

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS REMICK, NADIYAH WALKER,
JAY DIAZ, MICHAEL ALEJANDRO,
MICHAEL DANTZLER, ROBERT
HINTON, JOSEPH WEISS, JOSEPH
SKINNER, SADDAM ABDULLAH, and
JAMES BETHEA, on behalf of themselves
and all others similarly situated,

Plaintiffs-Petitioners,

v.

CITY OF PHILADELPHIA; and BLANCHE
CARNEY, in her official capacity as
Commissioner of Prisons,

Defendants-Respondents.

No. 2:20-cv-01959-BMS

ELECTRONICALLY FILED

IMMEDIATE RELIEF SOUGHT

**PLAINTIFFS-PETITIONERS' BRIEF IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. PRELIMINARY STATEMENT

Plaintiffs-Petitioners seek immediate injunctive relief due to the urgent need to remedy the perilous conditions of confinement in the Philadelphia Department of Prisons, which expose all those incarcerated in Philadelphia's jails to grave and unjustified risks of serious illness or death from COVID-19. The extraordinary challenges presented by COVID-19 are even more extraordinary in prisons and jails. Incarcerated persons and all those who work within these facilities are subject to environments that have become the unfortunate epicenters of the pandemic. In the face of immediate, severe risks to the health and safety of the people within these institutions, the courts must ensure that incarcerated people—many of whom are presumed innocent and awaiting trial or are serving short sentences for minor offenses, and are highly vulnerable to the

risk of serious complications or death from COVID-19 due to age and/or medical conditions—are not subjected to unconstitutional conditions of confinement.

As this Court is aware, in the United States, there have been hundreds of thousands of documented cases of COVID-19, and tens of thousands of deaths. Compl. Ex. A, Decl. of Dr. Joseph J. Amon (“Amon Decl.”) (ECF 1-4) ¶ 5. Not surprisingly, given the way the virus infects and endangers all people, jails like those in New York, Chicago, and Philadelphia have already become rife with COVID-19. *Id.* ¶¶ 38–39. As of the filing of Plaintiffs’ Complaint on April 20, 2020, the Philadelphia Department of Prisons (PDP) reported that more than 120 inmates had been infected with COVID-19. Compl. (ECF 1) ¶ 21. If additional preventive measures are not implemented, the exponential increase in infections will only continue.

Plaintiffs and the class they seek to represent have been subjected to conditions of confinement which prevent them from availing themselves of the basic social distancing and hygiene practices which are not only critical to their health and safety, but which have been mandated by Defendant City of Philadelphia for everyone else in our community. The putative class, consisting of all current and future persons held in custody within PDP, face ongoing untenable threats to their health and safety under the present conditions. Because these conditions of confinement pose an imminent threat of serious disease and death for incarcerated people held within PDP’s facilities (as well as correctional officers, health workers, and other staff at PDP),¹

¹ Those working within the jails have also raised concerns regarding conditions within PDP’s facilities. Three unions, representing thousands of workers at Philadelphia jails called for judges to reduce the jail population as a “common-sense measure” to protect workers and the broader community. Juliana Feliciano Reyes, *Philly jail workers want judges to release more inmates because of coronavirus*, The Philadelphia Inquirer, <https://www.inquirer.com/jobs/labor/coronavirus-philadelphia-prisons-reduce-jail-population-unions-20200422.html> (April 22,2020).

Plaintiffs are entitled to preliminary relief. In short, judicial intervention is necessary to protect their health and their lives.

Plaintiffs acknowledge that the virus presents difficult challenges in the jail setting, but we are not asking the Court to hold the defendants to an impossible bar. The standards Plaintiffs propose come from medical and correctional experts, including Dr. Robert L. Cohen and Dr. Joseph A. Amon, whose declarations have been provided to the Court.² They in turn have consulted and incorporated relevant guidance from the Centers for Disease Control and Prevention (CDC). This guidance is recognized as the minimum standard for protecting incarcerated persons. Plaintiffs' request for preliminary relief to remedy Defendants' constitutional and statutory violations is fully consistent with the public health standards articulated by Drs. Cohen and Amon. Importantly, the requests for specific measures are consistent with those recently ordered by federal courts in Washington, D.C., Chicago, and Michigan.³

² Dr. Cohen has served as a prison and jail medical-conditions monitor for several courts, including for the Philadelphia Court of Common Pleas in the *Jackson v. Hendrick* class action lawsuit that concerned conditions of confinement in the PDP for the period 1971-2002. He was also the plaintiffs' expert in *Bowers v. City of Philadelphia*, No. 06-cv-3229, 2007 WL 219651 (Jan. 25, 2007), and *Williams v. City of Philadelphia*, No. 08-cv-1979. He was the Medical Director at Rikers Island in New York City from 1981 to 1986. Compl., Ex. B, Decl. of Dr. Robert L. Cohen ("Cohen Decl.") (ECF 1-5), ¶ 1. Dr. Amon is an infectious disease epidemiologist, Director of Global Health and Clinical Professor in the department of Community Health and Prevention at the Drexel Dornsife School of Public Health, and he has specifically studied infectious disease in detention centers. Amon Decl. ¶ 1.

³ See *Banks v. Booth*, 2020 WL 1914896, at *1 (D.D.C. Apr. 19, 2020) (ordering defendants to, among other measures, comply with proper social distancing and quarantine protocols, and recommending that defendants to retain a "registered sanitarian" to oversee hygiene and cleaning); *Mays v. Darts*, 2020 WL 1812381 (ND. Ill. April 9, 2020) (ordering defendants to, among other measures, provide adequate soap and/or hand sanitizer for frequent hand washing, and implement proper social distancing, including the discontinuance of "bullpens" during intake); *Cameron v. Bouchard*, No. 20-10949, 2020 WL 1929876, at *2 (E.D. Mich. Apr. 17, 2020) (ordering defendants to undertake certain measures including providing each detainee, free of charge, a sufficient supply of soap to allow regular hand washing each day and an adequate supply of disinfectant products for daily cleanings, and scheduling a hearing to address plaintiffs' request for release).

Plaintiffs' first request for relief, as detailed below, is that the Court issue a temporary restraining order (TRO) and preliminary injunction under the Eighth and Fourteenth Amendments to the United States Constitution and the Americans with Disabilities Act (ADA). Plaintiffs ask this Court to order the Defendants to ensure that conditions of confinement at PDP comply with the health and safety standards necessary to protect the plaintiff class, and to provide humane conditions of confinement.

Second, if Defendants do not or cannot comply with such a directive, Plaintiffs request that the Court, pursuant to its jurisdiction under the federal habeas corpus statute, 28 U.S.C. § 2241, and/or its injunctive powers under 42 U.S.C. § 1983, order the release of a sufficient number of incarcerated persons to fully protect the rights of the plaintiff class to be free from unconstitutional conditions of confinement.

II. FACTUAL BACKGROUND

A. Characteristics of COVID-19

The devastating effects of COVID-19 are well documented. Compl. ¶¶ 12–16. As of April 20, 2020, 695,353 cases have been confirmed in the United States. Amon Decl. ¶ 5. Over 32,427 Americans have died. *Id.* Philadelphia County has reported 8,764 of the Commonwealth's 32,284 cases of COVID-19, and 240 of its 1,112 deaths. Compl. ¶ 12. In Philadelphia, the number of people infected with COVID-19 grows by 20% every day, on average. Amon Decl. ¶ 5. Indeed, on Wednesday April 22, Philadelphia reported 615 new COVID-19 cases bringing the total number of infections within the city to 10,643.⁴ These numbers likely underestimate the virus's impact, given the lack of testing.

⁴ See NBC 10 Staff, *The Peak Might Be Higher: More than 135,000 Cases, 6,700 Deaths in Pa., NJ, and Del*, <https://www.nbcphiladelphia.com/news/coronavirus/where-coronavirus-cases-have-been-reported-in-the-philly-area/2318340/> (April 22, 2020).

The rate of infection in the PDP far exceeds the infection rate overall in the City of Philadelphia. Over the past two months, it has been reported that 120 prisoners in the PDP have contracted the virus—more than double the rate of infection of the City as a whole. Cohen Decl. ¶ 7. Moreover, without adequate testing, it is impossible to know exactly how many individuals in PDP facilities are actually infected.

COVID-19 spreads through a population in close contact with each other through respiratory droplets produced when an infected person sneezes, coughs, or speaks. These droplets can travel up to six feet or more through the air to infect another person. Amon Decl. ¶ 21; Cohen Decl. ¶ 11. The virus is also contracted when people touch surfaces and objects contaminated by those same respiratory droplets and then touch their own mouth, nose, or eyes. *Id.* The virus has a potent life span and can survive on surfaces for hours or even days, depending on the material. Cohen Decl. ¶ 11. Symptomatic persons spread the disease, but so too can asymptomatic persons. Amon Decl. ¶ 22; Cohen Decl. ¶ 5. For this reason, the Pennsylvania Department of Health and the CDC have recommended persons wear masks any time they leave their homes and recently mandated that people wear masks when patronizing essential businesses.⁵

Symptoms of infection span a range of reactions, from no symptoms to respiratory failure and death. Amon Decl. ¶ 6. COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause permanent and widespread damage to the lungs, heart, and other organs and bodily functions. Compl. ¶ 16.

⁵ Amon Decl. ¶ 24; *see also Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations* <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf> (April 19, 2020).

For persons over the age of 55 or with certain preexisting medical conditions, COVID-19 infection presents a greater risk of serious symptoms and death. Cohen Decl. ¶ 43. Persons with lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, and developmental delay are all at a heightened risk of serious illness and death should they become infected with COVID-19. Cohen Decl. ¶ 43; Amon Decl. ¶ 8.

The most effective strategy for limiting the spread of the disease is social distancing—deliberately keeping at least six feet of space between persons to avoid spreading the illness—combined with a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, and disinfecting surfaces. Amon Decl. ¶¶ 23–25 ; Cohen Decl. ¶ 6. Following the recommendation of public health experts, government officials across the country have taken extraordinary measures to implement social distancing to minimize the spread of the disease, including shutting down schools, non-essential businesses, and courts. *Id.* The goal of these efforts is to “flatten the curve” by spreading the rate of infection across a longer period to avoid overwhelming the healthcare facilities that need to treat the most serious cases of COVID-19 infection. Amon Decl. ¶ 26.

B. COVID-19 in the PDP’s Facilities

The CDC has issued guidance for limiting the spread of COVID-19 in correctional facilities and these standards reflect universally accepted medical and safety measures for jails and prisons.⁶ The guidelines recommend, at a minimum, (a) provide all incarcerated persons a six-foot radius or

⁶ See Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) available at <https://bit.ly/2UKYGES>; see also Amon Decl. ¶¶ 30–33, 44–49, 58–59; Cohen Decl. ¶¶ 24(a), 40–41, 50 (discussing CDC guidance).

more of distance from any other persons, including during meals, recreation, housing, group activities, medical treatments, and all other activities; (b) instituting a safety plan to prevent a COVID-19 outbreak in PDP's facilities in accordance with CDC guidelines; (c) providing incarcerated persons no-cost access to liquid soap, paper towels, running water, tissues and consider providing alcohol-based sanitizer (with at least 60% alcohol) readily available; (d) ensuring that all common areas and frequently touched surfaces (including: doorknobs, light switches, sink handles, countertops, toilets, toilet handles, kiosks, and telephones) are cleaned and disinfected several times per day; (e) providing adequate and appropriate COVID-19 testing for incarcerated persons, jail staff, and visitors; (f) waiving all medical co-pays for those experiencing COVID-19 like symptoms; and (g) providing sufficient personal protective equipment, particularly masks, to all staff and incarcerated people. *Id.* As we detail below, courts have relied on these standards as well as other measures urged by medical and correctional experts in ordering jails and prisons to implement adequate health and safety measures for incarcerated people. The CDC guidance for detention facilities specifically contemplate the continuation of recreation for detained individuals and, in case of cancellation of group activities, notes the importance of identifying alternative forms of activity that support the mental health of detained individuals.⁷

This case is before this Court because the defendants have failed to implement these guidelines or the other measures necessary to protect the plaintiff class. As the Declarations of the Plaintiffs and Drs. Cohen and Amon demonstrate:

- **Defendants fail to provide for and enforce social distancing protections.** Compl. ¶

28. In virtually all aspects of their daily lives, including when eating, sleeping, using the bathroom, or talking on the phones with their families, incarcerated persons in the

⁷ CDC Interim Guidance, at 12.

PDP are unable to maintain a six-foot distance from others. Compl. ¶ 28; *see also* Compl. Ex. C, Decl. of Jay Diaz (“Diaz Decl.”) (ECF 1-6) ¶¶ 10–11; Compl. Ex. C, Decl. of Nadiyah Walker (“Walker Decl.”) (ECF 1-6) ¶ 10; Compl. Ex. C, Decl. of Michael Alejandro (“Alejandro Decl.”) (ECF 1-6) ¶¶ 5–10; Compl. Ex. C, Decl. of Robert Hinton (“Hinton Decl.”) (ECF 1-6) ¶ 5; Compl. Ex. C, Decl. of Joseph Weiss (“Weiss Decl.”) (ECF 1-6) ¶ 6; Compl. Ex. C, Decl. of Joseph Skinner (“Skinner Decl.”) (ECF 1-6) ¶¶ 7, 10; Compl. Ex. C, Decl. of Saddam Abdullah (“Abdullah Decl.”) (ECF 1-6) ¶¶ 8, 16–17; Compl. Ex. C, Decl. of James Bethea (“Bethea Decl.”) (ECF 1-6) ¶¶ 8, 14. Almost all members of the plaintiff class are housed in 2-person cells (some in cells with up to 4 persons), *see* Diaz Decl. ¶ 6, Walker Decl. ¶ 6, Hinton Decl. ¶ 5, Weiss Decl. ¶ 6, Skinner Decl. ¶ 6, Abdullah Decl. ¶ 7, Bethea Decl. ¶¶ 8, 10, and some in dormitory areas, *see* Compl. Ex. C, Decl. of Thomas Remick (“Remick Decl.”) (ECF 1-6) ¶ 7, Alejandro Decl. ¶ 5.

- **Defendants fail to adequately, consistently, and freely provide necessary hygiene products to incarcerated people in PDP, leaving some without soap for days at a time.** Compl. ¶ 29; Walker Decl. ¶ 13; Alejandro Decl. ¶ 12; Compl. Ex. C, Decl. of Michael Dantzler (“Dantzler Decl.”) (ECF 1-6) ¶ 8; Hinton Decl. ¶ 7; Weiss Decl. ¶ 13; Skinner Decl. ¶ 15; Abdullah Decl. ¶ 13; Bethea Decl. ¶ 16. Defendants have refused to provide alcohol-based hand sanitizer as recommended by the CDC and Drs. Cohen and Amon. Compl. ¶ 29; *see also* Remick Decl. ¶ 18; Walker Decl. ¶ 14; Alejandro Decl. ¶ 12; Skinner Decl. ¶ 16; Bethea Decl. ¶ 17.
- **Defendants fail to provide for adequate cleaning, sanitizing and disinfecting of shared common areas including toilets, sinks, showers, and phones.** Compl. ¶ 30.

Defendants fail to clean frequently touched surfaces and common areas and fail to provide incarcerated persons with sufficient sanitation solutions and equipment (bleach, disinfectant, paper towels, and mops) to clean their living spaces or surrounding areas. *Id.*; *see also* Remick Decl. ¶ 12; Dantzler Decl. ¶ 6; Hinton Decl. ¶ 8; Weiss Decl. ¶¶ 11, 13; Skinner Decl. ¶ 18. Some plaintiffs have been unable to clean their shared cell for weeks at a time. Abdullah Decl. ¶ 15; Bethea Decl. ¶ 11.

- Defendants fail to provide and mandate the use of adequate personal protective equipment. Prison staff inconsistently use masks and often interact with people, including those in “quarantine,” without wearing masks.** Remick Decl. ¶ 15; Diaz Decl. ¶ 14; Dantzler Decl. ¶¶ 10–11; Hinton Decl. ¶ 12; Abdullah Decl. ¶¶ 19–20. These same staff members move between different areas of PDP’s facilities. While PDP has given each incarcerated person a single cloth face mask, incarcerated people are unable to clean or exchange these masks on an adequate basis. Plaintiffs have been required to wear the same mask for multiple days or weeks. Compl. ¶ 31; Alejandro Decl. ¶ 14; Dantzler Decl. ¶ 12; Hinton Decl. ¶ 10; Skinner Decl. ¶ 12; Abdullah Decl. ¶ 14; Bethea Decl. ¶ 18.
- Defendants fail to provide for adequate isolation or quarantine measures.** Newly admitted inmates are not always quarantined for a full 14 days before transfer to general population. Remick Decl. ¶ 16; Skinner Decl. ¶ 19. Incarcerated people displaying symptoms of COVID-19 are frequently neither isolated nor tested for COVID-19. Diaz Decl. ¶ 15; Abdullah Decl. ¶¶ 4–6, 18; Bethea Decl. ¶ 20. Those who have tested positive for COVID-19 and temporarily isolated are often returned to general

population without subsequent testing to ensure they are no longer contagious to others.

Compl. ¶ 32; *see also* Abdullah Decl. ¶ 21; Bethea Decl. ¶ 21.

Plaintiffs expect that Defendants will assert that the PDP has implemented the CDC guidelines, but as Drs. Cohen and Amon make clear, their findings and opinions are based *both* on: (1) the significant gaps between what the guidelines (and their own expert experience) demand in terms of protective measures and the policies adopted by the PDP,⁸ and (2) the significant gaps between what the policies state and the actual day-to-day implementation of these policies as evidenced by the consistent Declarations of the diverse set of Plaintiffs. In sum, neither the policies nor the practices of the PDP are constitutionally adequate.

As a result of Defendants' practices, the plaintiff class is without the health and safety protections necessary to protect them from infection. Further, Defendants have adopted an unconstitutional practice of prolonged lockdowns, with severely limited out-of-cell time. Compl. ¶ 33; Diaz Decl. ¶ 8; Walker Decl. ¶ 9; Alejandro Decl. ¶ 19; Hinton Decl. ¶ 6; Skinner Decl. ¶ 8; Dantzer Decl. ¶ 9; Skinner Decl. ¶ 8; Abdullah Decl. ¶ 10; Bethea Decl. ¶¶ 11–13. The lockdowns prevent adequate exercise and shower time. *See id.* For those in cells, these conditions constitute solitary confinement,⁹ widely known to cause and exacerbate mental illness and mental distress.

⁸ For instance, Dr. Amon has described PDP's guidance on social distancing as "woefully inadequate," as the written guidance only contemplates social distancing in the context of legal and official visits. Amon Decl. ¶ 54; *see also* Cohen Decl. ¶ 21 (noting that "[d]istancing is not optional"). The policies do not mention how social distancing amongst inmates is to be carried out. *Id.* Likewise, while PDP protocol accounts for the provision of masks, it does not address regular replacement and/or cleaning of masks, which is "not sufficient." *See* Cohen Decl. ¶ 19.

⁹ Even for those with cellmates, these conditions still constitute solitary confinement. *See* Alison Shames, Jessa Wilcox, Ram Subramian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, VERA INSTITUTE OF JUSTICE (May 2015), pp. 4-5, available at https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf (defining solitary confinement as "confinement in an isolated cell (alone or with a cellmate) for an average of 23 hours a day, with limited human interaction, little constructive activity, and in an environment that ensures maximum control over the individual").

See Cohen Decl. ¶ 52 (emphasizing need to mitigate “extreme stress” caused by “the prolonged solitary confinement status now operating at PDP facilities”). Lockdown conditions have also limited access to medical care for chronic conditions and acute illness. See Diaz Decl. ¶¶ 3–4; Walker Decl. ¶ 3; Abdullah Decl. ¶ 2; Bethea Decl. ¶ 5.

III. ARGUMENT

A. **Plaintiffs and Members of the Proposed Class Are Entitled to Equitable Relief to Prevent Infection, Illness or Death From COVID-19.**

Plaintiffs request immediate equitable relief due to the extraordinary and urgent situation here, seeking both a temporary restraining order (“TRO”) and a preliminary injunction. Courts apply the same standard in assessing requests for interim injunctive relief, regardless of whether a petitioner requests a TRO or preliminary injunction. See *Ellakkany v. Common Pleas Ct. of Montgomery Cnty.*, 658 F. App’x 25, 27 (3d Cir. 2016) (applying one standard to a motion for both a TRO and preliminary injunction). The plaintiffs “must establish that they are likely to succeed on the merits of their claims, they are likely to suffer irreparable harm without relief, the balance of harms favors them, and relief is in the public interest.” *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 131 (3d Cir. 2017). In lawsuits brought by incarcerated people challenging the conditions of their confinement, preliminary injunctive relief is permitted so long as it is “narrowly drawn, extend[s] no further than necessary to correct the harm . . . and [is] the least intrusive means necessary to correct that harm.” 18 U.S.C. § 3626(a)(2). Before entering a preliminary injunction, the Court must make “specific findings with respect to the[se] needs-narrowness-intrusiveness criteria.” *Victory v. Berks Cty.*, 789 F. App’x 328, 334 (3d Cir. 2019). These findings, “at a minimum . . . must be ‘sufficient to allow a clear understanding of the ruling.’” *Id.* at 333-34 (quoting *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1070 (9th Cir. 2010)).

Courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), including orders “placing limits on a prison’s population, “[w]hen necessary to ensure compliance with a constitutional mandate.” *Brown v. Plata*, 563 U.S. 493, 511 (2011). Courts “must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners” and “may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” *Id.* at 511 (internal citations and quotation marks omitted)).

1. Plaintiffs Are Likely to Succeed on The Merits.

Plaintiffs are likely to prevail on their claims under the Eighth and Fourteenth Amendments and the Americans with Disabilities Act (ADA) that the conditions of confinement in PDP present a clear and present danger to their health and safety and that the defendants have failed to provide necessary health measures to protect them from immediate risks of infection, illness, and death.¹⁰

a. Plaintiffs and the class are likely to succeed on their constitutional claims.

The United States Supreme Court and the United States Court of Appeals for the Third Circuit have made clear that inhumane conditions of confinement and/or the failure to implement recognized community standards of care for serious medical conditions establish claims under the Eighth Amendment for sentenced prisoners and under the Fourteenth Amendment for pretrial detainees.

The Eighth Amendment protects incarcerated people serving criminal sentences from cruel and unusual punishment, and it requires jails and prison officials to protect people in their custody

¹⁰ Plaintiffs have filed a motion for class certification (ECF 2), and if this motion is contested by Defendants, it can be litigated in due course. However, this Court has “general equity powers allowing it to grant temporary or preliminary injunctive relief to a conditional class.” *Mays v. Dart*, 2020 WL 1812381, at *3 (N.D. Ill. April 9, 2020).

from known risks of serious harm. *Farmer v. Brennan*, 511 U.S. 285, 834 (1994). To prevail on claim alleging that conditions of confinement violate the Eighth Amendment, plaintiffs must meet two requirements: (1) “the deprivation alleged must be, objectively, ‘sufficiently serious,’” and (2) “the ‘prison official must have a sufficiently culpable state of mind,’” such as “deliberate indifference to the inmate’s health or safety.” See *Thomas v. Tice*, 948 F.3d 133, 138 (3d Cir. 2020) (quoting *Farmer*, 511 U.S. at 834).

Leaving those in custody in the path of an infectious disease easily satisfies the first prong. The Supreme Court held in *Helling v. McKinney*, 509 U.S. 25 (1993), that the government violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies” or otherwise exposes prisoners “to a serious, communicable disease.” 509 U.S. at 33 (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Importantly, a high risk of harm—even without proof of a current and ongoing harm—is sufficient to establish the constitutional violation and justify court intervention. *Id.* (“[A] remedy for unsafe conditions need not await a tragic event.”).

Plaintiffs also satisfy the second prong because Defendants are undeniably aware of the serious risk that COVID-19 poses to Plaintiffs and other members of the proposed class. The PDP website, in a post written by Defendant Carney, reports the number of confirmed COVID-19 cases in PDP facilities, and outlines screening steps purportedly taken “to be proactive in safeguarding the welfare of everyone at the PDP.”¹¹ The PDP deems it important to issue personal protective equipment “to staff,” *id.*, but not those held in PDP facilities. The PDP claims to conduct assessment tracing of anyone within 6 feet of a staff member who tests positive, in accordance with “CDC guidelines,” *id.*, but has not adopted other CDC social distancing, hygiene, and medical

¹¹ See “How Philadelphia Department of Prisons is responding to COVID-19,” available at <https://www.phila.gov/2020-03-30-how-philadelphia-department-of-prisons-is-responding-to-covid-19/>.

care guidelines critical to slow the spread of the virus. The “PDP Response to COVID-19”¹² does not satisfy Defendants’ constitutional obligation to provide safe conditions. Rather, it underscores that Defendants: (1) knew of the grave risks of COVID-19 in PDP, and (2) nonetheless failed to take appropriate steps to create a response plan that complied with CDC guidelines. Amon Decl. ¶ 53. Worse, the evidence establishes that PDP is not even complying with its own inadequate response plan. *Id.* at ¶ 57. As a result, plaintiffs are not receiving adequate hygiene or cleaning supplies, *id.*, and staff and inmates are not consistently getting or using personal protective equipment. *Id.* at ¶ 33, 53.

Conditions that violate the Eighth Amendment necessarily also violate pretrial detainees’ due process rights under the Fourteenth Amendment. *See Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (explaining that the “Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’”) (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)). Because Defendants’ conduct clearly violates the Eighth Amendment, the Court need not analyze plaintiffs’ claim separately under the Fourteenth Amendment.¹³

b. Plaintiffs and the Disability Subclass are likely to succeed on the ADA claims.

¹² Available at <https://www.phila.gov/media/20200413152258/PDP-Response-COVID-19.pdf>

¹³ Plaintiffs note, however, that the Fourteenth Amendment also protects pretrial detainees from being held in conditions that amount to punishment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). When “a condition of confinement is [not] reasonably related to a legitimate governmental objective, [courts] may infer ‘that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.’” *E.D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019) (quoting *Hubbard v. Taylor*, 538 F.3d 229, 232 (3d Cir. 2008)); *see also Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (holding that defendants can be liable under the Due Process Clause even when they did not have subjective awareness that their acts or omissions subjected pretrial detainees to a substantial risk of harm) (citing *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015)).

The ADA provides additional and alternative grounds for injunctive relief. The ADA is “a remedial statute, designed to eliminate discrimination against the disabled in all facets of society” and “must be broadly construed to effectuate its purposes.” *Schorr v. Borough of Lemoyne*, 243 F. Supp. 2d 232, 235 (M.D. Pa. 2003) (citing *Tcherepnin v. Knight*, 389 U.S. 332, 335 (1967)). To establish a claim for relief under Title II of the ADA, 42 U.S.C. § 12101 *et seq.*, a plaintiff must establish “that he is a qualified individual with a disability, who was precluded from participating in a program, service, or activity, or otherwise was subject to discrimination, by reason of his disability.” *Furgess v. Pa. Dep’t of Corr.*, 933 F.3d 285, 288-89 (3d Cir. 2019)); *see also Bowers v. NCAA*, 475 F.3d 524, 553 n.32 (3d Cir. 2007). The ADA prohibits public entities, including county jails, from discriminating on the basis of disability. *See Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 209–10 (1998) (finding ADA protections apply to activities of correctional institutions); *Chisolm v. McManimon*, 275 F.3d 315, 325 (3d Cir. 2001) (“Title II of the ADA applies to services, programs and activities provided within correctional institutions.”). Discrimination includes failing to make reasonable accommodations that would allow a person with a disability to participate in a service, program or activity. 28 C.F.R. § 35.130(b)(7); *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (noting Congress recognized “that failure to accommodate persons with disabilities often have the same practical effect as outright exclusion” or discrimination).

The ADA defines disability as an impairment that substantially limits “major life activities.” 42 U.S.C. § 12102(2). “Major life activities” include “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” *Id.* Each of the named plaintiffs has a physical impairment that constitutes a disability under the ADA. Compl. ¶¶ 36–45. The same is true of each member of the Disability Subclass,

who is at increased risk of COVID-19 illness, injury, or death due to their disability or any medical treatment necessary to treat their disability.¹⁴

Plaintiffs and members of the Disability Subclass are precluded from safely participating in PDP's services, programs, and activities. "Services, programs, and activities" under the ADA "encompass virtually everything that a public entity does." *Haberle v. Troxell*, 885 F.3d 171, 180 (3d Cir. 2018) (internal quotations omitted); *see also Furgess*, 933 F.3d at 289 ("We have confirmed these terms' broad meaning, calling them 'all-encompassing.'"). Due to the unique nature of detention, in which facility staff control nearly all aspects of detained individuals' daily lives, this includes "virtually all [] prison programs," including those involving "mobility, hygiene, [and] medical care." *Furgess*, 933 F.3d at 290 (citing *United States v. Georgia*, 546 U.S. 151, 157 (2006)). By virtue of their incarceration, members of the Disability Subclass qualify for the "services, programs, and activities" of PDP, including the safe care PDP has a duty to provide for those in its custody. Conditions in PDP's facilities deny Plaintiffs and the members of the Disability Subclass that safety. Defendants have neglected their ADA obligations by failing to provide Plaintiffs and members of the Disability Subclass with adequate means to protect themselves against COVID-19 and its serious complications.

The conditions of confinement at PDP violate the constitutional and statutory rights of all members of the plaintiff class as they place them at a significant and unreasonable risk of

¹⁴ Members of the Disability Subclass have diagnoses including but not limited to the following: (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders and/or (i) developmental disability. Compl. ¶ 49.

contracting COVID-19. Plaintiffs cannot get sufficient soap, hand sanitizer, cleaning and disinfecting products, or personal protective equipment. Amon Decl. ¶ 33, 59; Cohen Decl. ¶ 40, 41. Plaintiffs do not get adequate testing, and there is insufficient quarantine, separation, and medical care for those who enter the PDP, those who are symptomatic or test positive, or those who are medically vulnerable. Amon Decl. ¶ 53; Cohen Decl. ¶ 37. Moreover, PDP's inadequate attempt to impose social distancing has led to additional violations, as plaintiffs have a significantly reduced ability to shower, exercise, or have necessary communications with their families or lawyers. Cohen Decl. ¶ 22, 52.

As the comprehensive declarations of Drs. Amon and Cohen establish, the PDP has failed to comply with the nationally recognized health and safety standards and as a result, at this time, the class members face a grave risk of illness and death. Courts considering similar conditions have found plaintiffs, like the plaintiffs in this case, to have established a likelihood of success on the merits of their constitutional and statutory claims, whether brought under the Eighth or Fourteenth Amendments. *See, e.g., Banks v. Booth*, No. CV 20-849(CKK), 2020 WL 1914896, at *11 (D.D.C. April 19, 2020) (granting TRO with respect to conditions in D.C. jails); *Mays v. Darts*, No. 20 C 2134, 2020 WL 1812381, at *8 (N.D. Ill, April 9, 2020) (issuance of TRO on claim of unconstitutional conditions of confinement in Cook County jail); *cf. Thakker v. Doll*, No. 20-00480, 2020 WL 1671563, at *8 (M.D. Pa. Mar. 31, 2020) (finding “no rational relationship between a legitimate government objective” and keeping people “detained in unsanitary, tightly-packed environments”).

2. The Heightened Risk of Infection from COVID-19 with No Vaccine or Cure Establishes Irreparable Harm

Denying preliminary relief will cause irreparable harm. Plaintiffs and the class members face the immediate and serious risk of severe illness and possible death unless the Court intervenes.

See Mays v. Dart, 2020 WL 1812381, at *13 (finding irreparable harm in light of the “grave threat to [plaintiffs] health and possibly their lives” posed by COVID-19); *Banks*, 2020 WL 1914896 at * 11; *Basank v. Decker*, No. 20-2518, 2020 WL 1481503, at *3 (S.D.N.Y. Mar. 26, 2020) (recognizing “the threat that COVID-19 poses to individuals held in jails and other facilities” and citing cases recognizing the same); *U.S. v. Stephens*, No. 15-95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (explaining prison inmates face “a heightened risk of contracting COVID-19 should an outbreak develop”).

Plaintiffs need not establish that they have actually suffered injury in order to establish irreparable harm, but rather, it is sufficient to establish that a condition of confinement is sure or very likely to cause serious illness and needless suffering. *See Helling*, 509 U.S. at 33, 35 (noting that a prisoner “could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery” and holding that exposure to second-hand smoke in prison stated a constitutional claim); *Padilla v. Immigration & Customs Enf’t*, No. 19-35565, 2020 WL 1482393, at *9 (9th Cir. Mar. 27, 2020) (affirming grant of preliminary injunction, agreeing “Petitioners would suffer irreparable harm in the form of substandard physical conditions” and “low standards of medical care,” among other things); *Thakker*, 2020 WL 1671563, at *3–4 (finding petitioners’ claim “rooted in imminent, irreparable harm,” given they “face the inexorable progression of a global pandemic creeping across the nation—a pandemic to which they are particularly vulnerable due to age and underlying medical conditions”); *Jones v. Wolf*, No. 20-361, 2020 WL 1643857, at *11, 13 (W.D.N.Y. Apr. 2, 2020); *Coreas v. Bounds*, No. 20-0780, Dkt. No. 56, at 30 (D. Md. Apr. 3, 2020) (“once COVID-19 is introduced into a detention facility, it spreads like wildfire,” creating “a high likelihood of irreparable health consequences” for detainees “that could not be alleviated without release”).

Recognizing such heightened risk of COVID-19 from the conditions of confinement in facilities around the country, several courts have already begun to grant preliminary injunctive relief and order defendants to undertake certain measures to comply with CDC guidelines. *See, e.g., Wilson v. Williams*, No. 4:20-cv-00794, slip op. at 15-19 (N.D. Ohio, Apr. 22, 2020) (granting preliminary injunctive relief in class action habeas petition for prisoners, ordering the Bureau of Prisons to identify individuals who are at heightened risk and transfer them to home confinement or a facility where social distancing is possible).¹⁵

Indeed, several courts have also ordered the immediate release of detainees facing the imminent threat of COVID-19. *See, e.g., Bent v. Barr*, No. 19-cv-06123-DMR, 2020 WL 1812850, at *6 (N.D. Cal. Apr. 9, 2020) (allowing for release of detainee who had “at least two high-risk conditions and ha[d] therefore established that he [was] at heightened risk because of COVID-19”); *Vazquez Barrera v. Wolf*, No. 4:20-cv-1241, 2020 WL 1904497, at *8 (S.D. Tex. Apr. 17, 2020) (ordering immediate release of detainee finding, among other things, “that detention of [detainees], who are high risk of serious illness or death if they contract COVID-19 ... where social distancing and proper hygiene are impossible, does not reasonably relate to a legitimate governmental purpose”); *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *14 (E.D. Mich.

¹⁵ *See also Cameron v. Bouchard*, No. 20-10949, 2020 WL 1929876, at *2 (E.D. Mich. Apr. 17, 2020) (ordering defendants to undertake certain measures in county jail including providing each detainee, free of charge, a sufficient supply of soap to allow regular hand washing each day and an adequate supply of disinfectant products for daily cleanings, and scheduling a hearing to address plaintiffs’ request for release); *Swain v. Junior*, No. 1:20-CV-21457-KMW, 2020 WL 1692668, at *2 (S.D. Fla. Apr. 7, 2020) (granting in part motion for temporary restraining order and requiring defendants to provide a list of detainees who meet certain health criteria that subjects them to heightened risk); *Parsons v. Shinn*, No. CV-12-00601-PHX-ROS, 2020 WL 1640532, at *2 (D. Ariz. Apr. 2, 2020) (requiring defendants to provide plaintiffs, on a weekly basis, the names and identification numbers of detainees who are tested for COVID-19).

Apr. 5, 2020) (requiring detainee to be released on her own recognizance where she suffered from a number of health conditions).

3. The Balance of Equities Favors Granting Relief to the Proposed Class.

The balance of equities weighs heavily in favor of granting the requested injunctive relief. The preliminary injunction Plaintiffs request will not substantially injure other interested parties. *See Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018) (preliminary injunction warranted where relief “will not result in even greater harm to the nonmoving party”). Rather, given the nature of the COVID-19 pandemic in general, *not* issuing preliminary relief would cause significant injury to the parties and the public at large. Beyond the fact that “[t]he balance of the equities tips sharply” in favor of Plaintiffs and the proposed class, given the threat of “irreparable harm to their constitutional rights and health,” *Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at *6 (C.D. Cal. Mar. 27, 2020); *see also Am. Freedom Def. Initiative v. Se. Pa. Transp. Auth.*, 92 F. Supp. 3d 314, (E.D. Pa. 2015) (same), the public interest favors granting preliminary relief as well.

As outlined below, Plaintiffs have requested remedial measures that go no further than necessary to protect their basic constitutional and statutory rights to humane conditions of confinement by ensuring compliance with the views of medical and correctional experts in line with but not necessarily limited by CDC guidelines and standards. Under this remedial scheme, the Defendants continue to hold the keys to the PDP and are required only to do what the Constitution requires.

4. Injunctive Relief Promotes the Public Interest.

There is a strong public interest in minimizing the spread of COVID-19 to staff in the PDP and, once carried out unknowingly by staff members, to the broader Philadelphia community. In

the first instance, uncontrolled spread of COVID-19 within the PDP's facilities increases the risk of infection to PDP staff members who return to their communities at the end of each workday, and, therefore, poses a direct threat to the entire surrounding community. Further, a large-scale infection within PDP will tax supporting hospitals and increase in the number of sick individuals in the community needing prompt and critical medical care. The public interest is best served by taking all necessary steps to reduce infection, slow the spread of the virus, and provide all necessary and available support to protect against undue pressures on Philadelphia hospitals.

Courts have consistently found a weighty public interest favoring injunctive relief where prisoners face similarly serious threats to their health. At bottom, “[t]he public has a critical interest in preventing the further spread of the coronavirus.” *Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at *6 (C.D. Cal. Mar. 27, 2020); *see also Thakker*, 2020 WL 1671563, at *9 (finding “[e]fforts to stop the spread of COVID-19 and promote public health are clearly in the public’s best interest”). Further escalation of the already substantial outbreak within PDP, like the detention center in *Castillo*, would “endanger all of us—detainees, employees, residents [of the surrounding community], residents of the State . . . , and our nation as a whole,” *Castillo*, 2020 WL 1502864, at *6; and would “quickly overwhelm the already strained health infrastructure within the facility . . . which would then place strain on the surrounding community hospitals.” *Coronel*, 2020 WL 1487274, at *7.

B. Requests for Injunctive Relief

Plaintiffs request a TRO and a preliminary injunction for immediate relief for all incarcerated people held in the PDP, because with each day that passes, the risk of severe harm grows exponentially for each person. Plaintiffs seek relief on behalf of a class (“Class”) consisting of:

All current and future persons held in custody within the Philadelphia Department of Prisons.

See Compl. ¶ 47; Pls.’ Mot. for Class Certification (ECF 2) ¶1.¹⁶

Plaintiffs seek injunctive and declaratory relief to bring the PDP into compliance with nationally recognized health and safety standards. The necessary measures are alleged in the Complaint, ¶¶ 26–34, detailed in the reports of Drs. Cohen and Amon, and outlined below.

Further, Plaintiffs request that Defendants be ordered to submit a plan to the Court within five (5) days, to be overseen by a qualified public health expert pursuant to Fed. R. Evid. 706, which outlines specific mitigation efforts.

More specifically, Plaintiffs request injunctive relief that addresses the following requirements and standards:

1. Ensuring proper social distancing by:
 - a. Allowing no less than six-feet of distance between incarcerated persons held in custody at the Philadelphia Department of Prisons when sleeping, eating, washing, recreating, using phones, and traveling between different areas of PDP facilities.
2. Ensuring enhanced personal hygiene by:
 - a. Providing unrestricted free access to hand soap and disposable hand towels to facilitate handwashing.
 - b. Providing unrestricted free access to hand sanitizer that contains at least 60% alcohol.
 - c. Providing the opportunity to shower daily, without forcing incarcerated people to choose between showers and other activities.
3. Ensuring clean and hygienic living spaces by:
 - a. Providing ready access to cleaning supplies, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning and disinfecting of floors and all surfaces in cells and housing areas.

¹⁶ Plaintiffs also seek certification of two subclasses, in addition to the Class defined above. One subclass is the “Medically Vulnerable Subclass,” and the other subclass is the “Disability Subclass.” See Compl. ¶ 48; Mot. for Class Cert. ¶¶ 2-3.

- b. Requiring and ensuring that all common areas and frequently touched surfaces , including common-use items such as but not limited to toilets, sinks, showers, televisions controls, books, door handles, light switches, and recreational equipment are cleaned at regular intervals repeatedly throughout the day. Phones should be cleaned after each use.
 - c. Increasing regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television controls, books, and gym and sports equipment.
 - d. Providing new gloves and masks daily to those who are cleaning or performing janitorial services.
 - e. Providing clean sheets and clothing twice per week.
 4. Ensuring consistent usage of personal protective equipment (PPE) by:
 - a. Providing all incarcerated people and prison staff members with masks that are laundered and/or exchanged on a daily basis; and
 - b. Mandating that prison staff wear masks at all times while working, and that incarcerated people wear masks at all times when leaving their cell (except if showering, eating, or for medical reasons).
 5. Implementing testing and medical isolation by:
 - a. Testing all incarcerated people in PDP, including those newly admitted, for COVID-19, prioritizing those in the medically vulnerable sub-class.
 - b. Ensuring that any incarcerated person who tests positive or displays symptoms consistent with COVID-19 is medically isolated and remains medically isolated until they test negative to prevent the infection of others. Individuals in isolation should have multiple daily temperature checks and monitoring of blood oxygen levels to ensure stability.
 - c. Testing all staff who enter PDP facilities, and for any staff that tests positive, requiring that they medically isolate themselves and test negative prior to re-entering a PDP facility.
 6. Alternatively, implementing screening, medical isolation, and quarantine if mass testing is not available by:
 - a. Immediately medically isolating all those who display symptoms of COVID-19. Individuals in isolation should have multiple daily temperature checks and monitoring of blood oxygen levels to ensure stability.
 - b. Quarantining all new admissions to PDP facilities for a full 14 days. Those in quarantine should be monitored daily for symptoms and temperature.

- c. Quarantining all people who have been exposed to individuals who have tested positive for COVID-19 or displayed symptoms consistent with COVID-19 for a full 14 days. Those in quarantine should be monitored daily for symptoms and temperature.
 - d. Screening everyone entering PDP facilities daily for temperature and symptoms. Those who cannot pass the screen should be sent home.
7. Ensuring access to necessary services by:
- a. Providing at least four hours of daily out-of-cell time for showering, cleaning, recreation, and making phone calls. Two of these hours must be permitted for large-muscle recreation out of doors. Such out-of-cell time should be provided on a staggered basis to allow for social distancing.
 - b. Providing medical care for non-COVID-19-related medical and mental health needs.
 - c. Maintaining no-cost medical service and medication delivery and, if applicable, waiving co-pays.
 - d. Providing unlimited and free calls to families or loved ones.
 - e. Providing free, unrecorded, and confidential phone calls to legal counsel.
8. Ensuring education, transparency, and information dissemination by:
- a. Providing all incarcerated people with (i) general updates and information about the COVID-19 pandemic; (ii) information on how incarcerated people can protect themselves from contracting COVID-19; and (iii) instructions on how to properly wash hands.
 - a. Providing a daily public report on the *current* and *cumulative* numbers of:
 - i. incarcerated people and correctional and health staff who have confirmed COVID-19;
 - ii. those who have been tested;
 - iii. incarcerated people over the age of 55;
 - iv. people in infirmary status;
 - v. pregnant women in custody;
 - vi. those in quarantine and medical isolation status;
 - vii. incarcerated people awaiting test results;
 - viii. COVID-19 positive persons in cohorted housing;
 - ix. incarcerated people hospitalized (including daily hospital admissions, discharges, and number of people on ventilators);
 - x. deaths of incarcerated people.

C. Release of Plaintiffs and Members of the Class Is Necessary and Warranted if Defendants do not Provide Constitutional Conditions of Confinement

If Defendants do not provide these constitutionally and statutorily required minimum protections, this Court has the power to issue writs of habeas corpus releasing class members. 28 U.S.C. § 2241 provides relief for incarcerated people who allege violations of the Constitution that make the fact of their confinement illegal. *See Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973) (habeas corpus permits prisoners to attack “the fact or length of confinement” and seek “immediate or more speedy release”); *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 242–44 (3d Cir. 2005) (Becker, J.) (habeas corpus permits prisoners to attack “execution” of their sentence, which includes manner and method of detention); *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002) (habeas corpus review available “where the deprivation of rights is such that it necessarily impacts the fact or length of detention”).

Writs of habeas corpus ordering release may be the only means to protect certain class members from constitutionally deficient conditions that place them at a severe risk of illness or death from COVID-19. If the PDP fails to adopt basic mitigation policies—such as social distancing, personal hygiene, and proper medical testing and care—class members and especially members of the Medically Vulnerable Subclass are entitled to judicial consideration for release. In adopting appropriate social distancing practices, however, PDP cannot substitute one unconstitutional practice for another and mandate facility-wide lockdowns. *See* Cohen Decl. ¶ 52; Diaz Decl. ¶¶ 3–4; Walker Decl. ¶ 3; Abdullah Decl. ¶ 2; Bethea Decl. ¶ 5.

In these circumstances, which are controlled, and therefore can be prevented by the Defendants, the Medically Vulnerable Subclass’ claims come “within the ‘core of habeas’ and require sooner release if resolved in [their] favor.” *Leamer*, 288 F.3d at 544; *see also Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 242–44 (3d Cir. 2005) (allowing sentenced prisoners to

challenge the execution of their confinement pursuant to Section 2241); *Thakker v. Doll*, No. 1:20-cv-480, 2020 WL 1671563, at *6 (M.D. Pa. Mar. 31, 2020) (“we note that federal courts, including the Third Circuit, have condoned conditions of confinement challenges through habeas”); *Robertson v. Allegheny Ct. of Com. Pleas*, No. 12-1080, 2012 WL 4712034, at *2 (W.D. Pa. Aug. 22, 2012) (“Section 2241 authorizes a federal court to issue a writ of habeas corpus to a pretrial detainee who ‘is in custody in violation of the Constitution or laws or treaties of the United States.’” (quoting 28 U.S.C. § 2241(c)(3) and citing *Moore v. DeYoung*, 515 F.2d 437, 441–43 (3d Cir. 1975))); *Holland v. Rosen*, 277 F. Supp. 3d 707, 738 (D.N.J. 2017) (a “challenge to pretrial incarceration seeks a remedy available only in habeas” (quoting *Wallace v. Fegan*, 455 F. App’x 137, 140 (3d Cir. 2011))); *Dodd v. Derosé*, No. 15-01088, 2015 WL 5029364, at *2 (M.D. Pa. Aug. 25, 2015) (same); *Ali v. Gibson*, 572 F.2d 971, 975 n.8 (3d Cir. 1978) (recognizing that sentenced state prisoners may challenge “conditions of confinement” under section 2241); *Lopez v. Lowe*, No. 3:20-CV-563, 2020 U.S. Dist. LEXIS 60796, at *11 (M.D. Pa. Apr. 7, 2020) (“When a petitioner seeks immediate release from custody, the “sole federal remedy” lies in habeas corpus.”).¹⁷

IV. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs-Petitioners’ Motion for a Temporary Restraining Order and Preliminary Injunction, and order that Defendants immediately enact policies implementing mitigation efforts within the PDP to prevent the spread of COVID-

¹⁷ Several courts have recently invoked § 2241 to order the immediate release of detainees facing the imminent threat of COVID-19. *See, e.g., Avendano Hernandez v. Decker*, No. 20-1589, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020); *Castillo v. Barr*, No. 20-00605, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020); *Coronel v. Thomas*, No. 20-2472, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Basank v. Decker*, No. 20-2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020).

19, and, in the alternative issue writs of habeas corpus for the members of the Medically Vulnerable Subclass.

Respectfully submitted,

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