

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-01795-JLK-KLM

In re DENVER JAIL COVID-19 LITIGATION

Civil Case No.

1:21-cv-00302-JLK
1:21-cv-00302-JLK
1:21-cv-00091-JLK
1:21-cv-01216-JLK
1:21-cv-00015-JLK
1:20-cv-03590-JLK
1:21-cv-00122-JLK
1:20-cv-01795-JLK
1:21-cv-00014-JLK
1:21-cv-00173-JLK
1:21-cv-00116-JLK
1:21-cv-00656-JLK
1:21-cv-00362-JLK
1:21-cv-00162-JLK
1:21-cv-00839-JLK
1:21-cv-02747-JLK
1:21-cv-00157-JLK

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Matthew White and Thomas Melendez, individually and on behalf of all other similarly situated persons, by and through their counsel of record, Bradley A. Levin, Robyn Levin, Gideon S. Irving, and Annika K. Adams of LEVIN SITCOFF, PC, Rick D. Bailey of LAW OFFICE OF RICK D. BAILEY, ESQ., and Zachary D. Warren of HIGHLANDS LAW FIRM, for their Second Amended Class Action Complaint against Defendant City and County of Denver, state and allege as follows:

INTRODUCTION

1. Plaintiffs, who were confined in the Denver County Jail,¹ bring this action because the conditions of their incarceration put them, and all others similarly situated, at imminent risk of serious illness and death from COVID-19, thereby depriving them of rights secured to Plaintiffs and proposed Class Members by the United States Constitution and the laws of the United States and the State of Colorado. They contracted COVID-19 during their confinement and were thereby injured.

2. This matter arose as a series of individual *pro se* complaints which were consolidated for pretrial proceedings by Order dated February 25, 2021. [Doc. # 37].

3. We are in the midst of the most dangerous pandemic in generations. The effects of the COVID-19 pandemic have rippled through local communities across the country, including Denver County, Colorado. While COVID-19 has spread through the community, jails, such as the Denver County Jail, have become hotbeds for COVID-19 cases, threatening the lives of people inside the jail and the broader community.

4. From a public health perspective, jails are particularly dangerous environments.² As of September 1, 2020, these facilities represented at least 90 of the top 100 COVID-19 clusters in the U.S. Incarcerated individuals have faced 5.5 times higher risk of contracting COVID-19

¹ The Denver Sheriff's Department operates two jail facilities, Cise-Simonet Downtown Detention Center (abbreviated DDC) and the Denver County Jail (COJL). Plaintiffs refer to "The Denver County Jails" or "a Denver County Jail" to when discussing both facilities, unless separately identified.

² <https://www.npr.org/2021/09/02/1033326204/crowded-jails-drove-millions-of-covid-19-cases-a-new-study-says>.

than those in the general U.S. population and, after adjusting for age, sex, and race/ethnicity, three times the COVID-19 mortality rate.³

5. As of September 26, 2021, at least 1,370 people in a Denver County Jail had tested positive for COVID-19.⁴

Today's COVID-19 Counts		Showing latest counts for: Sunday, September 26, 2021	
Current/Active Positive Cases:	94 Combined: Current	86 DDC: Current	8 COJL: Current
Resolved Positives:	892 Combined: Resolved	790 DDC: Resolved	102 COJL: Resolved
Released Positives:	384 Combined: Released	372 DDC: Released	12 COJL: Released
Cumulative Positive Cases (Current + Resolved + Released)	1370 Combined: Cumulative	1248 DDC: Cumulative	122 COJL: Cumulative
Cum. Positive Cases, Intake Cases Only: <i>(Intake cases are also included in total cumulative positive count above)</i>	483 Combined: Cumulative Intake	483 DDC: Cumulative Intake Cases	- n/a
Cumulative Tests Administered:	32711 Combined: Tests	30512 DDC: Tests	2199 COJL: Tests
(NEW!) Vaccine Doses Administered:	1654 Combined: Vaccine Doses	1032 DDC: Vaccine Doses	384 COJL: Vaccine Doses

Total also includes doses administered to people in DSD custody at Denver Health Medical Center

DSD operates two jail facilities: Van Cise-Simonet Downtown Detention Center (DDC) and Denver County Jail (COJL). Case counts exclude staff cases but include inmates who test positive upon intake and inmates who contract the virus inside our facilities. This differs from definitions used by the CO Dept of Public Health in their outbreak data, which excludes intake cases and includes staff. For questions, contact: Lizzie.Friend@denvergov.org

SHERIFF DEPARTMENT
DENVER PUBLIC SAFETY

6. Of the at least 1,370 who have tested positive, at least 883 were contracted in the jail, while at least 487 cases were intake cases.⁵

³

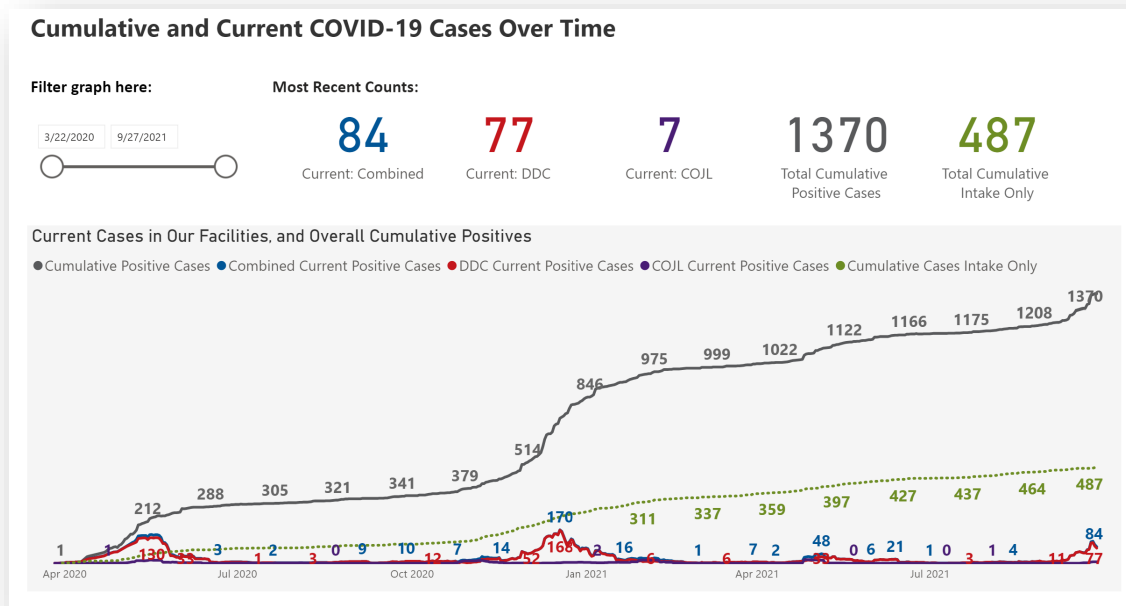
https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783680?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=090221

⁴

<https://www.denvergov.org/Government/Agencies-Departments-Offices/Sheriff-Department/Data-Statistics#section-1>, p. 3.

⁵

<https://www.denvergov.org/Government/Agencies-Departments-Offices/Sheriff-Department/Data-Statistics#section-1>, p. 4.



7. According to news reports, two deputies at The Denver County Jail’s Downtown Detention Facility (DDC) died within ten (10) days of each other from complications of COVID-19. As of May 27, 2021, 107 deputies were reported to have contracted COVID-19.⁶

8. The facts recited above indicate that many more inmates than only those who filed *pro se* complaints were injured. Moreover, additional inmates have requested representation in this matter. In light of the increasing number of potential plaintiffs, in the Court’s Minute Order dated August 2, 2021 [Doc. # 148], the Court stated, “Plaintiffs’ counsel may also consider whether it might be appropriate to assert claims on behalf of a class.” This Second Amended Class Action Complaint, is the result of that inquiry.

⁶ <https://kdvr.com/news/problem-solvers/2-denver-jail-deputies-die-from-covid-within-10-days/>

JURISDICTION

9. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§ 1331, 1341, & 1343 because it is filed to obtain compensatory damages for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. § 1983. This Court also has jurisdiction under the provisions of 28 U.S.C. § 2201, as it is filed to obtain declaratory relief relative to the constitutionality of the policies of a local government.

10. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' and the Class claims occurred within this judicial district.

11. There are no administrative exhaustion requirements that would pose a bar to any of the claims in this case because Plaintiffs have been released from custody.

PARTIES

12. Plaintiff Matthew White is a citizen of the United States and resides in Denver, Colorado. From January 2020 to April 2020, Mr. White was detained at the Denver County Jail (COJL). From September 2020 to December 2020, Mr. White was detained at the DDC, before his transfer to the COJL, where he was detained from December 2020 to May 2021. Mr. White contracted COVID-19 in December 2020 while detained at the DDC, and was exposed to the same on numerous occasions through his detentions at the Denver County Jails.

13. Plaintiff Thomas Melendez is a citizen of the United States and resides in Denver, Colorado. From August 2021 to November 2021, Mr. Melendez was detained at a Denver County Jail. Mr. Melendez contracted COVID-19 while detained at the Downtown Detention Center

(DDC), and was subsequently exposed to the same on numerous occasions throughout his detention at the Denver County Jails.

14. Defendant The City and County of Denver (“Denver”), is a consolidated city and county operating under Article XX, Section 4 of the Constitution of the State of Colorado and Title 30, Article 11, Section 101 of the Colorado Revised Statutes. At all times relevant hereto, Denver was responsible for the policies, practices, supervision, implementation, and conduct of all matters pertaining to the Denver County Jail and was responsible for the appointment, training, supervision, and conduct of all jail personnel.

CLASS ALLEGATIONS

15. Plaintiffs bring this action pursuant to Rules 23(b)(2) and 23(c)(4) of the Federal Rules of Civil Procedure on behalf of themselves and a Class of similarly situated individuals who were detained and not properly protected from COVID-19 at the Denver County Jails.

16. This class action seeks to determine liability only. Plaintiffs request that the case be bifurcated between liability and damages phases and that, if there is a verdict of liability, then the Court institute a procedure for Class Members to make claims for damages, including a mechanism for establishing individuals’ damages.

17. The Class and Subclasses that Plaintiffs seek to represent is defined as follows:

Primary Class

All detainees who have been or will be placed in custody of the Denver County Jails (both facilities) and tested positive for COVID-19 while detained. The class period commences on January 1, 2020 and is continuing.

COJL Class:

All detainees who have been or will be placed in custody of the Denver County Jail (COJL) and tested positive while detained. The class period commences on January 1, 2020 and is continuing.

DDC Class:

All detainees who have been or will be placed in custody of the Cise-Simonet Downtown Detention Center (DDC) and tested positive while detained. The class period commences on January 1, 2020 and is continuing.

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

19. The members of the Class are so numerous as to render joinder impracticable. As indicated above, there are at least 883 detainees known to be in the Class as of September 23, 2021. Moreover, upon information and belief, there are hundreds of citizens who are placed into the custody of Denver County Jails every month and detainees are continuing to test positive for COVID-19.

20. Upon information and belief, joinder of all these individuals is impracticable because of the large number of Class Members and the fact that Class Members are likely dispersed over a large geographical area, with some Members presently residing outside of Colorado. Furthermore, many Members of the Class are low-income persons, may not speak English, and likely would have great difficulty pursuing their rights individually.

21. Common questions of law and fact exist as to all Members of the Class, in that they were all entitled to all available protections under the Eighth and Fourteenth Amendments, and

those protections were violated by Defendant's improper, inadequate, and negligent policies and procedures for protecting inmates from contracting COVID-19 while detained.

22. Plaintiffs' claims are typical of the claims of Members of the Class. Plaintiffs and all Members of the Class sustained damages as a consequence of Defendants' course of conduct. The harms suffered by the Plaintiffs are typical of the harms suffered by Members of the Class in that they tested positive for COVID-19 while detained.

23. The representative Plaintiffs have requisite personal interests in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are adverse to the interests of the Members of the Class.

24. The Court-appointed counsel in this action have substantial experience in the prosecution of Class actions and civil rights litigation, including successful litigation in civil rights cases. Plaintiffs' counsel have the resources, expertise, and experience to successfully prosecute this action against Denver. Counsel for Plaintiffs knows of no conflicts among Members of the Class or between counsel and Members of the Class.

25. Plaintiffs seek Class certification under Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(c)(4) in that all Members of the Proposed Class were subjected to the same inadequate, improper, and negligent policies that failed to protect detainees from COVID-19. In short, this class action is brought under Fed. R. Civ. P. 23(b)(2) in that the Defendants and their employees acted on grounds generally applicable to all members of the Class. Further, this Class action is brought under Fed. R. Civ. P. 23(c)(4) to determine a particular issue, namely the liability of Defendants.

26. Common questions of law and fact exist, including, without limitation, the common questions of whether the Defendants' written and/or *de facto* policies failed to protect detainees from COVID-19 in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

27. A Class action is superior to other available methods for a fair and efficient adjudication of this controversy, since joinder of all individual members of the Class is impracticable given the large number of Members of the Class and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for the individual Members of the Class to redress the wrongs done to them. The cost to the federal court system of adjudicating hundreds of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, maintaining this action as a Class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

FACTS

Facts Applicable to the Class Generally

28. The Fourteenth Amendment of the United States Constitution requires Denver and its policymaker(s) to provide for the reasonable health and safety of persons in custody and the Eighth Amendment prohibits Denver from subjecting detainees to cruel and unusual punishment. Failing to institute and enforce procedures reasonably calculated to protect the detainees from contracting COVID-19 violates the constitutional rights of Plaintiffs.

29. To comply with public health guidelines, jailers must ensure that prisoners be allowed to eat, cook, sleep, use the toilet and socialize while maintaining adequate social distancing. Failure to take these actions has serious consequences. For example, at the peak of the outbreak in Wuhan, China—the province where COVID-19 originated—over half of all reported COVID-19 cases were infections of incarcerated people. At one point, on Rikers Island, the rate of infection among incarcerated people was over seven times the rate of infection in New York City generally, and 25 times higher than the rate in Wuhan, China.

30. Public health guidance put all sheriffs nationwide, and locally, on notice of the dire risk of the spread of COVID-19 through jails without substantial changes to the jail environment. For example, on March 26, 2020, the Sheriff Diggins received a letter from the ACLU providing public health information regarding the dangers of the spread of the virus in jails, as well as the societal and constitutional obligation of jailers to allow prisoners, and particularly those in the high risk population, to practice physical distancing at all times in the jails. A copy of the ACLU letter is attached as **Exhibit A**. Attached to the ACLU letter was a letter from an infectious disease expert at University of Colorado Anschutz, Dr. Franco-Paredes, who made clear that, to protect inmates, they must be housed in a manner that allows them to sleep, socialize, and eat while maintaining a six-foot distance from others. A copy of the letter is attached as **Exhibit B**. Dr. Franco-Paredes explained:

To contain the spread of the disease, infection prevention protocols must be meticulously followed. These infection prevention protocols include “social distancing” measures, where individuals maintain a distance of at least six feet from each other and frequent hand-washing and other good hygiene practices. . . . In a carceral setting, these protocols would require, for example, that individuals sleep one person per cell, rather than in bunk beds.

31. Given the obvious dangers to those held in prison during the pandemic, public health experts strongly recommend, and have recommended for several months, the reduction of prison populations and the immediate release of people vulnerable to COVID-19 who pose low public safety risks.⁷ This measure is necessary not only for the protection of the most vulnerable prisoners and correctional officers, but also to sufficiently reduce prison populations such that adequate physical distancing is possible.⁸ Preventing widespread infection in prisons also ensures that scarce health resources aren't overtaxed, improving the public health resources available to all.

32. From the early days of the pandemic, persons in charge of the Denver County Jails knew that infections in the jails were only a matter of time, militating an immediate need to reduce the jail populations and to institute social distancing and other policies to protect inmates from the spread of the virus.

33. Despite being aware of the dire risks associated with COVID-19 infection in the jail facilities, Denver failed to act promptly and took almost no precautionary measures for weeks after COVID-19 began spreading in Colorado. When Denver finally began to institute protective policies, they were too little, too late. Moreover, even after implementing policies and protocols,

⁷ Social Distancing, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

⁸ See *Carranza v. Reams*, No. 20-CV-00977-PAB, 2020 WL 2320174 (D. Colo. May 11, 2020) at Doc. No. 1-1 (March 23, 2020) (Declaration of Dr. Jaimie Meyer, ¶ 35, Exhibit 1) (noting that population reduction in jails will be “crucially important to reducing the level of risk both for those within [jail] facilities and for the community at large,” and that stemming the flow of intakes is a part of the necessary intervention); *Dawson v. Asher*, 20-cv-409 (W.D. Wash.) at Doc. No. 4 (Declaration of Dr. Robert B. Greifinger, MD at ¶ 13, Exhibit 2) (“In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.”) and at Doc. No. 6 (Declaration of Marc Stern at ¶¶ 9–10, Exhibit 3) (noting that release is “a critically important way to meaningfully mitigate” the risks of harm to persons who are at high risk of serious illness or death, as well as to support the broader community health infrastructure).

Denver failed to adhere to or enforce those policies and protocols. Even now, Denver has not adequately reduced the jail population, instituted adequate social distancing, effectively separated contagious and healthy prisoners, or instituted other protective measures, and prisoners are still being regularly infected.

34. Specifically, in the early weeks of the COVID-19 pandemic, the Denver County Jails did not have policies and procedures in place to allow detainees to properly social distance from one another. This includes, but is not limited to, social distancing following an arrest or during the intake process.

35. Likewise, during the early weeks of the COVID-19 pandemic, Denver did not provide all arrestees with face coverings to wear while in intake facilities.

36. After the COVID-19 pandemic was declared, Denver allowed arrestees in its intake facilities to be in close proximity to one another without masks and without medically determining which individuals had COVID-19 and/or its symptoms.

37. In other words, for a time period after the COVID-19 pandemic was declared, Denver County Jails made no effort to isolate and/or quarantine arrestees until they either tested negative for COVID-19 or were observed to lack the diagnostic symptoms of COVID-19 for a sufficient period of time.

38. The result is that symptomatic or COVID-19 positive arrestees were confined with, and interacted with, non-symptomatic or COVID-19 negative arrestees during the intake process. What's more, those interactions were not socially distanced or masked.

39. This allowed the COVID-19 virus to spread among individuals in the intake facilities, and as those individuals were moved to permanent housing, it allowed the COVID-19 virus to spread to between the Denver County Jails and to non-infected individuals.

40. On March 30, 2020 (more than two weeks after the COVID-19 pandemic was declared in Colorado), Sheriff Diggins issued a memorandum to all Denver Sheriff's Department staff concerning protocols for the care and custody of inmates who were suspected or confirmed positive for COVID-19 (the "First Protocol").

41. The First Protocol required that "[w]hen a person is a suspected case either by their complaint, response to screening questions or a staff members [sic] observation, they will immediately be given a surgical mask and escorted to the Medical Unit."

42. The First Protocol further stated that "if an individual is identified as confirmed positive for COVID-19, they may be housed alone or with another individual who is also positive."

43. Likewise, the First Protocol indicated that individuals identified as confirmed positive for COVID-19 should remain in medical isolation until cleared for release by Denver Health and Hospital Authority ("DHHA") personnel.

44. Finally, the First Protocol stated that housing unit 2E would serve as a designated overflow pod if the medical unit 3Medical no longer had space to house confirmed positive individuals.

45. Contrary to the First Protocol, all individuals identified as confirmed positive for COVID-19 (whether by testing, reporting, or observation) were not immediately given a surgical mask.

46. Contrary to the First Protocol, all individuals identified as confirmed positive for COVID-19 were not immediately escorted to the Medical Unit.

47. In fact, some confirmed positive individuals were not isolated at all.

48. Other confirmed positive individuals were placed into confinement with confirmed negative and/or non-symptomatic individuals.

49. Additionally, Denver had no formal procedures for identifying and isolating detainees who were in contact with, or who were in close proximity with, those detainees who were confirmed positive for COVID-19.

50. Thus, in the weeks and months following the outbreak of the pandemic, individuals who were in contact with, or who were in close proximity with, confirmed positive individuals were moved and/or housed throughout the Denver County Jails.

51. On April 2, 2020, Sheriff Diggins issued a second memorandum to all Denver Sheriff Department staff concerning protocols for the care and custody of inmates who were suspected or confirmed positive for COVID-19 (the “Second Protocol”).

52. The Second Protocol was identical to the First Protocol in all material respects save for changing the designated medical overflow pod from 2E to 2C.

53. Upon information and belief, this change was necessary because the number of infected and/or symptomatic inmates was rising and pod 2C had more capacity than pod 2E and/or was more accessible to medical staff.

54. On April 9, 2020, the Denver County Jails issued their first employee face-covering mandate.

55. The mandate required all Denver Sheriff Department staff “who work in close proximity with other employees, inmates, or with the public are required to wear medical or non-medical cloth face coverings that cover the nose and mouth while working, except when doing so would inhibit that individual’s health.”

56. So, between the date the pandemic was declared and April 9, 2020, the Denver Sheriff Department did not require employees in direct contact with inmates to wear masks.

57. On April 24, 2020, Major McManus from the Denver Sheriff Department and Dr. Crum from DHHA issued the Department’s First Recommendations for Low Risk Housing/Low Risk Inmates.

58. The recommendations stated that “[m]oving forward Classification will make every attempt to establish low risk housing units at both the DDC and the County Jail.”

59. Specifically, the recommendation advised that efforts would be made to house low risk inmates in low risk housing units.

60. The recommendations defined a “Low Risk Inmate” as “any inmate that has completed a 14-day quarantine period” or “any inmate that has been diagnosed with and subsequently cleared of the Covid-19 infection.”

61. The recommendations defined “Low Risk Housing” as “any housing unit that has as its population only Low Risk Inmates.”

62. The recommendations contained the following warning: “Important! -Inmates with negative coronavirus tests without a 14-day quarantine are not considered Low Risk and should not be housed in a low risk housing unit. (For example, from Book-in testing or from testing for

positive symptoms). A completed 14-day quarantine is required for low risk housing!" (underlining in original, highlighting in original omitted).

63. The recommendations further stated: "**A Low Risk Inmate is no longer considered Low Risk if he/she:** Leaves the low risk housing unit and makes contact with any person not also considered low risk. This includes hospital visits." (bold in original).

64. The recommendations also stated: "**Low Risk Housing is no longer considered as such if:**" (1) "A 'non-Low Risk' inmate is introduced to the low risk unit;" (2) "A low risk inmate leaves the low risk housing and is in some fashion exposed to 'non-low risk' individuals and returns to the low risk housing unit;" and (3) "An inmate from a low risk housing unit tests positive for Covid-19. The low risk housing unit inmates will need to be quarantined for 14 days to be again determined to be low risk."

65. Subsequent to the recommendations, the Denver Sheriff Department established low risk housing units in certain of its facilities.

66. Contrary to the recommendations, the Denver Sheriff Department placed one or more individuals into low risk housing who had not been quarantined for 14 days immediately beforehand.

67. Contrary to the recommendations, the Denver Sheriff Department placed individuals in low risk housing who had tested positive for COVID-19 less than 14 days before their placement.

68. Contrary to the recommendations, the Denver Sheriff Department considered certain individuals to be low risk inmates, and allowed them to be in low risk housing, following medical visits outside of the low risk housing unit.

69. Contrary to the recommendations, the Denver Sheriff Department considered certain individuals to be low risk inmates, and allowed them to be in low risk housing, after they came into contact with other individuals not considered low risk.

70. Contrary to the recommendations, the Denver Sheriff Department continued to treat certain housing units as low risk after a ‘non-low risk’ inmate was introduced.

71. Contrary to the recommendations, the Denver Sheriff Department continued to treat certain housing units as low risk after one or more low risk inmates left the unit, were exposed in some fashion to ‘non-low risk’ individuals, and returned to the unit.

72. Contrary to the recommendations, the Denver Sheriff Department continued to treat certain housing units as low risk after one or more inmates from the unit tested positive for COVID-19.

73. On April 28, 2020, more than a month after the pandemic was declared, Sheriff Diggins issued the Department’s first inmate mask protocol.

74. The protocol stated that inmates would be issued one homemade face covering for use during intake and intake housing.

75. The protocol further stated that upon entering permanent housing, classification staff would exchange the homemade cloth face covering for two DOC manufactured face cloth coverings.

76. Finally, the protocol stated that inmates could exchange their DOC face covering during laundry and receive two clean DOC face coverings.

77. Prior to April 28, 2020, the Denver County Jails did not issue face covering to all inmates.

78. The next day, on April 29, 2020, Sheriff Diggins authored a letter intended for all inmates which stated: “Today you will be issued a cloth mask face covering to help reduce the spread of COVID. . . . If your mask is lost during your stay, you will be charged \$2.60, the cost for replacement.”

79. Replacement masks, however, were largely unavailable to inmates.

80. Moreover, many inmates who requested replacement masks were denied them by staff.

81. On May 4, 2020, Sheriff Diggins issued another protocol for suspected or confirmed COVID-19 persons in custody (the “Third Protocol”).

82. While the First and Second Protocols mandated isolation of suspected or confirmed positive inmates individually or with another positive inmate, the Third Protocol directed that “it has been determined that 8-person units can serve as designated pods for suspected or positive persons.”

83. The change from isolation units of 1-2 people to 8-person isolation units was made because there were so many individuals suspected or confirmed positive for COVID-19 that the Denver County Jails no longer had the space to isolate such persons in groups of 1-2.

84. On August 18, 2020, Sheriff Diggins issued a revised mask mandate for inmates.

85. The revised mandate was issued when COVID-19 transmissions and/or infections within the jail facilities were rising.

86. The revised mandate directed that rather than being two DOC face coverings upon entering permanent housing, inmates would only be given one.

87. The revised mandate likewise directed that rather than being able to exchange their soiled face mask for a clean one during laundry, inmates were expected to clean their own single mask and could not exchange it.

88. On August 25, 2020, again in response to the number of inmates with COVID-19, Sheriff Diggins issued another protocol for suspected or confirmed COVID-19 persons in custody (the “Fourth Protocol”).

89. The Fourth Protocol directed that rather than 8-person units, entire cell blocks could serve as isolation areas for inmates with COVID-19.

90. Importantly, however, the Fourth Protocol warned: **“If a confirmed positive is housed in the same pod as persons who are on isolation protocols, the two groups shall not be mixed at any time.”** (bold in original).

91. Contrary to the Fourth Protocol, persons confirmed to have COVID-19 were placed in the same pod as persons who were on isolation protocols, and the two groups were mixed.

92. Although Plaintiffs are seeking damages rather than injunctive relief in this case, it is instructive that many courts, including Chief Judge Brimmer in this District, have granted injunctive relief in class actions to protect incarcerated people during COVID-19.⁹

⁹ See, e.g., *Carranza v. Reams*, No. 20-CV-00977-PAB, 2020 WL 2320174, at *15 (D. Colo. May 11, 2020) (ordering identification of medically vulnerable incarcerated people, enactment of procedures to ensure to the maximum extent possible that such people are physically distanced from others, enhanced sanitation in the areas populated by medically vulnerable people, increased access to PPE, and adoption of a policy for their increased monitoring); *Clark v. Pritzker*, No. 20-cv-01133-SPM, 2020 WL 6391185, at *5-6 (S.D. Ill. Nov. 2, 2020) (holding that incarcerated plaintiffs adequately stated claims for deliberate indifference by prison officials and unconstitutional conditions of confinement due to overcrowding and lack of access to adequate facilities in quarantine); *In re Von Staich*, 2020 WL 6144780, at *4 (Cal. App. Oct. 20, 2020) (“We therefore recommend that the prison population at San Quentin be reduced to 50% of current capacity (even further reduction would be more beneficial) via decarceration”) (emphasis in original); Order Granting Motion to Enforce, *Frailhat v. U.S. Immigration & Customs Enf’t*, No. 5:19-cv-01546-JGB-SHK, at 14 (C.D. Cal. Oct. 7, 2020), ECF No. 240, (“The Preliminary Injunction envisions the following two-step process: determine if one or more of the defined Risk Factors are present, and if so, timely evaluate or re-evaluate whether continued detention is appropriate, according significant weight to the presence of a Risk Factor and to public health”);

93. Defendants know that they have a constitutional obligation protect the safety of the prisoners in the Denver County Jails.

94. Defendants know that they may not institute, enforce, or permit enforcement of a policy or practice that results in the cruel and unusual punishment of detainees. Defendants' policies, practices and customs, and its failures, as addressed above, are both inhumane and unconscionable. Forcing detainees to be incarcerated in such a manner as to subject them to a high degree of risk of COVID-19 is blatantly illegal and is unacceptable in a civilized society.

Hernandez Roman v. Wolf, No. CV-20-00768, 2020 WL 6107069, at *5 (C.D. Cal. Oct. 15, 2020) (ordering the government to reduce current detainee population of 772 people by at least 50 detainees each day until the detainee population is at or below 475 people); *Hernandez Roman v. Wolf*, No. 20-55436, 2020 WL 6040125, at *5 (9th Cir. Oct. 13, 2020) (affirming that district court may require ICE to reduce the population of detained people to ensure detention center's conditions do not put detainees at serious risk of serious illness or death); *Vasquez Barrera v. Wolf*, No. 4:20-cv-1241, 2020 WL 5646138, at *9 (S.D. Tex. Sept. 21, 2020) ("While it may be true that a district court's authority to grant bail pending a habeas petition seldom has been warranted, our society is seldom thrown into the throes of an incessant pandemic in which measures that may be unusual but are safely within legal authority must be invoked"); *Criswell v. Boudreaux*, No. 1:20-cv-01048-DAD-SAB, 2020 WL 5235675, at *26 (E.D. Cal. Sept. 2, 2020) (ordering adoption and memorialization of policies to allow for physical distancing, to reduce contacts between incarcerated people in all common areas, and to provide masks to prisoners); *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC, 2020 WL 4554646, at *1 (N.D. Cal. Aug. 6, 2020) (ordering ICE to administer rapid-result COVID-19 testing to all detainees at least once a week, to maintain current practice of not admitting new class members to facility, and to provide daily updates about the status of COVID-19 in facility and defendants' efforts to manage COVID-19 risk); *Torres v. Milusnic*, No. CV-20-4450-CBM-PVC(x), 2020 WL 4197285, at *23-24 (C.D. Cal. July 14, 2020) (ordering federal prison to identify class members who requested compassionate release, to institute a process so those eligible for home confinement can communicate with their families and make a plan for release, and to give substantial weight to prisoners' risk factors for serious illness or death from COVID-10 when reviewing their applications for home confinement); *Banks v. Booth*, No. 20-849, 2020 WL 3303006, at *18 (D.D.C. June 18, 2020) (ordering creation of plan to review DOC prisoners for possible release, as well as implementation of physical distancing and sanitation procedures); *Savino v. Souza*, No. 20-10617-WGY, 2020 WL 3529664, at *2 (D. Mass. June 18, 2020) (explaining decision to deny government's motion for reconsideration of preliminary injunction granted to ICE detainees, in part because of "the government's refusal voluntarily to work toward reducing the population of the facility to a density in which social distancing would be possible"); *Gayle v. Meade*, No. 20-21553-CIV-COOKE/GOODMAN, 2020 WL 4047334, at *2 (S.D. Fla. July 17, 2020) (appointing special master to inspect ICE detention centers because "[a] continued failure to provide detainees with bare minimum necessities and supplies to survive the pandemic may be evidence of deliberate indifference to medical needs, tantamount to the infliction of cruel and unusual punishment because it increases the risk of exposure to a lethal and highly-contagious disease"); *Gayle v. Meade*, No. 20-21553-CIV, 2020 WL 3041326, at *23 (S.D. Fla. June 6, 2020) (ordering ICE to provide the court with frequent updates on housing and release of people in their custody, to provide detainees with unrestricted access to soap, hand sanitizer, and cleaning supplies, and to provide all detainees and staff members with masks); *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 WL 2813072, at *3 (D. Conn. May 29, 2020) (finding that the "extraordinary circumstances, including the substantial risk to the health of these medically vulnerable inmates and the prevalence of COVID-19 at FCI Danbury. . . .make bail necessary to make the habeas remedy effective").

95. The Defendants' written and/or *de facto* policies, practices, and customs regarding the protection of prisoners against COVID-19 have been promulgated, effectuated and/or enforced (or have failed to have been enforced) in bad faith and contrary to clearly established law.

96. Pursuant to these written and/or *de facto* policies, and/or Defendants' failure to enforce appropriate policies, the members of the Class, including Plaintiffs, were physically injured by contracting COVID-19.

97. As a direct and proximate result of the Defendants' written and/or *de facto* policies, or the failure of their personnel to enforce such policies, the victims of the unlawful practices – the Members of the Class, including Plaintiffs – have suffered or will suffer severe physical and psychological pain, suffering, and mental anguish.

Facts Applicable to the Named Plaintiffs

Matthew White

98. Mr. White was detained at the COJL and DDC on multiple occasions during the class period. Specifically, Mr. White was first detained at the COJL at the beginning of the class period until April 2020, was briefly detained at the DDC in June 2020, and was detained again at the DDC from September 2020 to December 2020, at which point he was transferred to the COJL, where he remained until his release in May 2021.

99. Prior to his detention, Mr. White did not have any significant health issues or concerns and had not tested positive for COVID-19.

100. Mr. White was tested for COVID-19 upon his arrival to the DDC in September 2020 and tested negative.

101. After a period of quarantine, Mr. White was transferred multiple times across different units within the DDC, including units with detainees who tested positive for COVID-19, thereby exposing him to the same.

102. During this time, Sheriff's deputies moved in and out of the pods without proper personal protective equipment ("PPE").

103. Medical personnel also moved in and out of pods without properly disinfecting medical supplies and equipment.

104. Upon information and belief, Defendant knowingly placed detainees infected with COVID-19 into Mr. White's pod, thereby exposing him and others in his pod to the virus.

105. Evidently, Defendant didn't have the physical space or staff to properly quarantine infected detainees, and instead shuffled detainees around pods, seemingly at random, causing the spread of COVID-19 within the Denver County Jails.

106. Because of Defendant's inadequate policies and procedures regarding the quarantine of infected detainees, inadequate cleaning protocols, and failure to issue clean masks on a routine basis, Mr. White tested positive for COVID-19 on December 9, 2020.

107. Mr. White experienced loss of taste, numbness in his mouth, soreness, debilitating fatigue, sore throat, and pain in his lungs after he tested positive for COVID-19.

108. Mr. White and other detainees around him took notice of the deputies' misconduct and expressed concern regarding deputies' failure to protect them from contracting COVID-19.

109. Specifically, Mr. White noticed lack of communication between deputies and detainees, and deputies' failure to wear masks and gloves when entering his pod. Mr. White has

the impression that deputies were purposefully putting infected detainees in clean pods to eliminate the need for quarantining.

110. Just twelve days after testing positive for COVID-19 at the DDC, Mr. White was transferred to the COJL on December 21, 2020.

111. While detained at the COJL, in April 2021, Mr. White was again exposed to COVID-19 when a fellow detainee working alongside him in the kitchen tested positive for COVID-19. Staff did not remove the infected detainee and place him in quarantine until 23 hours after his COVID-19 test was administered, thereby exposing Mr. White and several other detainees to the virus.

Thomas Melendez

112. Mr. Melendez was arrested and booked into the DDC location of the Denver County Jails in August 2021.

113. Prior to his detention, Mr. Melendez reported no significant health issues or concerns. Mr. Melendez received the Johnson & Johnson COVID-19 vaccine in June 2021, prior to his detention.

114. On arrival at DDC, Mr. Melendez was placed in a holding cell, tested for COVID-19 during intake, and placed in general population before receiving the results of his COVID-19 test.

115. On September 2, 2021, Mr. Melendez received negative COVID-19 test results.

116. During this time, Deputies frequently moved inmates around different cells, thereby increasing the risk of COVID-19 exposure within the jail. Deputies switched COVID-19 positive inmates from cell-to-cell, intermingling them with those who had tested negative.

117. There was no access to cleaning supplies or hand sanitizer within the cells.

118. During his incarceration, Mr. Melendez and the other inmates were unable to have any outside visitors, so his only contacts were with the inmates, jail staff, and the jail's medical personnel.

119. Mr. Melendez was moved into a different cell in October 2021, and two days later, Deputies moved a COVID-19 positive inmate into his cell.

120. On or around October 5, 2021, Mr. Melendez began experiencing COVID-19 symptoms and requested to be tested again. In order to make that request, Mr. Melendez had to file a "kite," *i.e.*, a request for medical assistance (which costs \$7.00). Also on October 5, 2021, Mr. Melendez was given a respiratory screening, spoke with a charge nurse, and was placed on a list to receive a PCR test.

121. On or around October 6, 2021, at approximately 6:30 a.m., a PCR test was administered to Mr. Melendez. The test was result and verified by Denver Health Central laboratory on or about October 6, 2021 at or around 9:28 p.m.

122. At or around 11:05 p.m. on October 6, 2021, Mr. Melendez was recommended for classification as a COVID-19 positive inmate, requiring contact, droplet, and airborne precautions.

123. At some point between October 5, 2021 and October 8, 2021, Mr. Melendez was moved into a new cell, although he remained in the same pod. Also, at some point between October 5, 2021 and October 8, 2021, Mr. Melendez was informed verbally that he had tested positive for COVID-19. He was not initially given any record of his diagnosis, and in fact had to file a "kite," *i.e.*, a request for medical assistance (which costs \$7.00) in order to gain access to the same.

124. After he tested positive for COVID-19, Mr. Melendez experienced severe nerve pain in his back, loss of taste and smell, heat flashes, headaches, and other severe flu-like symptoms.

125. After Mr. Melendez was notified that he had tested positive for COVID-19, Deputies moved him into a COVID-19 positive cell with seven other inmates. Deputies gave him Tylenol to help with the pain he was experiencing.

126. Mr. Melendez and other inmates were distressed by the prevalence of COVID-19 within the jail, yet Deputies appeared casual in their attitudes towards how inmates contracted COVID-19 and in taking measures to abate the risk.

127. Mr. Melendez asked to receive a COVID-19 booster shot while detained, but jail staff refused.

128. After Mr. Melendez tested positive for COVID-19, he was transferred to the COJL location in November 2021.

129. Mr. Melendez was a healthy and productive individual with no pre-existing conditions interfering with his ability to live and work prior to his detainment at the Denver County Jails. However, Mr. Melendez now experiences lingering symptoms of COVID-19; namely, severe back and neck pain.

130. These lingering symptoms interfere with Mr. Melendez's ability to live and work as he once did, as the nerve damage in his back and neck affect him after very little physical labor or movement. In short, Mr. Melendez was healthy before he entered the Denver County Jails, and because of the Jails' failure to isolate detainees, failure to adequately keep pods and medical supplies sanitized, and failure to utilize PPE, he continues to suffer every day.

131. As a direct and proximate result of Defendants' failure to reduce their jail populations as recommended by public health experts, to institute adequate social distancing, and to institute and enforce policies and procedures consistent with public health recommendations, Plaintiffs have been injured, incurred damages, and have suffered and continue to suffer physical and psychological pain, suffering, and mental anguish.

FIRST CLAIM FOR RELIEF

Unconstitutional Conditions of Confinement in Violation of the Fourteenth Amendment to the U.S. Constitution – 42 U.S.C. § 1983

132. Plaintiffs incorporate by reference and realleges each and every allegation in paragraphs 1 – 131 above.

133. Under the Fourteenth Amendment, corrections officials are required to provide for the reasonable health and safety of persons in pretrial custody. *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (the state has an “unquestioned duty to provide adequate . . . medical care” for detained persons).

134. Defendants have unconstitutionally failed to comply with public health guidelines to prevent or manage an outbreak of COVID-19 and unconstitutionally failed to provide for the safety of the individually-named Plaintiffs and the other Class Members. Defendants' actions and inactions resulted in the confinement of these Plaintiffs and other Class Members in jails where their rights to reasonably safe conditions of confinement and adequate medical care have been or are being violated. These failures are the product of formal customs, policies, practices, and/or procedures established by Sheriff Diggins and implemented by officers employed by Denver and acting under color of state law.

135. These failures represent actionable policy decisions that were recklessly and deliberately indifferent to the Constitutional rights of Plaintiffs and other Class members proximate causes of Plaintiffs' and other Class members' injuries.

136. As a result these actionable policy decisions and failures, Plaintiffs and the other Class Members were subjected to the unreasonable risk of contracting, and in fact contracted, COVID-19 and were thereby injured.

137. Accordingly, under color of state law, Defendants have violated the rights guaranteed to Plaintiffs and the other Class Members under the Fourteenth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution - 42 U.S.C. § 1983

138. Plaintiffs incorporate and reallege paragraphs 1 - 137 above.

139. Under the Eighth Amendment to the United States Constitution, persons in carceral custody have a right to be free from cruel and unusual punishment. As part of the right, the Government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. *See, e.g., Estelle*, 429 U.S. at 104; *DeShaney*, 489 U.S. at 200. Deliberate indifference to the serious risk COVID-19 poses to Plaintiffs and the other Class members infringes on the protection from cruel and unusual punishment. Defendants violated this right by subjecting Plaintiffs and the other Class members to conditions of confinement that did not and do not ensure their health and safety.

140. Defendants have unconstitutionally failed to comply with public health guidelines to prevent or manage an outbreak of COVID-19 and unconstitutionally failed to provide for the safety

of Plaintiffs and the other Class Members. Defendants' actions and inactions resulted in the confinement of Plaintiffs and the other Class Members in jails where their rights to reasonably safe conditions of confinement and adequate medical care have been and are being violated. These failures are the product of formal customs, policies, practices, and/or procedures established by Sheriff Diggins and implemented by officers employed by Denver and acting under color of state law.

141. These failures represent actionable policy decisions that were recklessly and deliberately indifferent to the Constitutional rights of Plaintiffs and moving forces and proximate causes of Plaintiffs' and other Class members' injuries.

142. As a result, Plaintiffs and the other Class Members were subjected to an unreasonable risk of contracting, and in fact contracted, COVID-19 and were thereby injured.

143. Accordingly, under color of state law, Defendants have violated the rights guaranteed to Plaintiffs and the other Class Members under the Eighth Amendment to the United States Constitution.

REQUEST FOR RELIEF

144. Plaintiffs, for themselves and for the other Members of the proposed Class, respectfully request the following relief:

- a. Certification of this action as a Class Action;
- b. A declaration that Defendants have violated the Fourteenth Amendment rights of Plaintiffs and other Class members to reasonable safety and that Defendants are liable for such violations;

- c. A declaration that Defendants have violated the Eighth Amendment rights of Plaintiffs and other Class members against cruel and unusual punishment and are liable for such violations;
- d. The establishment of a procedure for Plaintiffs and other Class members to make claims for damages and for the adjudication of such claims;
- e. An award of Plaintiffs' attorney fees and costs under 42 U.S.C. § 1988 and other applicable law; and
- f. Any further relief this Court deems appropriate.

DATED this 10th day of June 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2026 a true and correct copy of the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system and served on the following by the method indicated which will send notification of said filing to the following email addresses:

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