

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

BRANDON LIVAS, RICHARD BUSWELL,
DEWAYNE CORBETT, JOHNNY SMITH,
CARLOS LORENZO MARTIN, and
GAINES ANDREWS, on behalf of
themselves and those similarly situated,

Petitioners,

v.

RODNEY MYERS, warden of Oakdale
Federal Correctional Institutions; and
MICHAEL CARVAJAL, Federal Bureau of
Prisons Director, in their official capacities,

Respondents.

Case No. xx-cv---

**Petition for Writ of Habeas Corpus,
Injunctive, and Declaratory Relief**

Class Action

IMMEDIATE RELIEF SOUGHT

INTRODUCTION

1. You are likely reading this Petition from self-isolation in your home. Now imagine if someone sick with COVID-19 came into your home and sealed the doors and windows behind them. That is what the Oakdale federal detention centers¹ have just done to the over 1,800 human beings currently detained there, where a COVID-19 outbreak is rampant, social distancing is impossible, and no one detained can leave.

¹ The Oakdale complex consists of FCI Oakdale I (population about 917) and FCI Oakdale II (population about 900, including 760 at the prison and 140 at the “Camp”). Conditions vary slightly among these buildings. *See* <https://www.bop.gov/locations/institutions/oak/>; <https://www.bop.gov/locations/institutions/oad/>. Because Defendant Myers is Warden for both, Defendant Carvajal is responsible for prisoners at both, and, upon information and belief, both facilities are infected with COVID-19, they are referred to collectively as “Oakdale.”

2. We are in the midst of the most significant pandemic in generations.² A highly contagious and deadly virus called coronavirus has swept the globe. No one is safe. The lethality rate of COVID-19, the serious respiratory disease caused by this coronavirus, is estimated between 0.3% and 3.5%: at least 5-35 times deadlier than the common flu that kills thousands a year.³ All age groups, including some children, have contracted the disease,⁴ and the World Health Organization estimates that one in five people who do contract it require hospitalization.⁵ On March 13, 2020, President Trump declared a national state of emergency.⁶ As of March 26, 2020, the United States led the world in confirmed cases of COVID-19.⁷ The virus is spreading exponentially: U.S cases doubled in the five-day period prior to April 2nd.⁸

3. COVID-19 is currently running rampant in the state of Louisiana. A study from the University of Louisiana at Lafayette reported that COVID-19 cases grew at 67.8% in the first

² John M. Barry, *The Single Most Important Lesson from the 1918 Influenza*, New York Times (March 17, 2020), <https://cutt.ly/PtQ5uAZ> (Opinion piece by author of “The Great Influenza: The Story of the Deadliest Pandemic in History,” noting comparison between current COVID-19 outbreak and the 1918 influenza outbreak widely considered one of the worst pandemics in history).

³ Exhibit 1, Declaration of Joe Goldenson, MD (“Goldenson Dec.”) ¶7. As of April 52, 2020, there were 1,260,015,104,403 confirmed cases globally, with 685,303,041 deaths and 258,105,885,79 recoveries. Johns Hopkins University of Medicine, *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University*, <https://cutt.ly/StEyn2U>.

⁴ Robert Verity, PhD., et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, *Lancet Infect Dis* (March 30, 2020), 6.

⁵ World Health Organization, *Q&A on Coronaviruses (COVID-19)*, “Should I Worry About COVID-19?,” <https://cutt.ly/YtEyrxl>.

⁶ Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, Wash. Post (March 13, 2020, 10:46 AM), <https://cutt.ly/ftWyIPb>.

⁷ Donald G. McNeil, Jr., *The U.S. Now Leads the World in Confirmed Coronavirus Cases*, New York Times (March 26, 2020), <https://cutt.ly/QtQ7zz6>.

⁸ Soo Kim, U.S. Coronavirus Cases Doubled in Just Five Days as Daily Death Toll Increasingly Exponentially, *Newsweek* (April 2, 2020), available at <https://www.newsweek.com/coronavirus-update-america-cases-double-1495692>; Johns Hopkins University, Coronavirus Resource Center, available at <https://coronavirus.jhu.edu/map.html>; see also Brittany Shammass, et al., *Trump says Quarantine for New York Area “Will not be Necessary;” U.S. Coronavirus-related Deaths Double in Two Days*, Wash. Post (March 28, 2020, 11:27 p.m.), <https://cutt.ly/ktRo8u0>.

two weeks after the initial diagnosis, the highest rate in the United States.⁹ As of April 2, 2020, Louisiana had 9,150 confirmed cases of COVID-19, with at least 310 deaths.¹⁰ On April 2, 2020, Louisiana Governor John Bel Edwards extended the state's stay-at-home order to April 30th, limiting gatherings in confined spaces to 10 or fewer people.¹¹ Governor Edwards estimated that the state would exceed its ventilator capacity by April 9th, and its ICU capacity a few days after that.¹²

4. There is no vaccine or cure for COVID-19. The best course, according to public health experts, is to slow and prevent transmission, primarily through a practice known as "social distancing."¹³ Social distancing requires all people to stay at least six feet away from all other people to control the spread of the virus. These measures are particularly important because the coronavirus spreads aggressively, and people can spread it even if they do not feel sick or exhibit any symptoms.¹⁴ The only assured way to curb the pandemic is through dramatically reducing

⁹ Adam Daigle, *Coronavirus Cases Grew Faster in Louisiana Than Anywhere Else in the World: UL Study*, THE ACADIANA ADVOCATE (Mar. 24, 2020), available at https://www.theadvocate.com/acadiana/news/coronavirus/article_94494420-6d4b-11ea-ac42-ff7dd722c084.html.

¹⁰ Sunday, April 3rd's figures represent a nearly 143% increase of confirmed cases since Friday, April 2 and a nearly 154% increase in confirmed deaths since Friday April, 2. See Louisiana Department of Health, Office of Public Health, Louisiana Coronavirus (COVID-19) Information, available at <http://ldh.la.gov/coronavirus>.

¹¹ *Louisiana coronavirus stay-at-home order extending to April 30, John Bel Edwards announces*, NOLA.com (Apr. 2, 2020) available at <https://cutt.ly/8tD5Kni>; see also Victoria Christina, *Gov. Edwards: Without social distancing, data models show thousands of new hospitalizations daily*, WGNO.com (April 3, 2020) (Gov. Edwards encourages people to "understand the impact of" and "full[y] compl[y] with" social distancing), available at <https://cutt.ly/ptD5Jr0>.

¹² Chandelis Duster, Louisiana governor says state could run out of ventilators by end of the week if coronavirus cases continue to rise, CNN, (Apr. 5, 2020, 12:43 p.m.) available at: <https://cutt.ly/WtD5Fu1>.

¹³ Goldenson Dec. ¶14; World Health Organization, *Coronavirus*, <https://cutt.ly/ztWyf7e> ("At this time, there are no specific vaccines or treatments for COVID-19.").

¹⁴ Centers for Disease Control and Prevention, *How Coronavirus Spreads*, <https://cutt.ly/CtYRkkC>.

contact for all.¹⁵ Consequently, every American institution—from schools¹⁶ to places of worship,¹⁷ from businesses¹⁸ to legislatures¹⁹—has been exhorted to reduce the number of people in close quarters, if not empty entirely.²⁰ They have also been told to undertake aggressive sanitation measures, such as cleaning and disinfecting all surfaces for exacting periods of time with products with particular alcohol contents, and closing off any areas used by a sick person.²¹

5. These imperatives apply with special force to prisons, where the government controls almost entirely a person's ability to avoid others and to maintain adequate sanitation.

6. Yet prisons are fundamentally incapable of implementing these recommendations, and incarcerated people are already dying nationwide as a result. For example, as of February 29, 2020, at the peak of the outbreak in Wuhan, China—the city where COVID-19 originated—over half of all new infection cases were incarcerated people.²² On Rikers Island, the rate of infection among incarcerated people is over eight times the rate of infection in New York City generally,

¹⁵ Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to “Flatten the Curve,”* Wash. Post. (March 14, 2020), <https://cutt.ly/etYRnkz>.

¹⁶ Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs*, <https://cutt.ly/ItRPq5n>.

¹⁷ Centers for Disease Control and Prevention, *Interim Guidance for Administrators and Leaders of Community-and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://cutt.ly/KtRPk1k>.

¹⁸ Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://cutt.ly/stRPvg4>.

¹⁹ Nat'l Conf. of State Legislatures, *Coronavirus and State Legislatures in the News*, <https://cutt.ly/4tRPQne.a>

²⁰ As of April 3, 2020, fully 311 million Americans were being urged by their City, County, Parish, Territory, and/or State governments to stay at home to reduce the spread of coronavirus. See Sarah Mervosh, Denise Lu, Vanessa Swales, *Which States and Cities Have Told Residents to Stay at Home*, NEW YORK TIMES (last updated April 3, 2020), *available at*: <https://cutt.ly/CtDMZY0>.

²¹ Centers for Disease Control and Prevention, *Cleaning and Disinfecting Your Facility*, <https://cutt.ly/atYE7F9>.

²² Zi Yang, *Cracks in the System: COVID-19 in Chinese Prisons*, THE DIPLOMAT (March 9, 2020), *available at* <https://thediplomat.com/2020/03/cracks-in-the-system-covid-19-in-chinese-prisons/>.

and 45 times higher than the rate in Wuhan, China.²³ Fourteen prisoners have died of COVID-19 in Bucks County, Pennsylvania.²⁴ Three inmates have died of the disease at FSL Elkton, a federal prison near Youngstown, Ohio.²⁵

7. Further, prisons are not sealed off from the world outside them. By their nature, people cycle in and out constantly—from correctional and medical staff, to families and attorneys, to those serving short sentences or finishing longer ones. This dynamic was occurring before BOP’s lockdown, and possibly-infected-but-asymptomatic employees are still going home and returning to Oakdale even during the lockdown’s pendency. This allows COVID-19 to spread from Oakdale to the community and from the community to Oakdale. Failing to prevent and mitigate the spread of COVID-19 endangers not only those within the institution, but the entire community. Hence, immediate and categorical release of prisoners, starting with the medically-vulnerable, is the primary mitigation effort that Oakdale can undertake to comport with public health guidance and to prevent a catastrophic outbreak at the facility.

8. Attorney General Barr’s April 3rd Memorandum to Defendant Carvajal (“April 3 Memo”) recognized the “significant level of infection” at Oakdale and suggested “immediately” “mov[ing] vulnerable inmates out.”²⁶ However, the April 3 Memo did not define “vulnerable

²³ These numbers likely underestimate the infection rate on Rikers Island, as they do not include the number of people contracted COVID-19 on Rikers Island but who have already been released. The rates of infection rely on publicly released data collected by the Legal Aid Society. *See* LEGAL AID SOCIETY, *Analysis of COVID-19 Infection Rate in NYC Jails* (last visited April 5, 2020, 3:00 p.m.), available at: <https://cutt.ly/RtYTbWd>.

²⁴ Larry R. King, Bucks County COVID-19 Deaths Reach 14; Four Cases Confirmed at Prison (April 4, 2020), available at: <https://cutt.ly/utD6u5F>.

²⁵ Rachel Polansky, 3 inmates at eastern Ohio prison dead from suspected cases of COVID-19, WKYC (April 4, 2020, 11:18 p.m.), available at: <https://cutt.ly/7tD6wlA>.

²⁶ Memorandum from Attorney General William Barr to Director of Bureau of Prisons, *The Increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (April 3, 2020), available at <https://politi.co/2UV3JBi>.

inmates.”²⁷ Nor did it establish concrete timelines and guidelines for local officials, including Defendants, to implement this directive in line with public health expertise—even though Oakdale is a low-security facility, and therefore every prisoner has already been deemed low risk. Finally, the April 3 Memo did not establish accountability mechanisms for the suffering, death, and constitutional violations to date. This lawsuit seeks all of the above.

9. Everyone at Oakdale recognizes Defendants’ inaction to date. Defense attorneys and prisoners have reported a continuing lack of hygiene protocols and social distancing, and corrections officers are suing for hazard pay.²⁸

10. Absent intervention from this Court to align the operation of Oakdale with public health principles—first and foremost, the release of as many incarcerated persons as possible, but also improved sanitation, testing, and treatment protocols for all others—devastating, and in many cases deadly, irreparable harm will befall incarcerated persons, facility staff, and the community.²⁹ The outbreaks in corrections facilities around the country³⁰ prove the need for immediate and significant reductions in population. The case-by-case review that Attorney General Barr proposes—even if implemented now, which it has not been—is no match for exponential spread

²⁷ *Id.*; see also Memorandum from Attorney General William Barr to Director of Bureau of Prisons, Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic (March 26, 2020), available at <https://www.justice.gov/file/1262731/download>.

²⁸ Nicole Ogrysko, *AFGE sues for hazard pay for federal employees working through coronavirus pandemic*, FEDERAL NEWS NETWORK (March 30, 2020, 6:26 p.m.) (“Three of the named plaintiffs on the case work at the Federal Correctional Complex in Oakdale, Louisiana.”), available at <https://federalnewsnetwork.com/afge/2020/03/afge-sues-for-hazard-pay-for-federal-employees-working-through-coronavirus-pandemic/>.

²⁹ Noam N. Levey, Jenny Jarvie, *Coronavirus Will Hit Health System Hard and Not All States are Prepared*, L.A. TIMES (March 12, 2020 4:00 a.m.), <https://cutt.ly/mtYTI3U>; Joanne Kenen, *Local Officials Alarmed by Dearth of Ventilators, Hospital Beds*, POLITICO (March 14, 2020 7:00 a.m.), <https://cutt.ly/stYTDDk>.

³⁰ Sam Kelly, *134 inmates at Cook County Jail confirmed positive for COVID-19*, CHICAGO SUN-TIMES (Mar. 30, 2020, 8:11 p.m.). <https://cutt.ly/6tYTqi5>.

of the disease. Courts and executive branch officials elsewhere in the country have accepted this reality and begun broad-based, categorical releases.³¹

11. Accordingly, Petitioners—a class and subclass of persons incarcerated at Oakdale now and in the future—bring this action and request immediate release of all Petitioners and Class Members, coupled with appropriate support and conditions upon release, as informed by public health expertise. If this Court does not grant immediate release on the basis of this Petition-Complaint, Petitioners request a hearing as soon as possible. Given the exponential spread of COVID-19, there is no time to spare.

I. JURISDICTION AND VENUE

12. Petitioners bring this putative class action pursuant to 22 U.S.C. § 2241 for relief from detention that violates their Eighth Amendment rights under the U.S. Constitution.

13. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), and 28 U.S.C. § 1331 (federal question jurisdiction).

14. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 2241(d) because the Petitioners and all other class members are in custody in this judicial district and venue. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioners' claims occurred in this district.

³¹ See, e.g., Memorandum and Order, *Thakker v. Doll*, No. 1:20-CV-0480 (M.D.Pa. Mar. 31, 2020) at Doc. No. 47 (categorically releasing petitioners who “suffer[] from chronic medical conditions and face[] an imminent risk of death or serious injury if exposed to COVID-19”); Emmanuel Felton, *A Judge Ordered The Release Of Low-Level Prisoners Because Of The Coronavirus. People Were Absolutely Furious.*, BUZZFEED NEWS (Mar. 27, 2020, 5:27 pm), <https://cutt.ly/QtD2D0l>.

II. PARTIES

15. Petitioner Brandon Livas, BOP No. Register 37736034, is detained in the satellite camp at Oakdale (FCI Oakdale II). He is 35 years old. He is diabetic and suffers from acute pancreatitis. He has no access to hot water and soap, and he cannot practice social distancing—he lives in a dorm-style barracks with a bed that is less than three feet away from his nearest neighbor. As part of his job duties at Oakdale, he is expected to clean about six prison offices. He is serving a 15-month sentence for fraud that began on December 2, 2019. He is a first-time, nonviolent offender.

16. Petitioner Richard Joseph Buswell, BOP Register No. 15618035, is detained at Oakdale (FCI Oakdale II). He is 51 years old. He has access to communal bars of soap that are filthy; they are shared by about 125 people at four sinks; those 125 people share six showers and eight filthy toilets. He suffers from asthma, hypertension, and sleep apnea; he sleeps with a CPAP device. He is serving a 10-year sentence for conspiracy to commit securities fraud and an 8-year concurrent sentence for distribution of synthetic marijuana.

17. Petitioner Johnny Smith, BOP Register No. 33172034, is detained at Oakdale (FCI Oakdale I). He is 49 years old and suffers from hypertension and a thyroid condition.

18. Petitioner Carlos Lorenzo Martin, BOP Register No. 15029043, is detained at Oakdale (FCI Oakdale II). He is 35 years old and has compromised lungs due to childhood asthma. He is housed in a room which sleeps 72 prisoners in bunks arranged in rows, such that when he sleeps he can reach out and touch the person next to him on either side. He was convicted of a drug charge and is slated for release in eight months.

19. Petitioner Dewayne Corbett, BOP Register No. 21703171, is detained at Oakdale (FCI Oakdale I). He is 58 years old and in chronic care. He has a respiratory disorder involving a

4-by-5-millimeter nodule on his lung and is awaiting a CT scan, so he feels he needs to socially distance but cannot.

20. Petitioner Gaines Andrews, BOP No. Register 44677379, is detained in the satellite camp at Oakdale (FCI Oakdale II). He is 39 years old and suffers from asthma. He is the head of maintenance and frequently makes deliveries to FCI Oakdale I. As part of his job duties at Oakdale, he is helping construct tent camps in the prison recreation yard along with bunk houses and showers for prison staff. He pleaded guilty to a single count of conspiracy to distribute methamphetamine and received a 10-year sentence; he is scheduled for release on October 28, 2022.

21. Respondent Rodney Myers is the warden of Oakdale and currently has immediate custody over Petitioners and all other putative Class members.

22. Respondent Michael Carvajal is the Director of the United States Bureau of Prisons and is responsible for all people including Plaintiffs housed at Bureau of Prisons facilities, including all structures at Oakdale.

III. FACTUAL ALLEGATIONS

A. COVID-19 Poses a Significant Risk of Illness, Injury, or Death

23. The novel coronavirus that causes COVID-19 has led to a global pandemic.³² As of April 5, 2020, there were more than 1.26 million reported COVID-19 cases throughout the world

³² Goldenson Dec. ¶15; Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://cutt.ly/UtEuSLC>.

and more than 9,400 deaths in the United States.³³ Projections indicate that as many as 240,000 people in the U.S. will die from COVID-19, accounting for existing interventions.³⁴

24. The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.³⁵ There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection.³⁶ Social distancing—deliberately keeping at least six feet of space between persons to avoid spreading the illness³⁷—plus a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, are the only known effective measures for protecting against transmission of COVID-19.³⁸ Because the coronavirus spreads among people who do not show symptoms, staying away from people is the best way to prevent contraction. In other words, *everyone*—including officials at Oakdale—has to act as if *everyone* has the disease.

25. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs including the heart and liver.³⁹

³³ See Johns Hopkins University of Medicine, *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University*, <https://cutt.ly/StEyn2U>.

³⁴ Rick Noack, et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even With Mitigation Efforts*, WASH. POST. (April 1, 2020, 12:02 a.m.), <https://cutt.ly/5tYT7uo>.

³⁵ Centers for Disease Control and Prevention, *Interim Infection Prevention and Control Recommendations for Patience with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings*, <https://cutt.ly/ztRAo0X>.

³⁶ *Supra* note 3.

³⁷ Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*, <https://cutt.ly/VtYYiDG>.

³⁸ Goldenson Dec. ¶14.

³⁹ Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://cutt.ly/etRPVRI>.

26. People over the age of fifty face a greater risk of serious illness or death from COVID-19.⁴⁰ In a February 29, 2020 preliminary report, individuals age 50-59 had an overall mortality rate of 1.3%. 60-69-year-olds had an overall 3.6% mortality rate, and those 70-79 years old had an 8% mortality rate.⁴¹

27. People of any age who suffer from the following also have an elevated risk: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.⁴² Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.⁴³

⁴⁰ Xianxian Zhao, et al., Incidence, clinical characteristics and prognostic factor of patients with COVID-19: a systematic review and meta-analysis (March 20, 2020), <https://cutt.ly/etRAkmt>.

⁴¹ *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart*, <https://cutt.ly/ytEimUQ> (data analysis based on WHO China Joint Mission Report and Chinese CCDC report published in the Chinese Journal of Epidemiology).

⁴² Centers for Disease Control and Prevention, *Groups at Higher Risk for Severe Illness*, <https://bit.ly/3dYDrqI>; *Coronavirus disease (COVID-19) advice for the public: Myth busters*, World Health Organization, <https://cutt.ly/dtEiCyc> (“Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”).

⁴³ *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12 <https://cutt.ly/KtD3ALr> (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”).

28. In many people, COVID-19 causes fever, cough, and shortness of breath. However, for people over the age of fifty or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe.⁴⁴ Most people in higher-risk categories who develop serious illness will need advanced support. This requires highly specialized equipment like ventilators that are in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive care physicians.⁴⁵

29. In serious cases, COVID-19 causes acute respiratory disease syndrome (“ARDS”), which is life-threatening; those who receive ideal medical care with ARDS have a 30% mortality rate.⁴⁶

30. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.⁴⁷

31. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.⁴⁸

32. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza.⁴⁹ According to recent estimates, the fatality

⁴⁴ Goldenson Dec. ¶¶ 7-9.

⁴⁵ Kevin McCoy and Katie Wedell, ‘*On-the-job emergency training*’: Hospitals may run low on staff to run ventilators for coronavirus patients, USA TODAY (Mar. 27, 2020), available at <https://bit.ly/2V7rLsS>.

⁴⁶ Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland, March 25, 2020, <https://cutt.ly/stERiXk>.

⁴⁷ CDC, *Interim Clinical Guidance*, *supra* note 39.

⁴⁸ Robin McKie, *Why do some young people die of coronavirus?*, The Guardian (April 5, 2020), available at <https://bit.ly/2x5dghp>.

⁴⁹ Goldenson Dec. ¶7.

rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems.⁵⁰

B. All People in Oakdale Face Grave and Immediate Danger Due to COVID-19

33. Beyond the general public health concerns presented by the COVID-19 pandemic, persons incarcerated at Oakdale face a particularly acute threat of illness, permanent injury, and death.⁵¹

34. Louisiana is experiencing some of the worst COVID-19 outbreaks in the world. As of April 3, 2020, Louisiana had 10,297 confirmed cases of COVID-19, with at least 370 deaths.⁵² A study from the University of Louisiana at Lafayette reported that COVID-19 cases grew at 67.8%, the highest rate in the United States.⁵³

35. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19,⁵⁴ as already evidenced by the rapid spread of the virus in cruise ships⁵⁵ and nursing homes.⁵⁶ It is virtually impossible for people who are confined in prisons, jails, and detention centers to engage in the necessary social

⁵⁰ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. (Mar. 10, 2020, 12:49 PM), <https://cutt.ly/itEmi8j>.

⁵¹ Goldenson Dec. ¶¶ 15-23.

⁵² Goldenson Dec. ¶ 11. Louisiana cases nearly tripled from March 29 (3,553 confirmed cases) to April 3 (10,297 confirmed cases). See Louisiana Department of Health, Office of Public Health, Louisiana Coronavirus (COVID-19) Information, available at <http://ldh.la.gov/coronavirus>.

⁵³ Daigle, *Coronavirus Cases Grew Faster in Louisiana Than Anywhere Else in the World*, *supra* note 9

⁵⁴ Goldenson Dec. ¶ 19.

⁵⁵ The CDC is currently recommending that travelers defer cruise ship travel worldwide. “Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19.” *COVID-19 and Cruise Ship Travel*, Centers for Disease Control and Prevention, <https://cutt.ly/7tEEQvT>.

⁵⁶ The CDC notes that long-term care facilities and nursing homes pose a particular risk because of “their congregate nature” and the residents served. *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, Centers for Disease Control and Prevention, <https://cutt.ly/7tEEITH>.

distancing and hygiene required to mitigate the risk of transmission.⁵⁷ This is demonstrated by dramatic outbreaks in the Cook County Jail in Chicago⁵⁸ and Rikers Island in New York City, where the transmission rate for COVID-19 is estimated to be the highest in the world.⁵⁹ The CDC also warns of “community spread” where the virus spreads easily and sustainably within a community where the source of the infection is unknown.⁶⁰

36. Correctional settings further increase the risk of contracting COVID-19 due to the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, presence of many high-contact surfaces, and no possibility of staying at a distance from others.⁶¹

37. Correctional facilities house large groups of people together, and move people in groups to eat, recreate, and engage in programming.⁶² They frequently have insufficient medical care for the population even outside times of crisis.⁶³ Hot water, soap, and paper towels are often in limited supply. Incarcerated people, rather than professional cleaners, are responsible for cleaning the facilities⁶⁴ and often are not given appropriate supplies.

⁵⁷ Goldenson Dec. ¶ 26; *see also* KPLC News, *Death toll rising at Federal prison in Oakdale* (April 2, 2020, 9:32 p.m.) (Corrections union president admits: “It’s unfortunate that the inmates are being kept in a close proximity, that’s just the nature and physical layout of our institution. They sleep in cells right next to one another. I mean approximately three to four feet from one another.”).

⁵⁸ *See supra* note 30.

⁵⁹ *Supra* note 23.

⁶⁰ *How Coronavirus Spreads*, Centers for Disease Control and Prevention, <https://cutt.ly/jtEE9vG>.

⁶¹ Letter from Johns Hopkins Faculty, *supra* note 46.

⁶² *See, e.g.*, Nathalie Baptiste, *Correctional Facilities are the Perfect Incubators for the Coronavirus*, MOTHER JONES (March 6, 2020), <https://cutt.ly/GtRSi3e>.

⁶³ *See, e.g.*, Steve Coll, *The Jail Health-Care Crisis*, *The New Yorker* (Feb. 25, 2019), <https://cutt.ly/ftERHNg>.

⁶⁴ *See* Exhibit 3 (Declaration of Gaines Andrews) ¶3; *see, e.g.*, Wendy Sawyer, *How much do incarcerated people earn in each state?*, Prison Policy Initiative, (April 10, 2017); <https://cutt.ly/qtER2bh> (noting that “custodial, maintenance, laundry” and “grounds keeping” are among the most common jobs for incarcerated people); North Carolina Dept. of Corrections, *North Carolina Prison Inmates at Work*,

38. Outbreaks of the flu regularly occur in prisons. During the H1N1 epidemic in 2009, jails and prisons dealt with a disproportionately high number of cases.⁶⁵

39. In addition to Dr. Joe Goldenson, whose declaration is attached here, public health experts including Dr. Gregg Gonsalves,⁶⁶ Ross MacDonald,⁶⁷ Dr. Marc Stern,⁶⁸ Dr. Oluwadamilola T. Oladeru and Adam Beckman,⁶⁹ Homer Venters,⁷⁰ the faculty at Johns Hopkins schools of nursing, medicine, and public health,⁷¹ and Josiah Rich⁷² have all strongly cautioned that people booked into and held in correctional facilities are likely to face serious, even grave, harm due to the outbreak of COVID-19.

C. Existing Procedures and Protocols Will Not Be Sufficient to Ensure the Safety of Class Members or the General Public

40. Because of the severity of the threat posed by COVID-19, and its potential to rapidly spread throughout a correctional setting, public health experts recommend the rapid release

<https://cutt.ly/jtERCbb> (noting that cleaning the grounds and facilities is one of the jobs of incarcerated persons in North Carolina).

⁶⁵ The H1N1 “swine flu” pandemic outbreak spread dramatically in jails and prisons in 2010, but that strain of virus had a low fatality rate because of the characteristics of the virus—COVID-19’s fatality rate is far higher. David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, PRISON LEGAL NEWS (Feb. 15, 2010), <https://cutt.ly/ytRSkuX>.

⁶⁶ Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, Connecticut Mirror (March 11, 2020), <https://cutt.ly/BtRSxCF>.

⁶⁷ Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus ‘Storm is Coming,’* New York Post (March 19, 2020, 11:29 a.m.), <https://cutt.ly/ptRSnVo>.

⁶⁸ Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions in 3 ‘Buckets,’* Washington Assoc. of Sheriffs & Police Chiefs (March 5, 2020), <https://cutt.ly/EtRSm4R>.

⁶⁹ Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America’s Incarcerated Population – and How to Ensure It’s Not Left Behind*, HEALTH AFFAIRS (March 10, 2020), <https://cutt.ly/QtRSYNA>.

⁷⁰ Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother Jones (March 12, 2020), <https://cutt.ly/jtRSPnk>.

⁷¹ See, supra note 46.

⁷² Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, THE GUARDIAN (March 13, 2020 3:00 p.m.), <https://cutt.ly/itRSDNH>.

from custody of people most vulnerable to COVID-19.⁷³ Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for people held or working in a prison and the broader community.⁷⁴ Release of the most vulnerable people from custody also reduces the burden on the region's health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.⁷⁵

41. Internationally, governments and jail staff have recognized the threat posed by COVID-19 and released high numbers of detained persons. In Iran, for example, more than 85,000 people were released from jails to curb the spread of coronavirus.⁷⁶

42. Domestically, jail administrators in Cuyahoga County, Ohio;⁷⁷ Los Angeles, California;⁷⁸ San Francisco, California;⁷⁹ Jefferson County, Colorado;⁸⁰ and the State of New Jersey,⁸¹ among others, have concluded that widespread jail release is a necessary and appropriate public health intervention.

⁷³ See, e.g., Josiah Rich, Scott Allen, and Mavis Nimoh, *We must release prisoners to lessen the spread of coronavirus*, WASHINGTON POST (March 17, 2020), available at <https://wapo.st/2JDVq7Y>.

⁷⁴ See generally Goldenson Dec.; *id.* at ¶ 26 (“What’s more, the infection in FCI Oakdale would not stay limited to the facility, but would worsen infection rates in the broader community.”).

⁷⁵ *Id.*

⁷⁶ *US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*, BBC News (March 19, 2020), <https://cutt.ly/9tRDyb3> (noting Iran’s release of over 85,000 prisoners in response to the virus).

⁷⁷ Scott Noll, *Cuyahoga County Jail Releases Hundreds of Low-Level Offenders to Prepare for Coronavirus Pandemic*, (March 20, 2020 6:04 p.m.), <https://cutt.ly/CtRSHkZ>.

⁷⁸ Alene Tchekmedyan, *More L.A. County Jail Inmates Released Over Fears of Coronavirus Outbreak*, L.A. Times, (March 19, 2020 6:55 p.m.), <https://cutt.ly/ltrSCs6>.

⁷⁹ Megan Cassidy, *Alameda County Releases 250 Jail Inmates Amid Coronavirus Concerns, SF to Release 26*, San Francisco Chronicle (March 20, 2020), <https://cutt.ly/0tRSVmG>.

⁸⁰ Jenna Carroll, *Inmates Being Released Early from JeffCo Detention Facility Amid Coronavirus Concerns*, KDVR Colorado (March 19, 2020 2:29 pm.), <https://cutt.ly/UtRS8LE>.

⁸¹ Erin Vogt, *Here’s NJ’s Plan for Releasing Up to 1,000 Inmates as COVID-19 Spreads* (March 23, 2020), <https://cutt.ly/QtRS53w>.

43. Notwithstanding Attorney General Barr's April 3 memorandum, which lacks specificity and oversight, immediate release of medically vulnerable Class members and a plan formulated by a public health expert remain necessary.⁸²

44. The April 3 Memo directed Defendant Carvajal to review all prisoners with COVID-19 risk factors who may be candidates for release to home confinement, starting with those at Oakdale and two other federal detention centers that have been hit the hardest by COVID-19 so far. This step, while necessary, falls far short of what is necessary to protect the health, safety, and lives of Petitioners and to avoid further death and serious illness. The April 3 Memo directs Defendant Carvajal to implement the review process "immediately" and "immediately maximize appropriate transfers to home confinement," but it does not provide any concrete timelines or procedures for doing so. Critical decisions are left entirely to the discretion of BOP personnel, who have already demonstrated that they lack the expertise and resources to implement AG Barr's directives and otherwise deal with the COVID-19 outbreak at Oakdale. Further, there is no indication how many people incarcerated at Oakdale will be considered and approved for transfer to home confinement. The only appropriate response to this emergency is immediate intervention by the Court.

45. Indeed, it is unclear whether Defendants can or will move with the required speed. Even before President Trump signed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Defendant Carvajal had the authority to release vulnerable prisoners in light of the pandemic. He did not. The CARES Act, signed March 27, 2020, then gave the Attorney General expanded power to immediately release prisoners on account of COVID-19, and Attorney

⁸² See Public Health Expert Declarations, *supra* note 80.

General Barr sent a memorandum to Defendant Carvajal the day before “directing” Defendant Carvajal to “prioritize” home confinement for vulnerable populations. Defendant Carvajal did nothing. Indeed, government attorneys continued to oppose release in individual cases for Oakdale prisoners.⁸³ Prisoners have informed undersigned counsel they have either not been permitted to submit individual grievance requests, or have not received responses to requests for furloughs, personal protective equipment, and additional personal hygiene supplies.

46. It has now been three days since Attorney General Barr’s April 3 Memo “directing” Defendant Carvajal to “move with dispatch in using home confinement” for vulnerable prisoners. Defendants have not moved with dispatch. There is no evidence that prisoners have been released based on these immediate directives. The case-by-case review contemplated in the April 3 Memo is both unnecessary—Oakdale is already a low-security facility—and inadequate to the moment. In the time between Attorney General Barr’s March 26 directive and today, five men at Oakdale have died waiting for the process to play out.

47. Accordingly, expedited release to home confinement—with social distancing, testing, and other expert-guided measures as necessary—is needed not only to prevent irreparable harm to members of the medically-vulnerable subclass, but also to reduce the incarcerated population at Oakdale sufficiently to ensure proper social distancing to reduce transmission for all class members and the wider public.⁸⁴

⁸³ See, e.g., United States’ Supplemental Opposition to Motion for Modification of Sentence, Stay of Sentence, and/or Imposition of Interim Sentence, *United States v. Harold Lee*, No. 12-CR-0320 (W.D.La. Apr. 3, 2020).

⁸⁴ See Public Health Expert Declarations, *supra* note 80. Further, in the prison context, the ABA urges that “Governmental authorities in all branches in a jurisdiction should take necessary steps to avoid crowding that... adversely affects the ... protection of prisoners from harm, including the spread of disease.” ABA Standard on Treatment of Prisoners 23-3.1(b).

48. Oakdale poses a particularly high risk of transmission. The CDC recommendations described above are “impossible” at Oakdale.⁸⁵ As to social distancing, Petitioner Buswell said that phones two feet apart, as are the sinks. There eight working sinks, eight dirty toilets, and “five or six” working showers for approximately 125 men at the Camp facility where he lives.⁸⁶ He also said, “There is no liquid soap in the individual soap dispensers and we only have access to communal bar soap, which is filthy. We do not have access to hand sanitizer or clean hand towels. Laundry is done only twice a week.”⁸⁷

49. Petitioner Buswell is over 50 and has several serious chronic health conditions including asthma and sleep apnea that make him particularly vulnerable to COVID-19.⁸⁸ He has interacted directly with three staffers who have tested positive.⁸⁹ Yet no one has responded to his administrative request for a furlough for over a week, and his case manager told him she was “too overwhelmed to deal with it and did not provide [him] any further guidance.”⁹⁰

50. Petitioner Andrews is the head of maintenance amongst the prisoners and is helping to build “tent camps in the yard” including “personally buil[ding] frames to hold oxygen tanks.”⁹¹ Although corrections officers are “quitting or retiring” rather than work at FCI Oakdale I, he is working seven days a week.⁹² He and his team “do not have enough personal protective

⁸⁵ Declaration of Somil Trivedi at Ex. 2 (Declaration of Richard Buswell) (“Buswell Dec.”) ¶4; Goldenson Dec. ¶ 26.

⁸⁶ Buswell Dec. ¶4; *see also* Andrews Dec. ¶5 (“Despite knowing about it, the prison directed maintenance to rip out half of the showers because they wanted to install new ones.”).

⁸⁷ *Id.* ¶5.

⁸⁸ Buswell Dec. ¶2; Goldenson Dec. ¶8 (“The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.”)

⁸⁹ Buswell Dec. ¶10.

⁹⁰ *Id.* ¶8.

⁹¹ Andrews Dec. ¶3.

⁹² *Id.* ¶3, ¶6.

equipment. We are able to get masks once per day if we ask, but they are not N95 masks.”⁹³ Even worse, he believes that prison officials “knew about this virus in January” but still “directed the maintenance team to rip out half of the showers because they wanted to install new ones.”⁹⁴ He said the official overseeing shower installation retired on April 5.⁹⁵

51. Counsel’s conversations with other prisoners during the current lockdown confirm these horrific conditions. A prisoner in the “Camp” facility at Oakdale told counsel that bunks are three feet away from each other; there is no access to hot water or soap; and there are eight showers for over 130 prisoners with no indication of tiered showering to improve social distancing. Camp residents are among the most vulnerable and cannot socially distance because of the “barracks-style” housing. A prisoner at the FCI Oakdale I building reported access to hot water and soap, but not hand sanitizer; laundry only once per week; and eight toilets, 15 urinals, and 24 showers for all prisoners, again without an indication of procedures to ensure distancing.

52. All available evidence indicates that Defendants have thus far disregarded the Attorney General’s directives to release vulnerable prisoners with “dispatch” in order to reduce populations and better achieve social distancing for those who remain.

53. Corrections officers suing Oakdale for hazard pay have made similar, harrowing complaints: one “performed work in close proximity to objects, surfaces, and/or individuals infected with COVID-19.”⁹⁶ Another “transported an inmate infected with COVID-19” and was

⁹³ *Id.* ¶4.

⁹⁴ *Id.* ¶5.

⁹⁵ *Id.*

⁹⁶ Complaint, *Braswell v. United States of America*, Civil Action No. 20-cv-359C at ¶ 23 (Fed. Cl. March 27, 2020), available at <https://www.classaction.org/media/braswell-et-al-v-the-united-states-of-america.pdf>.

only given personal protective equipment “after he had spent a significant amount of time with the inmate.”⁹⁷

54. The corrections union president has admitted that there is not sufficient personal protective equipment and that the layout of the prison makes social distancing physically impossible.⁹⁸

55. Given this track record, it defies reality that Oakdale could now miraculously implement AG Barr’s directives on its own, in line with CDC guidelines⁹⁹ and with the combination of speed and care for human life that the moment requires.¹⁰⁰

IV. CLASS ACTION ALLEGATIONS

56. Petitioners bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedures on behalf of themselves and a class of similarly situated individuals.

57. Petitioners Livas, Smith, Martin, Andrews, Corbett, and Buswell each seek to represent a class of all current and future people in post-conviction custody at Oakdale (“Class”), including a subclass of persons who, by reason of age or medical condition, are particularly vulnerable to injury or death if they were to contract COVID-19 (“Medically-Vulnerable Subclass”).

58. The “Medically-Vulnerable” Subclass is defined as all current and future persons incarcerated at Oakdale over the age of 50, as well as all current and future persons incarcerated

⁹⁷ *Id.*

⁹⁸ KPLC News, *Death toll rising at Federal prison in Oakdale* (April 2, 2020) (Corrections union president admits: “It’s unfortunate that the inmates are being kept in a close proximity, that’s just the nature and physical layout of our institution. They sleep in cells right next to one another. I mean approximately three to four feet from one another.”).

⁹⁹ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹⁰⁰ *Id.*; see also Goldenson Dec. ¶ 28.

at Oakdale of any age who experience: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.

59. Each Petitioner can represent the Class because each Petitioner is currently housed at Oakdale. Each Petitioner can also represent the Medically-Vulnerable Subclass because each Petitioner is over the age of 50 and/or suffers from one of the conditions listed in the definition of the Subclass above.

60. This action has been brought and may properly be maintained as a class action under Federal law. It satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

61. Joinder is impracticable because (1) the classes are numerous; (2) the classes include future members, and (3) the class members are incarcerated, rendering their ability to institute individual lawsuits limited, particularly in light of the BOP's current 14-day lockdown and generally reduced legal visitation and court closures in the Western District of Louisiana instituted to address COVID-19 concerns.

62. There are approximately 1,871 people in the proposed Class, and, on information and belief, approximately 748 people in the proposed Medically-Vulnerable Subclass.¹⁰¹

¹⁰¹ See <https://www.bop.gov/locations/institutions/oak/>; <https://www.bop.gov/locations/institutions/oad/>.

63. Common questions of law and fact exist as to all members of the proposed Class and Subclass: all have a right to receive adequate COVID-19 prevention, testing, and treatment.

64. Named Petitioners have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class. Petitioners have no interests adverse to the interests of the proposed class. Petitioners retained *pro bono* counsel with experience and success in the prosecution of civil rights litigation. Counsel for Petitioners know of no conflicts among proposed class members or between counsel and proposed class members.

65. Defendants have acted on grounds generally applicable to all proposed Class members, and this action seeks declaratory and injunctive relief. Petitioners therefore seek class certification under Rule 23(b)(2).

66. In the alternative, the requirements of Rule 23(b)(1) are satisfied, because prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the proposed classes.

V. ARGUMENT

A. Petitioner's Incarceration Amidst the Current COVID-19 Outbreak in Oakdale Violates his/her Right to Constitutional Conditions of Confinement

67. Corrections officials have a constitutional obligation to protect incarcerated people from a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Indeed, under the Eighth Amendment, prison officials “must provide humane conditions of confinement; . . . must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates[.]” *Id.* at 832 (internal quotation marks omitted). This obligation also requires corrections officials to address prisoners’ serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Plata*, 563 U.S. 493,

531-32 (2011); *Hinojosa v. Livingston*, 807 F.3d 657, 666 (5th Cir. 2015) (plaintiff stated an Eighth Amendment claim when Defendants subjected him to conditions “posing a substantial risk of serious harm” to his health).

68. This obligation requires corrections officials to protect incarcerated people from infectious diseases like COVID-19; officials may not wait until someone tests positive for the virus and an outbreak begins. *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition. . . . It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them”); *Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (“It is also important to note that [an] inmate need not show that death or serious illness has [already] occurred.”); *see also Farmer*, 511 U.S. at 833 (“[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”). By then it is too late. That one individual would have almost certainly infected untold numbers of people before displaying symptoms.¹⁰²

69. Prison officials violate this affirmative obligation by showing “deliberate indifference” to the substantial risk of serious harm. *Farmer*, 511 U.S. at 828. With respect to an impending infectious disease like COVID-19, deliberate indifference is satisfied when corrections officials “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33, 36 (holding that a prisoner “states a cause of

¹⁰² Goldenson Dec. ¶ 26.

action . . . by alleging that [corrections officials] have, with deliberate indifference, exposed him to conditions that pose an unreasonable risk of serious damage to future health”) (emphasis added); *see also Ball v. LeBlanc*, 792 F.3d 584, 594 (5th Cir. 2015) (court “may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious”) (citing *Farmer*, 511 U.S. at 842); *Hinojosa*, 807 F.3d at 667 (“open and obvious nature” of dangerous prison conditions supported an inference of deliberate indifference); *Johnson v. Epps*, 499 F. App’x 583, 589-92 (5th Cir. 2012) (allegations that prisoner was exposed to “serious, communicable diseases” and that prison officials were aware of the risk and did nothing to prevent it were sufficient to state a claim for violation of Eighth Amendment rights); *Gates v. Collier*, 501 F.2d 1291, 1300-03 (5th Cir. 1974) (affirming district court’s holding that allowing “[s]ome inmates with serious contagious diseases . . . to mingle with the general prison population,” alongside maintaining a host of other unsanitary and inhumane conditions, “constitute[d] cruel and unusual punishment”) (cited with approval in *Rhodes v. Chapman*, 452 U.S. 337, 352 n.17 (1981)).

70. Here, COVID-19 is “sure or very likely to cause serious illness,” and even waiting until “next week” to attempt internal mitigation efforts may be too long. *See supra* ¶¶48-54 (describing Oakdale’s failures to implement social distancing and hygienic practices thus far). In other words, the harmful “condition of confinement” at Oakdale is confinement itself.

71. Indeed, as outlined in Dr. Goldenson’s declaration, there are no mitigation efforts that Oakdale could undertake that would better prevent the risk of contraction—and possible later spread to the non-prison community—than immediate release of the Medically-Vulnerable Subclass and potentially more.¹⁰³ Accordingly, Oakdale’s failure to do so constitutes deliberate

¹⁰³ Goldenson Dec. ¶ 26-27.

indifference. *See, e.g., Hare v. City of Corinth, Miss.*, 74 F.3d 633, 644 (5th Cir. 1996) (“even where a State may not *want to* subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices.”) (emphasis added).

72. As Dr. Goldenson puts it:

It is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within FCI Oakdale. Adequate social distancing would be impossible to maintain. What’s more, the infection in FCI Oakdale would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

Goldenson Dec. ¶ 26.

B. 28 U.S.C. § 2241 is an Appropriate Vehicle to Remedy these Violations

73. Section 2241(c)(3) allows this court to order the release of inmates like Petitioners who are held “in violation of the Constitution.” 28 U.S.C. 2241(c)(3); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“It is clear, not only from the language of §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”); *Peyton v. Rowe*, 391 U.S. 54, 67 (1968) (Section 2241(c)(3) can afford immediate release for claims other than those challenging the sentence itself).

74. While the Fifth Circuit has indicated that “conditions of confinement” claims may not sound in Section 2241, it has not addressed how Section 2241 would apply in the current context, where the “condition” is a lightning-fast pandemic that has *already killed five men in the*

prison facility. Therefore immediate release is the only medically and legally sound remedy, rather than mere mitigation and/or further proceedings.¹⁰⁴ *Cf. Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (preferring Section 1983 to Section 2241 where outcome of challenge is not inevitable) (citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)); *see also Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (habeas “is not now and never has been a static, narrow, formalistic remedy”); Eve Brensike Primus, *A Structural Vision of Habeas Corpus*, 98 CAL. L. REV. 1, 12-14 (an original purpose of habeas was to rectify systemic violations by state actors).

VI. CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution

28 U.S.C. § 2241

Class including Medically-Vulnerable Subclass versus All Defendants

75. Under the Eighth Amendment, persons in carceral custody have a right to be free from cruel and unusual punishment. As part of the right, the government must protect incarcerated persons from a substantial risk of serious harm to their health and safety. *See, e.g., Farmer*, 511

¹⁰⁴ The Fifth Circuit recognizes that “[s]ection 2241 is the proper habeas remedy if a prisoner challenges the execution of his sentence rather than the validity of his conviction and sentence.” *Carter v. Sawyer*, 54 Fed. App’x. 406 (5th Cir. 2002) (unpublished) (citing *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992)); *see also United States v. Gabor*, 905 F.2d 76, 77-78 (5th Cir. 1990). Similarly, the Fifth Circuit has long held that the “sole function” of habeas is to “grant relief from unlawful imprisonment or custody,” such as the unconstitutional imprisonment Petitioners are currently enduring. *United States v. Pierre*, 525 F.2d 933, 935-936 (5th Cir. 1976) (approving the district court’s exercise of habeas jurisdiction to stay exclusion of petitioners because “[s]uch injunctive relief was necessary to enforce the petitioners’ right of liberty, and inhered in the question of custodial restraint upon liberty” and the district court’s decision not to exercise jurisdiction over petitioners’ request for the issuance of work permits because “the collateral relief now sought, on the other hand, is extraneous rather than intrinsic to the central question of the legality of custody.”) (emphasis added). *See also Torres v. Chapman*, 359 Fed. App’x. 459, 461 (5th Cir. 2009) (unpublished); *Moore v. King*, No. 08-60164, 2009 WL 122555, *1 (5th Cir. 2009) (per curiam) (unpublished) (“Because Moore does not seek release from custody, his claims are not cognizable in habeas proceeding.”)

U.S. at 828; *Estelle*, 429 U.S. at 104. Defendants are aware of the serious risk COVID-19 poses to members of the Class, and particularly members of the Medically-Vulnerable Subclass, yet have failed to take meaningful action to reduce the population of Oakdale and mitigate the risk of harm to the Class members. Defendants are therefore deliberately indifferent to that risk and violate Class members' constitutional rights.

76. Oakdale has neither the capacity nor the ability to comply with public health guidelines to manage the outbreak of COVID-19 currently ravaging the facility and cannot provide for the safety of the Class.

77. Defendants' actions and inactions result in the confinement of members of the Class in a prison where Defendants have not followed and seem incapable of following public health guidance regarding social distancing and personal hygiene, and treating or preventing COVID-19 outbreaks and deaths, all of which violates Petitioners' rights to treatment and adequate medical care.

78. By failing to implement controls necessary to contain the COVID-19 outbreak and stop preventable deaths at Oakdale, Defendants have violated the Eighth Amendment rights of the Class and particularly the Medically-Vulnerable Subclass.

VII. REQUEST FOR RELIEF

79. Petitioners and Class Members respectfully request that the Court order the following:

1. Certification of this Petition as a Class Action;
2. A temporary restraining order, preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Defendants to immediately release all

Medically-Vulnerable Subclass Members, with supports to ensure social distancing and other expert-recommended measures to prevent the spread of coronavirus;

3. Following immediate release of all Medically-Vulnerable Subclass Members, a plan, to be immediately submitted to the Court and overseen by a qualified public health expert pursuant to Fed. R. Evid. 706, which outlines:

- i. Specific mitigation efforts, in line with CDC guidelines, to prevent, to the degree possible, contraction of COVID-19 by all Class Members not immediately released;
- ii. A housing and/or public support plan for any released Class or Subclass Members for whom testing confirms exposure to or infection with COVID-19 and who do not readily have a place to self-isolate for the CDC-recommended period of time (currently 14 days).

4. All further action required to release Class Members outside the Medically-Vulnerable Subclass to ensure that all remaining persons are incarcerated in Oakdale under conditions consistent with CDC guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them;

5. If immediate release is not granted on the basis of this Petition alone, then expedited review of the Petition, including oral argument, via telephonic or videoconference if necessary;

6. A declaration that Oakdale's policies violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class; and

7. Any further relief this Court deems appropriate.

Dated: April 6, 2020

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Livas, Brandon; Buswell, Richard; Corbett, Dewayne; Smith, Johnny; Martin, Carlos Lorenzo; Andrews, Gaines

(b) County of Residence of First Listed Plaintiff Allen Parish, Louisiana (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

(see attachment)

DEFENDANTS

Myers, Rodney, warden of Oakdale Federal Correctional Institutions; Carvajal, Michael, Federal Bureau of Prisons Director

County of Residence of First Listed Defendant Allen Parish, Louisiana (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 2241

Brief description of cause: Class action for relief from detention that violates the Eighth Amendment under the U.S. Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE April 6, 2020 SIGNATURE OF ATTORNEY OF RECORD Bruce Hamilton

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

BRANDON LIVAS, RICHARD BUSWELL,
DEWAYNE CORBETT, JOHNNY SMITH,
CARLOS LORENZO MARTIN, and
GAINES ANDREWS, on behalf of
themselves and those similarly situated,

Petitioners,

v.

RODNEY MYERS, warden of Oakdale
Federal Correctional Institutions; and
MICHAEL CARVAJAL, Federal Bureau of
Prisons Director, in their official capacities,

Respondents

Case No.

**Petition for Writ of Habeas Corpus and
Complaint for Injunctive and Declaratory
Relief**

Class Action

IMMEDIATE RELIEF SOUGHT

DECLARATION OF SOMIL TRIVEDI

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. My name is Somil Trivedi. I am a Senior Staff Attorney for the American Civil Liberties Union and am counsel for the Petitioners in this case. I make this declaration in support of Petitioners' Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief.

2. Attached hereto are true and correct copies of the following materials, identified as numbered exhibits in the Petition:

Ex. 1: Declaration of Joe Goldenson, MD

Ex. 2: Declaration of Richard Buswell

Ex. 3: Declaration of Gaines Andrews

Dated: April 6, 2020

/s/ Somil Trivedi
Somil Trivedi

EXHIBIT 1

Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.
2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.
3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.
4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

The nature of COVID-19

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first began appearing sometime between December 1, 2019 and

December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.
7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.
8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.
9. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.
10. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents, heavily affected countries include Italy, Spain, Iran, South

Korea, and the US. The U.S. is now the world's most affected country. As of April 3, 2020, there have been 972,303 confirmed human cases globally and 50,322 known deaths. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.

11. In the United States alone, the CDC reports 239,279 cases and 5,443 deaths as of April 3, 2020. The Louisiana Department of Health reports 10,297 cases and 370 dead as of April 3. All these numbers are likely underestimates because of limited availability of testing.
12. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no pre-existing or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.
13. The U.S. CDC estimates that the reproduction rate of the virus, the R_0 , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.
14. There is currently no vaccine for COVID-19, and no cure. The only know ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough

handwashing, frequent decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

The risks of COVID-19 in detention facilities

15. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Oakdale, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.
16. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.
17. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.
18. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.
19. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet, shower, and eating environments; and limits on hygiene and personal protective equipment

such as masks and gloves in some facilities. Limits on soap (copays are common) and hand sanitizer, since they can contain alcohol, are also risks for spread.

20. Additionally, the high rate of turnover and population mixing of staff and detainees increases likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff. The current outbreak in the detention facility of Riker's Island in New York City is an example—and in the first days of that outbreak, the majority of cases were among prison staff, not inmates.
21. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.
22. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.
23. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are inevitable, as evidenced in Oakdale. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention facilities, the community as a

whole. Indeed, according to the World Health Organization, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”¹

24. From news reports, it is my understanding that 5 prisoners have died at FCI Oakdale. 18 detainees and 17 staff members have COVID-19, and that dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people. News outlets have reported that four detainees have already died from COVID-19 in FCI Oakdale. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.
25. It is my understanding that FCI Oakdale has five open bay / dorm housing units, eight housing units with multiple-occupancy cells, and no housing units with single occupancy cells, but a number of segregation units. It also my understanding that FCI Oakdale may have upward of 100 new admissions in a given month and roughly 1,700 detainees in the facility on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.
26. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within

¹ World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

FCI Oakdale. Adequate social distancing would be impossible to maintain.

What's more, the infection in FCI Oakdale would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

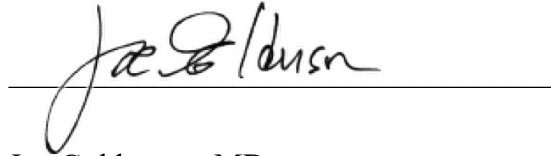
27. It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit,² be released from FCI Oakdale immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

28. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in FCI Oakdale, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

² "Persons held at Oakdale over the age of 50 , as well as all current and future persons held at Oakdale of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of April 2020 in Alameda County, CA

A handwritten signature in black ink, appearing to read "Joe Goldenson", is written over a horizontal line.

Joe Goldenson, MD

References

1. Dolan K, Wirtz A, Maazen B., et al. Global Burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees. *The Lancet*, July 14, 2016.
2. Stuckler D, Basu S, McKee M, King I. Mass incarceration can explain population increases in TB and multi-drug resistant TB in European and Central Asian countries. *Proceedings of the National Academy of Science USA*, 2008. 105:13280-85.
3. Beyrer C, Kamarulzaman A, McKee M; Lancet HIV in Prisoners Group. Prisoners, prisons, and HIV: time for reform. *The Lancet*. 2016 Jul 14. pii: S0140-6736(16)30829-7. doi: 10.1016/S0140-6736(16)30829-7. [Epub ahead of print] No abstract available. PMID: 27427447.
4. Marusshak LM, Sabol W, Potter R, Reid L, Cramer E. Pandemic Influenza and Jail Facilities and Populations. *American Journal of Public Health*. 2009 October; 99(Suppl 2): S339–S344.
5. Nakamoto Group, Prison Rape Elimination Act Audit Report of FCC Oakdale (2017), https://www.bop.gov/locations/institutions/oak/OAK_prea.pdf.

6. Rubenstein LS, Amon JJ, McLemore M, Eba P, Dolan K, Lines R, Beyrer C. HIV, prisoners, and human rights. *The Lancet*. 2016 Jul 14. pii: S0140-6736(16)30663-8. doi: 10.1016/S0140-6736(16)30663-8
7. Wang J, Ng, CY, Brook R. Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing. March 3, 2020. *JAMA*. Published online March 3, 2020. doi:10.1001/jama.2020.3151.

EXHIBIT 2

Declaration of Richard Buswell

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 15618035. I previously pleaded guilty to one count of conspiracy to commit wire fraud and one count of distribution of synthetic marijuana. I received a 10-year sentence for the wire fraud charge and a consecutive 8-year sentence for the marijuana charge.

2. I am 51-years-old and I have a number of serious chronic medical conditions. I have high blood pressure, which I treat with medication. I have asthma, which I treat with an albuterol inhaler. I also have sleep apnea, which requires me to use a Continuous Positive Airway Pressure (CPAP) machine to sleep at night.

3. I am concerned that I already have coronavirus or COVID-19, or that I will get it very soon.

4. It is impossible for inmates at Oakdale to stay six feet away from each other. To make phone calls, inmates must stand within two feet of each other because the phones are so close. For approximately 125 men, we have eight working sinks, which are no more than two feet apart. There are only five or six working showers. We have eight working toilets, which are very dirty.

5. There is no liquid soap in the individual soap dispensers and we only have access to communal bar soap, which is filthy. We do not have access to hand sanitizer or clean hand towels. Laundry is done only twice a week.

6. Most of the prison staff has very little access to personal protective equipment. Even when they do have access, they often do not wear masks or gloves. A member of the prison medical staff takes inmates' temperatures every day, but they wear the same pair of gloves for every inmate, which puts us at risk of cross-contamination.

7. Three Oakdale staffers that I interacted with have tested positive for coronavirus. Many prison staffers work at the prison hospital and then come to the Camp. Several prison staffers have told me that it's just a matter of time until we get coronavirus and get sick, and that there is nothing they can do for us. The prison is constructing hospital tents in the recreation yard. The prison staff is overworked and they are just as confused and scared as the inmates. I am concerned about the prison staff's safety as well as the inmates'.

8. Approximately one week ago, I submitted a request for emergency furlough. I have not received a response. I spoke to my case manager about my request. She told me she was too overwhelmed to deal with it and did not provide me any further guidance. She told me she thought that the inmates at Oakdale probably already have coronavirus or COVID-19 and she believes she already has it as well, which made me very worried.

9. I work in food service and help prepare meals for the inmates. I am housed at the Camp and prepare meals for the inmates at FCI Oakdale. Since Oakdale went on lockdown, I have been preparing bag lunches for inmates. We are preparing bag lunches because we don't have enough food to meet the usual requirements. We cannot get any food into the prison and we were not prepared for this. Prison officials are trying to get more food. I estimate we have enough food to last 30 to 40 days.

10. The three prison staffers I interacted with who tested positive for coronavirus also helped prepare bag lunches for inmates. They appeared to be very sick while they were working and handling food in close quarters for an eight-hour shift. One staff member in particular was coughing, sweating, and seemed very sick.

I, Somil Trivedi, certify that I reviewed the information contained in this declaration with Mr. Buswell by telephone on April 5, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.



Somil Trivedi
American Civil Liberties Union
915 15th Street, NW, Washington, DC 20005
202.715.0802
strivedi@aclu.org

EXHIBIT 3

Declaration of Gaines Andrews

1. I am currently incarcerated at FCI Oakdale II. My Bureau of Prisons Register Number is 44677379. I previously pleaded guilty to one count of conspiracy to distribute methamphetamine and received a 10-year sentence.

2. I am 39 years old. I am a longtime smoker and I have asthma.

3. I am the head of maintenance and frequently make deliveries to FCI Oakdale I. The prison is building tent camps in the yard. I personally built frames to hold oxygen tanks. We are also building bunk houses and showers for prison guards who are dealing with the outbreak crisis. We are working seven days a week.

4. We do not have enough personal protective equipment. We are able to get masks once per day if we ask, but they are not N95 masks.

5. Prison staff knew about this virus in January. Despite knowing about it, the prison directed maintenance to rip out half of the showers because they wanted to install new ones. The person in charge of building the new showers is retiring today.

6. Many prison guards are quitting or retiring rather than being assigned to FCI Oakdale I.

I, Somil Trivedi, certify that I reviewed the information contained in this declaration with Mr. Andrews by telephone on April 5, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.



Somil Trivedi
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