

1 PETER J. ELIASBERG (189110)
2 peliasberg@aclusocal.org
3 MELISSA CAMACHO-CHEUNG
4 (264024)
5 mcamacho@aclusocal.org
6 **ACLU FOUNDATION OF**
7 **SOUTHERN CALIFORNIA**
8 1313 W. 8th Street
9 Los Angeles, CA 90017
10 Phone: (213) 977-9500
11 Fax: (213) 977-5299

DAVID C. FATHI (*pro hac vice*)*
dfathi@aclu.org
ERIC BALABAN (*pro hac vice*)*
eabalaban@aclu.org
ACLU NATIONAL PRISON
PROJECT
915 15th St., NW
Washington, D.C. 20005
Phone: (202) 393-4930
Fax: (202) 393-4931

*Not admitted in D.C., practice limited to federal courts

8 CORENE T. KENDRICK (226642)
9 ckendrick@aclu.org
10 **ACLU NATIONAL PRISON**
11 **PROJECT**
12 39 Drumm St.
13 San Francisco, CA 94111
14 Phone: (202) 393-4930
15 Fax: (202) 393-4931

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 DENNIS RUTHERFORD, *et al.*,

18 Plaintiffs,

19 vs.

20 ALEX VILLANUEVA, Sheriff of Los
21 Angeles County, in his official capacity,
22 and COUNTY OF LOS ANGELES,

23 Defendants.

Case No. CV 75-04111 DDP

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

Assigned to Hon. Dean D. Pregerson

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 4 [defendants-los-angeles-county-courts](https://www.latimes.com/opinion/story/2022-05-20/mentally-illness-treatment-defendants-los-angeles-county-courts) 10

5 Spectrum News 1, *The Future of Men’s Central Jail* (Aug. 29, 2022),
 6 [https://spectrumlocalnews.com/tx/san-antonio/inside-the-](https://spectrumlocalnews.com/tx/san-antonio/inside-the-issues/2022/08/30/the-future-of-men-s-central-jail)
 7 [issues/2022/08/30/the-future-of-men-s-central-jail](https://spectrumlocalnews.com/tx/san-antonio/inside-the-issues/2022/08/30/the-future-of-men-s-central-jail)..... 12

8 *United States v. Cnty. of L.A.*, CV No. 15-05903 DDP, Doc. 174-1 (Monitor’s
 9 Corrected Twelfth Report) (C.D. Cal. Oct. 6, 2021) 6-7, 7-8

10 *United States v. Cnty. of L.A.*, CV 15-05903 DDP, Doc. 186 (Monitor’s 13th
 11 Report) (C.D. Cal. Mar. 3, 2022)..... 8

12 Taylor Walker, *LA County Motion Aimed At Expanding Diversion Is Gutted,*
 13 *Then Put on Hold*, WitnessLA (June 17, 2022), [https://witnessla.com/la-](https://witnessla.com/la-county-motion-aimed-at-expanding-diversion)
 14 [county-motion-aimed-at-expanding-diversion](https://witnessla.com/la-county-motion-aimed-at-expanding-diversion) 11

15 Taylor Walker, *LA County Supervisors Pass Diluted Motion To Expand ODR*
 16 *With No Set Deadline*, WitnessLA (June 30, 2022), [https://witnessla.com/la-](https://witnessla.com/la-county-supervisors-pass-diluted-motion-to-expand-odr-with-no-set-deadline/)
 17 [county-supervisors-pass-diluted-motion-to-expand-odr-with-no-set-deadline/](https://witnessla.com/la-county-supervisors-pass-diluted-motion-to-expand-odr-with-no-set-deadline/).. 11

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1 **INTRODUCTION**

2 Los Angeles County Jail System (“Jail”) is the largest jail system in the U.S.
3 and the world, currently incarcerating upwards of 14,600 human beings. Its Inmate
4 Reception Center (“IRC”), the Jail processing hub, has thousands of people pass
5 through it weekly. For five decades, the Court has overseen lawsuits—including this
6 one—aimed at, among other things, closing antiquated, barbaric facilities; ending
7 widespread violence and uses of force; and for people awaiting processing in the IRC,
8 ensuring humane conditions such as medical and mental health care, and access to
9 basic necessities of life such as food, water, toilets, mattresses, and clothing.

10 The Court must get involved again. The IRC’s current conditions are a gross
11 deviation from prior Court orders, constitutional and statutory requirements,
12 professional correctional standards, and the most basic standards of human values and
13 dignity. The abysmal state of the IRC poses a substantial risk of serious harm to class
14 members. Detainees—many with profound mental illnesses, chronic medical
15 conditions, and physical impairments—endure unconscionable hardships, such as:

- 16 • People with the most severe mental illness are chained to benches and chairs
17 in the IRC for days at a time;
- 18 • People sleep for days on the floor head-to-foot with one another, or while
19 sitting upright in chairs with no mattresses or blankets;
- 20 • Overcrowded, filthy, and unhygienic conditions, such as people defecating
21 in garbage cans and urinating on the floor or in empty juice boxes;
- 22 • Untimely or no access to medical and mental health care, including the
23 abrupt discontinuation of critical psychotropic and chronic care
24 medications, and a failure to provide health care to people detoxing from
25 drugs or alcohol;
- 26 • Broken toilets, sinks used as urinals, no showers or hygiene products; and,
- 27 • Inadequate nutrition and access to clean drinking water.

28 The crisis at IRC is life-threatening. People are dying. In April, a man was
found unresponsive there, and died despite emergency aid. In June, a 72-year-old man
held at IRC for two days without medical evaluation, collapsed and died.

1 In recent years, the number and proportion of people with mental illness booked
2 into the Jail has grown considerably, and their psychiatric illnesses are more acute
3 than in the past. This is due in large part to the County’s willful refusal to properly
4 fund and develop community alternatives to incarceration that can safely divert and
5 treat seriously mentally ill people. Instead, the County relies on a limited number of
6 High Observation Housing (“HOH”) and Medium Observation Housing (“MOH”)
7 beds in the Jail for people with acute mental illness. As a result, a huge backlog of
8 hundreds of people—arrested or arraigned, but not convicted of any offense—spend
9 days in intolerable and shocking conditions in the IRC, waiting for HOH and MOH
10 beds to open up, including being chained for days to chairs:



28 Declaration of Melissa Camacho-Cheung (“Camacho Decl.”) Ex. Q at 4-5.

1 The County committed years ago to a “Care First, Jail Last” diversion approach
2 to the treatment of people with mental illness who become entangled in the criminal
3 legal system. County officials have commissioned reports and studies, held countless
4 community and stakeholder hearings, and reiterated their belief in a vision that treats
5 people with mental illness in the community, instead of warehousing them in the
6 barbaric Jail. Plaintiffs agree with such a vision. But critically, County leaders fail to
7 put their money where their mouths are, and fund community alternatives to
8 incarceration at a level necessary to meaningfully alleviate the crush of people with
9 acute mental illness in the Jail.

10 The County’s failure to take serious action creates intolerable bottlenecks in
11 the IRC, in flagrant violation of this Court’s past orders and of detainees’ basic
12 constitutional and statutory rights. Accordingly, a Temporary Restraining Order
13 (TRO) and Preliminary Injunction (PI) are warranted under the law, and supported by
14 the factual record detailed below and the evidence filed in support of this motion.

15 **PROCEDURAL HISTORY**

16 As this case dates from the Ford Administration, Plaintiffs will focus on key
17 inflection points relevant to the motion at hand. This case was filed in 1975 as a class
18 action on behalf of all present and future persons incarcerated at the Jail. After more
19 than three weeks of trial, and two unannounced visits to the Jail, including the IRC,
20 District Judge William P. Gray, Jr. held in 1978 that its conditions “present poor
21 examples of the civilized standards and concepts of dignity, humanity and decency,”
22 and found IRC conditions “constitutionally intolerable.” *Rutherford v. Pitchess*, 457
23 F. Supp. 104, 109, 114 (C.D. Cal. 1978), *rev’d in part on other grounds sub nom.*
24 *Block v. Rutherford*, 468 U.S. 576 (1984). Judge Gray’s order observed that:

25 The sight of from twenty to fifty-four men being crammed into a
26 fourteen-foot cell is a repelling experience in any society that takes pride
27 in its high concepts of human dignity. The closest comparison that I can
28 draw to such a spectacle is that of an overcrowded pig pen. If the
defendants find it necessary to detain a detainee in a holding cell before

1 placing him on a bus, or after his return, ***they must at least give him a***
2 ***place to sit on a bench or a chair.***

3 *Id.* at 114 (emphasis added).¹ In addition to the 1978 opinion, subsequent orders set
4 out specific minimum requirements for the IRC. These include:

5 Feb. 16, 1979 Judgment:

6 Every prisoner kept overnight in the jail shall be accorded a mattress and
7 a bed or bunk upon which to sleep. This order shall not preclude
8 defendants from permitting inmates to be housed with full bedding but
without a bunk, for one night only . . .²

9 Declaration of Corene Kendrick (Ex. 15), Ex. 15-A at 2, ¶ 1.

10 Aug. 27, 1992 Joint Status Report and Proposed Order:

11 The parties stipulated, and the Court so ordered, that “[e]ach inmate shall
12 receive at least twice each week clean outer garments, undergarments, socks and a
13 towel in exchange for those he has been using.” Ex. 15-B at 7 ¶ 7. Moreover,
14 Defendants stated that “[t]he Sheriff shall work towards . . . providing constitutionally
15 adequate health care to all inmates in his custody . . .” *Id.* at 10 ¶ 9.

16 Nov. 18, 2005 Stipulation and Order Re: Injunction:

17 The parties stipulated, and the Court ordered, that “[e]very inmate kept
18 overnight in the jail will be accorded a mattress and a bunk upon which to sleep. [...]

19 _____
20 ¹ Of note, the findings about IRC conditions were in the context of detainees going to
21 and from court, when they were in the IRC for an hour or two in the morning and
22 evening, before returning to regular housing with mattresses, hot meals, and showers.
Rutherford, 457 F. Supp. at 114. Today, class members spend days on end in these
same abysmal conditions.

23 ² These requirements were not reversed or modified by the Ninth Circuit or the U.S.
24 Supreme Court in subsequent appeals. *Rutherford v. Pitchess*, 710 F.2d 572, 575 (9th
25 Cir. 1983), *rev’d in part on other grounds sub nom. Block v. Rutherford*, 468 U.S.
26 576, 578 (1984); *Rutherford v. Pitchess*, 713 F.3d 1416 (9th Cir. 1983); *rev’d in part*
27 *on other grounds sub nom. Block v. Rutherford*, 468 U.S. 576, 578 (1984). *See also*
28 *Thompson v. City of L.A.*, 885 F.2d 1439, 1448 (9th Cir. 1989) (holding that “a jail’s
failure to provide detainees with a mattress and bed or bunk runs afoul of the
commands of the Fourteenth Amendment”); Cal. Code of Regs., Tit. 24, § 2-
1013(a)(2).

1 All bunks shall be supplied with full bedding. [...] Inmates shall not be housed in any
2 area where there is not reasonably close access to toilets.” *Rutherford v. Block*, 2005
3 WL 3388141, at *1 ¶¶ 1-3, 5 (C.D. Cal. Nov. 18, 2005) (citing definitions of “bunk,”
4 “bed,” “mattresses,” and “bedding” as set forth in Titles 15 and 24 of the California
5 Code of Regulations).³

6 Oct. 27, 2006 Order to Show Cause Re Preliminary Injunction and TRO:

7 Here, the Court enjoined Defendants from:

8
9 1. Holding an inmate in the IRC for more than 24 hours, unless any
10 period in excess of 24 hours is because the inmate is being treated at the
11 medical facilities within the IRC;

12 2. Holding more than 20 inmates in a holding cell without first
13 exhausting every other means to avoid placing more than 20 inmates in
14 a holding cell. [. . .]

15 3. Holding an inmate in a cell in the IRC which is not maintained in a
16 clean and sanitary condition, including access to a functioning toilet,
17 potable drinking water and clean water to wash;

18 4. Holding an inmate in the IRC without providing ongoing access to
adequate medical care, including but not limited to regular pill call and
sick call[.]

19 *Rutherford v. Baca*, 2006 WL 3065781, at *4 (C.D. Cal. Oct. 27, 2006).⁴

20 On April 24, 2007, Plaintiffs filed an Application for an Order to Show Cause
21 re Contempt (“OSC Application”), raising concerns yet again about abysmal
22 conditions in the IRC and detailing how LASD’s daily IRC processing reports showed
23 more than 900 people had been held in violation of the 2006 order in a two-month
24 period. Doc. 131 at 5. The parties stipulated on May 11, 2007, that Plaintiffs would
25 withdraw the OSC Application if the County expedited intake and triaging. Doc. 134
26 at 5. Defendants agreed to give hygiene kits (toothbrush and basic toiletries) to men

27 _____
28 ³ This stipulation is found at Docket 64 of the ECF system for the case.

⁴ The order is filed at Docket 102, and was renewed twice at Docket 121 and 148.

1 in IRC overflow housing. *Id.* at 3, 7. Defendants changed the way they evaluated
 2 releases to free up space in IRC and make more beds available in MCJ and Twin
 3 Towers Correctional Facility (“TTCF”). *Id.* at 5.

4 Since the entry of the Stipulation, LASD provides Plaintiffs’ counsel two daily
 5 IRC reports. The IRC Processing Report (“IRC Report”) shows the number of people
 6 in the non-Clinic portion of the IRC and how long they have been there. The IRC
 7 Clinic Processing Report (“Clinic Report”) shows the number of people in the IRC
 8 Clinic and how long they have been there. Camacho Decl. ¶¶ 4-8.⁵ Between 2007 and
 9 2015, the parties submitted regular status reports to the Court on Jail conditions. *See*
 10 *generally* Docket. On March 17, 2015, while retaining jurisdiction over the action,
 11 the Court removed the case from its active caseload until further application by the
 12 parties or order of the Court. Doc. 311.

13 Plaintiffs now ask the Court to reinstate this case to its active caseload and to
 14 issue a TRO, PI, and any further relief that it deems necessary.

15 STATEMENT OF FACTS

16 **A. The Increase in the Incarceration of People with Serious Mental Illness**

17 The number and proportion of people with mental illness booked into the Jail
 18 is surging. According to the Court monitor in the U.S. Department of Justice’s lawsuit
 19 challenging the Jail’s mental health system, as of June 2021, about 40% of the Jail
 20 population has a diagnosed mental illness, a 51% increase from 2015. *See United*
 21 *States v. Cnty. of L.A.*, CV No. 15-05903 DDP, Doc. 174-1 (Monitor’s Corrected
 22 Twelfth Report) at 8 (C.D. Cal. Oct. 6, 2021) (“DOJ Monitor’s 12th Report”). There
 23 are at any given time more than 1,200 people with “significant impairment” who are
 24 “in persistent danger of hurting self in a less acute care setting,” in need of HOH beds;

25
 26 ⁵ The reports are snapshots taken at a specific time and are timestamped accordingly.
 27 Camacho Decl. ¶ 5. LASD does not track total aggregate wait times in IRC. *Id.* For
 28 example, the time spent in the Clinic does not carry over to the IRC processing time.
Id. ¶ 8. The clock restarts upon Clinic entry and exit, if a person moves to another
 location within IRC after the Clinic. *Id.*

1 and over 2,500 people with moderate mental health problems with “recurrent episodes
2 of mood instability, psychotic symptoms maintained by medication, pervasive
3 patterns of self-injury (superficial lacerations/scratches), and are non-violent but at
4 risk of victimization by others,” in need of MOH beds. *Id.* at 9-10.

5 **B. Failure to Reduce the Number of People with Mental Illness in the Jail**

6 **1. The Specialized Mental Health Beds in the Jail Are Full.**

7 County officials repeatedly admit that a major reason why people spend more
8 than 24 hours in the IRC is that there are not enough housing units for people with
9 mental illness. The Office of Inspector General (OIG) noted in November 2019 that:

10 The steadily increasing populations of prisoners with moderate and
11 severe mental illness has led to the MOH and HOH modules often
12 nearing or reaching capacity. When these modules are full, new patients
13 who present with moderate or severe mental illnesses – some of whom
14 are tethered throughout the entire intake process – are required to remain
in IRC or Module 231 for several additional hours until appropriate
housing becomes available.

15 Los Angeles County Office of the Inspector General, *Review of the Inmate Reception*
16 *Center Intake Evaluation Process* (Nov. 2019) at 9 (OIG 2019 Review);⁶ *see also*
17 L.A. County CEO, *Jails Last: Addressing the Overcrowding Concerns in the IRC*
18 (Aug. 3, 2022) (shortage of HOH and MOH beds causes IRC overcrowding).⁷ In
19 short, the lack of specialized housing available for the large and growing number of
20 people with mental illness processed at the IRC results in their languishing there in
21 squalid conditions for long periods of time in violation of past Orders, the 1979
22 Judgment, and the Constitution.⁸

23 _____
24 ⁶ Available at [https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-
b43e949b70a2/c2463bac-4aab-43b6-9824-
7e8c9c10fdb8/Review%20of%20IRC%20Intake%20Evaluation%20Process.pdf](https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/c2463bac-4aab-43b6-9824-7e8c9c10fdb8/Review%20of%20IRC%20Intake%20Evaluation%20Process.pdf).

25 ⁷ Available at <http://file.lacounty.gov/SDSInter/bos/supdocs/170774.pdf> .

26 ⁸ The DOJ Monitor’s 12th Report of October 2021 highlighted in stark terms the
27 County’s ongoing failure to comply with numerous provisions of the consent decree
28 between the County and the DOJ related to mental health care in the Jail. Provision

1 People who very recently were in IRC confirm that a shortage of mental health
 2 housing is why they were warehoused in IRC for days at a time. For example, George
 3 Ruiz came to IRC from Patton State Hospital on August 23, 2022 for a court hearing
 4 on whether he had regained competence to stand trial. He was still at the IRC on
 5 August 31, eight days later. Declaration of George Ruiz (Ex. 11) ¶ 7; Camacho Decl.
 6 ¶ 71. He was told that he was still in IRC because he needed to be in the MOH, but
 7 no MOH beds were available. Ex. 11 (Ruiz) ¶ 5. A class member with chronic PTSD
 8 and severe depression came to IRC on August 25, at about 5 pm, and was still in the
 9 IRC on August 30, five days later. Declaration of Curtis Howard (Ex. 5) ¶ 2-3;
 10 Camacho Decl. ¶ 71. An LASD deputy told him that he needed to be in the MOH, but
 11 no beds were available. Ex. 5 (Howard) ¶ 12. *See also* Declaration of Jerome Dubose
 12 (Ex. 3) ¶ 10, 12 (person with depression and paranoid schizophrenia spending
 13 multiple days in IRC “waiting for a bed”).⁹

14 **2. The Failure to Divert People With Mental Illness From the Jail.**

15 One obvious way to reduce the shortfall of Jail mental health housing, thereby
 16 reducing delays and overcrowding in IRC, is to divert people with mental illness out
 17 of the Jail and into community treatment programs with appropriate housing, mental
 18 health care, and other services. *OIG 2019 Review* at 13 (“Recommendation 7. The
 19

20 _____
 21 63 of the decree requires the Jail to have adequate HOH and MOH housing “sufficient
 22 to meet the needs of the jail population with mental illness.” Compliance is measured
 23 by whether there are MOH and HOH beds immediately available in TTCF (for men)
 24 and CRDF (for women) 95% of the time. DOJ Monitor’s 12th Report at 11. The
 25 Monitor found the County is noncompliant and had been for years. During a sampling
 26 period in 2020, TTCF and CRDF had 0% availability of HOH housing. *Id.* The
 27 Monitor’s 13th Report to the Court showed continued failures. According to third
 28 quarter 2021 self-assessment reports, 45% of men with mental illness waited seven
 days or more for permanent Jail housing. *United States v. Cnty. of L.A.*, CV 15-05903
 DDP, Doc. 186 (Monitor’s 13th Report) (C.D. Cal. Mar. 3, 2022).

⁹ COVID-19 isolation also puts HOH beds out of commission, placing an additional
 strain on housing. DOJ Monitor’s 13th Report. On September 2, 2022, LASD had 79
 people in COVID-19 isolation (*i.e.*, HOH beds) at TTCF. Camacho Decl. Ex. P.

1 County should increase efforts to divert qualified prisoners with mental illnesses to
 2 community-based mental health treatment programs in order to alleviate
 3 overcrowding in mental health housing locations”). The County hired the RAND
 4 Corporation in 2020 to estimate how many people with mental illness in the Jail could
 5 be diverted if appropriate community resources were available. The report found that
 6 about 60% of the people in the Jail with mental illness, or 3,368 people, could safely
 7 be diverted if community programs existed and were funded. *See* Stephanie Brooks
 8 Holliday, *et al.*, *Estimating the Size of the L.A. County Jail Mental Health Population*
 9 *Appropriate for Release into Community Services* at 7, RAND Corp. (2020).¹⁰

10 Effective community-based programs currently exist that can safely divert
 11 significant numbers of people with mental illness out of the Jail. But the County Board
 12 of Supervisors repeatedly has refused to fund them adequately. For example, the
 13 Office of Diversion and Reentry (ODR) runs a program called ODR Housing serving
 14 people who are incarcerated in the Jail, unhoused, and have a mental health or
 15 substance abuse disorder. *See* [https://probation.lacounty.gov/office-of-diversion-](https://probation.lacounty.gov/office-of-diversion-reentry-housing/)
 16 [reentry-housing/](https://probation.lacounty.gov/office-of-diversion-reentry-housing/). It aims to quickly resolve cases through a probationary plea and
 17 diversion, and offers permanent supportive housing and intensive case management,
 18 including links to services. *Id.* The program is very successful. Among participants,
 19 78% of whom had a mental health disorder, there was a 91% housing stability rate at
 20 six months, and 74% at one year; only 14% were convicted of a new felony in the one
 21 year after they received housing through ODR. Sarah Hunter et al., *L.A. County Office*
 22 *of Diversion and Reentry’s Supportive Housing Program: A Study of Participants’*
 23 *Housing Stability and New Felony Convictions*, at 3 RAND Corp. (2019).¹¹ Indeed, it
 24 is so effective that Superior Court judges publicly endorse it.

25 In my experience, what works is the kind of help provided by the L.A.
 26 County Office of Diversion and Reentry. ODR has built a track record
 27 — supported by data — of moving people with mental health issues out

28 ¹⁰ Available at https://www.rand.org/pubs/research_reports/RR4328.html.

¹¹ Available at https://www.rand.org/pubs/research_reports/RR3232.html.

1 of jail and onto a path to permanent supportive housing, keeping them
2 off the streets and out of hospitals and incarceration long term.

3 Hon. James Bianco, *Op-Ed: An L.A. program helps people get mental health care*
4 *instead of jail time. Why not expand it?* L.A. Times (July 18, 2022)¹²; see also Hon.
5 Terry Smerling, *Op-Ed: The mentally ill defendants in my courtroom need treatment,*
6 *not jail*, L.A. Times, (May 20, 2022) (“The [ODR housing] program is well-respected
7 in the courts because it is effective in providing case management and supportive
8 housing, which address some of the root causes of harm in our communities.”).¹³

9 ODR also runs the only program in California to divert people charged with
10 felonies and found incompetent to stand trial (FISTs) into community-based
11 placements to receive restoration services (FIST-CBR). There are currently more than
12 600 people in ODR’s FIST-CBR program.¹⁴ FIST-CBR participants’ re-arrest rate
13 after the end of restoration services is 17%, while in contrast, people with equal levels
14 of acuity found IST committed to state mental hospitals have a re-arrest rate of 70%.¹⁵

15 Despite ODR’s proven success in moving people with serious mental illness
16 out of the Jail, the County has failed to fund it adequately. On July 7, 2020, the Board
17 of Supervisors passed a motion entitled *Expanding the Office of Diversion and*
18 *Reentry’s Work to Reduce Incarceration and Invest in Health and Well-Being of*
19

20 ¹² Available at [https://www.latimes.com/opinion/story/2022-07-18/jails-mental-](https://www.latimes.com/opinion/story/2022-07-18/jails-mental-health-los-angeles-county-diversion)
21 [health-los-angeles-county-diversion](https://www.latimes.com/opinion/story/2022-07-18/jails-mental-health-los-angeles-county-diversion).

22 ¹³ Available at [https://www.latimes.com/opinion/story/2022-05-20/mentally-illness-](https://www.latimes.com/opinion/story/2022-05-20/mentally-illness-treatment-defendants-los-angeles-county-courts)
23 [treatment-defendants-los-angeles-county-courts](https://www.latimes.com/opinion/story/2022-05-20/mentally-illness-treatment-defendants-los-angeles-county-courts).

24 ¹⁴ L.A. County Dep’t of Health Servs., Office of Diversion & Reentry, *Clinical*
25 *Programs Dashboard* (July 2022), at
26 http://file.lacounty.gov/SDSInter/dhs/1119711_ClinicalProgramsDashboard.pdf.

27 ¹⁵ L.A. County Dep’t of Health Servs., Office of Diversion & Reentry, *Who We Are*,
28 (Aug. 31, 2021), at [https://www.chhs.ca.gov/wp-](https://www.chhs.ca.gov/wp-content/uploads/2021/08/ODR_CBR_Presentation_08312021_Accessible.pdf)
[content/uploads/2021/08/ODR_CBR_Presentation_08312021](https://www.chhs.ca.gov/wp-content/uploads/2021/08/ODR_CBR_Presentation_08312021_Accessible.pdf)
[_Accessible.pdf](https://www.chhs.ca.gov/wp-content/uploads/2021/08/ODR_CBR_Presentation_08312021_Accessible.pdf); Cal. Dep’t of State Hospitals, *The Case for Early Access to*
Treatment at 17, at [https://www.chhs.ca.gov/wp-content/uploads/2021/09/DSH-](https://www.chhs.ca.gov/wp-content/uploads/2021/09/DSH-Early-Access.pdf)
[Early-Access.pdf](https://www.chhs.ca.gov/wp-content/uploads/2021/09/DSH-Early-Access.pdf).

1 *Communities*.¹⁶ It called for ODR’s expansion, including another \$30 million in the
 2 supplemental budget to divert at least 500 more people from the Jail, to expand reentry
 3 and supportive services, and to develop a sustainability plan to allow ODR to grow to
 4 divert all eligible people with serious mental illness from the Jail.¹⁷ The County CEO
 5 funded ODR \$30 million in the 2020 supplemental budget, but with one-time money
 6 that could *not* go to expansion.¹⁸ The Board asked the CEO to report back with
 7 funding options for ODR expansion and sustainability; the CEO’s November 2020
 8 response refused to make a “recommendation for service expansion.”¹⁹

9 This summer, the Board of Supervisors considered—but failed to implement—
 10 a plan to substantially expand ODR Housing. Supervisor Holly Mitchell proposed in
 11 June 2022 to have the CEO find funding to expand ODR Housing by 500 beds by July
 12 1, 2023; an additional 1,000 beds by the end of Fiscal Year 2024; and to ultimately
 13 increase the total number of beds to 5,800. Declaration of Peter Eliasberg (Ex. 13),
 14 Ex. 13-C. The Board tabled the motion and amendments.²⁰ Supervisor Mitchell then
 15 introduced a motion that only asked the CEO to find funding to expand ODR Housing
 16 by 500 beds by July 1, 2023, but this passed with an amendment that did not set a
 17 deadline for 500 more spaces in the program. Exs. 13-D & 13-E.²¹ As a result of the
 18 CEO and the Board’s actions and inactions, the size of ODR Housing is capped and
 19 has been unable to take on new clients for well over a year.²² The Board failed to take

20
 21 ¹⁶ Motion available at <http://file.lacounty.gov/SDSInter/bos/supdocs/146940.pdf>.

22 ¹⁷ See <http://file.lacounty.gov/SDSInter/bos/supdocs/146940.pdf>.

23 ¹⁸ *Memo from CEO to LA Board of Supervisors* (11/17/2020), Ex. 13-F.

24 ¹⁹ *Id.*

25 ²⁰ Taylor Walker, *L.A. County Motion Aimed At Expanding Diversion Is Gutted, Then Put On Hold*, Witness LA (June 17, 2022) at <https://witnessla.com/la-county-motion-aimed-at-expanding-diversion>.

26 ²¹ Taylor Walker, *L.A. County Supervisors Pass Diluted Motion To Expand ODR With No Set Deadline*, Witness LA (June 30, 2022), at <https://witnessla.com/la-county-supervisors-pass-diluted-motion-to-expand-odr-with-no-set-deadline/>.

27 ²² Emily Dugdale, *This L.A. Jail Program Is a Huge Success. So Why Can’t It Take*

1 meaningful action even though it is aware of the Front Bench wait times and
2 “deplorable” conditions in IRC.²³ Two days before the filing of this Motion, the Board
3 approved \$29.8 million for ODR Housing.²⁴ While providing these funds is a step in
4 the right direction, less than \$30 million in one-time funding for two years will not
5 allow ODR to expand to the point that its reach will meaningfully reduce the current
6 IRC wait times.

7 **3. The Sheriff Has Available Options to Release People from the Jail to**
8 **Eliminate the Overcrowding Crisis in IRC But Has Not Taken Them.**

9 Defendant Villanueva has the authority and ability to reduce the Jail population
10 to alleviate the crisis in the IRC. California Government Code § 8658 provides:

11 In any case in which an emergency endangering the lives of inmates of
12 a state, county, or city penal or correctional institution has occurred or is
13 imminent, the person in charge of the institution may remove the inmates
14 from the institution. . . . Such person shall not be held liable, civilly or
15 criminally, for acts performed pursuant to this section.

16 “[T]here is no requirement in the statute that such removal or transfer of
17 inmates be made pursuant to a court order.” Cal. Dep’t of Justice, *COVID-19 and*
18 *Statutory Authority Under Government Code Section 8658* (Apr. 14, 2020).²⁵ The law
19 is part of the Emergency Services Act of 1970, where the Legislature recognized the
20 authority of the State and political subdivisions to “generally to protect the health and

21 *On More People?* LAist (April 17, 2022), at <https://laist.com/news/criminal-justice/this-la-jail-program-is-a-huge-success-so-why-cant-it-take-on-more-people>.

22 ²³ Spectrum News 1, *The Future of Men’s Central Jail* (Aug. 29, 2022) (Supervisor
23 Holly Mitchell explains that OIG has informed the Board “how many people in the
24 Inmate waiting center are waiting too long or not being housed or held in humane
25 conditions. . . . *Those are all deplorable conditions, and we all agree to that.*”), at
<https://spectrumlocalnews.com/tx/san-antonio/inside-the-issues/2022/08/30/the-future-of-men-s-central-jail>, 9:36-10:00 (emphasis added).

26 ²⁴ L.A. County Chief Executive Office, *Detailed CEO Recommended Care First*
27 *Community Investment Year 2 Spending Plan* at
[http://file.lacounty.gov/SDSInter/ceo/ati/1129063_CFCIYear2SpendingPlanBLAtta](http://file.lacounty.gov/SDSInter/ceo/ati/1129063_CFCIYear2SpendingPlanBLAttachment1_Final_.pdf)
28 [chment1_Final_.pdf](http://file.lacounty.gov/SDSInter/ceo/ati/1129063_CFCIYear2SpendingPlanBLAttachment1_Final_.pdf)

²⁵ See <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf>

1 safety and preserve the lives and property of the people of the state.” *Id.*

2 The overcrowding crisis at IRC is life-threatening: in April, a man was found
3 unresponsive in IRC and died despite emergency aid; in June, a 72-year-old man held
4 for two days at IRC without evaluation by a medical provider, collapsed and died.
5 L.A. County OIG, *Reform and Oversight Efforts* (April to June 2022) (OIG Reform),
6 at 15 & n.11.²⁶ The overcrowding and failures of the County to provide adequate
7 health care at IRC has led to deaths—a sufficient basis for the Sheriff to exercise his
8 authority to make additional releases under Government Code Section 8658.

9 State law offers other ways to relieve overcrowding. When a jail’s population
10 “exceeds the actual bed capacity,” a sheriff “may apply to the presiding judge of the
11 superior court to receive general authorization for a period of 30 days to release
12 inmates” up to 30 days early. Cal. Penal C. § 4024.1(a), (b). The Jail population on
13 September 2, 2022, was 14,665,²⁷ and the maximum capacity set by the Board of State
14 and Community Corrections (BSCC) is 12,404.²⁸ Defendants are operating their Jail
15 at 18% over capacity. Inspector General Max Huntsman recently accused the Sheriff
16 of keeping the population higher than necessary. “Currently for political reasons, the
17 sheriff maintains an excessive jail population, and deputies and prisoners suffer.”²⁹

18
19 ²⁶ Available at [https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-
20 b43e949b70a2/f9ffb501-8dc9-4d89-a4cf-
21 4d55c894ea0c/Reform%20and%20Oversight%20Efforts%20-
22 %20Los%20Angeles%20County%20Sheriff%27s%20Department%20-
23 %20April%20to%20June%20%202022.Protected.pdf](https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/f9ffb501-8dc9-4d89-a4cf-4d55c894ea0c/Reform%20and%20Oversight%20Efforts%20-%20Los%20Angeles%20County%20Sheriff%27s%20Department%20-%20April%20to%20June%20%202022.Protected.pdf)

24 ²⁷ Population Management Bureau Daily Inmate Statistics, Sept. 2, 2022. Available
25 at [https://lasd.org/wp-
26 content/uploads/2022/09/Transparency_Custody_AD_P_090222.pdf](https://lasd.org/wp-content/uploads/2022/09/Transparency_Custody_AD_P_090222.pdf).

27 ²⁸ Los Angeles County Dep’t of Auditor-Controller, *Estimated Services and Supplies
28 Cost Impact From Maintaining a Reduced Jail Population Post-COVID* at 2 (Feb. 25,
2021), at [http://file.lacounty.gov/SDSInter/auditor/audit_reports/1103288_2021-02-
25Sheriff_sDepartment-EstimatedServicesandSuppliesCostImpactfromMaintaining
27 aReducedJailPopulationPost-COVID-19-BoardAgendaItem2_June9_2020.pdf](http://file.lacounty.gov/SDSInter/auditor/audit_reports/1103288_2021-02-25Sheriff_sDepartment-EstimatedServicesandSuppliesCostImpactfromMaintainingaReducedJailPopulationPost-COVID-19-BoardAgendaItem2_June9_2020.pdf).

²⁹ Emily Dugdale, *Flooding Shuts Down Elevators in LA Jail, Delays Court*

1 Defendant Villanueva has authority to petition the Superior Court presiding judge to
2 lower the population to address the overcrowding crisis.³⁰

3 Plaintiffs are not at this time asking the Court to order Defendants to fund ODR
4 expansion, increase releases from the jails, or close IRC to all new intakes when it is
5 too crowded. They are simply showing that Defendants have alternative ways
6 available to them to eliminate the crisis at IRC, which they have not exercised.

7 **C. Increasing Numbers of People Are Spending Multiple Days in the IRC**

8 **1. Backups into IRC from 2019 - 2021**

9 In late 2019, the OIG raised concerns about long wait times at IRC, noting that
10 [o]ver the course of the last two years, the OIG has frequently
11 encountered patients who were required to wait in the IRC Clinic for
12 more than twenty-four hours. On multiple occasions, patients waited for
more than forty-eight hours.

13 *OIG 2019 Review* at 3.

14 Soon after the OIG released its review, drastic COVID-19-driven population
15 reductions began in March 2020 due to a decrease in arrests and the California Judicial
16 Council's order for zero bail for most misdemeanors and low-level felonies, both of
17 which gave the County a break from IRC and Jail overcrowding. The total Jail
18 population dropped by a fourth in half of a year, from 16,791 on January 1, to a low
19 of 12,085 on July 1, 2020. L.A. County CEO, *Jails Last* at 3.

20 The break would not last. One year ago, the total Jail population rose above
21
22

23 _____
24 *Hearings and Visitation*, LAist (Sept. 6, 2022), at <https://laist.com/news/criminal-justice/lasd-sheriff-jail-incarceration-twin-towers>.

25 ³⁰ While the Sheriff made applications to the Superior Court since the start of
26 COVID, these reductions have not brought the jail population down to the BSCC
27 rated capacity, or by an amount sufficient to eliminate the dangerous backlog in the
28 IRC. L.A. County Dep't of Health Services, *Developing A Plan For Closing Men's Central Jail as the County Reduces its Reliance on Incarceration*, at 135 (Mar. 30, 2021) http://file.lacounty.gov/SDSInter/bos/bc/1104568_DEVELO_1.PDF

1 15,000. *Population Management Bureau Daily Inmate Statistics*, August 21, 2021.³¹

2 In late August 2021, the OIG sounded the alarm after a week of significant
3 overcrowding left people trapped for days in the IRC. The OIG reported at the Civilian
4 Oversight Commission’s September 23, 2021 meeting,

5 [t]hat there was an increase in the number of COVID-19 infected
6 incarcerated people and that there were troublesome conditions of
7 confinement, including people sleeping on the floor, people experiencing
8 long wait times, medication was not immediately available, and that the
area was excessively dirty and unkept.

9 L.A. County Sheriff Civilian Oversight Commission, *Efforts to Reduce Los Angeles*
10 *County Jail Population* at 1 (Oct. 21, 2021).³² The longest IRC Clinic wait times
11 between August 21, 2021 and September 15, 2021 were 111.5 hours. Camacho Decl.
12 Ex. N at 3. August 21-27, 2021 saw wait times over 69 hours, but then the wait times
13 fell below 24 hours on September 1, 2021 and stayed there. *Id.*

14 Catie Beltz, Assistant Inspector General, stated the conditions at the time were
15 “grossly inadequate [and] expose many vulnerable ... patients to level[s] of suffering
16 that we as a county should neither tolerate nor enable.” Camacho Decl. Ex. N. at 4.
17 The OIG recommended immediate releases to get the Jail population below the
18 BSCC’s 12,400-person capacity. *Id.* at 4-5. The County instead asked the state prison
19 system to accept people sentenced to prison who had been stuck in the Jail due to
20 COVID-19 transfer restrictions. Los Angeles County CEO, *Jail Closure Implement*
21 *Team - First Report Back (Nov. 16, 2021)* at 3.³³ Due to large numbers of transfers to
22 state prison, the population dropped to 12,511 on January 3, 2022.³⁴ IRC Clinic wait
23

24 ³¹ See [https://lasd.org/wp-](https://lasd.org/wp-content/uploads/2021/08/Transparency_Custody_AD_P_082121.pdf)
25 [content/uploads/2021/08/Transparency_Custody_AD_P_082121.pdf](https://lasd.org/wp-content/uploads/2021/08/Transparency_Custody_AD_P_082121.pdf).

26 ³² See [http://file.lacounty.gov/SDSInter/bos/supdocs/StaffMemo-](http://file.lacounty.gov/SDSInter/bos/supdocs/StaffMemo-2dEffortstoReduceJailPopulation10.21.2021.pdf)
27 [2dEffortstoReduceJailPopulation10.21.2021.pdf](http://file.lacounty.gov/SDSInter/bos/supdocs/StaffMemo-2dEffortstoReduceJailPopulation10.21.2021.pdf)

28 ³³ See [https://ceo.lacounty.gov/wp-content/uploads/2022/06/JCIT-First-60-Day-](https://ceo.lacounty.gov/wp-content/uploads/2022/06/JCIT-First-60-Day-Report_November-16-2021.pdf)
[Report_November-16-2021.pdf](https://ceo.lacounty.gov/wp-content/uploads/2022/06/JCIT-First-60-Day-Report_November-16-2021.pdf)

³⁴ See *Population Management Bureau Daily Inmate Statistics*, January 3, 2022, at

1 times largely settled below 24 hours and stayed there for the next few months.

2 **2. IRC Clinic wait times have spiraled out of control.**

3 The respite was brief. The total Jail population has climbed to 14,665,³⁵ and the
4 wait times in the IRC Clinic have reached a new and terrifying peak. The August 2021
5 emergency and the periodic backlog in the years before the November 2019 OIG
6 report pale in comparison to the current, staggering humanitarian crisis in the IRC. In
7 contrast to August 2021, the County's efforts to alleviate the pressure on IRC have
8 failed to relieve or even slow the crisis.

9 On June 6, 2022, the Clinic Report showed 41 people there for more than 24
10 hours, 28 of whom had been there for more than 49 hours. Camacho Decl. Ex. A at 1.
11 Plaintiffs' counsel visited the Clinic that day and were stunned by the filth and levels
12 of tension and despair encountered. *Id.* ¶¶ 15-22. Counsel initiated discussions with
13 LASD Custodial Staff, Correctional Health Services (CHS), and the OIG in an
14 attempt to address the conditions, overcrowding, and length of stay. *Id.* ¶ 23.

15 Between June 6 and August 11, 2022, Plaintiffs' counsel had numerous
16 conversations with County officials, OIG staff, LASD Custodial Staff, CHS staff, and
17 two Justice Deputies for the Board of Supervisors. Camacho Decl. ¶¶ 23-24, 32-33.
18 These efforts culminated in a meeting on August 11 with the OIG, LASD, CHS,
19 County Counsel, and plaintiffs' counsel. *Id.* ¶ 33. Plaintiffs' counsel determined after
20 this meeting that court intervention was necessary to address the disaster at IRC.

21 Between August 9 and September 2, 2022, the number of people held in the
22 Clinic beyond 24 hours, with no mattress or bedding, and in deplorable conditions,
23 has ranged from a low of 23 to a high of 252 people on August 22, 2022. Camacho
24 Decl. Ex. I. On the day the Clinic held 252 people who had been there for longer than

25 _____
26 [https://lasd.org/wp-
content/uploads/2022/01/Transparency_Custody_AD_P_010322.pdf](https://lasd.org/wp-content/uploads/2022/01/Transparency_Custody_AD_P_010322.pdf).

27 ³⁵ See Population Management Bureau Daily Inmate Statistics, Sept. 2, 2022, at
28 [https://lasd.org/wp-
content/uploads/2022/09/Transparency_Custody_AD_P_090222.pdf](https://lasd.org/wp-content/uploads/2022/09/Transparency_Custody_AD_P_090222.pdf).

1 24 hours, 235 of them had been in the Clinic longer than 49 hours. *Id.* The number of
 2 people held in non-Clinic areas of the IRC for more than 24 hours has ranged from
 3 two to 81 for the same date range. *Id.* Ex. M.

4 It is now common for people to stay in the IRC for more than 49 hours, with
 5 wait times frequently peaking between 100-200 hours. Camacho Decl. Exs. I & M.
 6 Declarants' length of stay in the IRC Clinic ranged from 36.9 hours to 180.4 hours
 7 (seven and a half days), and many of them spent more than four days in the Clinic. *Id.*
 8 ¶ 71. Late-summer numbers show a long-standing problem that has spiraled out of
 9 control.³⁶

10 **D. People Spend Days Chained to Chairs on the IRC Clinic Front Bench**

11 The people who suffer some of the most inhumane conditions in the IRC Clinic
 12 are those who are chained to chairs in the Clinic's so-called Front Bench. The OIG
 13 described the plight of the Front Bench in its 2019 report.

14 Some of the patients subjected to the worst conditions are those who
 15 display the most serious medical or mental health symptoms. Patients
 16 who are at risk of or exhibit acute mental health distress are tethered with
 17 handcuffs to fixed chairs for the duration of the intake process. Despite
 18 the reporting, recommendations, and frequent warnings by the OIG
 19 against long-term tethering, patients continue to encounter excessive
 20 wait times in unsanitary conditions while tethered to chairs.

21 *OIG 2019 Review* at 3-4.

22 The report expressed grave concern that some individuals "remained tethered
 23 [with handcuffs] for nearly twenty-four hours." *Id.* at 4. It contained a chart showing
 24 hours spent chained to the Front Bench over a period of 15 days. During that time
 25 three people were chained for more than 16 hours, and 35 people were chained
 26 between four and eight hours. *Id.* at 4.

27 ³⁶ People held in the IRC Clinic have no access to diversion (books, magazines, etc.),
 28 unless they can see the televisions in the main clinic. Surreally, on an August 26 visit
 to the IRC, Plaintiffs' counsel observed the movie *Groundhog Day* playing on every
 TV. Camacho Decl. ¶ 54.

1 Three people chained for more than 16 hours – considered untenable by the
2 OIG in 2019 – is nothing compared to the present Front Bench wait times. From
3 August 9 to September 2, 2022, the longest wait time for people chained to chairs on
4 the Front Bench ranged from a “low” of 36.3 hours to a high of **166.2 hours**, or almost
5 seven days. Camacho Decl. Ex. J. The number of people chained to the Front Bench
6 for more than 24 hours has ranged from three to 29 persons. *Id.* On August 22, the
7 Clinic Report showed 22 people on the Front Bench for more than three days. *Id.*

8 The harmful effects of keeping people with “the most serious medical or mental
9 health issues” chained to a chair for days at a time are obvious. Plaintiffs’ counsel
10 observed cuts, swelling, and bruising, consistent with prolonged handcuffing, on the
11 wrists of a man who had been on the Front Bench for 99 hours. Camacho Decl. ¶¶ 66-
12 69. Plaintiffs’ counsel saw one person chained to the Front Bench urinating on the
13 floor on August 22 (Ex. 13 ¶ 6) and another person lying on the floor in a puddle of
14 urine on August 26. Camacho Decl. ¶ 52. A class member reported seeing a man on
15 the Front Bench defecate on the floor, and that the feces remained there for two days.
16 Declaration of Tony Jones (Ex. 6) ¶ 5. Another declarant stated that he witnessed a
17 man chained to the Front Bench defecate in a trash can, which was not emptied for
18 several hours. Ex. 5 (Howard) ¶ 7. *See also* Camacho Decl. Ex. Q at 5-6 (photos).

19 Dr. Terry Kupers, a nationally recognized forensic psychiatric expert who
20 testified in *Rutherford* in 1978 and has visited the Jail for nearly five decades, notes
21 that these “very harsh practices” of chaining people to the Front Bench violate
22 national correctional standards and the LASD’s Custody Division Manual.
23 Declaration of Dr. Terry Kupers (Ex. 16) ¶¶ 28-29. Restraints such as these “should
24 be utilized only as a last resort after all less restrictive and harsh interventions have
25 been attempted and failed” and “cannot be used as punishment but rather must be
26 instituted for the shortest time possible to safely control dangerous behavior.” *Id.* ¶
27 28. Dr. Kupers writes:

28 [American Correctional Association] standards require that when an

1 inmate is restrained, other inmates are not permitted in the same space
2 and have no access to the restrained inmate, and this requirement is
3 necessary because restrained individuals are at high risk of assault and
4 victimization by unrestrained inmates. Of course, all standards that
5 address this issue, as well as common decency, require that restrained
6 jail inmates be released as needed for bathroom functions. There is also
7 a requirement that each limb of a restrained person be released from
8 restraint at frequent intervals so that circulation will not be cut off, and
9 that there be close medical monitoring. And there is a strong consensus
10 in corrections, as reflected in very many jail policies nationwide, that
11 there must be strict time limits to the use of fixed restraint, that limit is 2
12 hours in many jurisdictions, 4 hours in some others[.]

13 ...

14 Severe restraint such as tethering to the front bench or a chair at IRC has
15 very harmful effects on all inmates, but especially on inmates with
16 mental illness. Those who suffer depression are likely made more
17 despairing and, in too many cases, resolve to commit suicide as soon as
18 they are released from restraints and have the opportunity. Many of those
19 suffering from psychosis become agitated and more dysfunctional, for
20 example they are likely to develop paranoid ideas about why they are
21 being treated so harshly. And inmates who are restrained in this fashion
22 tend to lose confidence and trust in custody and mental health staff at the
23 jail, and this makes their subsequent behavioral management and mental
24 health treatment very problematic.

25 Ex. 16 ¶¶ 28, 30 (footnote omitted); *see also* Camacho Decl. Ex. Q at 5-6; Declaration
26 of Chuck Bethel (Ex. 1) ¶ 8 (“I have seen lots of people chained up who get hit by
27 other inmates because they can’t defend themselves.”).

28 **E. Current Conditions of Confinement in the IRC**

Plaintiffs’ Counsel visited IRC five times this summer. They have submitted
declarations about their first-hand observations of the conditions in IRC and attached
photographs taken during their visits at their direction. *See generally* Camacho Decl.
and *id.*, Ex. Q; Ex. 13 (Eliasberg Decl.), Declaration of Summer Lacey (Ex. 14), Ex.
15 (Kendrick Decl.). Class members recently detained at IRC also have provided
declarations in support of this application.

1 **1. Floor Sleeping / Overcrowding**

2 ACLU lawyers observed dozens of people chained to the Front Bench
3 attempting to sleep and hundreds of other people sleeping in the clinic area or holding
4 cells in IRC on floors, on metal benches or in chairs. None had blankets or a mattress.
5 Camacho Decl. ¶¶ 17, 22, 27, 35-36, 44, 51-53, 60, 65, Ex. Q at 2-6, 8; Ex. 13 ¶¶ 9,
6 13; Ex. 14 ¶ 5; Ex. 15 ¶¶ 4-5. *See also* Camacho Decl. Ex Q at 2-5 (photos). Declarants
7 reported that they had no choice but to sleep on the cold hard floor, on metal benches,
8 or in chairs, without access to a mattress or blankets. Ex. 11 (Ruiz) ¶ 3; Ex. 1 (Bethel)
9 ¶¶ 6; Declaration of Diego Bolton (Ex. 2) ¶ 5; Ex. 3 (Dubose) ¶ 5; Declaration of
10 Daniel Gonzalez (Ex. 4) ¶ 3; Ex. 5 (Howard) ¶ 6; Declaration of Damian Payan (Ex.
11 7) ¶ 4; Declaration of Gilberto Perez (Ex. 8) ¶ 5; Declaration of Ira Porter (Ex. 9) ¶ 6-
12 7; Declaration of Giovanni Reese (Ex. 10) ¶ 6, 8; Declaration of Bryan Salinas (Ex.
13 12) ¶ 4-5.

14 Class members reported that conditions in the clinic and the cage at the back of
15 the clinic were dangerously overcrowded. Ex. 7 (Payan) ¶¶ 9-10 (“[I]t is worse than
16 being homeless. Even when I sleep on the streets there is some room to stretch out.
17 But in here there are so many people walking by you or sleeping next to you that I’d
18 rather be on the streets.”); Ex. 1 (Bethel) ¶ 6 (spent night in a triangle shaped holding
19 cell about 15’x15’ with 40-50 other people); Ex. 5 (Howard) ¶ 9 (spent night “packed
20 like sardines” in the cage with about 100 people); Ex. 2 (Bolton) ¶ 5 (spent night in
21 cage with hundreds of other people); Ex. 10 (Reese) ¶ 4 (spent more than 15 hours in
22 a triangle shaped holding cell about 12-15 feet on each side with 40-50 other people);
23 Ex. 6 (Jones) ¶ 2; Ex. 8 (Perez) ¶ 3. *See also* Camacho Decl. Ex Q at 8 (photo of
24 “cage”).

25 **2. Lack of Adequate Healthcare, Including Medications**

26 Class members reported that they regularly take psychiatric medications but
27 did not get them while in the IRC. Ex. 1 (Bethel) ¶ 3 (bipolar, schizophrenia, takes
28 Buspar, Risperdal, Zyprexa and Abilify, but the psychiatrist says he won’t get them

1 until he is permanently housed: “I am hearing voices and I feel like I am falling
2 apart.”); Ex. 3 (Dubose) ¶¶ 10, 13 (not receiving Zoloft for depression and Trazodone
3 for paranoid schizophrenia); Ex. 4 (Gonzalez) ¶¶ 4, 6 (chained to Front Bench, not
4 receiving Seroquel for schizophrenia); Ex. 5 (Howard) ¶ 3 (chronic PTSD and severe
5 depression; needs Trazodone, Abilify, Wellbutrin); Ex. 6 (Jones) ¶ 7; Ex. 9 (Porter) ¶
6 3-4 (extreme depression with psychotic side effects, not receiving Remeron, Zoloft,
7 and Zyprexa); Ex. 10 (Reese) ¶ 5 (Paxil for depression, psychiatrist says he won’t get
8 psych meds until he is permanently housed); Ex. 12 (Salinas) ¶¶ 4, 7, 9 (chained to
9 Front Bench, has schizophrenia but not receiving psych meds since being in IRC).

10 It is extremely dangerous to abruptly stop psychotropic medications rather than
11 tapering them. Ex. 16 ¶¶ 13-19. Dr. Kupers, the psychiatrist, notes that:

12 All standards in community psychiatry and correctional mental health
13 require ‘continuity of care,’ i.e. a course of psychotropic medications
14 must not be interrupted, and there must be no abrupt discontinuation of
15 the medication regimen, for example when the patient moves from one
16 living situation or institutional setting to another, and this is an especially
17 important consideration in relation to jail admission.

18 ...

19 The symptoms described by inmates in the Declarations I reviewed—
20 including severe anxiety, severe insomnia, a sense of falling apart,
21 hallucinated voices, panic attacks, deep despair, sweats, shaking,
22 vomiting, and so forth—are unfortunately very expectable sequelae of
23 abrupt discontinuation of psychotropic medications.

24 Because of the well-known psychiatric sequelae of abrupt
25 discontinuation of psychiatric medications as well as the physiological
26 difficulties and risk of suicide, all standards in correctional mental health
27 as well as instruction on institutional care require immediate attention to
28 inmates’ psychiatric medications when they are arrested and admitted to
jail.

29 *Id.* ¶¶ 7, 15, 16.

30 Additionally, many class members report inadequate or non-existent medical

1 care for injuries and other medical conditions, including for drug and alcohol
2 withdrawal. Ex. 3 (Dubose) ¶ 6 (his wheelchair was taken away despite difficulty
3 walking due to a painful leg infection); Ex. 5 (Howard) ¶ 10 (asks for medical care
4 for a toe that is cut and that he believes is broken, only given hydrogen peroxide); Ex.
5 8 (Perez) ¶ 8 (told medical staff he has asthma but does not have Albuterol, which he
6 takes 3-4 times a day outside jail – breathing is labored); Ex. 9 (Porter) ¶ 5 (sweating,
7 shaking and vomiting as a result of withdrawing from heroin and crystal meth but has
8 not received medication assisted treatment or mental health professional evaluation);
9 Ex. 6 (Jones) ¶ 7 (deputies ignore requests for help with alcohol withdrawal). On their
10 June 14, 2022 visit to IRC, Plaintiffs’ counsel spoke to people in serious medical
11 distress, including a man who said he was an insulin-dependent diabetic, had not
12 received insulin for 36 hours, and was only fed peanut butter and jelly sandwiches
13 and orange juice that made his blood sugar spike and crash; counsel brought him to
14 Jail staff’s immediate attention. Ex. 15 ¶ 12; *see id.* ¶ 13 (man with a fist-sized hernia
15 doubled over in obvious pain); Camacho Decl. ¶¶ 29-30 (bloody open wound in one
16 person’s mouth and another with large red and swollen cut on leg). On an August 26,
17 2022 visit, counsel saw a man in a wheelchair crying while holding up his hands,
18 showing how they were curled up and swollen. Camacho Decl. ¶ 49.

19 **3. Denial of Adequate Food and Water**

20 Class members have limited or non-existent access to potable water in IRC as
21 a result of the lack of working water fountains, or sinks that did not work or had almost
22 no water pressure or were so filthy that people could not drink out of them. Ex. 1
23 (Bethel) ¶ 9 (“Water trickles out of the sinks, which are full of dirt and food scraps
24 and people pee in them.”); Ex. 5 (Howard) ¶ 11 (“[S]inks are filthy, there are no water
25 fountains, and I feel really dehydrated.”); Ex. 8 (Perez) ¶ 7 (“There is no drinking
26 water. The sinks are disgusting. I would not drink from that ever.”); Ex. 9 (Porter) ¶
27 8 (“There is no water. The sink is nasty and smells like urine and feces and stuff is
28 floating in the water. The buttons on the sink are dirty. It is like it has never been

1 cleaned”); Ex. 6 (Jones) ¶ 6; Ex. 7 (Payan) ¶ 6; Ex. 2 (Bolton) ¶ 10. On August 26,
2 2022, counsel saw medical staff wheel a tray of approximately 40 pixie cup-sized
3 water cups with drinking water and offer it to the crowd of people in the Clinic, but
4 not to people chained to the Front Bench or those in the various holding tanks.
5 Camacho Decl. ¶ 55.

6 People in IRC are forced to subsist on a nutritionally inadequate diet consisting
7 solely of a peanut butter and jelly sandwich for breakfast and lunch, sometimes a
8 burrito at dinner, cookies, and orange juice. There are no fruit or vegetables, and no
9 other food is available even for those who are allergic to peanuts or diabetic or pre-
10 diabetic. Ex. 2 (Bolton) ¶ 9 (“I am allergic to peanut butter but almost the only food
11 they give us is peanut butter sandwiches 1 or 2 cartons of OJ a day and some cookies.
12 I am very hungry”); Ex. 3 (Dubose) ¶ 8 (allergic to peanut butter, uses diet control to
13 stay off insulin, concerned food in IRC will make him diabetic again); Ex. 15 ¶ 12
14 (man with diabetes reported that diet made his blood sugar spike and crash); Ex. 1
15 (Bethel) ¶ 5; Ex. 7 (Payan) ¶ 8; Ex. 8 (Perez) ¶ 6; Ex. 9 (Porter) ¶ 8.

16 **4. Lack of Ventilation and Basic Sanitation / Nonfunctioning Toilets**

17 Multiple class members reported a lack of ventilation or sanitation in the IRC.
18 Ex. 6 (Jones) ¶ 2 (left in the showers with about 60 other people for about six hours
19 at first intake, where it was stuffy and he couldn’t breathe); *id.* ¶ 5 (while chained to
20 the Front Bench from Friday, August 19 to Monday, August 22, the man chained to
21 the chair next to him pulled his pants down and defecated on the ground, the feces
22 was not cleaned for two days); *id.* (observed men chained to the front bench urinating
23 into empty orange juice boxes); *id.* ¶ 6 (clinic’s toilet filled with feces and smelled);
24 Ex. 11 (Ruiz) ¶ 6 (there is nowhere to place wrappers and containers and the floor of
25 the cell he sleeps on is covered in trash); Ex. 7 (Payan) ¶ 5 (floor of the holding cell
26 is filthy with food wrappers and other detainees urinate on the floor); ¶ 6 (toilets are
27 filthy and sinks do not work); ¶ 7 (the only time the clinic area was cleaned was shortly
28 before the arrival of the ACLU); Ex. 5 (Howard) ¶ 7 (has observed the people with

1 severe mental illness chained to the front bench urinate on the floor because deputies
2 ignore their requests to be unchained to go use a toilet, one man chained to the front
3 bench defecated in a trash can which was not emptied for several hours); *id.* ¶ 8 (“[t]he
4 only time they did a decent cleaning was about an hour before the ACLU came
5 today”); *id.* ¶ 11 (the sinks are filthy, there are no water fountains); Ex. 1 (Bethel) ¶ 7
6 (floor area of the open clinic “is disgusting” with discarded food and food cartons,
7 and some detainees “come in drunk or high and lie down and pee on the floor while
8 they sleep”); *id.* ¶ 9 (toilets are overflowing and people have to urinate in the sinks).
9 *See also* Camacho Decl. Ex. Q at 1, 7 (photos).

10 Plaintiffs’ counsel also observed a great deal of trash in the IRC clinic area. Ex.
11 15 ¶ 5 (food wrappers, drink containers on floor throughout the area, with two large
12 garbage cans in the general area, one of which was full and the other that looked as if
13 it had just been emptied and a new trash bag put in it a few minutes before the ACLU’s
14 arrival); *id.* ¶¶ 7, 10 (counsel able to smell overwhelming smells of body odor, urine,
15 feces, and bleach despite wearing a KN-95 mask); *see also* Camacho Decl. ¶¶ 51-52,
16 63 (rancid smells of urine in uncomfortably warm and trash-strewn holding cells); *Id.*
17 Ex. Q at 2, 4, 6-8 (photos); Ex.13 ¶¶ 4, 6, 13; Ex. 14 ¶ 5.

18 **5. Denial of Showers/Hygiene Products/Clothing**

19 Multiple class members reported that while spending days in the IRC, they
20 were not allowed access to showers or clean clothes. *See* Ex. 3 (Dubose) ¶¶ 4, 9, 15
21 (61-year-old man who uses a wheelchair has not been provided a shower since arrival
22 to the IRC five days earlier, including his request for a shower after having sudden
23 stomach pains and defecating on himself); Ex. 11 (Ruiz) ¶ 4 (has not had a shower or
24 change of clothes in almost a week); Ex. 7 (Payan) ¶ 5 (when he was trying to rest on
25 the floor he accidentally laid in a puddle of liquid, got dirty, asked for clean clothes,
26 but the deputies said he would not get new clothes until he is housed); *id.* ¶ 6 (no soap
27 is available to detainees); Ex. 5 (Howard) ¶ 5 (has not had a shower in the four days
28 since he came to the IRC); Ex. 1 (Bethel) ¶ 4.

1 Given the dangerous conditions in the Jail, and Defendants’ failure to comply
 2 with past orders of the Court, immediate injunctive relief is warranted and necessary
 3 to protect class members from being placed at substantial risk of serious harm.
 4 Plaintiffs meet all of the requirements for injunctive relief and a TRO, because they
 5 are (1) likely to succeed on the merits, (2) will suffer irreparable injury in the absence
 6 of court-ordered relief, (3) the balance of equities tips in their favor, and (4) an
 7 injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7,
 8 20 (2008). “Likelihood of success on the merits is ‘the most important’ factor”
 9 *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (citation omitted).

10 A TRO may be granted when the need for immediate relief is clear and to
 11 preserve the status quo pending a hearing on a preliminary injunction. Fed. R. Civ.
 12 Pro. 65(b); *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck*
 13 *Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974); *Reno Air Racing*
 14 *Ass’n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006). Plaintiffs complied with
 15 the Rule 65(b) and Local Rule 65.1’s notice requirements for a TRO. *See* Camacho
 16 Decl. ¶¶ 76-79 (counsel notified Defendants’ counsel on Sept. 2, 2022).

17 **II. THE FACTS AND LAW CLEARLY FAVOR PLAINTIFFS**

18 **A. Plaintiffs Will Prevail on the Merits Because This Court Has the Power**
 19 **to Enforce Past Orders, and the IRC Conditions Violate Plaintiffs’**
 20 **Constitutional Rights.**

21 Plaintiffs clearly meet the *Winter* requirement that they are likely to succeed on
 22 the merits of their claims. Defendants cannot dispute that IRC conditions run afoul of
 23 multiple past Court orders and judgments, nor can they dispute that courts have the
 24 power to issue further enforcement orders to make a party comply with past judgments
 25 or settlements. Even if Plaintiffs had to prove a new constitutional violation for the
 26 Court to issue a further enforcement order (which they do not under Supreme Court
 27 and Ninth Circuit precedent detailed below), the IRC conditions clearly violate their
 28 constitutional rights when they are “treated in a way antithetical to human dignity.”

1 *Hope v. Pelzer*, 536 U.S. 730, 744-45 (2002).

2 A court has the power to issue further orders and relief to effectuate the purpose
 3 of a decree, settlement agreement, injunction, or past orders. *Frew v. Hawkins*, 540
 4 U.S. 431, 440 (2004) (“Federal courts are not reduced to approving consent decrees
 5 and hoping for compliance. Once entered, a consent decree may be enforced.”); *see*
 6 *also Parsons v. Ryan* (“*Parsons III*”), 949 F.3d 443, 454 (9th Cir. 2020) (affirming
 7 district court’s power to enforce a past order through civil contempt). The Court’s
 8 authority to issue further orders is at its zenith in situations such as this: long-running
 9 cases vindicating basic rights. *See Armstrong v. Brown*, 768 F.3d 975, 986 (9th Cir.
 10 2014) (citing the “ongoing, intractable nature of this litigation”).

11 Moreover, a “district court [i]s not required to make new findings of a
 12 constitutional violation before enforcing” past judgments, settlements, or orders, with
 13 further orders directed against prison or jail officials. *Parsons v. Ryan* (“*Parsons II*”),
 14 912 F.3d 486, 501 (9th Cir. 2018). A court can use “all remedies provided by law.”
 15 *Id.* at 497-98. “Courts may not allow constitutional violations to continue simply
 16 because a remedy would involve intrusion into the realm of prison administration.”
 17 *Brown v. Plata*, 563 U.S. 493, 511 (2011).³⁸

18 This Court retains all powers of an Article III court, and those authorized by
 19 case law, statute, and the Federal Rules. *See Roadway Exp., Inc. v. Piper*, 447 U.S.
 20 752, 764 (1980) (holding that “[t]he inherent power of federal courts are those which
 21 ‘are necessary to the exercise of all others.’”) (quoting *United States v. Hudson*, 7
 22

23 ³⁸ The Prison Litigation Reform Act does not change the *Winter* standard for entry of
 24 a preliminary injunction; it requires only that any prospective relief is narrowly drawn,
 25 goes no further than necessary, and is the least intrusive remedy. 18 U.S.C. §
 26 3626(a)(1)(A); *see also Plata*, 563 U.S. at 526 (“[t]he PLRA should not be interpreted
 27 to place undue restrictions on the authority of federal courts to fashion practical
 28 remedies when confronted with complex and intractable constitutional violations.”).
 The only limitation is that the injunction “shall automatically expire on the date that
 is 90 days after its entry, unless the court makes the findings under subsection (a)(1)
 . . . and makes the order final.” 18 U.S.C. § 3626(a)(2).

1 Cranch 32, 34 (1812)). The All Writs Act provides that federal courts “may issue all
2 writs necessary or appropriate in aid of their respective jurisdictions and agreeable to
3 the usages and principles of law.” 28 U.S.C. § 1651(a); *see also United States v. N.Y.*
4 *Tel. Co.*, 434 U.S. 159, 172 (1977) (“This Court has repeatedly recognized the power
5 of a federal court to issue such commands under the All Writs Act as may be necessary
6 or appropriate to effectuate and prevent the frustration of orders it has previously
7 issued”); *Nat’l Org. for the Reform of Marijuana Laws v. Mullen*, 828 F.2d 536,
8 544 (9th Cir. 1987) (same).

9 While Plaintiffs do not have to prove new constitutional violations for the Court
10 to issue further enforcement orders, *see Parsons II*, 912 F.3d at 501, the IRC
11 conditions clearly violate their constitutional rights. Class members held there consist
12 overwhelmingly of recent arrestees not yet convicted of any crime. The rights of
13 pretrial detainees “are analyzed under the Fourteenth Amendment Due Process
14 Clause, rather than under the Eighth Amendment.” *Frost v. Agnos*, 152 F.3d 1124,
15 1128 (9th Cir. 1998) (*citing Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)). The
16 Fourteenth Amendment is more protective than the Eighth Amendment “because the
17 Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*.” *Vazquez v.*
18 *Cnty. of Kern*, 949 F.3d 1153, 1163 (9th Cir. 2020) (emphasis in original) (*quoting*
19 *Demery v. Arpaio*, 378 F.3d 1020, 1029 (9th Cir. 2004)).³⁹ A jailer’s conduct
20

21 ³⁹ The Eighth Amendment prohibits “cruel and unusual punishments.” U.S. Const.
22 amend. VIII. This provision is only applicable only to people convicted of crimes and
23 is violated when correctional officials, acting with deliberate indifference, deprive
24 incarcerated people of “the minimal civilized measure of life’s necessities” that place
25 them at “a substantial risk of serious harm.” *Farmer v. Brennan*, 511 U.S. 825, 834
26 (1994). Under the Fourteenth Amendment, only the objective prong is applicable and
27 plaintiffs do not have to prove subjective deliberate indifference by officials. *Kingsley*
28 *v. Hendrickson*, 576 U.S. 389, 397-99 (2015); *Gordon v. Cnty. of Orange*, 888 F.3d
1118, 1124-25 (9th Cir. 2018), *cert denied sub nom. Cnty. of Orange, Cal. v. Gordon*,
139 S.Ct. 794 (2019) (holding this test applies to violations of right to adequate health
care in jails). Accordingly, while many of the cases cited herein about conditions in

1 constitutes punishment if it is either not rationally related to a legitimate, nonpunitive
 2 government purpose, or is excessive in relation to that purpose. *Bell*, 441 U.S. at 561;
 3 *Demery*, 378 F.3d at 1030-33.⁴⁰ This requires showing at least reckless disregard by
 4 jail officials for detained persons' health or safety. *Castro v. Cnty. of Los Angeles*,
 5 833 F.3d 1060, 1071 (9th Cir. 2016).

6 **1. Floor Sleeping / Overcrowding**

7 “[A] jail’s failure to provide detainees with a mattress and bed or bunk runs
 8 afoul of the commands of the Fourteenth Amendment.” *Thompson*, 885 F.2d at 1448.
 9 The 1979 Judgment similarly provides that “every prisoner kept overnight in the jail
 10 will be accorded a mattress and a bed or bunk upon which to sleep.” Ex. 15-A ¶ 1(a).
 11 The 1992 Stipulation and the 2005 Order reiterate this requirement, set out a
 12 procedure for recording floor sleepers, and incorporate the State of California’s
 13 minimum requirements for county jails from Titles 15 and 24 of the California Code
 14 of Regulations. *Id.* Ex. B; *Rutherford*, 2005 WL 3388141, at *1 ¶¶ 1-3, 5.

15 As the Three Judge Panel noted in a decision related to overcrowding in the
 16 California state prison system, “A prison system’s capacity is not defined by square
 17 footage alone; it is also determined by the system’s resources and its ability to provide
 18 inmates with essential services such as food, air, and temperature and noise control.”
 19 *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 921 (E.D. Cal. & N.D. Cal. 2009)
 20 (Three Judge Panel). In its affirmance of the Three Judge Panel’s subsequent order
 21 directing CDCR to reduce its population, the Supreme Court observed:

22 Crowding also creates unsafe and unsanitary living conditions that
 23 hamper effective delivery of medical and mental health care. A medical
 24 expert described living quarters in converted gymnasiums or dayrooms,
 25 where large numbers of prisoners may share just a few toilets and

26 the Jail involve the stricter Eighth Amendment standard, the conditions *a fortiori*
 27 violate the Fourteenth Amendment.

28 ⁴⁰ In an injunctive case, plaintiffs need not show actual physical injury; rather, the
 Constitution is violated by an unreasonable risk of harm. *Helling v. McKinney*, 509
 U.S. 25, 33-34 (1993)); *see also Plata*, 563 U.S. at 531-32.

1 showers, as breeding grounds for disease. Cramped conditions promote
 2 unrest and violence, making it difficult for prison officials to monitor and
 3 control the prison population. . . . Living in crowded, unsafe, and
 4 unsanitary conditions can cause prisoners with latent mental illnesses to
 5 worsen and develop overt symptoms. Crowding may also impede efforts
 6 to improve delivery of care.

7 *Plata*, 563 U.S. at 519-521 (cleaned up).

8 Forty-four years ago, the late Judge Gray described the IRC’s crowding as “a
 9 repelling experience” and “a spectacle” he compared to “an overcrowded pig pen.”
 10 *Rutherford*, 457 F. Supp. at 114. Here, Defendants’ own daily data reports show that
 11 dozens, and on occasion hundreds, of people are held at the IRC, night after night,
 12 without blankets and a mattress, let alone a bed or bunk. Class members similarly
 13 report these exhausting and degrading experiences of going for nights without a bed,
 14 bunk, or mattress. *See supra* pages 19-20; *see generally* class member declarations.
 15 The fact that hundreds of class members have gone days without a bed, bunk, or
 16 mattress unquestionably violates orders of this Court, the 1979 Judgment, and
 17 constitutional and statutory requirements. Plaintiffs have shown not only that the
 18 number of people in the IRC repeatedly has exceeded capacity, but also that the sheer
 19 quantity of class members crammed in the IRC for days on end, creates “toxic” living
 20 conditions for both the people detained in the unit as well as the people working in it.

21 **2. Lack of Adequate Healthcare, Including Medications**

22 The 1992 stipulation, entered by the Court, held that “[t]he Sheriff shall work
 23 towards . . . providing constitutionally adequate health care to all inmates in his
 24 custody” Ex. 15-B at 10 ¶ 9. In the Ninth Circuit, an incarcerated person may
 25 show a “serious medical need by demonstrating that failure to treat a prisoner’s
 26 condition could result in further significant injury or the unnecessary and wanton
 27 infliction of pain.” *Akhtar v. Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

28 Health care conditions that significantly affect a person’s daily activities or
 result in chronic and substantial pain are serious medical needs, even if they are not

1 immediately life-threatening. *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir.
2 1992). Mental health needs are as serious as physical health needs. *Doty v. Cnty. of*
3 *Lassen*, 37 F.3d 540, 546 (9th Cir. 1994). The failure to provide needed medications,
4 or to properly supervise their prescription, is deliberate indifference to serious health
5 care needs. *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1132 (9th Cir. 2000).⁴¹

6 In 2006, this Court enjoined Defendants from “[h]olding an inmate in the IRC
7 without providing ongoing access to adequate medical care, including but not limited
8 to regular pill call and sick call.” *Rutherford*, 2006 WL 3065781 at *4, ¶ 4. Despite
9 being in a “clinic,” IRC detainees have erratic access to sick call at best. Many are
10 denied medication they were prescribed and taking prior to arrest, with dangerous
11 effects as documented by psychiatrist Dr. Kupers. Ex. 16 ¶¶ 13-19. Multiple
12 declarants and detainees reported that they were told they would not receive
13 psychotropic medication until they were in permanent housing. *See supra* at 20-21.
14 Many others are detoxing from alcohol, opioids, and other drugs. The overcrowding
15 makes it difficult for deputies to observe people in case of medical emergencies. And
16 as described above, at least two people have died in the IRC since April. These failures
17 meet both the Eighth Amendment standard of deliberate indifference as well as the
18 Fourteenth Amendment standard for pretrial detainees.

19 **3. Denial of Adequate Food and Water**

20 Food is a basic necessity of life, guaranteed to incarcerated people by the
21 Constitution. *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996), *amended on other*
22 *grounds*, 135 F.3d 1318 (9th Cir. 1998); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th
23 Cir. 1982), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472
24 (1995). While jail food need not be “tasty or aesthetically pleasing,” it must be

25
26 _____
27 ⁴¹ Opiate and heroin withdrawal are serious medical needs to which corrections
28 officials may not be deliberately indifferent. *Foelker v. Outagamie Cnty.*, 394 F.3d
510, 513 (7th Cir. 2005); *Gonzalez v. Cecil Cnty., Md.*, 221 F. Supp. 2d 611, 616 (D.
Md. 2002).

1 “adequate to maintain health.” *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993).

2 Incarcerated people also must have adequate, clean, drinking water. *See Hope*,
3 536 U.S. at 738 (“prolonged thirst” contributed to Eighth Amendment violation);
4 *Hearns v. Terhune*, 413 F.3d 1036, 1043 (9th Cir. 2005) (holding that allegations of
5 a lack of drinkable water is sufficient to state a cause of action); *Jackson v. State of*
6 *Arizona*, 885 F.2d 639, 641 (9th Cir. 1989), *superseded by statute on other grounds*
7 *as stated in Lopez*, 203 F.3d at 1130 (reversing dismissal of a claim that prison
8 drinking water was polluted).

9 For detainees held for more than a few hours in the IRC, the inadequate and
10 nutritionally unbalanced food and erratic access to potable water, described above,
11 violate minimal constitutional standards.

12 **4. Lack of Ventilation or Basic Sanitation / Nonfunctioning Toilets**

13 A necessity of life that is as basic as food and water is adequate and functional
14 toilet facilities. In *Hope*, 536 U.S. at 738, the U.S. Supreme Court understated the
15 obvious when it held that denying a prisoner access to a toilet “created a risk of
16 particular discomfort and humiliation,” and led to an Eighth Amendment violation.
17 *See also Johnson v. Lewis*, 217 F.3d 726, 732-33 (9th Cir. 2000) (denying prisoners
18 adequate toilet facilities, and prison conditions that resulted in “prisoners wetting each
19 other with urine,” stated a claim for an Eighth Amendment violation); *Fischer v.*
20 *Winter*, 564 F. Supp. 281, 302 (N.D. Cal. 1983) (failure to increase bathroom facilities
21 while population increased was unconstitutional); *DeSpain v. Uphoff*, 264 F.3d 965,
22 974-75 (10th Cir. 2001).

23 “Inadequate ventilation and air flow violates the Eighth Amendment if it
24 undermines the health of inmates and the sanitation of the penitentiary.” *Keenan*, 83
25 F.3d at 1090 (*quoting Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985)). As
26 the Ninth Circuit held in *Keenan*, “[i]f the air was in fact saturated with the fumes of
27 feces, urine, and vomit, it could undermine health and sanitation.” *Id.*

28 Here, the lack of cleanliness in the IRC, inadequate access to functional toilets,

1 and poor ventilation together create an unhealthy, unsanitary environment which
2 violates minimum Fourteenth and Eighth Amendment constitutional standards.

3 **5. Denial of Showers / Personal Hygiene Products / Clothing**

4 Incarcerated people must have reasonable opportunities for personal
5 cleanliness, including regular access to functional showers. *Toussaint v. McCarthy*,
6 801 F.2d 1080, 1110-11 (9th Cir. 1986). Indigent incarcerated people have the right
7 to personal hygiene supplies such as toothbrushes and soap. *See Keenan*, 83 F.3d at
8 1091 (citing *Hoptowit*, 682 F.2d at 1246, and *Toussaint v. McCarthy*, 597 F. Supp.
9 1388, 1411 (N.D. Cal. 1984)), *reversed in part on other grounds in Toussaint*, 801
10 F.2d 1080 (the Eighth Amendment guarantees personal hygiene)).

11 In 1992, the parties stipulated, and the Court so ordered, that “[e]ach inmate
12 shall receive at least twice each week clean outer garments, undergarments, socks and
13 a towel in exchange for those he has been using.” Ex. 15-B at 7 ¶ 7. In 2006, the Court
14 enjoined defendants from “[h]olding an inmate in a cell in the IRC which is not
15 maintained in a clean and sanitary condition, including access to a functioning toilet,
16 potable drinking water and clean water to wash[.]” *Rutherford*, 2006 WL 3065781, at
17 *4. In 2007, the parties stipulated that they would provide hygiene kits to people in
18 IRC overflow housing, and that these people would “have access to showers.” Doc.
19 134 at 3,7. Defendants’ current practices in the IRC violate past court orders and run
20 afoul of the constitutional minima.

21 **6. Chaining People to Fixed Objects for Hours and Days on End**

22 Defendants chain people with serious mental illness to the Front Bench who
23 are awaiting mental health screening exams. Defendants’ own reports show that
24 people spend days in this condition, causing physical and psychological injury. This
25 barbaric practice violates all basic norms of human decency and the Constitution. *See*
26 *Hope*, 536 U.S. at 736 (Eighth Amendment violated when Alabama prison handcuffed
27 a man to a “hitching post” when there was a “clear lack of an emergency situation”);
28 *Wall v. Cnty. of Orange*, 364 F.3d 1107, 1112 (9th Cir. 2004) (overly tight handcuffs);

1 *Madrid v. Gomez*, 889 F.Supp. 1146, 1168-71, 1254-55 (N.D. Cal. 1995) (chaining
2 prisoners to toilets or other objects); *see also* Ex. 16 (Dr. Kupers) ¶¶ 28-30.

3 **B. Plaintiffs Will Suffer Irreparable Harm if a TRO and Preliminary**
4 **Injunction Do Not Issue.**

5 Class members are at risk of suffering irreparable harm, including death, if they
6 remain incarcerated in the IRC in these abysmal conditions. Courts “evaluate these
7 factors via a ‘sliding scale approach,’ such that ‘serious questions going to the merits’
8 and a balance of hardships that tips sharply towards the plaintiff can support issuance
9 of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood
10 of irreparable injury and that the injunction is in the public interest.” *Arc of California*
11 *v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014) (citations omitted).

12 The risk of harm is profound. Class members are locked in an unsafe,
13 unhygienic, and barbaric environment, with many denied essential medications.
14 People have died recently while detained in the IRC. Defendants’ refusal to undertake
15 measures to divert significantly more people from the Jail, or reduce the Jail’s overall
16 population, are causing an interacting and cascading set of failures that make it
17 impossible for the Jail to process arrestees through the IRC or to provide them the
18 modicum of basic human needs. Where, as here, a violation of constitutionally
19 protected rights is shown, no further showing of irreparable injury is required.
20 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (holding that the deprivation
21 of constitutional rights “unquestionably constitutes irreparable injury.”).

22 **C. The Balance of Equities Tip Overwhelmingly in Plaintiffs’ Favor**

23 As demonstrated above, and in the declarations, Plaintiffs are likely to prevail
24 on their legal claims, and the risk of harm is profound. The threatened injury to class
25 members outweighs any theoretical injury posed by the requested injunction.

26 While Defendants may argue that diverting class members to community-based
27 resources somehow will impact public safety, any such impact pales in comparison to
28 the potential human cost of continuing to detain human beings in these medieval

1 conditions, and is purely speculative. These alternatives to incarceration have low
 2 recidivism rates, *see supra* pages 9-10, and the County has failed to properly fund
 3 them. Defendant Villanueva has broad authority under state law to move or release
 4 people. Any fearmongering that a person might commit a crime if not incarcerated in
 5 the IRC must be weighed against the clear evidence that the longer the problems at
 6 the IRC go unaddressed, the greater the risk to class members. And a “[l]ack of
 7 resources is not a defense to a claim for prospective relief because prison officials
 8 may be compelled to expand the pool of existing resources in order to remedy
 9 continuing Eighth Amendment violations.” *Peralta v. Dillard*, 744 F.3d 1076, 1083
 10 (9th Cir. 2014) (en banc) (citations omitted).

11 **D. An Injunction is in the Public Interest**

12 “[T]he public interest is a factor to be strongly considered” in granting a
 13 preliminary injunction. *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983). It
 14 is clearly in the public interest for Los Angeles County’s jails to provide
 15 constitutionally adequate conditions of confinement to the people detained within it.
 16 *Melendres*, 695 F.3d at 1002 (holding that “it is always in the public interest to prevent
 17 the violation of a party’s constitutional rights”); *see also Coleman v. Brown*, 960 F.
 18 Supp. 2d 1057, 1073 (E.D. Cal. & N.D. Cal. 2013) (Three Judge Panel); *cf. Plata*, 563
 19 U.S. at 510-11; *Armstrong v. Brown*, 939 F. Supp. 2d 1012, 1022 (N.D. Cal. 2013)
 20 (“the Court need not wait until a death to require compliance with its orders”).⁴²

21 **CONCLUSION**

22 For the aforementioned reasons, and all evidence submitted in support of this
 23 motion, Plaintiffs respectfully request that the Court issue a temporary restraining
 24 order and preliminary injunction. A proposed order is attached.

25
 26 _____
 27 ⁴² Plaintiffs should not be required to post a bond. This action has been brought by a
 28 class of indigent plaintiffs, and this Court did not previously require the posting of a
 bond. *See Rutherford*, 2006 WL 3065781, at *5.

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Respectfully submitted,

DATED: September 8, 2022

By: /s/ Corene T. Kendrick

Peter J. Eliasberg
Melissa Camacho-Cheung
**ACLU FOUNDATION OF SOUTHERN
CALIFORNIA**

David C. Fathi
Corene T. Kendrick
Eric Balaban
ACLU NATIONAL PRISON PROJECT

Attorneys for Plaintiffs Dennis Rutherford,
et al.