No. 23-______

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re STATE OF OREGON,

Petitioner,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON,

Respondent.

PAUL JULIAN MANEY; GARY CLIFT; GEORGE W. NULPH; THERON D. HALL; DAVID HART; SHERYL LYNN SUBLET; FELISHIA RAMIREZ, personal representative for the Estate of Juan Tristan, individually, on behalf of a class of other similarly situated,

Real-Parties-in-Interest–Plaintiffs,

v.

STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Real-Parties-in-Interest–Defendants.

PETITION FOR A WRIT OF MANDAMUS

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INTRODUCTION

Under the All Writs Act, 28 U.S.C. § 1651, and Federal Rule of Appellate Procedure 21, the State of Oregon petitions for a writ of mandamus directing the district court to quash its order compelling the deposition of former Oregon Governor Kate Brown. Such a deposition is foreclosed by *In re U.S. Department of Education*, 25 F.4th 692 (9th Cir. 2022), and by separation-of-powers principles.

This case is a class action against the State of Oregon and leaders of Oregon state government regarding the COVID-19 pandemic in Oregon state prisons. Plaintiffs have sued on behalf of all adults in custody ("AICs") who contracted the virus between February 1, 2020, and May 31, 2022. They broadly allege that their contraction of COVID-19 constitutes cruel and unusual punishment in violation of the Eighth Amendment. In turn, they seek compensatory and punitive damages.

One aspect of the case is already pending before this Court. In pertinent part, plaintiffs allege that Governor Brown and the former Director of the Oregon Health Authority, Patrick Allen, violated the Eighth Amendment when they did not prioritize all AICs to receive the initial doses of the Pfizer and Moderna vaccines in January 2021. The district court denied a motion to dismiss the claim as barred by the Public Readiness and Emergency Preparedness (PREP) Act, 42 U.S.C. §§ 247d-6d & 247d-6e, which provides immunity from suit for public officials for responses to public health emergencies. Governor Brown and Director Allen

appealed that denial, the merits of which remain pending after being jointly argued and submitted on April 20, 2023. *Maney v. Brown*, No. 22-35218 (9th Cir.); *Maney v. Allen*, No. 22-35219 (9th Cir.).

This petition concerns a different claim in the class action: whether the Governor violated the Eighth Amendment in commuting the sentences of some AICs and by recommending the closure of two prisons. Specifically, plaintiffs assert that the Oregon Governor inflicted cruel and unusual punishment by not releasing *more* AICs than she did early in the pandemic, and by closing two state prisons for cost savings starting in July 2021; plaintiffs contend that those decisions inhibited greater social distancing across prisons. As discovery closed, plaintiffs moved to compel her deposition on those official state decisions. The district court ordered the deposition.

In so ordering, the district court contravened binding precedent and flouted constitutional principles. No court in this Circuit had *ever* ordered the deposition of a governor over official state decisions. In becoming the first, the district court misapplied each required element for doing so. If such an infringement in the separation of powers were ever warranted, a court first would have to find that the governor had acted in bad faith, the information sought was essential to a case, and the party seeking the deposition had exhausted all less intrusive discovery on an issue. Here, the court *assumed* bad faith based solely on the complaint; the desired

information is inapt to an Eighth Amendment claim; and plaintiffs never issued interrogatories on the desired information. Mandamus relief is warranted.

STATEMENT OF THE CASE

A. Factual History

1. Oregon prisons work to slow the spread of COVID-19.

As the Court is aware, COVID-19 is a novel coronavirus that began circulating in the world in late 2019, arrived in the United States in early 2020, and upended life as we knew it after being declared a global pandemic in March 2020. Since before the pandemic was declared, the state defendants endeavored to keep all Oregonians, including those in state custody, safe from COVID-19.

As the district court found, the Oregon Department of Corrections (ODOC) "made a valiant effort" to respond to the pandemic. (Add-76).[1] In particular, "ODOC was focused on the COVID-19 threat even before the virus reached the United States." (Add-48). ODOC tasked "its leading experts" with "working around the clock to develop, and continuously improve, procedures to fight the spread of COVID-19 in our state prisons." (Add-48). Namely,

> ODOC * * * enforced various social distancing measures, purchased 60,000 cloth masks for staff and AICs, widely distributed educational information to AICs, prohibited visitors and contractors, guaranteed a supply of soap at no cost to AICs, established respiratory clinics in

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[1] "Add" refers to the addendum included with this petition. The district court made these factual findings in denying plaintiffs' request for an order releasing AICs, discussed below in Statement Part B.1.

> every institution, conducted widespread symptom interviews, tested symptomatic AICs, contact traced any AIC who tested positive, quarantined AICs who have been exposed, placed any COVID-19 positive AICs in isolation in negative pressure rooms and, if necessary, in local hospitals, and conducted antibody testing.

(Add-48–49). ODOC also responded to AIC pushback against infection-control measures and worked "to ensure that AICs kept their belongings and privileges in [medical] isolation." (Add-49). In sum, the agency response "evolved, and improved, with time, new information, and data." (Add-75).

Similarly, since March 2020, the U.S. Centers for Disease Control and Prevention (CDC) has issued guidance on how best to manage COVID-19 in correctional and detention facilities, given the evolving science of the virus and the unique difficulties posed by the correctional environment. (Add-302–27). At the outset, the CDC emphasized that, due to the safety and security constraints of a correctional setting, "**[t]he guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions**." (Add-302 (emphasis in original)). The CDC continued to update the guidance periodically throughout the pandemic, but that bolded directive remained at the beginning of each update.[2]

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[2] *E.g.*, CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 2 (June 13, 2021), https://stacks.cdc.gov/view/cdc/107037.

In turn, differences between state prisons in Oregon necessitated different COVID-19 precautions and practices on the ground at each facility. (ECF 290 at 11–15).[3] For example, the physical layout of each institution, and of the housing units in each institution, varied; as a result, the ability to social distance varied by institution and by housing unit. (ECF 290 at 17–18). The medical isolation capacity of each institution similarly varied, as did the concomitant ability to quarantine and isolate AICs. (ECF 290 at 18–19). And the willingness of AICs to report symptoms or take a COVID-19 test—foundations to managing spread of the virus—also varied by institution and over time. (ECF 290 at 19–20).

External forces further affected pandemic policies, protocols, and practices, both statewide and at individual facilities. Early in the pandemic, testing equipment was scarce nationwide. (ECF 290 at 35 & n.13). In July 2020, the CDC first recommended that "all staff and incarcerated/detained persons * * * wear a cloth mask as much as safely possible," after which defendants promptly implemented a system-wide mask mandate. (ECF 290 at 35). In September 2020, massive wildfires spread through Oregon, requiring emergency evacuations and

[3] "ECF" refers to the district court docket in this case. ECF 290 is defendants' opposition to plaintiffs' motion to certify a damages class action. The district court ultimately granted the motion, and this Court denied defendants' petition for permission to appeal that class certification. No. 22-80033 (9th Cir.). However, the background facts provided in ECF 290 are generally not in dispute.

transfers of AICs and staff from certain facilities. (ECF 290 at 20). In February and March 2021, vaccines became widely available to AICs and to Oregonians more broadly, which offered significant protection against the virus. (ECF 377 at 4). And since summer 2021, variants have continued to emerge that can cause infections with often mild-to-no symptoms. (ECF 265 at 2–3).

2. The Governor of Oregon exercises her constitutional authority on clemency and facility closures.

During the pandemic, Governor Brown also took two actions pertinent to this petition. First, she issued a series of clemency decisions to release AICs. Second, she directed the closure of two state prisons beginning in July 2021.

As legal context, under the Oregon Constitution, the powers of state government are divided between three co-equal branches, with the Governor serving as head of the executive branch. Or. Const. art. III, § 1; Or. Const. art. V, § 1. In that role, the Governor has the power to issue "reprieves, commutations, and pardons" after an individual has been convicted of a crime. Or. Const. art. V, § 14. The "constitutional power is plenary—historically indistinguishable from the powers of clemency of the President under the United States Constitution, and the powers of the monarch at English common law." *Marteeny v. Brown*, 517 P.3d 343, 367–68 (Or. Ct. App.), *rev. den.*, 518 P.3d 129 (Or. 2022). The legislative branch receives reports on grants of clemency, Or. Rev. Stat. § 144.660, but the role of the judicial branch is more limited. Generally, "it is not within judicial

competency to control, interfere with, or even to advise the Governor when exercising [the] power to grant reprieves, commutations, and pardons." *Eacret v. Holmes*, 333 P.2d 741, 743 (Or. 1958). Rather, "it is the voters, not the courts, who hold the power to limit gubernatorial clemency actions." *Marteeny*, 517 P.3d at 368.

Similarly, as noted, the Governor serves as chief of the executive branch. Or. Const. art. V, § 1. The executive branch includes ODOC, the agency charged by the legislative branch with "custody over those persons sentenced to a period of incarceration until such time as a lawful release authority authorizes their release." Or. Rev. Stat. § 423.020(1)(c). The Director of ODOC serves at the pleasure of the Governor. *Id.* § 423.075(2). And the Director, with the approval of the Governor, can "organize and reorganize the department in whatever manner the director deems necessary to conduct the work of the department." *Id.* § 423.075(5)(a).

Here, the Governor made a series of clemency grants in response to the pandemic. In April 2020, she convened a workgroup to evaluate the possible release of AICs. (Add-298). In June 2020, she began issuing directives to ODOC to identify possible AICs for release on a case-by-case basis, recognizing the "limits to the department's ability to implement physical distancing in a correctional setting." (Add-189–90, 296–97, 299–300). To that end, she made eligible for release AICs who had committed non-violent crimes, were medically

vulnerable to COVID-19, and did not pose "an unacceptable safety, security, or compliance risk to the community." (Add-296). In August and December 2020, she expanded eligibility to include AICs near the end of their sentence. (Add-189–90). And in March 2021, she expanded eligibility to include those AICs who had served as firefighters in the above-mentioned wildfires. (Add-190). Between March 2020 and March 2022, the Governor ultimately granted clemency releases to 1,070 AICs, including 1,006 AICs identified through her COVID-19 directives. (Add-189–90).[4]

Separately, the Governor also recommended the closure of two of ODOC's fourteen facilities, one in July 2021 (Mill Creek), and one in January 2022 (Shutter Creek). The state economist had forecasted significant declines in the need for prison beds due to the Governor's clemency releases and a marked decrease in the number of intakes of AICs into the prison system. (Add-148–50). State officials then compared the age, location, maintenance needs, and operation costs for each facility. (Add-150–54). The closures were projected to free up more than $40 million in state funding that could be used to "reduce our state's reliance on incarceration and invest more dollars in the program areas that work to prevent

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[4] *See also* Report from the Oregon Governor to the Oregon Legislature on clemency decisions (Mar. 4, 2022) (clemency report from June 2021 to March 2022), https://digital.osl.state.or.us/islandora/object/osl:62027.

people from entering the criminal justice system."[5] The Oregon Legislature then ratified that recommendation in the next budget process.[6]

B. Procedural History

1. The district court denies plaintiffs' request for an order releasing AICs but recommends prison depopulation.

This case began shortly after the onset of the pandemic. On April 6, 2020, plaintiffs sued the State of Oregon, the Oregon Governor, and the central leadership of the Oregon Department of Corrections. Plaintiffs alleged that the individual defendants' initial efforts to respond to the pandemic in Oregon prisons violated the Eighth Amendment; plaintiffs further alleged that the State and individual defendants were negligent under Oregon law. (ECF 1 at 42–43).

Plaintiffs quickly moved for an order of reduction in the prison population. (ECF 14). They acknowledged ODOC's efforts to comply with public health guidance from the CDC and the Oregon Healthy Authority, but they alleged "a disconnect between high-ranking officials and the staff operating the facilities each day." (ECF 14 at 25). They also faulted the CDC's guidance for not mandating

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[5] *E.g.*, Lauren Drake, *Gov. Kate Brown moves to close 3 Oregon prisons*, OPB (Jan. 15, 2021) (quoting the Governor's Office), https://www.opb.org/article/2021/01/15/oregon-kate-brown-prison-closures/.

[6] *E.g.*, State of Oregon, Legislative Fiscal Office, *2021-23 Legislatively Approved Budget Detailed Analysis* 136 (Nov. 2022), https://www.oregonlegislature.gov/lfo/Documents/2021-23%20LAB%20Detailed.pdf.

social distancing across correctional facilities. (ECF 14 at 46, 55). They argued that the Eighth Amendment required the State to release thousands of AICs to allow for full social distancing in all state prisons. (ECF 14 at 63–65).

The district court denied the motion. (ECF 108). The court ruled that, under the Prison Litigation Reform Act, a prisoner release order could only be issued by a three-judge court after efforts at less intrusive relief had failed. (Add-68 (citing 18 U.S.C. § 3626(a)(3))). The court also ruled that plaintiffs had failed to demonstrate a likelihood of success on their Eighth Amendment claim, largely because the state defendants were endeavoring to follow the correctional guidelines provided by the CDC on social distancing, testing, and medical care. (Add-73, 78–79, 81). However, the district court presaged its opinion with a policy recommendation: The court emphasized that quickly releasing AICs would be "the most effective way to save the lives of our family members, friends, and neighbors in prison." (Add-47). And the court stressed that, at that juncture, "[o]nly the Governor has that power." (Add-48).

2. The district court maintains plaintiffs' Eighth Amendment claims against the Governor.

Three years later, the current operative complaint in the case is plaintiffs' Sixth Amended Complaint. (ECF 282). Plaintiffs now allege that the state defendants' response to COVID-19 in Oregon state prisons constituted cruel and unusual punishment in violation of the Eighth Amendment, as well as negligence

under Oregon law, by causing thousands of AICs to contract COVID-19. (ECF 282 at 34–38). As pertinent here, the complaint includes a series of allegations that state defendants, including the Governor, could and should have released more AICs to allow for greater social distancing across state prisons. (ECF 282 at 16–19, 31–34). The complaint includes no allegations about the two prison closures.

Defendants previously moved to strike a number of claims and allegations from the complaint under Federal Rule of Civil Procedure 12(b)(6) and 12(f). (ECF 245). As pertinent here, the district court earlier had ruled that discretionary immunity under state law, Or. Rev. Stat. § 30.265(6)(c), precluded negligence liability for AIC release decisions. (ECF 149 at 21). Defendants thereby moved to strike the release allegations, reasoning that such allegations also are not cognizable under the Eighth Amendment. (ECF 245 at 9–15). Defendants further moved to dismiss all claims against the Governor in her personal capacity, arguing that plaintiffs had failed to raise allegations that would render the Governor personally liable under the Eighth Amendment. (ECF 245 at 17–18).

The district court denied both motions. The court ruled that the release allegations “provide relevant background and context to Plaintiffs’ claims” and are “arguably relevant” to the Eighth Amendment claim. (Add-28). The court also ruled that plaintiffs had adequately alleged that the Governor was “personally involved in developing and overseeing ODOC’s COVID-19 policies and [was]

aware of the harmful consequences of those policymaking decisions." (Add-34). In support, the district court cited to plaintiffs' allegations about defendants broadly failing to implement and enforce COVID-19 policies across facilities and that the Governor, as head of the executive branch, was involved in developing and overseeing those policies. (Add-34–35).

3. The district court denies and then grants plaintiffs' request to depose the Governor.

Discovery has been extensive. Plaintiffs have propounded more than 182 document requests, and defendants have produced more than 240,000 documents. (Add-127). Plaintiffs also have issued 25 interrogatories, many with subparts, and have deposed 44 separate witnesses, including the Governor's former chief of staff, Nik Blosser; her former public safety policy advisor, Constantin Severe; her former senior health policy advisor, Tina Edlund; the former director of the Oregon Health Authority, Patrick Allen; the former director of ODOC, Colette Peters; and the acting director of ODOC, Heidi Steward. (Add-126).

In November 2022, before deposing anyone in the Governor's Office, plaintiffs sought to depose the Governor herself in the final weeks of her term. (ECF 414). In a minute order, the district court granted defendants' motion for a protective order against the deposition. (Add-20). The court ruled that plaintiffs had failed to demonstrate "extraordinary circumstances to justify" the deposition,

as plaintiffs "ha[d] not yet exhausted other less intrusive discovery methods, such as deposing Governor Brown's staff or serving interrogatories." (Add-20).

In April 2023, as fact discovery closed, plaintiffs again sought to force the deposition of the now-former Governor, arguing that she had "first-hand knowledge related to the claims at issue." (Add-249). Specifically, plaintiffs sought to depose the Governor on "decisions relating to early release or commutations of the sentences for AICs and decisions relating to the closure of certain ODOC institutions." (Add-249). Plaintiffs asserted that they had exhausted less intrusive means of discovery, as they had propounded interrogatories and deposed several former staff members since November 2022. (Add-251–52). They further argued that any privilege against being deposed was weakened because the Governor had left office. (Add-248).

Defendants countered that none of the elements required to order the deposition were met. (Add-104). In brief, defendants had operated in good faith, providing plaintiffs with significant access to deposition witnesses and document discovery from the Governor's Office; the Governor had acted in good faith, implementing standard policies through normal channels; plaintiffs were not seeking essential information, as the clemency and facility-closure decisions are not actionable under the Eighth Amendment; and plaintiffs had failed to exhaust less intrusive means of discovery, having never issued interrogatories on the

desired topics or sought to depose the Governor's chief of staff at the time of the facility closures, Gina Zejdlik. (Add-107–20). Defendants also argued that, under this Court's caselaw, the deposition privilege applied with equal force to the Governor regardless of whether she was no longer in office. (Add-120–21).

The district court ordered the deposition. (Add-2). At the outset, the court framed the inquiry as whether plaintiffs had demonstrated a need "to depose Governor Brown primarily on the topics of her early release program and her closure of two ODOC facilities during the COVID-19 pandemic." (Add-6). To answer that question, the court applied the three-part test delineated by this Court in *In re U.S. Department of Education*, 25 F.4th 692. (Add-8–9).

The court ruled that extraordinary circumstances warranted the deposition. First, the court *assumed* agency bad faith based on the allegations in plaintiffs' complaint. (Add-12). Next, the court ruled that the clemency and prison-closure decisions were essential to plaintiffs' Eighth Amendment claim. (Add-14). And the court found that plaintiffs had exhausted all less intrusive means of discovery. (Add-16). The court also reasoned that "the deposition privilege applie[d] with less force" since the Governor had left office; as such, a deposition was "not too much to ask of a former elected official." (Add-17–18). The court then stayed its order pending resolution of this petition. (ECF 470).

ARGUMENT

The Court should issue a writ of mandamus directing the district court to quash its order granting the former Governor's deposition. "A writ of mandamus is an extraordinary remedy." *In re U.S. Dep't of Educ.*, 25 F.4th at 697. In deciding whether to issue a writ, the Court considers five non-exclusive factors:

> (1) the petitioner has no other adequate way to obtain the relief sought; (2) the petitioner will suffer damage or prejudice that cannot be corrected on appeal; (3) the district court clearly erred as a matter of law; (4) the error is often repeated or shows the district court's persistent disregard for the federal rules; and (5) there are new and important issues at stake.

Id. at 698. As a general rule, clear legal error by the district court "is almost always a necessary predicate for the granting of the writ." *Id.*

This case satisfies all five factors. The Court recently issued mandamus to reverse an order allowing the deposition of the former Secretary of the U.S. Department of Education. *Id.* at 706. In doing so, the Court identified three required elements for ordering the deposition of a high-ranking executive-branch official. *Id.* at 702–05. The Court also held that such a deposition order generally satisfies the other mandamus factors due to the grave separation-of-powers principles at stake. *Id.* at 705–06. That precedent warrants the same result here: The district court committed clear legal error and breached the separation of powers by ordering the Governor's deposition with *no* required element present.

A. The district court committed clear legal error.

A district court may order the deposition of a high-ranking executive-branch official only when "extraordinary circumstances" warrant intrusion by the judicial branch into the mental processes of the executive branch. *In re U.S. Dep't of Educ.*, 25 F.4th at 702. To meet that exceptional bar, a party seeking the deposition must demonstrate: "(1) a showing of agency bad faith; (2) the information sought from the [official] is essential to the case; and (3) the information sought from the [official] cannot be obtained in any other way." *Id.* For the reasons explained below, none of the required elements is satisfied in this case. The district court thus clearly erred as a matter of law in ruling otherwise.

1. No state defendant has exhibited bad faith, and the district court never found that any did.

First, to warrant intrusion by the judicial branch into the high-level workings of the executive branch, a party must demonstrate "agency bad faith." *Id.* As summarized by the Eighth Circuit, mere "[a]llegations that a high government official acted improperly are insufficient to justify the subpoena of that official unless the party seeking discovery provides compelling evidence of improper behavior and can show that he is entitled to relief as a result." *In re United States*, 197 F.3d 310, 314 (8th Cir. 1999). Rather, "further judicial scrutiny is justified" beyond official policies and positions only "when the agency has been dishonest." *In re U.S. Dep't of Educ.*, 25 F.4th at 703.

The rationale for the required showing of bad faith is constitutional. This Court stressed that the deposition privilege and its concomitant "rules rest on a constitutional foundation," namely, "the maintenance of a proper separation of powers" between branches of government. *Id.* at 700 & n.1. As a result, the Court explained that the interests at stake are "distinct from the 'apex doctrine,'" which courts apply to potential depositions of high-level corporate employees. *Id.* Instead, "[j]ust as a judge cannot be subjected to such a scrutiny, so the integrity of the [executive] process must be equally respected." *Id.* at 700 (quoting *United States v. Morgan*, 313 U.S. 409, 422 (1941)).

By way of example, in *In re U.S. Department of Education*, plaintiffs were challenging delays by the U.S. Department of Education in processing applications to cancel student loan debt under a federal law. *Id.* at 695–96. The district court found that the agency had acted in bad faith by first claiming that the delay "was due, in part, to the time-sensitive process of considered decision making," before sending out a slew of "denials in unreasoned form letters" in the middle of settlement negotiations. *Id.* at 696, 703. Put another way, the court found agency bad faith where official action had contravened an official position. On appeal, this Court then "s[aw] no reason to question this finding of bad faith." *Id.* at 703.

Below, the district court understood this Court's caselaw to require a finding of bad faith before it could order the Governor's deposition. (Add-7, 11). And yet,

the court ordered the deposition without ever making such a finding. Instead, the court *assumed* bad faith based solely on the allegations in plaintiffs' complaint. (Add-12). That is not the law. Nor does the record support a finding of bad faith here: The Governor made her clemency and facility-closure decisions following proper constitutional and statutory procedures, and defendants have tirelessly complied with plaintiffs' extensive discovery requests, producing more than 240,000 documents and providing 44 separate witnesses for deposition.

In ordering the Governor's deposition, the district court failed to grapple with the grave separation-of-powers principles at stake. Indeed, the court based its analysis on apex-doctrine caselaw, despite this Court's prior admonition against that analogy. (Add-7). But as this Court emphasized, a proper and healthy separation of powers "is essential to the constitutional design." *In re U.S. Dep't of Educ.*, 25 F.4th at 699. As a general rule, "[c]ourts are not * * * to second-guess policy decisions properly delegated" to other branches of government. *Id.* That principle applies with equal force to state officials: "[O]ur system not only separates power among branches of the federal government, but also between the state and federal governments." *In re Office of the Utah Att'y Gen.*, 56 F.4th 1254, 1262 (10th Cir. 2022) (quashing a deposition of the Utah Attorney General).

Before the district court, plaintiffs failed to demonstrate agency bad faith to warrant such extraordinary action. As noted, the Governor followed the proper

constitutional and statutory procedures for taking the official state action at issue here. Official action did not contravene an official position. Absent any such bad faith, neither plaintiffs nor the district court can "prob[e] the mental processes of [such] decisionmakers." *In re U.S. Dep't of Educ.*, 25 F.4th at 700 (internal quotation marks and citation omitted).

At bottom, it appears that the district court (and plaintiffs) disagreed with some of the Governor's decision-making. At the onset of the pandemic, the court recommended that the Governor use her clemency authority to affect a widescale release of AICs. (Add-47–48). Six months later, the court described the number of AICs released as, in the court's view, "a (very) limited number." (ECF 149 at 21). The constitutional standard, however, is bad faith, not disagreement. By ordering the Governor's deposition without a finding of agency bad faith, the district court impermissibly breached the separation of powers between the judicial and executive branches, as well as between state and federal governments.

2. The information sought is not actionable under the Eighth Amendment, much less essential to an Eighth Amendment claim.

The second required element to depose a high-ranking official is that "the information sought * * * is essential to the case." *In re U.S. Dep't of Educ.*, 25 F.4th at 702. Relevance is not enough: "If the information is not absolutely needed for a case," then courts should not "allow a deposition to disrupt the normal governmental balance of powers." *Id.* at 703 (citing cases from other circuits).

The Court explained that ordering a non-essential deposition of a high-ranking official could impede duties and would "upset[] the proper balance of powers." *Id.*

Here, plaintiffs do not seek information that is essential to their Eighth Amendment claim. Plaintiffs proceed from the premise that the Governor violated the Eighth Amendment by not ensuring greater social distancing in state prisons with her clemency and facility-closure decision-making. (Add-249). But to assert a claim for damages under the Eighth Amendment, a plaintiff must satisfy both objective and subjective prongs. Objectively, "only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (internal quotation marks and citations omitted). Subjectively, "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Plaintiffs' theory and request fail under both prongs, either of which defeats a claim of essentiality.

a. Objectively, plaintiffs do not assert a harm that society is unwilling to tolerate.

The objective prong under the Eighth Amendment is "contextual and responsive to contemporary standards of decency." *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (internal quotation marks omitted). A court must "assess whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a

risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993). That is, "the prisoner must show that the risk of which he complains is not one that today's society chooses to tolerate," *id.*, and that a defendant "fail[ed] to take reasonable measures to abate" it, *Farmer*, 511 U.S. at 847. As reiterated by this Court, "[s]uch an objectively intolerable risk of harm requires that the risk must be sure or very likely to cause serious illness and needless suffering." *Norbert v. City & Cty. of S.F.*, 10 F.4th 918, 934 (9th Cir. 2021) (internal quotation marks and citations omitted).

Here, the district court ruled that the constitutionality of the Governor's clemency and facility-closure decisions would depend, in part, on "her knowledge of whether the population density at ODOC institutions allowed for adequate distancing to protect AICs from the spread of COVID-19." (Add-14). In other words, the court ruled that the Governor could be held liable for damages under the Eighth Amendment for not maximizing social distancing across state prisons with her clemency and prison-facility decision-making between March 2020 and May 2022; the court thus concluded that her thought processes on social distancing "are essential" to plaintiffs' claim. That ruling was error.

As an initial matter, it bears noting the district court previously reached a contrary determination on that issue in this case. As recounted above, defendants moved to strike plaintiffs' release allegations from the complaint, arguing that they did not state a claim under the Eighth Amendment. (ECF 245 at 9–15). The court

denied the motion, ruling that the release allegations "provide relevant *background and context* to Plaintiffs' claims"; at most, the issue was "*arguably relevant*" to plaintiffs' Eighth Amendment claim. (Add-28 (emphases added)). Mere relevance, and arguable relevance at that, is legally insufficient to establish essentiality. *In re U.S. Dep't of Educ.*, 25 F.4th at 703.

More fundamentally, the clemency and facility-closure decisions at issue are not essential to plaintiffs' Eighth Amendment claim because the decisions are not actionable under the Eighth Amendment at all. As recounted above, a "prisoner must show that the risk of which he complains is not one that today's society chooses to tolerate." *Helling*, 509 U.S. at 36. Plaintiffs cannot make that showing.

Federal law defers to state officials on the systems-level management of state prison systems. Such "administrators are charged with the responsibility of ensuring the safety of the prison staff, administrative personnel, and visitors, as well as the obligation to take reasonable measures to guarantee the safety of the inmates themselves." *Whitley v. Albers*, 475 U.S. 312, 320 (1986) (internal quotation marks omitted). In other words, they have the "unenviable task of keeping dangerous [people] in safe custody under humane conditions." *Farmer*, 511 U.S. at 845 (internal quotation marks omitted). As a result, state officials are "accorded wide-ranging deference in the adoption and execution of policies and

practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Whitley*, 475 U.S. at 321–22 (cleaned up).

The CDC's correctional guidance reflects this systems-level deference. As plaintiffs themselves previously lamented in asking the district court for an order of widespread release, the CDC never recommended full social distancing across all state prisons. (ECF 14 at 46, 55). Instead, CDC guidance stated that virus precautions in the correctional setting would have "to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions." (Add-302 (emphasis omitted)). With social distancing specifically, "[s]trategies will need to be tailored to the individual space in the facility," as "[n]ot all strategies will be feasible in all facilities." (Add-312). As a result, social distancing should be "encourage[d]" only "[w]hen feasible and consistent with security priorities." (Add-314).

On clemency in particular, there is no federal constitutional right to early release before the expiration of a valid sentence. *Greenholtz v. Inmate of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). Rather, "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981). Forced reductions in a prison population can be ordered only after a three-judge panel has been convened and less intrusive

efforts at remedying conditions have failed. 18 U.S.C. § 3626(a)(3). Under state law, the Governor's clemency authority is plenary: "[I]t is the voters, not the courts, who hold the power to limit gubernatorial clemency actions." *Marteeny*, 517 P.3d at 368. In other words, the societal and institutional interests, risks, and attendant consequences all fall to the Governor, and to the Governor alone.

Similarly, as to facility closures, no law supports plaintiffs' claim that the Eighth Amendment required that the Governor keep the closed facilities open. As the Supreme Court has explained, prison administration "is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Turner v. Safley*, 482 U.S. 78, 85 (1987). As such, it is "a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint." *Id.* Those principles apply with particular force to state prisons, particularly with executive budget decisions subsequently ratified by a state's legislature. *Id.*

To be sure, within each individual facility, "prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates." *Farmer*, 511 U.S. at 832 (internal quotation marks omitted). For example, prison officials cannot knowingly place AICs with "infectious maladies such as hepatitis and venereal

disease" in a crowded cell with others. *Helling*, 509 U.S. at 33. And typically, "the State's responsibility to provide inmates with medical care ordinarily does not conflict with competing administrative concerns." *Hudson*, 503 U.S. at 6.

But this is not a typical case. The import of plaintiffs' theory is breathtaking. In their view, the Governor's constitutional decision-making was constrained and, indeed, controlled by a social-distancing mandate that the CDC never issued; the mandate continued into 2022, when vaccines were plentiful and society had reopened; and the Governor should be deposed—and ultimately held liable under the Eighth Amendment—because she reached different decisions than plaintiffs would have reached. Separation-of-powers principles, and Eighth Amendment caselaw, foreclose that logic. As a result, the information sought by plaintiffs is not apposite, much less essential, to their Eighth Amendment claim.

b. Subjectively, plaintiffs do not seek information essential to the allegations in their complaint.

The subjective prong under the Eighth Amendment examines the state of mind of each individual defendant regarding the harm alleged. Precisely, "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." *Whitley*, 475 U.S. at 312. Thus, the state of mind required to state a claim "varies with the circumstances of the claim." *Johnson v. Lewis*, 217 F.3d 726, 733 (9th Cir. 2000). In a non-emergent scenario, deliberate indifference is required: An official must

"know[] of and disregard[] an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. In exigent circumstances, however, "decisions of prison officials are typically made in haste, under pressure, and frequently without the luxury of a second chance." *Id.* at 835 (internal quotation marks omitted). As such, a plaintiff there must establish that an official acted "maliciously and sadistically for the very purpose of causing harm." *Id.* (internal quotation marks omitted).

Here, between the harm alleged in plaintiffs' complaint and the ensuing record created in this case, plaintiffs' request to depose the Governor is not essential under the Eighth Amendment's subjective prong, even if plaintiffs state a claim under the objective prong. At the outset, plaintiffs have never alleged that the Governor acted maliciously. Their claims thus fail as a matter of law, to the extent that the Eighth Amendment requires a showing of subjective malice.

To be sure, plaintiffs maintain that only deliberate indifference is required. (Add-91). But plaintiffs will be required to show maliciousness to state a claim for damages for any asserted harm that occurred during an emergency, including as it relates to social distancing. As noted above, courts require a showing of malice when prisoner harm is an unfortunate byproduct of exigent circumstances that pose an immediate risk to safety. *Farmer*, 511 U.S. at 835; *see Johnson*, 217 F.3d at 734 (apply different standards to different time periods based on the nature of the circumstances). Plaintiffs' asserted harm here spans from February 1, 2020, to

May 31, 2022. Exigencies existed throughout that timeline, including in the first months of the pandemic, when shutdowns were widespread, and in September 2020, when wildfires forced emergency evacuations and transfers from four prisons. (ECF 290 at 20).

In any event, even under a deliberate-indifference standard, the Governor's deposition is not essential. *See In re U.S. Dep't of Educ.*, 25 F.4th at 703 (requiring that information sought from a high-ranking official be "absolutely needed for a case"). As to clemency, plaintiffs challenge whether the Governor had "knowledge of the inability to socially distance in ODOC's institutions." (Add-246). The record already answers that question: The Governor's directive to ODOC to identify possible AICs for release specifically referenced the "limits to the department's ability to implement physical distancing in a correctional setting." (Add-296). The requested information on prison closures is even less imperative, given that the issue appears nowhere in plaintiffs' complaint. A subject matter not identified by any allegation in a complaint is simply not essential to it.

In sum, gubernatorial decisions on clemency grants and facility closures do not implicate, much less violate, the Eighth Amendment's prohibition on cruel and unusual punishment. Even if they did, the information sought by plaintiffs here is not essential under the extant record and allegations in plaintiffs' complaint. The district court clearly erred in ruling otherwise.

3. Plaintiffs never exhausted less intrusive means of discovery.

The third element for deposing a high-ranking official is that the desired information "cannot be obtained in any other way." *In re U.S. Dep't of Educ.*, 25 F.4th at 702. That is, the party seeking the deposition must have exhausted all less intrusive means of discovery on the issue: "Exhaustion of all reasonable alternative sources is required." *Id.* at 704. For example, the party must have sought the desired information through interrogatories and, where appropriate, a Rule 30(b)(6) deposition. *Id.* Such exhaustion is required because courts should not "intrude into the workings of the executive branch and the time of that branch's leaders if there is another way to obtain the necessary information." *Id.*

Here, plaintiffs never exhausted less intrusive means of discovery. Specifically, they never issued interrogatories on the clemency or facility-closure decisions on which they seek to depose the Governor. Nor did they ever seek to depose the individual who served as the Governor's chief of staff during most of the class window in this case. To be sure, plaintiffs deposed the individual who served as the Governor's chief of staff at the beginning of the pandemic, Nik Blosser. (Add-128). But he left the Governor's Office in October 2020, and plaintiffs never deposed his successor, Gina Zejdlik, who served as the Governor's chief of staff for the remainder of the Governor's term (after having served as the Governor's deputy chief of staff). (Add-155). In other words, they did not even

try to depose the chief of staff who served when most of the challenged clemency grants and facility closures took place. Those discovery efforts by plaintiffs fail to demonstrate "[e]xhaustion of all reasonable alternative sources" of discovery. *In re U.S. Dep't of Educ.*, 25 F.4th at 704.

The district court ruled otherwise, reasoning that plaintiffs had issued other interrogatories and deposed several staff members, and the fact discovery window was closing. (Add-16). That is true. It also is legally irrelevant. The question is whether plaintiffs had exhausted all reasonable sources of discovery *on the desired information*. *In re U.S. Dep't of Educ.*, 25 F.4th at 704. As discussed above, they did not. Were it otherwise, any party could do what plaintiffs did here: allege systemic harm, wait until discovery is closing, and then seek to depose a high-ranking official to seek answers to questions that the party never asked.

What is puzzling is that, in denying plaintiffs' request to depose the sitting Governor in the final weeks of her term, the district court specifically identified interrogatories and staff-member depositions as means of discovery that plaintiffs first had to exhaust before they could seek such a deposition. (Add-20). Plaintiffs then failed to do either: They issued no interrogatory on the desired information, and they never tried to depose the individual who served as the Governor's chief of staff during most of the pandemic. Yet the district court ordered the deposition anyway.

Before the district court, Plaintiffs attempted to excuse their discovery shortcomings in two ways, neither of which has merit. They tacitly acknowledged that their interrogatories had not asked about the Governor's clemency or facility-closure decisions in any way. (Add-96–97 (summarizing interrogatories); *see* Add-254–95 (defendants' responses to plaintiffs' second set of interrogatories)). However, they posited that so inquiring would not have been "an effective use of interrogatories," as a party usually can use interrogatories to obtain general information before then deposing witnesses. (Add-97). In short, this is not a usual case. In so proceeding, plaintiffs flatly disregarded this Court's exhaustion requirement and ignored the separation-of-powers principles at stake.

Plaintiffs also maintained that deposing Gina Zejdlik, the Governor's chief of staff for most of the class period, was not required because the initial decision to close prison facilities occurred before she became chief of staff (when she was serving as the deputy chief of staff). (Add-96). That reasoning similarly fails to withstand scrutiny. The bulk of the challenged actions here—the clemency grants and facility closures—occurred during Zejdlik's tenure as chief. For the reasons discussed above, neither is pertinent to a claim under the Eighth Amendment. But if they were, Zejdlik would be the senior staff member in the best position to testify to them, including the extent to which social distancing factored into the

actions at the time that they actually occurred. Plaintiffs' failure to depose her or to seek answers in an interrogatory fail the Court's exhaustion requirement.

B. The remaining mandamus factors similarly weigh in favor of relief.

The remaining four mandamus factors also warrant issuing a writ here. As this Court explained in quashing a similar deposition order directed at the former Secretary of the U.S. Department of Education, "in cases involving high-level government officials, there are no other means of relief beyond mandamus because to disobey the subpoena, face contempt charges, and then appeal would not be appropriate for a high-ranking government official." *In re U.S. Dep't of Educ.*, 25 F.4th at 705. In addition, the harm "is the intrusion of the deposition itself, and so the harm is not correctable on appeal, even if [the] testimony is excluded at trial." *Id.* Moreover, although such an error by the district court "is not new or often repeated, it is an important issue implicating constitutional concerns," namely, separation-of-powers principles. *Id.* at 705–06. So too here.

One final issue warrants mention. The district court ordered the deposition, in part, because the court agreed with plaintiffs that the institutional interests were lessened with the Governor having left public office. (Add-17–18). This Court expressly rejected that premise in *In re U.S. Department of Education*, 25 F.4th at 705. Specifically, the same legal standards apply regardless of whether a high-ranking official is still in office. *Id.* Otherwise, as the Court explained,

"overwhelming and unnecessary discovery could * * * discourage them from taking that office in the first place or leaving office when there is controversy." *Id.*

That identified interest—promoting the public good and preserving the efficiency of government by avoiding unnecessary discovery targeted at a public official—is well established. Indeed, that longstanding principle underpins both the deposition privilege here as well as the doctrine of qualified immunity. *Id.*; *see Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (qualified immunity); *Harlow v. Fitzgerald*, 457 U.S. 800, 814–17 (1982) (same); *Morgan*, 313 U.S. at 422 (deposition privilege). And that principle, along with separation-of-powers principles, are equally threatened by an unwarranted intrusion into executive branch decision-making with the ordered deposition of a high-ranking official, whether the official is currently in or out of office.

Strikingly, the district court acknowledged the Court's holding on the matter; the court simply disagreed with the holding so chose not to follow it. (Add-17–18 & n.8). That decision—much like the challenged clemency and facility-closure decisions—was not the district court's to make. Plaintiffs and the district court are free to disagree with the difficult policy decisions made by the Governor amidst a worldwide pandemic and historic wildfires. But this Court's precedents foreclose their attempt to use the power of the federal judiciary to depose the Governor on public safety questions that state and federal constitutional

law reserved to her and, by extension, to the people of Oregon. That attempt doubly fails given the lack of bad faith by state officials and the failure by plaintiffs to exhaust less intrusive means of discovery. The district court's unprecedented deposition order requires reversal.

CONCLUSION

The Court should grant the State of Oregon's petition for a writ of mandamus directing the district court to quash its order compelling the deposition of the former Governor of the State of Oregon, Kate Brown.

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rules 21-3 and 28-2.6, undersigned counsel is aware of two consolidated appeals pending in this Court that are related to this petition: *Maney v. Brown*, No. 22-35218 (9th Cir.); and *Maney v. Allen*, No. 22-35219 (9th Cir.). They all arise out of the same case in the district court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 21(d)(1) and 32(c)(2), and Ninth Circuit Rules 21-2 and 32-3, I certify that the foregoing Petition for a Writ of Mandamus is proportionately spaced, has a typeface of 14 points or more, and contains 7,696 words.

DATED: July 6, 2023

/s/ Robert A. Koch

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ADDENDUM TO PETITION FOR A WRIT OF MANDAMUS

Pursuant to Federal Rule of Appellate Procedure 21(a)(2)(C), the State of Oregon submits the following Addendum to Petition for a Writ of Mandamus:

District Court Orders

ECF #	Document	Add-#
464	Order granting plaintiffs' motion to compel deposition; denying defendants' motion for protective order	1–19
419	Minute order granting defendants' motion for protective order	20–21
272	Order denying defendants' motion to strike clemency allegations and to dismiss claims against the Governor	22–44
108	Order denying plaintiffs' motion for an order of reduction in the prison population	45–86

Other Documents

ECF #	Document	Add-#
451	Plaintiffs' response to defendants' motion for protective order	87–98
446	Defendants' response to plaintiffs' motion to compel deposition; motion for protective order	99–124
447	Declaration of Anit K. Jindal	125–27
447-1	Excerpt of deposition of Nik Blosser	128–56
447-2	Excerpt of deposition of Constantin Severe	157–88
447-6	Report from the Oregon Governor to the Oregon Legislature on clemency decisions	189–241
441	Plaintiffs' motion to compel deposition	242–53

442-3	Defendants' responses and objections to plaintiffs' second set of interrogatories	254–95
442-4	Letter from the Governor on clemency process	296–97
442-5	Communication from ODOC on clemency process	298
442-6	Letter from the Governor on clemency process	299–300
442-7	Communication from ODOC on clemency process	301
83-1	CDC interim guidance on COVID-19 in correctional facilities	302–27

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET, and FELISHIA RAMIREZ, a personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of others similarly situated,

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Defendants.

Case No. 6:20-cv-00570-SB

OPINION AND ORDER

BECKERMAN, U.S. Magistrate Judge.

Plaintiffs Paul Maney, Gary Clift, George Nulph, Theron Hall, David Hart, and Sheryl Lynn Sublet, adults in custody ("AIC") at Oregon Department of Corrections ("ODOC") institutions, along with Felishia Ramirez, the personal representative for the Estate of Juan Tristan (together, "Plaintiffs"), filed a motion for an order compelling former Governor Kate

Brown ("Governor Brown"), former Oregon Health Authority Director Patrick Allen, several ODOC officials, and the State of Oregon (together, "Defendants") to make Governor Brown available for a deposition.[1] (ECF No. 441.) Defendants filed a motion for protective order, seeking to bar Governor Brown's deposition. (ECF No. 446.) All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636.

For the reasons that follow, the Court grants Plaintiffs' motion for an order compelling Defendants to make Governor Brown available for deposition and denies Defendants' motion for a protective order barring Governor Brown's deposition.

PROCEDURAL BACKGROUND

Plaintiffs filed this class action in April 2020, alleging that Defendants failed to protect AICs in ODOC's custody from the heightened risk that COVID-19 presented in the custodial setting. (*See* Sixth Am. Compl. ("SAC"), ECF No. 282.) A jury trial is scheduled to begin in July 2024. (*See* ECF No. 435.)

In May 2020, in the early days of the COVID-19 pandemic, Plaintiffs filed a motion for temporary restraining order and preliminary injunction to require Defendants to reduce the AIC population at each ODOC facility, appoint an expert to effectuate the rapid downsizing of those facilities, require Defendants to provide safe and non-punitive housing separation of AICs in each ODOC facility based on their COVID-19 infection status, require Defendants to create and enforce procedures to reduce the risk of COVID-19 transmission in ODOC facilities consistent with public health guidance, and immediately implement new procedures to bring ODOC in compliance with expert guidance and appoint an independent monitor to ensure such

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[1] Plaintiffs also moved for an order compelling Defendants to make Kevin Gleim, former Special Projects Attorney at the Office of the Governor, available for deposition. The Court granted Plaintiffs' motion to compel in a separate opinion.

compliance. (ECF No. 14.) Following an evidentiary hearing (ECF No. 107), the Court denied Plaintiffs' motion (ECF No. 108).

In August 2020, Defendants filed a motion for partial summary judgment arguing, as relevant here, that qualified immunity bars Plaintiffs' Eighth Amendment claims and discretionary immunity bars Plaintiffs' negligence claims. (ECF No. 115.) Following oral argument (ECF No. 147), the Court denied Defendants' motion with respect to qualified immunity, but granted the motion in part with respect to discretionary immunity and entered partial summary judgment on Plaintiffs' negligence claims. (Op. & Order, ECF No. 149.) Specifically, the Court "agree[d] that discretionary immunity protects the State from negligence liability for public policy decisions made by policymakers with authority, but Plaintiffs' negligence claim here challenges more than just high-level policy decisions." (*Id.* at 14.) The Court entered summary judgment on Plaintiffs' negligence claims challenging Defendants' deliberative policy decisions, but not on their claims challenging failures to act or to implement policy decisions. (*Id.* at 14-25.)

In October 2020, Plaintiffs requested a deposition of Governor Brown, as well as (now former) ODOC Director Colette Peters ("Director Peters"), and the Court held an informal telephonic discovery hearing. (Oct. 23, 2020 Hrg. Tr., ECF No. 416.) The Court denied Plaintiffs' request to depose Director Peters at that time, on the ground that the information Plaintiffs sought was available from a less burdensome or alternative source, namely, (then) Deputy Director Heidi Steward ("Steward") or Health Services Administrator Joe Bugher ("Bugher"). (*Id.* at 14, "And so I deny the request, but without prejudice to revisit the issue after the deposition of Deputy Director Steward and Mr. Bugher, if plaintiff deposes him as well. If they have deposed both of those individuals and have identified questions that only Director

Peters can answer, then we will revisit the request and have another conversation about it and about whether either a limited deposition or written interrogatories is the appropriate response to address that issue."). The Court deferred the question of Governor Brown's deposition pending further briefing, but instructed the parties that it expected Plaintiffs to serve interrogatories and a detailed deposition notice before the question would be appropriate for the Court's review. (*See id.* at 15-18.)

In July 2021, Defendants filed a motion to dismiss Plaintiffs' fourth amended complaint arguing, as relevant here, that Defendants cannot be held liable under the Eighth Amendment for Governor Brown's discretionary exercise of her constitutional clemency powers and that none of the remaining allegations state a claim against Governor Brown. (ECF No. 245.) Following oral argument (ECF No. 262), the Court denied Defendants' motion to dismiss with respect to Plaintiffs' claim against Governor Brown, holding that Plaintiffs alleged sufficient facts that a causal connection exists between Plaintiffs' alleged injuries and Governor Brown's involvement in implementing and overseeing ODOC's policies, and that Governor Brown knew or reasonably should have known the consequences of her actions or inaction.[2] (Op. & Order at 12-15.)

In April 2022, the Court granted Plaintiffs' motion to certify two classes of plaintiffs: (a) the "damages" class, with respect to Plaintiffs' Eighth Amendment deliberate indifference and negligence claims, defined as "[a]ll adults incarcerated in Oregon Department of Corrections facilities who: (1) were incarcerated on or after February 1, 2020; (2) while incarcerated, tested positive or were otherwise diagnosed with COVID-19; and (3) if they became incarcerated after February 1, 2020, tested positive or were otherwise diagnosed with COVID-19 at least fourteen

[2] The Court noted Defendants' early acknowledgment in this litigation that Governor Brown was personally involved with authorizing and overseeing ODOC's COVID-19 policies. (Op. & Order at 14 n.3, ECF No. 272.)

days after they entered Oregon Department of Corrections custody;" and (b) the "wrongful death" class, with respect to Plaintiffs' wrongful death claims, defined as "[e]states of all adults incarcerated at Oregon Department of Corrections facilities continuously since February 1, 2020, who died during the Wrongful Death Class period, and for whom COVID-19 caused or contributed to their death[.]" (Op. & Order at 53-54, ECF No. 377.) Defendants sought permission to appeal the Court's class certification opinion, but the Ninth Circuit denied Defendants' request in May 2022. (*See Maney v. State of Or.*, No. 22-80033, ECF No. 4.)

On October 31, 2022, Defendants filed a motion for protective order to prevent Plaintiffs from deposing Governor Brown while she remained in office, "so that Governor Brown can focus on state business, including the upcoming transition to a new administration, and not have to sit for a premature and potentially unnecessary deposition." (Defs.' Mot. Prot. Order at 2, ECF No. 410). Plaintiffs opposed the motion. (ECF No. 414.) The Court granted Defendants' motion for a protective order with respect to Governor Brown's deposition, holding that "Plaintiffs have not met their burden of demonstrating extraordinary circumstances to justify taking Governor Kate Brown's deposition before the end of her current term." (ECF No. 419.) The Court found that "[s]pecifically, Plaintiffs have not yet exhausted other less intrusive discovery methods, such as deposing Governor Brown's staff or serving interrogatories." (*Id.*, "The Court therefore enters a protective order barring Governor Brown's deposition prior to January 9, 2023. The Court denies Defendants' request for a protective order barring Governor Brown's deposition altogether, with leave to renew if Plaintiffs notice her deposition again after exhausting less intrusive discovery methods.").

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On April 10, 2023, Plaintiffs filed the motion to compel at issue here, and Defendants responded with their motion for protective order on April 17, 2023. (ECF Nos. 441, 446.) The Court heard oral argument on the motions on May 24, 2023. (ECF No. 462.)

LEGAL STANDARDS

Federal Rule of Civil Procedure ("Rule") 26(b)(1) provides that parties "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]" FED. R. CIV. P. 26(b)(1). Rule 26 lists the relevant proportionality factors: "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* Rule 26(c) also provides that "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" by, among other things, not allowing a deposition or limiting its scope. FED. R. CIV. P. 26(c)(1).

DISCUSSION

Plaintiffs move to compel the deposition of former Governor Brown. (Pls.' Mot. Compel ("Pls.' Mot.") at 5-10, ECF No. 441.) Plaintiffs seek to depose Governor Brown primarily on the topics of her early release program and her closure of two ODOC facilities during the COVID-19 pandemic. (*Id.*) Defendants object to any deposition of Governor Brown, on the ground that the deposition privilege applicable to high-ranking officials protects her from answering any of Plaintiffs' questions about her role in managing ODOC's response to the COVID-19 pandemic. (Defs.' Mot. Prot. Order & Opp'n to Pls.' Mot. ("Defs.' Mot.") at 8-18, ECF No. 446.)

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I. "APEX" DEPOSITION PRIVILEGE

Defendants argue that the deposition privilege applicable to high-ranking government officials protects former Governor Brown from any deposition in this case, and that Plaintiffs have not established extraordinary circumstances to justify Governor Brown's deposition here. (Defs.' Mot. at 8-18.)

A. Applicable Law

The Ninth Circuit recently articulated the standards applicable to the deposition privilege for high-ranking government or corporate officials, also known as the "apex" doctrine. In *In re U.S. Department of Education*, a Ninth Circuit panel issued a writ of mandamus and held that a district court clearly erred in allowing the deposition of former U.S. Secretary of Education Betsy DeVos ("Secretary DeVos") in connection with an action challenging a Department of Education ruling on student borrowers' applications to cancel federal student loans. *See In re U.S. Dep't of Educ.*, 25 F.4th 692 (9th Cir. 2022). The panel outlined three requirements a party must establish to depose a cabinet secretary: "(1) a showing of agency bad faith; (2) the information sought from the secretary is essential to the case; and (3) the information sought from the secretary cannot be obtained in any other way." *Id.* at 702; *see also Givens v. Newsom*, No. 2:20-cv-0852-JAM-CKD, 2021 WL 65878, at *5 (E.D. Cal. Jan. 7, 2021) (finding that depositions of high-ranking individuals are allowed "when there are allegations that the official acted with improper motive or acted outside the scope of his official capacity" (quoting *Coleman v. Schwarzenegger*, No. CIV S-90-0520-LKK-JFM-P, 2008 WL 4300437, at *3-4 (E.D. Cal. Sept. 15, 2008))); *Estate of Levingston v. Cnty. of Kern*, 320 F.R.D. 520, 525 (E.D. Cal. 2017) (holding that under the apex doctrine, "an individual objecting to a deposition must first demonstrate [s]he is sufficiently high-ranking to invoke the deposition privilege" and then the court considers whether there are "extraordinary circumstances" to justify the deposition, based

on "(1) whether the deponent has unique first-hand, non-repetitive knowledge of the facts at issue in the case; and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods") (simplified); *Coleman*, 2008 WL 4300437, at *3 (to demonstrate "extraordinary circumstances," a plaintiff must show that proposed high-ranking deponents "possess personal knowledge of facts critical to the outcome of the proceedings and that such information cannot be obtained by other means").

The panel sustained the district court's finding of agency bad faith, but disagreed with the district court that Secretary DeVos's testimony was essential to the case or that the information the plaintiffs sought was otherwise unobtainable. *In re U.S. Dep't of Educ.*, 25 F.4th at 704. The panel held that its reasoning applied even though DeVos was no longer serving as secretary.[3] *Id.* at 705.

Courts have recognized the rationale for the apex deposition privilege, finding that "high ranking government officials have greater duties and time constraints than other witnesses and . . . , without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation." *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1048 (E.D. Cal. 2010) (citation omitted); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012) (recognizing that there is "tremendous potential for abuse or harassment" if courts allow depositions of high-ranking officials).

The Court has no reason to conclude that the Ninth Circuit would apply a different test to evaluate the deposition of a governor, who similar to a cabinet secretary is a high-ranking official

[3] One judge of the three-judge panel dissented, finding that "the district court did not clearly err in denying the motion to quash, particularly because of the salient feature that DeVos is a *former* secretary." *In re U.S. Dep't of Educ.*, 25 F.4th at 713.

serving in the executive branch. Accordingly, the Court applies the *In re U.S. Department of Education* test here to evaluate Plaintiffs' request to depose former Governor Brown.

B. Deposition Privilege Applied to Governors

Before applying the test, the Court notes that in prior cases, courts have allowed the depositions of both current and former governors. *See, e.g.*, *Fair Fight Action, Inc. v. Raffensperger*, 333 F.R.D. 689, 698 (N.D. Ga. 2019) (allowing deposition of the current governor of Georgia on three of eight requested topics); *Freedom From Religion Found., Inc. ("FFRF") v. Abbott*, No. A-16-CA-00233-SS, 2017 WL 4582804, at *11 (W.D. Tex. Oct. 13, 2017) (allowing deposition of the current governor of Texas, finding that "Governor Abbott is a party to this litigation in his individual capacity, and his motive in requesting removal of [the plaintiff's] exhibit [in the state capitol building] is central to [the plaintiff's] claims against him"); *Victory v. Pataki*, No. 02-CV-0031S(Sr), 2008 WL 4500202, at *2 (W.D.N.Y. Sept. 30, 2008) (allowing deposition of the former governor of New York regarding his involvement in the rescission of a decision by the New York State Parole Board and finding that the deposition was necessary to address the former governor's possible involvement in the decision and noting that "[t]here can be no question [] that a deposition of a former official can no longer pose the risk of interfering with governmental duties"); *Bagley v. Blagojevich*, 486 F. Supp. 2d 786, 788-90 (C.D. Ill. 2007) (allowing deposition of the current governor of Illinois in retaliation action where former correctional captains alleged that the governor was either the ultimate decision-maker or at least personally involved in the decision to eliminate their positions).

Courts have also denied depositions of both current and former governors. *See, e.g.*, *Givens*, 2021 WL 65878, at *6 (denying the plaintiff's request to depose the current governor of California, and holding that "[u]ntil plaintiffs can show the fruitlessness of other discovery avenues, a protective order will remain appropriate to prohibit the deposition of Governor

Newsom in this case”); *Thomas*, 715 F. Supp. 2d at 1048-49 (denying the plaintiff’s request to depose the current and former governors of California where the plaintiff sought information regarding the general process of reviewing parole applications); *Coleman*, 2008 WL 4300437, at *3-4 (denying the plaintiffs’ request to depose the current governor of California in action challenging prison overcrowding because the “plaintiffs have not carried their burden of establishing that no other person possesses the information in question, particularly other members of the Governor’s office or his administration, or that such information may not be obtained by other means”); *see also Am. Trucking Ass’n, Inc. v. Alviti*, 14 F.4th 76, 85 (1st Cir. 2021) (issuing writ of mandamus to quash subpoena of nonparty former governor of Rhode Island).[4]

C. Analysis

The parties do not dispute that Governor Brown is a high-ranking government official for the purposes of the deposition privilege, and therefore the Court must determine if Plaintiffs have demonstrated extraordinary circumstances to allow them to depose the former governor. *See Thomas*, 715 F. Supp. 2d at 1049 (“There can be no doubt that Governor Schwarzenegger is a high-ranking government official for the purposes of the deposition privilege. Accordingly, the Court must determine whether Petitioner has demonstrated extraordinary circumstances which entitled him to depose the Governor.”).

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[4] Courts have also denied depositions of governors in cases where the governor simply had no personal knowledge of the dispute. *See, e.g.*, *Watson v. Schwarzenegger*, No. CV 05-0192-JFW(CTx), 2006 WL 8440703, at *3 (C.D. Cal. Jan. 20, 2006) (“Plaintiff speculates, with absolutely no factual support, that it is ‘quite possible’ that plaintiff’s administrative appeal came to the personal attention of the Governor[.]”).

1. Bad Faith or Improper Conduct

With respect to the threshold showing of agency bad faith or improper conduct to justify a high-ranking government official's deposition, the Ninth Circuit panel in *In re U.S. Department of Education* "s[aw] no reason to question" the district court's finding that the Department of Education acted in bad faith by denying student loan applications using form letters despite previously claiming that lengthy delays in deciding applications for student debt relief were due to a time-intensive decisionmaking process. *In re U.S. Dep't of Educ.*, 25 F.4th at 703; *see also FFRF*, 2017 WL 4582804, at *11 n.24 (finding that the current Texas governor's "first-hand knowledge of his own motives" was reason to deny protection where the plaintiff "pled specific facts sufficient to support its allegation that Governor Abbott acted with improper motive").

Here, Plaintiffs allege that Governor Brown and the other defendants acted with deliberate indifference to the health and safety of AICs during the COVID-19 pandemic. An official acts with deliberate indifference if she "knows of and disregards an excessive risk to inmate health and safety." *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (citation omitted). "Under this standard, the prison official must not only 'be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,' but that person 'must also draw the inference.'" *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). "If [an official] should have been aware of the risk, but was not, then the [official] has not violated the Eighth Amendment, no matter how severe the risk." *Id.* (citation omitted).

Although the deliberate indifference standard is not synonymous with bad faith, the Ninth Circuit has likened the two standards. *See Luke v. City of Tacoma*, No. 21-35440, 2022 WL 2168938, at *1 n.1 (9th Cir. June 16, 2022) ("Because of the absence of evidence upon which a reasonable juror could find that the individual defendants engaged in wrongful or bad faith

conduct, we also reject [the plaintiff's] argument that the individual defendants acted with deliberate indifference[.]" (citing *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011))). At the very least, deliberate indifference reflects wrongful or improper conduct.

The Court finds that Plaintiffs' allegations that Governor Brown (as well as the other named defendants) acted with deliberate indifference to the health and safety of AICs during the COVID-19 pandemic is sufficient to meet the threshold requirement of either agency or individual bad faith or wrongful conduct. Plaintiffs' allegations here are no less serious than those cases in which courts have found that plaintiffs' allegations met the threshold seriousness requirement. *See, e.g.*, *In re U.S. Dep't of Educ.*, 25 F.4th at 703 (denying student loan applications with a form letter); *Raffensperger*, 333 F.R.D. at 698 (N.D. Ga. 2019) (engaging in voting irregularities); *FFRF*, 2017 WL 4582804, at *11 (removing an exhibit from the state capitol building); *Victory*, 2008 WL 4500202, at *2 (rescinding a parole decision); *Bagley*, 486 F. Supp. 2d at 788-90 (terminating state employees in retaliation).

For these reasons, the Court finds that Plaintiffs have met the threshold requirement to depose Governor Brown.

2. Essential to Plaintiffs' Claims

With respect to whether the information Plaintiffs seek from Governor Brown is essential, the *In re Department of Education* panel explained that the deponent's information must be not only relevant but also necessary. *In re U.S. Dep't of Educ.*, 25 F.4th at 704 ("Were we to allow the taking of depositions of cabinet-level officials in which relevant, but unnecessary information, was sought, we would risk distracting cabinet secretaries from their essential duties with an inundation of compulsory, unnecessary depositions and upsetting the proper balance of powers."). The panel found that the plaintiffs did not allege that former Secretary DeVos had

information essential to their case, and in fact acknowledged that they could obtain relief without DeVos's testimony.[5] *Id.* at 704.

Courts are more likely to allow depositions of high-ranking officials who were personally involved in the events at issue, or who are named as a defendant in the litigation, because they possess direct factual information relevant to the case. *See, e.g.*, *Givens*, 2021 WL 65878, at *5 ("Plaintiffs are correct that courts often look more favorably on depositions of high-ranking officials when there are allegations that the official personally made the decision(s) at issue in the litigation.") (citations omitted); *Coleman*, 2008 WL 4300437, at *2 ("The extraordinary circumstances test may be met when high-ranking officials 'have direct personal factual information pertaining to material issues in an action,' and 'the information to be gained is not available through any other sources'" (quoting *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007))); *Thomas*, 715 F. Supp. 2d at 1049 ("Depositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated.") (citations omitted); *see also FFRF*, 2017 WL 4582804, at *11 (allowing limited deposition based on finding that "Governor Abbott is a party to this litigation in his individual capacity, and his motive in requesting removal of FFRF's exhibit is central to FFRF's claims against him"); *Bagley*, 486 F. Supp. 2d at 789 (allowing deposition of the governor where the plaintiffs alleged that "the Governor was either the ultimate decision maker or at least personally involved in the decision"); *Toussie v. Cnty. of Suffolk*, No. CV 05-1814, 2006 WL 1982687, at *2 (E.D.N.Y.

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[5] The dissenting judge disagreed, finding that the "district court thoroughly explained why former Secretary DeVos had unique information that was necessary, or 'essential,' to the plaintiffs' . . . claims[,]" noting the district court's finding that "'material gaps at the highest rungs of the Department's decisionmaking record' revealed DeVos's personal involvement in the challenged conduct" and demonstrated the necessity for her testimony. *In re U.S. Dep't of Educ.*, 25 F.4th at 711. The dissenting judge further noted that the plaintiffs also alleged agency inaction, for which there existed no official and contemporaneous explanation. *Id.*

July 13, 2006) (finding that "[g]enerally, the depositions of former government officials are granted where the official has been personally involved in the events at issue in the case").

Here, there is no dispute that Governor Brown was personally involved in making relevant decisions regarding ODOC's response to the COVID-19 pandemic in the state's prisons, and Governor Brown remains a named defendant in this class action. In addition, Plaintiffs have established that Governor Brown's testimony is necessary to prove their case, in particular their deliberate indifference claims against her. (Pls.' Mot. at 8-12; Pls.' Resp. at 6-7, ECF No. 451.) Although Plaintiffs have now deposed members of the Governor's staff, as well as ODOC officials, no other witness can testify about Governor Brown's knowledge with respect to the heightened risk that COVID-19 presented in the custodial setting and the actions she took or did not take with that knowledge. Plaintiffs are not directly challenging Governor Brown's early release decisions, but the information she received in connection with the early release program, as well as her decision to close two ODOC institutions during the pandemic, is relevant to her knowledge of whether the population density at ODOC institutions allowed for adequate distancing to protect AICs from the spread of COVID-19. Those facts are essential to Plaintiffs' burden to prove that Governor Brown and the other defendants knew of, but disregarded, an excessive risk to AICs' health and safety.

For these reasons, Plaintiffs have established that Governor Brown's testimony is both relevant and necessary, and therefore essential, to proving their claims.

3. Not Otherwise Obtainable

Finally, the Ninth Circuit panel held in *In re U.S. Department of Education* that to take the deposition of a high-ranking official, "the information sought cannot be obtainable in any other way." *In re U.S. Dep't of Educ.*, 25 F.4th at 704. The panel found that the district court had not considered less intrusive means of discovery, the plaintiffs had not established that the

information they sought from Secretary DeVos was otherwise unobtainable, and the plaintiffs had not exhausted "all reasonable alternative sources" of information. *Id.* Specifically, the panel held that vague references by other deponents to their lack of decisionmaking authority was not sufficient to demonstrate that DeVos had information that the plaintiffs could not obtain elsewhere.[6] *Id.* at 705.

Similarly, the district court in *Givens* found that the plaintiffs had not demonstrated "that no other person possesses the information in question, particularly other members of the Governor's office or his administration, or that such information may not be obtained by other means." *Givens*, 2021 WL 65878, at *5 (quoting *Coleman*, 2008 WL 4300437, at *4). Specifically, the *Givens* court found that "it is likely that other lower-ranking members of [the governor's] office or administration would have relevant information about his actions." *Id.* (quoting *Coleman*, 2008 WL 4033437, at *4). In that case, the "plaintiffs ha[d] not attempted any less intrusive discovery methods or sources for the information they seek" and the court held that "[a]t a bare minimum, no deposition should be required of Governor Newsom until plaintiffs have first deposed the two [agency] fact witnesses currently scheduled for deposition later this month." *Id.* ("[T]he court is unconvinced that deposing the Governor will be the least burdensome method of discovery.").

So too in *Coleman*, where the district court found that the "plaintiffs have not carried their burden of establishing that no other person possesses the information in question,

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[6] The dissenting judge noted that the plaintiffs took the depositions of the officials the Department designated as most likely to have relevant information, "but those officials then disclaimed authority to make the decisions at issue and intimated that the decisions rested with former Secretary DeVos." *In re U.S. Dep't of Educ.*, 25 F.4th at 704 ("No court of appeals has stated that *all* discovery methods must be exhausted in order to show that the information is not available from another source.").

particularly other members of the Governor's office or his administration, or that such information may not be obtained by other means." *Coleman*, 2008 WL 4300437, at *3-4.

The posture of this litigation is different. As discussed above, the Court instructed the parties in October 2020 that Plaintiffs must first serve interrogatories and depose lower-ranking officials before deposing high-ranking officials in this case. The Court also denied Plaintiffs' request to depose Governor Brown in November 2022 while she was nearing the end of her tenure as governor, finding that "Plaintiffs have not met their burden of demonstrating extraordinary circumstances to justify taking Governor Kate Brown's deposition before the end of her current term." (ECF No. 419.) The Court found that Plaintiffs had "not yet exhausted other less intrusive discovery methods, such as deposing Governor Brown's staff or serving interrogatories." (*Id.*)

Plaintiffs have now returned to the Court at the close of discovery having served interrogatories on Governor Brown and deposed several of her staff members (including Constantin Severe, Tina Edlund, and Nik Blosser) and high-ranking ODOC officials (including Director Peters, Steward, and Bugher). None of those discovery methods have provided Plaintiffs with all of the information they require regarding what Governor Brown knew—both from the sources already deposed but also from all other available sources of information to which she was privy—about the heightened risk of COVID-19 in the state's prisons, particularly with respect to the population density absent early releases and as a result of prison closures. (*See* Pls.' Resp. at 8-11.) The Court finds that Plaintiffs have now exhausted less intrusive discovery mechanisms, and have established that the information they seek from Governor Brown is not otherwise available.

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4. **Conclusion**

In *In re U.S. Department of Education*, the Ninth Circuit panel emphasized that "[t]he significant protection from depositions that [high-ranking government officials] enjoy does not mean that they are above the law," citing the fact that in the treason case against Aaron Burr, then trial judge John Marshall held that it was appropriate to call the U.S. president to testify at Burr's trial, distinguishing what separates U.S. elected officials from a monarchy:

> [T]he crown is hereditary, and the monarch can never be a subject . . . [T]he president is elected from the mass of people, and, on the expiration of the time for which he is elected, returns to the mass of the people again. . . . If, upon any principle, the president could be construed to stand exempt from the general provisions of the constitution, it would be, because his duties as chief magistrate demand his whole time for national objects. But it is apparent that this demand is not unremitting. . . .

In re U.S. Dep't of Educ., 25 F.4th at 701 (quoting *United States v. Burr*, 25 F. Cas. 30, 34 (C.C.D. Va. 1807)). Governor Brown was similarly elected from the mass of the people, and on the expiration of the time for which she was elected, she has returned to the mass of the people again. Although the Court agreed with Defendants that deposing Governor Brown while she remained in office would interfere with her official duties as governor, the demands of the job have now remitted. As a result, although the deposition privilege continues to apply (*see In re U.S. Dep't of Educ.*, 25 F.4th at 705),[7] the rationale behind the deposition privilege applies with less force.[8] *See Thomas*, 715 F. Supp. 2d at 1049-50 (finding that "[t]he general rule prohibiting

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[7] The dissenting judge in *In re U.S. Department of Education* observed that "no court of appeals decision has resolved whether the 'extraordinary circumstances' doctrine should apply with the same force to a *former* secretary where the underlying rationales have limited applicability." *In re U.S. Dep't of Educ.*, 25 F.4th at 709.

[8] The *In re U.S. Department of Education* panel reasoned that the concerns about time constraints continued to apply to former officials, and that the threat of preparing and sitting for depositions could "hamper and distract officials from their duties while in office[,]" and "overwhelming and unnecessary discovery could also discourage [officials] from taking that office in the first place or leaving office when there is controversy." *In re U.S. Dep't of Educ.*, 25

depositions of high-ranking government officials applies to former high-ranking officials, although in the case of former high-ranking government officials, one important rationale for the rule is absent" and citing prior case "noting that rationale based on interference with official duties is absent" (citing *United States v. Sensient Colors, Inc.*, 649 F. Supp. 2d 309, 320 (D.N.J. 2009))).

The deposition privilege is important to protect high-ranking government officials from harassment, distraction, or burden while they execute the demanding duties of their office. But now that Governor Brown has left office, a brief deposition is less burdensome and will not distract from any official duties.[9]

In addition, this is not a case of one AIC seeking to depose the governor about an individual claim, nor is there any evidence that Plaintiffs seek to depose former Governor Brown for any improper purpose. Instead, a certified class of thousands of individuals infected with COVID-19 while in the state's custody—including the estates of dozens who died—seek to ask Governor Brown questions about her knowledge of and actions regarding the spread of COVID-19 in Oregon's prisons while she served as Oregon's governor. To minimize the burden of a deposition on Governor Brown pursuant to Rule 26(c)(1), the Court limits its duration to two hours, and finds that a two-hour deposition in this certified class action is not too much to ask of a former elected official.

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F.4th at 705. It seems unlikely that a gubernatorial candidate would be discouraged from seeking public office with knowledge that she might be required to sit for the brief deposition ordered here upon leaving office.

[9] There is nothing in the record to suggest that former Governor Brown is reemployed, nor that any new employment or duties would interfere with her ability to participate in a brief deposition.

CONCLUSION

For the reasons stated, the Court GRANTS Plaintiffs' motion to compel the deposition of former Governor Brown (ECF No. 441), DENIES Defendants' motion for a protective order barring the deposition (ECF No. 446), and ORDERS Defendants to make former Governor Brown available for a deposition, not to exceed two hours, at a time and location convenient to former Governor Brown.

IT IS SO ORDERED.

DATED this 7th day of June, 2023.

HON. STACIE F. BECKERMAN
United States Magistrate Judge

Koch Robert A

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District of Oregon

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Docket Text:
ORDER: Granting in Part and Denying in Part Defendants' motion for protective order (ECF No. [410]). Plaintiffs have not met their burden of demonstrating extraordinary circumstances to justify taking Governor Kate Brown's deposition before the end of her current term. Specifically, Plaintiffs have not yet exhausted other less intrusive discovery methods, such as deposing Governor Brown's staff or serving interrogatories. The Court therefore enters a protective order barring Governor Brown's deposition prior to January 9, 2023. The Court denies Defendants' request for a protective order barring Governor Brown's deposition altogether, with leave to renew if Plaintiffs notice her deposition again after exhausting less intrusive discovery methods. Ordered on November 23, 2022 by Magistrate Judge Stacie F. Beckerman. (gw)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; MICAH RHODES; SHERYL LYNN SUBLET; and FELISHIA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of other similarly situated,

Plaintiffs,

v.

KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; GARRY RUSSELL; and STATE OF OREGON,

Defendants.

Case No. 6:20-cv-00570-SB

OPINION AND ORDER

BECKERMAN, U.S. Magistrate Judge.

Plaintiffs Paul Maney, Gary Clift, George Nulph, Theron Hall, David Hart, Micah Rhodes, and Sheryl Lynn Sublet, adults in custody ("AIC") at four Oregon Department of Corrections ("ODOC") institutions, and Felishia Ramirez, the personal representative for the Estate of Juan Tristan (together, "Plaintiffs"), filed a fourth amended complaint ("FAC") alleging

constitutional and state law violations against defendants Governor Kate Brown ("Governor Brown"), Oregon Health Authority ("OHA") Director Patrick Allen ("Director Allen"), several ODOC officials, and the State of Oregon (together, "Defendants").

Now before the Court is Defendants' motion to dismiss and motion to strike portions of Plaintiffs' FAC (ECF No. 245), Plaintiffs' motion for entry of an order of dismissal without prejudice of plaintiff Micah Rhodes ("Rhodes") (ECF No. 249), Defendants' request pursuant to the Court's informal discovery dispute resolution procedure to take additional depositions and interview AICs, and Plaintiffs' request to compel Defendants to produce the names of any AICs who have received positive COVID-19 antibody test results. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(a)(3)-(4), and 1367, and all parties have consented to the jurisdiction of a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636.

For the reasons discussed below, the Court grants in part and denies in part Defendants' motion to dismiss, denies Defendants' motion to strike, grants in part Defendants' motion to compel, grants Plaintiffs' motion to compel, and grants Plaintiffs' motion to dismiss plaintiff Rhodes without prejudice.

BACKGROUND

Plaintiffs filed this action in April 2020, alleging that Defendants (1) violated the Eighth Amendment by acting with deliberate indifference to their health and safety by failing adequately to protect them from COVID-19 through social distancing, testing, sanitizing, medical treatment, masking, and vaccines, and (2) were negligent in failing to carry out proper preventative measures. (*See* ECF No. 1.) Plaintiffs assert allegations on behalf of themselves and a class of similarly situated AICs, and propose three classes: (1) the "Damages Class"; (2); the "Vaccine Class"; and (3) the "Wrongful Death Class." (FAC ¶¶ 24-26.)

On August 3, 2020, Defendants moved for partial summary judgment on the damages portion of Plaintiffs' Eighth Amendment claim and on the entirety of Plaintiffs' state negligence claim. (ECF No. 115.) On December 15, 2020, the Court granted in part and denied in part Defendants' motion for partial summary judgment. (Mot. Summ. J. Op. & Order, ECF No. 149.)

On January 21, 2021, Plaintiffs moved for a preliminary injunction requiring ODOC to offer all AICs housed in ODOC facilities a COVID-19 vaccine, and sought provisional class certification of the Vaccine Class, which includes: "All adults in custody housed at Oregon Department of Corrections facilities (ODOC) who have not been offered COVID-19 vaccinations." (Pls.' Mot. Prelim. Inj.; Pls.' Mot. to Certify Class at 2.) On February 2, 2021, the Court granted Plaintiffs' motion for provisional class certification of the Vaccine Class and motion for a preliminary injunction, ordering Defendants to "offer all AICs housed in ODOC facilities, who have not been offered a COVID-19 vaccine, a COVID-19 vaccine as if they had been included in Phase 1A, Group 2, of Oregon's Vaccination Plan." (Mot. Prelim. Inj. Op. & Order at 34.)

On May 3, 2021, Plaintiffs filed the FAC and a motion to certify the Damages Class and Wrongful Death Class. (ECF Nos. 223 and 203.) Defendants now move to dismiss and to strike portions of Plaintiffs' FAC, and request leave to conduct additional discovery. Plaintiffs move for an order dismissing plaintiff Rhodes without prejudice, and ask the Court to compel Defendants to disclose the names of all AICs who have received positive results on a COVID-19 antibody test.

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DISCUSSION

I. STANDARDS OF REVIEW

A. Rule 12(f)

Under Rule 12(f) of the Federal Rules of Civil Procedure, "[t]he court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f). "A matter is immaterial if it has no essential or important relationship to the claim for relief or the defenses being pleaded." *Rees v. PNC Bank, N.A.*, 308 F.R.D. 266, 271 (N.D. Cal. 2015). "A motion to strike should not be granted unless the matter to be stricken clearly could have no possible bearing on the subject matter of the litigation." *Menchu v. Multnomah Cnty. Health Dep't*, No. 3:20-cv-00559-AC, 2021 WL 2450780, at *3 (D. Or. May 3, 2021) (quoting *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004)). "If there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the court should deny the motion." *Id.*

B. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure governs motions to dismiss for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "'The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.'" *Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir. 2017) (quoting *Twombly*, 550 U.S. at 556).

C. Rule 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure governs motions to dismiss for lack of subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). When a party challenges subject matter jurisdiction, the burden of proof is on the party asserting that jurisdiction exists. *See Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (holding that "[t]he party seeking to invoke the court's jurisdiction bears the burden of establishing that jurisdiction exists") (citations omitted).

II. ANALYSIS

A. Motion to Strike

Defendants move this Court for an order striking allegations from Plaintiffs' FAC relating to Defendants' alleged failure to release AICs from custody during the COVID-19 pandemic. (Defs.' Mot. to Dismiss & Mot. to Strike ("Defs.' Mot.") at 4-8.) Specifically, Defendants argue that the Court should strike paragraphs 46-49, 86-93, and 110(e) of the FAC as immaterial based on the Court's prior ruling that discretionary immunity precludes Plaintiffs from pursuing a negligence claim based on the State's alleged "fail[ure] to release or relocate AICs to allow for adequate social distancing[.]" (Mot. Summ. J. Op. & Order at 21-22; Defs.' Mot. at 4-5; *see also United States v. Jingles*, 682 F.3d 811, 817 (9th Cir. 2012) ("Under the 'law of the case' doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case." (quoting *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988))).

Plaintiffs do not dispute that in light of the Court's prior ruling, their allegations relating to the failure to release AICs are immaterial to their negligence and wrongful death claims. Rather, Plaintiffs argue that the allegations are relevant to their Eighth Amendment deliberate indifference claims because Defendants' knowledge of the inability to socially distance within ODOC facilities coupled with their decision not to release AICs from ODOC custody to ensure

proper social distancing "tends to establish that Defendants knew of and disregarded an excessive risk to inmate health or safety." (Pls.' Opp'n to Defs.' Mot. ("Pls.' Opp'n") at 8.)

"Allegations in a complaint should not be stricken when they provide relevant background information or are 'arguably relevant' to an actionable claim." *Menchu*, 2021 WL 2450780, at *6 (citation omitted); *see also Erhart v. BofI Holding, Inc.*, 269 F. Supp. 3d 1059, 1085 (S.D. Cal. 2017) ("[A]llegations that provide background information, historical material, 'or other matter of an evidentiary nature will not be stricken unless unduly prejudicial to defendant.'" (quoting *In re Facebook PPC Advert. Litig.*, 709 F. Supp. 2d 762, 773 (N.D. Cal. 2010))).

Paragraphs 46-49 of the FAC include allegations that at least twenty-four other jurisdictions across the United States have released AICs from correctional facilities to prevent COVID-19 outbreaks, and that Defendants have not implemented similar measures. (FAC ¶¶ 46-49.) Paragraphs 86-90 include allegations that experts agree that downsizing prison populations is the most important tool to combat the spread of COVID-19 among residents, staff, and the community. (*See id.* ¶¶ 86-90, alleging that public health experts and corrections officials have advocated for "[d]ownsizing jail populations" to "allow[] those who remain incarcerated to better maintain social distancing," "reduce the risk of contraction and transmission of COVID-19," "reduce the level of risk [for AICs] within those facilities," and "flatten the curve of COVID-19 cases among incarcerated populations and limit the impact of transmission . . . inside correctional facilities"). In paragraphs 91-93, Plaintiffs identify the mechanisms by which Defendants could release AICs (e.g., early release, clemency, house arrest), allege that AICs "should be provided the adequate care recommended by health experts, including their release if safe," and assert that the Court "may find it necessary" to "request the convening of a three-judge court to determine

whether a prisoner release order should be entered." (*Id.* ¶¶ 91-93.) Finally, Plaintiffs alleged in paragraph 110(e) that Defendants were negligent by "failing [to] arrange for alternative housing, transfers, alternative incarceration, or, if necessary, release to achieve necessary social distancing." (*Id.* ¶ 110(e).)

The Court declines to strike these allegations from the FAC. Paragraphs 46-49 and 86-93 provide relevant background and context to Plaintiffs' claims, are "arguably relevant" to Plaintiffs' deliberate indifference claim, and are not unduly prejudicial to Defendants. *See Epstein v. United States*, No. 16-cv-2929-BAS (WVG), 2017 WL 4227054, at *4 (S.D. Cal. Sept. 21, 2017) ("[S]triking this material from the TAC is unnecessary because the Court regards such material as providing background information only."); *Dettrich v. Shinseki*, No. CIV. 1:10-434 WBS, 2011 WL 3204729, at *7 (D. Idaho July 26, 2011) ("The court is not convinced that inclusion of these allegations is redundant, immaterial, impertinent, or scandalous. Simply because a particular word, phrase, or fact in a complaint might not entitle plaintiff to recover does not bar plaintiff from asserting additional historical or background information."). With respect to paragraph 110(e), Defendants represent that Plaintiffs offered to replead paragraph 110 to challenge only Defendants' implementation and enforcement of social distancing policies throughout ODOC's facilities as a basis for their negligence claim. (Defs.' Mot. at 5.) The Court agrees with that approach and orders Plaintiffs to amend paragraph 110 in their fifth amended complaint. Otherwise, the Court denies Defendants' motion to strike.

B. Motion to Dismiss

Defendants argue that Plaintiffs' class claim for injunctive relief related to the prioritization and distribution of the COVID-19 vaccine is now moot because Defendants have

offered the vaccine to all AICs, and that Plaintiffs fail to state a claim against Governor Brown and Director Allen.[1]

1. Mootness

Defendants argue that Plaintiffs' claim for injunctive relief related to the prioritization and distribution of the COVID-19 vaccine is moot because Defendants have already made COVID-19 vaccines available to all AICs. The Court agrees.

"The doctrine of mootness, which is embedded in Article III's case or controversy requirement, requires that an actual, ongoing controversy exist at all stages of federal court proceedings." *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 862 (9th Cir. 2017) (quoting *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011)). A claim is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980). If a claim is moot, a federal court lacks subject matter jurisdiction. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) ("It has long been settled that a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'") (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). "The question of mootness 'focuses upon whether we can still grant relief between the parties.'" *Dream Palace v. Cnty. of Maricopa*, 384 F.3d 990, 999-1000 (9th Cir. 2004) (quoting *In re Pattullo*, 271 F.3d 898, 901 (9th Cir. 2001)). "The party asserting mootness bears the heavy burden of establishing that there remains no effective relief a court can provide." *Bayer*, 861 F.3d at 862.

[1] Defendants also move to dismiss Plaintiffs' Eighth Amendment claim to the extent it is premised on Defendants' alleged failure to release AICs from ODOC custody. (Defs.' Mot. at 8.) Plaintiffs acknowledge that they "do not allege a deprivation of their Eighth Amendment rights based on a failure by Governor Brown to release them." (Pls.' Opp'n at 11.)

On February 2, 2021, the Court granted Plaintiffs' motion for a preliminary injunction and entered the following order with respect to the Vaccine Class: "Defendants shall offer all AICs housed in ODOC facilities, who have not been offered a COVID-19 vaccine, a COVID-19 vaccine as if they had been included in Phase 1A, Group 2, of Oregon's Vaccination Plan." (Mot. Prelim. Inj. Op. & Order at 34.) After the Court granted Plaintiffs' motion, Defendants provided four joint status reports to the Court, updating the Court on their efforts to vaccinate AICs. (ECF Nos. 182, 185, 187, & 195.) In the latest report, Defendants represented that they had fully complied with the Court's order to offer and administer vaccines, and that the overall vaccine acceptance rate among AICs at that time was 70%. (ECF No. 195 at 2.)

Defendants assert that in light of their compliance with the preliminary injunction, Plaintiffs cannot show the requisite threat to future injury necessary to confer jurisdiction on this Court to grant any additional injunctive relief with respect to vaccine distribution. (Defs.' Mot. at 10; Defs.' Reply at 4.) Plaintiffs respond that COVID-19 continues to present an ongoing risk to AICs, and that new and potentially unvaccinated individuals entering ODOC facilities must have access to a COVID-19 vaccine to protect against further spread of the virus. (Pls.' Opp'n at 13.) Defendants reply that ODOC continues to offer the vaccine to AICs, "has developed a plan to provide [eligible] AICs with access to boosters[,]" and "has access to enough vaccine doses to distribute boosters to any AIC who wishes to receive one." (Defs.' Resp. to Pls.' Sec. Not. of Add'l Auths. at 2.)

The Court concludes that Plaintiffs have failed to establish the existence of a credible threat that AICs will again be subjected to an injury relating to the availability of the COVID-19 vaccine while in ODOC custody. *See Bayer*, 861 F.3d at 864 ("A request for injunctive relief remains live only so long as there is some present harm left to enjoin.") (quotation omitted); *see*

also O'Neal v. City of Seattle, 66 F.3d 1064, 1066 (9th Cir. 1995) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983))).

Although Plaintiffs point to legitimate concerns regarding the absence of herd immunity in the United States, the efficacy of the COVID-19 vaccines against emerging variants of the virus, and "vaccine hesitancy" among ODOC staff,[2] they have not offered any evidence to demonstrate a "real or immediate" threat that Defendants will again prioritize eligibility for COVID-19 vaccines in a manner that violates the constitutional rights of the members of the Vaccine Class. *See Hernandez v. City of San Jose*, No. 16-CV-03957-LHK, 2019 WL 4450930, at *19 (N.D. Cal. Sept. 17, 2019) ("In order to have standing for prospective injunctive relief, a plaintiff must establish a 'real and immediate threat of repeated injury.'" (quoting *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011))); *see also Sample v. Johnson*, 771 F.2d 1335, 1340 (9th Cir. 1995) ("Plaintiffs must demonstrate that a 'credible threat' exists that they will again be subject to the specific injury for which they seek injunctive or declaratory relief."). Oregon's initial vaccine prioritization plan that gave rise to the constitutional injury in this case no longer exists, as all Oregonians (ages twelve and over) are now eligible to receive a COVID-19 vaccine and vaccine supply in Oregon currently exceeds demand. Plaintiffs have not presented any evidence to suggest that Defendants have discontinued or will discontinue offering the COVID-19 vaccine to any AIC who wants to be vaccinated, and Defendants have presented

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[2] Defendants point out that all executive branch employees of Oregon state government must be vaccinated against COVID-19 as of October 18, 2021. (Defs.' Resp. to Pls.' Sec. Not. of Add'l Auths. at 3) (citing Executive Order No. 21-29, COVID-19 Vaccination Requirement for State Executive Branch, https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf).

evidence that a plan is in place to continue to provide the vaccine to all AICs and to provide a booster vaccine to any eligible AICs.

While Plaintiffs are correct that continuing to offer the vaccine to individuals entering ODOC custody is necessary to prevent further spread of COVID-19 within ODOC facilities, "[a]llegations that a defendant's conduct will subject unnamed class members to the alleged harm is insufficient to establish standing to seek an injunction on behalf of the class." *Hernandez*, 2019 WL 4450930, at *19 (citing *Hodgers-Durgin v. De la Fina*, 199 F.3d 1037, 1044-45 (9th Cir. 1999) ("Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief."). At this juncture, Plaintiffs' concerns about vaccine availability for future AICs are speculative and insufficient to support standing for their injunctive relief claim. *See Munns v. Kerry*, 782 F.3d 402, 411-12 (9th Cir. 2015) ("Despite being harmed in the past, the [plaintiffs] must still show that the threat of injury in the future is 'certainly impending' or that it presents a 'substantial risk' of recurrence for the court to hear their claim for prospective relief." (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013))); *Hernandez*, 2019 WL 4450930, at *19 ("The threat of harm cannot be 'speculative.'" (quoting *Lyons*, 461 U.S. at 111)); *J.M. v. Major*, No. 6:18-cv-00739-YY, 2018 WL 7104882, at *4 (D. Or. Oct. 2, 2018) ("The showing must be objective; plaintiffs' attestation 'that the injury might recur will not suffice to demonstrate the capability of repetition of an injury." (quoting *Sample*, 771 F.2d at 1343)).

Plaintiffs have already prevailed on their claim for injunctive relief on behalf of the Vaccine Class. Now that Defendants have complied with the Court's injunction, Plaintiffs fail to establish that there remains a "real and immediate threat" that Defendants will fail to offer the COVID-19 vaccine to members of the Vaccine Class, and therefore they lack standing and this

Court no longer has subject matter jurisdiction over Plaintiffs' claim for injunctive relief. Accordingly, the Court dismisses Plaintiffs' injunctive relief claim on behalf of the Vaccine Class.

2. Liability of State Officials

Defendants argue that Plaintiffs have failed to state a claim for personal liability against defendants Governor Brown and Director Allen. (Defs.' Mot. at 12.) The Court disagrees.

"A defendant may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.'" *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). "The requisite causal connection can be established . . . by setting in motion a series of acts by others, or by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury." *Id.*

"There is no *respondeat superior* liability under [42 U.S.C.] § 1983." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (affirming summary judgment in favor of prison administrators who had not known of or been personally involved in any of the AIC's alleged constitutional violations). However, "[a] supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." *Starr*, 652 F.3d at 1208.

Defendants argue that Plaintiffs have failed to state a claim against Governor Brown and Director Allen because they do not allege any personal involvement in the conduct giving rise to Plaintiffs' alleged injuries. (Defs.' Mot. at 12-14.) Plaintiffs respond that they have adequately

alleged that both Governor Brown and Director Allen were personally involved in developing and overseeing ODOC's COVID-19 policies and were aware of the harmful consequences of these policymaking decisions, and that the evidence discovered to date supports these allegations. (Pls.' Opp'n at 15-16.)

State officials can be held individually liable under Section 1983 if the policies they implement are "so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of a constitutional violation.'" *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013); *see also OSU Student All. v. Ray*, 699 F.3d 1053, 1076 (9th Cir. 2012) ("[Section] 1983 allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, implements, or in some other way possesses responsibility for the continued operation of a policy the enforcement (by the defendant-supervisor or her subordinates) of which subjects, or causes to be subjected that plaintiff to the deprivation of any rights . . . secured by the Constitution.").

Plaintiffs allege in the FAC that during a state of emergency, Governor Brown is authorized to make, enforce, or terminate any policy, rule, or regulation of any state agency, including ODOC. (*See* FAC ¶ 12, alleging that Governor Brown (1) "retains ultimate executive authority over ODOC," (2) "during a state of emergency . . . has authority to suspend provisions of any order or rule of any state agency, if the Governor determines and declares that strict compliance with the provision or rule would in any way prevent, hinder or delay mitigation of the effects of the emergency," and (3) is "authorized to make rules and regulations necessary to carry out the purposes of the declared emergency"). Plaintiffs also allege that Director Allen directly participated in developing and implementing ODOC policy in response to the COVID-

19 pandemic.[3] (*See id.* ¶ 19, "Defendant Patrick Allen is the Director of the Oregon Health Authority (OHA)" and "OHA [] worked closely with ODOC to develop and implement guidance and recommendations for the management of COVID-19 in ODOC facilities, including through weekly meetings with ODOC staff[.]").

Plaintiffs also assert that Defendants have "failed to continuously implement and enforce quarantine policies to prevent incarcerated adults from coming into contact from others who had contracted or otherwise been exposed to COVID-19" by failing to: "promptly and continuously implement and enforce a mask mandate"; "implement and enforce guidelines and/or procedures relating to sanitation and disinfection"; "follow CDC Guidelines and implement necessary public health measures to protect against the spread of COVID-19 in ODOC institutions, including by failing to implement and enforce proper quarantines and/or social distancing for individuals who contracted or became exposed to COVID-19 and by allowing mixing between and among adults in custody and ODOC staff and contractors without regard to the risk that adults in custody would or could become exposed to COVID-19"; and "prioritize adults in custody for COVID-19 vaccine distribution." (FAC ¶¶ 73(e), 101.) Plaintiffs allege that in doing so, Defendants "acted with callous disregard for the rights, serious medical needs, and physical safety of Plaintiffs." (FAC ¶ 102.)

The Court concludes that Plaintiffs have alleged sufficient facts to suggest that a causal connection exists between Governor Brown and Director Allen's involvement in developing,

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[3] Defendants have acknowledged that both Governor Brown and Director Allen developed and implemented ODOC's COVID-19 policies. (*See* Decl. of Nadia H. Dahab Ex. E; Mot. Summ. J. Hg. Tr. (Nov. 13, 2020) at 24, defense counsel stated that "[w]e have conceded that each of the individually-named defendants have high-level supervisory authority for policymaking"; Defs.' Reply to Mot. Summ. J. at 8, "It is undisputed that Governor Brown had some general personal involvement in developing ODOC policy in response to the COVID-19 pandemic.").

overseeing, and authorizing ODOC's policies and Plaintiffs' alleged injuries, and that Defendants knew or reasonably should have known the consequences of those policies. *See Starr*, 652 F.3d at 1207 ("The requisite causal connection can be established . . . by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury."). Accordingly, the Court denies Defendants' motion to dismiss Plaintiffs' claims against Governor Brown and Director Allen.[4]

C. Motion to Dismiss Micah Rhodes

Plaintiffs move to dismiss plaintiff Rhodes as a plaintiff without prejudice because Rhodes has been released from ODOC custody, he did not test positive for COVID-19 while in ODOC custody, and he is therefore not currently a member of the proposed Damages Class. (*See* Pls.' Mot. for Entry of Order ("Pls.' Mot.") at 1-2, adding that "it is possible . . . that he may return to ODOC custody before the end dates of the designated class periods of the Damages [Class]," "become a member of that class," and "be entitled to relief as part of the class[.]"). Defendants argue that Rhodes lacks standing and therefore dismissal should be with prejudice. (Defs.' Opp'n to Pls.' Mot. for Entry of Order at 3.)

A "dismissal for lack of Article III standing is a dismissal for lack of subject matter jurisdiction." *Stevenson v. Cnty. of Churchill*, 617 F. App'x 805, 806 (9th Cir. 2015); *see also Kertesz v. Ferguson*, 851 F. App'x 804, 804 (9th Cir. 2021) ("The district court properly dismissed [the plaintiff's] action for lack of subject matter jurisdiction because [the plaintiff] failed to allege facts sufficient to demonstrate Article III standing."). "In general, dismissal for lack of subject matter jurisdiction is without prejudice." *Missouri ex rel. Koster v. Harris*, 847

[4] As a result, Defendants' objections to Plaintiffs' pending discovery requests relating to Governor Brown and Director Allen are now moot.

F.3d 646, 656 (9th Cir. 2017); *see also* *O'Campo v. Ghoman*, 622 F. App'x 609, 609-10 (9th Cir. 2015) (holding that the district court erred in dismissing the complaint for failure to establish Article III standing with prejudice because "a dismissal for lack of jurisdiction is not an adjudication on the merits"); *Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1106-07 (9th Cir. 2006) ("[D]ismissal for want of standing must be 'without prejudice.'") (citation omitted). Accordingly, the Court dismisses plaintiff Rhodes without prejudice.

D. Discovery Disputes

On May 3, 2021, Plaintiffs filed a motion for class certification (ECF No. 203), and Defendants have not yet filed a response. Plaintiffs stipulated to Defendants' request to depose the named Plaintiffs, as well as the putative class members who provided declarations in support of Plaintiffs' motion for class certification, for a total of sixteen depositions. (ECF No. 239.) Defendants now seek a discovery order allowing them to: (1) depose up to an additional seventy putative class members who provided declarations in connection with earlier motions; and (2) interview AICs who are not represented by counsel.

1. Additional Depositions

Defendants seek to depose up to seventy absent class members who provided declarations in support of Plaintiffs' earlier motions in this case, nine of which Plaintiffs cross-referenced in their motion for class certification.[5] Of the seventy, Defendants have identified three declarants

[5] Defendants have identified these declarants as Mari-Teresa Gillespie (ECF No. 42), Jamahl Maner (ECF No. 31), Mylo Lupoli (ECF No. 48), Nathan Adams (ECF No. 49), Lisandro Sanchez (ECF No. 40), Christopher Mitchell (ECF No. 21), Brandon Borba (ECF No. 20), Mickey Weis (ECF No. 47), and D. White (ECF No. 24). (*See* Pls.' Mot. to Certify at 11-13 n. 37-46.)

whose declarations are arguably inconsistent with the evidence relied upon by Plaintiffs in support of their motion for class certification.[6]

"Generally, courts do not permit discovery from absent class members." *Rojas v. Marko Zaninovich, Inc.*, No. 1:09-00705 AWI JLT, 2011 WL 2636071, at *4 (E.D. Cal. July 5, 2011) (citing *McPhail v. First Command Fin. Planning*, 251 F.R.D. 514, 517 (S.D. Cal. 2008)). However, "the rules pertaining to such discovery are flexible, especially where the proposed deponents have been identified as potential witnesses or have otherwise 'injected' themselves into the litigation." *Brown v. Wal-Mart, Inc.*, No. 09-cv-03339-EJD (SVK), 2018 WL 339080, at *1 (N.D. Cal. Jan. 9, 2018); *see also A.B. v. Pac. Fertility Ctr.*, No. 06-cv-2671-BTM (WMc), No. 18-cv-01586-JSC, 2019 WL 6605883, at *1 (N.D. Cal. Dec. 3, 2019) ("[D]iscovery of absent class members is generally not permitted unless the class member has inserted herself into the litigation."); *cf. Antoninetti v. Chipotle, Inc.*, No. 06-cv-2671-BTM (WMc), 2011 WL 2003292, at *2 (S.D. Cal. May 23, 2011) (holding that absent class members who submitted declarations in support of the plaintiff's motion for class certification "have injected themselves into the litigation" and therefore "cannot claim noninvolvement as a means of avoiding discovery[,]" but not reaching the question of whether absent class members who submitted declarations in support of earlier motions necessarily injected themselves into the litigation of later motions).

"The proponent of discovery must demonstrate three factors to justify discovery of absentee class members: (1) whether the information sought is relevant; (2) whether the information is not readily obtainable from the representative parties or other sources; and (3)

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[6] At oral argument, Defendants identified these declarants as Jacob Strock (ECF No. 30), Skyler Floro (ECF No. 56), and Mallory Seck (ECF No. 95).

whether the request is not unduly burdensome and made in good faith." *Brown*, 2018 WL 339080, at *1 (citation omitted); *see also Moreno v. Autozone, Inc.*, No. C-05-4432 MJJ (EMC), 2007 WL 2288165, at *1 (N.D. Cal. Aug. 3, 2007) (finding that discovery of absent class members is appropriate where "the proponent of the deposition demonstrates discovery is not sought to take undue advantage of class members or to harass class members, and is necessary to the trial preparation").

Defendants argue that the Court should allow them to take additional depositions of up to seventy AICs who submitted declarations in this case, in addition to the sixteen agreed-upon depositions, because the declarants have injected themselves into this litigation and the requested depositions are necessary to address the claims and defenses in this case. Plaintiffs respond that Defendants have failed to demonstrate that more than sixteen depositions are necessary, and the request is unduly burdensome.

The Court concludes that Defendants have met their burden of demonstrating the need to depose the three AIC declarants whose sworn statements arguably conflict with the factual assertions in Plaintiffs' motion for class certification. Plaintiffs do not dispute the relevance of the requested testimony, Defendants cannot obtain the anticipated testimony from another source, and three short additional depositions are not unduly burdensome. *See Rojas*, 2011 WL 2636071, at *4 (granting the defendants' request to depose four additional absent class members because of inconsistencies in several declarations submitted by witnesses in support of the plaintiffs' motion for class certification); *see also Moreno*, 2007 WL 2288165, at *1 (finding that "[r]easonable cross examination of the declarants as to facts asserted therein is reasonably necessary to Defendant's preparation of its opposition to the class certification motion" where "the declarants appear to possess information which may not be documented and thus not within

Defendant's possession absent a deposition"). Therefore, the Court grants Defendants' request to depose the three identified AICs for up to two hours each.

Turning to Defendants' request to depose dozens of additional putative class members who submitted declarations in support of earlier motions, the Court concludes that Defendants are able adequately to defend the class certification motion with the nineteen depositions discussed above, especially in addition to the AIC interviews discussed below, and any additional depositions would be cumulative and not proportional to the needs of the case at this time. *See Rojas*, 2011 WL 2636071, at *4 ("In the face of this already gathered information, Defendant fails to demonstrate that the [] information that could be gained from deposing the [witness] would add to, rather than duplicate—the quantum of information already known on this topic.").

In summary, Defendants have met their burden to depose the three absent class members whose declarations include factual assertions that are arguably inconsistent with Plaintiffs' current position, but not the dozens of additional absent class members. The parties shall meet and confer to determine a schedule for any remaining depositions to take place within the next thirty days.

2. AIC Interviews

Defendants also request leave to interview unrepresented AICs. Plaintiffs object, arguing that all AICs are represented parties as members of the Vaccine Class, and therefore Rule 4.2 of the American Bar Association's Model Rules of Professional Conduct ("ABA Model Rules") bars any communication with AICs except through counsel.[7] Plaintiffs also argue that allowing

[7] ABA Model Rule 4.2 provides that: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." ABA Rule 4.2, available at

counsel for Defendants to interview AICs creates potential for abuse and risk to absent class members because of the inherently coercive relationship between ODOC personnel and AICs.

"Communications with prospective plaintiffs in a collective action prior to certification of the class are generally allowed so long as the communications are not misleading, coercive, or improper." *Nancy Allision & Holly Burney v. Dolich*, No. 3:14-CV-1005-AC, 2014 WL 12792546, at *7 (D. Or. Dec. 16, 2014) (citation omitted). To protect the parties and putative class members, a court may: (1) "restrict[] the communications between the parties and the prospective plaintiffs;" or (2) "order[] a corrective notice to remedy the effect of improper communications." *Id.* The Court's authority to regulate communications with putative class members "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 (1981); *see In re Logitech, Inc.*, 784 F. App'x 514, 517 (9th Cir. 2019) ("[A]ny restriction on communications that would frustrate the policies of Rule 23 must follow 'a specific record showing . . . the particular abuses . . . threatened' and the district court must 'giv[e] explicit consideration to the narrowest possible relief which would protect the respective parties.'") (quoting *Gulf Oil*, 452 U.S. at 102); *see also McKenzie Law Firm, P.A. v. Ruby Receptionists, Inc.*, No. 3:18-cv-1921-SI, 2020 WL 2789873, at *1 (D. Or. May 29, 2020) ("When exercising its authority under Rule 23(d) to limit a defendant's communications to class members, a court need not find that actual misconduct has occurred; it is enough for a court to find that there is a threat of abuse or other potential for interference with the rights of the

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https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_2_communication_with_person_represented_by_counsel/ (last visited Sept. 28, 2021).

parties.”). The moving party bears the burden of establishing the “particular abuses by which it is threatened.” *Gulf Oil*, 452 U.S. at 102.

As an initial matter, in light of this Court’s conclusion that the Vaccine Class claims are now moot, many of the AICs with whom Defendants seek to communicate are no longer represented parties with respect to this litigation, and therefore ABA Model Rule 4.2 does not apply except to putative members of the Damages and Wrongful Death Classes.

Turning to Plaintiffs’ argument that allowing defense counsel to communicate with AICs about this lawsuit creates the potential for coercion, the Court concludes that any risk of abuse can be mitigated here. Defense counsel seeks to send communications to AICs inquiring whether they are willing to speak with defense counsel about the facts and circumstances relating to the allegations in this case, and to submit unsworn declarations. Defendants assure Plaintiffs and this Court that any decision by AICs regarding whether to speak with defense counsel will be voluntary, off the record, and not under the penalty of perjury.[8] While the Court recognizes that communications between defense counsel and AICs pose a potential for abuse based on the power differential between ODOC officials and AICs, Plaintiffs have not alleged that defense counsel has engaged in any improper communications with AICs to date. *See Gulf Oil*, 452 U.S. at 104 (noting that “the mere possibility of abuses in class action litigation does not justify routine adoption of a communications ban” between parties and potential class members); *Cedano v. Thrifty Payless, Inc.*, No. CV-10-237-HZ, 2011 WL 8609402, at *12 (D. Or. May 9, 2011) (“At this point, I find imposing any limitations on communications that either party may have with putative class members would be based on speculation and conjecture, especially in

[8] The parties shall confer ahead of time regarding whether the interviews, or any notes, recordings, or transcripts therefrom, are discoverable.

light of the fact that the parties have failed to even assert that any abuse in communications has occurred. . . . Accordingly, I will not address this issue at this point in time."). Furthermore, a blanket prohibition on communications between Defendants and all AICs would interfere with the right of Defendants to investigate and prepare their defense in this case.

In weighing the rights of the parties, the Court concludes that, at this juncture of the case, imposing a blanket limitation on communications between Defendants and AICs is inappropriate. *See In re Logitech, Inc.*, 784 F. App'x at 517 ("[A]ny restriction on communications that would frustrate the policies of Rule 23 must follow 'a specific record showing . . . the particular abuses . . . threatened[.]") (citation omitted). However, to protect against the inherent coercion between prison officials and unrepresented AICs and to mitigate the risk that AICs will misapprehend the interview request or their right to decline, defense counsel shall confer with Plaintiffs' counsel with respect to (i) the form and content of the communication that defense counsel intends to send to AICs; (ii) the format of the meetings and whether defense counsel intends to record the interviews; and (iii) how defense counsel will ensure that they are not contacting any putative members of the Damages Class or the Wrongful Death Class. The parties may contact the Court to resolve any disputes.

3. Antibody Test Results

Plaintiffs asked the Court pursuant to its informal discovery dispute resolution procedure to compel Defendants to disclose a list of AICs who received a positive (i.e., reactive) result on a COVID-19 antibody test. Defendants declined to produce the requested confidential medical information without a Court order. The Court finds that the identities of AICs who tested positive for COVID-19 antibodies are relevant to Plaintiffs' claims and proportional to the needs of the case. Accordingly, the parties shall confer and submit an agreed-upon proposed order for the Court's signature allowing disclosure of the requested information.

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CONCLUSION

For the reasons stated, the Court DENIES Defendants' motion to strike (ECF No. 245), GRANTS in part and DENIES in part Defendants' motion to dismiss (ECF No. 245), GRANTS IN PART Defendants' request to take additional depositions and interview unrepresented AICs, GRANTS Plaintiffs' motion for an order of dismissal without prejudice of plaintiff Micah Rhodes (ECF No. 249), and GRANTS Plaintiffs' request to compel Defendants to disclose a list of AICs who have tested positive for COVID-19 antibodies.

Plaintiffs shall file a Fifth Amended Complaint consistent with this opinion by October 5, 2021.

Defendants' response to Plaintiffs' motion to certify the class (ECF No. 203) is due thirty days from the date of the last of the nineteen depositions authorized herein. The parties shall notify the Court of the relevant dates.

DATED this 28th day of September, 2021.

HON. STACIE F. BECKERMAN
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; MICAH RHODES; and SHERYL LYNN SUBLET, individually, on behalf of a class of others similarly situated,

Plaintiffs,

v.

KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; and KEN JESKE,

Defendants.

Case No. 6:20-cv-00570-SB

OPINION AND ORDER

BECKERMAN, U.S. Magistrate Judge.

Plaintiffs Paul Maney, Gary Clift, Gary Nulph, Theron Hall, David Hart, Micah Rhodes, and Sheryl Lynn Sublet (collectively, "Plaintiffs"), adults in custody ("AIC") at four Oregon Department of Corrections ("ODOC") institutions, bring this civil rights action pursuant to 42 U.S.C. § 1983 against defendants Kate Brown, Colette Peters, Heidi Steward, Mike Gower, Mark Nooth, Rob Persson, and Ken Jeske (collectively, "Defendants").

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Before the Court is Plaintiffs' motion for a temporary restraining order and preliminary injunction. (ECF No. 14.) All parties have consented to the jurisdiction of a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636, and the Court held an all-day evidentiary hearing on Plaintiffs' motion on May 29, 2020. For the reasons discussed herein, the Court denies Plaintiffs' motion.

INTRODUCTION

"If I look at the mass, I will never act. If I look at the one, I will."[1] Mr. Steven S. ("Steven") testified by phone at the hearing on Plaintiffs' motion. He is a 52-year-old man suffering from heart disease that has resulted in a pacemaker and implanted defibrillator and 30 trips to the hospital since 2016. He is immunosuppressed and currently housed in a dorm-style facility with 80 other medically vulnerable individuals where he sleeps three feet away from others. Steven is scheduled to be released from state custody in 14 days.

Every expert who provided testimony in support of, or in opposition to, Plaintiffs' motion agrees on one thing: the only meaningful way to save lives in prison during the pandemic we are facing is to reduce the prison population. Without a reduction in the number of human beings in Oregon's prisons, it is impossible for those in custody safely to socially distance at all times:

- "[C]ompliance with [CDC and local public health agency] recommendations alone is not enough to create a carceral setting that fully protects the health and safety of the people incarcerated there. . . . For this reason, it is also important to reduce the number of persons incarcerated." (Decl. of Mark F. Stern ("Stern Decl.") ¶¶ 20, 22, ECF No. 16.)

- "[A] prison at or near full capacity simply cannot medically segregate populations to control the spread of infection." (Decl. of Jeffrey A. Schwartz ("Schwartz Decl.") at 7, ECF No. 17.)

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[1] Samantha Power, *The Education of an Idealist* (2019) (quoting Mother Teresa).

- "It is not possible to maintain six feet of social distancing between all persons present in a facility at all times with the current physical layout of the institutions and the AIC population." (Decl. of Heidi Steward ("Steward Decl.") ¶ 51, ECF No. 83.)

- "The idea of releasing AICs in order to establish and maintain social distancing also has a sound evidentiary basis, and is likely to result in harm reduction: i.e., decrease of COVID-19 spread within an institution, resulting in a lesser likelihood of a vulnerable AIC being infected and experiencing severe morbidity and death." (Decl. of Daniel Dewsnup ("Dewsnup Decl.") ¶ 56, ECF No. 84.)

- "There is no denying that a reduction in prison population would provide more options for isolation and quarantine and increase our ability to implement social distancing measures. . . . [but] [t]he policy decision to conduct such a mass release of AICs . . . is well outside the discretion of ODOC." (Decl. of Gary Russell ("Russell Decl.") ¶¶ 106-07, ECF No. 85.)

- "[Amici public health experts] respectfully submit this brief to offer their view that facilities like those run by ODOC should work with state and local health officials to release from incarceration individuals to whom COVID-19 poses a high risk of serious infection and to ensure that jails and prisons across the state take immediate steps to better protect those individuals who do remain in custody during the pandemic." (Br. of *Amici Curiae* Public Health Experts, at 3, ECF No. 74.)

The experts agree that smart, swift, and evidence-based decarceration is the most effective way to save the lives of our family members, friends, and neighbors in prison, but that is a solution this Court cannot provide. The law is clear that this Court cannot order the release of categories of individuals, or even a single individual, nor may it order transfers to underutilized or unused facilities to spread out the numbers, in response to Plaintiffs' claims.

When asked in early April 2020 to develop a range of release options to improve social distancing in our prisons, ODOC provided several population management scenarios, including identifying 73 "most vulnerable" individuals, 269 "vulnerable" individuals, and 324 individuals age 60 or older, all of whom are serving sentences for non-measure 11 offenses. (Steward Decl. Ex. 11 at 4-6.) ODOC also identified 2,584 individuals who are scheduled for release within six

months,[2] the majority of whom are serving sentences for "non-person" crimes. (Steward Decl. Ex. 11 at 7.) However, as of June 1, none of these individuals have been released early.

Looking at one individual at a time, like Steven, makes it clear that there are medically vulnerable individuals in custody who could go home a few weeks or a few months early without risking public safety. At this juncture, neither ODOC's policies nor this Court's pen can reduce the prison population to save lives. Only the Governor has that power.[3]

With that context in mind, the question currently before this Court is not whether ODOC has responded perfectly to the COVID-19 pandemic, nor even whether it could do more to keep AICs safe. The question before the Court is whether ODOC has acted with *deliberate indifference* toward the health risks that COVID-19 poses to those currently in custody. As the Court learned, quite the contrary is true.

ODOC was focused on the COVID-19 threat even before the virus reached the United States. ODOC put its leading experts in charge of its efforts, and those individuals have been working around the clock to develop, and continuously improve, procedures to fight the spread of COVID-19 in our state prisons. ODOC has enforced various social distancing measures, purchased 60,000 cloth masks for staff and AICs, widely distributed educational information to AICs, prohibited visitors and contractors, guaranteed a supply of soap at no cost to AICs, established respiratory clinics in every institution, conducted widespread symptom interviews,

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[2] Another AIC who testified at the hearing from the Oregon State Penitentiary ("OSP") is currently suffering from COVID-19 and struggled to testify due to shortness of breath. His parole date is in August 2020.

[3] "It has long been said that a society's worth can be judged by taking stock of its prisons. That is all the truer in this pandemic, where inmates everywhere have been rendered vulnerable and often powerless to protect themselves from harm. May we hope that our country's facilities serve as models rather than cautionary tales." *Valentine v. Collier*, --- S. Ct. ---, 2020 WL 2497541, at *3 (2020) (statement of Justice Sotomayor, joined by Justice Ginsburg).

tested symptomatic AICs, contact traced any AIC who tested positive, quarantined AICs who have been exposed, placed any COVID-19 positive AICs in isolation in negative pressure rooms and, if necessary, in local hospitals, and conducted antibody testing. When ODOC became aware that AICs viewed medical isolation as punitive, it took steps to ensure that AICs kept their belongings and privileges in isolation, including purchasing portable DVD players for those in isolation. When AICs at one institution were frustrated by correctional officers' inconsistent mask wearing, ODOC encouraged the formation of an "inmate council" to communicate more effectively with prison officials.

Of course, ODOC policies rely on effective implementation and enforcement on the ground, and dozens of AICs have voiced legitimate concerns about correctional officers not wearing masks, a lack of social distancing, and inadequate testing and care, among other things. In response, ODOC has started making unannounced visits to each facility to audit compliance with its COVID-19 policies. ODOC was transparent about its first audit at OSP, and acknowledged room for improvement.

To date, 157 AICs have tested positive for COVID-10 in four of ODOC's 14 facilities, and one AIC has died. To be sure, ODOC's efforts have not kept COVID-19 from entering and spreading in its prisons, and despite ODOC's best efforts, the numbers will likely continue to rise. But the question is not whether ODOC can do better, the question is whether ODOC has acted with *indifference* to the risks posed by COVID-19. ODOC has not acted with indifference. On the contrary, the evidence that Defendants presented made it clear that ODOC officials are already doing their best in response to this unprecedented crisis.

Plaintiffs are rightfully terrified of being trapped in prison during a global pandemic, and ask this Court to hold Defendants accountable. Although today the Court denies Plaintiffs' motion for preliminary injunctive relief, this case will remain pending.

BACKGROUND

I. COVID-19

COVID-19 is a "novel respiratory virus" that "spreads primarily through the droplets generated when an infected person coughs or sneezes, or through droplets of saliva or discharge from the nose." (Stern Decl. ¶ 7.) Currently there is no vaccine or cure for the virus, and no one is immune. (Stern Decl. ¶ 7.) For now, the only way to control the spread of the virus is through preventative strategies, such as social distancing. (Stern Decl. ¶ 7.)

COVID-19 presents itself in humans in different ways. For some, it comes on "very rapidly" and creates "serious symptoms and effects." (Stern Decl. ¶ 8.) Others experience "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 (perhaps sooner) after that." (Stern Decl. ¶ 8.) Or, "symptoms might appear after two weeks of infection or not at all." (Stern Decl. ¶ 8.) Troublingly, infected people who "transmit the virus without being symptomatic" account for a "significant amount of transmission[.]" (Stern Decl. ¶ 8.)

Vulnerable individuals are subject to serious risks if infected with COVID-19. (Stern Decl. ¶ 9.) When vulnerable people are infected by COVID-19, they may "experience severe respiratory illness, as well as damage to other major organs." (Stern Decl. ¶ 10.) Treating vulnerable COVID-19 patients "requires significant advanced supports, including ventilator assistance for respiration and intensive care support." (Stern Decl. ¶ 10.)

II. PARTIES

Paul Maney ("Maney") is a 62-year-old AIC at Oregon State Correctional Institution ("OSCI") in Salem, Oregon. (First Am. Compl. ("FAC") ¶ 3.) Gary Clift ("Clift") is a 76-year-old AIC at OSCI (FAC ¶ 4), and George Nulph ("Nulph") is a 68-year-old AIC at OSCI. (FAC ¶ 5.) Theron Hall ("Hall") is a 35-year-old AIC at OSP (FAC ¶ 6), and David Hart ("Hart") is a 53-year-old AIC at OSP. (FAC ¶ 7.) Micah Rhodes ("Rhodes") is an AIC at Columbia River Correctional Institution ("CRCI"). (FAC ¶ 8.) Sheryl Lynn Sublet ("Sublet") is a 63-year-old AIC at Coffee Creek Correctional Facility ("CCCF"). (FAC ¶ 9.) Each plaintiff has an underlying medical condition or conditions, and Hart is currently suffering from COVID-19. (FAC ¶ 7.)

Kate Brown is the Governor of the State of Oregon (hereinafter, "Governor Brown"). (FAC ¶ 10.) Colette Peters is the Director of ODOC. (FAC ¶ 11.) Heidi Steward is the Deputy Director of ODOC. (FAC ¶ 12.) Mike Gower is ODOC's Assistant Director of Operations. (FAC ¶ 13.) Mark Nooth is ODOC's Eastside Institutions Administrator and is responsible for operations at six ODOC institutions (FAC ¶ 14), and Rob Persson is the Westside Institutions Administrator and is responsible for the remaining eight ODOC institutions. (FAC ¶ 15.) Ken Jeske is the Oregon Correctional Enterprises ("OCE") Administrator. (FAC ¶ 16.)

III. GOVERNMENT RESPONSE TO COVID-19

On March 8, 2020, Governor Brown declared a state of emergency to slow the spread of COVID-19 in Oregon. (Steward Decl. ¶ 13.) On March 11, 2020, the World Health Organization designated COVID-19 as a global pandemic. (*Id.*) The next day, Governor Brown issued Executive Order No. 20-05, prohibiting large gatherings of 250 people or more. (*Id.*) Governor Brown's guidelines followed updated guidance from the U.S. Center for Disease Control and

Prevention ("CDC"), released on March 10, 2020. On March 13, 2020, the President of the United States declared a national emergency arising from COVID-19. (Steward Decl. ¶ 14.)

On March 27, 2020, the CDC issued "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (hereinafter, "CDC Correctional Guidelines"). (Schwartz Decl. at 5.) The CDC Correctional Guidelines attempt to assist facilities to prepare for potential COVID-19 cases, prevent its spread, and manage confirmed and suspected cases. (Steward Decl. Ex. 1 at 5.) The CDC Correctional Guidelines recommend keeping six feet between individuals, making masks and personal protective equipment ("PPE") available, staggering recreation and dining times, and making medical examination rooms available near each housing unit. (Schwartz Decl. at 5.) The CDC Correctional Guidelines acknowledge that social distancing "strategies will not all be feasible," and therefore the Guidelines provide tailored advice on how best to achieve social distancing depending on the area (common areas, recreational areas, dining hall, housing, and medical areas). (Steward Decl. Ex. 1 at 11.)

On April 5, 2020, the Oregon Health Authority ("OHA") issued guidelines for responding to the COVID-19 pandemic. (Steward Decl. Ex. 2 at 1.) The guidelines include recommendations for correctional settings with respect to communications, social distancing, visitation, PPE, screening measures, healthcare evaluation for confirmed and suspected cases, and considerations for those at higher risk of severe disease from COVID-19. (Steward Decl. Ex. 2 at 2-3.) The OHA acknowledges that not all social distancing "strategies will be feasible in all facilities." (Steward Decl. Ex. 2 at 11.) However, the OHA offered guidance on how best to implement social distancing to the extent possible by adopting measures such as increasing space between AICs in line movements, staggering recreation and meal times, limiting group activities,

rearranging bunks so AICs sleep "head to foot," and designating a medical room near each housing unit. (Steward Decl. Ex. 2 at 11-12.)

IV. COVID-19 IN OUR STATE PRISONS

Prisons are "congregate environments" that a pose a heightened risk of COVID-19 infection. (Stern Decl. ¶ 14.) AICs live, eat, and sleep in close proximity, and therefore "infections like COVID-19 can spread more rapidly." (Stern Decl. ¶ 15.) Prisons are more dangerous than other congregate settings, like cruise ships, because they are not closed systems, and "staff and visitors travel from the facilities back to their homes[.]" (Stern Decl. ¶ 17.)

The parties agree that maintaining social distance at all times is impossible in a prison setting. *See, e.g.,* Steward Decl. ¶ 51 ("It is not possible to maintain six feet of social distancing between all persons present in a facility at all times with the current physical layout of the institutions and the AIC population."); Decl. of Jacob Strock ("Strock Decl.") ¶ 8, ECF No. 30 ("[T]here is no social distancing . . . . Regardless of how much [prison officials] are trying to do, it's impossible for real social distancing to happen."). As outlined above, the experts who weighed in on this motion agree that it is "important to reduce the number of" AICs in order to allow for social distancing. Any reduction in the population "will permit greater flexibility when prisons have outbreaks and require space to isolate and/or quarantine people" and will "permit those people remaining in prison to have greater opportunities to physically distance themselves to prevent transmission[.]" (Stern Decl. ¶ 24); *see also* Br. of *Amicus Curiae* at 10 (explaining that the current crisis "will be dangerously exacerbated if jails and prisons do not act immediately to reduce their populations and contain the spread of the virus").

V. PLAINTIFFS' EVIDENCE

Plaintiffs submitted over fifty declarations describing the current conditions in ODOC facilities.[4] *See* ECF Nos. 15-60, 92-100. Each declaration is based on the AIC's individual experience in various institutions, but there are common concerns among all of the AIC's declarations.

A. Social Distancing

Throughout the declarations, most AICs report an inability to social distance. *See, e.g.,* Decl. of Brandon A. Borba ("Borba Decl.") ¶ 5(e), ECF No. 20 ("In the dining hall we sit six people to a table, elbow to elbow. There is no social distancing in the chow hall[.]"); Decl. of Christopher Mitchell ("Mitchell Decl.") ¶ 13, ECF No. 21 ("I am never six feet or more from another person."); Decl. of Daniel White ("White Decl.") ¶ 23, ECF No. 24 ("We now have split tiers in our unit, which does limit the amount of people in any given area, but still doesn't allow for social distancing. We are still in close proximity to one another, and we still feel unsafe."). Both AICs who testified at the hearing also shared their concerns about the inability to socially distance.

B. Fear to Report Symptoms and Fear of Getting Tested

Many AICs express reluctance to get tested, or to report that they are experiencing COVID-19 symptoms. AICs believe that if they test positive, they will be quarantined in a segregation unit, which they view as a punitive measure. *See, e.g.,* Decl. of Corey Constantin ("Constantin Decl.") ¶ 5(b), ECF No. 22 ("We were all scared to get tested for COVID19

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[4] Defendants dispute many of the allegations set forth in the AIC declarations. *See* Russell Decl. ¶¶ 32-100 (providing specific information in response to many of the AICs' allegations); Decl. of Brandon Kelly ("Kelly Decl."), ECF No. 88 (same); Decl. of Ken Jeske ("Jeske Decl."), ECF No. 86 (same).

because we knew we would be put in segregation[.]"); Decl. of Gavin Pritchett ("Pritchett Decl.") ¶ 5(b), ECF No. 29 ("I have not reported these symptoms to medical staff because I am afraid of being isolated, kept from my property, and getting transferred to another facility[.]"); Decl. of John L. Preston II ("Preston Decl.") ¶ 4, ECF No. 33 ("I did not report these symptoms because I was afraid of being sent to the hole (Disciplinary Segregation Unit).").

C. Inadequate Treatment and Testing

Many AICs complain that ODOC's medical response to COVID-19 has been inadequate. *See, e.g.*, Decl. of Aaron Delicino ("Delicino Decl.") ¶ 5(b), ECF No. 19 ("When I got sick in March a bunch of other people on my unit also got really sick. I self-quarantined because medical wasn't doing anything for us. After 9 days of being sick a nurse came and checked my temperature – it came back 103 degrees and then later that day 104 degrees. The nurse I saw gave me salt packets and told me to gargle with saltwater."); Decl. of Mathew Maddox ("Maddox Decl.") ¶ 5(a), ECF No. 43 ("I almost went to the hole trying to get medical treatment because I had to insist on getting treatment. I was seen on or about the 7th of March by medical. The nurse took my temperature, confirmed to be 104 degrees, and told me to get plenty of rest. She gave me Theraflu."); Decl of Michael Garrett ("Garrett Decl.") ¶ 5(g), ECF No. 45 ("Currently people in my unit are coughing, running fevers, and displaying other COVID19 symptoms. Nobody is getting temperature checks and no medical staff are coming through the unit.").

Several AICs report that testing is either unavailable, or ODOC medical staff are reluctant to test AICs. *See* Pritchett Decl. ¶ 5 ("Near the end of March 2020, I asked for a COVID-19 test. I was told no tests were available."); Decl. of Kerry Crockett ("Crockett Decl.") ¶ 5(g), ECF No. 37 ("I still have not been tested. I asked roughly three weeks ago to be tested and they said they didn't have any tests. They haven't offered since.")

VI. DEFENDANTS' EVIDENCE

ODOC has been monitoring COVID-19 since before the first confirmed case in the United States. (Steward Decl. ¶ 7.) Two ODOC employees have been present at the State Emergency Coordination Center ("ECC") since March 2, 2020, to ensure that ODOC is connected with the statewide response and that ECC understands ODOC's needs. (Steward Decl. ¶ 10.) On March 4, 2020, ODOC activated the Agency Operations Center ("AOC") to fight the spread of the virus, led by Health Services Administrator Joe Bugher and ODOC's Chief of Security Garry Russell. (Steward Decl. ¶ 11.) The AOC has been working around the clock, meeting with representatives from each of the correctional facilities and medical services each day, and reporting to Director Peters and Deputy Director Steward at the end of every day. (Steward Decl. ¶ 12.)

A. ODOC Actions in Response to COVID-19

ODOC reports that it is following both the CDC and OHA guidelines. (Russell Decl. ¶ 17; Steward Decl. ¶¶ 16-17.) ODOC has diagnosed COVID-19 cases in four of ODOC's fourteen facilities, and of those four, one (TRCI) has had no additional cases since its only infected AIC recovered. (Russell Decl. ¶ 18.)

1. Six Key Components

ODOC reports that its response to COVID-19 includes six key components.

a. Education and Tracking

ODOC institutions are communicating daily with all AICs by holding meetings, sending AICs letters with information, placing signs with information around facilities, and providing information on ODOC television. (Steward Decl. ¶ 23.) "ODOC is also conducting targeted outreach to AICs who are particularly vulnerable to COVID-19" and has "implemented a plan to track and manage medically vulnerable AICs." (Steward Decl. ¶ 25.) Each weekday, a message

goes out via voice message and tablet services to share information with AICs regarding COVID-19 positive statistics and helpful tips. (Russell Decl. ¶ 30.) The ODOC television channel provides constant educational information about COVID-19 and prevention. (Russell Decl. ¶ 30.) ODOC is taking steps to educate its staff, and "[e]ach worksite has a Critical Incident Stress Management team that is used to providing timely, comprehensive, and confidential peer-to-peer assistance to ODOC employees and their families." (Russell Decl. ¶ 14.)

b. Sanitation, Hygiene, and PPE

All ODOC institutions increased cleaning efforts, to include commonly touched and high traffic areas. (Steward Decl. ¶ 28.) ODOC provides every AIC with free access to soap and water, sinks, and handwashing stations. (Steward Decl. ¶ 31.) ODOC added additional handwashing stations throughout many of its institutions. (Steward Decl. ¶ 31.) ODOC provided two cloth masks to all AICs, and to anyone entering the facility, and to date, ODOC has purchased 60,000 cloth masks (Steward Decl. ¶ 33), and OCE has produced over 200,000 masks for ODOC. (Jeske Decl. ¶ 31.)

c. Testing and Medical Care

ODOC health care providers screen any AIC presenting COVID-19 symptoms. (Steward Decl. ¶ 37.) ODOC follows the CDC and OHA guidance on appropriate criteria for testing. (Steward Decl. ¶ 38.) If an AIC tests positive, ODOC conducts contact tracing to determine the extent of the infection, and then strengthens preventative measures accordingly. (Steward Decl. ¶ 40.) Medical care for individual AICs is directed by ODOC providers, who are available at each institution. (Steward Decl. ¶ 44.) Correctional staff are not gatekeepers to medical services. (Steward Decl. ¶ 44.)

ODOC also identifies and tracks medically vulnerable AICs. (Decl. of Joe Bugher ("Bugher Decl.") ¶ 6, ECF No. 87.) As of May 20, 2020, ODOC had identified 823 vulnerable AICs. (*Id.*) ODOC identified plaintiffs Clift, Rhodes, and Sublet as vulnerable. (Bugher Decl. ¶ 7.)

d. Social Distancing

ODOC recognizes the importance of social distancing to reduce the spread of COVID-19, but acknowledges that social distancing in its institutions is largely impossible. (Steward Decl. ¶ 51.) That said, ODOC has taken multiple steps to facilitate social distancing: (1) closing its doors to non-essential visitors, (2) limiting the number of AICs in common areas at any given time, (3) limiting chapel attendance, (4) keeping AICs together by unit, (5) marking six foot spaces on the ground where line movements take place, (6) eliminating group activities in the yard and limiting the number of AICs in the yard at one time, (7) staggering dining times when possible, (8) modifying dorms, and (9) postponing non-essential medical trips. (Steward Decl. ¶ 52.)

e. Medical Isolation and Quarantine

ODOC quarantines newly transferred AICs for fourteen days, when possible. (Steward Decl. ¶ 54.) ODOC places AICs who test positive for COVID-19 in negative pressure rooms (where medical staff closely observe and monitor the AIC) or medical isolation (single or double cells with solid walls and a solid door that closes). (Steward Decl. ¶ 54.)

ODOC recognizes that "it is essential to treat quarantine and medical isolation [as] nondisciplinary" and therefore it provides "amenities of regular housing to the extent possible consistent with the purpose of quarantine or medical isolation and the resources of the particular institution." (Steward Decl. ¶ 55.) In order to differentiate medical isolation from disciplinary segregation, ODOC "expanded television access and other amenities." (Steward ¶ 58.) ODOC purchased portable DVD/TV players for AICs in medical isolation, and provides access to an

extensive video library. (Russell Decl. ¶ 48.) ODOC allows AICs to keep their personal property in medical isolation and allows them to use the phone whenever possible. (Russell Decl. ¶ 48.)

f. Tiered Screening Protocol

Finally, ODOC screens everyone who enters their institutions for COVID-19 symptoms, including checking temperatures. (Steward Decl. ¶ 61.) ODOC has a five-tier system that dictates the level of screening in accordance with the institution's number of COVID-19 cases. (Steward Decl. ¶¶ 61-71.)

To date, ODOC officials are "surprised and encouraged by the AICs' compliance" with ODOC's COVID-19 policies. (Russell Decl. ¶ 110.) "In general, AICs understand that ODOC is not implementing the COVID-19 response as a punitive measure, and that the entire world is facing increased restrictions" and ODOC has "seen a decrease in disturbances, fights, misconduct, and other security issues since the pandemic began." (Russell Decl. ¶ 110.)

2. ODOC Job Sites

OCE helps "ODOC meet its constitutional mandate to ensure that AICs [in] state correctional facilities work or receive on-the-job training for 40 hours a week." (Jeske Decl. ¶ 5.) ODOC has implemented measures to reduce the spread of the virus for AICs at work. For example, "[a]ll staff and adults in custody in [OCE] are required to wear face masks." (Steward Decl. ¶ 33(b).) AICs who work in the laundry "have additional PPE requirements and AICs are screened before being allowed to work." (Steward Decl. ¶ 33(b).) OCE provides hand soap, sanitizing materials, and PPE for its workers, as recommended by OHA and CDC guidance. (Jeske Decl. ¶ 10.) At many ODOC facilities, OCE provides AICs with sack lunches to eat in their cubicles. (Jeske Decl. ¶¶ 14, 17, 20, 23.)

To encourage social distancing in the laundry facilities, OCE marked the "floor every six feet" at TRCI and OSP, and reduced the numbers of workers present in the laundry facilities.

(Jeske Decl. ¶¶ 29, 36.) At SRCI, soiled laundry sorting carts are "set up so only two workers are working each set of carts instead of four" to provide "for additional social distancing." (Jeske ¶ 37.) AICs at work are instructed to maintain social distancing. (Jeske ¶ 34.)

B. Accountability

"ODOC recognizes that COVID-19 prevention policies . . . must be implemented in the institution level to be effective." (Steward Decl. ¶ 73.) ODOC is now implementing an Infection Prevention Readiness Assessment Tool for COVID-19 to evaluate each facility's compliance with ODOC policies. (Steward Decl. ¶ 74.)

On May 20, 2020, ODOC conducted its first COVID-19 Infection Prevention Assessment at OSP. (Steward Decl. ¶ 78.) ODOC found that the results were largely positive, but it also identified several areas for improvement. (Steward Decl. ¶ 78.) AICs and staff socially distanced when possible, used PPE, and cleaned surfaces, and appropriate educational materials were available throughout the facility. (Steward Decl. ¶ 78.)

C. COVID-19 Cases to Date

ODOC maintains a publicly available tracking tool that lists the total number of COVID-19 tests and COVID-19 positive AICs. (Bugher Decl. ¶ 8.) As of June 1, 2020, 157 AICs had tested positive for COVID-19, and one AIC had died as a result of COVID-19. (*See* COVID-19 Status at Oregon Department of Corrections Facilities, https://www.oregon.gov/doc/covid19/Pages/covid19-tracking.aspx (last visited June 1, 2020).)

D. COVID-19 Grievance Process

"An AIC may file a single grievance concerning any incident or issue regarding institutional life that directly and personally affects that AIC." (Decl. of Jacob Humphreys ("Humphreys Decl.") ¶ 8, ECF No. 89) (citing Or. Admin. R. ("OAR") 291-109-210(3)). For example, an AIC may grieve the "misapplication of department policies, rules, or other

directives;" "[u]nprofessional actions of employees, volunteers, or contractors[;]" and "[i]nadequate medical or mental health treatment[.]" (*Id.*)

ODOC has received hundreds of grievances from AICs about all aspects of its response to COVID-19. (Humphreys Decl. ¶ 10.) ODOC continues to process these grievances, and has generally accepted the ones related to unprofessional behavior in response to the pandemic, health concerns, or other essential services. (Humphreys Decl. ¶ 11.) However, ODOC does not accept certain grievances, and as Plaintiffs also report, ODOC has "denied the majority of the grievances it [] received concerning the COVID-19 response." (Humphreys Decl. ¶ 12.)

ODOC explains that the grievance denials are appropriate because AICs may only grieve the misapplication of a rule, policy, or administrative directive. (Humphreys Decl. ¶ 12.) Accordingly, ODOC has denied grievances related to emergency operations relating to Governor Brown's executive order because an AIC cannot grieve any matter outside the jurisdiction of ODOC, and any grievances regarding ODOC's general COVID-19 response do not relate to a personal or direct effect on an AIC. (Humphreys Decl. ¶ 12.) ODOC does not accept "general grievances regarding social distancing, isolation, and quarantine of other AICs, or modified operations such as the visiting shutdown" because doing so is "inconsistent with ODOC's rules." (Humphreys Decl. ¶ 14.)

As of May 18, 2020, ODOC had accepted only 14 of 216 grievances related to COVID-19. (Humphreys Decl. ¶ 15.) The accepted grievances concerned: unprofessional staff behavior, inadequate hygiene or cleaning products, denials of property related to COVID-19 operational changes, and ODOC's failure to enforce social distancing policies. (Humphreys Decl. ¶ 16.)

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ANALYSIS

I. LEGAL STANDARDS

A. Preliminary Injunction[5]

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008) (citations omitted). The elements of the test are "balanced, so that a stronger showing of one element may offset a weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d. 1127, 1131 (9th Cir. 2011) ("For example, a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits."). "When the government is a party, [the] last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).[6]

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[5] Although styled as a motion for a temporary restraining order and preliminary injunction, Plaintiffs acknowledged at oral argument that the appropriate relief at this stage of the litigation is a preliminary injunction.

[6] The Ninth Circuit also provides an alternative preliminary injunctive relief test: the "serious questions" test. *Alliance for the Wild Rockies*, 632 F.3d at 1131-32. Under this test, "'serous questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Id.* at 1132. Under this test, a court may grant a preliminary injunction "if there is a likelihood of irreparable injury to plaintiff; there are serious questions going to the merits; the balance of hardships tips sharply in favor of the plaintiff; and the injunction is in the public interest." *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1156 (D. Or. 2018) (quoting *M.R. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012)). However, where, as here, Plaintiffs seek a mandatory injunction, courts decline to apply the "serious questions" test. *See P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126, 1135 (C.D. Cal. 2015) ("Plaintiffs seek a mandatory injunction, the Court declines to interpret the 'serious questions' standard for purposes of the Motion as inconsistent with the Ninth Circuit's guidance that a mandatory injunction not issue in 'doubtful cases' and not be granted 'unless the facts and law clearly favor the moving party.'"); *Guerra v W. L.A. College*, No. CV 16-6796-MWF (KSx), 2016 WL 11619872, at *4 (C.D. Cal. Nov. 2, 2016) (same).

B. Mandatory Injunction

A "mandatory injunction orders a responsible party to take action" and "is particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (citation and quotation marks omitted). The "already high standard for granting a TRO or preliminary injunction is further heightened when the type of injunction sought is a 'mandatory injunction.'" *Innovation Law*, 310 F. Supp. 3d at 1156 (citing *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)). A plaintiff requesting a "mandatory injunction" must "establish that the law and facts *clearly* favor her position, not simply that she is likely to succeed." *Id.* (quoting *Garcia*, 786 F.3d at 740).

C. Prison Litigation Reform Act

The Prison Litigation Reform Act ("PLRA") imposes additional restrictions on a court's ability to grant injunctive relief. Any such "[1] relief must be narrowly drawn, [2] extend no further than necessary to correct the harm the court finds requires preliminary relief, and [3] be the least intrusive means necessary to correct the harm." 18 U.S.C. § 3626(a)(2). The PLRA requires that courts "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity[.]" *Id.* Preliminary relief relating to prison conditions "shall automatically expire on the date that is 90 days after its entry, unless the court makes findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period." *Id.*

II. DISCUSSION

Plaintiffs assert that Defendants' response to COVID-19 violates their Eighth Amendment right to reasonable protection from severe illness or death. Plaintiffs ask the Court to: (1) direct Defendants to "take every action within their power to reduce the risk of COVID-

19" in all of ODOC's institutions; (2) require Defendants to "reduce prisoner population to levels" to enable social distancing; (3) appoint an expert to effectuate that reduction; (4) provide safe and non-punitive separation housing for infected AICs or those at risk of being infected with COVID-19; and (5) comply with CDC and OHA guidance. (Mot. Prelim. Inj. at 2.)

Defendants responds that Plaintiffs cannot establish a likelihood of success on the merits of their claim, irreparable harm, or balance of the equities and public interest in their favor. Defendants also argue that this Court does not have the authority to order the release of AICs, and Plaintiffs do not have standing for the sweeping relief they seek.

A. Threshold Issues

1. PLRA's Exhaustion Requirement

The Court must first determine whether Plaintiffs may proceed on their claims without satisfying the PLRA's exhaustion requirement.

a. Applicable Law

The PLRA provides that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as available are exhausted." 42 U.S.C. § 1997e(a). The PLRA exhaustion requirement has a built-in exception by requiring that plaintiffs exhaust administrative remedies that are "available." 42 U.S.C. § 1997e.

In *Ross v. Blake*, the Supreme Court described three circumstances when a remedy is not "available" and therefore a plaintiff need not exhaust administrative remedies before filing suit: (1) the procedure "operates as a simple dead end" because the "relevant administrative procedure lacks authority to provide any relief" or "administrative officials have apparent authority, but decline ever to exercise it[;]" (2) the "administrative scheme [is] so opaque that . . . no reasonable prisoner can use them[;]" or (3) when "prison administrators thwart inmates from

taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Ross v. Blake*, 136 St. Ct. 1850, 1859-60 (2016) (citations omitted).

In the wake of the COVID-19 pandemic, federal courts are split on the issue of whether an AIC must exhaust administrative remedies before filing suit. Some courts reason that the irreparable and time-sensitive harm plaintiffs face in light of the virus renders all grievance procedures inherently unavailable, and therefore courts should not require exhaustion. *See, e.g.*, *Sowell v. TDCJ*, No. H-20-1492, 2020 WL 2113603, at *3 (S.D. Tex. May 4, 2020) ("Where the circumstances present an imminent danger to an inmate, TDCJ's time-consuming administrative procedure, which TDCJ may choose to extend at will, presents no 'possibility of some relief.'" (citing *Ross*, 136 S. Ct. at 1859))); *United States v. Vence-Small*, --- F. Supp. 3d ---, 2020 WL 1921590, at *5 (D. Conn. 2020) ("In light of these emergency circumstances, some judges have [waived exhaustion requirements,]" (citing *United States v. Russo*, --- F. Supp. 3d ---, 2020 WL 1862294, at *6 (S.D.N.Y. 2020) and *United States v. Haney*, --- F. Supp. 3d at ---, 2020 WL 1821988 (S.D.N.Y. 2020))).

Other courts have found that COVID-19 does not inherently render grievance procedures unavailable and that AICs must exhaust the administrative process unless one of the three categories outlined by *Ross* applies. *See Bell v. Ohio*, 2:20-cv-1759, 2020 WL 1956836, at *4 (S.D. Ohio Apr. 23, 2020) ("Plaintiff failed to properly exhaust his administrative remedies before seeking judicial relief . . . . [T]he exhaustion requirements of the PLRA are mandatory and may not be altered for special circumstances." (citing *Ross*, 136 S. Ct. at 1856-57)); *Nellson v. Barnhart*, No. 1:20-cv-21457-KMW, 2020 WL 1890670, at *5 (D. Colo. Apr. 16, 2020) ("The Court finds that plaintiff has failed to exhaust his administrative remedies before seeking judicial

relief . . . . [T]he Court may not alter the mandatory requirements of the PLRA for COVID-19 or any other special circumstance." (citing *Ross*, 136 S. Ct. at 1856-57)).

On May 14, 2020, Justices Sotomayor and Ginsburg provided additional guidance in *Valentine*. Although the Supreme Court denied the plaintiffs' application to vacate the Fifth Circuit's stay of the district court's preliminary injunction, Justice Sotomayor wrote a statement respecting the denial. Joined by Justice Ginsburg, Justice Sotomayor took issue with the Fifth Circuit's outright rejection of "the possibility that grievance procedures could ever be a 'dead end' even if they could not provide relief before an inmate faced a serious risk of death." *Valentine*, 2020 WL 2497541, at *3. Instead, Justice Sotomayor reasoned that districts courts could find grievance procedures unavailable where "a plaintiff has established that the prison grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19 . . . much in the way they would be if prison officials ignored the grievances entirely." *Id.* Justice Sotomayor explained that it was "difficult to tell whether the prison's system fits in that narrow category, as applicants did not attempt to avail themselves of the grievance process before filing suit." *Id.* Ultimately, Justice Sotomayor cautioned "that in these unprecedented circumstances, where an inmate faces an imminent risk of harm that the grievance process cannot or does not answer, the PLRA's textual exception could open the courthouse doors where they would otherwise stay closed." *Id.*

Valentine reinforces the reasoning of district courts like *Bell* and *Nellson* that COVID-19 does not automatically render a prison's grievance system unavailable, therefore exempting a plaintiff from the PLRA exhaustion requirement. Instead, Justice Sotomayor suggested that courts conduct a fact-based inquiry, and determine whether the "grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19[.]" *Id.*

b. Analysis

Plaintiffs have demonstrated that ODOC's grievance process is currently unavailable to grieve the systemic COVID-19 issues that Plaintiffs challenge in this case. (Mot. Prelim. Inj. at 55-56.) Importantly here, Defendants acknowledge that ODOC is not accepting grievances relating to COVID-19 emergency operations, nor "general grievances regarding social distancing, isolation, and quarantine of other AICs, or modified operations such as the visiting shutdown" because doing so is "inconsistent with ODOC's rules." (Humphreys Decl. ¶ 14.) As of May 18, 2020, ODOC had accepted only 14 of 216 grievances related to COVID-19.[7] (Humphreys Decl. ¶ 15.)

Based on the current record, the Court concludes that ODOC's administrative grievance procedure is currently unavailable for the relief Plaintiffs seek in this case, and therefore exhaustion is not required for Plaintiffs to proceed on their Section 1983 claims. *See Valentine*, 2020 WL 2497541, at *3 ("[I]f a plaintiff has established that the prison grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19, the procedures may be 'unavailable' to meet the plaintiff's purposes[.]"); *see also McPherson v. Lamont*, --- F. Supp. 3d ---, 2020 WL 2198279, at *9-10 (D. Conn. 2020) (holding that the "imminent health threat that COVID-19 creates has rendered DOC's administrative process inadequate to the task of handling Plaintiffs' urgent complaints regarding their health" and "[i]n this context, the DOC's administrative process is thus, 'practically speaking, incapable of use'

[7] Plaintiffs submitted questionnaires from 24 AICs regarding, among other things, each AIC's ability to file a grievance related to COVID-19, and the AIC's reports are generally consistent with Defendants' acknowledgement that ODOC is not accepting grievances relating to ODOC's response to COVID-19. (Decl. of Althea Seloover ("Seloover Decl.") Att. 1, at 5, ECF No. 15.)

for resolving COVID-19 grievances") (citing *Ross*, 136 S. Ct. at 1859 and *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1173 (7th Cir. 2010)).

2. PLRA's Release Order Prohibition

Defendants argue that the PLRA prohibits the Court from granting Plaintiffs' motion to the extent Plaintiffs are asking the Court to order the release of AICs to reduce the prison population. Plaintiffs acknowledged in their reply, and at oral argument, that the Court does not have the authority to order the release of AICs. The Court agrees.

In civil actions concerning prison conditions, federal district courts cannot order the release of individuals in custody unless the "court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right" and "the defendant has had a reasonable amount of time to comply with the previous court orders." 18 U.S.C. § 3626(a)(3)(A)(i)-(ii). Furthermore, "[a] 'prisoner release order' may be issued only by a three-judge court." *Plata v. Newsom*, --- F. Supp. 3d ---, 2020 WL 1908776, at *10 (N.D. Cal. 2020) (citing § 3626(a)(3)(B)). If the plaintiff meets the requirements of § 3626(a)(3)(A)(i)-(ii), "a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered." 18 U.S.C. § 3626(a)(3)(D). A three-judge panel may only order release if it "finds by clear and convincing evidence that 'crowding is the primary cause of the violation of a Federal right' and 'no other relief will remedy the violation.'" *Money v. Pritzker*, --- F. Supp. 3d ---, 2020 WL 1820660, at *10 (N.D. Ill. 2020) (quoting 18 U.S.C. § 3626(a)(3)(E)(i)-(ii)).

In *Coleman v. Newsom*, --- F. Supp. 3d at ---, 2020 WL 1675775 (N.D. and E.D. Cal. 2020), the plaintiffs recently sought an order modifying a 2009 population cap and requiring the State of California to reduce the population in crowded congregate living spaces to a level that

will permit social distancing in response to COVID-19. The three-judge panel denied the motion, explaining that the panel's original release order in 2009 was "never designed to address" the defendants' response to COVID-19. *Id.* at *7. The panel invited the plaintiffs to "go before a single judge to press their claim that Defendants' response to the COVID-19 pandemic is constitutionally inadequate." *Id.* The panel explained that from there, if a single judge found a constitutional violation, she could "order Defendants to take steps short of release necessary to remedy that violation[,]" and "if that less intrusive relief proves inadequate[,]" the plaintiff could request, or the district court may order, "the convening of a three-judge court to determine whether a release order is appropriate." *Id.* (citing 18 U.S.C. § 3626(a)(3)).

The Court agrees with the parties that it lacks the authority to order the release of AICs from ODOC custody, as Plaintiffs request.[8] Furthermore, the PLRA's prohibition of "prisoner release orders" applies to any order "that has the purpose or effect of reducing or limiting a prison population, or that directs the release from or nonadmission of prisoners to a prison[.]" 18 U.S.C. § 3626(g)(4). Accordingly, the PLRA necessarily also prohibits the court from ordering the transfer of AICs from one institution to another, ordering a moratorium on ODOC accepting new AICs, or requiring that ODOC develop a process for release. *See Money*, 2020 WL 1820660, at *13 (finding that the plaintiffs' effort to "shift[] the focus from an order directly releasing [vulnerable individuals in custody] to an order imposing a court-ordered and court-managed 'process' for determining who should be released . . . does not place this case outside of

[8] Plaintiffs acknowledge that the appropriate path for a release order is for the Court to find that Defendants' response to COVID-19 is constitutionally inadequate, order a preliminary injunction that stops short of release, and then convene a three-judge panel to consider release if Defendants do not comply with the Court's injunction. *See* Pls.' Reply at 27 ("The PLRA does not require that the Court place [release as a] remedy in a black box never to be identified as a solution. It merely states that it cannot be the first response ordered to ameliorate [a] constitutional violation, as absurd of a proposition as that is in a global pandemic.").

Section 3626(a)(3)" because "[t]he 'purpose' of any order compelling the State to engage in that process would be to reduce the prison population, and the 'effect' of its successful implementation would be the same, albeit indirectly"); *but see Cameron v. Bouchard*, No. 20-10949, 2020 WL 2569868, at *27-28 (E.D. Mich. May 21, 2020) (holding that the PLRA "do[es] not apply to an order releasing medically-vulnerable inmates" because "[t]he inability to socially distance in the jail setting has nothing to do with the capacity of the facility"). Thus, this Court does not have the authority to order any relief that would directly or indirectly require ODOC to reduce its prison population.

B. Preliminary Injunction

The Court must evaluate the four factors outlined by the Supreme Court in *Winter* to determine if Plaintiffs have established the need for preliminary injunctive relief: (1) likelihood of success on the merits, (2) irreparable harm in the absence of preliminary relief, (3) the balance of equities, and (4) the public interest. *See Winter*, 555 U.S. at 20.

1. Likelihood of Success on The Merits

Plaintiffs allege that Defendants' response to the COVID-19 pandemic is violating the Eighth Amendment.[9] "A public official's 'deliberate indifference to a prisoner's serious illness or injury' violates the Eighth Amendment ban against cruel punishment." *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (quoting *Estelle v. Gamble*, 429 U.S. 97, 105 (1976)). A plaintiff must establish that he was "confined under conditions posing a risk of 'objectively, sufficiently serious' harm and that the officials had a 'sufficiently culpable state of mind' in denying the proper medical care." *Id.* (citing *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995)). "Thus,

[9] Plaintiffs also allege that Defendants are violating Art. 1 Sections 13, 15, and 16 of the Oregon Constitution, but only move for preliminary relief on their Section 1983 claims.

there is both an objective and a subjective component to an actionable Eight Amendment violation." *Id.*

To satisfy the objective prong, a plaintiff must "show a serious medical need by demonstrating that failure to treat [the] prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." *Hopton v. Fresno Cty. Human Health Sys.*, No. 1:20-cv-0141-NONE-SKO, 2020 WL 1028365, at *5 (E.D. Cal. Mar. 3, 2020) (citing *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012)). "The subjective component requires the inmates to show that the officials had the culpable mental state, which is deliberate indifference to a substantial risk of serious harm." *Clement*, 298 F.3d at 904 (citation and quotation marks omitted).

"Deliberate indifference" is established only when "the official knows of and disregards an excessive risk to inmate health or safety; the official must be both aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). "A prison official's duty under the Eighth Amendment is to ensure 'reasonable safety,'" and "prison officials who act reasonably cannot be found liable[.]" *Farmer*, 511 U.S. at 844-45 (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)). Importantly here, "prison officials who actually know of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

a. Objective Prong

Plaintiffs argue that "[b]ecause of [their] health conditions, [they] are at serious risk for severe illness or death from COVID-19" and therefore satisfy the objective prong of the deliberate indifference test. (Mot. Prelim. Inj. at 40.) Defendants do not dispute the objective prong (Defs.' Opp'n at 17 n. 10), and the Court agrees that Plaintiffs are currently confined

under conditions posing a risk of objectively serious harm. *See Frazier v. Kelley*, No. 4:20-cv-00434-KGB, 2020 WL 2110896, at *6 (E.D. Ark. May 4, 2020) (finding that "it cannot be disputed that COVID-19 poses an objectively serious health risk to named plaintiffs . . . given the nature of the disease and the congregate living environment" and that the risk is heightened "given plaintiffs' allegations regarding their susceptibility to contracting COVID-19 and experiencing worsened symptoms"); *Coreas v. Bounds*, --- F. Supp. 3d ---, 2020 WL 1663133, at *9 (D. Md. 2020) ("As to the objective prong, the available evidence establishes that COVID-19 is a highly communicable disease that presents a potentially mortal risk, particularly for high-risk individuals[.]"); *see also Basank v. Decker*, --- F. Supp. 3d ---, 2020 WL 1481503, at *3 (S.D.N.Y. 2020) (taking judicial notice that "for people of advanced age, with underlying health problems, or both, COVID-19 causes severe medical conditions and has increased lethality").

b. Subjective Prong

The parties dispute whether Plaintiffs are likely to establish the subjective prong. It is clear that Defendants are aware of the serious risk that COVID-19 poses to AICs. *See Awshana v. Adducci*, --- F. Supp. 3d. ---, 2020 WL 1808906, at *8 (E.D. Mich. 2020) ("There is no doubt that [defendants] are aware of the grave threat posed by the pandemic and the exacerbated risk caused by the close quarters of the detention facilities."); *see also Valentine v. Collier*, No. 4:20-CV-1115, 2020 WL 1916883, at *10 (S.D. Tex. Apr. 20, 2020) ("The risk of COVID-19 is obvious."). However, Plaintiffs must also demonstrate that Defendants are disregarding the risk.

Plaintiffs argue that Defendants are disregarding the serious risks posed by COVID-19 by: (1) failing to implement social distancing; (2) undertesting; (3) failing properly to categorize vulnerable AICs; and (4) failing to provide adequate medical care. (Pls.' Reply at 6-16.) Defendants respond that the "aggressive and ongoing measures by ODOC officials to prevent the

spread of COVID-19 is the very opposite of indifference—deliberate or otherwise." (Defs.' Opp'n at 17.) The Court agrees with Defendants.

1) Social Distancing

Plaintiffs argue that until Defendants "accomplish[] social distancing for the people entrusted into their care, they are deliberately indifferent." (Pls.' Reply at 7.) Plaintiffs explain that the policies Defendants detail in their response are not being implemented at ODOC institutions. (Pls.' Reply at 7.) Although the parties agree that social distancing cannot be implemented at all times in ODOC institutions, AICs report that even when social distancing is possible, like during mealtimes or line movements, it is not being enforced. *See, e.g.,* Decl. of Jeffrey Parnell ("Parnell Decl.") ¶ 5, ECF No. 18 ("[L]ine movements are not socially distanced."); White Decl. ¶ 6 ("When we go to lunch, or 'chow,' there was no social distancing. We were 6 to a table, elbow to elbow. Only one day did they tell us to scatter and keep a distance."); Constantin Decl. ¶ 5(x)) (explaining that at the vending line, staff does not enforce social distancing).

Defendants respond with evidence describing their social distancing policy objectives and efforts to date. First, Defendants assert that they are following CDC's Correctional Guidelines, and while it is impossible to "maintain six feet of separation between all persons" they are "committed to achieving maximum social distancing within the current population and physical layout" of ODOC institutions. (Steward Decl. ¶ 51.) Second, Defendants describe the specific implementation of their social distancing policy in ODOC institutions: closing doors to all visitors, modifying line movements, limiting the number of AICs permitted in common areas like the yard and chow hall, marking six feet on the ground for line movements, staggering meal times, modifying dorms to the extent possible, and postponing non-essential medical trips. (Steward Decl. ¶ 52(a)-(j).) Defendants acknowledge that "social distancing is challenging to

practice in" their facilities, but that it is the "cornerstone of reducing transmission" of COVID-19. (Dewsnup Decl. ¶ 11.)

By way of a few examples of ODOC's current social distancing efforts, at CCCF, AIC access to the dayroom and yard is limited to allow for social distancing, medical lines are done on the housing unit, and unit schedules are modified to ensure units are as segregated as possible. (Russell Decl. ¶ 37.) At CRCI, recreational time is segregated by unit and there is tape to indicate a six-foot distance in the diabetic medicine line. (Russell Decl. ¶ 46.) At EOCI, there are markers showing six-foot distance in the chow hall lines, and the dining schedule is spread out to create more space in the chow hall. (Russell Decl. ¶ 54.) At MCCF, there are social distancing markers and announcements regarding social distancing. (Russell Decl. ¶ 59.) At PRCF, staff moved half of the dining chairs from the chow hall to ensure chairs are six feet apart, the walls are painted with lines to denote six feet between individuals waiting in line for food, and staff removed milk and water dispensers where AICs typically congregate. (Russell. Decl. ¶ 69(a).) PRCF staggers meal and recreational times and positioned bunks "head-to-toe." (Russell Decl. 69(b)-(c).) At SRCI, AICs may not participate in group sports, and units attend yard time on a staggered schedule. (Russell Decl. ¶ 74.) At SCI, staff posted flyers to promote social distancing. (Russell Decl. ¶ 79.) At SCCI, staff brings meals to AICs in their units, and units are assigned separate recreation and chapel times. (Russell Decl. ¶ 83.) At TRCI, units are split and fed by tier, and only half of the units are out at a time during daylight hours to reduce crowding. (Russell Decl. ¶ 95.) At OSP, staff modified line movements to limit the number of AICs in common areas, units are segregated, and group activities, like chapel, are suspended. (Kelly Decl. ¶ 22.) OSP also posted flyers all over its institutions reminding AICs and staff to socially distance, and frequent email reminders are sent to staff. (Kelly Decl. ¶ 23.)

The Court finds that both sides' evidence is credible.[10] The issue before the Court is not whether ODOC's policies or implementation of those policies has been perfect. On the contrary, the Court must determine if Defendants have acted with indifference to the risks of COVID-19. The Court finds that based on the current record, Plaintiffs are unlikely to establish that Defendants acted with deliberate indifference.

In so finding, the Court notes that ODOC's response has evolved, and improved, with time, new information, and data. Perhaps most importantly, ODOC has recognized that any policy is only as good as its implementation, and therefore ODOC is making unannounced visits to its prisons to evaluate compliance with its social distancing and other measures. The Court cannot fault ODOC, which has no control over the number of AICs sent to ODOC's institutions, for failing at the impossible task of maintaining six feet between all AICs at all times. *See Wragg v. Ortiz*, --- F. Supp. 3d. ---, 2020 WL 2745247, at *22 (D. N.J. 2020) ("That physical distancing is not possible in a prison setting, as [Plaintiffs] urge, does not an Eighth Amendment claim make and, as such, Petitioners are not likely to succeed on the merits."); *Swain v. Junior*, 958 F.3d 1081, 1089 (11th Cir. 2020) (rejecting district court's conclusion that failure to implement social distancing would establish the subjective component because "the inability to take a positive action likely does not constitute a state of mind more blameworthy than negligence") (citation and quotation marks omitted); *Plata v. Newsom*, --- F. Supp. 3d ---, 2020 WL 1908776, at *5 (N.D. Cal. 2020) (finding that where defendants did not implement social distancing, they were not deliberately indifferent because they "implemented several measures to promote increased physical distancing, including reducing the population, transferring inmates out of

[10] At the hearing on Plaintiffs' motion, two AICs testified and, although they communicated credible concerns about ODOC's social distancing efforts, they also corroborated several of the social distancing measures that ODOC asserts it has taken.

dormitory housing to less crowded spaces, restricting movement, eliminating mixing of inmates from different housing units, and placing six-foot markers in communal areas").

In addition, Plaintiffs do not cite to any evidence to establish that Defendants "subjectively believed the measures they were taking were inadequate." *Swain*, 958 F.3d at 1089; *see also Sanchez, et al. v. Dallas Cty. Sheriff Marian Brown*, No. 3:20-cv-00832-E, 2020 WL 2615931, at *16 (N.D. Tex. May 22, 2020) ("Plaintiffs did not present evidence that Defendants subjectively believed their actions in response to the COVID-19 situation were inadequate . . . . [and] the evidence in this record does not meet the high burden required to demonstrate deliberate indifference[.]"); *Wragg*, 2020 WL 2745247, at *21 ("Petitioners' clear concession that 'Respondents may subjectively believe their containment measures are the best they can do,' *supra*, should alone settle the score: Petitioners admit they cannot show at this juncture a likelihood of success on their Eighth Amendment claim. That is, Petitioners acknowledge they have no evidence of Respondents' liable state of mind."). The opposite is true here, as the record demonstrates that ODOC has made a valiant effort to date to respond to the COVID-19 pandemic. *See Money*, 2020 WL 1820660, at *18 (finding that the "record simply does not support any suggestion that Defendants have turned the kind of blind eye and deaf ear to a known problem that would indicate 'total unconcern' for the inmates' welfare") (quoting *Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012)).

2) Testing

Plaintiffs also assert that ODOC is acting with deliberate indifference by not testing a sufficient number of AICs. (Pls.' Reply at 15.) The Court disagrees.

Plaintiffs submit declarations from eight AICs who requested a COVID-19 test, but did not receive one. *See* Decl. of Brandon Plunk ("Plunk Decl.") ¶ 4(b), ECF No. 92 ("I asked for a test and the nurse told me I don't have enough symptoms."); Decl. of Kevin McCormack

("McCormack Decl.") ¶ 4(b), ECF No. 100 ("I sent a kyte to medical asking to be tested for COVID-19. I got a reply that they're not going to test anyone that doesn't have serious enough symptoms."); Delicino Decl. ¶ 5(c) ("I asked for a COVID19 test sometime between the 5th and 15th of April and was told I didn't need one."); Constantin Decl. Att. 1 at 3 (explaining that he asked for a test but was told only people "who desperately need them will get them"); Decl. of Jesse Patterson ("Patterson Decl.") ¶ 15, ECF No. 32 (explaining that he showed no symptoms, asked for a test, and was denied); Preston Decl. ¶ 5 ("I asked for a COVID-19 test. I was told no tests were available."); Decl. of Kerry Crocket ("Crocket Decl.") ¶ 5, ECF No. 37 (describing that he was coughing and had a dry throat but was refused a test). Six AICs requested a test and had to wait for the test (AICs Maddox, Garret, White, Hall, Walls, and Hart). Seven AICs asked for a test and received one right away (AICs Horner, Seck, White, Larson, Lee, Gardea, and Astorga). Six AICs stated that they have not requested a test (AICs Borba, Mitchell, Pritchett, Weis, Kirk, and Richardson). The remaining declarants did not mention whether they asked for a test.

Defendants present evidence describing their testing policy, and data showing how many AICs they have tested to date. As of June 1, 2020, ODOC had tested 591 AICs (and re-tested 64). *See* https://www.oregon.gov/doc/covid19/Pages/covid19-tracking.aspx (last visited June 1, 2020). ODOC does not test every AIC, but has followed CDC and OHA guidance on the appropriate criteria for testing. (Steward Decl. ¶ 38; Dewsnup Decl. ¶ 32 ("ODOC is not conducting mass prevalence testing at this time as it is not recommended by either OHA or the CDC. Identification of all positive, asymptomatic AICs is not possible using present testing methodologies, and thus could not be expected to result in complete eradication or prevention of COVID-19 within any facility.").)

If an AIC tests positive, ODOC conducts "targeted concentric tracing of asymptomatic AICs" which involves "testing the close contacts of the positive AICs to determine the extent of the infection[.]" (Steward Decl. ¶ 40.) Some of the confirmed cases "come from testing [] symptomatic AICs" but the majority "come through contact tracing and daily health checks conducted by Health Services." (Steward Decl. ¶ 41.)

Defendants' current testing policy, consistent with the CDC's Correctional Guidelines, does not rise to the level of deliberate indifference. The Court is sympathetic to AICs who are scared, and for whom a negative test would ease their worry, but Defendants' testing protocol is based on the current standard of care and does not constitute deliberate indifference. *See Wragg*, 2020 WL 2745247, at *21 (finding that where a "prison only tests those inmates who exhibit symptoms and are then determined eligible for testing by medical staff[,]" officials were not deliberately indifferent); *cf. Savino v. Souza*, --- F. Supp. 3d ---, 2020 WL 2404923, at *10 (D. Mass. 2020) (finding that the defendants' failure to test more than twenty detainees by May 1, 2020, or conduct any contact tracing, would likely qualify as deliberate indifference); *Coreas*, 2020 WL 2201850, at *2 (finding that the "lack of any testing for COVID-19" constituted deliberate indifference because the defendant had not "actually tested anyone to date").[11]

3) Identifying Vulnerable AICs

Plaintiffs argue that Defendants' definition of AICs it considers to be "vulnerable" is too narrow. *See* Pls.' Reply at 15. Plaintiffs argue that in the prison context, AICs fifty and older

[11] In addition, ODOC cannot be faulted for an AIC's fear of taking a test because a positive test will result in transfer to a medical facility or isolation, where isolation is the appropriate response to a positive test. The Court notes that ODOC has taken important measures to ensure that the condition of isolation units is not punitive, but it could do a better job of communicating to AICs that the conditions of medical isolation are not the same as disciplinary segregation.

should be considered "vulnerable." *See* Pls.' Reply at 15; Stern Decl. ¶ 12. Plaintiffs assert that "ODOC's improperly narrowed category of vulnerable prisoners prevents Defendants from appropriately and reasonably providing the care required for vulnerable people" and rises to deliberate indifference. *See* Pls.' Reply at 16; Stern Decl. ¶ 12 ("[I]t is well known in correctional health sciences that individuals in jails are physiologically comparable to individuals in the community several years older.").

ODOC considers "individuals who are 65 years and older" to be "vulnerable." (Dewsnup Decl. ¶ 24.) The CDC Correctional Guidelines do not explicitly define an age category as "vulnerable," and instead explain that "COVID-19 is a new disease, and there is limited information[,]" but "[b]ased on currently available information and clinical expertise, older adults and people of any age who have serious underlying medical conditions might be at higher risk[.]" (Steward Decl. Ex. 5 at 6.) Although ODOC categorizes AICs who are 65 and older as vulnerable, ODOC also considers AICs with the following medical conditions to be vulnerable: chronic lung disease or moderate to severe asthma, serious heart conditions, immunocompromised condition, severe obesity, diabetes, chronic kidney disease requiring dialysis, and liver disease. (Dewsnup Decl. ¶ 24(a)-(g).)

Although there exists reasonable disagreement on the appropriate age of vulnerability to COVID-19, ODOC's position that AICs age 65 and up are the most vulnerable does not amount to deliberate indifference, especially in light of the fact that ODOC also takes into account each AIC's other comorbidities. *See Money*, 2020 WL 1820660, at *18 ("[Defendants' plan] may not be the plan that Plaintiffs think best; it may not even be the plan that the Court would choose . . . . But the Eighth Amendment does not afford litigants and courts an avenue for de novo review of the decisions of prison officials[.]"); *cf. Gomes v. U.S. Dep't of Homeland Sec.*, No. 20-cv-452-

LM, 2020 WL 2514541, at *13 (D. N.H. May 14, 2020) (holding that the defendant institution's failure to identify *any* vulnerable detainees constituted deliberate indifference).

4) Medical Treatment

Plaintiffs argue that Defendants are not providing appropriate health care services to its COVID-19 positive AICs, citing plaintiff Hart's experience. (Pls.' Reply at 17.) Hart alleges that he was initially refused a test despite having symptoms, but on May 15, 2020, Hart tested positive for COVID-19 and ODOC moved him to a disciplinary segregation unit for medical isolation. (Suppl. Decl. David Hart ("Hart Suppl. Decl.") ¶ 22, ECF No. 99.) Hart received medical checks from a nurse multiple times a day. *See* Decl. ¶ 34 ("During the morning medical check . . . . Later in the day when I had another check . . . ."). Defendants confirm that "Hart is now in the COVID-19 isolation unit at OSP. He is seen frequently (multiple times per day) by ODOC Health Services, who continue to monitor his symptoms." (Dewsnup Decl. ¶ 53.)

Plaintiffs also point to AIC Astorga's experience. On May 15, 2020, Astorga developed a fever and body aches, and sought medical attention. (Decl. of Jose Sanchez Astorga ("Astorga Decl.") ¶ 4(b), ECF No. 94.) That same day he saw a nurse, who did not speak English, and there was no interpreter present during his consultation. (Astorga Decl. ¶ 4(c).) Astorga perceived that the nurse reluctantly listened to him and decided to test him for COVID-19. (Astorga Decl. ¶ 4(c).) The nurse tested Astorga on May 21, 2020, and staff sent him to isolation on May 22, 2020. (Astorga Decl. ¶ 4(a).) Staff informed Astorga that he will be quarantined for twenty-four days. (Astorga Decl. ¶ 4(e).) Three days into his quarantine, he did not have a towel, new sheets, pillow covers, pants, or more than two shirts per week. (Astorga Decl. ¶ 4(f).)

Defendants respond that "AICs presenting with symptoms of COVID-19 are screened by ODOC's health care providers." (Steward Decl. ¶ 37.) ODOC's Chief Medical Officer and its infectious disease specialist are primarily responsible for coordinating the medical care for

confirmed and suspected COVID-19 positive AICs. (Steward Decl. ¶ 42.) "ODOC has varying levels of medical care available at each institution" and while "[s]everal institutions have 24/7 medical care and infirmary level care[,]" "[e]very medium and maximum security institution has at least one healthcare provider on site at all times." (Steward Decl. ¶ 46.) CCCF and SRCI have around-the-clock care facilities. (Steward Decl. ¶ 46.) While the minimum-security institutions do not have appropriate treatment facilities, ODOC has "established hospital locations and services for each institution and is prepared to transfer AICs to a higher level of care if needed." (Steward Decl. ¶ 48.) ODOC screens AICs in medical isolation at least daily. (Steward Decl. ¶ 46); *see also* Pritchett Decl. ¶ 5(c) ("I have my temperature checked every day with the rest of my unit, C2."); Decl. of Micah Rhodes ("Rhodes Decl.") ¶ 22, ECF No. 44 ("Currently, nurses are coming by our unit to see how specific AICs are doing.").

Many AICs who test positive for COVID-19 are asymptomatic or have mild symptoms, and they are generally instructed to rest and hydrate while being monitored by nursing staff. (Dewsnup Decl. ¶ 47.) ODOC transfers any vulnerable AICs who test positive to CCCF, where there is around-the-clock on-site oxygen, IV fluids, IV antibiotics, adequate isolation conditions, and access to medical professionals equipped to deal with serious COVID-19 cases. (Dewsnup Decl. ¶ 48.) If an AIC cannot be treated at CCCF, he or she will be hospitalized in the community. (Dewsnup Decl. ¶ 49.)

Plaintiffs' evidence to date does not demonstrate that ODOC has been deliberately indifferent in providing medical care relating to COVID-19. *See Camacho Lopez v. Lowe*, --- F. Supp. 3. ---, 2020 WL 1689874, at *7 (M.D. Penn. 2020) (finding that the defendants, who placed the AIC in isolation shortly after he developed symptoms and was assessed by medical staff throughout the day, did not act with deliberate indifference).

5) **Summary**

In sum, the Court finds that to date, Defendants have responded reasonably to the serious risks posed by the COVID-19 pandemic, and Plaintiffs are therefore unlikely to succeed in demonstrating that Defendants acted with deliberate indifference. *See Farmer*, 511 U.S. at 844 ("[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted."); *see also Garcia*, 786 F.3d at 740 ("Because it is a threshold inquiry, when 'a plaintiff has failed to show the likelihood of success on the merits, we 'need not consider the remaining three [*Winter* elements].'" (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013))).

2. Likelihood of Irreparable Harm

Although the Court's analysis could end there, it nevertheless examines the remaining *Winter* factors. The second *Winter* factor "requires plaintiffs . . . to demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (noting that the "possibility" of irreparable harm is insufficient). Plaintiffs argue that Defendants' inadequate response to COVID-19 makes it "likely that some Plaintiffs have been infected and that many others will be infected" and "[i]t is also likely that because of their vulnerability to serious infection and death, Plaintiffs will suffer severe illness, permanent bodily injury, or death." (Mot. Prelim. Inj. at 50.) The Court agrees.

Even if a plaintiff cannot establish a likelihood of success on the merits, he may still establish the likelihood of irreparable harm. *See Alvarez v. Larose*, --- F. Supp. 3d ---, 2020 WL 2315807, at *5 (S.D. Cal. 2020) (finding that the plaintiffs did not establish a likelihood of success on the merits of their claim, but that it is undisputed that medically vulnerable AICs face "a heightened risk of serious injury or death upon contracting COVID-19"). Indeed, "[e]ven in

the early days of the pandemic, and with few exceptions, courts did not hesitate to find irreparable harm as a result of potential COVID-19 exposure in prison and detention, including in facilities where there had not been a confirmed case" and "[a]t this stage of the pandemic, the threat is even clearer." *Fraihat v. U.S. ICE*, No. EDCV 19-01546-JGB (SHKx), 2020 WL 1932570, at *27 (C.D. Cal. Apr. 20, 2020).

Plaintiffs live, work, sleep, and eat in a congregate environment that poses significant, if not absolute, challenges to social distancing. There can be no reasonable dispute that Plaintiffs are at an increased risk of COVID-19 infection in prison, especially in light of their underlying medical conditions and age. Accordingly, the Court finds that Plaintiffs have established that they are likely to suffer irreparable harm. *See Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850, at *6 (N.D. Cal. Apr. 9, 2020) (finding that the plaintiff established he would suffer "irreparable injury to his health and safety" because the plaintiff had "at least two high-risk conditions" that put him " at a heightened risk because of COVID-19"); *see also Coronel v. Decker*, Case No. 20-cv-4272 (AJN), 2020 WL 1487274, at *3 (S.D.N.Y. Mar. 27, 2020) ("Due to their serious underlying medical conditions, all Petitioners face a risk of severe, irreparable harm if they contract COVID-19."); *Thakker v. Doll*, --- F. Supp. 3d ---, 2020 WL 1671563, at *4 (M.D. Penn. 2020) ("Based upon the nature of the virus, the allegations of current conditions in the prisons, and Petitioners' specific medical concerns . . . we therefore find that Petitioners face a very real risk of serious, lasting illness or death. There can be no injury more irreparable."); *cf. Habibi v. Barr*, No. 20-cv-00618-BAS-RBB, 2020 WL 1864642, at *6 (S.D. Cal. Apr. 14, 2020) ("Petitioner is a 23-year-old with no stated preexisting or underlying medical conditions that make him high-risk due to COVID-19. Petitioner's claim that his mere presence in [the detention facility], absent any underlying conditions, is therefore insufficient to state

a *likelihood* that he will suffer severe illness or any other irreparable harm as a result of his continued detention.").

3. Balance of Equities and Public Interest

Balancing the public interest and equities here invokes important interests on both sides of the dispute.

On the one hand, preventing the spread of COVID-19 in ODOC facilities will both save lives of AICs and reduce the risk of spread to the community. *See Frazier*, 2020 WL 2110896, at *10 ("[The] public interest is served by protecting plaintiffs . . . . from COVID-19 both within [defendants'] facilities and among communities surrounding and interacting with those facilities[.]").

On the other hand, "[s]tates have a strong interest in the administration of their prisons[,]" and the Supreme Court has cautioned "that federal courts must tread lightly when it comes to questions of managing prisons, particularly state prisons[.]" *Id.* at *9 (quoting *Woodford v. Ngo*, 549 U.S. 81, 94 (2006)). The "public interest also commands respect for federalism and comity" and the "Court should approach intrusion into the core activities of the state's prison system with caution." *Id.* at *10; *see also* 18 U.S.C. § 3626(a)(2) ("The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity[.]").

Any injunctive relief this Court could order would implicate important federalism and separation of powers concerns. *See Money*, 2020 WL 1820660, at *16-19 (explaining that "running and overseeing prisons is traditionally the province of the executive and legislative branches" and that "the public interest also commands respect for federalism and comity, which means that courts must approach the entire enterprise of federal judicial intrusion into the core activities of the state cautiously and with humility"). Indeed, "courts are 'ill equipped' to

undertake the task of prison administration, which is within the province of the legislative and executive branches of government." *Valentine*, 2020 WL 1916883, at *14 (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)). This Court respects that ODOC is run by correctional experts with many years of experience and in-depth knowledge, and court involvement runs the risk of disrupting ODOC's current COVID-19 response. *See Mecham v. Fano*, 427 U.S. 215, 228-229 (1976) (warning against court involvement in "the day-to-day functioning of state prisons and involv[ing] the judiciary in issues and discretionary decisions that are not the business of federal judges"); *but see Valentine*, 2020 WL 2497541, at *1 ("[W]hile States and prisons retain discretion in how they respond to health emergencies, federal courts do have an obligation to ensure that prisons are not deliberately indifferent in the face of danger and death.").

Given the weighty considerations on both sides, the Court concludes that the public interest and equities factors balance roughly equally between the parties. *See Frazier*, 2020 WL 2561956, at *36 (finding that the balance of equities and public interest factors were neutral where there were "strong considerations that favor both sides in th[e] dispute").

4. Weighing the factors

Weighing all of the *Winter* factors here, the Court concludes that preliminary injunctive relief is not warranted at this time.[12] *See Winter*, 555 U.S. at 20 (explaining that a party seeking preliminary injunctive relief must establish all four factors); *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020) (staying district court's preliminary injunction requiring officials immediately to implement additional COVID-19 prevention efforts, and noting that "even assuming there is a substantial risk of serious harm, the Plaintiffs lack evidence of the

[12] In light of this holding, the Court does not address Defendants' argument that Plaintiffs do not have standing for the broad injunctive relief they seek.

Defendants' subjective deliberate indifference to that risk"); *Swain*, 958 F.3d at 1090 (staying district court's preliminary injunction requiring officials immediately to implement additional COVID-19 prevention efforts, because where "the defendants adopted extensive safety measures such as increasing screening, providing protective equipment, adopting social distancing when possible, quarantining symptomatic inmates, and enhancing cleaning procedures, the defendants' actions likely do not amount to deliberate indifference").

CONCLUSION

For the reasons stated, the Court DENIES Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 14).

IT IS SO ORDERED.

DATED this 1st day of June, 2020.

STACIE F. BECKERMAN
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and FELISHIA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of other similarly situated,

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN, COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Defendants.

Case No. 6:20-cv-00570-SB

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

ORAL ARGUMENT REQUESTED

Plaintiffs respectfully provide the following in response to Defendants' Motion for Protective Order ("Motion"). Plaintiffs' response is supported by the Second Declaration of Nadia H. Dahab ("Second Dahab Decl."), filed concurrently herewith.

I. Plaintiffs are entitled to depose Kevin Gleim.

As Plaintiffs explained in their motion to compel, ECF 441, Rule 26 provides a liberal framework for obtaining discovery in federal court, providing that all relevant evidence is discoverable. Fed. R. Civ. P. 26(a)(1). "Relevancy" has been " 'construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that bear on, any issue that is or may be in the case.' " *Woodward Stuckart, LLC v. United States*, 2012 WL 1890364, at *1 (D. Or. May 23, 2012) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)); *see also Hickman v. Taylor*, 329 U.S. 495, 501 (1947) (same). For the reasons explained in their motion to compel, Kevin Gleim's testimony is relevant to Plaintiffs' claims in this case. *See* ECF 441, at 2–5.

Indeed, Defendants' assertion that testimony from Kevin Gleim would be irrelevant to the claims in this case, *see* Motion at 18, is belied by the discovery that Plaintiffs have obtained to date. Although Defendants claim that Gleim "[f]or the most part" only "implemented" Defendant Brown's commutation authority, Motion at 18, that statement not only is qualified in a manner that Defendants do not explain,[1] but also is inconsistent with the deposition testimony that Plaintiffs have obtained to date. Specifically, at the deposition of Nathaline Frener, ODOC's then-Assistant Director of Correctional Services, Frener testified that she spoke with Gleim "all the time, every day" on issues relating to Defendant Brown's COVID-19-related commutation program. Frener Depo at 49:8–14; *see also id.* (testifying that she worked "hugely" with Gleim). Frener further testified that Gleim would provide guidance to ODOC relating to the Governor's early release criteria and procedures, including when and why AICs were categorically removed

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[1] Plaintiffs do not understand what Defendants mean by "[f]or the most part."

from early release consideration, *see id.* at 87:16–22,[2] and what additional categories of AICs would (or would not) be considered for release at all, *see id.* at 91:18–103:3. With respect to those conversations, Frener testified that she went "back and forth" directly with Gleim. *Id.* at 101:2–103:3. Gleim's testimony is relevant.[3]

And allowing Kevin Gleim's deposition would be proportional to the needs of this case. As Plaintiffs explain further below, the Honorable Kate Brown is a named defendant in this case, and her decisions relating to the management of COVID-19 in Oregon's prisons, including her decisions relating to population reduction in the face of the heightened risks that COVID-19 creates in the custodial setting, are central to Plaintiffs' claims. *See* ECF 282, at 36. Kevin Gleim's knowledge of those decisions, and in particular how those decisions were communicated to ODOC, is essential to Plaintiffs' claims. His testimony is proportional to the needs of this case.

One final point on proportionality: Defendants repeatedly suggest that the number of depositions that Plaintiffs have taken is somehow excessive or overly burdensome in light of the needs of this case. *See, e.g.*, Motion at 1, 19. But the allegations in this case involve systemic misconduct by the State of Oregon, including three state agencies and several high-level executive officials, that has resulted in significant harm to thousands of AICs, and death to almost 50 more, all of whom at the time were confined in *Defendants'* care and custody. The discovery that Plaintiffs seek is not disproportional in any respect to the harms they have suffered as a result of Defendants' actions.

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[2] "There was a final time that the governor's office did say, you know, if – if not by this date, you know, then . . . were' now done on those, you know. Kevin Gleim had said if we haven't found housing for them, it's not going to happen."

[3] To be sure, to the extent that Gleim was only "implementing" the Defendant Brown's commutation and therefore cannot testify about the decisions that Defendant Brown made, that is only an additional reason to allow Plaintiffs to take Defendant Brown's deposition.

II. Plaintiffs are entitled to depose Defendant Kate Brown.

Again, federal cases provide a framework for determining when to protect a current or former government official from a deposition under Rule 26(c). *See Smith v. City of Stockton*, 2017 WL 11435161, at *2 (E.D. Cal. Mar. 27, 2017). Under that framework, "an individual objecting to a deposition must first demonstrate [that s]he is sufficiently high-ranking to invoke the deposition privilege." *Estate of Levingston v. Cty. of Kern*, 320 F.R.D. 520, 525 (E.D. Cal. 2017). Upon such a showing, a court must then consider whether "extraordinary circumstances" justify deposing the official, based on "(1) whether the deponent has unique first-hand, nonrepetitive knowledge of the facts at issue in the case; and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods." *Id.*; *see Coleman*, 2008 WL 4300437, at *3 (plaintiffs must show that deponent "possess[es] personal knowledge of facts critical to the outcome of the proceedings and that such information cannot be obtained by other means").

Courts then have discretion to limit the timing and scope of that deposition to avoid the "potential for abuse or harassment." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). As many courts have explained, "high ranking government officials have greater duties and time constraints than other witnesses and . . . without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation." *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1048 (E.D. Cal. 2010). With respect to former government officials, however, "one important rationale for the rule is absent." *Thomas*, 715 F. Supp. 2d at 1049. Thus, courts have explained that, in those circumstances, the rational based on interference with official duties simply does not exist. *See id.*[4]

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[4] Defendants take issue with Plaintiffs' citation to an unpublished opinion in the Southern District of Mississippi. *See* Motion at 18. The rationale of that Mississippi district court has been adopted in a published opinion of a district court in the Ninth Circuit. *See Thomas*, 715 F. Supp. 2d at 1048.

For the reasons explained in Plaintiffs' motion to compel, and for the additional reasons set forth below, extraordinary circumstances exist in this case for the deposition of Defendant Brown.

A. Plaintiffs allege that Defendant Brown acted with an improper motive.

As an initial matter, Defendants claim—incorrectly—that Defendant Brown "did not act with 'improper motive' or 'outside the scope' of normal channels." Motion at 9. They state, without citation to any authority or evidence in the record, that Defendant Brown simply "implemented standard policies through the normal channels,"[5] and claim that "[t]here is no allegation that she had improper motive or engaged improper conduct that would justify of deposition of her." Motion at 9–10.

Those assertions not only are unsupported by the record, but also are wrong. In this case, Plaintiffs allege that Defendant Brown was *deliberately indifferent* to the rights of Plaintiffs and members of the Damages and Wrongful Death Classes, including to class members' rights to be protected from heightened exposure to serious and communicable diseases like COVID-19. ECF 282, at 35–36. They further allege that, among other things, Defendant Brown failed to follow guidance issued by the Centers for Disease Control and Prevention (CDC) and failed to implement necessary public health measures to protect against the spread of COVID-19 in Oregon Department of Corrections (ODOC) institutions. ECF 282, at 35. Plaintiffs allege that Defendant Brown failed in these respects by *not* implementing and enforcing proper social distancing, by *not* implementing proper quarantines, and by allowing mixing between and among adults in custody (AICs) and ODOC staff and contractors without regard to the risks that COVID-19 presented in the custodial setting. ECF 282, at 35.

Based on those failures, as well as the additional failures set forth in their claims for relief, Plaintiffs allege that Defendant Brown acted with *callous disregard* for the rights, serious

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[5] Again, Defendants do not explain, and Plaintiffs do not understand, what Defendants mean by "normal channels." As far as Plaintiffs are aware, that is not the standard under the Eighth Amendment.

medical needs, and physical safety of Plaintiffs and members of the classes in this case. ECF 282, at 35–36. Finally, they allege that "by operating and continuing to operate ODOC facilities that lack the capacity to treat, test, or prevent or protect against a COVID-19 outbreak and/or spread," Defendant Brown violated the Eighth Amendment. ECF 282, at 36. Stated differently, Plaintiffs allege that Defendant Brown acted with an improper motive when she failed to protect the rights, serious medical needs, and physical safety of members of the Damages and Wrongful Death Classes.

B. Defendant Brown is in possession of unique testimony.

Defendant Brown is also in possession of unique testimony that Plaintiffs cannot obtain through other sources. Plaintiffs' arguments on this point are not new; as they previously have explained in this Court, Defendant Brown, as the Executive head of state, oversaw all state agencies, including ODOC, during the COVID-19 emergency. ECF 442-11 (Peters Depo at 23:2–10 (ODOC Director reports directly to the Governor)). In that capacity, Brown made decisions relating to the health and safety of AICs confined in ODOC's facilities. For instance, early in the pandemic, Brown commissioned a workgroup to "evaluate the potential of releasing individuals from ODOC's custody" to "reduce the likelihood of COVID-19 and increase ODOC's ability to practice social distancing." ECF 442-5. Over the next several months, she wrote Defendant Peters multiple times requesting that Peters identify vulnerable AICs for possible commutation based on criteria that Brown provided. ECF 442-4, ECF 442-6. Brown changed that criteria over time and granted limited commutations in response. ECF 442-7.

Brown also made decisions relating the closure of certain ODOC facilities, including Mill Creek Correctional Facility and Shutter Creek Correctional Institution, both of which were closed during the COVID-19 emergency.[6] Those decisions required other institutions to absorb

[6] *See* Jake Thomas, *Why Salem's Mill Creek Correctional Facility Will Be Shuttered in July*, Salem Reporter (Jan. 28, 2021), https://www.salemreporter.com/2021/01/28/why-salems-mill-creek-correctional-facility-will-be-shuttered-by-july/ (last visited Apr. 10, 2023); Amanda Slee, *Curtains for Shutter Creek: Oregon Governor Sticks With Plan to Close Prison by January*, KCBY (July 28, 2021), https://kcby.com/news/local/curtains-for-shutter-creek-oregon-governor-sticks-with-plan-to-close-prison-by-january (last visited Apr. 10, 2022).

the Shutter Creek and Mill Creek populations, increasing the density of those institutions and decreasing opportunities for social distancing.[7] And Brown had the authority, but apparently did not exercise it, to undertake additional steps to increase the space available for social distancing or inquire with ODOC about the possibility or need to do so.

But what is most important for purposes of Defendants' Motion, none of the witnesses that Plaintiffs have deposed to date could testify to Defendant Brown's reasons or process in making those decisions. By way of example, ODOC and Governor's Office staff, including then-Director Peters, then-Deputy Director Steward, and Defendant Brown's Chief of Staff Nik Blosser, testified that Brown made ultimate decisions relating to both release and facility closure.[8] They could not testify, however, as to why Defendant Brown made those decisions.[9]

C. Plaintiffs exhausted less intrusive discovery methods.

Finally, and consistently with this Court's prior order, *see* ECF 419, Plaintiffs have exhausted less-intrusive discovery methods relating to the issues on which they seek to depose Defendant Brown.

As explained in their motion to compel, Plaintiffs have deposed three individuals who were staff members in the Governor's Office during the class period: Constantin Severe, Tina Edlund, and Nik Blosser. Second Dahab Decl. ¶ 2. Plaintiffs identified Severe and Edlund as deponents based on information that Defendants provided to Plaintiffs during discovery conferrals in this case; according to Defendants, Severe (Defendant Brown's Public Safety Policy Advisor) and Edlund (Defendant Brown's Health Policy Advisor) were two of the five Governor's Office custodians that Defendants claimed would possess documents responsive to

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7 As Plaintiffs have noted before, these were not the only decisions that Defendant Brown made that gave rise to the harms suffered by Plaintiffs and members of the certified classes. She also made several decisions in early 2021 relating to the delivery of COVID-19 vaccines to AICs. *See* ECF 178.

8 *See, e.g.*, ECF 442-11 (Peters Depo. at 103:9–104:17 (Governor made the closure decisions)); ECF 442-13 (Gower Depo. at 135:17–136:1 (closure decisions are made between the director and "her boss, the Governor")).

9 *See, e.g.*, ECF 442-11 (Peters Depo. at 104:1–17 (that "would be a question for the Governor")).

Plaintiffs' requests for production. Second Dahab Decl. ¶ 2. The other three custodians that Defendants identified at that time as having documents responsive to Plaintiffs' requests were then-Governor Kate Brown, Gina Zejdlik (Defendant Brown's Deputy Chief of Staff), and Jenn Baker (Defendant Brown's Labor and Workforce Policy Advisor). Second Dahab Decl. ¶ 2.

In part because of their titles, and in part because of the information contained in documents Defendants had produced to date, Plaintiffs chose first to depose Severe and Edlund. Second Dahab Decl. ¶ 3. During those depositions, in response to counsel's questions about issues relating to early release, Severe testified that "DOC did some work on different release options," but that was "the best [he could] recall." Severe Depo. at 17:1–11. In response to counsel's questions about Defendant Brown's awareness of the ability to socially distance in ODOC's institutions, Severe explained that he didn't "know if anybody ever said it exactly like that, like impossible." Severe Depo. at 16:20–23. And in response to counsel's questions about whether Severe discussed with Defendant Brown the contents of a letter from the Federal Public Defender, Lisa Hay, about the dangers of COVID-19 in ODOC's institutions, Severe explained that he "remember[ed] that [Lisa Hay] wrote a letter and it had a big impact, but I can't think of the details. At this point, I don't recall." Severe Depo. at 146:1–20.[10] Edlund, for her part, testified that she, as Health Policy Advisor, was not familiar with *any* strategies that Defendant Brown took or considered taking to protect against the spread of COVID-19 in Oregon's prisons, Edlund Depo. at 54:8–16, that she, as Health Policy Advisor, was not aware of any issues with mask compliance in ODOC's institutions, *id.* at 67:15–17, and that she, as Health Policy

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[10] Later, Severe testified that he did, in fact, review the letter at the time that it was sent to Brown, and that he "believe[d] the letter was discussed [with Defendant Brown] that Ms. Ha[y] sent it and some of the highlights, so to speak." Severe Depo. at 178:15–179:17. He explained that the nature of that discussion was "[t]hat Ms. Hay had sent the letter and she's a very articulate person, so she outlines, she points to actions done in other states and so, yeah." Severe Depo. at 178:15–179:17.

Advisor, had no specific conversations with anyone in the Governor's Office about specific strategies for managing COVID-19 in prisons, *id.* at 73:4–74:12.[11]

Edlund also testified at some length regarding the flow of information in the Governor's Office during the class period, which Plaintiffs then used to identify additional deponents who may possess information relating to the issues on which Plaintiffs sought to depose Defendant Brown. Second Dahab Decl. ¶ 4. Specifically, Edlund testified that Nik Blosser, then-Chief of Staff, "managed communication from the policy advisors to the governor's executive team," Edlund Depo. at 27:8–12, and that where COVID-19-related issues arose in the context of ODOC, information relating to those issues would flow through Severe and either directly to Defendant Brown or through Blosser, *id.* at 52:12–53:6. Based on that information, Plaintiffs chose to depose Nik Blosser. Second Dahab Decl. ¶ 4. As Plaintiffs explained in their motion to compel, Blosser then testified that he did not recall any information about several topics central to Plaintiffs' claims, including information about the closure of ODOC's institutions[12] or the reasons or process for Defendant Brown's early release process.[13] He also could not clarify whether Defendant Brown ever considered the use of alternative spaces for social distancing.[14]

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[11] It's not entirely clear to Plaintiffs' counsel why Edlund was identified as a custodian of information relevant to Plaintiffs' discovery requests.

[12] Blosser Depo. at 84:1–6 ("Q. Who . . . makes the final decision on which [institutions] to close and which ones to leave open? A. You know, I'm not 100 percent sure if the Governor has to tell Colette to do that or if Colette does it. I'm not 100 percent sure.").

[13] Blosser Depo. at 72:23–25 ("Q . . . [T]hen how did she go about making the ultimate decision? A. I don't remember exactly that."); *id.* at 74:1–4 ("Q. Did the Governor have some goal for how far to reduce the prison population at this time? A. I don't remember that—if we had a specific goal in mind or not."); *id.* at 9–14 (Q. Were any . . . public health professionals involved in the process to— A. I assume they were. I don't know.").

[14] Blosser Depo. at 91:1–12 ("Q. Was there ever any consideration given to using Deer Ridge space for—to put beds in Deer Ridge? A. Not that I—I don't know."); *id.* at 91:25–92:5 ("Q. Okay. Did the Governor or the Governor's Office ever talk with DOC about the possibility of using those mothballed facilities or other unused space? A. I don't know. Not that I remember being witness to."); *id.* at 92:13–16 ("I mean, to the question of did – did DOC ask for money to open the mothballed facility? I don't know, not to me, not that I remember. But you have to remember, like, agencies were asking for money all the time every day and so it's possible but I don't remember it if it happened."); *id.* at 94:6–11 ("Q. . . . DOC never came to the Governor's

Defendants now complain—at the same time that they suggest that they have produced too much—that Plaintiffs somehow have not done enough. First, they note that "[P]laintiffs did not request depositions of any other Governor's Office officials." But the other custodians that Defendants identified had virtually few substantive documents responsive to Plaintiffs' discovery requests. Second Dahab Decl. ¶ 5. They also suggest that Plaintiffs should have, but did not, request the deposition of Gina Zejdlik, who replaced Mr. Blosser "and was chief of staff during the facility closures." Defendants fail to note, however, that the closure decisions at issue were made well before Zejdlik took over that role. Second Dahab Decl. ¶ 6. Her testimony is therefore not likely to be helpful on those issues.

Plaintiffs have also exhausted less-intrusive discovery in the form of interrogatories. Again, as Plaintiffs explained in their motion to compel, Plaintiffs served Defendant Kate Brown and the Governor's Office with interrogatories specific to the actions and inactions of Defendant Brown during the class period. *See* ECF 442-3. Those interrogatories sought to obtain information relating to:

(1) all persons who provided COVID-19-related updates directly to Governor Brown on behalf of (a) ODOC, (b) the Oregon Health Authority, and (c) the Agency Operations Center during the Class Period, including their name, job title, and the frequency of such updates;

(2) all actions taken by the Governor's Office in response to the surge in COVID-19 cases and deaths of AICs that occurred between December 1, 2020, and January 31, 2021, including any actions taken during and immediately after the period of that surge;

(3) all COVID-19-related orders, policies, decisions, or mandates issued by the Governor's Office during the Class Period that apply or applied to any or all ODOC Institutions, including orders, policies, decisions, or mandates relating to AIC commutations, releases (including early releases), or reprieves during the COVID-19 pandemic;

(4) how and when all orders, policies, or mandates listed in response to (3), above, were communicated to ODOC; and

(5) whether and how Defendant Brown and/or the Governor's Office was involved in determining, drafting, amending, or implementing COVID-19

Office to—with the proposal to put online unused space? A. I can't say if they did or didn't to the Governor's Office. I don't remember seeing that.").

> policies and protocols for ODOC Institutions during the Class Period (other than the orders, policies, or mandates identified in response to (3), above), and the individuals involved in doing so.

ECF 442-3, at 5–21. Defendant Brown's responses to those interrogatories confirmed for Plaintiffs the scope of Defendant Brown's response to the COVID-19 emergency in ODOC's institutions, but did not provide Plaintiffs with the identities of any additional Governor's Office of ODOC staff members from whom to request additional discovery or depositions. Second Dahab Decl. ¶ 7.

On this point, Defendants again complain that Plaintiffs simply have not done enough. In their view, Plaintiffs should have used their interrogatories to "seek specific factual information uniquely within the [Defendant] Brown's possession." Motion at 17. But that is not an effective use of interrogatories. Generally speaking, "[i]nterrogatories are an effective way to obtain simple facts, to narrow the issues by securing admissions, . . . and to obtain information needed in order to make use of the other discovery procedures," including depositions. Charles A. Wright & Arthur R. Miller, 8B *Federal Practice & Procedure* § 2163 (3d ed) (hereinafter "*Federal Practice & Procedure*"); *see also Richlin v. Sigma Design West, Ltd.*, 88 F.R.D. 634, 638 (E.D. Cal. Dec. 11, 1980) ("Interrogatories are a simple mode of obtaining the facts, or of securing information about the existence of documentary evidence."). Thus, "[r]esort may be had to interrogatories to obtain details about matters on which the pleadings are quite general";[15] "[a]fter obtaining such information by means of interrogatories, a party may take depositions of witnesses." *Federal Practice & Procedure* § 2163. That is precisely what Plaintiffs have done here.

* * * * *

The Honorable Kate Brown is a named defendant in this case and is no longer the Governor of the State of Oregon. She has in her possession important information that is central to Plaintiffs' claims. Because Plaintiffs have exhausted less-intrusive methods of discovery and still cannot obtain this information from any other sources, the Court should order her deposition.

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[15] *See Federal Practice & Procedure* § 2169 (noting that "interrogatories are of limited utility for inquiring into certain types of subjects").

DATED this 24th day of April, 2023.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and FELISHA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, *individually, on behalf of a class of other similarly situated*,

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Defendants.

Case No. 6:20-cv-00570-SB

DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND RESPONSE TO MOTION TO COMPEL

Request for Oral Argument

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INTRODUCTION

Deposing Governor Brown is still not appropriate because plaintiffs have not shown that Governor Brown engaged in improper conduct or has unique, firsthand knowledge essential to their claims. Plaintiffs seek to interrogate Governor Brown about the decision-making process around early release of AICs and the closure of two prisons in late 2021. Despite the questionable relevance of this information, plaintiffs have requested and received significant discovery regarding the Governor's Office's internal discussions regarding early release and facility closures. Plaintiffs have taken nearly four dozen depositions, including several depositions of Governor's Office officials. Plaintiffs have propounded 25 written interrogatories (with multiple subparts), including interrogatories directed to the Governor's Office. Plaintiffs have served 182 documents requests and have received over 240,000 documents, including documents from the Governor's office. (Decl. of Anit Jindal in Supp. of Defs.' Mot. for Protective Order and Response to Mot. To Compel ("Jindal Decl.") ¶ 6.) Plaintiffs do not articulate what they need from the former governor herself that they have not received (or could not have received) from this vast body of alternative discovery methods. Nor is this a case in which plaintiffs allege that the former governor was personally involved in a corrupt or unusual act that requires probing the mental impressions of the governor personally. No federal court in the Ninth Circuit has ever ordered the deposition of a state governor. Nothing in plaintiff's motion suggests that this Court should be the first.

This Court should also not compel the deposition of Kevin Gleim. Mr. Gleim is a former Governor's Office attorney who was a point of contact with ODOC when applying Governor Brown's early release criteria in individual cases. Mr. Gleim's testimony regarding early release criteria is not relevant to any of plaintiff's claims regarding systemwide COVID-19 policies. Any internal communications that Mr. Gleim would have had personally with Governor Brown would be privileged. And any scant discoverable testimony that Mr. Gleim could provide would be duplicative of the testimony regarding early releases that plaintiffs have already received from numerous other sources.

This Court should deny plaintiff's motion to compel and issue a protective order barring the depositions of former Governor Brown and Mr. Gleim.

LR 7-1 CERTIFICATION

In compliance with Local Rule 7-1(a)(1), the parties made a good faith effort through telephone conferences and email communications to resolve the dispute that is the subject of this motion and have been unable to do so.

MOTION

Pursuant to FRCP 26(c)(1), Defendants move the Court for a protective order:

1. preventing plaintiffs from taking the deposition of former Governor Kate Brown; and
2. preventing plaintiffs from taking the deposition of Kevin Gleim.

BACKGROUND

I. In the pleadings, plaintiffs do not allege or assert that any defendant is liable to plaintiffs due to facility closures or early release decisions.

Plaintiffs seek to depose Governor Brown and Mr. Gleim regarding the Governor's executive clemency decisions and the closure of two ODOC facilities in late 2021. (Dkt. 441 Pl's Mot. To Compel at 1.) Understanding the connection between these issues and plaintiffs' claims in this case is relevant background for plaintiffs' motion.

In this suit, Plaintiffs challenge specific, "system-wide" COVID-19 policies "common to all institutions" and persisting "throughout the proposed class period." (Dkt. 377 Op. and Ord. at 34.) Plaintiff's complaint identifies the areas where plaintiffs allege that Defendants' policies were constitutionally deficient (e.g., masking, social distancing), without mentioning facility closures or commutation decisions. (*See* Dkt. 282 Sixth Am. Compl. ¶¶ 93, 101.) The complaint does not contain any allegations regarding closed or unused facilities. The complaint does allege that congregate care facilities in other states released individuals in response to COVID-19 and contains general background regarding the availability of "early release" and "clemency" in Oregon. (*See* Dkt. 282 Sixth Am. Compl. ¶¶ 79-87.)

At the outset of this case, Defendants moved to strike the complaint allegations regarding early release and clemency, arguing that they were irrelevant to plaintiff's liability theories. (Dkt. 272 Op. and Ord.) This Court granted the motion in part. (*Id*. at 23.) The Court held that the allegations regarding the general availability of clemency and early release were "arguably relevant" and provided "background and context" to plaintiffs' claims, *i.e.* social distancing. (*Id*. at 7.) But the Court also suggested that the failure to exercise clemency and early release in a particular way was not itself a basis for Defendants' liability and ordered plaintiffs to strike an allegation in the complaint that Defendants were liable for damages in negligence for the failure to release more AICs. (*Id*. at 5-7.)

II. This Court ordered plaintiffs to exhaust "less intrusive" discovery methods including written interrogatories before noticing the deposition of Governor Brown again.

Plaintiffs first noticed Governor Brown's deposition in this case last October. In motion practice before this Court, plaintiffs asserted that they needed to depose Governor Brown on two topics: clemency decisions and the closure of Mill Creek Correctional Facility and Shutter Creek Correctional Institution. *See* Dkt. 414 Plaintiffs' Response to Defs'. Mot. For Protective Ord. at 2-3.[1] On Defendants' motion, this Court entered a protective order "barring Governor Brown's deposition prior to January 9, 2023," finding that plaintiffs had not "exhausted other less intrusive discovery methods, such as deposing Governor Brown's staff or serving interrogatories." (Dkt. 419 Ord.) Although the Court declined to bar Governor Brown's deposition altogether, it provided Defendants leave to seek such an order "if Plaintiffs notice her deposition again after exhausting less intrusive discovery methods." (*Id.*)

III. Plaintiffs served interrogatories regarding Governor's Office policies but did not serve any interrogatories that sought information possessed only by Governor Brown.

Defendants have responded to two sets of interrogatories propounded by plaintiffs, including six interrogatories directed to Defendant Kate Brown "in her official capacity as

[1] Plaintiffs also asserted they wanted to depose Governor Brown about her vaccine prioritization decisions. But this Court stayed discovery on vaccine prioritization pending the outcome of an interlocutory appeal.

Governor to the State of Oregon" and to the Governor's Office.[2] (Dkt. 442-3 Defs. Responses and Objections to Pl's. Second Set of Interrogatories at 5-21.) Those interrogatories asked Defendants to identify the COVID-19 policies implemented by the Governor's Office, explain who was involved in the creation and implementation of the policies, and explain how the policies were developed within the Governor's Office and communicated to ODOC. Defendants provided detailed responses to these interrogatories. The interrogatories did not seek any information that only Governor Brown could have known, and that could not be provided by a staff member of the Governor's Office. (*Id.*)

IV. Defendants have provided plaintiffs' significant access to deposition witnesses regarding the Governor's Office.

Since plaintiffs first noticed Governor Brown's deposition, Defendants have produced 18 witnesses for deposition by plaintiffs. (Jindal Decl. ¶ 2.) Plaintiffs requested and Defendants produced three Governor's Office officials: (1) Governor Brown's former chief of staff (through October 2020) Nik Blosser; (2) Governor Brown's Public Safety Policy Advisor Constantin Severe; and (3) Governor Brown's Senior Health Policy Advisor Tina Edlund. Other than Kevin Gleim whose testimony is also the subject of this motion, plaintiffs did not request depositions of any other Governor's Office officials.

Plaintiffs have also requested, and Defendants have produced for deposition, numerous high-ranking government officials that communicated with the Governor's Office, including multiple agency heads. Plaintiffs deposed former OHA Director Patrick Allen, former ODOC Director Colette Peters, and acting ODOC Director Heidi Steward (who plaintiffs deposed twice). (Jindal Decl. ¶ 2.) Plaintiffs will also have a second opportunity to depose Director Peters on April 21, 2023. Defendants have agreed to make one additional deponent available, former ODOC Chief Financial Officer Steve Robbins, who will be deposed on April 26, 2023. (Dkt. 442-1 Notice of Deps. Of Kevin Gleim and Steve Robbins at 2.)

[2] Plaintiffs have served a third set of interrogatories with responses due on April 27, 2023. None of the interrogatories in the third set are directed to Governor Brown or her office.

Throughout the case, plaintiffs have deposed numerous additional state employees, including dozens of ODOC employees. In total, plaintiff will take 42 depositions in this case.

V. Defendants provided plaintiffs with document discovery from the Governor's Office, including discovery regarding early release and facility closures.

Plaintiffs have received substantial discovery from the Governor's Office. Defendants produced emails from Governor's Office officials pertaining to COVID-19 policies, handwritten notes from Governor's Office staff members, and public reports from the Governor's Office regarding the various policies at issue in this case. (Jindal Decl. ¶ 6.) Beginning in June 2020, Governor Brown's office reported early release decisions to the legislature. Defendants have produced these reports in discovery. These reports included the numbers of AICs released, a description of the specific criteria used to evaluate AICs for release, and an AIC-by-AIC explanation for the application of the release criteria to each AIC. (Dkt. 442-4 June 12, 2020 Letter to the Department of Corrections re Commutation Criteria, Jindal Decl. Ex. 6.)

VI. Defendants provided plaintiffs with access to Governor's Office deponents relevant to executive clemency and facility closures.

A. Executive Clemency

Plaintiffs have taken the depositions of multiple witnesses relevant to Governor Brown's decision-making regarding executive clemency. Plaintiffs deposed Nik Blosser, Governor Brown's chief of staff for most of 2020 and Constantin Severe, Governor Brown's Public Safety Policy Advisor. Mr. Blosser's time at the Governor's Office ended in October 2020, but he testified about "early steps" relating to early release. (3/2/2023 Blosser Dep. at 66:8-73:6, Jindal Decl. Ex. 1.) Mr. Blosser testified about receiving data on AICs who were to be released in the next six months and may be medically fragile. (*Id.*) Mr. Blosser testified that he did not take the lead on formulating criteria for early release, but that was something that Mr. Severe or the governor's General Counsel—Dustin Buehler —would have handled. (*Id.* at 68:23-69:10.) Mr. Blosser testified that he monitored the Governor's Office's decision-making on early releases and commutations. (*Id.* at 71:10-13.) He testified about the creation of criteria for early releases during COVID-19 and the Governor's Office's goals in creating the criteria. (*Id.* at 66:8-73:6.)

Plaintiffs also deposed Mr. Severe, who Mr. Blosser identified as taking the "lead" on formulating early release criteria. (*Id.* at 68:23-69:10.) When asked, Mr. Severe testified that he participated in meetings with the Governor to formulate criteria for early releases during the COVID-19 pandemic. (12/19/2022 Severe Dep. at 162:20-163:24, Jindal Decl. Ex. 2.) But plaintiffs chose not to ask Mr. Severe detailed factual questions about internal conversations at the Governor's Office regarding the formulation of these criteria. *(Id.)* Plaintiffs questioned Mr. Severe regarding the letter setting forth early release criteria towards the end of the deposition and for just eight transcribed pages. (*Id.* at 161:17-168:23.) During this time, plaintiffs asked Mr. Severe to respond to their legal theories regarding deliberate indifference, not his discussions with Governor Brown. (*Id.*) Plaintiffs asked whether social distancing in prisons was difficult and whether the Governor's Office set a specific target for the number of releases. Mr. Severe answered these questions directly. (*See, e.g., id.* at 165:7-166:1.) Plaintiffs also noted that Mr. Severe was a former criminal defense attorney and asked whether Governor Brown's early release criteria violated the Eighth Amendment. Mr. Severe answered this question too. (*Id.* 166:3-167:5.)

In advance of Mr. Severe's deposition, Defendants produced, among other things, Mr. Severe's handwritten notes. Plaintiffs spent the bulk of Mr. Severe's deposition explaining the meaning of the notes in this 52-page set. In answering those questions, Mr. Severe testified that Governor Brown's office reviewed early information that other states, namely Illinois, released AICs who had committed person crimes prior to release and those AICs committed person crimes upon release. (*Id.* at 107:6-109:14.) Accordingly, Governor Brown included the absence of person crimes in the eligibility criteria for early release.

Plaintiffs asked Director Peters questions about ODOC's efforts to implement Governor Brown's early release criteria. Director Peters testified that ODOC staff would identify a list of potentially eligible AICs and consult with local law enforcement officials. (1/18/2023 Peters Dep. at 81:16-82:16, Jindal Decl. Ex. 3.) Director Peters would then often personally review the AIC's file "cover to cover" to determine if they were suitable for the Governor's consideration under the criteria Governor Brown's office adopted. (*Id.*)

Plaintiffs also deposed Nathaline Frener, who previously served as the assistant director of correctional services for DOC. (3/20/2023 Frener Dep., Jindal Decl. Ex. 4.) She described DOC's process for implementing Covid-related early releases, including the process for identifying AICs who met the early release criteria articulated by the Governor's Office's. (*Id.* at 56:20-78:20.)

B. Facility Closures

Plaintiffs did not explore facility closures in detail with the available witnesses. Mr. Severe testified that he was involved in communications with Governor's Office staff about the decision to close Mill Creek and Shutter Creek. (12/19/2022 Severe Dep. at 44:16-47:13, Jindal Decl. Ex. 2.) But plaintiffs asked Mr. Severe just a handful of questions about these closures in the course of asking him about the contents of his handwritten notes. (*Id.*) One such note reflected an August 2020 discussion regarding prison closures. (*Id.* at 46:12-47:13.) Plaintiffs asked Mr. Severe about that meeting and whether the participants in the discussion evaluated the effect on population density and COVID-19 of closing facilities. (*Id.* at 45:8-46:10.) Mr. Severe answered these questions, explaining that due to reductions in prosecutions the prison population had declined during the pandemic, which supported the closures. (*Id.*) Mr. Severe also explained that there had not been a discussion in that August 2020 meeting regarding the impact on COVID-19 of closing facilities, but Mr. Severe noted that the facilities eventually closed housed AICs in dorms. (*Id.* at 47:3-13.) Plaintiffs did not ask Mr. Severe any detailed follow-up questions regarding facility closures or the Governor's Office's role in implementing the closures.

Plaintiffs also questioned Mr. Blosser about facility closures. Plaintiffs asked Mr. Blosser generally about conversations at the Governor's Office regarding the decision to close facilities. (3/2/2023 Blosser Dep. At 76:12-82:10, Jindal Decl. Ex. 1.) Mr. Blosser explained that the state economist forecasted a decreased prison population due to increased releases and decreased intakes. Accordingly, the state economist forecasted that ODOC could close three prisons. (*Id.*) Mr. Blosser also testified about the various considerations relevant to the decision to close prisons, including the maintenance costs, age of the facility, and proximity

to AIC families. (*Id.*) Mr. Blosser also testified about the involvement of the legislature in the facility closure decision, namely that the facility closures were included in the budget process and voted on by the legislature. (*Id.* at 76:12-78:1.)

Plaintiffs asked Mr. Blosser about whether the Governor's Office considered social distancing when addressing facility closures. (*Id.* at 78:2-82:10.) Mr. Blosser's tenure at the Governor's Office ended in October 2020, before the facility closures occurred. (*Id.* at 95:6-15.) Mr. Blosser explained that social distancing was not a significant factor in the early discussions he took part in because the closures would take time and it was not clear in the early days of the pandemic how long the pandemic would last. (*Id.* at 81:9-82:10) Mr. Blosser did note that one of the facilities closed was "the most constrained from a square footage per adult AIC" standpoint. (*Id.*) Plaintiffs did not request the deposition of Governor Brown's incoming chief of staff, Gina Zejdlik, who replaced Mr. Blosser, and was chief of staff during the facility closures.

ARGUMENT

VII. The Court should bar the deposition of former Governor Brown because plaintiffs have not demonstrated extraordinary circumstances justifying her deposition.

This Court should issue a protective order barring the deposition of former Governor Kate Brown because there are no "extraordinary circumstances" that justify her deposition. "High-ranking government officials are not normally subject to depositions." *Thomas v. Cate,* 715 F. Supp. 2d 1012, 1048 (E.D. Cal. 2010), order clarified, No. 1:05-cv-01198-LJO-JMD-HC, 2010 WL 797019 (E.D. Cal. Mar. 5, 2010); *see also Kyle Eng'g Co. v. Kleppe*, 600 F.2d 226, 231 (9th Cir. 1979); *United States v. Morgan*, 313 U.S. 409, 421-22 (1941). Instead, the party noticing such a deposition must demonstrate "extraordinary circumstances" to justify the deposition. *Thomas,* 715 F. Supp. 2d at 1048. Limiting the circumstances under which a high-ranking official may be subject to a deposition is necessary to protect such an official from harassment and time-consuming discovery requests, and to allay the risk that depositions will improperly intrude on the internal deliberative process of administrative agencies. *See Thomas,* 715 F. Supp. 2d at 1048 (citation omitted) (explaining that "without appropriate limitations,

such officials will spend an inordinate amount of time tending to pending litigation"); *see also Morgan,* 313 U.S. at 422 (stating that it is "not the function of the court to probe the mental processes" of administrative agencies). These concerns are heightened for high-level officials like governors, "given the frequency with which such officials are likely to be named in lawsuits." *Coleman v. Schwarzenegger*, No. CIV S-90-0520LKKJFMP, 2008 WL 4300437, at *2 (E.D. Cal. Sept. 15, 2008).

Extraordinary circumstances exist in one of three circumstances. First, courts have ordered the deposition of high-ranking officials "when there are allegations that the official acted with improper motive or acted outside the scope of his official capacity." *Id.* at *3. Second, courts have ordered depositions where the official had pertinent, admissible information that could be obtained "only from" the official. *Id.* at *3. Finally, courts have ordered the deposition where the court has "doubts as to whether an official is sufficiently 'high-ranking' to merit protection from depositions." *Id.* at *3.

This is a high burden for plaintiffs to meet. Depositions of governors under this standard are rare. To the best of Defendants' knowledge, no federal circuit court has ever held that extraordinary circumstances exist justifying the deposition of a state governor, nor has any district court in the Ninth Circuit.[3] *See Coleman*, 2008 WL 4300437, at *3 ("The Court notes that plaintiffs have not cited any circuit court cases that have found 'extraordinary circumstances' sufficient to allow depositions of Governors, or their top aides, or, for that matter, any other high-ranking officials."); *see also Thomas,* 715 F. Supp. 2d at 1050 (denying motion to compel testimony of former governor).

A. Governor Brown did not act with "improper motive" or "outside the scope" of normal channels.

A deposition of Governor Brown is inappropriate because Governor Brown implemented standard policies through the normal channels. There is no allegation that she had improper

[3] The Ninth Circuit has stated that a writ of mandamus is appropriate to seek immediate review of an order permitting a high-ranking official's deposition, because the harm to the official is the "intrusion of the deposition itself." *In re U.S. Dep't of Educ.*, 25 F.4th 692, 705 (9th Cir. 2022); *see also Am. Trucking Ass'n's., Inc. v. Alviti*, 14 F.4th 76, 85 (1st Cir. 2021) (granting mandamus quashing subpoenas to high-ranking governmental officials, including a former governor).

motives or engaged in improper conduct that would justify a deposition of her. In *Coleman v. Schwarzenegger*, the plaintiffs sought to depose a governor and his chief of staff about their efforts to implement prison reforms to reduce overcrowding including implementing a state appropriations bill regarding prison infrastructure and advocating for prisoner releases. *Coleman*, 2008 WL 4300437, at *2. The district court barred the depositions reasoning that there was no allegation that the proposed deponents "acted outside the scope of their official duties or with improper motive." *Id.* at *4. Similarly, here, there is no allegation that Governor Brown acted outside normal channels or with improper motive in addressing prison population issues and implementing a legislative appropriation regarding facility closures. Accordingly, there is no need for plaintiffs to depose her regarding her internal thought processes and motivations.

B. Governor Brown does not have "essential information" that can be gathered "only from" her.

Further, a deposition of Governor Brown is inappropriate because Governor Brown does not have unique, first-hand knowledge that is both "essential" to their claims and "cannot reasonably be obtained from other sources." *Thomas,* 715 F. Supp. 2d at 1049; *Sargent v. City of Seattle*, No. C12-1232 TSZ, 2013 WL 1898213, at *3 (W.D. Wash. May 7, 2013); *Coleman*, 2008 WL 4300437, at *3. Here, the information plaintiffs seek is not essential to their claims and regardless plaintiffs could have obtained the information they seek from other sources.

1. Early releases and facility closures are not essential to plaintiffs' claims.

The information plaintiffs seek from Governor Brown is not essential to their claims. In their motion to compel, plaintiffs assert that they would like to question Governor Brown on two issues: early release of AICs and facility closures. But Plaintiffs' class claims do not – and cannot – depend on Governor Brown's motivation or reasons for these decisions. As shown, Plaintiffs do not base any of defendant's liability on Governor Brown's actions with respect to the closure of ODOC facilities or her efforts to identify AICs for possible early release. In their motion for class certification, Plaintiffs did not seek—and this Court did not grant—certification on the issue of whether the Governor should be personally liable for damages based on her

decision-making regarding facility closures or executive clemency. (Dkt. 154. Pl's Mot. For Provisional Class Certification.)

For good reason. There is no constitutional right to executive clemency and governors have immunity when exercising their discretion to grant executive clemency. *See Burnett v. Fallin,* No. CIV-17-385-M, 2018 WL 4376513, at *4 (W.D. Okla. June 5, 2018) (Governor's alleged refusal to use clemency powers to address overcrowding in state's prisons was not cognizable under the Eighth Amendment); *see also Greenholtz v. Inmates of the Neb. Penal & Corr. Complex, et al.,* 442 U.S. 1, 7 (1979) (holding there is "no constitutional or inherent right . . . to be conditionally released before the expiration of a valid sentence"). To the best of Defendants' knowledge, no federal court has ever held a state governor personally liable for damages based on a contention that she should have exercised her executive clemency authority more broadly. *Delaney v. Shobe,* 235 F. Supp. 662, 667 (D. Or. 1964) ("The executive's prerogative of reprieve, commutation and pardon are at the Governor's own discretion to be exercised without limitation, except in good faith, and for which [she] owes no accounting."). The Oregon Court of Appeals recently confirmed that in Oregon "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Marteeny v. Brown,* 321 Or. App. 250, 291 (2022), *review denied,* 370 Or. 303 (2022).

Plaintiffs appear to acknowledge that executive clemency cannot form the basis of any of their claims. Plaintiffs state that they do not challenge "any particular decision" that Governor Brown "made in the exercise of her release, clemency, of reprieve authority." (Dkt. 441 Pl's Mot. To Compel at 4.) But in the same paragraph, Plaintiffs argue that Governor Brown's "decision not to release AICs from ODOC custody" violated the Eighth Amendment. (*Id.*) Despite Plaintiffs' ambiguous briefing, a clear pattern emerges from their deposition questions. Plaintiffs' theory is that social distancing was not always possible in ODOC facilities. (12/19/2022 Severe Dep. at 15:11-16:25, Jindal Decl. Ex. 2.) Plaintiffs believe that Governor Brown should have set a "goal" or "target" population number that would have permitted social distancing at all times and in all settings, and then released the number of AICs necessary to

reach that goal or target. (*Id.* at 163:25-164:10.) Conversely, Plaintiffs fault the Governor's Office for "balancing" (*id.* at 166:3-19) other public safety goals (e.g., history of person crimes, housing plan on release) when formulating criteria for early release. As shown, this theory is barred by numerous immunity doctrines. It would be an astounding departure from precedent to compel the deposition of an Oregon governor and submit her to questioning over the manner in which she exercised her purely discretionary, constitutional authority to make clemency decisions.

Similarly, the closure of two ODOC facilities in late 2021 cannot form the basis for any of Plaintiffs' class claims.[4] The closure of these two facilities were not "systemwide" policies that persisted "throughout the class period." (Dkt. 377 Op. and Ord. at 33-34.) ODOC closed these facilities at the end of the class period and their closure would affect a small minority of class members. Indeed, each of the named Plaintiffs contracted COVID-19 before the closure of Mill Creek and Shutter Creek and thus cannot trace their infections to the closure of these facilities.[5] The complaint does not mention these facility closures, nor did Plaintiffs' class certification motion. (*See* Dkt. 282 Sixth Am. Compl., Dkt. 154. Pl's Mot. For Provisional Class Certification.) This theory is not essential to Plaintiffs' claims and is not the proper subject of a gubernatorial deposition. *Givens v. Newsom*, No. 2:20-CV-0852-JAM-CKD, 2021 WL 65878, at *7 (E.D. Cal. Jan. 7, 2021) (denying the deposition of a former public health officer where deposition would be "fishing expedition" regarding issues not raised by pleadings).

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[4] Mill Creek Correctional Facility closed on June 30, 2021 and Shutter Creek Correctional Institution closed on December 30, 2021. https://www.oregon.gov/doc/about/pages/history.aspx.

[5] *See* Dkt. 206 Decl. of Felisha Ramirez in Support of Pl's Mot. For Class Certification ¶ 5 noting COVID-related death on January 22, 2021), Dkt. 207 Decl. of Gary Clift in Support of Pl's Mot. For Class Certification ¶ 8 (noting positive test in late-September 2020), Dkt. 208 Decl. of Paul Maney in Support of Pl's Mot. For Class Certification ¶ 8 (noting positive test on December 27, 2020), Dkt. 209 Decl. of Sheryl Sublet in Support of Pl's Mot. For Class Certification ¶ 8 (noting positive test on January 9, 2021), Dkt. 210 Decl. of David Hart in Support of Pl's Mot. For Class Certification ¶ 7 (noting positive test on March 14, 2020), Dkt. 211 Decl. of Theron Hall in Support of Pl's Mot. For Class Certification ¶ 9 (noting COVID-19 infection in April 2020).

At most, facility closures and early releases are "arguably relevant" background regarding the overall prison population in ODOC facilities. Plaintiffs already have ample discovery about these background facts. Plaintiffs have received the number of AICs released, the identities of the individuals released, and the dates of their release. The dates of facility closures and the number of AICs affected by the closures are matters of public record and are also the subject of document discovery.

2. Governor Brown does not have unique information that can be gathered only from her.

Even if facility closures and early release were essential to Plaintiffs' claims, a deposition of Governor Brown would still be inappropriate because Plaintiffs could have obtained the information they seek from other sources. As the district court explained in *Coleman*, "when the Governor acts within the parameters of [her] official duties by, for example, issuing orders or proposing reform legislation, it is likely that other lower-ranking members of his office or administration would have relevant information about [her] actions." *Coleman*, 2008 WL 4300437, at *4. Except for the two deponents at issue in this motion, Defendants made available for deposition every Governor's Office official that Plaintiffs requested, including Governor Brown's former chief of staff. These individuals answered Plaintiffs' questions regarding facility closures and executive clemency and Plaintiffs' motion does not identify any information they did not receive from these sources.

a. Governor Brown does not have unique information about Governor's Office policies or the efficacy of social distancing.

Plaintiffs' motion fails to identify any information that they need from Governor Brown that they could not or did not receive through other methods. Instead, Plaintiffs merely list various decisions Governor Brown "made" or was "personally involved in" as the "head of state, overseeing all state agencies." (Dkt. 441 Pl's Mot. To Compel at 8.) Similar statements could be made about any high-level executive policy and if accepted would subject every governor to depositions about every executive decision. Courts in the Ninth Circuit routinely reject assertions of personal involvement in high-level policy as justifying the deposition of a governor. *See, e.g.*, *Givens*, 2021 WL 65878, at *5. ("[M]erely asserting personal involvement in a

contested decision is not sufficient, alone, to deny deposition protection" under the deposition privilege). Courts in the Ninth Circuit also routinely reject attempts to depose even department-level government officials regarding prison conditions based on the mere allegation that the officials had supervisory and oversight authority over prisons. *See, e.g.*, *Sarnowski v. Peters*, No. 2:16-CV-00176-SU, 2017 WL 4467542, at *4 (D. Or. Oct. 6, 2017); *Est. of Levingston v. Cnty. of Kern*, 320 F.R.D. 520, 526 (E.D. Cal. 2017); *Est. of Silva by & through Allen v. City of San Diego,* No. 18cv2282-L 2021 WL 211613, at *1 (S.D. Cal. Jan. 21, 2021); *Greer v. Cnty. of San Diego,* No. 19-CV-378-JO-DEB, 2022 WL 2134601 (S.D. Cal. June 14, 2022), at *1; *Arizmendi v. City of San Jose*, No. C08-05163 JW (HRL), 2010 WL 1459867, at *3 (N.D. Cal. Apr. 7, 2010).

Plaintiffs also assert that they want to depose Governor Brown about her general "understanding of the risk of COVID-19" and "efficacy" of "safety measures" such as social distancing. (Dkt. 441 Pl's Mot. To Compel at 9-10.) But Governor Brown does not have "unique" firsthand information about the riskiness of COVID-19 or the efficacy of social distancing. (*Id.* at 5.) Plaintiffs asked numerous deponents whether social distancing was possible in prisons, and their motion suggests that they would like to ask Governor Brown this same question. *See e.g.* 3/2/2023 Blosser Dep. at 64:2-64:21, Jindal Decl. Ex. 1., 12/19/2022 Severe Dep. at 15:11-16:25, Jindal Decl. Ex. 2, 1/18/2023 Peters Dep. at 34:4-35:21, Jindal Decl. Ex. 3. But the deponents answered the question directly, explaining that social distancing would be difficult in some prison settings (e.g., medical settings) but could be achieved in other prison settings. (*Id.*) There is no reason why Plaintiffs need to ask Governor Brown this same generic question, which numerous other executive branch officials have already answered.

b. The footnoted quotations at the end of Plaintiffs' motion do not reveal the existence of unique information in Governor Brown's possession.

Plaintiffs also include in their motion various footnoted quotations, but these quotations also do not establish that Plaintiffs are missing any pertinent information. In general, Plaintiffs asked witnesses about conversations they were not a party to, then cited their lack of knowledge as some sort of evidentiary deficiency. But the full record shows that Plaintiffs received the

pertinent information elsewhere. For instance, Plaintiffs fault Mr. Blosser for failing to remember if he forwarded an October 2020 letter from the federal public defender's office to Governor Brown. (Dkt. 441 Pl's Mot. To Compel at 9 n.17.) But in the full text, Mr. Blosser explained that if he had forwarded the letter to the Governor, it would be reflected in his emails and that Mr. Severe, not him, would have discussed the letter with Governor Brown. (3/2/2023 Blosser Dep. at 45:10-50:25, Jindal Decl. Ex. 1.) When asked, Mr. Severe testified that he had personally discussed the letter with Governor Brown, and he recounted the conversation. (12/19/2022 Severe Dep. at 178:20-180:20, Jindal Decl. Ex. 2.) Plaintiffs do not identify a single piece of information they are missing from this exchange. Nor do they explain why Mr. Blosser's lack of participation in this conversation between Governor Brown and Mr. Severe somehow justifies the deposition of Governor Brown.

Plaintiffs also asked various witnesses about whether any person had ever conveyed information to the Governor's Office at any time. The witnesses were careful to explain that they could only speak to their own personal knowledge. Plaintiffs now use the witnesses' careful responses to these broadly-worded questions as evidence of a deficiency. For instance, Plaintiffs asked Mr. Blosser—who left the Governor's Office in October 2020—"Did the Governor or the Governor's Office *ever* talk to DOC about the possibility of using mothballed facilities or unused space?" (Dkt. 442-10 Blosser Dep at. Pages 91:25-92:5 (emphasis added).) Plaintiffs fault Mr. Blosser for being careful to limit his answers to his tenure by responding "I don't know. Not that I remember being witness to." Plaintiffs do not explain why Mr. Blosser's decision to clarify that he could only speak to conversations he witnessed was somehow deficient or inappropriate. To the extent Plaintiffs need information after Blosser's tenure, Plaintiffs also deposed Mr. Severe—who remained in the Governor's Office throughout the pandemic. And Plaintiffs could have deposed Mr. Blosser's successor but chose not to. The unamplified footnotes at the end of Plaintiffs' motion do not satisfy Plaintiffs' burden of identifying essential, unique information that can only be gathered from Governor Brown.

c. **Governor Brown does not have unique information about her meetings with Director Peters, because those meetings were attended by other staff members.**

Nor does Director Peters's recollection of her conversations with Governor Brown justify taking a deposition of Governor Brown. (1/18/2023 Peters Dep. at 26:6-27:21, Jindal Decl. Ex. 3.) Director Peters testified that Mr. Severe was her "primary point of contact at the Governor's Office. (*Id.* at 25:5-27:21) She would consult with him "first" before elevating an issue to the Governor's chief of staff and eventually Governor Brown herself. (*Id.*) Director Peters testified that she had fewer than six conversations with Governor Brown about COVID-19 issues. (*Id.* at 26:6-22.) Peters could not recall "specifics" about those conversations, only that they covered COVID-19 issues. (*Id.* at 28:4-23) But Director Peters also testified that ODOC and Governor's Office staff attended those meetings, including Director Steward, Mr. Blosser, and Mr. Severe. (*Id.* at 27:6-21.) Plaintiffs deposed these other witnesses, and they answered Plaintiffs' questions about meetings between Director Peters and the Governor's Office. For instance, Director Steward testified that she was part of conversations about implementing the early release criteria created by the Governor's Office but not conversations about formulating the underlying criteria. (3/17/2021 Steward Dep. at 80:1-81:15, Jindal Decl. Ex. 5.) Director Steward also described a briefing by Director Peters to Governor Brown on population reduction in Spring 2020. Plaintiffs asked Director Steward detailed questions about this briefing, and Director Steward answered them. (*Id.* at 30:14-32:25.) Director Steward also provided the names of everyone that attended this briefing, and Plaintiffs had the opportunity to seek additional testimony from these witnesses about the briefing. (*Id.*) Plaintiffs could have asked Director Steward about other ODOC meetings with Governor Brown, but they chose not to.

Plaintiffs also did not ask Mr. Blosser or Mr. Severe about direct meetings between Governor Brown and Director Peters. Plaintiffs asked Mr. Blosser and Mr. Severe relatively few questions about their communications with Director Peters, and Mr. Blosser and Mr. Severe answered the questions they were asked. (12/19/2022 Severe Dep. at 12:21-13:11, Jindal Decl. Ex. 5.) There is no reason to permit the deposition of Governor Brown regarding her few

interactions with Director Peters. Plaintiffs have made no showing that the meetings are essential to their claims, and Plaintiffs have already had the opportunity to depose other witnesses regarding communications between Director Peters and the Governor's Office.[6]

d. Plaintiffs did not exhaust written interrogatories as an alternative to a deposition.

Also, Plaintiffs motion should be denied because they did not attempt to gather any unique, firsthand knowledge from Governor Brown through written interrogatories. Plaintiffs served six interrogatories on the Governor's Office and those six interrogatories requested information about the formation and implementation of high-level policies. Plaintiffs' interrogatories did not seek specific factual information uniquely within Governor Brown's possession. Thus, even if Plaintiffs' motion had identified unique, essential information in Governor Brown's possession, the Court should still deny the motion because Plaintiffs failed to seek that information through interrogatories.

C. The deposition privilege protects Governor Brown even though she has left office.

Separately, Plaintiffs are wrong to suggest that the deposition privilege ceases to protect Governor Brown now that she has left office. The protections afforded by the deposition privilege apply even after a high-ranking official has left office. *See Greer*, 2022 WL 2134601, at * 2; *Givens*, 2021 WL 65878at *8; *K.C.R. v. Cty. of Los Angeles*, No. CV 13-3806 PSG (SSx), 2014 WL 3434257, at *3 (C.D. Cal. July 11, 2014); *Sargent*, 2013 WL 1898213 at *3 n.2 (interests protected by deposition privilege doctrine "survive[] leaving office"). As such, courts routinely deny requests to take the deposition of a former high-ranking government official after they have left office – even in cases where the former official is a named defendant. *See Greer*, 2022 WL 2134601 (denying motion to compel the deposition of the former San Diego County Sheriff); *Givens*, 2021 WL 65878 at *6-*7 (granting protective order to bar the depositions of the former California Highway Patrol Commissioner and the former Public Health Officer).

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[6] Plaintiffs are also taking a second deposition of Director Peters on April 21 and may learn additional information regarding Director Peters's interactions with Governor Brown in that deposition.

The Ninth Circuit recently held that the deposition privilege applies to former government officials, in that case a former cabinet secretary. The Ninth Circuit specifically considered and rejected the argument Plaintiffs make in their motion that the prospect of post-tenure depositions would not interfere with official duties, explaining that "[t]he threat of having to spend their personal time and resources preparing for and sitting for depositions could hamper and distract officials from their duties while in office." *In re U.S. Dep't of Educ.*, 25 F.4th 692, 705 (9th Cir. 2022). The contrary rule that Plaintiffs derive from an unpublished, district court case in Mississippi is not the law in the Ninth Circuit. (Dkt. 441 Pl's Mot. To Compel at 6 (citing *Jackson Mun. Airport Auth. v. Reeves*, 2020 WL 5648329, at *3 (S.D. Miss. Sept. 22, 2020).)

VIII. The Court should bar the deposition of attorney Kevin Gleim because any testimony he could provide about the application of early release criteria in individual cases would be irrelevant, privileged, or redundant.

The Court should also issue a protective order barring the deposition of Kevin Gleim, a former legal counsel for the Governor's Office. FRCP 26(b)(1) only permits discovery on "nonprivileged matter[s]" that are "relevant to" the claims or defenses and "proportional to the needs of the case." Depositions are generally limited to questions that seek relevant information. *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 313 (D. Nev. 2019), *aff'd sub nom. V5 Techs., LLC v. Switch, LTD.*, No. 2:17-CV-2349-KJD-NJK, 2020 WL 1042515 (D. Nev. Mar. 3, 2020). Where a litigant seeks to depose a witness regarding irrelevant or privileged issues, a court should issue a protective order to prevent the deposition. *See, e.g.*, *Home Sav. Bank F.S.B. by Resol. Tr. Corp. v. Gillam*, 952 F.2d 1152, 1158 (9th Cir. 1991) (affirming district court's protective order denying deposition on irrelevant issues). Here, a deposition of Gleim is not appropriate because his testimony is (1) irrelevant, (2) privileged, and (3) not proportional to the needs of the case.

Mr. Gleim's testimony is irrelevant to the claims in this case for numerous reasons. For the most part, Mr. Gleim worked with ODOC to *implement* Governor Brown's commutation decisions. (3/20/2023 Frener Dep., 56:20-78:20, Jindal Decl. Ex. 4.) But Plaintiffs assert that Governor Brown should have "more broadly" exercised her authority when *selecting* criteria for early releases. (Dkt. 441 Pl's Mot. To Compel at 3.) Mr. Gleim's testimony regarding applying

early release criteria to individual AICs would be irrelevant to Plaintiffs' theories. Also, as shown, Plaintiffs' complaint and class certification motion did not assert the Governor's failure to issue more commutations as a basis for class-wide liability. Regardless, Plaintiffs could not have asserted such a theory because the Governor's clemency powers are discretionary acts that cannot be the basis of federal damages claims. *See Burnett v. Fallin,* 2018 WL 4376513, at *4 (W.D. Okla. June 5, 2018) (Governor's alleged refusal to use clemency powers to address overcrowding in state's prisons was not cognizable under the Eighth Amendment); *see also Greenholtz,* 442 U.S. at 7. (holding there is "no constitutional or inherent right . . . to be conditionally released before the expiration of a valid sentence"). Thus, the testimony Plaintiffs seek from Gleim is irrelevant to this case.

Conversely, any testimony that Mr. Gleim would have regarding internal Governor's Office deliberations would be privileged. *See Rojas v. Marko Zaninovich, Inc*, No. 1:09-CV-00705 AWI JLT, 2011 WL 2636071, at *4 (E.D. Cal. July 5, 2011) ("Defendant fails to demonstrate that the non-privileged information that could be gained from deposing the lawyer would add to, rather than duplicate—the quantum of information already known on this topic."). Plaintiffs appear to acknowledge this fact, noting in a footnote that they only seek to depose him regarding external communications with ODOC, not internal communications with Governor Brown. (Dkt. 441 Pl's Mot. To Compel at 3 n.2)

Finally, any scant relevant, non-privileged testimony that Gleim could provide would not be proportional to the needs of the case. Again, at most, early release in Oregon provides "arguably relevant" background regarding the makeup of ODOC's prison population. Plaintiffs have already received ample discovery regarding the population of ODOC's prisons, the exact identities of the AICs released, the dates of their release, and the reasons for their release. Plaintiffs have also taken 42 depositions, including numerous depositions of ODOC and Governor's Office officials regarding the early release criteria. And Defendants responded to interrogatories regarding the early release criteria. Further, Former Assistant Director Frener already testified about ODOC's communications with Gleim regarding early release, and any internal discussions Gleim had with the Governor's Office would be privileged. (3/20/2023

Frener Dep., 56:20-78:20, Jindal Decl. Ex. 4.) Plaintiffs do not and cannot identify any additional information they need from a Governor's Office attorney regarding early releases that they have not received from the dozens of depositions they have already taken on this same topic.

CONCLUSION

Defendants respectfully request the Court deny Plaintiffs' motion to compel and grant a protective order barring the depositions of former Governor Kate Brown and Kevin Gleim.

DATED this 17th day of April, 2023.

ELLEN ROSENBLUM
ATTORNEY GENERAL
FOR THE STATE OF OREGON

By: *s/ Anit K. Jindal*

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CERTIFICATE OF COMPLIANCE WITH L.R. 7-2(b)(2)

I certify that this brief complies with the applicable word-count limitation under L.R. 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 6,973 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of authorities, signature block, and any certificates of counsel.

DATED this 17th day of April, 2023.

s/ Anit K. Jindal
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and FELISHA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of other similarly situated, Plaintiffs, v. STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL, Defendants.	Case No. 6:20-cv-00570-SB **DECLARATION OF ANIT K. JINDAL IN SUPPORT OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND RESPONSE TO MOTION TO COMPEL**

I, Anit K. Jindal, declare:

1. I am an attorney with Markowitz Herbold PC, counsel of record for Defendants, in the above-captioned matter. I make this declaration of my own personal knowledge. The following statements are true and correct and, if called upon, I could competently testify to the facts averred herein.

2. On November 23, 2022, the Court partially granted defendants' motion for a protective order barring plaintiffs from taking Governor Brown's deposition while in office. Since that time, plaintiffs have taken depositions from 18 witnesses produced by defendants, including. Witnesses include Governor Brown's former chief of staff Nik Blosser, Governor Brown's Public Safety Policy Advisor Constantin Severe, and Governor Brown's Senior Health Policy Advisor Tina Edlund; as well as former OHA Director Patrick Allen, former ODOC Director Colette Peters, acting ODOC Director Heidi Steward (who plaintiffs deposed twice); OHA State Health Officer and State Epidemiologist Dr. Dean Sidelinger, Senior Epidemiologist Orion McCotter, and Senior Health Advisor Dr. Ann Thomas; and ODOC employees Jessica Freeburn, Greg Jones, Jeffrey Wise, Rob Persson, Dr. Warren Roberts, Mike Gower, Dr. Christopher DiGiulio, Nathaline Frener and Martin Imhoff.

3. Plaintiffs have noticed the additional depositions of Kevin Gleim, a former legal counsel for the Governor's Office, for April 17, 2023, Director Colette Peters for April 21, 2023, and Steve Robbins, former Chief Financial Officer for the Department of Correct for April 26th, 2023.

4. In response to Requests for Production Nos. 119, 171, 176-77, 179-80, 181-82 defendants have produced documents regarding the criteria the Governor's Office used to determine which AICs obtained early release.

5. Plaintiffs have served defendants with 43 additional document requests since January 27, 2023.

6. Defendants have produced emails from Governor's Office officials pertaining to COVID-19 policies, handwritten notes from Governor's Office staff members, and public reports from the Governor's Office regarding the various policies at issue in this case. In total

Defendants have produced over 240,000 documents in response to the 139 requests served by February 2, 2022, and are continuing to collect and produce additional documents in response to the requests served in the last two months.

7. Attached are true and correct copies of the following documents:

Exhibits	Date	Description
Exhibit 1	3/2/23	Excerpt of the Deposition of Nik Blosser
Exhibit 2	12/19/22	Excerpt of the Deposition of Constantin Severe
Exhibit 3	1/18/23	Excerpt of the Deposition of Colette Peters
Exhibit 4	3/20/23	Excerpt of the Deposition of Nathaline Frener
Exhibit 5	3/17/21	Excerpt of the Deposition of Heidi Steward
Exhibit 6	6/25/21 – 6/26/21	Compilation of Letters from Governor Brown to the Legislature re Reprieves, Commutations, and Pardons MANEY-768225 - MANEY-768277

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 17th day of April, 2023.

s/ Anit K. Jindal
Anit K. Jindal, OSB #171086

1437689

Deposition of:
Nik Blosser

March 2, 2023

Paul Maney; et al.
vs.
State of Oregon; et al.

Case No.: 6:20-cv-00570-SB

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF OREGON
3 EUGENE DIVISION
4
5 PAUL MANEY; GARY CLIFT; GEORGE NULPH;
6 THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and
7 FELISHIA RAMIREZ, personal representative for the
8 ESTATE OF JUAN TRISTAN, individually, on behalf of a
9 class of others similarly situated,
10 Plaintiffs,
11 vs Case No. 6:20-cv-00570-SB
12 STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI
13 STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN
14 JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,
15 Defendants.
16
17 DEPOSITION OF NIK BLOSSER
18 Taken in behalf of the Plaintiffs
19
20
21 BE IT REMEMBERED THAT, the deposition of Nik
22 Blosser was taken before Mary Jacks, Court Reporter
23 and Notary Public, on Thursday, March 2, 2023,
24 commencing at the hour of 1:00 p.m., at the location
25 of 1455 SW Broadway, Suite 1900, Portland, Oregon.

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16 Adam Gregg
17 Sarah Osborne
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21
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24
25

1 EXAMINATION INDEX

2 EXAMINATION BY: PAGE NO.

3 Ms. Dahab 6

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6

7

8

9

10 EXHIBIT INDEX

	EXHIBIT NO.	DESCRIPTION	PAGE NO.
11			
12	1	E-mail in re: COVID-19 in prisons	41
13		follow-up	
14	2	E-mail in re: FPD Lisa Hay	45
15	3	Governor's incoming correspondence	45
16	4	E-mail in re: A few questions	51
17	5	Letter dated 6/12/20 to Colette Peters	67
18	6	Oregon Corrections Population Forecast	84
19	7	E-mail in re: Help	84
20	8	E-mail in re: DOC Forecast 202010	85

21

22

23

24

25

1 A. Yes.
2 **Q. Were you -- do you recall whether you were in**
3 **that meeting?**
4 A. I don't.
5 **Q. Okay. You can set that aside. That's all the**
6 **questions I have about that document. Found another**
7 **couple documents.**
8 **(Whereupon, Exhibits 2 and 3 were marked.)**
9 BY MS. DAHAB:
10 **Q. Mr. Blosser, if you'll take a look at 2 and 3.**
11 A. Do you want me to read this whole --
12 **Q. I will say with respect to that packet, the --**
13 **what I want you to look at is the front page and then**
14 **just the letter from Lisa Hay, which is the first --**
15 A. From Lisa Hay?
16 **Q. Yeah.**
17 A. Okay.
18 **Q. Okay.**
19 A. Am I supposed to assume that the claims in here
20 are all accurate or do I --
21 MS. HONORE: No.
22 BY MS. DAHAB:
23 **Q. The claims in this letter from Lisa Hay?**
24 A. Yeah.
25 **Q. Well, we'll get there in a second.**

1 A. Okay.
2 **Q. The first -- the first document that you looked**
3 **at was a document that's numbered 764792?**
4 A. Yeah.
5 **Q. And that's an e-mail from the Federal Public**
6 **Defenders Office?**
7 A. Yeah.
8 **Q. To you with a letter from Lisa Hay attached?**
9 A. Yeah.
10 **Q. And then the second document is a packet --**
11 **packet of correspondence, I assume, that came to the**
12 **Governor's Office at that time, and included in that**
13 **packet is Lisa Hay's letter.**
14 **Does that look right to you?**
15 A. I don't -- I don't remember seeing this cover
16 letter, but that's what it appears, yes.
17 **Q. Okay. Have you seen this letter from Lisa Hay**
18 **before?**
19 A. It rings a very distant bell but I don't know
20 that I have read it from front to back until now.
21 **Q. Okay.**
22 A. This is the kind of thing, like, generally I
23 would have forwarded to Constantin or Dustin in this
24 case if -- and it sounds like -- looks like Dustin
25 was on the original sentence so I would have probably

1 assumed he was dealing with it.

2 **Q. Okay. So had Dustin not sent this or forwarded**

3 **on -- this is the kind of thing that you would**

4 **typically forward, you said, to him or to**

5 **Constantin --**

6 A. Yeah.

7 **Q. -- public safety advisor?**

8 A. Yes.

9 **Q. Is -- the letter is addressed to**

10 **Governor Brown.**

11 **Would you have forwarded this to Governor Brown**

12 **at any point?**

13 A. I don't know. I mean, I think that would be in

14 my e-mail. It would depend on the issue and the

15 letter and the circumstance. Sometimes I would have

16 forwarded things to her and sometimes not. This --

17 this is not an automatic, probably, but it could have

18 been.

19 **Q. And what kinds of things would have been an**

20 **automatic?**

21 A. I think it's really hard to give a general

22 statement on that because it really comes down to

23 that specific situation, the day. Like, if she had

24 asked me about something the day before and then I

25 get something on it, that would have been more

1 relevant. I think generally what I -- what I would
2 not want to do is put something in front of her that
3 we hadn't, sort of, vetted or gotten to the bottom of
4 because we know if she saw something like this she
5 would ask questions about, you know, what exactly
6 happened. And so I would have wanted Constantin --
7 so in this case, if we got a letter like this, I
8 would probably want Constantin and Dustin to get to
9 the bottom of what actually happened here so that
10 she -- then we could present it to her. It's not so
11 much that she wouldn't see this letter eventually.
12 It's just I would generally prefer to have her have
13 the information with the additional work and judgment
14 that our staff would provide to her.
15 **Q. Okay. Did you ask Constantin or Dustin to run**
16 **down what actually happened here in response to**
17 **getting this letter?**
18 A. I don't remember if I did or not, but I will --
19 I probably would have assumed that since Dustin
20 forwarded me this e-mail that he was doing it. If I
21 didn't -- if there's not an e-mail me directing him
22 to do that, I probably would have assumed that he --
23 it's pretty clear -- I think you get a rhythm of
24 working together where you know if it's a question
25 related to encouraging more commutations, for

1 example, which this letter does, we know that Dustin
2 is in charge of that. So it's only generally in
3 areas where it's not totally clear who's in charge
4 that I would sometimes ask for someone to do
5 something.
6 **Q. To your knowledge, did the -- was there any --**
7 **did Dustin or Constantin or anyone else in the**
8 **Governor's Office take any steps to run down -- to**
9 **sort of fact-check this letter and run down some**
10 **additional information to vet it?**
11 MS. HONORE: Objection, asked and
12 answered.
13 THE WITNESS: Yeah, this was around -- it
14 looks like this -- looks like we got this -- I mean,
15 I'm looking at the letter here. It's early October.
16 And I'm trying to remember what was going on at this
17 period of time because at this period of time, I was
18 more focused on concern that -- that Donald Trump
19 would take over our National Guard because he was
20 going to lose the election. And I was trying to
21 figure out -- that was the public safety space I was
22 operating in at this particular time. And then
23 probably around this time or later I was approached
24 for my next role at the transition team that I was
25 moved onto. So just giving you sort of like a

1 mindset of what's -- what was happening at this time.
2 But it would have been my expectation, I guess I
3 would say, that, yes, this was a serious letter.
4 Dustin and Constantin should look into it.
5 BY MS. DAHAB:
6 **Q. Okay. Do you know whether the Governor has**
7 **ever read this letter?**
8 A. I don't know.
9 **Q. Okay. You mentioned the date of this letter,**
10 **which is October 7th, 2020.**
11 A. Yeah.
12 **Q. And to put us in the -- in the timeline of the**
13 **pandemic, the pandemic started in March of 2020, and**
14 **vaccines rolled out in late 2020, early 2021.**
15 **Does that sound right?**
16 A. Sounds right.
17 **Q. Okay. So this was pre-vaccines?**
18 A. Yeah.
19 **Q. Do you have any recollection of what the --**
20 **what COVID-19 case numbers looked like in the**
21 **corrections setting at this time?**
22 A. I don't recall just even generally where we
23 were in the pandemic at this particular time.
24 **Q. Okay. That's all the questions I have about**
25 **that letter.**

1 A. Right.
2 **Q. Was six feet of social distancing possible in**
3 **Oregon prisons?**
4 A. I don't know. I didn't go inspect every prison
5 to see, but I think in theory, the combination -- I
6 mean, I'm sorry to give you the same answer but it's
7 sort of the -- if there's a case where you can't do
8 six feet of distance, like in a medical setting, then
9 they require masks. I mean, it's not just blanket.
10 These are all, like, very unique situations,
11 specialized situations. Medical setting is a perfect
12 example, whether it's in a corrections medical
13 facility or not. You can't do six feet so what do
14 you do? Well, you require masking. If you have any
15 symptoms you test. I mean, there's just different
16 things that you do.
17 So I guess I don't know how to answer the
18 question about did they think social distancing was
19 possible or not, because to me, that was never the
20 fundamental question. The fundamental question was,
21 could we try to keep people safe?
22 BY MS. DAHAB:
23 **Q. Okay. At this time in September, masking was**
24 **sort of an understood, effective strategy of**
25 **protecting against the spread of COVID-19?**

1 masking compliance. I mean, I don't want to guess,
2 so I guess I'll just say I don't recall. But it's
3 certainly possible that we had concerns because we
4 had broad concerns about compliance for masking, I
5 guess I'd say.
6 **Q. Okay. I don't have any other questions about**
7 **that document.**
8 **Okay. You've mentioned a couple times this**
9 **afternoon commutations and early releases. And I**
10 **think earlier you mentioned it was a relatively early**
11 **step the Governor's Office took relating to COVID-19.**
12 A. That's my recollection, yes.
13 **Q. Can you describe those -- those early steps**
14 **that you were referring to relating to specifically**
15 **early releases?**
16 A. Yeah. What I recall is we wanted to get data
17 on specifically, sort of, adults in custody who were,
18 you know, going to be released in the next six months
19 anyway, may have been medically fragile. And then
20 asked questions about did they have -- did they have
21 issues with discipline at the institution? Did they
22 have a place to go after they were released? And
23 then did they -- what were they in for? Were they in
24 for a person or a violent crime or not?
25 And I remember those being the attributes that

1 we really wanted to get data on to look at what would
2 be -- and then thinking about doing it in tranches.
3 What would be the -- how would we do the -- manage
4 these? And I think, you know, we didn't -- this was
5 all new to me so I wanted to really understand what
6 that would look like.
7 **Q. Okay. I'm going to hand you an exhibit here.**
8 **(Whereupon, Exhibit 5 was marked.)**
9 MS. DAHAB: I'll give you a minute to read
10 that.
11 THE WITNESS: Got it.
12 BY MS. DAHAB:
13 **Q. Have you seen this letter before?**
14 A. I'm pretty sure I would have looked at it and
15 reviewed it before it got sent, yeah.
16 **Q. Okay. Just for the record, we're looking at**
17 **Maney 490154 down there in the bottom right-hand**
18 **corner?**
19 A. Yeah.
20 **Q. And this is a letter from Governor Brown to**
21 **Colette Peters in June of 2020, requesting that DOC**
22 **perform a case-by-case analysis to determine a**
23 **potential --**
24 A. Yes.
25 **Q. -- to determine eligibility for early release?**

1 A. Yes.
2 **Q. Okay. And there's some bulleted -- there's a**
3 **bulleted list at the bottom.**
4 A. Right.
5 **Q. Is that -- you were just describing some sort**
6 **of --**
7 A. Right.
8 **Q. -- eligibility criteria.**
9 A. Exactly.
10 **Q. Are those the -- the factors you were**
11 **describing?**
12 A. Yes.
13 **Q. Okay? My first question -- and I think you**
14 **mentioned this was an early -- early step the**
15 **Governor's Office took. And through other**
16 **depositions we've taken in this case, I understand**
17 **there to have been a work group convened at some**
18 **point early on to address this; is that fair to say**
19 **or --**
20 A. Within the Governor's Office, you mean? Or,
21 like when you say "work group," you mean in the
22 agency?
23 **Q. Some sort of -- some sort of group convened to**
24 **determine what these eligibility criteria would be**
25 **and direct the Department of Corrections on how to**

1 **respond.**
2 A. Well, what I -- what I remember and what I
3 imagine would have happened is we would -- started
4 talking about this much before June 12 --
5 **Q. Okay.**
6 A. -- and trying to figure out how do we want to
7 enable this. And so Constantin probably would have
8 had the lead with Dustin on drafting this and
9 figuring out what these bullets are in here. I don't
10 remember a formal work group on it.
11 **Q. Right.**
12 A. But it was probably, you know --
13 **Q. Sure.**
14 A. -- a team of Dustin and Constantin and maybe a
15 couple others that were consulting with DOC, I think,
16 too.
17 **Q. What was the goal of this whole process?**
18 A. I think it's to reduce -- overall reduce the
19 population and keep people safe. And part of keeping
20 people safe is if people are at risk of COVID more in
21 the corrections facility than they would be on the --
22 released, then -- and it would be safe to release
23 them, then let's look at that.
24 **Q. Okay. And in terms of these eligibility -- the**
25 **bulleted list here, that sort of defines AICs**

1 **eligible for early release.**
2 A. Uh-huh.
3 **Q. Who -- who created that list? Were you**
4 **involved in that?**
5 A. I don't think I was involved in the creation of
6 it. This was probably -- I mean, what I -- my
7 assumption is it would have been Dustin and
8 Constantin working with DOC, but I don't know that I
9 have firsthand knowledge of who actually wrote those
10 words. But as I said before I even saw it, this was
11 the conversation we were having around these
12 attributes.
13 **Q. Was this -- you said the goal was at least**
14 **related to reducing the population in the -- in the**
15 **congregate setting and keeping people safe?**
16 A. Yeah.
17 **Q. Was that -- was that a -- was this whole**
18 **process done at the Governor's request or whose idea**
19 **was it that -- that the Governor needed to lead an**
20 **effort to reduce the prison population at this time?**
21 A. I mean, it could have been someone suggested it
22 but we would have only done it because the Governor
23 directed us to.
24 **Q. Okay. Okay. And was -- did she have any say**
25 **in what these -- did she have any say -- did she**

1 direct any of the eligibility criteria?
2 A. I don't know if she directed it or -- but she
3 clearly had read it and approved it before the letter
4 was sent.
5 Q. Okay.
6 A. Or my assumption is she did.
7 Q. And who -- who would know that with certainty,
8 Constantin Severe?
9 A. I think probably Dustin or Constantin.
10 Q. And what was your role in this process, if any?
11 A. My recollection is this was an example of
12 something that I was not the lead, quote, unquote,
13 "the lead on," but I was monitoring closely.
14 Q. Okay. And what does that mean?
15 A. It means I would have read the letter before it
16 went out. I would have participated in some
17 conversations but probably not all.
18 Q. How many adults in custody did the Governor
19 release early in this -- you know, as a part of this
20 process?
21 A. Yeah, I don't -- I don't know that number.
22 Q. Okay. Did you have a role in determining the
23 specific individuals that met these criteria and that
24 were eventually ordered released?
25 A. No.

1 **Q. Who would have been involved in that?**
2 A. Well, the way I -- what I remember and what
3 this letter says is we wanted DOC to do the analysis
4 and tell us who met these criteria so it didn't --
5 and then let's just do it on that group. We didn't
6 necessarily need to get into looking, like the normal
7 commutation process would -- would have.
8 **Q. And tell me the -- explain to me the difference**
9 **between this and --**
10 A. Well, I'm not an -- I'm not an expert on the
11 process that we would use. I didn't -- I wasn't
12 generally involved with the individual commutations,
13 but we were trying to do more than -- we wanted to
14 have them looked at case by case because they needed
15 to meet these criteria but we also wanted to try to
16 expedite this.
17 **Q. Okay. So was it DOC making the decision on who**
18 **to release or the Governor's Office making a decision**
19 **on who to release?**
20 A. Well, ultimately the Governor has to make the
21 decision but she's asking DOC to tell us who meets
22 these criteria.
23 **Q. Okay. And then how did she go about making the**
24 **ultimate decision?**
25 A. I don't remember exactly that. I don't

1 remember then after we got the response to this
2 letter -- what we got. That would have been a Dustin
3 and Constantin -- I think I would have been more
4 involved at this initial stage of how to think about
5 the criteria, and then the actual implementation of
6 it would have been more Dustin and Constantin.
7 **Q. Okay. Do you recall how you chose these**
8 **specific criteria?**
9 A. Well, I mean, the one thing I'll go back to is
10 the principle of trying to keep people -- the broad
11 principle of trying to keep people safe. So if you
12 are going to go from one congregate setting to
13 another very crowded congregate setting, that doesn't
14 necessarily achieve the goal. So I think the
15 question about -- so having a suitable housing plan
16 was -- was important. Also, you know, thinking about
17 clearly people who are at the end of their term and
18 aren't at risk for committing other crimes and have
19 health issues also, it would be better to keep
20 people -- keep those -- that group safe by probably
21 releasing them so --
22 During this period of time you're not safe
23 necessarily anywhere so it's sort of a balance of
24 like what's going to make the most sense for the
25 broadest number of people.

1 **there was a specific goal for, you know, how far to**
2 **reduce the population.**
3 A. Right.
4 **Q. Was there a consideration of certain goals or**
5 **certain -- certain goals for population reduction at**
6 **that time?**
7 A. I don't know. It's possible we had a goal. I
8 just don't remember what the goal was.
9 **Q. Okay.**
10 A. If we had one.
11 **Q. Okay. You can set that aside.**
12 **Do you recall being a part of any conversations**
13 **in the Governor's Office about the closure of certain**
14 **prison facilities?**
15 A. Yes.
16 **Q. Okay. Can you describe to me those -- your**
17 **role in those conversations or what those**
18 **conversations were?**
19 A. Yes. And I kind of alluded to this earlier,
20 but one of the things that the Governor does is
21 produce a recommended budget. And this was, I
22 believe, the year where on the even years she has to
23 propose a recommended budget by the fall to the
24 legislature for then the legislature to make final
25 decisions about the budget for the state. So part of

1 that process is figuring out the recommended budget
2 for all these agencies including Corrections.
3 And what I recall also is we -- I don't
4 remember the frequency, but there's prison forecasts
5 that are made by the state economist that are meant
6 to be pretty independent to looking at what is the
7 forecast for AICs and what do we need in terms of
8 space.
9 And I remember that the forecasts were, like,
10 dramatically very clear because intakes were down and
11 we were releasing folks early and that the data said
12 we actually can close up to three facilities and not
13 have an issue in terms of the population.
14 So from a budgeting perspective we took a look
15 at, okay, what made the most sense in terms of doing
16 that, just like we would in any other, you know,
17 budget setting.
18 **Q. And you said you could close facilities without**
19 **creating an issue for the population. What do you**
20 **mean by that? What sort of issue -- what do you mean**
21 **by creating an issue for the population?**
22 A. Well, I guess there's -- you know, each
23 facility has certain capacity and the forecast
24 implied we didn't need those. We had capacity and
25 didn't need to have -- we could close three

1 facilities and still have capacity.
2 **Q. Okay. Can you describe the process for**
3 **actually deciding which facilities you would close**
4 **and whether to actually close that facility?**
5 A. So this hadn't been done in a long time, at
6 least in my -- people didn't -- had not done this, so
7 my recollection was we asked Corrections -- well,
8 this forecast -- I mean, this was dialogue. This
9 forecast looks like you don't need all these
10 facilities. What do you think? Well, let us come
11 back to you. And then we asked Corrections to
12 make -- there was some matrix that they made in terms
13 of recommendations. I think a factor would have been
14 the age of the facility, the maintenance needed, and
15 ease of operation, cost of operation. Some
16 facilities are more efficient in terms of numbers of
17 corrections officers it takes to run it. So that
18 would be how we would look at it.
19 And then we would -- in this case, we talked to
20 the legislature first. We weren't actually clear who
21 had the authority to do it. We thought they would do
22 it. And then they told us, well, the Governor can
23 just put it in her budget. So that's -- that's what
24 we did. And I think I would just say, like, we knew
25 it takes -- it's not just an automatic thing. It

1 takes a period of time. It takes years -- years to
2 actually go through the process of closing. And I
3 think there was an assumption that we should start
4 down this path and see -- you know, obviously have
5 check-ins over time to see if it still was making
6 sense and the forecast was still showing that we
7 could close it.
8 **Q. Right. You mentioned some matrix for age of**
9 **facility, type of services the facility provided.**
10 **Is that the DOC matrix?**
11 A. Uh-huh.
12 **Q. Okay. For which facilities were you involved**
13 **in decisions to -- or in the process for closing?**
14 A. I don't know that I remember the names, but I
15 remember the three that we were looking most closely
16 at were the -- the one in Lakeview I want to say,
17 Warner Creek I think, the one in Salem, Mill Creek,
18 and then the one on the south coast, and then -- is
19 that Shutter Creek?
20 **Q. Shutter Creek.**
21 A. Okay. Those are the three that were ranked the
22 highest as -- made the most sense to close these
23 three.
24 **Q. Okay. And when you say made the most sense,**
25 **based on what?**

1 A. Based on that -- that matrix of, like, cost of
2 operations, age of facility, cost to keep it
3 maintained. There's also a factor frankly of -- from
4 a humanitarian perspective. If you want to have --
5 you want to have people -- adults in custody closer
6 to where -- where family might be and visitation
7 might be. And frankly, Lakeview is not that. So we
8 were, you know, just knowledgeable about what would
9 be -- you know, it's better for the folks inside if
10 they can have regular visitation, and I just know
11 it's more burdensome for folks to do that in the
12 Lakeview setting. So that was a -- I would say an
13 anecdotal factor in some of those, too, and south
14 coast as well.
15 **Q. The prison -- prison forecast --**
16 A. Yeah.
17 **Q. -- is that what you -- is that what you called**
18 **it? The --**
19 A. I think it's called the prison forecast. I
20 don't know. The state economist does it.
21 **Q. Yeah. Those prison forecasts consider -- what**
22 **sort of factors do those forecasts consider?**
23 A. I couldn't tell you. I just think they're
24 generally -- they've been doing it forever.
25 Generally pretty well accepted and that's what we

1 would, you know, rely on. We -- we have forecasts
2 for lots of things. Like, how many people are
3 forecasted to be on Medicaid? And that's how we set
4 a Medicaid budget. How many people are forecasted to
5 go to university of Oregon? That's how we factor
6 tuition. So, I mean, there's --
7 **Q. Sure.**
8 A. -- lots of forecasts.
9 **Q. In either the forecast or the Governor's Office**
10 **process for deciding which facilities to close and**
11 **when to close them, was the increased space available**
12 **in those facilities and the ability to use that space**
13 **to create social distancing, was that a factor --**
14 MS. HONORE: Objection, compound.
15 MS. DAHAB: -- in the process?
16 THE WITNESS: I think the way I would
17 answer that is, I do remember that -- I think it was
18 Mill Creek -- there was one of the facilities that
19 was actually the most constrained from a square
20 footage per adult AIC, but it wasn't so much that
21 that was -- we factored in COVID. It was just more
22 of a -- this is just not -- it's not the -- it's not
23 the, kind of, best practice today for a correctional
24 setting.
25 So I think my assumption at the time was

1 it wasn't a huge factor because we knew it would take
2 time to do this. And I don't know if we -- you know,
3 this was the beginning of a lengthy process to figure
4 out how to do it. And so I don't know. I think
5 maybe at that point we all hoped and felt like "maybe
6 COVID will be over any day now" kind of thing. So
7 but we also knew there would be time -- this wasn't a
8 knee-jerk decision every time to sort of see, okay,
9 how did the vaccines roll out? How did this work?
10 And, well, would this decision ultimately be made?
11 BY MS. DAHAB:
12 **Q. Okay. Do you know when Mill Creek was closed?**
13 A. Huh-uh.
14 **Q. Do you know when Shutter Creek was closed?**
15 A. Huh-uh.
16 **Q. Did you have a projected closure date for those**
17 **two facilities at the time that you were making the**
18 **decisions?**
19 A. I think there would have been a date assumed in
20 the Governor's budget that she proposed because
21 that's how you would factor in the cost but I don't
22 remember what those were exactly.
23 **Q. Okay. I'll tell you that Mill Creek closed in**
24 **July of 2021.**
25 A. Okay.

1 would have been a big deal that they needed to help
2 figure out how to work through, so I wouldn't call it
3 necessarily concerns but they had -- parts of it made
4 them nervous and required them to do new things that
5 were difficult.
6 **Q. Sure. But specifically related to COVID-19**
7 **they didn't come to you and say, "Hey, we have**
8 **concerns because we already have limited space in**
9 **this congregate setting and you are reducing it by**
10 **closing these facilities"? They didn't express that**
11 **kind of concern?**
12 A. I don't remember them expressing that to me,
13 but I also -- like I said previously, I think we
14 assumed this would take some time so it's possible
15 they expressed it after I left.
16 **Q. Sure. Who was your successor as chief of**
17 **staff?**
18 A. Gina Zejdlik.
19 **Q. Okay. And was Gina there while you were also**
20 **there as chief of staff?**
21 A. Yeah, she was a deputy chief of staff when I
22 was there.
23 **Q. Okay. What was her role as deputy chief of**
24 **staff?**
25 A. She was, sort of, the Governor's special fixer.

1 REPORTER'S CERTIFICATE
2
3 I, Mary Jacks, a professional court
4 reporter, do hereby certify:
5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth;
7 that any witnesses in the foregoing proceedings,
8 prior to testifying were placed under oath; that a
9 verbatim record of the proceedings was made by me
10 using machine shorthand which was thereafter
11 transcribed under my direction; further, that the
12 foregoing is a transcription thereof.
13 I further certify that I am neither
14 financially interested in the action nor a relative
15 or employee of any attorney of any of the parties.
16 IN WITNESS HEREOF, I have hereunto
17 subscribed my name this 15h day of March, 2023.
18
19
20
21

22 ____________________
23 Mary Jacks
24 Oregon Commission No. 1027581
25 Expires 09/13/2026

Deposition of:
Constantin Severe

December 19, 2022

Paul Maney; et al.
vs.
State of Oregon; et al.

Case No.: 6:20-cv-00570-SB

Constantin Severe

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF OREGON
3 EUGENE DIVISION
4
5 PAUL MANEY; GARY CLIFT; GEORGE
6 NULPH; THERON HALL; DAVID HART;
7 SHERYL LYNN SUBLET; and FELISHIA
8 RAMIREZ, personal representative
9 for the ESTATE OF JUAN TRISTAN,
10 individually, and on behalf of a
11 class of other similarly
12 situated,
Plaintiffs,
13 vs. No. 6:20-cv-00570-SB
14 STATE OF OREGON; KATE BROWN;
15 COLETTE PETERS; HEIDI STEWARD;
16 MIKE GOWER; MARK NOOTH; ROB
17 PERSSON; KEN JESKE; PATRICK
18 ALLEN; JOE BUGHER; and GARRY
19 RUSSELL,
Defendants.
20
VIDEO-RECORDED DEPOSITION
21 OF
CONSTANTIN SEVERE
22
DATE TAKEN: December 19, 2022
23 TIME: 9:00 a.m.
PLACE: 1455 S.W. Broadway, Suite 1900
24 Portland, Oregon
25 COURT REPORTER: Teresa L. Rider, CRR, RPR, CCR, CSR

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1 A. So, you know, going back to, you know, late
2 February, March 2020, you know, it's an unknown --
3 particularly at my level -- unknown exactly how big of a
4 risk COVID is.
5 I was working, per my job, with a number of the
6 emergency management-related agencies for the State. You
7 know, we were getting a lot of different reports. I was
8 at the emergency coordination center, which is kind of
9 our command control-type system within the State.
10 And, you know, I guess trying to -- I guess the
11 best that I could think of at that particular time is
12 that there were just a lot of unknowns of how -- how much
13 this virus, this pandemic was going to affect kind of the
14 broader society.
15 You know, obviously given folks in carceral
16 setting, there were concerns about how it would affect
17 adults in custody and, you know, the agency, Department
18 of Corrections, had set up their AOC and the Director
19 would kind of give me relatively high-level updates on
20 what they were doing.
21 **Q. Okay. So I take it because of all your other**
22 **responsibilities, you weren't participating in the**
23 **Department of Corrections' AOC.**
24 A. No, sir, I was not.
25 **Q. And you referred to the Director giving you**

1 **briefings. Was that Colette Peters?**
2 A. Yes, yes, sir. Director Peters did, as well as
3 the Assistant Director Steward and a former employee, Rem
4 Nivens, who I think was most of that time period, like,
5 the communications director, I believe.
6 **Q. I missed the name.**
7 A. Rem Nivens.
8 **Q. Were you getting reports from any of the**
9 **medical providers or medical personnel associated with**
10 **Department of Corrections?**
11 A. No, sir.
12 **Q. And I know that there are a lot of moving parts**
13 **in the machinery of government.**
14 **Am I correct that you were the conduit through**
15 **which the Governor would have received information from**
16 **Department of Corrections about COVID in the prisons?**
17 A. Generally I would say yes. I would say there
18 would also be, you know, if there's some sort of
19 intersection point between the agency and OHA, I think
20 the Governor had her own kind of separate conduit of
21 information through OHA, as well, or -- I mean, as well
22 as, you know, like particularly if Ms. Leslie was aware
23 of an issue, as well, just, you know, kind of what I
24 described would be the main ways that I would think that
25 the Governor would get information.

1 **masking strategy as a means of protecting adults in**
2 **custody?**
3 A. I would say -- I'm trying to remember. I know
4 there was kind of back and forth on the efficacy of
5 masking as a kind of a broader kind of preventative
6 measure for a little bit there kind of at the beginning
7 of the pandemic, the first few months.
8 But, you know,I would say by the summer of
9 2020, masking was a strategy kind of guidance, federal
10 level OHA, as a means at least to prevent the spread.
11 **Q. And it's common knowledge, isn't it, in the**
12 **Governor's office that you can't achieve social**
13 **distancing at Oregon state prisons?**
14 A. You know, I think what was, you know, what I
15 was aware of was that, you know, there were challenges to
16 accomplishing social distancing within, you know, our
17 carceral settings, both DOC and OYA, but my understanding
18 both agencies kind of took steps to try to accomplish
19 some social distancing. But it was tough and, you know,
20 just given the nature of, particularly DOC, it was really
21 hard.
22 **Q. We'll leave OYA, Oregon Youth Authority, and**
23 **the jails out of the discussion today. It is my**
24 **intention, unless it is important to you to draw a**
25 **distinction, but I don't need to inquire into those**

1 **things, so that you know. Let me ask it this way.**
2 **You were certainly aware that people in Oregon**
3 **prisons live and sleep less than six feet apart, correct?**
4 A. Yes.
5 **Q. And that was information that you would have**
6 **provided to the Governor, as well, I presume.**
7 A. To be honest, I don't know if I transmitted
8 that information to the Governor, you know, the
9 schematics or the breakdown of how people, like, you know
10 -- yeah.
11 **Q. Well, I'm asking it this way because I've seen**
12 **various statements along the lines of it's hard to**
13 **achieve social distancing in Oregon prisons.**
14 **You've seen statements like that, I imagine.**
15 A. Yes, sir.
16 **Q. In fact, it's impossible, isn't it?**
17 MS. HONORE: Object, ambiguous.
18 THE WITNESS: Yeah.
19 BY MR. SUGERMAN:
20 **Q. And do you know whether the Governor knew that**
21 **it was impossible?**
22 A. I mean, I don't know if anybody ever said it
23 exactly like that, like impossible, but it's really
24 difficult, particularly when you think about it started
25 with 14,500 people in custody in institutions.

1 **Q. And the meeting talking about prison closures**
2 **included who, to your recollection?**
3 A. That I don't know.
4 **Q. Let me ask it this way.**
5 **Was it with the Governor?**
6 A. That I wouldn't know. I would -- if I had to
7 guess, it's probably staff. And given how neat the
8 writing is, I think I'm encapsulating what we had already
9 decided, yeah.
10 **Q. I'm smiling because I absolutely understand**
11 **what you're saying about that, because I can see my own**
12 **chaotic notes or cleaner notes in much that same fashion.**
13 **Is it -- when you say with staff, you mean**
14 **Governor staff?**
15 A. Yes, sir, it would be Governor staff.
16 **Q. So as of August 5, '20, there's a plan that's**
17 **coming into place that would involve the closure of Mill**
18 **Creek and Warner Creek, correct?**
19 A. Mill -- I think Mill Creek was kind of a
20 consensus.
21 **Q. I think I misread, Warner Creek or Shutter**
22 **Creek.**
23 A. That's correct. So, yeah, it was either Warner
24 or Shutter Creek. There was pushback from both of the
25 communities around Warner Creek, so Lane County. The

1 Shutter Creek, it's located in Coos County, but there's a
2 significant amount of workforce that comes from Douglas
3 County, as well.
4 **Q. Roughly how many beds are in these facilities?**
5 A. Mill, I want to say was around 200. Warner
6 around 400 and Shutter was about 200 or so is my
7 recollection.
8 **Q. Again, I'm recognizing those are estimates, and**
9 **I'm not holding you to precise numbers.**
10 **During that discussion about the potential loss**
11 **of 400 beds or more, approximately, any discussion about**
12 **what that means for density among adults in custody?**
13 MS. HONORE: Object as to form.
14 THE WITNESS: So the conversation consisted of
15 larger Warner or Shutter Creek. The conversation kind of
16 revolved more around if there was an uptick in the AIC
17 population, and DOC would not be able to adjust
18 appropriately.
19 By that point in the pandemic, we had already
20 seen a significant decrease in the AIC population.
21 Intakes were down significantly from, you know, courts
22 were really closed down, particularly in the larger
23 counties. Multnomah County, in particular, they really
24 stopped sentencing people for a period of time there,
25 unless it was a pretty serious offense. So DOC, you

1 know, intakes were down, like on a month-to-month basis,
2 half as much, if not more, so we were, you know, like I
3 said earlier, DOC population during the pandemic was
4 14,500.
5 By that time in the pandemic, we had already
6 seen, you know, like a significant decrease in, you know,
7 between the Governor's early release, COVID-related
8 release and then the DOC population changes, there wasn't
9 as much of a conversation around, you know, around
10 density.
11 BY MR. SUGERMAN:
12 **Q. Okay. You noted the start population**
13 **approximately 14,000 plus or minus at the beginning of**
14 **the pandemic.**
15 **What's your recollection August, mid-August or**
16 **early August of 2020, approximate total adults in custody**
17 **population?**
18 A. You know, that I -- I don't really -- that I
19 don't recall, as well. I know where it kind of ended at
20 the low. It ended up at a low of around 12,000. And,
21 you know, and I know by August of '20 we, you know, we
22 were probably down to maybe around 13-something. That's
23 me kind of like outside the limit. It's a little too
24 specific for my recollection.
25 But what I could say is I know the population

1 was down significantly and, you know, kind of the prison
2 forecast was also trending downward significantly.
3 **Q. So as of this date, August 5, 2020, talking**
4 **about closure of these facilities, is there any**
5 **discussion of the COVID impact on the process of closing**
6 **these facilities?**
7 MS. HONORE: Object as to form.
8 THE WITNESS: Not so much, no. I'm trying to
9 kind of recall kind of the timeline, but at a certain
10 point once the Governor had announced her intention of
11 closing some of the facilities, DOC, you know,
12 particularly at Shutter and Mill Creek, they started
13 closing dorms, so -- I guess short answer is no.
14 MR. SUGERMAN: Let's go ahead and take a break
15 at this point.
16 It's 10:25. Is ten minutes sufficient or do
17 people need longer?
18 THE VIDEOGRAPHER: Off the record at 10:26.
19 (Off the record.)
20 THE VIDEOGRAPHER: Back on the record at 10:36.
21 BY MR. SUGERMAN:
22 **Q. Sir, back in the summer of 2020, what did you**
23 **understand the masking rule to be for corrections**
24 **officers and other employees working within Department of**
25 **Corrections' prisons?**

1 were thinking about this potential next group, the
2 timeline for this group to work?
3 A. I don't really recall, but I think that's
4 either the timeline for the group to operate or just how
5 long we would have before the decision point.
6 Q. Next bullet point is AIC scenarios and in
7 parentheses, vulnerable. I assume that the first
8 sub-part is 73 AICs, is that now serving Measure 11?
9 A. Maybe non-serving Measure, but --
10 Q. And then 269 not Measure 11?
11 A. Yeah. But using kind of a broader
12 encapsulation at that point.
13 Q. What's the difference between non-serving
14 Measure 11 and not Measure 11?
15 A. Yeah. In this particular context, I'm not
16 sure. I know -- when you're looking at it, you know,
17 pretty early on, you know, were fairly clear on doing
18 early releases of persons on person crimes.
19 The definition of person crimes, how DOC
20 categorizes person crimes versus how the statute defines
21 a person crime or sometimes the statutory language moves
22 around. Sometimes there can be a little fuzziness there.
23 So I think that's my possible way of kind of the
24 difference between them.
25 Q. This idea early on that you didn't want to

1 **release people convicted of person crimes with whatever**
2 **boundaries you put on that --**
3 A. Yes.
4 **Q. -- was that absolute?**
5 MS. HONORE: Object as to form.
6 THE WITNESS: I mean, I guess the Governor --
7 you know, we've established the Governor has really broad
8 clemency powers.
9 BY MR. SUGERMAN:
10 **Q. Sure.**
11 A. And there are people who would engage in the
12 individual clemency process. And so the Governor takes
13 in, like, a variety of reasons why she should provide
14 people clemency one-on-one, particularly when you can
15 kind of do that pretty robust with the individual
16 clemency process.
17 With these early releases, even at this time
18 relatively speaking small numbers, let's say, 73 AICs,
19 there's a limit how many you can do with individuals.
20 And the Governor was really clear in talking to our team
21 that she really was concerned about the AICs in custody
22 and took that risk really seriously and felt a lot of
23 duty around making sure that AICs in custody were out of
24 custody, at the same time, wanting to make sure that the
25 community was protected as much as possible from any

1 actions that were taken around the clemency.
2 So she always was really trying to make sure
3 that her team understood her values and making sure that
4 we were doing a 360 approach of balancing, you know, the
5 potential harm to AICs, and also mitigating any release
6 to the community, releasing people prior to their prison
7 sentence being terminated because they went wrong.
8 And even relatively early on, we were seeing
9 states release people out of custody early. Illinois,
10 they released people with person crimes, and there were
11 people who got out of custody and committed person crimes
12 subsequent to their release. It set back the whole --
13 kind of the whole purpose and caused some states to pull
14 back. She did not want that to happen in Oregon.
15 **Q. Was there consideration given to the age of the**
16 **offender at the time they committed a person crime versus**
17 **their age at this time?**
18 MS. HONORE: Object as to form.
19 THE WITNESS: No, no. The only time age came
20 in is sort of potentially -- one of the release criteria,
21 AICs of a certain age.
22 BY MR. SUGERMAN:
23 **Q. Continuing on this page, there's a bullet**
24 **point: Tie COVID releases to longer session reforms.**
25 **I assume that's about legislative possibility.**

1 A. I know there was concern about just --
2 particularly one, you know, having people transferring
3 inside the facilities. Excuse me.
4 **Q. Sure.**
5 A. There was concerns about transferring people
6 between facilities and potentially COVID positive AICs
7 who were non-symptomatic and spreading COVID.
8 And then, you know, potentially releasing
9 people out of custody who were COVID positive and
10 particularly the local county community health not being
11 aware and the agency not being informed.
12 Actually this piece makes me think it's
13 actually kind of 2020. It's probably fall 2020, because
14 there was a pretty big dip in how much COVID was going
15 around in our state the summer of 2020 and then started
16 in the fall of 2020.
17 **Q. And then let's look at 7129.**
18 A. Yes.
19 **Q. What are you noting here?**
20 A. Just looking at previous Governors and how much
21 -- how many grants of clemency they engaged in during
22 their time in office.
23 **Q. We touched on that before. Can you approximate**
24 **a date for this entry?**
25 A. No.

1 **Q. There's some numbers below the review of prior**
2 **Governors.**
3 **Are those numbers that you note there potential**
4 **releases for COVID?**
5 A. Are you talking about the 1742?
6 **Q. Yes.**
7 A. No, those are just -- yeah, people just go into
8 that bucket as no murder, sex offense, aggravated murder
9 within six months of release, individuals with person
10 crimes and non-person crimes and then total is 1742.
11 **Q. So that was one potential way of thinking about**
12 **a population --**
13 A. Yes.
14 **Q. -- that might get early release for COVID.**
15 A. Yes.
16 **Q. And that number at its largest after these**
17 **filters are applied is 1,742?**
18 A. Yes.
19 **Q. Good news. We're done with the notes, so it**
20 **should go quicker from here.**
21 **Mr. Severe, I've handed you, just to speed it**
22 **up, a total of unrelated emails. I'll ask you about each**
23 **of them in turn. They're in chronological order. I**
24 **figure we could go quicker to try to get through this.**
25 A. Okay.

1 **Q. Let's move to Exhibit 5, and this is an email**
2 **that starts with an email from Heidi Steward, 328213**
3 **through 214.**
4 A. Okay.
5 **Q. Okay. Thanks.**
6 **The email from Deputy Director Steward alludes**
7 **to a work group that will evaluate potential of releasing**
8 **individuals from DOC custody, correct?**
9 A. Yes.
10 **Q. This is April 7, 2020, correct?**
11 A. Yes.
12 **Q. How long did the process take to get through**
13 **this evaluation?**
14 MS. HONORE: Object as to form.
15 THE WITNESS: I would say it took a few months
16 would be my guess.
17 BY MR. SUGERMAN:
18 **Q. Okay. Were you in discussion with Deputy**
19 **Director Steward before she sent this email about the**
20 **email that she would send?**
21 MS. HONORE: Object as to form.
22 THE WITNESS: Not as to like her sending out a
23 communication, but just saying, hey, this is something
24 the Governor is thinking about, yes.
25 BY MR. SUGERMAN:

1 **Q. In April of 2020, April 7, 2020, did you have**
2 **an expectation of how long it would take to process -- go**
3 **through this process and determine how many -- who would**
4 **be released early?**
5 MS. HONORE: Object as to form.
6 THE WITNESS: No. This was something pretty
7 unprecedented in a couple of different ways because of
8 the pandemic and all the issues facing the state, and the
9 Governor using her clemency powers to release individuals
10 as a class, which to my knowledge had never been done
11 before in our state. Yeah, there was a lot an
12 expectation as to a particular timeline.
13 BY MR. SUGERMAN:
14 **Q. Okay. I take it these are unrelated emails.**
15 **Probably just makes more sense to read them as we get to**
16 **them, but if you want to read them all first.**
17 MS. HONORE: Do you happen to know on this
18 764755, there's -- the coloring of the emails are not
19 produced?
20 MR. SUGERMAN: They were produced to us.
21 MS. HONORE: I don't think that's true.
22 MR. SUGERMAN: Do you have a color copy?
23 MS. HONORE: Yeah, I'm sure I can get one.
24 MR. SUGERMAN: Why don't we do this. Why don't
25 you pull that with copies. We'll put this aside and come

1 office and within that are a number of different
2 subcommittees, and the juvenile adults in custody was one
3 of them.
4 **Q. So why did it matter what the court had ruled**
5 **on the preliminary injunction in early June of 2020?**
6 MS. HONORE: Object as to form.
7 THE WITNESS: You know, I don't know if it
8 mattered, so to speak. I think I was just giving Ms.
9 Kudna and Ms. Leslie an update.
10 BY MR. SUGERMAN:
11 **Q. And as far as whether their successors have**
12 **continued to be apprised of their developments, you don't**
13 **know?**
14 A. Yeah, that I don't know. That would be counsel
15 or somebody else.
16 **Q. All right.**
17 **Let's go to Exhibit 13, please, and this is a**
18 **letter from Governor Kate Brown dated June 12th, 2020, to**
19 **Colette Peters, Maney 490154 through 155.**
20 A. Okay.
21 **Q. You've seen this before, I imagine.**
22 A. I have.
23 **Q. Did you help draft it?**
24 A. Yes.
25 **Q. There are a series of bullet points at the**

1 **bottom of the page, the first page of the letter.**
2 A. Yes.
3 **Q. And this is how people were to be evaluated or**
4 **filtered for the possibility of COVID-related early**
5 **release, correct?**
6 A. Yes.
7 **Q. And these are criteria that you worked on,**
8 **correct?**
9 A. Yes.
10 **Q. And did the Governor accept -- let me ask it**
11 **this way.**
12 **Did you propose these criteria to the Governor?**
13 A. So I was part of a team. This document was
14 vetted by the team.
15 **Q. Who was the team on this document?**
16 A. Myself, counsel, Mr. Buehler. I'm trying to
17 remember whether Ms. Weston, Deputy General Counsel, was
18 in the office yet. Nik Bosser and probably somebody from
19 com, communications, with the Governor's office.
20 **Q. I don't know what happens in the office at this**
21 **time, so I'm trying to understand the process here.**
22 **Before this group provides a draft to the**
23 **Governor, had you or members of this group discussed with**
24 **the Governor these criterion?**
25 MS. HONORE: Object as to form. And just

1 because the witness testified that counsel was involved
2 in the creation of this letter, again, I'm going to
3 object to the extent your answer calls for communications
4 with counsel, legal advice, and instruct you not to
5 answer to the extent that it would reveal those
6 communications.
7 THE WITNESS: Counsel, can you restate your
8 question or can you say your question again, please?
9 BY MR. SUGERMAN:
10 **Q. Sure.**
11 **There are six bullet points on page 1, correct?**
12 A. Yes, sir.
13 **Q. All right. These are the screening criteria**
14 **for who would be considered for early COVID release,**
15 **correct?**
16 A. That is correct.
17 **Q. Did you discuss with the Governor these**
18 **criteria before this group presented a draft of the**
19 **letter to the Governor?**
20 A. I would say we probably discussed certain
21 concepts that would be providing her updates of, like,
22 okay, you give X amounts of weeks or months ago or
23 whatever and here where I am right now and here's what
24 some potential options are for you.
25 **Q. So exact number, not critical, but we talked**

1 **earlier today population and incarcerated goals, 14,500**
2 **to 10,000, rough numbers, right?**
3 MS. HONORE: Object as to form.
4 THE WITNESS: Of how many people are in
5 custody?
6 BY MR. SUGERMAN:
7 **Q. Yes.**
8 A. Yeah, in that range.
9 **Q. I'm not asking for exact numbers.**
10 A. Yes.
11 **Q. The first cut here of that group, no matter**
12 **what the population is, whether it's the lower end of**
13 **that or the higher end of that, the only people who will**
14 **be considered for early release for COVID protection are**
15 **those who are particularly vulnerable to COVID-19, as**
16 **identified by DOC medical staff, correct?**
17 A. Yes.
18 **Q. Okay. And the way I think about this process**
19 **is each one of those bullet points pulls more people out**
20 **of the pool of those who may be potentially released,**
21 **correct?**
22 A. Yes.
23 **Q. Okay. So by the time we get to the sixth**
24 **bullet point, as of June 12, 2020, how many people are**
25 **possibly in that universe?**

1 A. That I don't know.
2 **Q. Okay. But we're talking about maybe a few**
3 **hundred at most, correct?**
4 MS. HONORE: Object as to form.
5 THE WITNESS: That's possible, yes.
6 BY MR. SUGERMAN:
7 **Q. During this discussion, was there ever any**
8 **consideration given to lowering population as an overall**
9 **protective method in order to provide greater room for**
10 **social distancing?**
11 MS. HONORE: Object as to form.
12 THE WITNESS: Kind of during these
13 conversations around COVID, there were -- there was
14 discussion of how many -- you know, how many AICs it
15 would take for there to be a significant reduction in the
16 prison population.
17 And given the composition of DOC's population
18 where a significant percentage of the AIC population are
19 there for person crimes, it just wasn't seen as feasible
20 to release, you know, let's say, several thousand AICs,
21 because that would not be in keeping with the Governor's
22 values of, you know, one, kind of maintaining some sort
23 of, you know, kind of case-by-case scrutiny, relatively,
24 maintaining community safety while also trying to release
25 individual AICs who would not be a significant risk of

1 either recidivising or threats to the public.
2 BY MR. SUGERMAN:
3 **Q. I imagine as a -- in your time as a criminal**
4 **defense attorney that you thought about the 8th Amendment**
5 **a fair amount.**
6 A. I did.
7 **Q. Doesn't really allow a balancing, does it?**
8 MS. HONORE: Object as to form.
9 THE WITNESS: Yeah, I mean, I think -- I mean,
10 you know, when the Governor engages in her clemency
11 powers, I think she is kind of acting in a space beyond
12 the 8th Amendment. I mean, she is extending an immense
13 amount of grace, and with that she has the responsibility
14 that she felt and did not want to do something that, you
15 know, harmed individual Oregonians or made it harder,
16 frankly, for other AICs to be released in a way that's
17 kind of outside of kind of the norm. And so that was all
18 part of this kind of calculus of the Governor's office.
19 BY MR. SUGERMAN:
20 **Q. I appreciate that. I understand, I think, the**
21 **very difficult questions that you and the Governor and**
22 **everybody faced. But it was apparent that if we left**
23 **people in these facilities without the ability to achieve**
24 **social distancing before the availability and rollout of**
25 **a vaccine, they were going to be affected, correct?**

1 MS. HONORE: Objection, incomplete
2 hypothetical.
3 THE WITNESS: I mean, yes, if you're in custody
4 or frankly out of custody, the chances of you getting
5 COVID given the nature of it, pretty significant.
6 BY MR. SUGERMAN:
7 **Q. The original announcement from Deputy Director**
8 **Steward and the email to DOC talking about this group was**
9 **on June 7. It's Exhibit 5 if you want to look at it. I**
10 **don't think you need to. This letter comes June 12.**
11 **Is that consistent with the timeline you**
12 **expected in April?**
13 MS. HONORE: Objection, misstates the dates on
14 the exhibit.
15 THE WITNESS: I mean, I didn't really have a
16 specific timeline in mind.
17 BY MR. SUGERMAN:
18 **Q. Let me deal with your Counsel's objections.**
19 **Exhibit 5 is dated April 7, 2020. It's on Maney 328213,**
20 **correct? You need to look at Exhibit 5 to answer the**
21 **question.**
22 A. Oh, you're talking to me?
23 **Q. That's correct.**
24 A. Exhibit 5, sir?
25 **Q. Yes, the date of the email from Heidi Steward**

1 **is April 7, 2020, correct?**
2 A. Yes, sir.
3 **Q. All right. And you can put that aside now.**
4 **The date of the letter from Governor Kate Brown**
5 **is June 12, 2020, that's Exhibit 13, correct?**
6 A. Yes, sir.
7 **Q. All right. So before when Counsel interposed**
8 **her objection that the dates had been misstated, I was**
9 **starting to ask whether that timeline was consistent with**
10 **your expectation in April. And you started to answer,**
11 **but I cut you off to deal with the objection. I**
12 **apologize for that.**
13 **In April of 2020, did you have an expectation**
14 **of how long it would take to get to the date where**
15 **Governor Brown issued her letter?**
16 A. I did not.
17 **Q. Okay. Thank you.**
18 MS. HONORE: Teresa, can you read back please
19 when he asked the general question? I believe he
20 indicated that Exhibit 5 was in June. Can you by chance
21 read that back or is it too hard to get to?
22 (Last question read by reporter.)
23 MR. SUGERMAN: April 7, corrected. Fabulous.
24 BY MR. SUGERMAN:
25 **Q. Let's go back to Exhibit 14, please, and that's**

1 **Q. Okay. I'm going to try to cut off some of**
2 **these exhibits, because it's getting late, and I'm**
3 **mindful of the time.**
4 MS. HONORE: Counsel, I need to take one more
5 break before the end of the day, and so if there is a
6 time --
7 MR. SUGERMAN: Why don't we do that now.
8 THE VIDEOGRAPHER: Off the record at 4:09.
9 (Off the record.)
10 THE VIDEOGRAPHER: Back on the record at 4:17.
11 BY MR. SUGERMAN:
12 **Q. Thanks.**
13 **We put the last batch of exhibits in front of**
14 **you, and we'll go through those and try to get done.**
15 **The first one is Exhibit 16, which is a letter**
16 **from Lisa Hay, October 7, 2020, to Governor Kate Brown.**
17 A. Exhibit 16?
18 **Q. 16. It's a four-page letter.**
19 A. Okay.
20 **Q. Exhibit 16 is October 7, 2020, letter, first**
21 **page Maney 764793 through 796.**
22 **Have you seen this letter before?**
23 A. I have.
24 **Q. Was it shared with you near the time it was**
25 **sent to Governor Brown?**

1 A. Yes.
2 **Q. And did you review it at the time?**
3 A. I did.
4 **Q. Did you discuss it with the Governor?**
5 A. I believe the letter was discussed that Ms.
6 Hays sent it and some of the highlights, so to speak.
7 **Q. I'm sorry?**
8 A. Some of the highlights.
9 **Q. Before that, were you referring to Ms. Hay? I**
10 **misheard you.**
11 A. I don't recall. Sorry. Sorry.
12 **Q. That's all right.**
13 **What was the nature of the discussion of this**
14 **letter, Exhibit 16, with Governor Brown?**
15 A. That Ms. Hay had sent the letter and she's a
16 very articulate person, so she outlines, she points to
17 actions done in other states and so, yeah.
18 **Q. Were there any inaccuracies in her letter,**
19 **factually, as far as you know?**
20 A. Yeah, not that I'm aware of.
21 **Q. Okay. Did it cause discussion about whether**
22 **there should be consideration given to additional release**
23 **in Oregon?**
24 A. Not particularly. I know our office was
25 thinking about doing -- well, you know, our state in

1 Oregon was starting to do releases, and we were
2 considering broadening those on our own.
3 **Q. When you were considering broadening those on**
4 **your own, how many did you expect might be released in**
5 **addition to those previously identified?**
6 A. This is what I can't recall, like I was talking
7 about earlier. We were looking at categories of
8 individuals, and those numbers -- until you actually
9 release people, like, those weren't hard and fast
10 numbers.
11 **Q. Okay. But order of magnitude, we're talking**
12 **about perhaps another 100, maybe 200 more?**
13 MS. HONORE: Object as to form.
14 THE WITNESS: No, not really, because, you
15 know, the anticipation was that, you know, for a
16 particular category, we were going to do that for the
17 remainder of the critical parts of COVID, and so kind of
18 as it played out, as well, the releases kind of went on
19 for a period of time. It wasn't anticipated to be a
20 one-and-done, so to speak.
21 BY MR. SUGERMAN:
22 **Q. Sum total of COVID-related releases to date,**
23 **can you give me a number?**
24 A. Roughly 1,000.
25 **Q. Up until May 31, 2022, sum total of COVID**

1 CERTIFICATE

2 STATE OF OREGON)

3) ss

4 COUNTY OF MULTNOMAH)

5

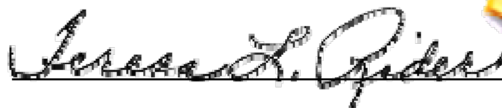
I, Teresa L. Rider, CRR, RPR, CCR, CSR, hereby
6 certify that said witness personally appeared before me
7 at the time and place set forth in the caption hereof;
8 that at said time and place I reported in stenotype all
9 testimony adduced and other oral proceedings had in the
10 forgoing matter; that thereafter my notes were
11 transcribed through computer-aided transcription, under
12 my direction; and that the foregoing pages constitute a
13 full, true and accurate record of all such testimony
14 adduced and oral proceedings had, and the whole thereof.
15 I further certify review of the transcript was
16 not requested.
Witness my hand at Portland, Oregon, this 2nd
17 day of January 2023.

18

19

20

21



22

23 Teresa L. Rider

24 Oregon CSR No. 12-0421

25 Expires 3-03-23

KATE BROWN
Governor

June 25, 2021

The Honorable Peter Courtney	The Honorable Tina Kotek
President of the Senate	Speaker of the House
900 Court Street NE, S-201	900 Court Street NE, Room 269
Salem, OR 97301	Salem, OR 97301

Dear President Courtney and Speaker Kotek,

ORS 144.660 directs me to report to the Legislative Assembly at its regular session each reprieve, commutation, pardon, or remission of penalty or forfeiture granted since the end of the previous legislative session. My report is as follows:

Since March 9, 2020, I have granted 33 pardons, 32 conditional commutations, and one reprieve. No remissions of penalty or forfeiture have been granted. Between March 9, 2020, and today, 191 applications for commutation of sentence have been denied. There are 344 commutation applications pending, 162 of which were submitted on or after May 1, 2021. Four commutation applications have been withdrawn. Twenty-five pardon applications have been denied, 36 pardon applications are pending, and three pardon applications were withdrawn. Zero reprieve applications are pending and eight reprieve applications have been denied. One remission application is pending and two remission applications have been denied. Please note that three applicants applied for more than one type of executive clemency. This report accounts for each type of clemency requested as a separate application. In addition, regarding commutations of a sentence, this report specifies only the convictions for which there was time remaining to be served on the respective sentence and does not, for instance, include convictions that may have been part of the same case, but the sentence for which had already been served.

On June 12, 2020, in light of the state of emergency due to the COVID-19 global pandemic and the threat it presents to the public health and safety of all Oregonians, I requested the Oregon Department of Corrections perform a case-by-case analysis of adults in custody who are vulnerable to the effects of COVID-19, for possible conditional commutation on a rolling basis. In order to ensure the safety and security of Oregon communities, an adult in custody was eligible for commutation of their sentence only if the adult in custody was particularly vulnerable to COVID-19, as identified by DOC medical staff, based on applicable guidance from the Oregon Health Authority and the Centers of Disease Control; was not serving a sentence for a person crime; had served at least 50% of their sentence; had a record of good conduct for the last 12 months; had a suitable housing plan; had their out-of-custody health care needs assessed and adequately addressed; and did not present an unacceptable safety, security, or compliance risk to the community. After being deemed by the Department of Corrections to be eligible for

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commutation under these criteria, I granted conditional commutations to 567 individuals. The names of these individuals are listed on the enclosed Exhibit A.

On August 25, 2020, in light of the continued state of emergency due to the worsening COVID-19 global pandemic and as a result of the pause on statutory prison early release programs, I requested the Department of Corrections perform a case-by-case analysis of adults in custody who are within two months of release from custody for possible conditional commutation on a rolling basis. In order to ensure the safety and security of Oregon communities, an adult in custody was eligible for commutation of their sentence only if the adult in custody was within two months of release, as calculated by the Department of Corrections; was not serving a sentence for a person crime; had served at least 50% of their sentence; had a record of good conduct for the last 12 months; had a suitable housing plan; had their out-of-custody health care needs assessed and adequately addressed; and did not present an unacceptable safety, security, or compliance risk to the community. On December 2, 2020, I modified the first criterion such that the adult in custody must have been within six months of release, as calculated by the Department of Corrections. On March 5, 2021, with the pause on statutory prison early release programs lifted, and in light of the still continued state of emergency, I further modified the first criterion to specify that an adult in custody is ineligible if he or she qualified for the Alternative Incarceration Program or received a judgment that does not allow for the full Short Term Transitional Leave. After being deemed by the Department of Corrections to be eligible for commutation under these criteria, I granted conditional commutations to 345 individuals. The names of these individuals are listed on the enclosed Exhibit B.

On March 5, 2021, in recognition of the extraordinary efforts made by adults in custody who were deployed to fight the historic wildfires that ravaged the state around Labor Day 2020, I requested the Oregon Department of Corrections to perform a case-by-case analysis of adults in custody who fought these fires, for possible one-time 12-month conditional commutation of their sentence. In order to ensure the safety and security of Oregon communities, an adult in custody was eligible for a 12-month commutation of their sentence only if the adult in custody met the criteria for fire crew participation, as outlined by DOC policy and procedures, for the duration of their deployment to fight the wildfires; had a record of good conduct for the last 12 months; had a suitable housing plan; had their out-of-custody health care needs assessed and adequately addressed; and did not present an unacceptable safety, security, or compliance risk to the community. After 53 adults in custody were deemed by the Department of Corrections to be eligible for a 12-month commutation under these criteria, I granted a 12-month conditional commutation to 41 individuals. The names of these individuals are listed on the enclosed Exhibit C.

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I have granted the following pardons:

Sorin Aldea. Convicted of Trafficking in Stolen Vehicles on March 13, 1992, and sentenced to five years of probation. Mr. Aldea successfully completed his probation in 1997 and, for the last 28 years since his conviction, has been a law-abiding citizen. He has maintained gainful employment as a delivery truck driver and is invested in his local Romanian community, where he currently serves on the Board of Directors of his Romanian church. I concluded that Mr. Aldea should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Zin Min Aung. Convicted of Possession of Controlled Substance II on August 21, 2011, and sentenced to eighteen months of probation. Mr. Aung successfully completed his probation and became a very involved member of his Burmese community. Even though his conviction had been expunged, Mr. Aung reasonably feared being subjected to deportation by federal officials due to this conviction. I concluded that Mr. Aung should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Fredrick Bain. Convicted of Sexual Abuse I on June 16, 2009, and sentenced to 75 months in the custody of the Oregon Department of Corrections as well as a term of post-prison supervision of 120 months. The alleged victim of Mr. Bain, whose allegation of sexual abuse was the basis for convicting him, completely and legitimately recanted her allegation. Due to this recantation and the lack of any other evidence in the case against Mr. Bain, the Malheur County District Attorney fully supported Mr. Bain's application for clemency based on a claim of true innocence. I concluded that Mr. Bain was truly innocent and should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Wendy Barnes. Convicted of two counts of Promoting Prostitution on July 21, 1999, and sentenced to 23 months of incarceration in the custody of the Oregon Department of Corrections as well as a term of 60 months post-prison supervision. As a victim of sex trafficking herself, after her incarceration, Ms. Barnes devoted her life to the anti-trafficking movement and earned the support of the Multnomah County District Attorney's office. I concluded that Ms. Barnes should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Cody Blackburn. Convicted of Manufacture/Delivery of a Controlled Substance-Schedule II on January 15, 2003, and sentenced to 36 months of probation. Mr. Blackburn has been involved with community service activities sharing his profound story of recovery and is working towards becoming a juvenile addictions counselor. He has been employed as a Residential Counselor at

the Volunteers of America Women's Residential Center and as a Recovery Support Specialist at Impact NW. The Clackamas County District Attorney's office supported his application. I concluded that Mr. Blackburn should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Sarah Boomhower. Convicted of Delivery/Manufacturing of a Controlled Substance- Schedule II on December 3, 1997, and sentenced to 24 months of probation and 30 days of work release. Ms. Boomhower pursued an education and has graduated with a bachelor's degree and a master's degree in social work and works as a therapist running the clinical program in a residential facility with women with significant mental health needs. I concluded that Ms. Boomhower should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Alfonso Calderon-Garcia (also known as Ricardo Calderon). Convicted of Manufacturing and Delivery of Controlled Substance Schedule I and Possession of a Controlled Substance I on June 10, 2003, and sentenced to 36 months of probation. Since the end of his probation, Mr. Calderon-Garcia has been a law-abiding person, maintained his sobriety, gotten involved in his church, excelled in his employment, and supported his family. The Multnomah County District Attorney's office supported Mr. Calderon-Garcia's request for a pardon. I concluded that Mr. Calderon-Garcia should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Gerardo Castro-Chavez. Convicted of Assault in the Fourth Degree – Class A Misdemeanor on August 11, 2009, and sentenced to 55 days of incarceration in the Clatsop County Jail and 24 months of probation. Although Mr. Castro-Chavez came to the United States as a teenager and has worked hard to become a pillar of his community and has this conviction expunged, he faced imminent deportation proceedings. I concluded that the deportation of Mr. Castro-Chavez would impose an exceptional and extremely unusual hardship upon him and his family and that Mr. Castro-Chavez should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Christopher Dickie. Convicted of Tampering with Drug Records on August 12, 2002, and sentenced to 10 days of incarceration at the Yamhill County Jail and 18 months of probation. Mr. Dickie has become a national recovery advocate and devoted his life to this important work. I concluded that Mr. Dickie should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

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William Brian Forrester (formerly known as Brian Vargo). At the age of 15, convicted of Sexual Abuse I on December 16, 2003, and sentenced to 75 months of incarceration with the Oregon Youth Authority and a term of 45 months post-prison supervision. Among many other impressive accomplishments, Mr. Forrester has been a law-abiding citizen, pursued his education and graduated *summa cum laude* with a degree in psychology, has created and purposed many programs now implemented in Oregon Youth Authority facilities, and served as interim director of a nonprofit food bank. The Marion County District Attorney did not oppose Mr. Forrester's request for a pardon. I concluded that Mr. Forrester should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Stephen Fowler. Convicted of Robbery I and Attempt to Commit Murder at the age of 17 on December 3, 2009, and sentenced to 90 months of incarceration for each count, 36 months of post-prison supervision, and ordered to pay fees and assessments. Since his incarceration, Mr. Fowler displayed remarkable personal growth and rehabilitation, has shown remorse and ownership over his actions, dedicated himself to using his lived experiences to teach others in the community, and demonstrated the need for a pardon. He now serves as the Co-Director of the Restorative Justice program at Resolutions Northwest and, among other things, volunteers his time at MacLaren. Multnomah County District Attorney Mike Schmidt supported Mr. Fowler's request for a pardon. I concluded that Mr. Fowler should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Kevin Frech. Convicted of Possession of Controlled Substance – Schedule I on November 29, 2005, and sentenced to 20 days of incarceration in the Union County Jail and three years of probation. Mr. Frech successfully completed his probation and was a law-abiding citizen, a valuable community member, and a responsible member of society. Mr. Frech is now deceased and his family petitioned for a posthumous pardon of the abovementioned crime on his behalf. I concluded that Mr. Frech should be pardoned of the abovementioned crime, thereby posthumously restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Nicholas Gude. Convicted of DUII – Measure 73 on February 27, 2012, and sentenced to 90 days of incarceration in the Jackson County Jail and 36 months of probation. Due to his superior compliance, Mr. Gude was placed on the reduced supervision caseload and successfully completed his supervision on February 26, 2014, with no violations. Mr. Gude expressed an extraordinary need for a pardon, has remained crime-free, and has shown himself to be a responsible member of society. I concluded that Mr. Gude should be conditionally pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

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Sennen Hegge. Convicted of Criminally Negligent Homicide on January 14, 2004, and sentenced to 30 days of incarceration in the Douglas County Jail and 400 hours of community service. Given that the tragic accident was the result of an epileptic episode, Ms. Hegge has devoted a substantial portion of her life and her career to epilepsy awareness and has spent a significant amount of time giving back to her community. Ms. Hegge also pursued an education, has been a law-abiding citizen, has lived a crime-free life for over 16 years, and has been a valuable member of her community. I concluded that Ms. Hegge should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Britni Huston. Convicted of Fleeing or Attempting to Elude a Police Officer on May 7, 2010, and sentenced to 72 hours of incarceration in the Clackamas County Corrections Facility, 18 months of probation, 80 hours of community service, and fines and assessments. Ms. Huston pursued an education, graduated with a bachelor's degree in criminal justice administration, and has been productively employed working with recently incarcerated individuals helping them learn how to reintegrate into society and get back on their feet. Ms. Huston has been a law-abiding citizen of this State, has lived a crime-free life since her discharge, and has been a valuable member of her community. I concluded that Ms. Huston should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Jennifer Johnson. Convicted of Possession of Forged Instrument I on August 11, 2015, and sentenced to drug court. Ms. Johnson successfully completed her sentence and graduated drug court in August 2015, and, since her conviction, has been a law-abiding citizen. Ms. Johnson continues her involvement with drug court as an alumni and has served as a sponsor in Narcotics Anonymous meetings, has been productively employed, has remained crime-free, and has shown herself to be a responsible member of society. The Washington County District Attorney's office did not object to this request for a pardon. I concluded that Ms. Johnson should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Amani Kelekele. Convicted of Burglary I on February 13, 2014, and sentenced to three years of probation. Mr. Kelekele has been a law-abiding citizen and a valuable member of society and his community. Notably, Mr. Kelekele obtained a bachelor's degree with a 4.0 GPA and now works for Secretary of State Shemia Fagan in constituent services. The Washington County District Attorney's office did not object to this request for a pardon. I concluded that Mr. Kelekele should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

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Jared Lakin. Convicted of Delivery of a Controlled Substance Schedule II on January 8, 2001, and sentenced to three years of probation. Mr. Lakin has been a law-abiding citizen, has spent 16 years determined to better himself, has helped open three recovery homes, and regularly volunteers his time to carry his message of hope and recovery into the local jails, prisons and youth detention centers. I concluded that Mr. Lakin should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Daniel Lopez de Jesus. Convicted of Robbery I, Delivery of Methamphetamine, Possession of Methamphetamine, and Failure to Appear I, on June 7, 2010, and sentenced to 90 months, 34 months, 6 months, and 24 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. In addition, Mr. Lopez de Jesus was convicted of Possession of Methamphetamine on April 13, 2007, and Forgery II and Unlawful Possession of a Firearm on January 12, 2007, and was sentenced to 18 months of probation, 12 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Lopez de Jesus was facing deportation by federal officials due to these state court convictions. I concluded that the deportation of Mr. Lopez de Jesus would impose a severe hardship upon him and his family and that Mr. Lopez de Jesus should be pardoned of the abovementioned crimes, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Chi Minh Mai. Convicted of Unlawful Use of a Weapon on April 9, 1997, and sentenced to a term of probation. Mr. Mai's conviction has since been set aside and sealed. Mr. Mai successfully completed his probation and subsequently received his associate's degree in computer science and his bachelor's degree in human services and management. Mr. Mai was fearful of deportation by federal officials. I concluded that the deportation of Mr. Mai would impose a severe hardship upon him and his family and that Mr. Mai should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Beatrice Mata. Convicted of Burglary I on December 6, 1983, and sentenced to five years of probation. In the nearly 40 years since her conviction, Ms. Mata has been a law-abiding citizen, a valuable member of her community, and a responsible member of society. I concluded that Ms. Mata should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Corie Mathers. Convicted of Burglary I and Aggravated Theft I on May 25, 2006, and sentenced to three years of probation. Since her successful discharge from supervision, Ms. Mathers has been a law-abiding citizen, a valuable member of her community, and a responsible member of society. The Washington County District Attorney's office supported her request for a pardon. I concluded that Ms. Mathers should be pardoned of the abovementioned crime,

thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Brian Mellott. Convicted of Burglary I on May 23, 1993, and sentenced to 60 days in the Multnomah County Restitution Center and three years of probation. Mr. Mellott has remained crime-free, has shown himself to be a responsible member of society, and has spent the last 20 years bettering himself and those around him by, among other things, sponsoring others who battle addiction. The Multnomah County District Attorney's office supported his application. I concluded that Mr. Mellott should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Michael Niday. Convicted of Manufacture of a Controlled Substance-Schedule II and Manufacture of a Controlled Substance within 1000 Feet of a School on January 3, 2001, and sentenced to 21 months of incarceration and 36 months of post-prison supervision. Mr. Niday served his time without issue and has been a model citizen since his release in 2001. He would like to adopt his two stepchildren and work in the public sector, but cannot with these convictions. I concluded that Mr. Niday should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Francis Poole. At the age of 17, convicted of Robbery II on July 16, 2002, and sentenced to 70 months of incarceration and 36 months of post-prison supervision. Mr. Poole pursued an education and graduated with a bachelor's degree in sociology and a master's degree in organizational management and subsequently became a mentor for at-risk youth. He has remained crime-free, and has shown himself to be a responsible member of society. The Josephine County District Attorney's office supported Mr. Poole's request for a pardon. I concluded that Mr. Poole should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Michael Pringle. At the age of 18, convicted of Robbery I on April 11, 1991, and sentenced to 37 months of incarceration and 34 months of post-prison supervision. Mr. Pringle has maintained gainful employment, created a stable life for himself and his family, been an outstanding member in his community, and has volunteered as a board member of Oregon Outreach. The Multnomah County District Attorney's office supported Mr. Pringle's request for a pardon. I concluded that Mr. Pringle should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Patrick Rogers. Convicted of Attempted Burglary I on June 7, 1976, and sentenced to three years of incarceration. Over the last 40 years, Mr. Rogers has remained crime-free and has shown himself to be a responsible member of society and a valuable member of his community. I concluded that Mr. Rogers should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Steven Rotter. Convicted of Manufacture/Delivery of a Controlled Substance-Schedule I (Marijuana) on June 4, 1997, and sentenced to a six-month work release program and 36 months of post-prison supervision. Mr. Rotter has operated a medical practice with his wife in Josephine County and he now hopes to get paneled with insurance companies and obtain medical malpractice insurance with this pardon. Mr. Rotter has remained crime-free and has shown himself to be a responsible member of society and a valuable member of his community. The Multnomah County District Attorney's office supported Mr. Rotter's request for a pardon. I concluded that Mr. Rotter should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Foday Sheriff. Convicted of Unlawful Possession of a Firearm on January 29, 2008, and sentenced to two days of incarceration in the Multnomah County Jail and 12 months of probation; additionally convicted of Assault II on May 26, 2009, and sentenced to18 months of incarceration and three years of post-prison supervision for that crime. Mr. Sheriff used his time in the custody of the Oregon Department of Corrections, and after, to engage with Alcoholics Anonymous and has been successful in maintaining his sobriety and has not had any further convictions. Mr. Sheriff established a stable and productive life with his wife and child, was a dedicated husband and father, and was involved with his mosque and the African community in Portland. After coming to the United States in 1994, at the age of 17, due to the civil war in Sierra Leone, he was able to consistently obtain work authorizations from Immigration and Customs Enforcement and maintain employment. However, after many years in this country, and after completing his sentences for the convictions references above, he was deported to Sierra Leone. Since his deportation, he has been separated from his family and cannot seek reentry without a pardon of these two convictions. I concluded that Mr. Sheriff should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State, including the ability to be reunited with his family.

Lisa Shultz. Convicted of Driving Under the Influence of Intoxicants on December 16, 1987, and sentenced to 30 days incarceration at the Benton County Jail and 40 hours of community service, and ordered to pay fines and assessments; additionally convicted of Driving While Suspended-Felony on December 23, 1987, and sentenced to six years of probation. Ms. Shultz has been a law-abiding citizen, has lived a crime-free life for over 20 years, and has been a valuable member of her community and a responsible member of society. She has been

productively employed working with school-based health centers that focus on community health for underrepresented and marginalized communities and volunteers in her community for local food drives. I concluded that Ms. Shultz should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

Michael Smith. Convicted of Attempted Assault I and three counts of Recklessly Endangering Another Person on January 23, 2003, and sentenced to 60 days in the Deschutes County Jail and three years of probation. Mr. Smith has been a valuable member of society and, for his community service and filming of wildfire-struck areas, received the 2019 Humanitarian of the Year Award in Lake County, California. Mr. Smith has been a law-abiding citizen since his conviction. The Deschutes County District Attorney's office supported Mr. Smith's request for a pardon. I concluded that Mr. Smith should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Larry Turner. Convicted of Robbery I on July 9, 1981, and sentenced to 60 months of incarceration and 36 months of post-prison supervision. Since his conviction, Mr. Turner has remained crime-free, has shown himself to be a responsible member of society, and has spent the last 40 years bettering himself and those around him. Notably, he became a drug and alcohol counselor and has worked for a series of social services agencies, often starting up new programs, with a particular focus on supporting Black men and the most vulnerable. The Multnomah County District Attorney's office supported Mr. Turner's request for a pardon. I concluded that Mr. Turner should be pardoned of the abovementioned crime, thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

Annie Zander. Convicted of Manufacturing and Delivery of a Controlled Substance-Schedule II on February 23, 1999, and Violation Treatment-Give False Information to a Police Officer on August 21, 2000, and was sentenced to 90 days in jail and 36 months of post-prison supervision. Ms. Zander has been a law-abiding citizen, has been a valuable member of her community, and has served as a responsible member of society. Notably, she has maintained her sobriety, obtained a bachelor's degree and master's degree in social work, and is now serving some of our most vulnerable populations as a mental health therapist and drug and alcohol counselor. The Multnomah County District Attorney's office did not object to Ms. Zander's request for a pardon. I concluded that Ms. Zander should be pardoned of the abovementioned crime, thereby restoring her to all of the rights and privileges heretofore enjoyed by her under the laws of this State.

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Earlier this year, Lane County District Attorney Patty Perlow began working with our office to identify certain incarcerated individuals who would have qualified for Lane County's 416 Program,[1] which is a downward departure prison diversion program for high-risk, repeat property crime offenders offering intensive supervision and supportive programs. Through this collaboration, clemency is used as a way to release these individuals from prison and place them into a more structured post-prison supervision program akin to the 416 Program. This structured post-prison supervision ensures that these individuals receive frequent and constructive relationships with a hands-on probation officer with a smaller caseload than the typical probation officer—similar to how drug court programs function. In addition, if the probation officer determines that a more structured residential treatment center would be beneficial, then the individual is admitted to Sponsors in Eugene upon release from custody. As a result of this collaboration, I have granted the following conditional commutations with the assistance of District Attorney Perlow and Lane County Community Corrections:

Faisal Al-Ansari. Convicted of three counts of Identity Theft on June 5, 2015, and sentenced to 100 months of incarceration, 12 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Al-Ansari served over five years of his sentence and, while incarcerated, engaged in rehabilitative programming to address his underlying substance abuse issues that led to his conviction, and has continued to do so after being released. In addition to participating in Alcoholics Anonymous and Narcotics Anonymous, Mr. Al-Ansari engaged in an intensive cognitive behavioral intervention program that worked on ownership of past actions and practicing future problem-solving skills. He has been clean and sober for years. After Lane County Community Corrections assessed that Mr. Al-Ansari would be a good fit for the 416 Program and District Attorney Perlow had no objection to his conditional release, I concluded that continued incarceration of Mr. Al-Ansari does not serve the best interests of the State of Oregon.

Summer Anderson. Convicted of three counts of Identity Theft on April 29, 2008, and was sentenced to terms of 19 months, 27 months, and 41 months of incarceration, respectively, 36 months of post-prison supervision, and ordered to pay fees and assessments. As someone whose substance abuse contributed to her convictions, during her time in custody, she has engaged in Alcoholics Anonymous and Narcotics Anonymous, counseling, and the cognitive skills development program in order to protect against relapse. She expressed remorse for her actions and showed promising signs that she would be able to successfully and smoothly reintegrate into society. After Lane County Community Corrections assessed that Ms. Anderson would be a good fit for the 416 Program and District Attorney Perlow had no objection to her conditional

[1] Senate Bill 416 (2011) authorized courts to impose probation with intensive supervision under certain circumstances when a person is convicted of certain drug or property crimes. The person must have an identifiable substance abuse problem and motivation to change their behavior. A pilot program started in Marion County in 2012 and then started operating in Lane County in 2015.

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release, I concluded that continued incarceration of Ms. Anderson does not serve the best interests of the State of Oregon.

Kevin Scott Bray. Convicted of Identity Theft and Unauthorized Use of a Vehicle on May 13, 2013, and was sentenced to 210 months of incarceration, 12 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Bray served almost eight years of his sentence and, while incarcerated, engaged in a substantial amount of rehabilitative programming to address his underlying substance abuse issues that led to his conviction, and has continued to do so after being released. For example, he engaged in Alcoholics Anonymous and Narcotics Anonymous, counseling, and the cognitive skills development program in order to protect against relapse, and he has been clean and sober for over four years now. After Lane County Community Corrections assessed that Mr. Bray would be a good fit for the 416 Program and District Attorney Perlow had no objection to his conditional release, I concluded that continued incarceration of Mr. Bray does not serve the best interests of the State of Oregon.

Blu Steeves Clark. Convicted of eight counts of Forgery, two counts of Theft I, eight counts of Identity Theft, and Aggravated Theft on January 16, May 14, and July 23, 2015. He was sentenced to 240 months of incarceration, 24 months of post-prison supervision, and ordered to pay fees and assessments. While incarcerated, Mr. Clark has spearheaded several new programs for adults in custody and engaged in a substantial amount of rehabilitative programming to address his underlying substance abuse issues. First, he implemented the Blu-Print for Success program, through which he mentored other adults in custody on post-prison career opportunities and discussed self-esteem and confidence building practices. Second, he created an LGBTQ group project in which he coordinated with other adults in custody to curate a Healing Garden through landscape design. Following a pre-incarceration, decade-long successful career as a hairstylist, he continued to cut hair while in custody and had a solid release plan that included transitional treatment and a job as a hairstylist. After Lane County Community Corrections assessed that Mr. Clark would be a good fit for the 416 Program and District Attorney Perlow had no objection to his conditional release, I concluded that continued incarceration of Mr. Clark does not serve the best interests of the State of Oregon.

Joseph Allen Dexter (also known as Joseph Allen Dexter-Merrill). Convicted of three counts of Burglary I on October 2, 2013, and sentenced to 36 months of incarceration on each count, 36 months of post-prison supervision, and ordered to pay fees and assessments. During his seven years of incarceration, Mr. Dexter took advantage of a substantial amount of rehabilitative programming that has minimized his risk of recidivism and assisted him in re-entering the community as a productive member of society. As someone whose substance abuse contributed to his convictions, he engaged in Alcoholics Anonymous and Narcotics Anonymous, counseling, and the cognitive skills development program in order to protect against relapse. He has been clean and sober for the vast majority of his time in custody. In addition, he obtained his GED,

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completed 192 hours of programming with Pathfinders, and extensively participated in the Getting Out by Going In program. As an active tribal member, he also participated in all Native American programs offered at Two Rivers Correctional Institution. After Lane County Community Corrections assessed that Mr. Dexter would be a good fit for the 416 Program and District Attorney Perlow had no objection to his conditional release, I concluded that continued incarceration of Mr. Dexter does not serve the best interests of the State of Oregon.

Breauna Lee Hall. Convicted of Possession of Methamphetamine and 45 counts of Identity Theft on November 6, 2013, and sentenced to 30 months of incarceration on each count of Identity Theft and six months of incarceration for the Possession of Methamphetamine conviction, 12 months of post-prison supervision, and ordered to pay fees and assessments. Ms. Hall took full responsibility for her actions, remained clean and sober, and had a clear disciplinary record since January 2014. In addition to the typical programming adults can complete while incarcerated, Ms. Hall also participated in the rigorous Victim Offender Education Group, Celebrate Recovery program, and mental health counseling to address and heal from the trauma associated with her previous drug abuse, postpartum depression, and other trauma. In an effort to shift her focus outward and help her peers transform their lives as well, Ms. Hall became one of a select group of women who mentor others on overcoming drug addiction as a Peer Recovery Coach. She was known within Coffee Creek as an exceptional Peer Recovery Coach and hopes to channel this aptitude into becoming a drug and alcohol counselor one day. After Lane County Community Corrections assessed that Ms. Hall would be a good fit for the 416 Program and District Attorney Perlow had no objection to her conditional release, I concluded that continued incarceration of Ms. Hall does not serve the best interests of the State of Oregon.

Aaron Keith Nute. Convicted of Theft I, Identity Theft, and Burglary I on November 17, 2014, and sentenced to terms of 96 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Nute took accountability for his actions, engaged in practical skills programming, and maintained good conduct while incarcerated. He has been clean and sober for over six years and was eager to begin residential drug and alcohol treatment upon release. After Lane County Community Corrections assessed that Mr. Nute would be a good fit for the 416 Program and District Attorney Perlow had no objection to his conditional release, I concluded that continued incarceration of Mr. Nute does not serve the best interests of the State of Oregon.

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Separate from the collaboration with the Department of Corrections and Lane County, each described above, I have granted the following conditional commutations:

Patricia Ann Butterfield. Convicted of Murder with a Firearm and Felon in Possession of a Firearm on March 22, 1999, and sentenced to life in prison, 300 months of post-prison supervision, and ordered to pay fees and assessments. Ms. Butterfield was incarcerated for 21 years and, during that time, demonstrated exemplary progress and considerable evidence of rehabilitation. While in custody, she was involved in programming, showed remorse for her actions, served as a longtime volunteer with the Hospice Program, and more recently spent time as a Survival Coach. I concluded that continued incarceration of Ms. Butterfield does not serve the best interests of the State of Oregon.

Joshua Cain. Convicted of Murder on July 21, 1999, and sentenced to life in prison with a mandatory minimum of 300 months of incarceration, lifetime post-prison supervision, and ordered to pay fees and assessments. Mr. Cain was incarcerated for over 20 years and, during that time, demonstrated excellent progress and considerable evidence of rehabilitation. Notably, he participated extensively in programming, earned his bachelor's degree, started working on his master's degree, showed remorse for his actions, and held jobs with increasing responsibility. I concluded that continued incarceration of Mr. Cain does not serve the best interests of the State of Oregon.

Taylor K. Couch. At the age of 15, convicted of Assault II on March 16, 2018, and sentenced to 60 months of incarceration, 60 months of post-prison supervision, and ordered to pay fees and assessments. While in the custody of the Oregon Youth Authority for three years, Mr. Couch immersed himself in rehabilitative programming, including taking drug and alcohol treatment seriously, showing remorse for his actions, and mentoring other youth. He thoroughly enjoys writing and recently graduated as the high school valedictorian at MacLaren Youth Correctional Facility. The District Attorney's Office supported Mr. Couch's application for clemency. I concluded that Mr. Couch demonstrated exemplary evidence of rehabilitation and that his continued incarceration does not serve the best interests of the State of Oregon.

Shawn Truman Fox. Convicted of Aggravated Murder-Robbery, Aggravated Murder-Burglary, Unlawful Use of a Weapon, Felon in Possession of a Firearm, and Unauthorized Use of a Vehicle on October 10, 1995, and sentenced to life in prison without the possibility of parole, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Fox was incarcerated for over 25 years and, during that time, demonstrated exemplary progress and considerable evidence of rehabilitation, including wholeheartedly addressing the issues underlying his convictions, showing remorse for his actions, volunteering with countless organizations, and donating his time and money to attempt to leave the world a better place. I

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concluded that Mr. Fox's ineligibility to seek parole does not serve the best interests of the State of Oregon and commuted his sentence to a life sentence with the possibility of parole.

Maurice Frazier. Convicted of Attempted Aggravated Murder with a Firearm on August 8, 2002 (nunc pro tunc November 5, 1998), and sentenced to 240 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. During his time in custody, Mr. Frazier demonstrated excellent progress, considerable evidence of rehabilitation, and remorse for his actions. Notably, he was the president of the Weusi Umoja African American Cultural Club and was involved in the New Horizons Club, through which he fundraised and performed community outreach. I concluded that continued incarceration of Mr. Frazier does not serve the best interests of the State of Oregon.

Aaron Gilbert. Convicted of Assault II on September 24, 2007, and sentenced to 70 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Gilbert has excelled while in custody, earning the right to live and work at the South Fork Forest Camp and serving as a wildlands firefighter during the historic Labor Day 2020 wildfires. He also earned his GED, three associate's degrees, has worked as a tutor, showed remorse for his actions, and participated in a significant amount of programming. I concluded that Mr. Gilbert demonstrated exemplary rehabilitation and that his continued incarceration does not serve the best interests of the State of Oregon.

Trei Hernandez. At the age of 17, convicted of Attempt to Commit Robbery I on January 22, 2013, and sentenced to 20 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. During his time in custody, Mr. Hernandez expressed remorse, engaged in a substantial amount of rehabilitation, maintained his sobriety, gave back to his community, and developed mentor relationships with other men in Portland. I concluded that continued incarceration of Mr. Hernandez does not serve the best interests of the State of Oregon. However, on May 3, 2021, I learned that Mr. Hernandez had violated the terms of his conditional commutation and, as a result, I revoked his commutation and ordered him to serve the time remaining on his sentence at the time of his commutation.

Kevin Dee William Harrington. At the age of 16, convicted of Manslaughter I on September 6, 2002, and sentenced to 240 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Harrington was incarcerated in the custody of both the Oregon Youth Authority and the Department of Corrections for 18 years and, during that time, demonstrated exemplary progress and considerable evidence of rehabilitation. Notably, he showed remorse for his actions, completed his GED, tutored other individuals, volunteered extensively, and mentored gang-impacted youth. I concluded that continued incarceration of Mr. Harrington does not serve the best interests of the State of Oregon.

Brett Fitzgerald Hollins. Convicted of Assault III on October 20, 2017, and sentenced to 60 months of incarceration, 0 months of post-prison supervision, and ordered to pay fees and assessments. During his incarceration, he worked hard to address the underlying issues that led to his crime, furthered his education, engaged in a tremendous amount of rehabilitation, showed remorse for his actions, and led other adults in custody through mentorship. Mr. Hollins had a good release plan and a genuine desire to positively impact his community. I concluded that continued incarceration of Mr. Hollins does not serve the best interests of the State of Oregon.

Tecuma Nathaniel Jackson (also known as Tacuma Jackson). Convicted by a non-unanimous jury of Unauthorized Use of a Vehicle and three counts of Kidnapping II on June 11, 2001, for which he was sentenced to 396 months of incarceration, and Supplying Contraband on February 24, 2006, for which he was sentenced to 10 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Jackson was incarcerated for almost 20 years and, during that time, showed remorse for his actions, engaged in a substantial amount of programming, volunteered with Equality 8, served as the co-facilitator of the Uhuru Sasa Cultural Club, obtained his GED, served as a mentor for other adults in custody and Black youth, and worked hard to address the issues underlying his convictions. District Attorney Mike Schmidt supported Mr. Jackson's clemency application. I concluded that Mr. Jackson demonstrated exemplary rehabilitation and that his continued incarceration does not serve the best interests of the State of Oregon.

Kiesha Johnson. Convicted of Felony Murder on August 19, 2003, and sentenced to life in prison with a mandatory minimum of 300 months of incarceration, lifetime post-prison supervision, and ordered to pay fees and assessments. Ms. Johnson was incarcerated for almost 18 years and, during that time, demonstrated exemplary progress and extraordinary evidence of rehabilitation, including fully addressing the issues and trauma underlying her convictions, obtaining her GED and starting undergraduate courses, completing the Victim Offender Education Group and a significant amount of additional programming, showing remorse for her actions, mentoring other women as a peer mentor and a live-in mentor, and volunteering countless hours of her time. I concluded that continued incarceration of Ms. Johnson does not serve the best interests of the State of Oregon.

Trevin Michael King. At the age of 17, convicted of Robbery I on February 27, 2014, and sentenced to 50 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. King was incarcerated in the custody of both the Oregon Youth Authority and the Department of Corrections for almost seven years and, during that time, demonstrated exemplary progress and considerable evidence of rehabilitation. Notably, he took full advantage of programming, showed remorse for his actions, addressed the trauma underlying his conviction, mentored youth, volunteered with Project Pooch and several other organizations,

and obtained his GED and worked toward becoming an electrician. I concluded that continued incarceration of Mr. King does not serve the best interests of the State of Oregon.

Rebecca Ann Machain. At the age of 16, convicted of Murder on December 22, 2006, and sentenced to life in prison, lifetime post-prison supervision, and ordered to pay fees and assessments. During her incarceration, Ms. Machain showed remorse for her actions, took significant steps to address the issues and trauma underlying her conviction, took undergraduate courses, mentored other adults in custody, and remained highly engaged in various forms of programming and skills building. I concluded that Ms. Machain demonstrated exemplary rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

Juliette McShane. Convicted of Assault II, Burglary I, Kidnapping II, and Robbery I on June 10, 2005, and sentenced to 250 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Ms. McShane had already served 15 years of her sentence and, during that time, demonstrated excellent progress and considerable evidence of rehabilitation, including committedly addressing the issues and trauma underlying her convictions, showing remorse for her actions, obtaining a bachelor's degree, and volunteering with the Puppy Program and Hospice Program. I concluded that continued incarceration of Ms. McShane does not serve the best interests of the State of Oregon.

Suzanne Miles. Convicted of Murder with a Firearm and Unlawful Use of a Weapon with a Firearm on January 17, 2002, and sentenced to life in prison, 300 months of post-prison supervision, and ordered to pay fees and assessments. During her 20 years of incarceration, Ms. Miles took many steps to address the trauma and issues underlying her conviction, expressed remorse for her actions, mentored other adults in custody in ways that others have not, substantially engaged in programming and skills building, and volunteered with the Hospice Program and Puppy Program. I concluded that Ms. Miles demonstrated exemplary rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

William Ray Miskell. Convicted of Murder on May 25, 2004, and sentenced to life in prison with a mandatory minimum of 300 months of incarceration, lifetime post-prison supervision, and ordered to pay fees and assessments. Mr. Miskell put his time in custody to productive use as he addressed the issues underlying his conviction, expressed remorse, mentored individuals both inside and outside prison, and extensively volunteered time with church outreach activities. I concluded that Mr. Miskell demonstrated excellent evidence of rehabilitation and that his continued incarceration does not serve the best interests of the State of Oregon.

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Victoria Marie Monfore. Convicted of Identity Theft on February 19, 2010 (Judgment of Conviction amended on February 6, 2020), and sentenced to 13 months of incarceration, 12 months of post-prison supervision, and ordered to pay fees and assessments. During her incarceration, Ms. Monfore graduated from the Victim Offender Education Group, became a mentor for young women, showed remorse for her actions, volunteered on the sustainability team, donated, and engaged in a host of other programs. I concluded that Ms. Monfore demonstrated exemplary rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

Mary Lynn Pierce. Convicted of five counts of Identity Theft on August 19, 2013, and sentenced to 30 months of incarceration on each count, 12 months of post-prison supervision, and ordered to pay fees and assessments. During her time in custody, Ms. Pierce engaged in a substantial amount of rehabilitative programming to address the issues underlying her conviction and was required to continue to do so upon her release. She also showed remorse for her actions. I concluded that Ms. Pierce demonstrated excellent evidence of rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

Josefina Jasmin Ramirez. At the age of 14, convicted of Attempt to Commit Murder and Assault III on July 12, 2013, and sentenced to 110 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. During her incarceration, Ms. Ramirez has taken every opportunity OYA offers to rehabilitate herself, including nearly completing her bachelor's degree, being accepted into a master's degree program, being the first in-custody youth at OYA to become a Certified Drug and Alcohol Counselor, mentoring and tutoring youths in custody, addressing the trauma underlying her conviction, expressing remorse for her actions, and volunteering in numerous capacities. Multnomah County District Attorney Mike Schmidt supported Ms. Ramirez's application for clemency. I concluded that Ms. Ramirez demonstrated exemplary evidence of rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

Jennifer Lynn Roberts. Convicted of four counts of Identity Theft and Theft I on July 2, 2009, and sentenced to 31 months of incarceration, 12 months of post-prison supervision, and ordered to pay fees and assessments. During her time in custody, Ms. Roberts engaged in a substantial amount of rehabilitative programming to address the issues underlying her convictions, showed remorse for her actions, volunteered with Girl Scouts Beyond Bars, completed the Victim Offender Education Group, obtained her Certified Drug and Alcohol Counselor certification, mentored other adults in custody, and volunteered with various organizations. I concluded that Ms. Roberts demonstrated excellent evidence of rehabilitation and that her continued incarceration does not serve the best interests of the State of Oregon.

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George Douglas Sanders. Convicted of Robbery I and Felon in Possession of a Firearm on September 13, 1996, and sentenced to 204 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. Mr. Sanders was incarcerated for 25 years and, during that time, demonstrated exemplary progress and considerable evidence of rehabilitation. Notably, he expressed remorse for his actions, took time to address the issues underlying his convictions, engaged in a substantial amount of rehabilitative programming, participated in fundraising, and volunteered much of his time, including coordinating family reunification activities at the Oregon State Prison. I concluded that continued incarceration of Mr. Sanders does not serve the best interests of the State of Oregon.

Jerome Sloan. Convicted of three counts of Aggravated Murder on October 28, 1994, and sentenced to life in prison without the possibility of parole, and ordered to pay fees and assessments. During his nearly 27 years of incarceration, Mr. Sloan demonstrated remorse for his actions, excellent progress, and exemplary evidence of rehabilitation. Of particular note, he has mentored and coach other adults in custody, helped many men disaffiliate from gangs, volunteered his time, curated numerous forms of artwork, engaged in a substantial amount of programming and now helps facilitate various programs. I concluded that Mr. Sloan's ineligibility to seek parole does not serve the best interests of the State of Oregon and commuted his sentence to a life sentence with the possibility of parole.

Tammy Rae Traxtle. Convicted of Murder on January 8, 1997, and sentenced to life in prison with a minimum of 300 months of incarceration, lifetime post-prison supervision, and ordered to pay fees and assessments. During her nearly 25 years of incarceration, Ms. Traxtle demonstrated excellent progress and exemplary evidence of rehabilitation. She worked diligently to address the trauma and issues that led to her convictions, expressed remorse for her actions, assisted several organizations with her fluency in Spanish, engaged in an enormous amount of programming, volunteered with the Puppy Program and other organizations, and built impressive relationships in her employment. I concluded that continued incarceration of Ms. Traxtle does not serve the best interests of the State of Oregon.

Marsel Darvis Upton. At the age of 16, convicted of Manslaughter I with a Firearm on March 11, 2011, and sentenced to 228 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. During his time in the custody of OYA and DOC, Mr. Upton expressed sincere remorse for his actions, addressed the trauma underlying his conviction, furthered his education, engaged in treatment and a substantial amount of programming, mentored at-risk youth, obtained his barber license, maintained high in-custody privileges, and took advantage of employment and mentorship opportunities wherever available. I concluded that Mr. Upton demonstrated excellent progress and extraordinary evidence of rehabilitation and that his continued incarceration does not serve the best interests of the State of Oregon.

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Ezequiel Vasquez. At the age of 15, convicted of Manslaughter I and Robbery I on June 10, 2013, and sentenced to 240 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. During his incarceration, Mr. Vasquez demonstrated excellent progress and extraordinary evidence of rehabilitation, including expressing sincere remorse for his actions, severing ties with the gang he was part of, mentoring and tutoring other youths in custody, obtaining his bachelor's degree, being accepted into a master's degree program, engaging in programming and skills building, addressing the issues and trauma underlying his convictions, and volunteering his time through numerous organizations. Multnomah County District Attorney Mike Schmidt supported Mr. Vasquez's application for clemency. I concluded that continued incarceration of Mr. Vasquez does not serve the best interests of the State of Oregon.

I have granted the following reprieve:

Darcy Miller. Convicted of Delivery of Methamphetamine on April 20, 2020, and sentenced to 25 months of incarceration, 36 months of post-prison supervision, and ordered to pay fees and assessments. At the time of her conviction, Ms. Miller was several months pregnant and, due to COVID-19, programming in prisons that would enable her to see her newborn baby on a regular basis had been paused. I concluded that the incarceration of Ms. Miller during the weeks before and after the birth of her child did not serve the best interests of the State of Oregon or of Ms. Miller and, as a result, I granted her a temporary and conditional reprieve of her remaining term of incarceration to have her baby and spend one month with her newborn.

Sincerely,

Governor Kate Brown

KB:smg

EXHIBIT A

Last Name	First Name	Conviction	Sentence (months)	Commutation Date
Adams	Vernon	Delivery of Methamphetamine within 1,000 ft of a School	12	02/04/2021
Aguilar	Ramon	Delivery of Methamphetamine	72	07/16/2020
Aldeguer	Makayla	Unauthorized Use of a Vehicle	60	01/07/2021
Aldridge	Howard	Burglary I	36	12/17/2020
Alldridge	Michelle	Burglary I	34	12/17/2020
Almaguer	Abel	Delivery of Methamphetamine	41	07/09/2020
Anderson	Sharryl	Delivery of Heroin	30	03/25/2021
Annis	Melissa	Mail Theft- New	36	6/24/2021
Antonuccio	Corrina	Delivery of Heroin	25	12/17/2020
April	Heather	Forgery I	30	12/17/2020
April	Heather	Forgery I	30	12/17/2020
April	Heather	Identity Theft	30	12/17/2020
April	Heather	Identity Theft	40	12/17/2020
Armour	Bruce	Burglary I	26	02/11/2021
Arreguin	Mary	Aggravated Theft	24	12/17/2020
Arroyo-Martinez	Isidro	Delivery of Methamphetamine	18	12/23/2020
Atcherson	Geoffrey	Criminal Possession of a Forged Instrument I	30	11/25/2020
Atcherson	Geoffrey	Aggravated Theft	51	11/25/2020
Atkinson	Amanda	Identity Theft	40	03/25/2021
Atkinson	Amanda	Unauthorized Use of a Vehicle	30	03/25/2021
Auman	Shannon	Burglary I	50	02/04/2021
Auman	Shannon	Burglary I	36	02/04/2021
Austin	Roger	Burglary II	24	05/20/2021
Austin	Roger	Delivery of Methamphetamine	11	05/20/2021
Ayala	Rafael	Delivery of Methamphetamine	20	05/27/2021
Bacon	Robin	Aggravated Theft	29	07/02/2020
Baird	Brian	Identity Theft	30	05/06/2021
Baird	Brian	Identity Theft	30	05/06/2021
Baity	Trevon	Burglary I	4	06/10/2021
Baity	Trevon	Burglary I	36	06/10/2021
Baity	Trevon	Burglary I	32	06/10/2021
Baker	Anthony	Delivery of Cocaine	24	12/17/2020
Baker	Mark	Delivery of Methamphetamine	60	12/17/2020
Baker	Shawn	Aggravated Theft	36	03/25/2021
Barbour	Joel	Unauthorized Use of a Vehicle	60	04/01/2021
Barker	Russell	Delivery of Methamphetamine	29	05/20/2021
Barker	Russell	Possession of Heroin	29	05/20/2021
Barker	Stephanie	Delivery of Methamphetamine	56	05/27/2021
Barnes	Pierre	Delivery of Cocaine within 1,000 ft of a School	34	02/18/2021
Barrera	Lyric	Theft I	13	06/17/2021

Barrera	Lyric	Unauthorized Use of a Vehicle	24	06/17/2021
Barrera	Lyric	Unauthorized Use of a Vehicle	26	06/17/2021
Barrera	Stephen	Delivery of Methamphetamine	30	03/25/2021
Baszler	Kameron	Identity Theft	6	01/07/2021
Baumgardner	Alex	Burglary II	6	04/01/2021
Baumgardner	Alex	Escape II	24	04/01/2021
Baumgardner	Alex	Unauthorized Use of a Vehicle	26	04/01/2021
Baumgardner	Alex	Unauthorized Use of a Vehicle	24	04/01/2021
Beaudoin	Gerard	Aggravated Theft	12	07/30/2020
Beaudoin	Gerard	Theft I	24	07/30/2020
Beausoleil	Brian	Driving while Suspended/Revoked	60	07/02/2020
Beck	Loran	Aggravated Theft	36	03/04/2021
Bell	Jeffrey	Delivery of Methamphetamine	46	04/01/2021
Bello	Denis	Delivery of Methamphetamine	61	12/17/2020
Bennett	Justin	Unauthorized Use of a Vehicle	30	04/08/2021
Benson	Andrew	Forgery I	30	05/20/2021
Benson	Andrew	Identity Theft	15	05/20/2021
Bercume	Richard	Burglary I	36	04/01/2021
Bergevin	Austin	Burglary I	36	06/03/2021
Berumen	Juan	Delivery of Methamphetamine	60	04/22/2021
Bigley	William	Delivery of Methamphetamine within 1,000 ft of a School	14	03/25/2021
Bigley	William	Delivery of Methamphetamine	14	03/25/2021
Bilbruck	Robert	Burglary II	30	02/11/2021
Bilbruck	Robert	Burglary II	30	02/11/2021
Bilbruck	Robert	Burglary II	18	02/11/2021
Bishop	Carrie	Failure to Appear I	12	03/25/2021
Bishop	Carrie	Failure to Appear I	24	03/25/2021
Bissonette	Ladawn	Forgery I	30	04/01/2021
Blake	Neva	Unauthorized Use of a Vehicle	18	12/17/2020
Bobo	Joseph	Delivery of Methamphetamine	18	04/01/2021
Bogle	Lori	Delivery of Methamphetamine	55	01/14/2021
Bonin	Daniel	Delivery of Methamphetamine	28	01/14/2021
Borden	Roy	Delivery of Methamphetamine	60	03/25/2021
Bouton	Jonathan	Burglary II	36	01/28/2021
Bouton	Jonathan	Felon in Possession of a Firearm	12	01/28/2021
Bouton	Jonathan	Identity Theft	30	01/28/2021
Bouton	Jonathan	Identity Theft	30	01/28/2021
Bouton	Jonathan	Aggravated Theft	36	01/28/2021
Bouton	Jonathan	Theft I	30	01/28/2021
Bouton	Jonathan	Theft I	30	01/28/2021
Bouvia	Mark	Delivery of Methamphetamine	25	12/17/2020
Boyd	Wesley	Burglary I	16	06/03/2021
Boyd	Wesley	Delivery of Methamphetamine	26	06/03/2021
Boyd	Wesley	Delivery of Methamphetamine	36	06/03/2021
Brackens	Chris	Theft I	13	01/14/2021
Bradley-Martin	Travis	Aggravated Identity Theft	24	11/25/2020

Brandner	Jason	Felon in Possession of a Firearm	19	04/01/2021
Breedlove	Edwin	Possession of Methamphetamine	27	12/17/2020
Brewster	Jonathan	Delivery of Heroin	60	06/03/2021
Brisson	Scott	Burglary II	14	04/29/2021
Brisson	Scott	Identity Theft	13	04/29/2021
Brisson	Scott	Identity Theft	13	04/29/2021
Brittle	James	Burglary II	46	04/08/2021
Broderick	Arren	Delivery of Methamphetamine	24	01/07/2021
Brooks	Ashley	Aggravated Identity Theft	12	12/17/2020
Brooks	Ashley	Burglary I	36	12/17/2020
Brooks	Robert	Identity Theft	44	06/10/2021
Brooks	Robert	Possession of a Stolen Vehicle	18	06/10/2021
Brooks	Robert	Unauthorized Use of aVehicle	44	06/10/2021
Brooks	Robert	Unlawfully Obtaining/Using Food Stamps	44	06/10/2021
Brown	Shannon	Delivery of Methamphetamine within 1,000 ft of a School	34	03/25/2021
Brown	Shannon	Delivery of Methamphetamine within 1,000 ft of a School	34	03/25/2021
Brown	Tenikia	Aggravated Identity Theft	38	01/14/2021
Brown	Terri	Mail Theft	30	12/23/2020
Bryant	Kevin	Burglary II	18	05/27/2021
Buck	Virginia	Burglary I	30	12/17/2020
Buckley	John	Felon in Possession of a Firearm	36	12/17/2020
Buckley	Richard	Delivery/Manufacturing of a Controlled Substance- B Felony	34	03/25/2021
Burdick	Toni	Forgery I	30	03/25/2021
Bush	Larry	Delivery of Methamphetamine	45	05/06/2021
Cambray-Diaz	Pablo	Delivery of Heroin	48	04/01/2021
Camenzind	Bryan	Burglary II	24	04/15/2021
Camenzind	Bryan	Identity Theft	21	04/15/2021
Camenzind	Bryan	Unauthorized Use of a Vehicle	28	04/15/2021
Campbell	Russell	Forgery I	48	12/17/2020
Canela-Perez	Jorge	Delivery of Heroin	90	12/17/2020
Canela-Perez	Jorge	Delivery of Methamphetamine	90	12/17/2020
Canning	William	Delivery of Heroin	34	04/15/2021
Canning	William	Delivery of Methamphetamine	34	04/15/2021
Carbary	Sierra	Burglary II	18	03/25/2021
Carney	Ira	Burglary II	30	04/29/2021
Carney	Ira	Theft I	30	04/29/2021
Carney	Ira	Unauthorized Use of a Vehicle	30	04/29/2021
Carney	Ira	Unauthorized Use of a Vehicle	30	04/29/2021
Carney	Ira	Unauthorized Use of a Vehicle	30	04/29/2021
Carra	Raymond	Identity Theft	18	03/04/2021
Carter	Damande	Possession of Methamphetamine	24	03/25/2021
Cassata	Anthony	Delivery of Cocaine	40	06/03/2021
Cassidy	Eric	Unauthorized Use of a Vehicle	48	05/13/2021
Caywood	Jessica	Identity Theft	24	02/11/2021

Caywood	Jessica	Identity Theft	36	02/11/2021
Ceideburg	Frank	Delivery of Methamphetamine	56	05/20/2021
Ceideburg	Mack	Delivery of Methamphetamine	48	05/13/2021
Chandler	Foy	Delivery of Methamphetamine	32	05/13/2021
Chandler	Foy	Delivery of Methamphetamine	35	05/13/2021
Chaney	Jeff	Burglary II	30	01/21/2021
Charpentier	Keeley	Identity Theft	18	12/17/2020
Chavez	Annadelia	Theft I	30	04/29/2021
Chavez-Villalobos	Gabriel	Delivery of Methamphetamine	60	12/17/2020
Chiles	Talia	Unauthorized Use of a Vehicle	22	01/07/2021
Christie	Thomas	Burglary I	30	04/01/2021
Cianflocco	Gregory	Unauthorized Use of a Vehicle	20	12/17/2020
Cifuentes-Roblero	Kristan	Identity Theft	18	04/08/2021
Cifuentes-Roblero	Kristan	Identity Theft	8	04/08/2021
Cifuentes-Roblero	Kristan	Identity Theft	13	04/08/2021
Clark	Kenneth	Burglary I	36	04/22/2021
Clason	Tina	Possession of a Stolen Vehicle	36	12/17/2020
Clason	Tina	Unauthorized Use of a Vehicle	6	12/17/2020
Clay	Roger	Delivery of Methamphetamine	34	07/30/2020
Clifford	Justin	Burglary II	30	03/25/2021
Clifford	Justin	Theft I	30	03/25/2021
Clingings	Morgan	Forgery I	6	12/17/2020
Clingings	Morgan	Identity Theft	16	12/17/2020
Cloyd	Glen	Burglary II	22	10/01/2020
Coenen	Randy	Identity Theft	30	02/11/2021
Coenen	Randy	Theft I	30	02/11/2021
Coenen	Randy	Unauthorized Use of a Vehicle	18	02/11/2021
Colello	Joseph	Racketeering	60	11/25/2020
Connor	Anna	Burglary I	24	03/25/2021
Connor	Anna	Unauthorized Use of a Vehicle	18	03/25/2021
Connors	Dustin	Theft I	24	03/25/2021
Copeland	Dwaine	Racketeering	45	11/25/2020
Copeland	Dwaine	Unauthorized Use of a Vehicle	26	11/25/2020
Copeland	Dwaine	Unauthorized Use of a Vehicle	24	11/25/2020
Copeland	Dwaine	Unauthorized Use of a Vehicle	28	11/25/2020
Corr	Darlene	Identity Theft	13	04/29/2021
Craine	Brandon	Forgery I	30	04/22/2021
Cross	Brian	Forgery I	30	12/23/2020
Cross	Meggan	Delivery of Methamphetamine	40	01/14/2021
Crume	Veda	Identity Theft	30	04/15/2021
Curtis	Marci	Manufacturing Methamphetamine	50	02/04/2021
Curtis	Marci	Supplying Contraband	12.03	02/04/2021
Daffern	Travis	Felon in Possession of a Firearm	14	01/28/2021
Daggs	Michelle	Unauthorized Use of a Vehicle	20	06/17/2021
Daniels	Jef	Possession of a Stolen Vehicle	22	01/14/2021
Daniels	William	Delivery of Methamphetamine	40	6/24/2021
Daniels	William	Delivery of Methamphetamine	26	6/24/2021

Davis	Amy	Burglary I	25	03/25/2021
Davis	Drew	Failure to Appear I	18	03/25/2021
Davis	Felisia	Delivery of Heroin	50	04/01/2021
Davis	Jason	Felon in Possession of a Firearm	13	06/10/2021
Davis	Ronald	Felon in Possession of a Firearm	36	04/22/2021
Dawson	Marcus	Burglary I	36	12/17/2020
Dawson	Marcus	Identity Theft	12.03	12/17/2020
Deleon	Juan	Delivery of Heroin	80	03/25/2021
Deleon	Juan	Delivery of Methamphetamine	18	03/25/2021
Delgadillo	Sergio	Delivery of Heroin	17	01/14/2021
Delgadillo	Sergio	Racketeering	163	01/14/2021
Densley	Carol	Theft I	24	12/17/2020
Derrick	Robert	Delivery of Heroin	60	03/25/2021
Derrick	Robert	Delivery of Methamphetamine	45	03/25/2021
Devore	Cary	Driving while Suspended/Revoked	11	07/09/2020
Dill	Shannon	Delivery of MDMA	29	03/25/2021
Dizer	Michael	Burglary II	30	10/01/2020
Dodson	Johnny	Burglary I	28	03/31/2021
Doe	Quintin	Delivery of Methamphetamine	41	12/17/2020
Dole	Alan	Burglary II	24	04/01/2021
Dole	Alan	Forgery I	35	04/01/2021
Dress	Amanda	Identity Theft	36	11/25/2020
Drusky	Jacob	Possession of Methamphetamine	18	11/25/2020
Duncan	Iain Alexander	Unauthorized Use of a Vehicle	40	12/17/2020
Dunlap	Burkley	Delivery of Methamphetamine	40	02/11/2021
Dunlap	Burkley	Delivery of Methamphetamine	60	02/11/2021
Dunn	Michael	Felon in Possession of a Firearm	30	05/06/2021
Duzan	Jamie	Delivery of Heroin	81	12/30/2020
Easley	Jay	Delivery of Heroin	29	12/17/2020
Eby	Raymond	Burglary I	72	05/20/2021
Eby	Raymond	Felon in Possession of a Firearm	13	05/20/2021
Eby	Raymond	Possession of Methamphetamine	6	05/20/2021
Edington	Brian	Unauthorized Use of a Vehicle	45	01/28/2021
Edwards	Jesse	Aggravated Identity Theft	32	04/01/2021
Edwards	Jesse	Aggravated Identity Theft	32	04/01/2021
Edwards	Jesse	Aggravated Identity Theft	32	04/01/2021
Ellis	Bonnie	Delivery of Heroin	14	07/02/2020
Ellis	Bonnie	Delivery of Heroin	20	07/02/2020
Emmert	Thomas	Delivery of Methamphetamine	60	01/07/2021
Engel	Jared	Fraudulent Use of a Credit Card	18	03/25/2021
Engel	Jared	Identity Theft	13	03/25/2021
Engel	Jared	Identity Theft	13	03/25/2021
England	Alexander	Aggravated Identity Theft	56	07/23/2020
Enriquez	Victor	Burglary II	24	06/03/2021
Enriquez	Victor	Unauthorized Use of aVehicle	20	06/03/2021
Epps	Dusty	Burglary I	24	12/17/2020
Erickson	Ernest	Felon in Possession of a Firearm	36	03/25/2021

Essman-Uruo	Angela	Identity Theft	39	05/20/2021
Evans	Marina	Delivery of Heroin	41	12/17/2020
Faiman	Casey	Unauthorized Use of a Vehicle	40	05/27/2021
Faiman	Casey	Unauthorized Use of a Vehicle	30	05/27/2021
Fain	Mark	Delivery of Methamphetamine	34	12/03/2020
Fall	Kristen	Aggravated Identity Theft	48	02/11/2021
Fall	Kristen	Aggravated Identity Theft	36	02/11/2021
Fall	Kristen	Identity Theft	18	02/11/2021
Fall	Kristen	Unauthorized Use of a Vehicle	30	02/11/2021
Faria	Dennis	Delivery of Methamphetamine	25	05/20/2021
Fay	Thomas	Delivery of Heroin	66	04/22/2021
Felkins	Serena	Aggravated Identity Theft	30	12/17/2020
Felkins	Serena	Identity Theft	30	12/17/2020
Fenton	Stephen	Identity Theft	6	04/15/2021
Fenton	Stephen	Unauthorized Use of a Vehicle	30	04/15/2021
Fero	Tyler	Felon in Possession of a Firearm	41	07/09/2020
Fero	Tyler	Possession of Heroin	30	07/09/2020
Fero	Tyler	Unauthorized Use of a Vehicle	30	07/09/2020
Ferra-Maier	Brittney	Theft I	30	02/04/2021
Ferrel	Steven	Delivery of Methamphetamine	25	06/17/2021
Ferrel	Steven	Identity Theft	13	06/17/2021
Flake	Monica	Delivery of Methamphetamine	66	01/21/2021
Flake	Monica	Delivery of Methamphetamine	66	01/21/2021
Flores	Juan	Delivery of Heroin	111	04/29/2021
Foley	Jeramy	Burglary II	30	05/13/2021
Fontana	Dustin	Unauthorized Use of a Vehicle	18	06/10/2021
Francisco	Pablo	Unauthorized Use of a Vehicle	8	04/01/2021
Freeland	Kelly	Burglary II	30	11/25/2020
Freeman	Angela	Identity Theft	30	04/15/2021
Freeman	Angela	Identity Theft	30	04/15/2021
Friese	Shawn	Escape II	24	01/14/2021
Fugate	Justin	Unauthorized Use of a Vehicle	9	12/17/2020
Gage	Belinda	Conspiracy to Commit a B Felony	60	12/17/2020
Galan-Sanchez	Santiago	Delivery of Methamphetamine	58	12/17/2020
Gamble	Donald	Driving while Suspended/Revoked	15	07/30/2020
Garcia	Michelle	Unauthorized Use of a Vehicle	30	12/23/2020
Gascon	Herbert	Delivery of Methamphetamine	10	06/17/2021
Gascon	Herbert	Delivery of Methamphetamine	40	06/17/2021
Gastineau	Tamara	Theft I	18	10/01/2020
Gates	Dustin	Possession of Methamphetamine	24	04/08/2021
Gates	Dustin	Possession of Heroin	24	04/08/2021
Gatewood	Alexander	Unauthorized Use of a Vehicle	30	12/17/2020
Gibson	Eric	Identity Theft	30	06/03/2021
Gibson	Eric	Identity Theft	30	06/03/2021
Gibson	Eric	Identity Theft	30	06/03/2021
Gibson	Eric	Unauthorized Use of a Vehicle	30	06/03/2021
Gifford	Heather	Mail Theft	18	03/25/2021

Gifford	Heather	Theft I	30	03/25/2021
Gifford	Heather	Unauthorized Use of a Vehicle	30	03/25/2021
Gill	Billy	Possession of a Stolen Vehicle	19	07/30/2020
Girod	Jason	Unauthorized Use of a Vehicle	60	05/13/2021
Goforth	Michael	Delivery of Methamphetamine	25	01/07/2021
Gonzales	Alejandro	Delivery of Heroin	36	03/11/2021
Goodenough	Ralph	Unauthorized Use of a Vehicle	48	01/14/2021
Goodenough	Ralph	Unauthorized Use of a Vehicle	48	01/14/2021
Goodman	Kristopher	Theft I	30	01/28/2021
Gorsline	Del	Delivery of Methamphetamine	45	11/25/2020
Gray	Christopher	Unauthorized Use of a Vehicle	18	04/08/2021
Green	Craig	Conspiracy to Commit a A Felony	60	04/01/2021
Greenslade	Kevin	Burglary II	44	04/01/2021
Greenslade	Kevin	Theft I	54	04/01/2021
Gregg	Adam	Delivery of Heroin	80	06/03/2021
Gregg	Donald	Delivery of Methamphetamine	45	07/23/2020
Gregg	Donald	Felon in Possession of a Firearm	30	07/23/2020
Griffin	Justin	Delivery of Methamphetamine	45	02/18/2021
Groesz	Kane	Criminal Possession of a Forged Instrument I	20	06/17/2021
Guess	Alexis	Unauthorized Use of a Vehicle	22	07/16/2020
Guevara	Cynthia	Escape II	20	11/25/2020
Guevara	Cynthia	Criminal Mischief I	18	11/25/2020
Gustina	Stephanie	Delivery of Methamphetamine	120	12/30/2020
Hairston	Tyree	Burglary I	32	04/15/2021
Hallanger	Nicole	Unauthorized Use of a Vehicle	24	04/01/2021
Hamilton	Justin	Felon in Possession of a Firearm	19	05/06/2021
Hamilton	Ryan	Delivery of Methamphetamine	25	06/17/2021
Hamilton	Ryan	Delivery of Methamphetamine	24	06/17/2021
Hammack	Karen	Delivery of Methamphetamine	23	02/11/2021
Handsaker	Gregory	Delivery of Heroin	68	06/17/2021
Handsaker	Gregory	Manufacturing Heroin	68	06/17/2021
Handsaker	Gregory	Possession of Heroin	36	06/17/2021
Hannah	Samuel	Unauthorized Use of a Vehicle	60	12/23/2020
Hannon	Audrey	Theft I	22	12/17/2020
Hargis	William	Burglary I	56	01/14/2021
Harp	Kevin	Burglary I	32	12/23/2020
Harp	Kevin	Unauthorized Use of a Vehicle	30	12/23/2020
Harris	Prince	Forgery I	30	04/15/2021
Hartness	Hiram	Unauthorized Use of aVehicle	48	06/10/2021
Hassel	Timothy	Delivery of Heroin	44	02/25/2021
Hassel	Timothy	Delivery of Methamphetamine	44	02/25/2021
Hasson	Nicole	Delivery of Methamphetamine	29	04/29/2021
Havis	Ashley	Delivery of Methamphetamine	23	03/25/2021
Hawash	Kasim	Identity Theft	12	12/17/2020
Hawash	Kasim	Theft I	12	12/17/2020
Hawash	Kasim	Theft I	18	12/17/2020
Hawthorne	Vincent	Identity Theft	30	07/09/2020

Healy	Thomas	Felon in Possession of a Firearm	24	12/17/2020
Healy	Thomas	Theft I	30	12/17/2020
Hebner	Dean	Aggravated Identity Theft	36	06/10/2021
Hebner	Dean	Theft I	22	06/10/2021
Hebner	Dean	Theft I	20	06/10/2021
Hedrick	Joshua	Unauthorized Use of a Vehicle	28	01/07/2021
Helm	Christopher	Criminal Mischief I	38	04/08/2021
Henkel	Timothy	Delivery of Methamphetamine	29	03/11/2021
Henry	William	Unauthorized Use of a Vehicle	36	03/31/2021
Hernandez	Isaiah	Delivery of Methamphetamine	24	04/15/2021
Herrera	Miguel	Delivery of Methamphetamine	75	07/16/2020
Herriges	John	Burglary II	48	01/21/2021
Heywood	Taylor	Attempted Aggravated Theft	24	04/15/2021
Heywood	Taylor	Unauthorized Use of a Vehicle	24	04/15/2021
Heywood	Taylor	Unauthorized Use of a Vehicle	18	04/15/2021
Higdon-Stewart	Elizabeth	Unauthorized Use of a Vehicle	30	07/23/2020
Higgins	Michael	Criminal Possession of a Forged Instrument I	30	06/03/2021
Higgins	Michael	Forgery I	24	06/03/2021
Higgins	Michael	Unauthorized Use of a Vehicle	30	06/03/2021
Higgins	Michael	Unauthorized Use of a Vehicle	30	06/03/2021
Hill	Victoria	Eluding Police	20	05/20/2021
Hill	Victoria	Failure to Appear I	14	05/20/2021
Hill	Victoria	Failure to Appear I	14	05/20/2021
Hill	Victoria	Unauthorized Use of a Vehicle	20	05/20/2021
Hillyer	John	Identity Theft	18	03/25/2021
Hillyer	John	Identity Theft	18	03/25/2021
Hines	Irvin	Burglary II	30	11/25/2020
Hines	Irvin	Burglary II	30	11/25/2020
Hoag	Norman	Identity Theft	30	04/08/2021
Hoag	Norman	Identity Theft	30	04/08/2021
Holcomb	Nicholas	Driving while Suspended/Revoked	19	07/02/2020
Hollifield	Michael	Aggravated Identity Theft	25	03/24/2021
Homayoun	Mahmod	Theft I	22	06/03/2021
Homayoun	Mahmod	Theft I	20	06/03/2021
Houston	Daniel	Unauthorized Use of a Vehicle	24	05/06/2021
Howell	Ricky	Burglary I	48	06/03/2021
Howell	Ricky	Burglary II	36	06/03/2021
Huerta	Jennifer	Identity Theft	32	01/07/2021
Huff	Kathaleen	Delivery of Cocaine	28	12/17/2020
Huff	Kathaleen	Delivery of Heroin	25	12/17/2020
Hustoft	Rebecca	Theft I	10	01/14/2021
Hustoft	Rebecca	Theft I	13	01/14/2021
Hyslop	Khristopher	Aggravated Identity Theft	17	07/09/2020
Ibarra	Jaime	Delivery of Methamphetamine	35	07/09/2020
Incze	Gyula	Delivery of Methamphetamine	25	12/30/2020
Inglis	Brandon	Unauthorized Use of a Vehicle	14	12/17/2020
James	Stacey	Identity Theft	30	01/07/2021

James	Stacey	Identity Theft	30	01/07/2021
Jason	Nicholas	Theft I	60	12/17/2020
Jeffers	Kevin	Burglary II	10	03/04/2021
Jeffers	Kevin	Manufacturing Methamphetamine	60	03/04/2021
Jenkins	Scott	Forgery I	40	03/25/2021
Jenkins	Scott	Identity Theft	26	03/25/2021
Jenkins	Scott	Identity Theft	26	03/25/2021
Jenkins	Scott	Identity Theft	26	03/25/2021
Jenniches	Justin	Burglary I	28	05/27/2021
Jensen	Ryan	Delivery of Heroin	22	04/15/2021
Jensen	Ryan	Possession of Methamphetamine	18	04/15/2021
Jeppesen	Peter	Theft I	13	05/27/2021
Jeppesen	Peter	Theft I	13	05/27/2021
Jeppesen	Peter	Theft I	13	05/27/2021
Jeppesen	Peter	Theft I	2	05/27/2021
Johnson	Brandon	Delivery of Heroin	45	05/27/2021
Johnson	Brandon	Possession of Methamphetamine	50	05/27/2021
Johnson	Carrie	Possession of Methamphetamine	24	01/21/2021
Johnson	Charles	Unauthorized Use of a Vehicle	18	07/30/2020
Johnson	Crystal	Identity Theft	50	01/07/2021
Johnson	Crystal	Aggravated Theft	50	01/07/2021
Johnson	Crystal	Theft I	50	01/07/2021
Johnson	Crystal	Theft I	50	01/07/2021
Johnson	Crystal	Theft I	50	01/07/2021
Johnson	Dylan	Theft I	14	12/17/2020
Johnson	Edwin	Burglary I	72	04/01/2021
Johnson	Gary	Theft I	15	01/28/2021
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Raymond	Identity Theft	30	07/16/2020
Johnson	Shaun	Identity Theft	60	03/25/2021
Jones	Teresa	Unauthorized Use of a Vehicle	20	12/17/2020
Jones	Ty	Identity Theft	25	04/29/2021
Jones	Ty	Identity Theft	25	04/29/2021
Jones	Ty	Mail Theft	30	04/29/2021
Jordan	Artemio	Identity Theft	18	05/13/2021
Jordan	Justin	Felon in Possession of a Firearm	14	12/29/2020
Jordan	Solomon	Delivery of Methamphetamine	70	03/25/2021
Kalcich	Kyle	Unauthorized Use of a Vehicle	30	6/24/2021
Keerins	Patrick	Delivery of Heroin within 1,000 feet of a School	41	01/14/2021

Keerins	Patrick	Delivery of Heroin within 1,000 feet of a School	16	01/14/2021
Keller	Stephanie	Manufacturing Methamphetamine	45	01/07/2021
Kelley	Janae	Identity Theft	13	06/03/2021
Kelley	Janae	Unauthorized Use of a Vehicle	18	06/03/2021
Kelley	Timothy	Delivery of Heroin	90	02/25/2021
Ketcham	Colt	Burglary I	24	6/24/2021
Ketcham	Colt	Theft I	15	6/24/2021
Ketcham	Colt	Theft I	13	6/24/2021
Kettner	Cory	Aggravated Identity Theft	32	06/10/2021
Kettner	Cory	Aggravated Identity Theft	40	06/10/2021
Kettner	Cory	Aggravated Identity Theft	28	06/10/2021
Kidd	Karen	Delivery of Methamphetamine	28	07/30/2020
Kidd	Karen	Delivery of Methamphetamine	36	07/30/2020
Kidd	Kayla	Burglary I	24	01/28/2021
Kilmurray	Jessica	Burglary I	26	12/17/2020
Kim	Yun	Criminal Mischief I	18	01/07/2021
King	Jay	Theft I	18	02/04/2021
King	Kevin	Burglary II	10	02/18/2021
King	Serena	Delivery of Methamphetamine	39	03/11/2021
Kingston	John	Conspiracy to Commit a B Felony	75	07/23/2020
Kinney	Alexander	Delivery of Heroin	36	03/25/2021
Knisley	Kori	Identity Theft	13	05/06/2021
Knisley	Kori	Racketeering	45	05/06/2021
Knisley	Kori	Unauthorized Use of a Vehicle	21	05/06/2021
Kohout	Thomas	Driving while Suspended/Revoked	12.03	07/23/2020
Kohout	Thomas	Driving Under the Influence of Intoxicants-Felony	22	07/23/2020
Korkow	Melissa	Delivery of Methamphetamine	45	05/27/2021
Lanegan	Frances	Delivery of Methamphetamine	30	03/25/2021
Lara	Carlos	Burglary II	22	06/10/2021
Lara	Carlos	Burglary II	6	06/10/2021
Lara	Carlos	Burglary II	6	06/10/2021
Leavens	Scott	Delivery of Methamphetamine	41	05/27/2021
Legare-Morales	Jeamilette	Forgery I	40	04/01/2021
Lepesh	Timothy	Theft I	13	11/25/2020
Leroy	Erik	Burglary I	13	12/17/2020
Leroy	Erik	Delivery of Methamphetamine	40	12/17/2020
Leroy	Erik	Identity Theft	18	12/17/2020
Lingar	Gina	Identity Theft	30	07/16/2020
Lingar	Gina	Identity Theft	30	07/16/2020
Lininger	Isaiah	Failure to Appear I	10	12/17/2020
Lis	Joseph	Computer Fraud	30	07/09/2020
Livermont	Nicole	Forgery I	22	04/01/2021
Loftis	Tommy	Delivery of Methamphetamine within 1,000 ft of a School	19	6/24/2021

Loftis	Tommy	Manufacturing Meth within 1,000 ft of a School	19	6/24/2021
Lopez	Cassandra	Identity Theft	5	04/22/2021
Lopez	Cassandra	Identity Theft	13	04/22/2021
Lopez	Cassandra	Identity Theft	13	04/22/2021
Lopez	Cassandra	Identity Theft	8	04/22/2021
Lopez	Maria	Racketeering	120	12/23/2020
Lopez	Ramiro	Identity Theft	18	01/14/2021
Lopez	Ramiro	Possession of Methamphetamine	6	01/14/2021
Lopez-Carranza	Domingo	Delivery of Methamphetamine	61	06/03/2021
Lorenz	Eric	Possession of a Stolen Vehicle	28	04/08/2021
Luck	Leon	Burglary I	24	04/08/2021
Lusk	Kayla	Delivery of Heroin	30	01/14/2021
Lusk	Kayla	Aggravated Theft	24	01/14/2021
Lyman	Dawn	Delivery of Methamphetamine	18	01/14/2021
Lyon	Bruce	Identity Theft	13	07/02/2020
Lyon	Bruce	Identity Theft	13	07/02/2020
Lyon	Bruce	Identity Theft	9	07/02/2020
Lyon	Gina	Delivery of Heroin	85	04/15/2021
Lyon	Gina	Delivery of Methamphetamine	85	04/15/2021
Macomber	Kathleen	Driving while Suspended/Revoked	12.03	07/16/2020
Magers	Jason	Burglary II	30	01/28/2021
Magnett	Raymond	Identity Theft	30	03/31/2021
Maloney	Jason	Theft I	30	12/17/2020
Manning	Roberta	Identity Theft	18	05/06/2021
Manning	Roberta	Identity Theft	18	05/06/2021
Manriquez	Juan	Delivery of Methamphetamine	34	12/17/2020
Manske	Jessica	Forgery I	30	12/17/2020
Manske	Jessica	Identity Theft	26	12/17/2020
Manske	Jessica	Identity Theft	28	12/17/2020
Manske	Jessica	Identity Theft	30	12/17/2020
Manske	Jessica	Theft I	30	12/17/2020
Marino	Anthony	Unauthorized Use of a Vehicle	26	01/07/2021
Marino	Anthony	Unauthorized Use of a Vehicle	18	01/07/2021
Marker	Anthony	Burglary I	24	04/08/2021
Marks	Michael	Forgery I	30	03/25/2021
Marks	Michael	Possession of a Stolen Vehicle	30	03/25/2021
Martinez	Selena	Unauthorized Use of a Vehicle	24	04/01/2021
Martinez	Selena	Unauthorized Use of a Vehicle	22	04/01/2021
Massi	Michael	Burglary II	18	04/29/2021
Massi	Michael	Felon in Possession of a Firearm	18	04/29/2021
Massi	Michael	Aggravated Theft	24	04/29/2021
Matz	Cherise	Delivery of Methamphetamine	35	04/01/2021
May	Douglas	Delivery of Methamphetamine	48	06/10/2021
Mayes	Lonnie	Failure to Appear I	14	02/18/2021
Mayse	Christina	Identity Theft	28	06/17/2021
Mayse	Christina	Identity Theft	30	06/17/2021

Mccain	Jessica	Delivery of Heroin	46	07/02/2020
Mccaulley	Bradley	Theft I	27	11/25/2020
Mccoy	Corbin	Delivery of Methamphetamine	50	01/07/2021
Mccright	Larry	Aggravated Theft	36	12/17/2020
Mcdonald	Devon	Burglary I	25	07/23/2020
Mckinney	Chauncey	Felon in Possession of a Firearm	28	05/06/2021
Mcmillan	Joshua	Driving Under the Influence of Intoxicants-Felony	13	07/23/2020
Measel	Brandon	Aggravated Identity Theft	40	04/01/2021
Medrano	Christina	Delivery of Heroin	34	06/03/2021
Medrano	Christina	Delivery of Methamphetamine	34	06/03/2021
Mendez	Lisa	Unauthorized Use of a Vehicle	40	12/17/2020
Mendoza	Jose	Possession of Methamphetamine	30	01/14/2021
Mendoza	Jose	Possession of a Stolen Vehicle	30	01/14/2021
Mendoza	Jose	Unauthorized Use of a Vehicle	30	01/14/2021
Meyer	John	Delivery of Methamphetamine within 1,000 ft of a School	52	01/07/2021
Meyers	Taylor	Burglary I	34	06/03/2021
Meyers	Taylor	Theft I	13	06/03/2021
Meza	Ivan	Delivery of Heroin	38	03/11/2021
Middlekauff	William	Delivery of Heroin	70	12/17/2020
Mildfelt	John	Burglary I	36	02/04/2021
Miley	Dustin	Criminal Possession of a Forged Instrument I	30	04/15/2021
Miley	Dustin	Identity Theft	6	04/15/2021
Miller	Kory	Delivery of Methamphetamine	75	02/18/2021
Miller	Melody	Burglary I	24	12/17/2020
Miller	Terry	Fraudulent Use of a Credit Card	22	04/15/2021
Miller	Terry	Fraudulent Use of a Credit Card	30	04/15/2021
Miller	Terry	Fraudulent Use of a Credit Card	26	04/15/2021
Mills	Robert	Burglary II	24	01/21/2021
Mills	Robert	Burglary II	24	01/21/2021
Mills	Robert	Burglary II	30	01/21/2021
Mills	Robert	Criminal Mischief I	18	01/21/2021
Minchue	Derrick	Burglary II	30	03/25/2021
Mitchell	Christopher	Identity Theft	22	01/21/2021
Mitchell	Christopher	Theft I	22	01/21/2021
Mitchell	Eric	Unauthorized Use of a Vehicle	13	12/17/2020
Mitchell	Isaiah	Escape II	21	04/15/2021
Mitchell	Owenn	Burglary II	30	01/21/2021
Mitchell	Owenn	Fraudulent Use of a Credit Card	30	01/21/2021
Mitchell	Owenn	Unauthorized Use of a Vehicle	30	01/21/2021
Mitchell	Sean	Theft I	30	01/07/2021
Moore	Scott	Aggravated Theft	48	03/25/2021
Moore	Scott	Aggravated Theft	48	03/25/2021
Moore	Scott	Aggravated Theft	48	03/25/2021
Morris	Randy	Burglary I	32	05/20/2021
Morris	Randy	Burglary I	26	05/20/2021

Morris	Randy	Identity Theft	19	05/20/2021
Morrison	Ashley	Delivery of Methamphetamine	24	03/25/2021
Moser	Chelsea	Burglary I	30	07/02/2020
Moser	Elizabeth	Unauthorized Use of a Vehicle	24	12/23/2020
Murphy	William	Delivery of Heroin	46	04/29/2021
Murray	Kenneth	Delivery of Methamphetamine	72	06/03/2021
Nair	Pritika	Aggravated Identity Theft	32	02/04/2021
Nava-Ramirez	Jose	Delivery of Methamphetamine	48	12/17/2020
Navarro Gutierrez	Delia	Delivery of Methamphetamine	40	05/20/2021
Neal	Brian	Possession of Methamphetamine	30	11/25/2020
Newsted	Troy	Unauthorized Use of a Vehicle	30	06/10/2021
Nichols	Robert	Unauthorized Use of a Vehicle	18	01/28/2021
Nichols	Trevor	Delivery of Methamphetamine	36	04/08/2021
Nikkel	Jeffery	Forgery I	30	01/28/2021
Nikkel	Jeffery	Identity Theft	30	01/28/2021
Nikkel	Jeffery	Identity Theft	30	01/28/2021
Nikkel	Jeffery	Identity Theft	30	01/28/2021
Nikkel	Jeffery	Theft I	30	01/28/2021
Nikkel	Jeffery	Theft I	30	01/28/2021
Normine	Joshua	Burglary I	24	05/20/2021
Norris	Donald	Delivery of Methamphetamine	50	11/25/2020
Norris	Jimmy	Unauthorized Use of a Vehicle	48	01/21/2021
O'Connor	Justin	Aggravated Identity Theft	15	05/06/2021
O'Connor	Justin	Fraudulent Use of a Credit Card	24	05/06/2021
Oester	Samuel	Identity Theft	34	02/11/2021
Olloque	Ronnie	Delivery of Methamphetamine	34	06/03/2021
Olson	Geri	Delivery of Methamphetamine	26	03/04/2021
Ortega	Jose	Unauthorized Use of a Vehicle	20	05/06/2021
Ortega	Noelia	Aggravated Theft I	26	06/17/2021
Ortega	Noelia	Burglary I	32	06/17/2021
Ortega	Noelia	Burglary I	26	06/17/2021
Ortega	Noelia	Unauthorized Use of a Vehicle	18	06/17/2021
Osborn	Colton	Escape II	10	03/11/2021
Osborne	Anna	Delivery of Heroin	50	04/01/2021
Osborne	Anthony	Burglary II	30	11/25/2020
Osborne	Anthony	Identity Theft	30	11/25/2020
Osborne	Anthony	Criminal Mischief I	30	11/25/2020
Owen	Joshua	Delivery of Methamphetamine	25	10/01/2020
Pachmayr	Nathan	Driving while Suspended/Revoked	30	01/07/2021
Paesch	Harry	Felon in Possession of a Firearm	25	07/16/2020
Pankey	Christopher	Delivery of Methamphetamine	56	04/08/2021
Pankey	Michael	Delivery of Methamphetamine	41	01/07/2021
Pantoja	Leon	Delivery of Heroin	29	02/11/2021
Park	Corey	Delivery of Methamphetamine	72	12/17/2020
Parker	Dandre	Delivery of Heroin	111	04/22/2021
Parker	Shawn	Identity Theft	12	11/25/2020
Parker	Shawn	Theft I	12	11/25/2020

Passmore-Winters	Joshua	Theft I	8	03/25/2021
Passmore-Winters	Joshua	Unauthorized Use of a Vehicle	20	03/25/2021
Patton	Jeffery	Delivery of Methamphetamine	60	06/17/2021
Patton	Nicholas	Felon in Possession of a Firearm	13	03/25/2021
Paul	Christopher	Burglary I	60	04/29/2021
Pearsall	Alden	Attempted Burglary I	30	05/06/2021
Pearsall	Alden	Attempted Burglary I	30	05/06/2021
Pena-Quiroa	Ricardo	Delivery of Methamphetamine	71	09/28/2020
Perez	Jose	Delivery of Heroin	29	04/01/2021
Perez	Jose	Manufacturing Heroin	29	04/01/2021
Perez	Juan	Delivery of Cocaine	56	05/27/2021
Persicke	Zachary	Felon in Possession of a Firearm	30	04/15/2021
Peterson	Gregory	Burglary I	36	03/31/2021
Peterson	Gregory	Aggravated Theft	36	03/31/2021
Peterson	Gregory	Unauthorized Use of a Vehicle	30	03/31/2021
Peterson	Jason	Delivery of Heroin	40	03/04/2021
Peterson	Logan	Aggravated Identity Theft	32	10/22/2020
Peterson	Logan	Aggravated Identity Theft	28	10/22/2020
Peterson	Logan	Unauthorized Use of a Vehicle	28	10/22/2020
Phillips	Patrick	Burglary II	30	06/03/2021
Phillips	Patrick	Unauthorized Use of aVehicle	28	06/03/2021
Pilson	Christina	Computer Fraud	28	12/17/2020
Pimentel	Paul	Burglary II	20	07/02/2020
Polanco	Luis	Theft I	28	07/06/2020
Pomeroy	Melissa	Delivery of Methamphetamine	14	12/17/2020
Post	Adrienne	Identity Theft	28	12/17/2020
Post	Adrienne	Identity Theft	5	12/17/2020
Potter	Ricky	Unauthorized Use of a Vehicle	52	12/17/2020
Powell	Joshua	Delivery of Methamphetamine	29	03/11/2021
Price	Tyler	Delivery of Heroin	34	01/28/2021
Price	Tyler	Theft I	13	01/28/2021
Price	Tyler	Unauthorized Use of a Vehicle	20	01/28/2021
Prosch	Paula	Theft I	18	07/23/2020
Pugh	Bradley	Delivery of Methamphetamine within 1,000 ft of a School	25	03/25/2021
Putnam	Renee	Burglary I	21	12/23/2020
Putnam	Renee	Burglary II	18	12/23/2020
Quesenberry	Christopher	Felon in Possession of a Firearm	16	01/14/2021
Quintanilla	Richard	Delivery of Methamphetamine	48	04/15/2021
Ramos	Ruben	Delivery of Methamphetamine	36	12/17/2020
Ramos-Mascote	Abel	Racketeering	65	03/04/2021
Ramos-Mascote	Abel	Racketeering	65	03/04/2021
Rawe	Oleson	Driving Under the Influence of Intoxicants-Felony	15	07/16/2020
Reckard	Darren	Delivery of Methamphetamine	80	12/17/2020
Remington	Nicholas	Criminal Possession of a Forged Instrument I	18	6/24/2021
Remington	Nicholas	Identity Theft	13	6/24/2021

Reyes-Cadenas	Winson	Delivery of Heroin	41	02/18/2021
Rhodes	Troy	Burglary II	30	03/25/2021
Rice	Eric	Delivery of Methamphetamine within 1,000 ft of a School	26	01/21/2021
Rice	Eric	Manufacturing Methamphetamine within 1,000 ft of a School	26	01/21/2021
Riddle	Loren	Delivery of Heroin	25	01/14/2021
Riddle	Loren	Possession of Heroin	25	01/14/2021
Ritchie	Joshua	Burglary I	21	01/21/2021
Ritchie	Joshua	Burglary I	21	01/21/2021
Ritchie	Joshua	Burglary I	18	01/21/2021
Rivera	Gabriel	Delivery of Heroin	50	05/06/2021
Robb	Elijah	Burglary I	35	02/04/2021
Robertson	Daniel	Unauthorized Use of a Vehicle	24	02/04/2021
Robertson	Kenneth	Delivery of Methamphetamine	53	07/09/2020
Robertson	Kenneth	Manufacturing Methamphetamine	53	07/09/2020
Rock	Glen	Criminal Possession of a Forged Instrument I	30	05/06/2021
Rock	Glen	Unauthorized Use of a Vehicle	30	05/06/2021
Rockwell	Shane	Identity Theft	20	02/25/2021
Rodriguez	Cynthia	Aggravated Theft	36	04/08/2021
Rodriguez	Cynthia	Aggravated Theft	36	04/08/2021
Rodriguez	Ernestina	Delivery of Cocaine	26	07/16/2020
Rodriguez	Ernestina	Delivery of Heroin	26	07/16/2020
Rodriguez	Ernestina	Delivery of Methamphetamine	26	07/16/2020
Rodriguez	Jose	Possession of Methamphetamine	35	06/17/2021
Rodriguez	Maria	Delivery of Methamphetamine	20	12/23/2020
Rogers-Hall	Jessica	Unauthorized Use of a Vehicle	22	07/02/2020
Rojas-Zepeda	Cuauhtemoc	Delivery of Heroin	36	12/17/2020
Roque	Nikki	Unauthorized Use of a Vehicle	18	04/15/2021
Rosas	Jordan	Delivery of Heroin	24	06/10/2021
Rose	Michael	Identity Theft	18	05/06/2021
Rose	Michael	Theft I	6	05/06/2021
Rouse	Steven	Theft I	30	05/06/2021
Rouse	Steven	Theft I	12	05/06/2021
Rowles	Shatemra	Theft I	18	04/29/2021
Rueda-Vargas	Jose	Delivery of Methamphetamine	80	06/10/2021
Rueda-Vargas	Jose	Racketeering	120	06/10/2021
Russell	Michael	Burglary I	36	12/23/2020
Rylant	Timothy	Theft I	30	03/25/2021
Sakran	Andrew	Delivery of Heroin	6	12/17/2020
Sanchez-Alcaraz	Moises	Delivery of Cocaine	13	07/17/2020
Sandeaux	Jason	Burglary I	20	03/25/2021
Sanders	Nancy	Delivery of Methamphetamine	21	05/06/2021
Sansburn	Kelly	Possession of Methamphetamine	23	03/25/2021
Sarkis	James	Felon in Possession of a Firearm	19	01/14/2021
Saultz	Travis	Identity Theft	30	01/14/2021
Saultz	Travis	Identity Theft	30	01/14/2021

Saultz	Travis	Identity Theft	30	01/14/2021
Sawyer	Colin	Burglary II	26	03/25/2021
Sawyer	Colin	Unauthorized Use of a Vehicle	30	03/25/2021
Sawyer	Colin	Unauthorized Use of a Vehicle	18	03/25/2021
Schaad	Samuel	Delivery of Heroin	24	01/14/2021
Schaad	Samuel	Delivery of Methamphetamine	24	01/14/2021
Schiesler	Nicholas	Identity Theft	15	07/02/2020
Schilder	Caitlin	Delivery of Heroin	23	12/23/2020
Schmidt	Jacob	Felon in Possession of a Firearm	18	06/03/2021
Schmidt	Jacob		15	06/03/2021
		Felony Driving While Suspend/Revoked- New		
Schmidtke	Keith	Criminal Possession of a Forged Instrument I	36	04/01/2021
Schmidtke	Keith	Criminal Possession of a Forged Instrument I	36	04/01/2021
Schmidtke	Keith	Unauthorized Use of a Vehicle	30	04/01/2021
Schroeder	Karl	Aggravated Theft	24	12/17/2020
Schwartz	Michael	Driving Under the Influence of Intoxicants-Felony	28	07/23/2020
Segal	Martin	Delivery of Methamphetamine	39	07/30/2020
Sheppard	Jeffrey	Delivery of Heroin	45	03/25/2021
Shiroma	George	Manufacturing Methamphetamine	34	04/08/2021
Shiroma	George	Manufacturing Methamphetamine	34	04/08/2021
Silverthorn	Jacqueline	Burglary I	36	12/17/2020
Simmons	Ramsey	Conspiracy to Commit a C Felony	24	01/21/2021
Simonson	Ashley	Delivery of Heroin	25	12/17/2020
Simonson	Ashley	Possession of Methamphetamine	25	12/17/2020
Sims	Hillary	Theft I	26	6/24/2021
Sippel	Jeffrey	Delivery of Methamphetamine	50	12/17/2020
Sirois	Jacob	Burglary I	36	04/01/2021
Sisk	Devon	Unauthorized Use of a Vehicle	22	06/17/2021
Skaggs	Jason	Burglary II	30	03/25/2021
Skaggs	Jason	Failure to Appear I	22	03/25/2021
Skinner	James	Identity Theft	15	12/17/2020
Smith	Ashley	Burglary II	18	12/17/2020
Smith	Jacob	Delivery of Methamphetamine	18	05/26/2021
Snider	Quinn	Identity Theft	18	12/17/2020
Snider	Quinn	Unauthorized Use of a Vehicle	18	12/17/2020
Soliz	Cassie	Possession of Methamphetamine	54	12/17/2020
Soliz	Ramon	Delivery of Methamphetamine	16	06/10/2021
Sowell	Richard	Burglary II	30	04/08/2021
Springer	Eddie	Delivery of Methamphetamine	16	03/25/2021
Starkweather	Angie	Identity Theft	20	12/23/2020
Starnes	Olle	Conspiracy to Commit a B Felony	30	04/08/2021
Starnes	Olle	Conspiracy to Commit a B Felony	30	04/08/2021
Starnes	Olle	Delivery of Methamphetamine within 1,000 ft of a School	45	04/08/2021
Starnes	Olle	Delivery of Methamphetamine within 1,000 ft of a School	45	04/08/2021

Stay	Bradley	Aggravated Identity Theft	36	02/11/2021
Stay	Bradley	Theft I	30	02/11/2021
Steele	Gary	Delivery of Methamphetamine	41	06/17/2021
Stell	Terrence	Identity Theft	30	07/09/2020
Stephens	Ronald	Delivery of Methamphetamine within 1,000 ft of a School	35	02/25/2021
Stephens	Ronald	Manufacturing Methamphetamine within 1,000 ft of a School	35	02/25/2021
Sternbeck	Elizabeth	Delivery of Methamphetamine	16	04/15/2021
Sterr	Karl	Driving Under the Influence of Intoxicants-Felony	25	07/30/2020
Stevenson	Tamara	Delivery of Heroin	39	6/24/2021
Steward	Justin	Possession of Heroin	6	04/29/2021
Steward	Justin	Theft I	15	04/29/2021
Steward	Justin	Unauthorized Use of a Vehicle	30	04/29/2021
Stone	Dakota	Unauthorized Use of a Vehicle	22	04/08/2021
Stucky	Dana	Burglary I	30	06/03/2021
Sublet	Sheryl	Delivery of Methamphetamine	72	04/01/2021
Sublet	Sheryl	Delivery of Methamphetamine	72	04/01/2021
Sullenger	Crystal	Delivery of Methamphetamine	70	01/28/2021
Summers	Rachelle	Delivery of Methamphetamine	23	01/07/2021
Sumnall	Janny	Burglary I	36	07/02/2020
Sumnall	Janny	Burglary I	36	07/02/2020
Sumnall	Janny	Burglary I	36	07/02/2020
Sumnall	Janny	Criminal Mischief I	30	07/02/2020
Sumnall	Janny	Theft I	30	07/02/2020
Swank	John	Delivery of Heroin	42	05/27/2021
Swank	John	Delivery of Methamphetamine	42	05/27/2021
Swauger	Daniel	Forgery I	58	04/01/2021
Swauger	Daniel	Forgery I	58	04/01/2021
Swauger	Daniel	Identity Theft	58	04/01/2021
Swift	Jimmy	Delivery of Methamphetamine	90	05/06/2021
Swisher	Nicholas	Identity Theft	28	05/27/2021
Taylor	Casey	Delivery of Methamphetamine	22	12/17/2020
Taylor	Casey	Delivery of Methamphetamine	22	12/17/2020
Taylor	Daniel	Identity Theft	30	06/03/2021
Taylor	Daniel	Identity Theft	30	06/03/2021
Taylor	Nathan	Unauthorized Use of a Vehicle	24	05/06/2021
Taylor	Nathan	Unauthorized Use of a Vehicle	24	05/06/2021
Taylor	Nathan	Unauthorized Use of a Vehicle	24	05/06/2021
Taylor	Terrel	Delivery of Methamphetamine	34	07/02/2020
Teegarden	Nicholas	Criminal Mischief I	30	12/17/2020
Teran	Juan Dedios	Delivery of Methamphetamine	36	07/09/2020
Tetukevich	David	Burglary I	46	12/17/2020
Tharp	Daniel	Delivery of Methamphetamine	24	03/25/2021
Thomas	Shannon	Delivery of Methamphetamine	26	12/17/2020
Thomas	Wendy	Possession of Methamphetamine	25	12/17/2020

Tiefenback	Jeremy	Delivery of Methamphetamine	60	05/20/2021
Tillman	Melvin	Burglary II	30	06/03/2021
Tillman	Melvin	Burglary II	30	06/03/2021
Tillman	Melvin	Burglary II	15	06/03/2021
Tillman	Melvin	Burglary II	30	06/03/2021
Torres	Averado	Unauthorized Use of a Vehicle	26	05/20/2021
Towlerton	Chaleigh	Burglary I	32	06/10/2021
Towlerton	Chaleigh	Burglary II	24	06/10/2021
Towlerton	Chaleigh	Unauthorized Use of a Vehicle	26	06/10/2021
Townsend	Winona	Burglary I	24	04/29/2021
Tregaskis	Ronald	Unauthorized Use of a Vehicle	18	04/01/2021
Turner	Derick	Fraudulent Use of a Credit Card	26	03/25/2021
Turnipseed	Brian	Manufacturing Methamphetamine within 1,000 ft of a School	23	07/09/2020
Tyler	Jeffery	Burglary II	21	5/27/2021
Valenzuela	Phil	Felon in Possession of a Firearm	24	12/17/2020
Van Ras	Murae	Burglary I	15	10/01/2020
Vanriper	James	Theft I	12.03	10/01/2020
Velasco-Mares	Mario	Racketeering	144	12/17/2020
Ver Valen	Jason	Criminal Possession of a Forged Instrument I	30	03/25/2021
Vicente	Dante	Burglary I	24	03/11/2021
Villarreal	Luis	Felon in Possession of a Firearm	45	04/29/2021
Viloria-Steffey	Ryan	Criminal Mischief I	24	04/22/2021
Viloria-Steffey	Ryan	Unauthorized Use of a Vehicle	24	04/22/2021
Vinals	Jose	Delivery of Methamphetamine	18	6/24/2021
Vinals	Jose	Delivery of Methamphetamine	18	6/24/2021
Vinals	Jose	Delivery of Methamphetamine	18	6/24/2021
Vinals	Jose	Racketeer Activity	140	6/24/2021
Wafford	Shawn	Identity Theft	13	12/17/2020
Wafford	Shawn	Identity Theft	13	12/17/2020
Wafford	Shawn	Identity Theft	13	12/17/2020
Wafford	Shawn	Identity Theft	6	12/17/2020
Wafford	Shawn	Identity Theft	13	12/17/2020
Wagner	James	Unauthorized Use of a Vehicle	30	04/15/2021
Wagner	James	Unauthorized Use of a Vehicle	30	04/15/2021
Waits	Brook	Failure to Appear I	24	06/17/2021
Waits	Brook	Hindering Prosecution	24	06/17/2021
Waits	Brook	Possession of Methamphetamine 81605 Th 81417	24	06/17/2021
Waits	Brook	Unauthorized Use of a Vehicle	24	06/17/2021
Waldrop	Skyler	Felon in Possession of a Firearm	12.03	01/07/2021
Wallace	John	Identity Theft	18	03/25/2021
Wallace	John	Identity Theft	13	03/25/2021
Wallman	Justun	Delivery of Heroin	34	01/21/2021
Walters	James	Identity Theft	30	12/17/2020
Ward	James	Criminal Possession of a Forged Instrument I	40	12/17/2020
Warhurst	Richard	Burglary I	60	12/23/2020

Warhurst	Richard	Aggravated Theft	60	12/23/2020
Watts	Serena	Theft I	13	04/15/2021
Weathers	Michael	Burglary I	24	04/01/2021
Weis	David	Delivery of Methamphetamine	24	04/15/2021
Wells	Neal	Burglary II	60	05/27/2021
Wells	Neal	Theft I	60	05/27/2021
Wells	Neal	Theft I	30	05/27/2021
Wenzell	James	Theft by Receiving	26	01/14/2021
White	Adria	Forgery I	22	05/06/2021
White	Adria	Forgery I	22	05/06/2021
White	Adria	Aggravated Theft	36	05/06/2021
White	Rebekka	Aggravated Identity Theft	36	02/04/2021
Whiteley	Colby	Theft I	13	06/10/2021
Whiteley	Colby	Unauthorized Use of a Vehicle	17	06/10/2021
Whiteley	Colby	Unauthorized Use of a Vehicle	13	06/10/2021
Whiteley	Colby	Unauthorized Use of a Vehicle	28	06/10/2021
Wick	Michael	Unauthorized Use of a Vehicle	36	05/20/2021
Wilburn	Adam	Burglary II	24	01/28/2021
Wilcox	Richard	Delivery of Heroin	25	02/11/2021
Wilhelm	Raymond	Felon in Possession of a Firearm	25	07/23/2020
Williams	Adam	Aggravated Identity Theft	36	04/08/2021
Williams	Eric	Burglary II	22	04/08/2021
Williams	Eric	Identity Theft	18	04/08/2021
Williams	Lovell	Unauthorized Use of a Vehicle	20	12/30/2020
Williams	Matthew	Delivery of Methamphetamine	41	04/15/2021
Williams	Matthew	Possession of Marijuana	12	04/15/2021
Willis	Cinthia	Identity Theft	10	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Identity Theft	28	04/15/2021
Willis	Cinthia	Theft I	13	04/15/2021
Wills	Jacob	Forgery I	28	04/01/2021
Wills	Joann	Identity Theft	30	12/17/2020
Wills	Joann	Identity Theft	30	12/17/2020
Wilson	Charles	Delivery of Heroin	39	7/2/2020
Wilson	Jennifer	Identity Theft	13	04/15/2021
Wilson	Raymond	Identity Theft	30	11/25/2020
Wilson	Robert	Delivery of Cocaine	42	07/16/2020
Winslow	Carl	Manufacturing Methamphetamine	31	12/17/2020
Wood	Matthew	Unauthorized Use of a Vehicle	15	04/29/2021
Wood	Matthew	Unauthorized Use of a Vehicle	10	04/29/2021
Workman	Justin	Burglary I	36	01/28/2021
Workman	Justin	Burglary I	34	01/28/2021
Workman	Justin	Aggravated Theft	36	01/28/2021

Workman	Justin	Unauthorized Use of a Vehicle	30	01/28/2021
Wright	Darnell	Theft I	12	03/25/2021
Wright	Hasaan	Delivery of Methamphetamine	35	12/23/2020
Wrighthouse	Michael	Unauthorized Use of a Vehicle	15	06/10/2021
Wrolson	Henry	Delivery of Methamphetamine	42	07/09/2020
Wyland	Lisa	Attempted Burglary I	26	02/04/2021
Wyland	Lisa	Criminal Possession of a Forged Instrument I	26	02/04/2021
Yager	Jesse	Criminal Mischief I	36	02/18/2021
Yager	Jesse	Unauthorized Use of a Vehicle	36	02/18/2021
Yarbery	Lacie	Delivery of Heroin	24	12/17/2020
Zosel	Danelle	Theft I	18	12/17/2020
Zumwalt	Jefferey	Felony Driving while Suspended/Revoked	13	06/10/2021
Zumwalt	Jefferey	Felony Driving while Suspended/Revoked	13	06/10/2021
Zurita Vera	Omar	Delivery of Heroin within 1,000 feet of a School	29	05/27/2021

EXHIBIT B

Last Name	First Name	Conviction	Sentence (months)	Commutation Date
Abernathy	Thomas	Delivery of Methamphetamine	65	10/15/2020
Adams	Adam	Delivery of Heroin	22	02/11/2021
Adams	Adam	Delivery of Heroin	22	02/11/2021
Adams	Adam	Delivery of Methamphetamine	22	02/11/2021
Aguirre-Ayon	Francisco	Racketeering	120	10/01/2020
Allen	Dennis	Theft I	13	12/17/2020
Allen	Jesse	Delivery of Heroin	69	02/04/2021
Allen	Jody	Mail Theft- C Felony	25	03/11/2021
Allred	Trevor	Delivery of Methamphetamine	13	04/08/2021
Almaraz	Consuelo	Delivery of Methamphetamine within 1,000 ft of a School	21	03/11/2021
Anderson	Brandon	Delivery of Heroin	25	02/04/2021
Andino-Murillo	Jose	Delivery of Heroin	50	12/17/2020
Arciniega	Alejandro	Delivery of Heroin	15	10/01/2020
Arrendondo Yerena	Defilia	Conspiracy to Commit an B Felony	60	10/01/2020
Arroyo	Reynaldo	Unauthorized Use of a Vehicle	22	01/21/2021
Ashley	William	Delivery of Methamphetamine	16	01/07/2021
Auborn	Angel	Forgery I	21	10/01/2020
Austin	Casey	Driving while Suspended/Revoked	13	12/17/2020
Bagg	Joseph	Delivery of Methamphetamine	20	03/25/2021
Baker	Christopher	Unauthorized Use of a Vehicle	18	11/25/2020
Baker	Richard	Manufacturing Heroin	18	03/25/2021
Banks	Sonny	Unauthorized Use of a Vehicle	20	12/17/2020
Barker	Jesse	Delivery of Methamphetamine within 1,000 ft of a School	22	02/04/2021
Barnes	Michael	Failure to Appear I	3.97	03/04/2021
Barnes	Michael	Unauthorized Use of a Vehicle	24	03/04/2021
Barreto	Dennis	Unauthorized Use of a Vehicle	13	03/04/2021
Barrs	Paul	Delivery of Methamphetamine within 1,000 ft of a School	50	02/04/2021
Bartlett	Christopher	Delivery of Heroin	60	02/04/2021
Bennett	Larry	Possession of Methamphetamine	24	02/04/2021
Berg	Katherine	Unauthorized Use of a Vehicle	22	05/06/2021
Berg	Tyler	Driving while Suspended/Revoked	13	03/04/2021
Beverly	Daniel	Felon in Possession of a Firearm	13	05/13/2021
Blanton	David	Felon in Possession of a Firearm	20	03/04/2021
Blood	Daniel	Felon in Possession of a Firearm	15	03/04/2021
Blood	Daniel	Theft I	13	03/04/2021
Bounxaysana	Phouphith	Delivery of Methamphetamine within 1,000 ft of a School	27	02/25/2021
Bounxaysana	Phouphith	Delivery of Methamphetamine	27	02/25/2021
Bowe (Bearman)	Krystal	Unauthorized Use of a Vehicle	30	03/25/2021

Boyd	Alex	ID Theft	26	03/11/2021
Boyle	Elizabeth	Delivery of Heroin	50	03/04/2021
Bradsteen	Michael	Burglary II	30	02/25/2021
Bradsteen	Michael	Burglary II	30	02/25/2021
Bradsteen	Michael	Criminal Mischief I	30	02/25/2021
Brandon	Aron	Delivery of Heroin within 1,000 ft of a School	26	06/30/2020
Branum	Clinton	Forgery I	58	02/04/2021
Breedlove	Daniel	ID Theft	18	02/04/2021
Brennan	David	Felon in Possession of a Firearm	19	03/04/2021
Briggs	Tabitha	Delivery of Methamphetamine	24	05/27/2021
Briggs	Tabitha	Delivery of Methamphetamine	24	05/27/2021
Brown	James	Theft I	17	02/04/2021
Burton	Ryan	Delivery of Heroin	41	04/22/2021
Busschau	Christian	Burglary II	18	04/15/2021
Caporale	Matthew	Unauthorized Use of a Vehicle	15	12/17/2020
Carbajal	Arturo	Delivery of Methamphetamine	61	02/18/2021
Carlson	Jason	Delivery of Methamphetamine	30	04/01/2021
Carscadden	Ryan	Unauthorized Use of a Vehicle	15	02/04/2021
Carter	Tyler	Delivery of Methamphetamine	15	10/01/2020
Carter	Tyler	Delivery of Methamphetamine	15	10/01/2020
Castaneda	Jesus	Delivery of Methamphetamine	50	12/16/2020
Ceballos	Rafael	Delivery of Methamphetamine	21	01/14/2021
Ceja-Gonzalez	Roberto	Delivery of Methamphetamine	41	12/17/2020
Ceja-Lara	Raul	Delivery of Methamphetamine	81	02/04/2021
Cerf	Edward	Unauthorized Use of a Vehicle	20	06/10/2021
Chadwick	Mary	Possession of Heroin	18	03/04/2021
Chase	Jason	Unauthorized Use of a Vehicle	30	02/11/2021
Colley	Timothy	Burglary II	18	02/04/2021
Colley	Timothy	Burglary II	18	02/04/2021
Collier	Matthew	Burglary II	24	10/08/2020
Colon	Rudy	Delivery of Heroin within 1,000 ft of a School	45	10/01/2020
Conrad	Matthew	Burglary I	28	01/28/2021
Conrado	Jeffrey	Felon in Possession of a Firearm	15	03/04/2021
Considine	Matthew	Aggravated Identity Theft	36	04/01/2021
Considine	Matthew	Theft I	6	04/01/2021
Cook	David	Delivery of Methamphetamine	34	12/17/2020
Cook	Donald	Theft I	13	04/01/2021
Cooper	Tildon	Delivery of Cocaine	58	02/04/2021
Corbin	Kenneth	Delivery of Methamphetamine	25	12/17/2020
Correa	Robert	Criminal Mischief I	22	03/25/2021
Correa	Robert	Criminal Mischief I	22	03/25/2021
Correa	Robert	Criminal Mischief I	22	03/25/2021
Costa	Harold	Delivery of Methamphetamine	60	6/17/2021
Coulter	Alan	Criminal Mischief I	22	03/25/2021
Coulter	Alan	Unauthorized Use of a Vehicle	22	03/25/2021

Coulter	Alan	Unauthorized Use of a Vehicle	22	03/25/2021
Covey	Jeremy	Unauthorized Use of a Vehicle	48	02/11/2021
Crahan	Taylor	Delivery of Methamphetamine	50	12/17/2020
Crahan	Taylor	Delivery of Methamphetamine	50	12/17/2020
Crowley	Donald	Burglary I	28	03/04/2021
Daily	Cody	Burglary I	36	02/25/2021
Daily	Cody	Theft I	30	02/25/2021
Daniels	James	Burglary II	15	02/25/2021
Daniels	James	Criminal Mischief I	15	02/25/2021
Daniels	James	Criminal Mischief I	20	02/25/2021
Daws	Cynthia	Delivery of Methamphetamine	18	05/06/2021
Daws	Cynthia	Felon in Possession of a Firearm	18	05/06/2021
Dean	Cody	Unauthorized Use of a Vehicle	18	04/15/2021
Demers	Jesse	Delivery of Heroin	34	02/25/2021
Dengler	Jeremy	Unauthorized Use of a Vehicle	22	02/04/2021
Denning	Christopher	ID Theft	15	02/25/2021
Deturenne	Crystal	Delivery of Methamphetamine within 1,000 ft of a School	17	10/01/2020
Diaz	Elias	Unauthorized Use of a Vehicle	18	12/17/2020
Dillon	Michael	Burglary II	20	12/17/2020
Doescher	Bonnie	Tampering with a Witness	35	04/22/2021
Donnahoo	Travis	Delivery of Methamphetamine	29	02/11/2021
Douglas	Amber	Theft I	13	12/17/2020
Douglas	Amber	Theft I	13	12/17/2020
Douglas	Amber	Theft I	13	12/17/2020
Douglas	Amber	Theft I	13	12/17/2020
Dovgan	Vasiliy	Theft I	13	10/01/2020
Duvall	Aaron	Unauthorized Use of a Vehicle	26	03/25/2021
Elliott	Zakary	ID Theft	13	12/17/2020
Ellis	Justin	Theft I	13	04/15/2021
Elsen	Antonio	Theft I	15	05/06/2021
Elstad	Malcolm	Theft I	13	02/11/2021
Emminger	Levi	Unauthorized Use of a Vehicle	24	03/25/2021
Enos	Danny	Delivery of Heroin	11	03/11/2021
Enyart	Kay	Aggravated Identity Theft	32	02/11/2021
Enyart	Kay	Aggravated Identity Theft	32	02/11/2021
Enyart	Kay	Aggravated Identity Theft	32	02/11/2021
Enyart	Kay	Aggravated Identity Theft	32	02/11/2021
Ersland	David	Unauthorized Use of a Vehicle	18	02/18/2021
Espino-Lopez	Giovanni	Delivery of Methamphetamine	60	02/04/2021
Estep	Mickey	Delivery of Heroin	25	02/04/2021
Fallon	William	Unauthorized Use of a Vehicle	20	02/04/2021
Ferreira	Brandi	Delivery of Methamphetamine	19	03/04/2021
Fischer-Salt	Ryan	Aggravated Theft	15	03/04/2021
Fisher	Aaron	Theft I	13	02/18/2021
Fitowski	Nicholas	Criminal Mischief I	30	04/29/2021
Fitowski	Nicholas	Unauthorized Use of a Vehicle	30	04/29/2021

Fitowski	Nicholas	Unauthorized Use of a Vehicle	30	04/29/2021
Fitowski	Nicholas	Unauthorized Use of a Vehicle	30	04/29/2021
Flowers	Dakota	Criminal Mischief I	14	03/04/2021
Foos	Leroy	ID Theft	13	03/04/2021
Fox	Dale	Aggravated Theft	26	04/22/2021
Fox	Dale	Aggravated Theft	3	04/22/2021
Fox	Dale	Aggravated Theft	25	04/22/2021
Fregoso	Jesus	Delivery of Heroin	45	12/17/2020
Fremont	Robert	Felon in Possession of a Firearm	30	04/15/2021
Fremont	Robert	Theft I	6	04/15/2021
Frisby	Darcy	Burglary II	18	03/18/2021
Fuentes-Miller	Regina	Delivery of Heroin	18	04/22/2021
Fuentez	Andrew	Aggrvated Theft I	18	06/10/2021
Fuentez	Andrew	Criminal Mischief I	18	06/10/2021
Fulleton	Blake	Delivery of Methamphetamine	48	03/04/2021
Gallagher	William	Felon in Possession of a Firearm	4	01/21/2021
Galloway	Jeffrey	Aggravated Theft	24	02/11/2021
Gamboa	Jesus	Delivery of Methamphetamine	34	02/04/2021
Gantt	Kareem	Driving while Suspended/Revoked	15	02/04/2021
Garcia	Arturo	Delivery of Methamphetamine	31	04/29/2021
Garcia	Arturo	Escape II	19	04/29/2021
Garcia	Michael	Theft I	18	10/01/2020
Garcia-Valdez	Raul	Delivery of Methamphetamine	34	02/04/2021
Garrison	Christopher	Burglary I	24	02/04/2021
Garrison	Christopher	Burglary I	24	02/04/2021
Gaylor	Jessica	Computer Fraud	30	05/20/2021
Gaylor	Jessica	Fraudulent use of a Credit Card	30	05/20/2021
Ghasedi	Mehrad	Delivery of Heroin	24	02/25/2021
Gonzalez	Jose	Delivery of Methamphetamine	34	03/25/2021
Gonzalez	Robert	ID Theft	13	02/18/2021
Gordineer	John	Theft I	30	10/01/2020
Gordon	David	Forgery I	18	06/03/2021
Graham	Steve	Burglary II	18	10/01/2020
Green	Joshua	Unauthorized Use of a Vehicle	18	02/25/2021
Gregory	Jamy	Theft I	13	02/11/2021
Guajardo	Ruben	Delivery of Heroin	35	02/04/2021
Guerrero	Amos	Delivery of Cocaine	14	12/17/2020
Guerrero	Christopher	Delivery of Methamphetamine	18	02/11/2021
Guerrero-Garcia	Hector	Delivery of Heroin	48	04/29/2021
Gutierrez-Ayala	Roger	Delivery of Methamphetamine	35	02/04/2021
Guzman	Jaime	Delivery of Methamphetamine	25	02/11/2021
Guzman	Jorge	Unauthorized Use of a Vehicle	18	02/04/2021
Guzman	Marbello	Delivery of Methamphetamine	58	02/04/2021
Hales	Tyson	Criminal Mischief I	22	04/01/2021
Hall	Anthony	Criminal Possession of a Forged Instrument	18	04/29/2021
Hansen	Jared	Burglary II	13	03/04/2021
Harwood	Paul	Possession of Methamphetamine	30	12/03/2020

Hastie	Laree	Theft I	13	02/04/2021
Haverfield	Chase	Theft I	13	02/04/2021
Heinz	Averitt	Supplying Contraband	13	04/01/2021
Hellard	Brandon	Unauthorized Use of a Vehicle	26	02/04/2021
Hembree	Timothy	Unauthorized Use of a Vehicle	18	04/01/2021
Hendrix	Donald	Mail Theft- C Felony	22	10/01/2020
Hill	Joshua	Unauthorized Use of a Vehicle	13	6/24/2021
Holland	Zachariah	Delivery of Heroin	15	04/01/2021
Holland	Zachariah	ID Theft	13	04/01/2021
Hopkins	Spencer	Aggravated Theft	24	02/18/2021
Housing	Roger	Failure to Appear I	18	02/18/2021
Hume	Jacob	Unauthorized Use of a Vehicle	18	02/04/2021
Hunt	Wilson	Unauthorized Use of a Vehicle	24	10/01/2020
Hurt	Christopher	Possession of Methamphetamine	6	02/04/2021
Hurwitz	Kevin	Eluding Police	13	04/08/2021
Hutchinson	Gary	Conspiracy to Commit an B Felony	32	02/11/2021
Hyatt	Amie	Aggravated Theft	12	04/15/2021
Iuhasz	Robert	Unauthorized Use of a Vehicle	4	02/04/2021
Iuhasz	Robert	Unauthorized Use of a Vehicle	22	02/04/2021
Jackson	Luther	Felon in Possession of a Firearm	19	04/22/2021
Jackson	Shawn	Delivery of Heroin	16	05/13/2021
Jackson	Shawn	ID Theft	16	05/13/2021
Jennings	Jeremy	Delivery of Methamphetamine	35	03/04/2021
Jennings	Jeremy	Delivery of Methamphetamine	35	03/04/2021
Johnson	Isaiah	Unauthorized Use of a Vehicle	20	12/17/2020
Jones	Michael	Burglary I	20	10/01/2020
Jones	Nicholas	Burglary I	26	05/13/2021
Jones	Troy	Eluding Police	20	02/25/2021
Jones	Troy	Unauthorized Use of a Vehicle	20	02/25/2021
Jordahl	Cary	Delivery of Methamphetamine	26	10/01/2020
Jordan	Aaron	Delivery of Heroin within 1,000 ft of a School	25	04/29/2021
Jordan	Aaron	Delivery of Heroin	25	04/29/2021
Kamarec	David	Burglary II	20	02/04/2021
Kapp	Raymond	ID Theft	13	02/11/2021
Kautz	Joseph	Theft I	15	06/03/2021
Kelly	Kaitlyn	ID Theft	40	02/04/2021
Kessell	Jamie	Aggravated Identity Theft	13	03/11/2021
Kessell	Jamie	Aggravated Identity Theft	13	03/11/2021
Kim	John	Aggravated Identity Theft	26	06/10/2021
Kim	John	Delivery of Methamphetamine	46	06/10/2021
Kraus	Julia	Theft I	3	05/27/2021
Kruse	Dusten	Forgery I	22	02/04/2021
Kruse	Jason	Delivery of Methamphetamine	25	03/25/2021
Larsen	Adrian	Delivery of Heroin	22	03/04/2021
Lavert	Andre	Theft I	13	05/13/2021
Layton	Dylan	Escape II	13	03/25/2021

Lebron	Stefan	Burglary II	14	12/17/2020
Lent	Joshua	Delivery of Heroin	12	03/04/2021
Liborio-Hernandez	Jose	Delivery of Methamphetamine	45	02/11/2021
Lifferth	Hannah	Theft I	13	02/04/2021
Lockhart	Howard	Felon in Possession of a Firearm	17	04/01/2021
Long	Crystal	ID Theft	26	02/25/2021
Lopez-Palomera	Diego	Delivery of Methamphetamine	40	12/30/2020
Loria	Jennifer	Burglary I	26	12/17/2020
Ludlow	Kyle	Delivery of Heroin	24	10/01/2020
Ludlow	Kyle	Delivery of Methamphetamine	24	10/01/2020
Lytell	Randall	Delivery of Methamphetamine	18	6/17/2021
Mackay	Jayden	Unauthorized Use of a Vehicle	15	05/06/2021
Madden	Andrew	Criminal Mischief I	18	03/18/2021
Magar	Arron	Delivery of Methamphetamine within 1,000 ft of a School	54	05/13/2021
Mallory	Daniel	Theft I	13	02/11/2021
Maness	Andrew	Burglary II	18	02/25/2021
Martin	Kyle	Eluding Police	13	02/25/2021
Mauri	Nicholas	Unauthorized Use of a Vehicle	15	02/11/2021
Mcallister	Lizabeth	Theft I	15	02/11/2021
Mccarran	Mark	Aggravated Identity Theft	34	10/01/2020
Mccarran	Mark	Aggravated Identity Theft	34	10/01/2020
Mccarran	Mark	Aggravated Identity Theft	34	10/01/2020
Mccarran	Mark	Aggravated Identity Theft	34	10/01/2020
Mccarran	Mark	Aggravated Identity Theft	34	10/01/2020
Mccarran	Mark	Aggravated Theft	34	10/01/2020
Mccarran	Mark	Aggravated Theft	34	10/01/2020
Mccarran	Mark	Aggravated Theft	34	10/01/2020
Mccarran	Mark	Aggravated Theft	34	10/01/2020
Mccarran	Mark	Aggravated Theft	34	10/01/2020
Mccurdy	Morgan	Delivery of Heroin	13	04/15/2021
Mcelroy	James	Driving while Suspended/Revoked	13	05/06/2021
Mcgrath	Avery	Delivery of Methamphetamine	30	10/08/2020
Mckee	Harley	Unauthorized Use of a Vehicle	20	02/11/2021
Mclaughlin	Tyler	Unauthorized Use of a Vehicle	60	02/04/2021
Mcmann	Jordan	Possession of Methamphetamine	28	04/08/2021
Meeks	Stephen	Burglary I	34	01/21/2021
Meeks	Stephen	Burglary I	34	01/21/2021
Melbourne	Dustin	Felon in Possession of a Firearm	36	10/01/2020
Melnik	Anatoliy	Burglary I	18	6/24/2021
Mendoza	Mario	Delivery of Methamphetamine	9	02/04/2021
Mendoza	Mario	Delivery of Methamphetamine	65	02/04/2021
Mercado	Victor	Delivery of Methamphetamine within 1,000 ft of a School	68	04/29/2021
Miles	Michael	Delivery of Methamphetamine	34	04/15/2021
Miller	Kevin	Burglary I	15	01/21/2021
Miller	Mark	Felon in Possession of a Firearm	18	10/15/2020

Miller	Travis	Felon in Possession of a Firearm	12	03/04/2021
Millsap	Loren	Delivery of Heroin	26	10/01/2020
Millsap	Loren	Delivery of Heroin	26	10/01/2020
Moffatt	James	COMP DESTR	22	10/01/2020
Montano	Jake	Felon in Possession of a Firearm	24	02/04/2021
Montclaire	Carol	Theft I	12.03	10/01/2020
Montoya	Denise	Theft I	13	04/29/2021
Moore	Aaron	Unauthorized Use of a Vehicle	22	02/25/2021
Moore	Aaron	Unauthorized Use of a Vehicle	22	02/25/2021
Moore	Aaron	Unauthorized Use of a Vehicle	22	02/25/2021
Moore	Daniel	Burglary I	24	02/11/2021
Moore	Devin	Driving while Suspended/Revoked	45	10/01/2020
Morgan	Bernard	Delivery of Heroin	15	02/04/2021
Morlock	Timothy	Delivery of Methamphetamine	25	01/28/2021
Moss	James	Delivery of Methamphetamine	48	12/17/2020
Muniz	Benjamin	Forgery I	20	02/11/2021
Nagy	Allen	Felon in Possession of a Firearm	27	10/01/2020
Neal	Logan	Burglary II	10	02/11/2021
Neer	Patricia	Unauthorized Use of a Vehicle	26	02/11/2021
Neer	Patricia	Unauthorized Use of a Vehicle	26	02/11/2021
Nelson	Douglas	Criminal Mischief I	13	02/11/2021
Nessly	David	Mail Theft- C Felony	13	12/17/2020
Nessly	David	Mail Theft- C Felony	13	12/17/2020
Nessly	David	Mail Theft- C Felony	13	12/17/2020
Newton	Shayn	Felon in Possession of a Firearm	15	05/13/2021
Norris	Jessi	Fraudulent use of a Credit Card	30	02/11/2021
Nunn	Shelbi	Delivery of Heroin	25	02/25/2021
Nunn	Shelbi	Unauthorized Use of a Vehicle	20	02/25/2021
Nuno	Victor	Delivery of Methamphetamine	16	6/24/2021
Obermier	Timothy	Possession of Heroin	24	04/01/2021
Obermier	Timothy	Unauthorized Use of a Vehicle	22	04/01/2021
Ochoa	Marisela	Racketeering	18	04/22/2021
Ochoa-Ochoa	Rodolfo	Delivery of Heroin	34	02/18/2021
Ochoa-Ochoa	Rodolfo	Delivery of Methamphetamine	34	02/18/2021
Oneal	Kerrie	Delivery of Methamphetamine	46	02/25/2021
Orielly	Richard	Unauthorized Use of a Vehicle	30	03/04/2021
Osborne	Kristin	Mail Theft- C Felony	30	02/25/2021
Pacheco Godoy	Ulises	Conspiracy to Commit an B Felony	50	12/17/2020
Pangelinan	Brandon	Delivery of Methamphetamine	21	12/17/2020
Parck	Shawna	Escape II	18	02/18/2021
Passey	Kregg	Escape II	13	02/18/2021
Patton	Nicholas	Felon in Possession of a Firearm	13	03/25/2021
Paulus	Richard	Aggravated Theft	30	12/30/2020
Paxton	Tamara	Delivery of Methamphetamine	36	02/11/2021
Peck	Chrisopher	Burglary II	24	02/25/2021
Peck	Christopher	Burglary II	24	02/25/2021
Peckham	Colin	Burglary II	24	12/17/2020

Pedersen	Christopher	Unauthorized Use of a Vehicle	24	02/25/2021
Perez	David	Burglary I	20	05/06/2021
Perez	Jaime	Delivery of Methamphetamine	50	03/04/2021
Pickett	Matthew	Burglary II	18	02/04/2021
Podesta	Zachary	Criminal Possession of a Forged Instrument	13	10/01/2020
Pollack	Michael	Aggravated Identity Theft	24	10/01/2020
Porter	Ty'Ree	Theft I	13	05/13/2021
Powell	Andrew	Forgery I	26	12/17/2020
Pritchard	Josie	Conspiracy to Commit an A Felony	30	02/04/2021
Pullum	Curtiss	Felon in Possession of a Firearm	14	02/11/2021
Queener	Richard	Possession of Methamphetamine	25	02/11/2021
Quigley	Breena	Delivery of Heroin	15	02/04/2021
Quigley	Breena	Theft I	15	02/04/2021
Quintana-Hernandez	Casimiro	Delivery of Methamphetamine	58	02/18/2021
Radmacher	Mark	ID Theft	10	04/29/2021
Radmacher	Mark	ID Theft	10	04/29/2021
Raines	Jacob	Delivery of Methamphetamine	13	12/23/2020
Ramirez	Angel	Possession of a Stolen Vehicle	18	04/01/2021
Ramirez	Jeofre	Delivery of Cocaine	13	02/11/2021
Randall	Mitchell	Criminal Mischief I	13	05/20/2021
Reed	Charles	Possession of a Stolen Vehicle	48	02/04/2021
Reed	Charles	Theft I	48	02/04/2021
Rexroad	Garrett	Unauthorized Use of a Vehicle	18	03/25/2021
Richards	Earl	Unauthorized Use of a Vehicle	20	12/17/2020
Richardson	Kent	Delivery of Methamphetamine	31	10/01/2020
Ringe	Benjamin	Unauthorized Use of a Vehicle	25	02/11/2021
Rippy	Radd	Aggravated Theft	36	02/04/2021
Ritter	Anthony	ID Theft	13	02/18/2021
Ritter	Anthony	ID Theft	13	02/18/2021
Ritter	Anthony	Unauthorized Use of a Vehicle	24	02/18/2021
Rivera	Luis	ID Theft	24	12/17/2020
Rivera	Luis	Unauthorized Use of a Vehicle	24	12/17/2020
Roach	Tyler	ID Theft	18	12/17/2020
Roach	Tyler	ID Theft	18	12/17/2020
Rodriguez	Consuelo	Delivery of Methamphetamine	18	02/25/2021
Rodriguez	Consuelo	Possession of Methamphetamine	18	02/25/2021
Ruiz	Sergio	Delivery of Heroin	26	12/17/2020
Rusbuldt	Patrick	Theft by Receiving	15	10/01/2020
Saban	Marissa	ID Theft	26	02/11/2021
Sanchez	Juan	Delivery of Heroin	90	03/11/2021
Sanchez	Juan	Delivery of Methamphetamine	90	03/11/2021
Sanchez	Ricardo	Unauthorized Use of a Vehicle	20	12/17/2020
Sandoval	Gabriel	Felon in Possession of a Firearm	19	02/25/2021
Saucedo Gonzalez	Irving	Delivery of Heroin	44	02/18/2021
Sauer	Jayson	Aggravated Theft	24	10/01/2020
Sauer	John	Delivery of Heroin	8	10/01/2020
Saylor	Kenneth	Possession of Methamphetamine	26	02/24/2021

Scanlan	Nicolaas	Unauthorized Use of a Vehicle	18	05/20/2021
Scanlan	Nicolaas	Unauthorized Use of a Vehicle	22	05/20/2021
Schafer	Roberta	Delivery of Heroin	24	10/01/2020
Schafer	Roberta	Delivery of Methamphetamine	24	10/01/2020
Schmit	Rowdey	Unauthorized Use of a Vehicle	43	02/04/2021
Scott	Jason	Unauthorized Use of a Vehicle	30	10/01/2020
Scott	Michael	Felon in Possession of a Firearm	60	04/01/2021
Seale-Canter	Peter	Unauthorized Use of a Vehicle	18	03/04/2021
Seaman	Corbin	Burglary II	34	10/08/2020
Shannon	Dustin	ID Theft	30	04/15/2021
Shaw	Erin	Aggravated Identity Theft	17	01/14/2021
Sierra-Carranza	Ismael	Delivery of Methamphetamine	67	02/04/2021
Sigmund	Bradley	Delivery of Heroin	24	02/25/2021
Simmons	Joshua	Delivery of Methamphetamine within 1,000 ft of a School	21	05/06/2021
Simmons	Mckenzie	Unauthorized Use of a Vehicle	22	03/25/2021
Sims	Eddie	Unauthorized Use of a Vehicle	30	02/11/2021
Smith	David	Unauthorized Use of a Vehicle	36	03/04/2021
Smith	David	Unauthorized Use of a Vehicle	30	03/04/2021
Smith	David	Unauthorized Use of a Vehicle	24	03/04/2021
Smith	Jacob	Delivery of Methamphetamine	36	03/11/2021
Smith	Patrick	Felon in Possession of a Firearm	10	03/04/2021
Smith	Richard	Unauthorized Use of a Vehicle	24	04/08/2021
Socia	Michael	Burglary II	17	03/25/2021
Southwell	Chad	Unauthorized Use of a Vehicle	22	02/25/2021
Spencer	William	Unauthorized Use of a Vehicle	24	10/01/2020
Stackhouse	Cody	Delivery of Heroin	12.03	02/18/2021
Stackhouse	Cody	Delivery of Methamphetamine	12.03	02/18/2021
Stiles	Troy	Forgery I	18	02/25/2021
Suarez	Alexis	Delivery of Methamphetamine	59	02/25/2021
Tabery	Michael	Theft I	13	02/04/2021
Tabery	Michael	Theft I	13	02/04/2021
Tavizon-Vidana	Irvin	Delivery of Methamphetamine	34	02/25/2021
Taylor	Joanne	Mail Theft- C Felony	24	02/11/2021
Taylor	Nathaniel	Criminal Mischief I	22	02/18/2021
Terwilliger	Molly	Unauthorized Use of a Vehicle	9	02/25/2021
Test	Richard	Unauthorized Use of a Vehicle	21	10/01/2020
Timm	Gerald	Delivery of Methamphetamine	34	05/06/2021
Torres	Amanda	Delivery of Heroin	38	10/01/2020
Torres Maciel	Marcelino	Conspiracy to Commit an B Felony	50	12/17/2020
Torres Maciel	Marcelino	Delivery of Methamphetamine	50	12/17/2020
Tuengel	James	Mail Theft- C Felony	28	02/04/2021
Tugman	Michael	Failure to Report as a Sex Offender	16	04/01/2021
Van Tress	Jason	Theft I	26	02/04/2021
Vanhook	Zachary	ID Theft	13	02/04/2021
Vidana-Angulo	Apolonio	Delivery of Methamphetamine	60	04/29/2021
Villasenor-Gonzalez	Cristian	Delivery of Heroin	40	06/10/2021

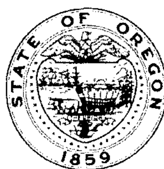
Vinson	Joseph	Delivery of Methamphetamine	30	12/17/2020
Vuky	Anthony	Aggravated Theft	22	02/04/2021
Wagner	Christopher	Felon in Possession of a Firearm	13	05/20/2021
Wagoner	Christopher	Theft I	13	04/01/2021
Walker	Allen	Felon in Possession of a Firearm	15	10/01/2020
Walker	Christopher	Unauthorized Use of a Vehicle	13	01/21/2021
Warneke	Timothy	Unauthorized Use of a Vehicle	18	04/15/2021
Weckler	Justin	Burglary II	18	02/04/2021
Weise	Kayla	Delivery/Manufacturing of a Controlled Substance- B Felony	25	02/18/2021
West	Tyler	Theft I	18	02/04/2021
White	Mikel	Theft I	13	10/22/2020
Wilson	Brandon	Identity Theft	30	10/01/2020
Wilson	Brandon	Identity Theft	30	10/01/2020
Wilson	Brandon	Identity Theft	30	10/01/2020
Wilson	Brandon	Identity Theft	30	10/01/2020
Wilson	Stanley	Burglary I	30	05/06/2021
Wilson	Stanley	Attempted Burglary I	1.98	05/06/2021
Wise	David	Unauthorized Use of a Vehicle	26	10/01/2020
Wochaski	Jason	Delivery of Methamphetamine	18	03/25/2021
Wolf	Leroy	Unauthorized Use of a Vehicle	24	02/04/2021
Woofter	Roger	Unauthorized Use of a Vehicle	13	03/25/2021
Wright	Karly	Delivery of Heroin	48	02/11/2021
Yaakola	Timothy	Theft I	13	12/17/2020
Zamora	Rigo	Unauthorized Use of a Vehicle	22	03/04/2021

EXHIBIT C

First Name	Last Name	Conviction	Sentence (months)	Commutation Date
Nayah	Addington	Burglary I	60	6/23/2021
Marcos	Alcala	Assault III	36	6/23/2021
Marcos	Alcala	Failure to Perform the Duties of a Driver- Injury	18	6/23/2021
Katie	Barajas	Delivery of Heroin	60	6/23/2021
Katie	Barajas	Delivery of Meth	29	6/23/2021
Katie	Barajas	Theft I Aggravated	24	6/23/2021
Brooke	Bearman	Burglary I	34	6/23/2021
Brooke	Bearman	Burglary I	34	6/23/2021
Brooke	Bearman	Burglary I	12	6/23/2021
Brooke	Bearman	Burglary I	55	6/23/2021
Jacob	Bender	Delivery of Meth	25	6/23/2021
Jacob	Bender	Delivery of Meth	25	6/23/2021
William	Bosley	Identity Theft	30	6/23/2021
William	Bosley	Unauthorized Use of a Vehicle	30	6/23/2021
William	Bosley	Unauthorized Use of a Vehicle	18	6/23/2021
William	Bosley	Unauthorized Use of a Vehicle	18	6/23/2021
Karrie	Butcher	Robbery I	90	6/23/2021
Edwin	Cadena	Delivery of Meth	40	6/23/2021
Edwin	Cadena	Unlawful Use of a Weapon	59	6/23/2021
Jesse	Calhoun	Burglary I	30	6/23/2021
Jesse	Calhoun	Burglary II	26	6/23/2021
Jesse	Calhoun	Unauthorized Use of a Vehicle	50	6/23/2021
Jesse	Calhoun	Unauthorized Use of a Vehicle	50	6/23/2021
Aaron	Capizzi	Assault II	70	6/23/2021
Brett	Cashman	Delivery of Meth	35	6/23/2021
Zachary	Craig	Robbery II	70	6/23/2021
Destiny	Dean	Delivery of Heroin	60	6/23/2021
Michael	Deangelo	Delivery of Cocaine	40	6/23/2021
Christopher	Denney	Burglary I	36	6/23/2021
Christopher	Denney	Identity Theft	13	6/23/2021
Christopher	Denney	Identity Theft	13	6/23/2021
Christopher	Denney	Identity Theft	13	6/23/2021
Christopher	Denney	Theft I	13	6/23/2021
Joseph	Gustin	Burglary II	28	6/23/2021
Joseph	Gustin	Burglary II	30	6/23/2021
Joseph	Gustin	Burglary II	45	6/23/2021
Joseph	Gustin	Criminal Mischief I	24	6/23/2021
Ismael	Guzman-Solis	Delivery of Meth	91	6/23/2021
Kinsey	Hart	Robbery I Attempt	60	6/23/2021
Michael	Humphrey	Aggravated Identity Theft	24	6/23/2021
Michael	Humphrey	Aggravated Identity Theft	32	6/23/2021
Michael	Humphrey	Aggravated Identity Theft	10	6/23/2021

Michael	Humphrey	Burglary I	36	6/23/2021
Michael	Humphrey	Theft I Aggravated	36	6/23/2021
Cody	Johnson	Delivery of Heroin	58	6/23/2021
Cody	Johnson	Delivery of Heroin	58	6/23/2021
Cody	Johnson	Delivery of Meth	58	6/23/2021
Andrew	Kampe	Burglary II	20	6/23/2021
Andrew	Kampe	Unauthorized Use of a Vehicle	20	6/23/2021
Cassandra	Kauffman	Delivery of Meth	26	6/23/2021
Cassandra	Kauffman	Delivery of Meth	48	6/23/2021
Casey	Longtree	Robbery II	46	6/23/2021
Jesse	Luna	Felon in Possession of a Firearm	36	6/23/2021
Marty	Lupoli	Delivery of Meth	25	6/23/2021
Marty	Lupoli	Delivery of Meth	26	6/23/2021
Nathan	May	Aggravated Identity Theft	36	6/23/2021
Nathan	May	Identity Theft	13	6/23/2021
Nathan	May	Mail Theft New	30	6/23/2021
Nathan	May	Mail Theft New	30	6/23/2021
Nathan	May	Mail Theft New	30	6/23/2021
Nathan	May	Theft I Aggravated	36	6/23/2021
Steven	Mcneely	Unlawful Use of a Weapon	15	6/23/2021
Steven	Mcneely	Unlawful Use of a Weapon	48	6/23/2021
Michael	Merryman	Theft I	18	6/23/2021
Michael	Merryman	Unauthorized Use of a Vehicle	30	6/23/2021
Michael	Morales	Unauthorized Use of a Vehicle	44	6/23/2021
Michael	Morales	Unauthorized Use of a Vehicle	6	6/23/2021
Michael	Morales	Unauthorized Use of a Vehicle	48	6/23/2021
Cassandra	Okonski	Unauthorized Use of a Vehicle	45	6/23/2021
Jordan	Pierce	Robbery II	60	6/23/2021
Timothy	Plumlee	Unauthorized Use of a Vehicle	15	6/23/2021
Jennifer	Reid	Delivery of Heroin	58	6/23/2021
Jesse	Rigel	Assault II	70	6/23/2021
Joseph	Sappington	Delivery of Meth	34	6/23/2021
Joseph	Sappington	Elude Police Attempt - Vehicle	2.98	6/23/2021
Joseph	Sappington	Elude Police Attempt - Vehicle	2.98	6/23/2021
Jessica	Schooley	Assault III	41	6/23/2021
Dylan	Sleezer-Gorczewsl	Burglary I	30	6/23/2021
Kelcey	Stevenson	Assault III	18	6/23/2021
Kelcey	Stevenson	Drive Suspend/Revoked Felo New	18	6/23/2021
Kelcey	Stevenson	Drive Suspend/Revoked Felo New	36	6/23/2021
Kelcey	Stevenson	Drive Suspend/Revoked Felo New	38	6/23/2021
Treveon	Thomas	Robbery II	48	6/23/2021
Treveon	Thomas	Robbery II Attempt	30	6/23/2021
Noah	Tollefson	Assault Public Safety Officer	60	6/23/2021
Noah	Tollefson	Identity Theft	60	6/23/2021
Noah	Tollefson	Theft I	60	6/23/2021
Seth	Walker	Burglary II	12	6/23/2021
Seth	Walker	Criminal Mischief I	30	6/23/2021

KATE BROWN
GOVERNOR



TO: Members of the Legislative Assembly

FROM: Dustin Buehler, General Counsel, Office of the Governor

CC: Brett Hanes, Interim Legislative Administrator

RE: Executive Summary of Executive Clemencies

DATE: June 26, 2021

On June 26, 2021, pursuant to ORS 144.660, Governor Kate Brown transmitted a report to Senate President Courtney and Speaker Kotek outlining each reprieve, commutation, pardon, and remission of penalty or forfeiture that her office processed pursuant to her constitutional authority under Article V, Section 14, of the Oregon Constitution, since the previous report to the Legislative Assembly.

Since March 9, 2020, Governor Brown has granted 33 pardons, 32 conditional commutations, and one reprieve, in addition to Department of Corrections early releases. No remissions of penalty or forfeiture have been granted. Between March 9, 2020, and today, 191 applications for commutation of sentence have been denied. There are 344 commutation applications pending, 162 of which were submitted on or after May 1, 2021. Four commutation applications have been withdrawn. Twenty-five pardon applications have been denied, 36 pardon applications are pending, and three pardon applications were withdrawn. No reprieve applications are pending and eight reprieve applications have been denied. One remission application is pending and two remission applications have been denied.

A copy of the report was provided to Interim Legislative Administrator, Brett Hanes, and is available from his office upon request, or from the Governor's Executive Clemency Coordinator Nicole Townsend, who can be reached via email at nicole.townsend@oregon.gov.

Please note that three applicants applied for more than one type of executive clemency. This report accounts for each type of clemency requested as a separate application.

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Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and FELISHIA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of other similarly situated,

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN, COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Defendants.

Case No. 6:20-cv-00570-SB

PLAINTIFFS' MOTION TO COMPEL

ORAL ARGUMENT REQUESTED

EXPEDITED CONSIDERATION REQUESTED

LOCAL RULE 7-1(a) CERTIFICATION

Counsel for Plaintiffs certifies that they conferred in good faith with counsel for Defendants on the issues raised in this motion. Defendants oppose the motion.

MOTION

Pursuant to Federal Rule of Civil Procedure ("Rule") 37, Plaintiffs respectfully move the Court for an order compelling Defendants to make available for deposition in this action (1) Kevin Gleim, Special Projects Attorney at the Office of the Governor, and (2), the Honorable Kate Brown, former Governor of the State of Oregon. Gleim served as an attorney in the Governor's Office during the Class Period and, according to information learned in a deposition taken on March 20, 2023, spoke "all the time, every day" with ODOC staff to determine the scope and process for early releases that Defendant Brown chose to make for the purposes of reducing the prison population. Defendant Brown was the Governor of the State of Oregon during the Class Period and, as explained below, personally participated in certain actions and inactions that are central to Plaintiffs' claims.

Defendants have refused to make Kevin Gleim and Defendant Brown available for depositions on the ground that their depositions are either impermissible or otherwise outside the scope of discovery.[1] Plaintiffs therefore respectfully move for an order compelling Defendants to make them available for those depositions. Plaintiffs' motion is supported by the Declaration of Nadia Dahab and the exhibits attached thereto.

MEMORANDUM

Rule 26(b)(1) provides that parties "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). When a party fails to produce discovery that falls within the scope of Rule 26(b)(1), Rule 37(a)(1) allows the requesting party to "move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). The party opposing the motion "carries the heavy burden of showing why discovery

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[1] Plaintiffs have noticed the depositions of both Gleim and Brown. Dahab Decl. ¶¶ 2 (Ex. A), 3 (Ex. B).

should be denied," *Dence v. Wellpath, LLC*, 2022 WL 17261990, at *1 (D. Or. Nov. 29, 2022) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)), and must do so by establishing that the discovery request is overly broad, unduly burdensome, irrelevant, or disproportional in light of "the issues at stake" in the case, Fed. R. Civ. P. 26(b)(1), (b)(2)(C). In the context of depositions, "a strong showing is required before a party will be denied entirely the right to take a deposition." *Blankenship*, 519 F.2d at 429 (internal quotation marks omitted). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not suffice. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

By this motion, Plaintiffs seek an order compelling Defendants to make Kevin Gleim and the Honorable Kate Brown—whose testimony, in Plaintiffs' view falls well within the scope of discovery—available for a deposition in this case. As explained below, Gleim participated in certain actions that are central to Plaintiffs' claims; his testimony is therefore relevant and within the scope of permissible discovery under Rule 26. The Honorable Kate Brown, for her part, is a named Defendant and made several decisions from which Plaintiffs' claims arise or relate. Defendants cannot satisfy their burden under Rule 26 to foreclose entirely their depositions.

I. Plaintiffs are entitled to depose Kevin Gleim.

The federal rules establish a liberal framework for obtaining discovery. *See Hickman v. Taylor*, 329 U.S. 495, 501 (1947). Rule 26 thus allows a party to "obtain discovery of any matter, not privileged, that is relevant to any claim or defense of any party." Fed. R. Civ. P. 26(b)(1). "[T]he definition of relevancy 'has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that bear on, any issue that is or may be in the case.' " *Woodward Stuckart, LLC v. United States*, 2012 WL 1890364, at *1 (D. Or. May 23, 2012) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

Plaintiffs in this case allege § 1983 and state-law negligence and wrongful death claims against the State of Oregon and several state officials, including the former Director and Deputy Director of the Oregon Department of Corrections (ODOC), the former Director of the Oregon Health Authority (OHA), and the former Governor of the State of Oregon. In their operative

complaint, Plaintiffs allege that Defendants, through their actions and inactions, failed to protect adults in ODOC's custody (also known as AICs) from the heightened risk that COVID-19 presents in the custodial setting. They further allege that, by way of those actions and inactions, Defendants were negligent and deliberately indifferent to the AICs' serious medical needs. Among those actions and inactions includes Defendants' failures to implement and enforce policies intended to achieve social distancing consistently with public health guidance. ECF 282, at 37. Plaintiffs further contend that Defendant Brown was deliberately indifferent because, among other things, she failed to more broadly exercise her release, commutation, and reprieve authority to reduce the prison population and create space for social distancing within ODOC's institutions, and because she only further reduced the space available for social distancing by closing certain institutions. Kevin Gleim is in possession of information relevant to those claims.

Mr. Gleim was an attorney in the Governor's Office during the Class Period.[2] Defendants did not initially identify Mr. Gleim as a custodian with information relevant to Plaintiffs' claims, but during a recent deposition of Nathaline Frener, ODOC's former Assistant Director of Correction Services and the ODOC staff person charged with overseeing the COVID-19 early release program, Plaintiffs learned for the first time that ODOC, through Ms. Frener, spoke with Gleim "all the time, every day" for the purpose of determining, assessing, and implementing the COVID-19 early release and commutation program that Defendant Brown directed and oversaw. Ms. Frener testified that Gleim was the primary person designated to implement that process in the Governor's Office.[3]

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[2] He is not ODOC's attorney, however. Thus, conversation between Gleim and ODOC staff are not protected by the attorney-client privilege.

[3] *See* Frener Depo. at 48:21–49:19. Notably, Defendants not only failed to identify Gleim as a custodian of information relevant to Plaintiffs' claims, but also affirmatively represented to undersigned counsel that Governor's Office staff primarily communicated with Heidi Steward and Colette Peters, and not other ODOC staff, on issues relating to COVID-19. Dahab Decl. ¶ 4. Neither representation was correct. Because those representations formed the basis of the search terms on which the parties agreed for documentary discovery, counsel was unable to identity Gleim as a custodian of relevant information before March 20, 2023. Dahab Decl. ¶ 4.

Defendants contend that Mr. Gleim's testimony relating to the COVID-19 early release/commutation program is outside the scope of permissible discovery under Rule 26 because, according to Defendants, early release decisions fall entirely outside the scope of this Court's authority to adjudicate. In Defendants' view,

> Governor Brown's exercise of her authority to grant reprieves, commutations, and pardons is discretionary and "courts have no authority to inquire into the reasons or motives which actuate the Governor in exercising the power." Governor Brown's decision to exercise (or not exercise) her discretionary authority cannot form the basis of a claim for an Eighth Amendment violation. Further, this Court has already concluded that Defendants are entitled to discretionary immunity based on policies relating to the release of AICs, and therefore Plaintiffs cannot pursue a claim for negligence based on the State's alleged "fail[ure] to release or relocate AICs [adults in custody] to allow for adequate social distancing."

Dahab Decl. ¶ 5, Ex. C (citations omitted). Defendants effectively reprise the arguments they made in support of their motion to strike Plaintiffs' allegations relating to release, which this Court denied. ECF 272 (holding that the early release allegations "provide relevant background and context to Plaintiffs' claims, are 'arguably relevant' to Plaintiffs' deliberate indifference claim, and are not unduly prejudicial to Defendants).[4]

Then and now, Defendants' arguments miss the point. Plaintiffs do not challenge, and have never challenged, any particular decision that Defendant Brown (or anyone in her office) made in the exercise of her release, clemency, of reprieve authority. Nor do they challenge the early release/commutation program as a whole or the particular criteria that Defendant Brown determined should govern an AIC's eligibility for release. *See* Dahab Decl. ¶ 6, Ex. D (listing those criteria). Instead, Plaintiffs contend that Defendant Brown's knowledge of the inability to socially distance in ODOC's institutions, coupled with her decision not to release AICs from ODOC custody to ensure social distancing, tends to establish that Defendants knew of and disregarded an excessive risk to inmate health or safety in violation of the Eighth Amendment. This, at its core, is deliberative indifference. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994)

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[4] Without restating them here, Plaintiffs incorporate herein by reference their arguments in response to Defendants' motion to strike the release allegations. *See* ECF 254, at 6–11.

(an official who is deliberately indifferent must "kno[w] of and disregar[d] an excessive risk to inmate health or safety"). That is particularly true where the decision not to further reduce the prison population through the early release/commutation program was motivated by reasons other than AIC health and safety.[5]

Gleim is in possession of information relevant to Plaintiffs' claims—specifically, information relating to Defendant Brown's early release program and the process involved in implementing that program. Plaintiffs are entitled to his deposition.

II. Plaintiffs are entitled to depose the Honorable Kate Brown.

Federal cases provide a framework for determining when to protect a current or former government official from a deposition under Rule 26(c). *See Smith v. City of Stockton*, 2017 WL 11435161, at *2 (E.D. Cal. Mar. 27, 2017). Under that framework, "an individual objecting to a deposition must first demonstrate he is sufficiently high-ranking to invoke the deposition privilege." *Estate of Levingston v. Cty. of Kern*, 320 F.R.D. 520, 525 (E.D. Cal. 2017). Upon such a showing, the court then considers whether "extraordinary circumstances" justify deposing the official, based on "(1) whether the deponent has unique first-hand, nonrepetitive knowledge of the facts at issue in the case; and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods." *Id.*; *see Coleman*, 2008 WL 4300437, at *3 (plaintiffs must show that deponent "possess[es] personal knowledge of facts critical to the outcome of the proceedings and that such information cannot be obtained by other means").

Courts have discretion to limit the timing and scope of that deposition to avoid the "potential for abuse or harassment." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). As many courts have explained, "high ranking government officials have greater duties and time constraints than other witnesses and . . . without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation." *Thomas v.*

[5] *Cf.* Frener Depo. at 91:18–93:19 (decision to release only those convicted of non-person crimes means that ODOC was releasing those who are *more* likely to reoffend; ODOC suggested to Governor that the early release program be opened up to "have a bigger impact" but understood that doing so would be a "harder . . . sell").

Cate, 715 F. Supp. 2d 1012, 1048 (E.D. Cal. 2010). To that end, such depositions generally are not permitted in the absence of "extraordinary circumstances." Extraordinary circumstances exist when the official has personal knowledge relating to material issues in the litigation and when that information may not be available through other sources. *Coleman v. Schwarzenegger*, 2008 WL 4300437, at *2 (E.D. Cal. Sept. 15, 2008). With respect to former government officials, however, "one important rationale for the rule is absent." *Thomas*, 715 F. Supp. 2d at 1049–50 (rationale based on interference with official duties does not exist as to former officials)). Thus, there is a "marked difference between current and former government officials in terms of the likely frequency and onerousness of discovery requests." *Jackson Mun. Airport Auth. v. Reeves*, 2020 WL 5648329, at *3 (S.D. Miss. Sept. 22, 2020) (internal quotations marks omitted).

This Court has already exercised its discretion to limit the timing of Defendant Brown's deposition. In November 2022, when Brown was in office, Defendants moved for a protective order barring her deposition on the ground that Plaintiffs had failed to establish extraordinary circumstances. ECF 410. This Court granted in part and denied in part that motion, concluding that Plaintiffs had not "met the burden of demonstrating extraordinary circumstances to justify taking Governor Kate Brown's deposition before the end of her current term." *Id.* The Court noted that "Plaintiffs ha[d] not yet exhausted other less intrusive discovery methods, such as depositing Governor Brown's staff or serving interrogatories." *Id.* The Court therefore "barr[ed] Governor Brown's deposition prior to January 9, 2023," but denied the request to "ba[r] Governor Brown's deposition altogether," allowing "leave to renew if Plaintiffs notice her deposition again after exhausting less intrusive discovery methods." *Id.*

Defendant Brown is no longer in office, and Plaintiffs have undertaken extensive less-intrusive discovery to narrow the scope of discovery necessary directly from her. But a deposition is still necessary; as explained below, Defendant Brown possesses information central to Plaintiffs' claims that Plaintiffs cannot obtain through any other means. Her deposition should therefore be allowed.

A. Brown was personally involved in the actions giving rise to Plaintiffs' claims and has unique, personal knowledge of information central to those claims.

Courts will generally consider subjecting a high-ranking government official to a deposition only if the official has first-hand knowledge related to the claims at issue and other persons cannot provide the necessary information. *See Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007); *Thomas*, 715 F. Supp. 2d at 1049. That is the case with respect to Defendant Brown. Defendant Brown was involved in (and made) decisions that are central to Plaintiffs' claims, including decisions relating to early release or commutations of the sentences for AICs and decisions relating to the closure of certain ODOC institutions. And although she presumably was aware of the health risks of COVID-19 in the corrections setting and the impossibility of social distancing in ODOC facilities,[6] she failed to undertake additional steps to increase the space available for social distancing or inquire with ODOC about the possibility or need to do so.

As Governor, Brown was the Executive head of state, overseeing all state agencies, including ODOC. Peters Depo at 23:2–10 (ODOC Director reports directly to the Governor). In that capacity, Brown made decisions relating to the health and safety of AICs confined in ODOC's facilities. For instance, early in the pandemic, she commissioned a workgroup to "evaluate the potential of releasing individuals from ODOC's custody" to "reduce the likelihood of COVID-19 and increase ODOC's ability to practice social distancing." Dahab Decl. ¶ 7, Ex. E. Over the next several months, she wrote Defendant Peters multiple times requesting that Peters identify vulnerable AICs for possible commutation based on certain criteria that Brown provided. Dahab Decl. ¶¶ 6 (Ex. D), 8 (Ex. F). Brown changed that criteria over time and granted limited commutations in response. Dahab Decl. ¶ 9, Ex. G.

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[6] Because they have not been able to depose her, Plaintiffs have not been able to fully understand the scope of that awareness and understanding. Depositions of Governor's Office staff at the time have not been particularly illuminating. *See, e.g.*, Severe Depo. at 16:20–25 ("Q. And do you know whether the Governor knew that [social distancing] was impossible? A: I mean, I don't know if anybody ever said it exactly like that, like impossible . . . ."); Blosser Depo. at 47:9–13 ("Q. . . . [T]he letter [from Lisa Hay about the dangers of COVID-19 in the corrections setting] is addressed to Governor Brown. Would you have forwarded this to Governor Brown at any point? A. I don't know.").

Brown also made decisions relating the closure of certain ODOC facilities, including Mill Creek Correctional Facility and Shutter Creek Correctional Institution, both of which were closed during the COVID-19 emergency.[7] Those decisions required other institutions to absorb the Shutter Creek and Mill Creek populations, increasing the density of those institutions and decreasing opportunities for social distancing.[8] And Brown had the authority, but apparently did not exercise it, to undertake additional steps to increase the space available for social distancing or inquire with ODOC about the possibility or need to do so.

Furthermore, no one other than Defendant Brown can testify to her reasons, mental impressions, or process in making those decisions. The depositions that Plaintiffs already have taken bear that out. ODOC staff, including then-Director Peters and then-Deputy Director Steward, testified that Brown made ultimate decisions relating to both release and facility closure.[9] They could not testify, however, as to why Defendant Brown made them.[10]

Indeed, the ODOC depositions that Plaintiffs have taken have only given rise to more questions than answers. Peters testified that she met one-on-one with Governor Brown during the Class period about issues relating to COVID-19, but she has no recollection about the topics the two discussed.[11] She also did not recall whether ODOC ever asked the Governor for additional funding or staff to bring online mothballed facilities or to use other ODOC space for social

[7] *See* Jake Thomas, *Why Salem's Mill Creek Correctional Facility Will Be Shuttered in July*, Salem Reporter (Jan. 28, 2021), https://www.salemreporter.com/2021/01/28/why-salems-mill-creek-correctional-facility-will-be-shuttered-by-july/ (last visited Apr. 10, 2023); Amanda Slee, *Curtains for Shutter Creek: Oregon Governor Sticks With Plan to Close Prison by January*, KCBY (July 28, 2021), https://kcby.com/news/local/curtains-for-shutter-creek-oregon-governor-sticks-with-plan-to-close-prison-by-january (last visited Apr. 10, 2022).

[8] These were not the only decisions that Brown made that gave rise to the harms suffered by Plaintiffs and members of the certified classes. As this Court is aware, also made several decisions relating to the delivery of COVID-19 vaccines to AICs in early 2021. *See* ECF 178.

[9] *See, e.g.*, Peters Depo. at 103:9–104:17 (Governor made the closure decisions); Gower Depo. at 135:17–136:1 (closure decisions are made between the director and "her boss, the Governor").

[10] *See, e.g.*, Peters Depo. at 104:1–17 (that "would be a question for the Governor").

[11] Peters Depo. at 27:12–19; 28:14–23 ("Q. In those . . . meetings do you recall . . . what issues you might have discussed with the Governor? A. I don't recall specifically, but—yeah, I don't recall specifically . . . generally about COVID-related issues.").

distancing.[12] She did not recall whether ODOC provided input to the Governor's office about the conditions of eligibility for early release,[13] but testified that the Governor alone made the ultimate decisions on that issue.[14] She also did not know why the Governor made certain decisions about institution closures, noting that those questions were for the Governor alone.[15]

B. Plaintiffs have exhausted less-intrusive discovery methods.

In pursing answers to those questions, Plaintiffs have exhausted less-intrusive means of discovering the information but have still been unable to do so. Since this Court's November 2022 order, Plaintiffs have propounded interrogatories on Defendant Brown[16] and have deposed then-Governor Brown's Public Safety and Health Policy Advisors, Constantin Severe and Tina Edlund. Based on information learned during those depositions, they also deposed then-Governor Brown's Chief of Staff, Nik Blosser.[17]

Those depositions did not, however, provide the answers to which Plaintiffs are entitled.[18] They did not, for instance, clarify the scope of Defendant Brown's understanding of the risk of COVID-19 in the corrections setting or the nature and efficacy of any COVID-19

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[12] Peters Depo. at 64:18–25; 65:3–9 ("Q. Did you ever, in the early stage of the pandemic, ask the legislature or the Governor for additional funding to staff or reopen those facilities? A. I don't recall, specifically. Q. Did you ever consider doing that? A. I don't recall.").

[13] Peters Depo. at 83:9–13 ("Q. Did you provide input to the Governor regarding conditions of eligibility? A. I don't recall being a part of those conversations. I'm not saying it didn't happen.").

[14] Peters Depo. at 83:21–25 ("A. You know, for me, the commutation authority is a very special constitutional authority, and so that really would be the opinion of the Governor, and the Governor alone, as to what criteria she would want to consider as she makes these very difficult decisions.").

[15] Peters Depo. at 104:1–17 ("Q. And you don't know . . . what factors made her close the other two over Warner Creek? A. No."); *id.* at 105:2–16 (Q. And did you ever consider whether closing institutions in the pandemic would negatively impact the ability of DOC to provide social distancing space for AICs? A. I don't recall having that thought or having those conversations.").

[16] Dahab Decl. ¶ 5, Ex. C.

[17] Edlund testified that information would typically flow from the ODOC through Mr. Severe and then either directly to the Governor or through her Chief of Staff. Edlund Depo. at 52:13–53:9. According to Blosser, he was "the top advisor to the Governor," meaning "the chief proxy for the Governor when she can't be there dealing with congress, dealing with the administration, dealing with agency leaders, dealing externally in the business community, and just basically doing everything you can to support the Governor achieving her goals." Blosser Depo. at 10:19–11:14.

[18] As noted above, Plaintiffs have requested, but Defendants have refused, the deposition of Kevin Gleim.

relating safety measures that ODOC had undertaken.[19] Nor did they answer Plaintiffs' questions about the closure of ODOC's institutions[20] or the reasons or process for Brown's early release program,[21] and they did not clarify whether Defendant Brown ever considered the use of alternative spaces for social distancing.[22] Thus, in the absence of a deposition of Defendant Brown herself, Plaintiffs continue to lack information necessary to prove their claims for relief.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully urge the Court to enter an order compelling the depositions of Kevin Gleim and the Honorable Kate Brown.

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[19] *See, e.g.*, Severe Depo. at 16:20–25 ("Q. And do you know whether the Governor knew that [social distancing] was impossible? A. . . . I don't know if anybody ever said it exactly like that, like impossible . . . ."); Blosser Depo. at 47:9–13 ("Q. . . . [T]he letter [from Lisa Hay about the dangers of COVID-19 in the corrections setting] is addressed to Governor Brown. Would you have forwarded this to Governor Brown at any point? A. I don't know."); *id.* at 62:17–19 ("Q. Did OHA recommend social distancing in prisons? A. I don't remember. I don't know."); *id.* at 64:2–4 ("Q. Was six feet of social distancing possible in Oregon prisons? A. I don't know."); Edlund Depo. at 54:8–16 ("Q. Is social distancing possible in Oregon's prisons? A. I don't know. Q. Are you [the Governor's Health Policy Advisor] familiar with the strategies the governor's office took or considered taking to protect against the spread of COVID-19 in Oregon's prisons? A. I don't know."); *id.* at 67:15–17 (Q. Was the governor aware of [issues] with respect to mask noncompliance? A. I don't know."); *id.* at 73:4–74:12 (Q. Did [the Health Policy Advisor] ever have any specific conversations with Mr. Severe or Mr. Blosser or anyone else in the governor's office about specific strategies for managing COVID-19 in prison? A. No.").

[20] Blosser Depo. at 84:1–6 ("Q. Who . . . makes the final decision on which [institutions] to close and which ones to leave open? A. You know, I'm not 100 percent sure if the Governor has to tell Colette to do that or if Colette does it. I'm not 100 percent sure.").

[21] Blosser Depo. at 72:23–25 ("Q . . . [T]hen how did she go about making the ultimate decision? A. I don't remember exactly that."); *id.* at 74:1–4 ("Q. Did the Governor have some goal for how far to reduce the prison population at this time? A. I don't remember that—if we had a specific goal in mind or not."); *id.* at 9–14 (Q. Were any . . . public health professionals involved in the process to— A. I assume they were. I don't know.").

[22] Blosser Depo. at 91:1–12 ("Q. Was there ever any consideration given to using Deer Ridge space for—to put beds in Deer Ridge? A. Not that I—I don't know."); *id.* at 91:25–92:5 ("Q. Okay. Did the Governor or the Governor's Office ever talk with DOC about the possibility of using those mothballed facilities or other unused space? A. I don't know. Not that I remember being witness to."); *id.* at 92:13–16 ("I mean, to the question of did – did DOC ask for money to open the mothballed facility? I don't know, not to me, not that I remember. But you have to remember, like, agencies were asking for money all the time every day and so it's possible but I don't remember it if it happened."); *id.* at 94:6–11 ("Q. . . . DOC never came to the Governor's Office to—with the proposal to put online unused space? A. I can't say if they did or didn't to the Governor's Office. I don't remember seeing that.").

DATED this 10th day of April, 2023.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; SHERYL LYNN SUBLET; and FELISHA RAMIREZ, personal representative for the ESTATE OF JUAN TRISTAN, individually, on behalf of a class of other similarly situated,

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN; COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; PATRICK ALLEN; JOE BUGHER; and GARRY RUSSELL,

Defendants.

Case No. 6:20-cv-00570-SB

DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants State of Oregon, Kate Brown, Colette Peters, Heidi Steward, Mike Gower, Mark Nooth, Rob Persson, Ken Jeske, Patrick Allen, Joe Bugher, and Garry Russell (collectively, "Defendants") object and respond to Plaintiffs' Second Set of Interrogatories.

PREFATORY STATEMENT

Discovery, investigation, and trial preparation are ongoing. Defendants' responses to Plaintiffs' Second Set of Interrogatories are made to the best of Defendants' present knowledge, information, and belief. The responses are made without prejudice to Defendants' right to produce evidence of any facts, information, or documents that are subsequently discovered, released, or otherwise made available to Defendants through investigation, discovery, research, or other preparation. Defendants accordingly reserve the right to amend or supplement and all information contained in this statement as additional facts are released, ascertained, analysis made, discovery is undertaken, and legal research is completed. Defendants further reserve the right to amend or supplement this statement based on any evidence, documents, or other information that may have been overlooked or omitted by oversight, neglect, mistake, or other inadvertence.

Defendants' objections and responses do not constitute an admission by Defendants of the relevance, materiality, or admissibility into evidence of the subject matter, documents, or facts contained or referred to in any interrogatory or in Defendants' response.

GENERAL OBJECTIONS

Defendants make the following General Objections to Plaintiffs' Second Set of Interrogatories:

1. Privilege and Privacy. Defendants object to the interrogatories to the extent that Plaintiffs seek information protected from disclosure by the attorney-client privilege, work-product doctrine, mediation privilege, deliberative process privilege, informer privilege, or any other applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction

that protects such information from involuntary disclosure. Defendants intend to and do assert the privileges above with respect to all such information, and such information will not be produced. Any inadvertent production of this information is not intended to constitute, and shall not constitute, a waiver in whole or in part of any privilege, doctrine, or objection.

2. Compliance with Rules. Defendants object to the interrogatories, instructions, and definitions to the extent they purport to impose on Defendants any obligations different from, inconsistent with, or in addition to, those imposed by the Federal Rules of Civil Procedure or the Local Rules of this Court. Defendants will not respond in any manner beyond what is required pursuant to the Federal Rules of Civil Procedure or the Local Rules of this Court.

3. Scope of Discovery. Defendants object to the interrogatories to the extent that Plaintiffs seek information not relevant to any party's claim or defense. Defendants object to the interrogatories to the extent they are intended solely to cause delay and are wasteful of the parties' time and resources. Defendants object to the interrogatories to the extent they are unduly burdensome, argumentative, vague, ambiguous, or overly broad. To the extent Defendants respond to or produce information requested in any individual interrogatory, Defendants do not concede that the information requested is relevant, material, competent, or admissible. Nothing contained herein shall be construed as an admission by Defendants relative to the existence or nonexistence of any information or documents or the truth or accuracy of any statement or characterization contained in any discovery request. Defendants reserve the right to object to further discovery into any subject matter covered by the interrogatories.

4. Discovery Ongoing. Discovery, investigation, and trial preparation are ongoing. Defendants' responses to the interrogatories are made to the best of Defendants' present knowledge, information, and belief. Responses are at all times subject to additional or different

information that discovery or further investigation may disclose. Accordingly, Defendants reserve the right to supplement their responses to the interrogatories if additional information becomes known to Defendants. In addition, Defendants have made reasonable efforts to respond to the interrogatories based on Defendants' interpretation of the interrogatories, but if Plaintiffs subsequently assert an interpretation of any interrogatory that is different from Defendants' interpretation, Defendants reserve the right to supplement their objections or responses. Defendants will complete production on a rolling basis.

5. Possession, Custody, or Control. Defendants object to the interrogatories to the extent that they seek information that is not in Defendants' possession, custody, or control. Defendants object to the interrogatories to the extent they seek information already in Plaintiffs' possession, custody, or control. In responding to the interrogatories, Defendants will produce only information reasonably known to Defendants or within their possession, custody, or control.

6. Public Sources. Defendants object to the interrogatories to the extent they seek documents or information equally available to Plaintiffs through public sources.

7. Undue Burden. Defendants object to the interrogatories to the extent they require Defendants to search for and produce information from sources that are not reasonably accessible because of undue burden or expense. Defendants will not produce information from sources that are not reasonably accessible because of undue burden or cost.

8. Proportionality. Defendants object to the interrogatories to the extent that they are not proportional to the needs of the case (considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit). Defendants further

object to the interrogatories to the extent that the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

9. Premature Expert Opinions. Defendants object to the interrogatories to the extent they prematurely require expert opinions before experts have been retained and are subject to disclosure.

10. Definition of "Defendants." Defendants object to Plaintiffs' definition of the term "Defendants" to the extent that the definition seeks discovery from people or entities that are not agents of Defendants under the Federal Rules of Civil Procedure, the Local Rules, or any other applicable rule or case law. Defendants will produce only information reasonably known to Defendants or within their possession, custody, or control. Defendants further object to Plaintiffs' definition of "Defendants" to the extent it includes Garry Russell; Mr. Russell is deceased and is thus unable to answer these interrogatories.

RESPONSES TO INTERROGATORIES

Interrogatories 5–10 are directed at Defendant Kate Brown and the Governor's Office:

INTERROGATORY NO. 5: Identify by name and title each individual, other than counsel, who assisted in the preparation of the responses to Interrogatory Nos. 6–10.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 5. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this

interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege and the work product doctrine. Defendants object that Interrogatory No. 5 is vague and ambiguous as the term "assisted in the preparation" is undefined and susceptible to more than one meaning; Defendants understand this interrogatory to seek the identification of persons who provided the substantive information set forth in the responses to Interrogatories Nos. 6-10.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 5 as follows:

Constantin Severe assisted in the preparation of the responses to Interrogatory Nos. 6-10.

INTERROGATORY NO. 6: Identify all persons who provided COVID-19-related updates directly to Governor Brown on behalf of (a) ODOC, (b) OHA, and (c) the AOC during the Class Period, including their name, job title, and the frequency of such updates.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 6. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege and the work product doctrine. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that the term "COVID-19-related updates" is vague and ambiguous because it

is undefined and susceptible to more than one meaning. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendant further object that this interrogatory is over broad and unduly burdensome to the extent it seeks the identification of all persons who ever communicated with Governor Brown about Covid-19 issues during the 852-day Class Period. Defendants are therefore construing this interrogatory to ask for the persons who regularly provided COVID-19 related information directly to Governor Brown.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 6 as follows: Constantin Severe - Public Safety Policy Advisor, Nik Blosser - Chief of Staff, Gina Zejdlik - Deputy Chief of Staff and then Chief of Staff, Berri Leslie - Deputy Chief of Staff, Dustin Buehler - General Counsel, Tina Edlund - Senior Health Policy Advisor, Linda Roman - Senior Health Policy Advisor, and Tony Lapiz - Health Policy Director, were part of Governor Brown's staff and all provided regular updates directly to Governor Brown relating to COVID-19 and ODOC or OHA. These updates varied in their level of frequency.

Director Patrick Allen for OHA, Dawn Jagger - Chief of Staff for OHA, Dr. Dana Hargunani - Chief Medical Officer for OHA, and Dr. Dean Sideliner - State Health Officer and State Epidemiologist, provided updates directly to Governor Brown relating to COVID-19-related issues. These updates varied in their level of frequency.

Director Colette Peters for ODOC and then Deputy Director (current Interim Director) Heidi Steward for ODOC provided updates directly to Governor Brown on COVID-19-related issues on behalf of ODOC. These updates varied in their level of frequency.

In light of the vagueness and potential breadth of this interrogatory, and because discovery is ongoing, Defendants reserve the right to supplement this request if they identify additional individuals who regularly provided information relating to COVID-19-related issues directly to Governor Brown.

INTERROGATORY NO. 7: Describe all actions taken by the Governor's Office in response to the surge in COVID-19 cases and deaths of AICs that occurred between December 1, 2020, and January 31, 2021, including any actions taken during and immediately after the period of that surge.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 7. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks information related to vaccine prioritization, discovery into which is currently stayed by the Court's April 12, 2022 Order (Dkt. 379). Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object to the factual characterization assumed by this interrogatory that there was a "surge in COVID-19 cases and deaths of AICs" during the referenced time period; by responding to this interrogatory,

Defendants do not admit or adopt that characterization. Defendants further object to this request because it is vague and ambiguous as to "actions taken . . . in response" to any surge in COVID-19 cases. Defendants also object that "actions taken . . . immediately after the period of surge" is vague and ambiguous. Defendants' response therefore identifies actions taken by the Governor's Office in relation to COVID-19 and ODOC in the time period between November 1, 2020 and February 28, 2021.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 7 as follows:

The Governor's Office was monitoring COVID-19 cases and the State's COVID-19 response across the State throughout the course of the COVID-19 pandemic. The Governor's Office had multiple channels of communication with ODOC—and with additional stakeholders involved with ODOC and the AIC population—to stay apprised of ODOC's COVID-19 response and other developments impacting the AIC population. These communications typically flowed through the Public Safety Policy Advisor, Constantin Severe, to the Governor's Office Deputy Chiefs of Staff, Chief of Staff, and to Governor Brown. In other instances, the Governor's Chief of Staff or Deputy Chiefs of Staff would communicate directly with ODOC officials or employees in connection with ODOC matters.

In addition to participating in regular meetings with ODOC officials, the Governor's Office took multiple actions in response to COVID-19 cases within ODOC, including, but not limited to, the following:

- Issuing multiple Executive Orders relating to COVID-19 (*see* response to Interrogatory No. 8);
- Approving temporary rules implementing Governor Brown's executive orders;

- Convening advisory groups, including the Medical Advisory Panel, to advise the Governor's Office on evolving COVID-19 guidance;
- Improving COVID-19 testing availability across the State and securing testing supplies from national providers;
- Increasing the availability of personal protective equipment across the State; and
- Communicating expectations to ODOC regarding mask-wearing within ODOC Institutions.

From November 1, 2020 through February 28, 2021, the Governor's Office continued to direct ODOC to implement health and safety protocols to mitigate the risk of COVID-19 spread in correctional institutions. This direction was communicated through regular meetings between Mr. Severe and ODOC personnel and through email and telephone conversations between the Governor's Office staff and Director Peters and Deputy Director Steward. Documents reflecting those conversations and actions include MANEY-457977 and its attachment, MANEY-457978 – MANEY-457979; MANEY-466324 – MANEY-466325; MANEY-464610 – MANEY-464612; and MANEY-764816 – MANEY-764817.

Defendants offer the following statements describing Governor Brown's early release program for AICs. Governor Brown's exercise of her authority to grant reprieves, commutations, and pardons is discretionary and "courts have no authority to inquire into the reasons or motives which actuate the Governor in exercising the power." *Eacret v. Holmes*, 215 Or. 121, 127 (1958). Governor Brown's decision to exercise (or not exercise) her discretionary authority cannot form the basis of a claim for an Eighth Amendment violation. *See Burnett v. Fallin*, 785 Fed. Appx. 546, 553 (10th Cir. 2019). Further, this Court has already concluded that Defendants are entitled to discretionary immunity based on policies relating to the release of AICs, and therefore Plaintiffs cannot pursue a claim for negligence based on the State's alleged "fail[ure] to release or relocate AICs [adults in custody] to allow for adequate social distancing."

(Dkt. 149 at 21.) Because Plaintiffs have no cognizable against Defendants based on any alleged failure to release them or other AICs, Defendants object that this interrogatory—to the extent it seeks information relating to commutation or release—is not relevant, is protected by the deliberative process privilege, and is unduly burdensome.

Without waiving the foregoing objections, in light of the state of emergency due to the COVID-19 global pandemic and the threat it presents to the public health and safety of all Oregonians, Governor Brown requested ODOC to perform a case-by-case analysis of adults in custody who are vulnerable to the effects of COVID-19, for possible conditional commutation on a rolling basis. MANEY-768225 – MANEY-768276. Governor Brown issued criteria to ODOC for possible conditional commutations on June 12, 2020, and modified that criteria on August 25, 2020, December 2, 2020, and again on March 5, 2021. *Id.* Between November 2020 and February 2021, 396 AICs were released through Governor Brown's grant of conditional commutations. *Id.* As of February 28, 2021, 505 total AICs were released through Governor Brown's grant of conditional commutations, including the AICs who were released before November 2020. *Id.*

In light of the vagueness and potential breadth of this interrogatory, and because discovery is ongoing, Defendants reserve the right to supplement this response to identify additional actions taken by Governor Brown's Office with respect to COVID-19 and ODOC between December 1, 2020 and January 31, 2021, including any actions taken during and immediately after that time period.

INTERROGATORY NO. 8: Identify all COVID-19-related orders, policies, decisions, or mandates issued by the Governor's Office during the Class Period that apply or applied to any

or all ODOC Institutions, including orders, policies, decisions, or mandates relating to AIC commutations, releases (including early releases), or reprieves during the COVID-19 pandemic.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 8. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks information related to vaccine prioritization, discovery into which is currently stayed by the Court's April 12, 2022 Order (Dkt. 379). Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that the term "COVID-19-related" is vague and ambiguous because it is undefined and susceptible to more than one meaning. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendants object that the use of the word "decision" renders this interrogatory over broad and unduly burdensome because it requires Defendants to identify every decision to act, not act, or defer a decision about whether to act during the 852-day Class Period. Defendants object that the terms "orders" and

"mandates" are not defined; Defendants understand the meaning of these terms to be co-extensive with Plaintiffs' definition of "policies" and "protocols."

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 8 as follows:

Governor Brown, through the Governor's Office, took a series of steps applicable to ODOC Institutions throughout the 852-day Class Period, including activating statewide emergency management officers, issuing of 20 executive orders, and exercising her constitutional clemency powers. On March 7, 2020, Governor Brown convened the Coronavirus Response Team, of which ODOC was a member.

Governor Brown issued over 20 Executive Orders that impacted ODOC:

- Executive Order 20-03 was issued on March 8, 2020, declared a state of emergency due to the novel Coronavirus SARS-Cov-2, authorized state executive agencies to take actions permitted by law to respond to the emergency, and directed state agencies to develop and implement procedures, consistent with state public health recommendations, to prevent or alleviate the public health threat.

- On March 12, 2020, Governor Brown issued Executive Order 2020-05, prohibiting gatherings of 250 or more people. Although by its terms, this executive order was not applicable to places of employment, Governor Brown simultaneously issued guidance for workplaces and other environments. Dkt. 145 at 4 and this site.

- Executive Order 20-07—which was issued on March 17, 2020 and prohibited the on-premises consumption of food and drink and gatherings of 25 or more people—expressly did not apply to "essential government buildings" and state government, the order nevertheless encouraged those institutions to implement similar restrictions to reduce the risk associated with the spread of Covid-19.

- Issued on March 18, 2020, Executive Order 2020-10 prohibited elective and non-urgent medical procedures until June 15, 2020 in order to conserve personal protective equipment for the State's Covid-19 emergency response.

- Executive Order 2020-12—which was issued on March 23, 2020—prohibited, among other things, persons from engaging in non-essential social and recreational gatherings outside of their homes or places of residence if a distance of six feet could not be maintained between individuals, closed state executive

branch offices and buildings to the public to the maximum extent possible, and directed state executive branch offices and buildings to facilitate teleworking and work-from-home to the maximum extent possible.

- On April 27, 2020, Governor Brown issued Executive Order 2020-22 which allowed the resumption of elective and non-urgent medical procedures that utilized personal protective equipment after May 1, 2020, provided that they complied with Oregon Health Authority rules or guidance, and rescinded Executive Order 2020-10.

- Executive Order 2020-24 was issued on May 1, 2020 and extended the COVID-19 state of emergency.

- Executive Order 2020-25 followed on May 14, 2020 and, among other things, rescinded Executive Orders 2020-07 and 2020-12, established a framework for the resumption of some prohibited activities, directed individuals who had left their homes or places of residence to maintain at least six feet of physical distance from persons who were not members of their households when possible and advised adherence to applicable Oregon Health Authority guidance, continued the closure of state executive office buildings to the public to the maximum extent possible, required state agencies to establish, implement, and enforce physical distancing measures to maximum extent possible, allow for telework where possible, and where that was not possible, designate an employee to establish, implement, and enforce physical distancing policies consistent with Oregon Health Authority guidance.

- Executive Order 2020-27 was issued on June 5, 2020. That executive order further established a framework for the resumption of some activities, directed the Department of Administrative Services to issue guidance to state executive branch offices and buildings, subject to Governor Brown's approval, and addressed limitations on social gatherings.

- On June 30, 2020, Governor Brown issued Executive Order 2020-30 which continued the COVID-19 state of emergency and continued Executive Orders 2020-22 and 2020-27.

- On September 1, 2020, Governor Brown extended the COVID-19 state of emergency when she issued Executive Order 2020-38 and continued Executive Orders 2020-22 and 2020-27.

- On October 27, 2020, Governor Brown again extended the COVID-19 state of emergency and continued Executive Orders 2020-22 and 2020-27 when she issued Executive Order 2020-59.

- On November 17, 2020, Governor Brown issued Executive Order 2020-65, ordering a temporary freeze on certain activities for a two-week period.

- On December 2, 2020, Governor Brown issued Executive Order 2020-66, rescinding Executive Orders 2020-27 and 2020-65 in favor of the directives of Executive Order 2020-66 which, among other things, delegated authority to the Department of Administrative Services to issue and revise Covid-19 mitigation guidance within state executive branch buildings and operations.

- Executive Order 2020-67 was issued on December 17, 2020 and continued the COVID-19 state of emergency, as well as Executive Orders 2020-22 and 2020-66.

- Likewise on February 25, 2021, Governor Brown issued Executive Order 2021-05, continuing the COVID-19 state of emergency and Executive Orders 2020-22 and 2020-66.

- On April 29, 2021, Governor Brown used Executive Order 2021-10, which continued the COVID-19 state of emergency, as well as Executive Orders 2020-22 and 2020-66.

- On June 25, 2021, Governor Brown issued Executive Order 2021-15, which continued the COVID-19 state of emergency for the duration of the executive order and rescinded Executive Orders 2020-22 and 2020-66 effective June 30, 2021 or when at least 70% of Oregon adults had received at least one dose of a Covid-19 vaccine.

- On August 13, 2021, Governor Brown issued Executive Order 2021-29, which required all state executive branch employees to receive a full course of a Covid-19 vaccine or request an exemption.

- On December 21, 2021, Governor Brown issued Executive Order 2021-36, extending the COVID-19 state of emergency.

- On March 17, 2022, Governor Brown issued Executive Order 2022-03, rescinding Executive Orders 2020-03 and 2021-36 effective April 1, 2022.

Defendants offer the following statements describing Governor Brown's early release program for AICs. Governor Brown's exercise of her authority to grant reprieves, commutations, and pardons is discretionary and "courts have no authority to inquire into the reasons or motives which actuate the Governor in exercising the power." *Eacret v. Holmes*, 215 Or. 121, 127 (1958). Governor Brown's decision to exercise (or not exercise) her discretionary authority cannot form the basis of a claim for an Eighth Amendment violation. *See Burnett v.*

Fallin, 785 Fed. Appx. 546, 553 (10th Cir. 2019). Further, this Court has already concluded that Defendants are entitled to discretionary immunity based on policies relating to the release of AICs, and therefore Plaintiffs cannot pursue a claim for negligence based on the State's alleged "fail[ure] to release or relocate AICs [adults in custody] to allow for adequate social distancing." (Dkt. 149 at 21.) Because Plaintiffs have no cognizable against Defendants based on any alleged failure to release them or other AICs, Defendants object that this interrogatory—to the extent it seeks information relating to commutation or release—is not relevant, is protected by the deliberative process privilege, and is unduly burdensome.

In late March 2020, the Governor's Office requested that ODOC provide data on AICs who were scheduled for release within three months and who met criteria involving their crime of conviction and medical vulnerability to Covid-19. The Governor's Office then met with Oregon Department of Corrections leadership to discuss and request additional data. MANEY-046555.

The Governor's Office next convened an Early Release Workgroup to explore options to reduce Oregon's prison population and met with legislators to discuss a proposal for early release of adults in custody. Governor Brown requested ODOC perform a case-by-case analysis of adults in custody who are vulnerable to the effects of COVID-19, for possible conditional commutation on a rolling basis. MANEY-768225 – MANEY-768276. Governor Brown issued criteria to ODOC for possible conditional commutations on June 12, 2020, and modified that criteria on August 25, 2020, December 2, 2020, and again on March 5, 2021. *Id.* In total, 953 AICs were granted conditional commutation. *Id.* The Governor's Office reported the commutation dates of individual AICs to the Legislative Assembly pursuant to ORS 144.660 on June 25, 2021. *Id.*

The Governor's Office also periodically approved guidance from the Oregon Department of Administrative Services ("DAS") to state executive branch agencies concerning Covid-19 mitigation policies applicable in certain buildings occupied by state executive agencies.

Furthermore, the Governor's Office received periodic updates on the temporary rule establishing a Covid-19 workplace standard issued by the Oregon Occupational Safety and Health Agency ("OR-OSHA") throughout the summer and fall of 2020 and participated in meetings with the leadership of that agency and the Oregon Department of Consumer and Business Services prior to the issuance of the temporary OR-OSHA rule. The Governor's Office continued to receive updates from OR-OSHA as the agency developed and promulgated a permanent Covid-19 workplace standard.

In light of the vagueness and potential breadth of this interrogatory, and because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 9: Describe how and identify when all orders, policies, or mandates listed in response to Interrogatory No. 8, above, were communicated to ODOC.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 9. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks information related to vaccine

prioritization, discovery into which is currently stayed by the Court's April 12, 2022 Order (Dkt. 379). Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants also object to this interrogatory because the phrase "communicated to ODOC" is vague and ambiguous as to whom a communication must be directed to in order to constitute a "communication to ODOC." Defendants understand a "communication to ODOC" to have occurred whenever Governor Brown publicly issued an order, policy, decision, or mandate that, by its terms, affected ODOC, as well as when Governor Brown announced any such order, policy, decision, or mandate to any member of the ODOC executive team through the Governor's Office Staff or DAS. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 9 as follows:

The Governor's Office used several different ways to inform ODOC of the orders, policies, decisions, or mandates described in response to Interrogatory 8. The Governor's Office often informed ODOC of these items through public announcements, as well as through communications by policy advisers, such as Constantin Severe, directly to ODOC officials or at regular Agency Directors' meetings. The orders, policies, decisions, or mandates described in response to Interrogatory No. 8 were also communicated to ODOC in correspondence from DAS, and emails from Governor Brown's press officers. Governor Brown's executive orders were publicly announced on the dates described in response to Interrogatory 8. Examples of

instances where Governor Brown's orders, policies, decisions, or mandates were communicated through DAS or through the Governor's Press Office include MANEY-517183 – MANEY-517184, MANEY-544277 – MANEY-544278, MANEY-097963 – MANEY-097964, MANEY-230662 -MANEY-230663, MANEY-540533 - MANEY-540534, MANEY-168456 – MANEY-168458, MANEY-545345 – MANEY-545346, MANEY-226107 – MANEY-226108, MANEY-232313 – MANEY-232314, and MANEY-232145.

Furthermore, the June 12, 2020 and August 25, 2020 letters described in the response to Interrogatory 8 were publicly announced on Governor Brown's official website and were communicated to ODOC leadership by Mr. Severe. MANEY-768225 – MANEY-768276. When Governor Brown opted to exercise her clemency authority under the Oregon Constitution with respect to the sentences of adults in custody, her decisions about which adults in custody would receive executive clemency were communicated to ODOC by Governor's Office Staff after the completion of appropriate documentation reflecting Governor Brown's exercise of executive clemency.

DAS guidance to state executive agencies was communicated to ODOC by email from DAS and by posting on websites managed by DAS.

Decisions concerning the Governor's Office's involvement in rulemaking efforts by OHA and OR-OSHA described above were respectively communicated to ODOC when Governor Brown publicly announced that she had directed OHA to issue rules governing indoor mask wearing and when OR-OSHA issued Covid-19 workplace standards that Governor Brown or her staff had reviewed.

In light of the vagueness and potential breadth of this interrogatory, and because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 10: Describe whether and how Defendant Kate Brown and/or the Governor's Office was involved in determining, drafting, amending, or implementing COVID-19 policies and protocols for ODOC Institutions during the Class Period (other than the orders, policies, or mandates identified in response to Interrogatory 8, above), and identify the individuals involved.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 10. Defendants object that this interrogatory is vague and ambiguous as to whom it is directed because the "Governor's Office" is not a party to this lawsuit and "Defendant Kate Brown" is specifically defined to mean "Kate Brown *in her official capacity as Governor to the State of Oregon*" (emphasis added). In light of the above, Defendants construe this interrogatory to be directed to the State of Oregon for purposes of FRCP 33(b)(1). Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks information related to vaccine prioritization, discovery into which is currently stayed by the Court's April 12, 2022 Order (Dkt. 379). Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants also object that "determining, drafting, amending, or implementing COVID-19 policies and protocols for ODOC Institutions during the Class Period" is vague and ambiguous.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 10 by incorporating their responses to Interrogatory Nos. 6-9 and as follows:

The Governor's Office was monitoring COVID-19 cases and the State's COVID-19 response across the State throughout the course of the COVID-19 pandemic. The Governor's Office had multiple channels of communication with ODOC—and with additional stakeholders involved with ODOC and the AIC population—to stay apprised of ODOC's COVID-19 response and other developments impacting the AIC population. These communications typically flowed through the Public Safety Policy Advisor, Constantin Severe, to the Governor's Office Deputy Chiefs of Staff, Chief of Staff, and to Governor Brown. In other instances, the Governor's Chief of Staff or Deputy Chiefs of Staff would communicate directly with ODOC officials or employees in connection with ODOC matters.

In addition to participating in regular meetings with ODOC officials, the Governor's Office took multiple actions in response to COVID-19 cases within ODOC, including, but not limited to, the following:

- Issuing multiple Executive Orders relating to COVID-19 (*see* response to Interrogatory No. 8);
- Approving temporary rules implementing Governor Brown's executive orders;
- Convening advisory groups, including the Medical Advisory Panel, to advise the Governor's Office on evolving COVID-19 guidance;
- Improving COVID-19 testing availability across the State and securing testing supplies from national providers;
- Increasing the availability of personal protective equipment across the State; and
- Communicating expectations to ODOC regarding mask-wearing within ODOC Institutions.

In light of the vagueness and potential breadth of this interrogatory, and because discovery is ongoing, Defendants reserve the right to supplement this response.

Interrogatories 11–20 are directed at all Defendants:

INTERROGATORY NO. 11: Provide the projected release date on the date of death for each person listed on **Exhibit A**. Exhibit A is provided only to Defendants' counsel of record under the attorneys'-eyes-only provision of the Stipulated Protective Order entered in this case.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 11. Defendants object to this interrogatory because it seeks information not relevant to Phase I of this case and is overbroad and unduly burdensome. Should this case proceed to Phase II, Defendants will supplement with additional information as to the additional individuals listed on Exhibit A, as appropriate. Defendants also object to "projected release date" as vague and ambiguous, because release dates are subject to change depending on a variety of factors, and therefore any projected release date as of any specific date is not necessarily indicative of when a person would in fact be released. Without waiving the foregoing objections, Defendants respond to Interrogatory No. 11 as follows:

- Named plaintiff Juan Tristan's projected release date on January 22, 2021 was August 14, 2025.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 12: Describe and identify all COVID-19 protocols and policies that apply to correctional and/or detention facilities, including any or all ODOC Institutions, and that were adopted, drafted, or considered by OHA during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 12. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a

reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants also object that the term "apply" is vague and ambiguous. Defendants object that this interrogatory does not define a relevant time period; it is unclear whether it seeks identification of protocols and policies that "apply" as of the date of Defendants' responses, or that "applied" at any time during the 852-day Class Period. Defendants object that identifying all protocols and policies that were "drafted" or "considered" during the entire 852-day class period is unduly burdensome and not proportional to the needs of the case. Defendants object to providing information about protocols and policies that "apply" to correctional and/or detention facilities other than ODOC Institutions; such information is not relevant to claims and defenses at issue and is not proportional to the needs of the case.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 12 as follows:

Throughout the course of the 852-day class period, OHA considered, adopted, and drafted innumerable COVID-19 protocols and policies, some of which were specific to ODOC Institutions and some of which were more broadly applicable, but also applied to either ODOC system-wide or to individual ODOC Institutions. For example, OHA promulgated COVID-19 guidance intended to prevent or mitigate the spread of COVID-19 in multiple sectors throughout Oregon, including within ODOC Institutions. Defendants will provide, under separate cover, a list of OHA COVID-19 guidance that was applicable to operations in ODOC Institutions during the Class Period.

OHA also promulgated new or modified Oregon Administrative Rules that applied or could have applied within ODOC or individual ODOC Institutions, depending on the unique circumstances, resources, programs, and services that existed in each institution. These included:

OAR 333-017-0000; OAR 333-018-0005; OAR 333-018-0010; OAR 333-018-0011; OAR 333-018-0016; OAR 333-019-0010; OAR 333-019-1010; OAR 333-019-1011; and OAR 333-019-1025.

Additionally, personnel at OHA, including Dr. Ann Thomas and Orion McCotter, provided OHA guidance to ODOC and worked closely with ODOC to assist in the preparation of ODOC-specific COVID-19 protocols and policies. OHA met with ODOC on a regular basis during the Class Period to develop systemwide and institution-specific guidance based on the needs and specific resources of the various ODOC Institutions. These COVID-19 protocols and policies were revised and updated throughout the course of the pandemic both as public health guidance changed, and also when the ODOC Institutions identified challenges in operationalizing systemwide guidance at specific institutions. *See, e.g.*, MANEY-766930 – MANEY-766984.

The following documents include ODOC-specific COVID-19 guidance developed by OHA:

- April 5, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (MANEY-528679 – MANEY-528705);
- August 18, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (MANEY-768498 – MANEY-768524);
- December 16, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (MANEY-768470 – MANEY-768497);
- Pre-release AIC COVID-19 Screening, Notification and Release Process (MANEY-488627 – MANEY-488628); and
- ODOC COVID-19 Policy and Practice Questions and Answers (MANEY-139411 – MANEY-139412).

Discovery is continuing and, in light of the vagueness and breadth of this interrogatory, Defendants reserve the right to supplement this request if they identify additional COVID-19 protocols and policies that were considered by OHA that were directed to, or applied to, ODOC Institutions during the Class Period.

INTERROGATORY NO. 13: Describe how and identify when all protocols and policies listed in response to Interrogatory No. 12, above, were communicated to ODOC.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 13. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object to this interrogatory to the extent it seeks information regarding communications about OHA guidance that was not specific to ODOC.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 13 as follows:

- OHA's April 5, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities was transmitted to the superintendents each ODOC Institution on April 15, 2020 (MANEY-528678).
- OHA's August 18, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities was posted on the Oregon Health Authority's website in August of 2020.
- OHA's December 16, 2020, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities was posted on the Oregon Health Authority's website in December of 2020.

- The Pre-release AIC COVID-19 Screening, Notification and Release Process (MANEY-488627 – MANEY-488628) was finalized by the AOC and OHA on April 9, 2020 (*see* MANEY-488625).

- The DOC COVID-19 Policy and Practice Questions and Answers (MANEY-139411 – MANEY-139412) was emailed by OHA to ODOC's Joe Bugher on November 19, 2020 (*see* MANEY-139410).

Guidance developed in meetings between OHA and ODOC was communicated through those meetings. *See, e.g.*, MANEY-766930 – MANEY-766984.

Discovery is continuing and, in light of the vagueness and breadth of this interrogatory and Interrogatory No. 12, Defendants reserve the right to supplement this request if they identify additional COVID-19 communications or materials related to protocols and policies that were adopted, drafted, or considered by OHA that were directed to, or applied to, ODOC Institutions during the Class Period.

INTERROGATORY NO. 14: Identify all OHA employees who participated in drafting the COVID-19 protocols and policies listed in response to Interrogatory No. 12, above.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 14. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object to this interrogatory to the extent it seeks information regarding communications about OHA guidance that was not specific to ODOC. Defendants object that "participated in drafting" is vague and ambiguous, and is overbroad and not proportional to the needs of the case.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 14 as follows:

The primary OHA employees who participated in drafting COVID-19 protocols and policies that were directed specifically to ODOC Institutions during the Class Period were Dr. Ann Thomas, Orion McCotter, Dr. Dean Sidelinger, and Dr. Paul Ceslak.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 15: Describe and identify all OSHA policies or rules that applied to workplace settings in ODOC Institutions during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 15. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendants also object that the phrase "policies or rules" is vague and ambiguous. Defendants' response identifies rules promulgated by OSHA in the Oregon Administrative Rules ("OAR").

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 15 as follows:

During the Class Period, the Oregon Administrative Rules that would apply to workplace settings in ODOC Institutions included OAR Chapter 437, Divisions 1 and 2. Said rules were subject to change during the Class Period, and said changes are publicly available information.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 16: Describe ODOC's understanding and/or definition of the "tier" status system assigned to ODOC Institutions during the COVID-19 pandemic, including any updates or amendments to the tier status system that occurred during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 16. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object to the request for "ODOC's understanding" because ODOC is neither a Defendant in this action, nor are these interrogatories directed to ODOC generally. Defendants further object that the phrase "'tier' status system" is vague and ambiguous because it is undefined and susceptible to more than one meaning.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 16 as follows:

ODOC developed the ODOC COVID-19 Infection Prevention Plan and Testing Protocol at the onset of the COVID-19 pandemic. Part of that plan included a tiered prevention plan that was created by the Agency Operation Center ("AOC") in conjunction with Health Services. On April 7, 2020, the AOC finalized a tiered (1-5) approach for the ODOC Institutions. The tiered

prevention plan imposed a series of steps that ODOC Institutions were required to take depending on the number of positive COVID-19 tests within the AIC or employee population. The tiered prevention plan was amended periodically throughout the Class Period. *See* MANEY-007028, MANEY-008241 – MANEY-008242, MANEY-398092 – MANEY-398093, MANEY-720829 – MANEY 720830, MANEY-067759 – MANEY-067760, MANEY-079904 – MANEY-079906 and MANEY-157906 – MANEY-157907, MANEY-092762, MANEY-078049, MANEY-075199, MANEY-737619, MANEY-391432, MANEY-358307, MANEY-332741, MANEY-390431 – MANEY-390454.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 17: Identify the tier status, as defined in your response to Interrogatory No. 16, above, for each ODOC Institution during the Class Period, including each and every change to each institution's tier status, and the date of that change, during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 17. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 17 as follows:

Defendants have prepared a chart responsive to this interrogatory and have produced it as MANEY-768278 – MANEY-768340. This chart was prepared by referring to documents

produced in this case. Those documents are identified by the Bates number in the “Source Doc” row of the chart. In general, the information on tier status for the date range May 1, 2020, through October 6, 2020, was obtained from the previously produced AOC Daily Actions Taken Timeline (MANEY-731716 – MANEY-732183), and the information on tier status for the date range October 7, 2020, through May 31, 2022, was obtained from the previously produced ODOC’s COVID-19 Tracking spreadsheets (*see* Bates numbers cited in the chart). To the extent there is any conflict between the chart and the documents on which it is based, the documents control.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 18: Identify all ODOC employees whose job responsibilities included enforcing COVID-19-related CDC and/or OHA policies and protocols in ODOC Institutions, both agency-wide and by individual facility, during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 18. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that the phrase “during the Class Period” is vague and ambiguous because it is unclear whether it is intended to mean “at any point during” the 852-day Class Period or “during the entirety” of the 852-day Class Period. Defendants object that the phrases “job responsibilities,” “CDC and/or OHA policies and protocols,” and the term “enforcing” are vague

and ambiguous. Defendants object that this interrogatory is over broad, unduly burdensome, and not proportional to the needs of the case.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 18 as follows:

Virtually every ODOC employee within any ODOC Institution has the ability to direct AICs to comply with COVID-19-related protocols and policies. ODOC enforces policies as to ODOC employees and third-party contractors through a combination of education about policy, informal redirection of behavior by imposition of an expectation on the staff member, and/or formal discipline, including but not limited to a progressive disciplinary process. In light of the vague and ambiguous nature of the phrases “job responsibilities,” “CDC and/or OHA policies and protocols,” and the term “enforcing,” Defendants are limiting their response to this interrogatory to individuals and/or positions with authority to initiate or impose formal discipline, including but not limited to progressive discipline, related to ODOC’s policies and protocols in ODOC institutions.

For ODOC institution management and bargaining unit employees, superintendents and assistant superintendents have authority to initiate and/or impose the progressive disciplinary process. During the Class Period, superintendents variously reported to Eastside and Westside Administrators, who reported to the Director of Operations, who in turn reported to the ODOC’s Director and/or Deputy Director. Each of these individuals had authority to initiate and or impose discipline. Defendants will provide a list of individuals occupying these positions during the Class Period under separate cover.

In addition, certain employment units within ODOC have separate reporting structures. For example, the Chief of Medicine and/or Medical Services Managers (“MSM”) have authority

to initiate and/or impose discipline over health services employees within institutions, and a medical services administrator and/or assistant administrator has supervisory authority over the MSMs. Behavioral Health Managers have authority to initiate and/or impose discipline within Behavioral Health Services, and those managers are subject to disciplinary action by a separate administrator and/or assistant administrator at the central office. Oregon Correctional Enterprises ("OCE") has a manager at each facility with the authority to impose disciplinary action on OCE employees, and each OCE manager reports up to an OCE administrator, who ultimately reports to the OCE Director. Defendants will provide a list of individuals occupying these positions during the Class Period under separate cover.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 19: Describe and identify all OSHA rules, policies, and/or regulations related to COVID-19 that ODOC understood to apply to ODOC Institutions during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 19. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object that the phrase "related to COVID-19," as used in this interrogatory, is vague and ambiguous because it is undefined and susceptible to more than one meaning. Defendants object that the phrase "OSHA rules, policies, and/or regulations" as vague and ambiguous because it is undefined and susceptible to more than one meaning. Defendants object to the request for what "ODOC understood" because ODOC is neither a Defendant in this action, nor are these interrogatories directed to ODOC. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear

whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendants further object that this interrogatory is cumulative and duplicative of Interrogatory No. 15.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 19 as follows:

Defendants incorporate their response to Interrogatory No. 15. Of the rules listed in response to Interrogatory No. 15, only OAR 437-001-0744 relates to COVID-19.

Because discovery is ongoing, Defendants reserve the right to supplement this response.

INTERROGATORY NO. 20: Describe and identify all COVID-19 protocols and policies that apply to correctional and/or detention facilities, including any or all ODOC Institutions, and that were adopted, drafted, or considered by the AOC during the Class Period.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 20. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, the attorney work-product, or any other applicable privilege. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that this interrogatory does not define a relevant time period; it is unclear whether it seeks identification of protocols and policies that "apply" as of the date of Defendants' responses, or that applied at any time during the 852-day Class Period. Defendants also object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendants object that identifying all protocols and policies that were "drafted" or "considered"

during the entire 852-day class period is unduly burdensome and not proportional to the needs of the case. Defendants object to providing information about protocols and policies that apply to correctional and/or detention facilities other than ODOC Institutions; such information is not relevant to claims and defenses at issue and is not proportional to the needs of the case. Defendants further object that this interrogatory is cumulative and duplicative of Interrogatory No. 12.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 20 as follows:

During the course of the 852-day Class Period, the AOC met hundreds of times and spent countless hours in their effort to respond to and manage an unprecedented global pandemic. The AOC worked with ODOC executive leadership, institution leadership, and other state partners in order to develop and modify COVID-19-related measures in light of ever-changing circumstances, public health information, and an evolving global health crisis. In doing so, the AOC considered, drafted, and/or adopted innumerable protocols and policies that were potentially applicable to ODOC system-wide or to individual ODOC Institutions. These protocols and policies were recorded or reflected, in part, within the following documents:

- ODOC's Centralized COVID-19 Plans, as amended (*see, e.g.*, MANEY-091199 - MANEY-091210, MANEY-007640 - MANEY-007651, MANEY-009823 - MANEY-009834, MANEY-079409 - MANEY-079421, MANEY-009413 - MANEY-009425, MANEY-009888 - MANEY-009900, MANEY-079362 - MANEY-079374, MANEY-011188 - MANEY-011200, MANEY-029792 - MANEY-029803);

- Institution plans promulgated by individual ODOC Institutions during the course of the Class Period (*see, e.g.*, MANEY-099556 - MANEY-099589, MANEY-317080 - MANEY-317097, MANEY-099710 - MANEY-099737, MANEY-306420 - MANEY-306445, MANEY-099356 - MANEY-099391, MANEY-152145 - MANEY-152170, MANEY-103399 - MANEY-103414, MANEY-103427 - MANEY-103428, MANEY-007193 - MANEY-007201, MANEY-013909 - MANEY-013942, MANEY-306873 - MANEY-306898, MANEY-

009559 - MANEY-009586, MANEY-013943 - MANEY-013976, MANEY-014463 - MANEY-014478, MANEY-007187 - MANEY-007189, MANEY-005820 - MANEY-005821, MANEY-005822 - MANEY-005839, MANEY-013977 - MANEY-014046, MANEY-013346 - MANEY-013357, MANEY-099458 - MANEY-099522, MANEY-009587 - MANEY-009613, MANEY-111260 - MANEY-111286, MANEY-013359 - MANEY-013361, MANEY-099644 - MANEY-099677, MANEY-152105 - MANEY-152109, MANEY-013590 - MANEY-013599, MANEY-011058 - MANEY-011062, MANEY-101735 - MANEY-101755, MANEY-007275 - MANEY-007278, MANEY-013050 - MANEY-013084, MANEY-012969 - MANEY-012996, MANEY-012907 - MANEY-012940, MANEY-099404 - MANEY-099419, MANEY-014283 - MANEY-014317, MANEY-099215 - MANEY-099276, MANEY-011890 - MANEY-011894, MANEY-103339 - MANEY-103371, MANEY-103301 - MANEY-103302, MANEY-084742 - MANEY-084775, MANEY-103372 - MANEY-103398, MANEY-263737 - MANEY-263766, MANEY-084600 - MANEY-084626, MANEY-099304 - MANEY-099312, MANEY-099313 - MANEY-099337, MANEY-101695 - MANEY-101722, MANEY-103265 - MANEY-103266, MANEY-103292 - MANEY-103300, MANEY-103457 - MANEY-103458, MANEY-103459 - MANEY-103484, MANEY-351711 - MANEY-351714, MANEY-241764 - MANEY-241768, MANEY-224170 - MANEY-224175, MANEY-241726 - MANEY-241730, MANEY-325048 - MANEY-325053, MANEY-085002 - MANEY-085009, MANEY-056967 - MANEY-056969, MANEY-099392 - MANEY-099403, MANEY-014318, MANEY-101601 - MANEY-101618, MANEY-101723 - MANEY-101734);

- ODOC's forms completed by ODOC Institutions with COVID-19-related updates and questions (*see, e.g.*, MANEY-007366 - MANEY-007368);

- COVID-19 guidance provided by OHA (*see* response to Interrogatory No. 12) (*see, e.g.*, MANEY-766930 – MANEY-766984; MANEY-528679 – MANEY-528705; MANEY-768498 – MANEY-768524; MANEY-768470 – MANEY-768497);

- AOC's messages to institutions (*see, e.g.*, MANEY-012756 - MANEY-012757; MANEY-018086 – MANEY-018088; MANEY-019366);

- AOC's Minutes from Daily Coordination Calls and Calls with Institution Superintendents (*see, e.g.*, MANEY-090460 - MANEY-090469, MANEY-266122 - MANEY-266127, MANEY-019111 - MANEY-019114); and

- AOC debrief forms. (*See, e.g.*, MANEY-192729 - MANEY-192730).

Discovery is continuing and, in light of the vagueness and breadth of this interrogatory, Defendants reserve the right to supplement this request if they identify additional COVID-19

protocols and policies that were adopted, drafted, or considered by the AOC during the Class Period.

INTERROGATORY NO. 21: Describe and identify all ODOC policies and protocols that applied to or determined OHA's ability to enter, visit, audit, or view areas within ODOC Institutions during the Class Period. Please also identify whether OHA had access to floorplans, security camera footage, photos, or videos of any ODOC Institutions.

ANSWER: Defendants incorporate their general objections into the response to Interrogatory No. 21. Defendants object to this interrogatory to the extent it seeks information subject to attorney-client privilege, work product doctrine, the deliberative process privilege, or is protected by legislative immunity. Defendants object to this interrogatory to the extent it seeks to require Defendants to produce information beyond what Defendants are able to locate upon a reasonable search of their own files and from a reasonable inquiry of their current employees. Defendants object that the term "audit" is vague and ambiguous because it is undefined and susceptible to more than one meaning; Defendants understand "audit" in this context to mean enter, visit or view. Defendants object that the phrase "during the Class Period" is vague and ambiguous because it is unclear whether it is intended to mean "at any point during" the 852-day Class Period or "during the entirety" of the 852-day Class Period. Defendants object that the term "access" is vague and ambiguous because it is undefined and susceptible to more than one meaning; Defendants understand "access" in this context to mean the ability to view floorplans, security camera footage, photos, or videos of any ODOC Institutions. Defendants object that the first and second sentences of Interrogatory No. 21 constitute at least two separate interrogatories.

Without waiving the foregoing general and specific objections, and subject to the limitations described, Defendants respond to Interrogatory No. 21 as follows:

ODOC had no OHA-specific policies and protocols that applied to or determined OHA's ability to enter, visit, audit, or view areas within ODOC Institutions during the Class Period. OHA's ability to enter ODOC Institutions during the Class Period was governed by ODOC's general access policies and facility access procedures, as appropriately modified by ODOC's Centralized COVID-19 Plan and related institution-specific policies and protocols that changed throughout the course of the class period. *See*, *e.g*.:

- ODOC's basic access policy. *See*, Oregon Department of Corrections Rule Manual – Facility Access (MANEY-768453 - MANEY-768461); ODOC Policy 40.1.18 Perimeter Security (MANEY-768462 - MANEY-768469);

- Facility access procedures for each institution. *See*, MANEY-768341 - MANEY-768452; and

- Directives modifying access in response to COVID-19. *See e.g*., MANEY-007752 – MANEY-007753.

OHA had access to floorplans, security camera footage, photos, or videos of ODOC Institutions.

Discovery is continuing and, in light of the vagueness and breadth of this interrogatory, Defendants reserve the right to supplement this request if they identify additional policies and protocols applicable to OHA's ability to enter, visit, audit, or view areas within ODOC Institutions during the Class Period.

DATED this 15th day of March, 2023.

ELLEN ROSENBLUM
ATTORNEY GENERAL
FOR THE STATE OF OREGON

By: *s/ Molly K. Honoré*

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1404146

VERIFICATION

I, Constantin Severe, declare,

I am the Public Safety Policy Advisor for the Governor's Office. I have read Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories and am informed and believe that the answers to Interrogatory Nos. 5-10 are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15th day of March, 2023.

s/ Constantin Severe
____
Constantin Severe

VERIFICATION

I, Dean Sidelinger, MD, declare,

I am the State Health Officer and State Epidemiologist for the State of Oregon. I have read Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories and am informed and believe that the answers to Interrogatory Nos. 12, 13, 14, and 21 are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15th day of March, 2023.

s/ Dean Sidelinger, MD

Dean Sidelinger, MD

VERIFICATION

I, Joseph Bugher, declare,

I am the Assistant Director of Health Services for the Oregon Department of Corrections for the State of Oregon. I have read Defendants' Responses and Objections to Plaintiffs' Second Set of Interrogatories and am informed and believe that the answers to Interrogatory Nos. 11, 15, 16, 17, 18, 19, 20, and 21 are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15th day of March, 2023.

s/ Joseph Bugher

Joseph Bugher

ATTORNEY CERTIFICATE OF SERVICE

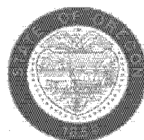
I hereby certify that on March 15, 2023, I have made service of the foregoing **DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND SET OF INTERROGATORIES** on the parties listed below in the manner indicated:

Juan C. Chavez Alexander Meggitt Brittney Plesser Franz H. Bruggemeier Benjamin Haile Oregon Justice Resource Center PO Box 5248 Portland, OR 97208 *Attorneys for Plaintiffs*	☐ U.S. Mail ☐ Hand Delivery ☐ Overnight Courier ☒ Email (per email service agreement): jchavez@ojrc.info; alex.meggitt@gmail.com; bplesser@oregoninnocence.info; fbruggemeier@ojrc.info attorneyhaile@gmail.com ☐ Electronically via USDC CM/ECF system
David F. Sugerman Nadia H. Dahab Sarah R. Osborn Sugerman Dahab 707 SW Washington Street, Suite 600 Portland, OR 97205 *Attorneys for Plaintiffs*	☐ U.S. Mail ☐ Hand Delivery ☐ Overnight Courier ☒ Email (per email service agreement): david@sugermandahab.com; nadia@sugermandahab.com; sarah@sugermandahab.com; marla@sugermendahab.com; katie@sugermandahab.com ☐ Electronically via USDC CM/ECF system
Jon W. Monson Nicole A.W. Abercrombie Victoria Baker Cable Huston LLP 1455 SW Broadway, Suite 1500 Portland, OR 97201-3412 *Attorneys for Defendant Patrick Allen*	☐ U.S. Mail ☐ Hand Delivery ☐ Overnight Courier ☒ Email (per email service agreement): jmonson@cablehuston.com; nabercrombie@cablehuston.com; vbaker@cablehuston.com ☐ Electronically via USDC CM/ECF system

DATED this 15th day of March, 2023.

s/ Molly K. Honoré

Molly K. Honoré, OSB #125250
Special Assistant Attorneys General for Defendants



KATE BROWN
Governor

June 12, 2020

Colette Peters
Director
Oregon Department of Corrections
2575 Center Street, NE
Salem, Oregon 97301

Director Peters,

I am requesting the Oregon Department of Corrections perform a case-by-case analysis of adults in custody vulnerable to COVID-19 for possible commutation, based on the criteria described below. Medically-vulnerable adults in custody who are eligible for commutation, do not pose an unacceptable risk to public safety, and are determined by DOC to meet the criteria will have the remainder of their term of incarceration commuted, pursuant to my authority as Governor, under Article V, Section 14 of the Oregon Constitution.

On March 8, 2020, I issued Executive Order 20-03 declaring a state of emergency due to the COVID-19 global pandemic and the threat it presents to public health and safety to all Oregonians. In formulating a strategy to address COVID-19, DOC has followed applicable guidance by the Centers of Disease Control and the Oregon Health Authority. The Department of Corrections has implemented a number of measures to prevent the spread of COVID-19 and to manage suspected and confirmed cases.

While DOC acted quickly to meet the threat presented by COVID-19, there are limits to the department's ability to implement physical distancing in a correctional setting. Given what we now know about the disease and its pervasiveness in our communities, it is appropriate to release individuals who face significant health challenges should they contract COVID-19.

In order to ensure the safety and security for Oregon communities, an adult in custody must meet all the following conditions to be eligible for commutation. Each adult in custody must:

- Be particularly vulnerable to COVID-19, as identified by DOC medical staff;
- Not be serving a sentence for a person crime;
- Have served at least 50% of their sentence;
- Have a record of good conduct for the last 12 months;
- Have a suitable housing plan;
- Have their out-of-custody health care needs assessed and adequately addressed; and
- Not present an unacceptable safety, security, or compliance risk to the community.

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-8970
WWW.GOVERNOR.OREGON.GOV

Colette Peters
June 12, 2020
Page 2

After performing a case-by-case analysis of medically vulnerable adults in custody based on these criteria, please provide me with a list of eligible adults in custody by June 22, 2020.

Adults in custody eligible for commutation based on these criteria shall take a COVID-19 test prior to release. An adult in custody displaying symptoms or who has tested positive for COVID-19 is ineligible for commutation and shall be immediately isolated and subject to COVID-19 treatment procedures and protocols. Once an adult in custody no longer shows symptoms and tests negative for COVID-19, they will resume eligibility for commutation.

DOC shall follow its victim notification process for approved commutations.

In no case may an adult in custody be released if they present an unacceptable safety, security, or compliance risk to the community.

Sincerely,

Governor Kate Brown

From:	Steward Heidi R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=17970297B7494C2987AC65124D5349BC-STEWARD HEI>
To:	DL DOC-All - All DOC Employees
Sent:	4/7/2020 6:42:42 PM
Subject:	COVID-19: Governor Exploring Early Release

DOC Team,

You may have seen articles in the paper or heard external stakeholders calling for the release of incarcerated people to help reduce the spread of COVID-19. Yesterday, Governor Kate Brown commissioned a workgroup to evaluate the potential of releasing individuals from DOC's custody. Please know, no decisions have been made. In the coming days, the workgroup will evaluate several categories including housing resources, access to medical care, and access to behavioral health care.

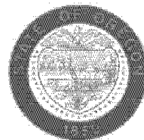
The Governor's workgroup will determine whether early release would be a safe and effective way to reduce the likelihood of COVID-19 by increasing DOC's ability to practice social distancing. As a result, enhancing safety for employees and those in our custody.

We'll keep you updated as decisions are made by the Governor's office.

Be well and be safe.

Heidi Steward
Deputy Director
www.oregon.gov/DOC

MANEY-068072



KATE BROWN
Governor

August 25, 2020

Colette Peters
Director
Oregon Department of Corrections
2575 Center Street, NE
Salem, Oregon 97301

Director Peters,

I am requesting that the Oregon Department of Corrections provide me a list of adults in custody who are medically vulnerable to COVID-19 or within two months of release from state custody, and meet the criteria described below. Adults in custody who meet those criteria will have the remainder of their sentences commuted pursuant to my authority, as Governor, under Article 5, Section 14 of the Oregon Constitution.

On March 8, 2020, I issued Executive Order 20-03 declaring a state of emergency due to the COVID-19 global pandemic and the threat it presents to public health and safety to all Oregonians. In formulating a strategy to address COVID-19, DOC has followed the applicable guidance by the Centers for Disease Control and the Oregon Health Authority. The Department of Corrections has implemented a number of measures to prevent the spread of COVID-19 and to manage suspected and confirmed cases. DOC conducts COVID screenings of all individuals entering its facilities and has mandated that both staff and adults in custody wear face coverings.

While DOC has acted quickly to meet the threat presented by COVID-19 and calibrated its approach based on the available evidence, there are limits to the ability to practice physical distancing in a correctional setting. Given what we now know about the disease and its pervasiveness in our communities, it is appropriate to review for potential release individuals who face significant health challenges should they contract COVID-19.

Adults in custody eligible for review for early release on the basis of medically vulnerability must meet the following criteria:

- Be particularly vulnerable to COVID-19, as identified by DOC medical staff;
- Not be serving a sentence for a person crime;
- Have served at least 50% of their sentence;
- Have a record of good conduct for the last 12 months;
- Have a suitable housing plan prior to the date set for their early release;
- Have their out of custody health care needs assessed and adequately addressed prior to the date set for their early release; and
- Not present an unacceptable safety, security, or compliance risk to the community.

Director Peters
August 25, 2020
Page 2

Adults in custody who are eligible for review for early release on the basis of being within two months of their scheduled release must meet the following criteria:

- Must be within two months of release as calculated by DOC;
- Not be serving a sentence for a person crime;
- Have a record of good conduct for the last 12 months;
- Have a suitable housing plan prior to the date set for their early release;
- Have their out-of-custody health care needs assessed and adequately addressed prior to the date set for their early release; and
- Not present an unacceptable safety, security, or compliance risk to the community.

Please provide me with a list of adults in custody who meet the criteria listed above by September 18, 2020. Please provide me with an updated list every other month.

Adults in custody who are determined to be eligible for commutation based on the above criteria shall take a COVID-19 test prior to release. An adult in custody displaying symptoms or who has tested positive for COVID-19 is ineligible for commutation and shall be immediately isolated and subject to COVID-19 treatment procedures and protocols. Once an adult in custody no longer shows symptoms and tests negative for COVID-19 they will resume eligibility for commutation.

DOC shall follow its victim notification process for approved commutations.

In no case may an adult in custody be released if in the judgment of DOC officials they present an unacceptable safety, security, or compliance risk to the community.

I look forward to reviewing the list of potentially eligible adults in custody. Please feel free to reach out to my staff if you have questions about this direction.

Sincerely,

Governor Kate Brown

MANEY-029948

From:	Black Jennifer
To:	DL DOC Contractors; DL DOC-All - All DOC Employees
Sent:	3/11/2021 3:36:18 PM
Subject:	Changes and New Criteria for Commutations

Hello everyone,

Governor Kate Brown has changed, **and added new criteria**, for the review of adults in custody (AICs) to be considered for early release. The Department of Corrections (DOC) will review individuals who are within 6 months of release and meet the following criteria (new criteria are listed in **bold**):

- **Received a judgment that either does not allow for Short Term Transitional Leave (STTL) or allows for only 30 or 90 days of STTL;**
- **Not currently enrolled in an Alternative Incarceration Program (AIP);**
- Not be serving a sentence for a person crime;
- Have a record of good conduct for the last 12 months;
- Have a suitable housing plan prior to the date set for their early release;
- Have their out-of-custody health care needs assessed and adequately addressed prior to the date set for their early release; and
- Not present an unacceptable safety, security, or compliance risk to the community.

Please know that the criteria for medically vulnerable has not changed and individuals who meet the criteria will continue to be considered. DOC is providing Governor Brown with a list of individuals qualifying under the criteria listed above on a two-month rolling basis. AICs can contact local institution healthcare staff for any questions about medical vulnerability.

Potential Early Release for Firefighters

Governor Brown will also consider early release for AICs who were deployed to fight the historic wildfires during the summer of 2020. AICs must meet the following criteria:

- For the duration of their deployment during the 2020 wildfire season, met the criteria for fire crew participation, as outlined by DOC policy and procedures;
- Have a record of good conduct for the last 12 months;
- Have a suitable housing plan prior to the date set for their early release;
- Have their out-of-custody health care needs assessed and adequately addressed prior to the date set for their early release; and
- Not present an unacceptable safety, security, or compliance risk to the community.

This list will be provided to the Governor's Office by April 16, 2021. DOC's Executive Team will review the names of firefighters to ensure they meet the Governor's criteria. The strict criteria in this case-by-case review will greatly reduce the number of AICs who move forward for consideration. Many of those who fought fires will not have their sentence commuted, but this it should not take away from their courageous efforts during the summer of 2020.

Jennifer Black
Communications Manager
Phone: 503.569.3318
www.oregon.gov/DOC

"The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior."

MANEY-031980

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

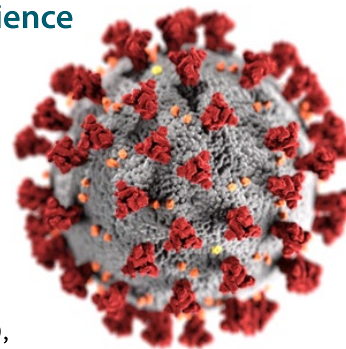
The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: https://www.cdc.gov/coronavirus/2019-ncov/index.html.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

- Who is the intended audience for this guidance?
- Why is this guidance being issued?
- What topics does this guidance include?
- Definitions of Commonly Used Terms
- Facilities with Limited Onsite Healthcare Services
- COVID-19 Guidance for Correctional Facilities
- Operational Preparedness
- Prevention
- Management
- Infection Control
- Clinical Care of COVID-19 Cases
- Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons
- Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

Who is the intended audience for this guidance?



This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.

cdc.gov/coronavirus

CS 316182-A 03/27/2020

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- √ Operational and communications preparations for COVID-19
- √ Enhanced cleaning/disinfecting and hygiene practices
- √ Social distancing strategies to increase space between individuals in the facility
- √ How to limit transmission from visitors
- √ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- √ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- √ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- √ Healthcare evaluation for suspected cases, including testing for COVID-19
- √ Clinical care for confirmed and suspected cases
- √ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define "local community" in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, "incarcerated/detained persons" refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e, detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance below). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term "medical isolation" to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this CDC publication.

Staff—In this document, "staff" refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, "staff" does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—Symptoms of COVID-19 include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the CDC website for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness**. This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

√ **Develop information-sharing systems with partners.**

- Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- **For all:** symptoms of COVID-19 and hand hygiene instructions
- **For incarcerated/detained persons:** report symptoms to staff
- **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- Review policies to ensure that they actively encourage staff to stay home when sick.
- If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- Determine which officials will have the authority to send symptomatic staff home.

√ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
- o Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
- o Put systems in place to implement work from home programs (e.g., time tracking, etc.).

√ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
- o Allow staff to work from home when possible, within the scope of their duties.
- o Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
- o Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
- o Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.

√ **Consider offering revised duties to staff who are at** higher risk of severe illness with COVID-19**.** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- o Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.

√ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.

√ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**

√ **Review** CDC's guidance for businesses and employers to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

√ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
- o Standard medical supplies for daily clinic needs
- o Tissues
- o Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
- o Hand drying supplies
- o Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
- o Cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See PPE section and Table 1 for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated

√ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**

- See CDC guidance optimizing PPE supplies.

√ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, CDC recommends cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.

√ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See Hygiene section below for additional detail regarding recommended frequency and protocol for hand washing.)

- Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.

√ I**f not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**

√ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See Table 1 for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

√ **Stay in communication with partners about your facility's current situation.**

- State, local, territorial, and/or tribal health departments
- Other correctional facilities

√ **Communicate with the public about any changes to facility operations, including visitation programs.**

- **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - Strongly consider postponing non-urgent outside medical visits.
  - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- **Implement lawful alternatives to in-person court appearances where permissible.**
- **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

- **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.
  - Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

√ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**

√ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis.** Sample signage and other communications materials **are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

- **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
- **Practice good** hand hygiene**:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
- **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
- **Avoid sharing eating utensils, dishes, and cups.**
- **Avoid non-essential physical contact.**

√ **Provide incarcerated/detained persons and staff no-cost access to:**

- **Soap—**Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
- **Running water, and hand drying machines or disposable paper towels for hand washing**
- **Tissues** and no-touch trash receptacles for disposal

√ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.

√ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

√ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).

- **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
  - Require the individual to wear a face mask.
  - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
  - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a close contact of a known COVID-19 case (but has no COVID-19 symptoms):**
  - Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

√ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
  - Arrange bunks so that individuals sleep head to foot to increase the distance between them
  - Rearrange scheduled movements to minimize mixing of individuals from different housing areas
- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

√ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**

√ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**

√ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**

√ **Provide** up-to-date information about COVID-19 **to incarcerated/detained persons on a regular basis, including:**

- Symptoms of COVID-19 and its health risks
- Reminders to report COVID-19 symptoms to staff at the first sign of illness

√ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

√ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.

√ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.

- In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
- Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.

√ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**

- Symptoms of COVID-19 and its health risks
- Employers' sick leave policy
- **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
- **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.

√ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**

- Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

- √ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- √ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

- √ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
    - o Staff performing temperature checks should wear recommended PPE.
    - o Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- √ **Provide visitors and volunteers with information to prepare them for screening.**
    - o Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
    - o If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
    - o Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- √ **Promote non-contact visits:**
    - o Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
    - o Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
    - o Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- √ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
    - o If moving to virtual visitation, clean electronic surfaces regularly. (See Cleaning guidance below for instructions on cleaning electronic surfaces.)
    - o Inform potential visitors of changes to, or suspension of, visitation programs.
    - o Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
    - o If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

√ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

√ **Implement alternate work arrangements deemed feasible in the** Operational Preparedness **section.**

√ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**

- o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.

√ **When possible, arrange lawful alternatives to in-person court appearances.**

√ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**

- o Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
  - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
  - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
  - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

√ **Coordinate with state, local, tribal, and/or territorial health departments.**
   - When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
   - When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
   - Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

Hygiene

√ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)

√ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

Cleaning and Disinfecting Practices

√ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)

√ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

√ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**

√ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
   - Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
   - Serve meals to cases inside the medical isolation space.
   - Exclude the individual from all group activities.
   - Assign the isolated individual a dedicated bathroom when possible.

√ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.

√ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
  (NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

√ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:

- **Cover** their mouth and nose with a tissue when they cough or sneeze
- **Dispose** of used tissues immediately in the lined trash receptacle
- **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.

√ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- The individual has had no subsequent illness

√ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.

- Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).

√ **Hard (non-porous) surface cleaning and disinfection**

- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

√ **Soft (porous) surface cleaning and disinfection**

- For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.

√ **Electronics cleaning and disinfection**

- For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - Follow the manufacturer's instructions for all cleaning and disinfection products.
  - Consider use of wipeable covers for electronics.
  - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

√ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)

√ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ Laundry from a COVID-19 cases **can be washed with other individuals' laundry.**

- Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

√ **Consult** cleaning recommendations above **to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

√ **Incarcerated/detained persons who are close contacts of a** confirmed or suspected COVID-19 case **(whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**

- If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.

√ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**

- Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
- Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

√ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**

- Provide medical evaluation and care inside or near the quarantine space when possible.
- Serve meals inside the quarantine space.
- Exclude the quarantined individual from all group activities.
- Assign the quarantined individual a dedicated bathroom when possible.

√ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually.** Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.

- If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
- If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
- Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

√ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

√ **In order of preference, multiple quarantined individuals should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

√ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

√ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

- √ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
  - o If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
  - o See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- √ **If an individual who is part of a quarantined cohort becomes symptomatic:**
  - o **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
  - o **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
  - o **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- √ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- √ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- √ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- √ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
  - o Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
  - o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

- √ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- √ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See Medical Isolation section above.**

- √ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.
- √ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
  - o If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
  - o If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- √ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
  - o Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- √ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.
- √ **Consider additional options to intensify** social distancing within the facility.

Management Strategies for Staff

- √ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- √ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
  - o See above for definition of a close contact.
  - o Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

- √ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).

√ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).

√ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

√ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**

- If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
- The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.

√ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**

√ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.

√ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**

√ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**

√ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

√ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
- For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.

√ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**

√ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (**see Table 1). **Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**

√ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**

√ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection—**goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
  - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
  - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

√ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- **Guidance in the event of a shortage of N95 respirators**
  - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
- **Guidance in the event of a shortage of face masks**
- **Guidance in the event of a shortage of eye protection**
- **Guidance in the event of a shortage of gowns/coveralls**

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/ Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

√ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

- *Today or in the past 24 hours, have you had any of the following symptoms?*
  - *Fever, felt feverish, or had chills?*
  - *Cough?*
  - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

√ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
- Remove and discard PPE
- Perform hand hygiene

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2023, I electronically filed the foregoing Petition for a Writ of Mandamus with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Pursuant to Federal Rule of Appellate Procedure 21(a), the district court will be provided with a copy of this petition. Service also has been accomplished via email to the following counsel for the parties to the proceeding in the district court:

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