

1 BRAD D. BRIAN (SBN 79001)
brad.brian@mto.com
2 ROHIT K. SINGLA (SBN 213057)
rohit.singla@mto.com
3 VICTORIA A. DEGTYAREVA (SBN 284199)
Victoria.Degtyareva@mto.com
4 MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
5 Los Angeles, California 90071-3426
Telephone: (213) 683-9100
6 Facsimile: (213) 687-3702
7 ALEC KARAKATSANIS*
alec@civilrightscorps.org
8 JEFFREY STEIN*
jeff@civilrightscorps.org
9 CIVIL RIGHTS CORPS
1601 Connecticut Avenue NW, Suite 800
10 Washington, D.C. 20009

11 DAN STORMER (SBN 101967)
dstormer@hadsellstormer.com
12 BRIAN OLNEY (SBN 298089)
bolney@hadsellstormer.com
13 HADSELL STORMER RENICK & DAI LLP
128 N. Fair Oaks Avenue
14 Pasadena, California 91103
Telephone: (626) 585-9600
15 Facsimile: (626) 577-7079

LESLIE A. BAILEY (SBN 232690)
lbailey@publicjustice.net
BRIAN HARDINGHAM (SBN 288773)
bhardingham@publicjustice.net
PUBLIC JUSTICE
475 14th St., Ste. 610
Oakland, CA 94612
Telephone: (510) 622-8150

16 [Additional Counsel Listed on Last Page]
17 *Attorneys for Plaintiffs*

18 **Pro Hac Vice applications pending*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

21 Phillip Urquidi, Daniel Martinez, Susana
Perez, Terilyn Goldson, Gerardo Campos, and
22 Arthur Lopez, on behalf of themselves and all
other similarly situated, and Clergy and Laity
23 United for Economic Justice (“CLUE”),
Reverend Jennifer Gutierrez, Reverend Gary
24 Williams, and Rabbi Aryeh Cohen,
individually,

25 Plaintiffs,

26 vs.

27 City of Los Angeles, Los Angeles County, Los
28 Angeles County Sheriff’s Department, Sheriff

Case No. 22STCP04044

Honorable Lawrence P. Riff
Spring St. Courthouse, Dept. 7

**PLAINTIFFS’ SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing:

March 27, 2023

Time: 8:45 a.m.

Dept: 7 (Spring Street)

Complaint filed: November 14, 2022

1 Alex Villanueva, Los Angeles Police
2 Department, and Chief Michel R. Moore,

3 Defendants.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION.....6

II. DISCUSSION7

 A. The Requested Preliminary Injunction is Prohibitory Because it Preserves
 the Status Quo7

 B. *O’Connell* Illustrates Why Plaintiffs’ Requested Relief is Proper.....12

III. CONCLUSION15

TABLE OF AUTHORITIES

FEDERAL CASES

Friends for All Children, Inc. v. Lockheed Aircraft Corp.
(D.C. Cir. 1984) 746 F.2d 816 12

Hernandez v. Sessions
(9th Cir. 2017) 872 F.3d 976.....6, 10, 11

Melendres v. Arpaio
(9th Cir. 2012) 695 F.3d 990.....9, 13, 14

STATE CASES

Allen v. Stowell
(1905) 145 Cal. 666..... 11

Butt v. State of California
((1992) 4 Cal.4th 668).....14, 15

Crawford v. Board of Education
((1976) 17 Cal.3d 280) 14

Daly v. San Bernardino County Bd. of Supervisors
(2021) 11 Cal.5th 1030..... 6, passim

Hillman v. Britton
(1980) 111 Cal.App.3d 810.....13

In re Humphrey
(2021) 11 Cal.5th 135.....9

Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.
(2016) 6 Cal.App.5th 1178..... 12

Jaynes v. Weickman
(1921) 51 Cal.App. 696..... 11

Ojavan Investors, Inc. v. California Coastal Com.
(1997) 54 Cal.App.4th 373..... 11

People ex rel. Brown v. iMergent, Inc.
(2009) 170 Cal.App.4th 333..... 11

People v. Mobile Magic Sales, Inc.
(1979) 96 Cal.App.3d 1 11

Serrano v. Priest
((1976) 18 Cal.3d 728 (*Serrano II*))..... 14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Supports the Requested Injunction. O’Connell v. Superior Court
((2006) 141 Cal. App. 4th 1452) 7, passim

Teachers Ins. & Annuity Assn. v. Furlotti
(1999) 70 Cal.App.4th 14878

United Railroads of San Francisco vs. Superior Court
172 Cal. 809, 10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After hundreds of pages of briefing and hours of oral argument, Plaintiffs have established
4 that they are likely to succeed on the merits and that the harms to Plaintiffs outweigh harms to the
5 Defendants. Indeed, Defendants conceded at the March 27, 2023 hearing that Plaintiffs have
6 demonstrated at least some likelihood of success on the merits. (Plaintiffs’ Supp. Br. Regarding
7 Proposed Order, Ex. 2 at 118:24-28.) The only remaining questions for the Court are whether
8 Plaintiffs’ requested injunction is appropriate and in the public interest. At the Court’s request,
9 Plaintiffs submit this supplemental brief to address two topics bearing on these issues.

10 ***The Requested Injunction Is Prohibitory Because It Preserves the Legally Relevant***
11 ***Status Quo.*** An injunction that “prevents future constitutional violations [is] a classic form of
12 prohibitory injunction.” (*Hernandez v. Sessions* (9th Cir. 2017) 872 F.3d 976, 998.) Plaintiffs’
13 proposed injunction does just that.

14 When an injunction seeks to prevent future violations of law, courts are to measure the
15 status quo “from the time *before the contested conduct began.*” (*Daly v. San Bernardino County*
16 *Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1046, italics added.) In contrast, when “the injunctive
17 order aims *not* to prevent injury from future conduct but *instead* offers a remedy for a past
18 violation,” courts are to “measure the status quo from the time the order is entered.” (*Id.* at pp.
19 1045–1046, italics added.)¹ Here, the injunction prevents injury from future conduct; it does not
20 aim to remedy a past violation. The legally relevant “baseline” is the status quo *prior to the*
21 *contested conduct.* (*Id.* at p. 1045.) And the “contested conduct” is Defendants’ unconstitutional
22 jailing of individuals pre-arraignment based solely on how much money they can access. The

23
24 _____
25 ¹ Property disputes are the context where mandatory injunctions are most common. (*Daly, supra*,
26 11 Cal.5th at p. 1042 [“Perhaps the prototypical mandatory injunction is an order requiring the
27 defendant to remove an improvement it has made to challenged property.”]; 42 Am.Jur.2d (2023)
28 Injunctions, § 6 [“Mandatory injunctions are commonly issued to compel, among other things, the
removal or abatement of nuisances; the removal of encroachments; the removal of obstructions on
public streets or highways which interfere with the use or enjoyment of the public’s rights; the
removal of bodies wrongfully buried; the removal of dangerous structures, such as dams and
jetties; and the repair or closing of openings in party walls.”] [footnotes omitted].)

1 relevant status quo, then, is the putative class members’ freedom from these constitutional
2 violations. The proposed injunction preserves this status quo rather than altering it. For that
3 reason, it is plainly prohibitory.

4 **O’Connell v. Superior Court Supports the Requested Injunction.** *O’Connell v. Superior*
5 *Court* (2006) 141 Cal.App.4th 1452 illustrates why the requested preliminary injunction is
6 appropriate. *O’Connell* establishes that (1) the Court must consider the public interest; (2) a court
7 must grant relief that is tailored to the defendants’ violation; and (3) the judicial branch may not
8 prescribe the precise policies for defendants from the executive or legislative branches to cure
9 their violations; rather, the defendants must develop their own plans for remedying any
10 constitutional violation. (*Id.* at pp. 1471, 1473-1476, 1478-1479.)

11 *O’Connell’s* holdings support Plaintiffs’ proposed injunction. First, the evidence is
12 overwhelming that the injunction is in the public interest and that Defendants’ current use of
13 secured money bail *harms* the public interest. Second, the proposed relief is precisely tailored; it
14 prohibits Defendants from enforcing the Los Angeles County bail schedules, providing a remedy
15 that targets the exact constitutional violation at issue. Third, the proposed relief does not require
16 the Court to impose on Defendants its own specific means of remedying their constitutional
17 violations. Instead, as the Court of Appeal prescribed in *O’Connell*, the proposed relief expressly
18 requires Defendants to develop their own plan for ensuring that their bail practices fulfill
19 constitutional requirements.

20 The Court should grant Plaintiffs’ proposed preliminary injunction.

21 **II. DISCUSSION**

22 **A. The Requested Preliminary Injunction is Prohibitory Because it Preserves the**
23 **Status Quo**

24 California law distinguishes between prohibitory and mandatory injunctions as a way to
25 determine whether the injunction should be stayed on appeal: a mandatory injunction is
26 automatically stayed on appeal regardless of the equities, while a prohibitory injunction is not.
27 (*Daly, supra*, 11 Cal.5th at pp. 1040-1041, 1054.) The “object of the rule in both cases is to
28 preserve the *status quo*”—“a prohibitory injunction is exempt from stay because such an

1 injunction, by its nature, operates to preserve the status quo,” while a mandatory injunction
2 “commands some change in the parties’ positions.” (*Id.* at p. 1041.) Because mandatory
3 injunctions require some change in the parties’ relative positions, the standard for granting a
4 mandatory preliminary injunction is higher than for granting a prohibitory injunction. (*Teachers*
5 *Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.)

6 The prohibitory-mandatory distinction turns on whether the injunction looks forward or
7 backward. A prohibitory injunction aims to “prevent[] the defendant from committing additional
8 violations of the law.” (*Daly, supra*, 11 Cal.5th at p. 1046.) Because these injunctions prevent
9 future harms, it is critical that they are not stayed pending appeal; if they were, “the appealing
10 party could renew or continue any destructive conduct during the period of appeal, even if that
11 would cause irreparable damage” (*Id.* at p. 1041.) Mandatory injunctions, by contrast,
12 “offer[] a remedy for a past violation,” such as “ripping out a building or other improvement,” or
13 “firing one worker and rehiring another.” (*Id.* at p. 1046.) Those injunctions “mandate[] the
14 performance of an affirmative act.” (*Id.* at p. 1041.) As such, mandatory injunctions are
15 automatically stayed pending appeal because “before such orders are executed and the defendant
16 must detrimentally alter its position, the defendant is entitled to know whether the order is
17 correct.” (*Ibid.*)

18 Plaintiffs’ requested preliminary injunction is prohibitory because it is forward-looking:
19 the injunction will “prevent” Defendants “from committing additional violations” in the future.
20 (*Daly, supra*, 11 Cal.5th at p. 1046.) Plaintiffs request that, starting 60 days after the Court enters
21 this injunction, Defendants be enjoined from “enforcing (i) the 2023 Los Angeles County Bail
22 Schedules, or (ii) any form or derivative thereof that requires or has as its effect that the existence
23 or duration of pre-arraignment detention is determined by an arrestee’s ability to pay”
24 (Proposed Order at ¶ 9.) Plaintiffs also request that, starting three days after the Court enters its
25 injunction, Defendants be enjoined from enforcing the bail schedule with respect to a subset of
26 offenses. (*Id.* at ¶ 11.) These requests are directed at preventing *future* violations—namely, the
27 detention of putative class members based solely on their ability to pay cash bail—not remedying
28 past wrongs.

1 Because Plaintiffs’ injunction prevents future violations, the status quo is measured from
2 the time *before* Defendants began violating putative class members’ constitutional rights. An
3 “injunction preventing the defendant from committing additional violations of the law may not be
4 recharacterized as mandatory merely because it requires the defendant to abandon a course of
5 repeated conduct as to which the defendant asserts a right of some sort.” (*Daly, supra*, 11 Cal.5th
6 at p. 1046.) In other words, the fact that Defendants have been detaining individuals based on
7 their access to cash for a long period of time does not make an injunction stopping the challenged
8 conduct mandatory. Rather, when an injunction enjoins future violations, “the essentially
9 prohibitory character of the order can be seen more clearly by measuring the status quo from the
10 time *before the contested conduct began*.” (*Ibid.*, italics added; see also *Melendres v. Arpaio* (9th
11 Cir. 2012) 695 F.3d 990, 994 [affirming without hesitation a 2011 preliminary injunction
12 enjoining a racially discriminatory policy in effect since 2007].)

13 For instance, in *United Railroads of San Francisco v. Superior Court*—a case on which
14 *Daly* relied—the trial court issued a preliminary injunction that prohibited the defendant railroad
15 company from running excess train cars over San Francisco’s city tracks, in violation of a
16 contractual agreement. ((1916) 172 Cal. 80, 86–87.) The excess cars were being run at the time
17 the injunction was issued, and the railroad company argued that the injunction should measure the
18 status quo from the present, when the cars were running. (*Ibid.*) But the Court determined that,
19 because the injunction aimed to prevent further violations, the proper point for measuring the
20 status quo was *prior* to the contested conduct—that is, before the defendant had begun running the
21 cars. (*Ibid.*) The injunction at issue, thus, was prohibitory, not mandatory, because it maintained
22 the status quo before any violations had occurred. (*Ibid.*)

23 In short, under *Daly*, the status quo here—the period “before the contested conduct
24 began”—is freedom. (*Daly, supra*, 11 Cal.5th at p. 1046; see also *In re Humphrey* (2021) 11
25 Cal.5th 135, 155 “[i]n our society liberty is the norm”.) The status quo is the point *before*
26 Defendants detained Plaintiffs and putative class members solely on the basis of access to cash.
27 Put another way, before Defendants detain an individual solely because of their inability to pay
28 bail, the contested conduct has not yet begun—the individual’s constitutional rights have not yet

1 been violated. Plaintiffs’ requested prohibitory injunction is designed to preserve that status quo
2 and ensure putative class members’ rights are not irreversibly violated by future acts of
3 Defendants while this litigation continues.

4 Finding Plaintiffs’ proposed injunction to be mandatory would turn the purpose of the
5 prohibitory-mandatory distinction on its head with irreparable consequences for putative class
6 members. “[I]f our law had no exception for purely preventive injunctions, the appealing party
7 could renew or continue any destructive conduct during the period of appeal” (*Daly*, 11
8 Cal.5th at p. 1041.) The conduct at issue here is destructive indeed: Plaintiffs have submitted
9 significant, undisputed evidence that even brief periods of pretrial detention upends people’s
10 lives—risking the possibility of lost jobs or housing, traumatic family separation, physical and
11 sexual abuse, and death. (Pls.’ Mot. for Prelim. Inj. at 12 (“Mot.”) [citing Scott-Hayward Decl. at
12 ¶¶ 28, 30-37].) This is just the kind of case in which a misapplication of the prohibitory-
13 mandatory distinction would not only misread the law, but would be gravely unfair.²

14 Nor is Plaintiffs’ proposed prohibitory injunction made mandatory simply because it may
15 require Defendants to perform some incidental act, such as proposing a plan for compliance with
16 the Court’s order or meeting and conferring with the Plaintiffs.³ As *Daly* explained, “the
17 character of a prohibitive injunction [is] not transformed and made mandatory because it
18 incidentally involved the doing of an affirmative act.” (*Daly, supra*, 11 Cal.5th at p. 1047
19 [quoting *United Railroads, supra*, 172 Cal. at p. 88]; see also *id.* at p. 1046 [a prohibitory
20 injunction “may not be recharacterized as mandatory merely because it requires the defendant to

21 _____
22 ² (*Daly, supra*, 11 Cal.5th at p. 1053 [“Because an appeal can take a substantial time to resolve,
23 and because during that time the plaintiff may, in some cases, be significantly injured by the
24 maintenance of the status quo, an automatic stay will not always be fair to prevailing plaintiffs
25 with strong cases that are likely to be upheld on appeal.”].)

26 ³ In *Hernandez, supra*, 872 F.3d at p. 1000 fn.29), the Ninth Circuit rejected the government’s
27 argument that the requirement that “it meet and confer with Plaintiffs to develop guidelines for
28 future immigration [bail] hearings [to ensure consideration of individuals’ ability to pay and the
adequacy of non-financial alternatives]” was mandatory rather than prohibitory, explaining, “The
requirement that the parties meet and confer is merely an administrative mechanism to reduce
unnecessary burdens on the district court’s resources. It is an entirely ordinary exercise of the
district court’s authority to manage cases and to encourage cooperation before parties resort to
asking the court to resolve a dispute.”

1 abandon a course of repeated conduct”].) For example, *Daly* noted “an order prohibiting a
2 defendant from using a particular trade name might incidentally require the defendant to remove
3 the name from its signage; the incidental steps required to take the trade name out of circulation
4 does not convert what is essentially a prohibitory injunction into a mandatory one.” (*Id.* at p. 1047
5 [citing *Jaynes v. Weickman* (1921) 51 Cal.App. 696, 699-700].) Likewise, *Daly* cited to *People v.*
6 *Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 5, which held that an injunction ordering the
7 defendant to refrain from displaying mobile home models for sale at a mobile home park did not
8 become mandatory because it also required the defendant to remove the mobile homes currently
9 on display. (See also *People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 342
10 [injunction was prohibitory, not mandatory, where its purpose was to “restrain defendants’
11 continued violation” of California’s consumer protection laws, and “[a]ny aspects of the
12 injunctions that require defendants to engage in affirmative conduct are merely incidental to the
13 injunction’s objective to prohibit defendants from further violating” those laws].)

14 Finally, to the extent Defendants argue that the injunction is mandatory because it would
15 amount to re-implementing the Emergency Bail Schedule (“EBS”), that argument
16 mischaracterizes Plaintiffs’ requested relief. Plaintiffs do not seek to re-implement the EBS;
17 rather, during the 60-day period that the broader injunction proposed by Plaintiffs is held in
18 abeyance, Plaintiffs merely seek to prohibit the Defendants from unconstitutionally enforcing the
19 bail schedules for a subset of the putative class (people charged with lower-level offenses for
20 which \$0 money bail was set under the EBS). In other words, the EBS is merely a tool to identify
21 lower-level offenses to which the prohibition would apply.

22 In any event, while the proposed injunction here is without doubt prohibitory in nature, the
23 Court would have the authority to grant Plaintiffs’ proposed relief even if it *were* mandatory. (See
24 *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 394 [“It is well
25 established the judiciary possesses broad discretion in deciding the type of equitable relief to fit a
26 case’s particular circumstances. This broad discretion includes a court’s power to grant a
27 mandatory injunction.”]; *Allen v. Stowell* (1905) 145 Cal. 666, 669 [“The principles upon which
28 mandatory and prohibitory injunctions are granted do not materially differ. The courts are perhaps

1 more reluctant to interpose the mandatory writ, but in a proper case it is never denied.”].)
2 “Mandatory injunctions are most likely to be appropriate when ‘the status quo . . . is exactly what
3 will inflict the irreparable injury upon complainant.’” (*Hernandez, supra*, 872 F.3d at p. 999
4 [quoting *Friends for All Children, Inc. v. Lockheed Aircraft Corp.* (D.C. Cir. 1984) 746 F.2d 816,
5 830 fn.21]; see also *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th
6 1178, 1184 [mandatory injunction is appropriate in “extreme cases where the right thereto is
7 clearly established”].) Here, even if the requested relief *were* mandatory (and it is not), Plaintiffs
8 would still be entitled to an injunction because the continued enforcement of the bail schedule is
9 exactly what will inflict irreparable injury and the putative class members’ rights to be free from
10 wealth-based detention are clearly established.

11 **B. *O’Connell* Illustrates Why Plaintiffs’ Requested Relief is Proper**

12 The Court of Appeal’s decision in *O’Connell* illustrates why the requested preliminary
13 injunction is appropriate. In *O’Connell*, the plaintiffs challenged the requirement that students
14 pass the high school exit examination called the “CAHSEE” before they were permitted to
15 graduate. (*O’Connell, supra*, 141 Cal.App.4th at p. 1461.) The trial court granted an injunction
16 that provided defendants were “enjoined and restrained . . . from denying any high school
17 senior . . . who is otherwise eligible to graduate and receive a diploma from participating in
18 graduation exercises and receipt of such diploma solely on the ground that such student has not
19 passed all parts of the CAHSEE.” (*Id.* at p. 1462.)

20 The Court of Appeals made three holdings that are relevant here: First, the trial court failed
21 to consider countervailing public interests; second, the injunction was not tailored to remedy the
22 violations of fundamental rights alleged; and, third, the court overstepped the power of the
23 judiciary by requiring the state to provide students with diplomas to cure the constitutional and
24 statutory violations. (*Id.* at pp. 1471, 1475-1476, 1478.) All of these holdings support Plaintiffs’
25 proposed relief here.

26 ***The Proposed Injunction is in the Public Interest.*** The undisputed evidence shows that
27 Plaintiffs’ proposed injunction is in the public interest. As the Court is aware, Plaintiffs have
28 submitted voluminous evidence demonstrating that wealth-based detention and secured money

1 bail *harm* the public interest. (See, e.g., Mot. at pp. 12-15, 20-22; Reply to County Defs.’ Opp’n
2 at pp. 14-15.) Unlike in *O’Connell*, where the trial court failed to consider record evidence that
3 the relief would harm the public interest and disadvantage students who had passed CAHSEE,
4 here, the evidence in the record is overwhelming that an injunction would support the public’s
5 interest in a safe and just society. Specifically, the record before the Court establishes that the
6 proposed preliminary injunction would further the government’s and public’s interests in
7 reasonably ensuring victim and public safety and court attendance, as the EBS and systems in
8 other jurisdictions that do not rely on cash bail demonstrate that alternatives to the bail schedules
9 are more effective at meeting those goals. (See, e.g., Decl. of Christine S. Scott-Hayward, Ph.D,
10 at ¶¶ 45-48.) The injunction would also avoid the severe legal, financial, and health consequences
11 of incarceration on the individuals who are unconstitutionally detained pursuant to the bail
12 schedules. (See, e.g., *id.* at ¶¶ 28-37.) Moreover, the proposed injunction would remedy
13 constitutional violations, which is itself in the public interest. (*Hillman v. Britton* (1980) 111
14 Cal.App.3d 810, 826; *Melendres, supra*, 695 F.3d at p. 1002 [citation omitted].)⁴

15 ***The Proposed Injunction is Tailored to Address the Constitutional Violations.*** Plaintiffs’
16 proposed remedy is tailored to address the constitutional violations at issue here. *O’Connell* held
17 that an order requiring the State to provide students with diplomas was overbroad and not tailored
18 to remedy the violation of students’ right to public education. (*O’Connell, supra*, 141 Cal.App.4th
19 at p. 1478, italics omitted.) The court concluded that the trial court “erred by focusing its remedy
20 on equal access to diplomas rather than on equal access to education (and the funding necessary to
21

22 _____
23 ⁴ *O’Connell*, which was decided before *Daly*, determined that ordering the State to affirmatively
24 provide high school students with high school diplomas, rather than ordering it to remedy the
25 infringement of educational equality, did not preserve the status quo. (*O’Connell, supra*, 141 Cal.
26 App.4th at p. 1472.) Thus, that aspect of the injunction was mandatory because it sought to
27 remedy a past harm, not prevent a future one: the interim relief gave diplomas as a means of
28 “social promotion” (*i.e.*, remedying the past harms of failing to provide an adequate education, not
preventing such failures in the future). Here, Plaintiffs do not seek that Defendants confer any
material benefit on Plaintiffs and putative class members to remedy their past unconstitutional
detentions; rather, they seek to prohibit Defendants from unconstitutionally detaining putative
class members in the future, and thereby to preserve the status quo in which the class members’
rights are not being violated.

1 provide it)” because “[t]he purpose of education is not to endow students with diplomas, but to
2 equip them with the substantive knowledge and skills they need to succeed in life.” (*Ibid.*) Thus,
3 ordering that students receive diplomas instead of ordering that they be provided with an adequate
4 education was not tailored to the constitutional violation at issue. (*Ibid.*)

5 By contrast, here, Plaintiffs are not seeking that Defendants provide some benefit that
6 compensates putative class members for the past violation of their constitutional rights (as the
7 diplomas compensated for students’ lack of access to an adequate education in *O’Connell*). (See
8 *O’Connell, supra*, 141 Cal.App.4th at p. 1472 [remarking that the “relief of forcing the ‘social
9 promotion’ of plaintiffs, by ordering that they be given diplomas . . . does not maintain the status
10 quo of the litigation, but ends it.”].) For instance, Plaintiffs do not propose that Defendants
11 compensate putative class members with cash to cover expenses incurred while they were detained
12 or social services to help them overcome the severe physical, emotional, and psychological effects
13 of detention. Instead, by prohibiting enforcement of the bail schedules, Plaintiffs’ proposed
14 injunction is tailored to enjoin the precise constitutional violation at issue—pre-arraignment
15 detention under the bail schedules solely because of an arrested individual’s inability to pay a
16 secured cash bail. (Proposed Order at ¶¶ 9, 11.)

17 ***The Proposed Injunction Respects the Separation of Powers.*** Unlike the trial court’s
18 order that was reversed in *O’Connell*, Plaintiffs do not request that the Court require Defendants to
19 remedy their constitutional violations via a specific policy proposal. *O’Connell* held that the trial
20 court had overstepped the judiciary’s limits by ordering that diplomas be conferred upon high
21 school seniors regardless of whether they passed the CAHSEE, instead of ordering defendants “to
22 develop a plan” to remedy the constitutional violation. (*O’Connell, supra*, 141 Cal.App.4th at pp.
23 1475-1476.) In so holding, the court relied primarily on *Serrano v. Priest* ((1976) 18 Cal.3d 728
24 (*Serrano II*) and *Butt v. State of California* (1992) 4 Cal.4th 668, both of which affirmed
25 injunctions that enjoined constitutional violations of students’ fundamental right to education but
26 allowed the government defendants to determine how to best remedy those violations. *O’Connell*
27 reiterated that, to avoid treading into the powers of the executive and legislative branches, the
28 judicial remedy should be tailored to remedy the right at issue. (*O’Connell*, at p. 1461.)

1 Here, Plaintiffs’ proposed injunction is akin to the injunctions affirmed in *Serrano II*, *Butt*,
2 and other California Supreme Court cases. (See, e.g., *Crawford v. Bd. of Ed.* (1976) 17 Cal.3d
3 280, 285) [affirming injunction that required a school district’s board to “prepare and implement a
4 reasonably feasible desegregation plan”].) Plaintiffs’ proposed order seeks to enjoin Defendants’
5 constitutional violation and expressly requests that Defendants “develop a plan” to bring their
6 practices into line with constitutional requirements. (*O’Connell*, *supra*, 141 Cal.App.4th at p.
7 1475.) Paragraph 9 of the Proposed Order requests that Defendants be enjoined from enforcing
8 the bail schedule “or any form or derivative thereof that requires or has as its effect that the
9 existence or duration of detention is determined by an arrestee’s ability to pay” That
10 paragraph merely prohibits the Defendants from violating Plaintiffs’ and putative class members’
11 rights: it does not prescribe a specific means by which Defendants are to do so, and it is tailored to
12 remedying the rights at issue. Similarly, Paragraph 11 is simply a more limited version of
13 Paragraph 9 that prohibits Defendants from enforcing the bail schedules against a *subset* of
14 putative class members while Paragraph 9 is held in abeyance; it likewise does not stray from the
15 specific constitution violation at issue here (and is in fact a more modest remedy focused only on
16 the most egregious violations) and does not prescribe a specific means by which Defendants are to
17 stop enforcing the bail schedules as to that subset. Paragraph 10 provides a procedure for the
18 Defendants to develop a plan to implement the requirements in Paragraph 9. That language
19 expressly aligns with *O’Connell’s* determination—as well as the relief issued in *Serrano II* and
20 *Butt*—that an injunction may properly “direct[] the . . . executive branch[] [Defendants] to find a
21 way to redress the particular constitutional violation identified by the judicial branch.”
22 (*O’Connell*, at p. 1475.) This proposed relief is well within the judiciary’s power to grant relief
23 tailored to remedying constitutional violations.

24 In sum, *O’Connell* reaffirms that the relief sought by Plaintiffs is proper to remedy the
25 constitutional violations at issue.

26 **III. CONCLUSION**

27 For the foregoing reasons, as well as those presented in briefing, evidentiary submission,
28 and oral argument, the Court should grant Plaintiffs’ proposed preliminary injunction.

1 DATED: March 30, 2023

Respectfully Submitted,

2 MUNGER, TOLLES & OLSON
3 HADSELL STORMER RENICK & DAI LLP
4 SCHONBRUN SEPLOW HARRIS HOFFMAN &
5 ZELDES
6 CIVIL RIGHTS CORPS
7 PUBLIC JUSTICE

8 By: /s/ Brad D. Brian

9 Brad D. Brian
10 Munger, Tolles & Olson LLP
11 Attorneys for Plaintiffs

12 Additional Plaintiffs' Counsel:

13 ROWLEY J. RICE (SBN 313737)
14 Rowley.Rice@mto.com
15 TIANA S. BAHERI (SBN 330835)
16 Tia.Baheri@mto.com
17 TAYLOR L. BENNINGER (SBN 344825)
18 Taylor.Benninger@mto.com
19 MUNGER, TOLLES & OLSON LLP
20 350 South Grand Avenue, Fiftieth Floor
21 Los Angeles, California 90071-3426
22 Telephone: (213) 683-9100
23 Facsimile: (213) 687-3702

SALIL H. DUDANI (SBN 330244)
salil@civilrightscorps.org
9861 Irvine Center Dr,
Irvine, CA 92618
CIVIL RIGHTS CORPS
Telephone: (202) 844-4975
Facsimile: (202) 609-8030

19 PAUL L. HOFFMAN (SBN 71244)
hoffpaul@aol.com
20 JOHN C. WASHINGTON (SBN 315991)
jwashington@sshhlaw.com
21 SCHONBRUN, SEPLOW, HARRIS,
22 HOFFMAN & ZELDES, LLP
23 200 Pier Ave., Suite 226
24 Hermosa Beach, CA 90254
25 Telephone: (424) 297-0114
26 Facsimile: (310) 399-7040
27
28

1 **SERVICE LIST**

2
3 Gabriel Dermer
4 CITY ATTORNEY
5 200 N. Main Street, Room 800
6 Los Angeles, CA 90012-4131
7 Telephone: 978-8100
8 gabriel.dermer@lacity.org

9
10 *Attorneys for Defendants*
11 *City of Los Angeles*
12 *LA Police Department*
13 *Chief Michael Moore*

14
15 Paul Beach
16 Justin Clark
17 Jim Choi
18 Tammy Kim
19 LAWRENCE BEACH ALLEN & CHOI PC
20 150 South Los Robles Avenue
21 Suite 660
22 Pasadena, CA 91101
23 pbeach@lbaclaw.com
24 jclark@lbaclaw.com
25 jchoi@lbaclaw.com
26 tkim@lbaclaw.com
27 Telephone: (818) 545-1925

28
29 James Bowman
30 Kelsey Chandrasoma
31 Kyle Grossman
32 Dimitri Portnoi
33 O'MELVENY & MYERS LLP
34 400 South Hope Street, 18th Floor
35 Los Angeles, CA 90071
36 Phone: (213) 430-6000
37 Fax: (213) 430-6407
38 jbowman@omm.com
39 kchandrasoma@omm.com
40 kgrossman@omm.com
41 dportnoi@omm.com

42
43 *Attorneys for Defendants*
44 *County of Los Angeles*
45 *Los Angeles County Sheriff's Department*
46 *Los Angeles County Sheriff*