UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M.C. and T.G., on behalf of themselves and all similarly situated individuals,

Plaintiffs,

v.

JEFFERSON COUNTY, NEW YORK; COLLEEN M. O'NEILL, as the Sheriff of Jefferson County, New York; BRIAN R. McDERMOTT, as the Undersheriff of Jefferson County; and MARK WILSON, as the Facility Administrator of Jefferson County Correctional Facility,

Defendants.

Case No. 6:22-cv-190 (DNH/ATB)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
Antony P.F. Gemmell, #700911
Terry T. Ding, #702578
Molly K. Biklen, #515729
125 Broad Street, 19th Floor
New York, New York 10004
Telephone: 212-607-3300
Facsimile: 212-607-3318
agemmell@nyclu.org

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INTRODUCTION

Even after a court in this District ordered Defendants to provide one detained individual access to his prescribed methadone medication, Defendants continue to impose a categorical ban on agonist medication for opioid use disorder ("MOUD") at the Jefferson County Correctional Facility. In the past month alone, Defendants have subjected around a dozen individuals to that ban, stripping them of access to their prescribed medication and forcing them into painful and dangerous withdrawal. Defendants have done so despite these individuals' pleas for access to this critical treatment and despite the court's order in *P.G. v. Jefferson County*, No. 5:21-cv-388, recognizing that denial of such treatment is likely unconstitutional and impermissible discrimination on the basis of disability.

If their practices are not enjoined, Defendants will continue to deny dozens more people of access to their prescribed medication in the coming months. In light of the broad harms that Defendants' ban continues to inflict, Plaintiffs M.C. and T.G. seek to represent a class of similarly situated individuals in challenging the jail's cruel and discriminatory ban on agonist MOUD. Scores of putative class members every year are subjected to that ban. Resolving Plaintiffs' challenge to this practice would resolve claims common to all putative class members. And because the ban affects all class members in the same way, Plaintiffs' interest in pursuing their claims is closely aligned with those of the putative class. Plaintiffs therefore satisfy the requirement of Rule 23, and the Court should grant this motion and certify the class.

FACTS

I. Medication for Opioid Use Disorder

Opioid use disorder ("OUD") is a chronic brain disease that compels its patients to use opioids even though the consequences can be dire—and even fatal. Decl. of Richard N.

Rosenthal, M.D. ("Rosenthal Decl.") ¶¶ 10–11, 14. OUD has driven an opioid epidemic that has claimed more than 74,000 lives in the United States in the past year alone, including 2,360 in this state. CTRS. FOR DISEASE CONTROL & PREVENTION ("CDC"), *Provisional Drug Overdose Death Counts* (Feb. 16, 2022), https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm. This national crisis has become particularly acute during the COVID-19 pandemic. Rosenthal Decl. ¶ 22. Today, one person dies of opioid overdose every 7 minutes in this country. *See* CDC, *supra*.

Because OUD permanently rewires the brain for addiction, people with OUD cannot "will" their way out of continued opioid use. Rosenthal Decl. ¶¶ 12–15. The standard of care for OUD is treatment with agonist medications for OUD (agonist "MOUD"), such as methadone and buprenorphine, which activate opioid receptors in the brain to relieve withdrawal symptoms and control cravings. *Id.* ¶¶ 26, 32. There is broad consensus in the medical community that agonist MOUD is clinically necessary to treat OUD. *See id.* ¶¶ 29–30, 32. There is also medical consensus that ending MOUD treatment absent significant adverse side effects or contraindications is exceptionally dangerous and violates the standard of care. *Id.* ¶¶ 35–39, 42. Doing so triggers excruciating withdrawal symptoms that markedly increase the risk of relapse, overdose, and death. *Id.* ¶¶ 36–41. The risks of forced withdrawal are especially pronounced in carceral settings. *Id.* One study found that people who did not receive MOUD while incarcerated are almost seven times more likely to die of a drug overdose within a month of their release than people who received MOUD. *Id.* ¶ 40.

II. Defendants' Policy or Practice of Denying Access to Agonist Medication for Opioid Use Disorder

For years, Defendants have maintained a policy or practice of categorically denying agonist medications for OUDs—methadone and buprenorphine—to non-pregnant people in the

custody of the Jefferson County Correctional Facility. During that time, the jail has enforced its ban on agonist MOUD treatment on scores, and perhaps even hundreds, of people with OUD detained there, without regard to the grave consequences to their health and safety.[1] That includes Plaintiff T.G. and other current and former members of the putative class, including J.C., M.S.C., R.G., and S.G., each of whom was denied access to their prescribed treatment at the jail within the last month. The jail has refused every request from these individuals for continuation of their MOUD treatment, causing them to suffer agonizing withdrawal for weeks, and sometimes months. *See* Decl. of T.G. ("T.G. Decl.") ¶¶ 9–12, 16; Decl. of Antony Gemmell in Supp. of Pls.' Mot. for Class Certification ("Gemmell Class Cert. Decl.") ¶¶ 8–11.

III. Plaintiff M.C.

M.C. is a 29-year-old Croghan resident who faces incarceration at the Jefferson County Correctional Facility on March 2, 2022, pursuant to a plea deal. Decl. of M.C. ("M.C. Decl.") ¶ 1; Decl. of Antony Gemmell in Supp. of M.C.'s Mot. for TRO ("Gemmell TRO Decl.") ¶ 4. He is diagnosed with severe OUD for which he is prescribed daily treatment with an agonist medication for OUD. M.C. Decl. ¶¶ 2, 14.

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[1] *See* N.Y.S. DIV. CRIM. JUST. SERVS., *Monthly Jail Population Trends* at 11 (Feb. 1, 2022), https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf (showing an average of 140 to 160 people held at the Jefferson County Correctional Facility on any given day); THE PEW CHARITABLE TRUSTS, *New Momentum for Addiction Treatment Behind Bars* (Apr. 4, 2018), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/04/04/new-momentum-for-addiction-treatment-behind-bars ("At least a quarter of the people in U.S. prisons and jails are addicted to opioids."); SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. ("SAMHSA"), *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* at 41 (Oct. 25, 2021), https://www.samhsa.gov/data/report/2020-nsduh-annual-national-report (reporting that 11.2% of people aged 12 or older with OUD within the past year opioid use disorder received prescribed MOUD in the past year).

M.C. became addicted to opioids as a teenager after he was prescribed Percocet for injuries from a four-wheeling accident. *Id.* ¶ 2. He has lived with opioid addiction ever since. *Id.* After years of unsuccessful attempts to manage his OUD, M.C. is sustaining active recovery from OUD because of the daily methadone treatment he receives through the Credo Community Center in Watertown, New York. *Id.* ¶¶ 5–6, 8, 14. The daily methadone prescribed by his treating physician has enabled M.C. to manage his opioid cravings and has substantially mitigated other symptoms of OUD that previously plagued him. *Id.* ¶¶ 8, 14. During two previous periods of incarceration, M.C.'s methadone treatment was involuntary ended, each time resulting in a host of severe withdrawal symptoms. *Id.* ¶¶ 10–12.

Fearing that he would be cut off from his treatment under the Jefferson County Jail's MOUD ban during his impending detention, M.C. through counsel sent a letter on February 24, 2022, requesting that Defendants accommodate his disability by affording him continued access to his prescribed methadone while he is in the jail's custody. Gemmell TRO Decl., Ex. A. Defendants did not grant the request. *Id.* ¶ 7.

IV. Plaintiff T.G.

T.G., a 31-year-old Watertown resident, has been in pretrial detention at the Jefferson County Jail since January 20, 2022. T.G. Decl. ¶¶ 1, 8. She is diagnosed with OUD, for which she had been receiving daily treatment with a prescribed agonist MOUD leading up to her current detention. *Id.* ¶¶ 1, 6, 9. Upon taking T.G. into custody, Defendants ended that treatment pursuant to their blanket ban on agonist MOUD, and have refused to allow her access to that treatment at any point during her detention. *Id.* ¶¶ 8–9.

T.G. has lived with opioid addiction since the age of 23, when she turned to heroin use following the death of her young daughter. *Id.* ¶ 2. T.G. made numerous attempts to overcome

her OUD, including inpatient rehabilitation programs and therapy. *Id.* ¶ 3. But without medication to manage her opioid cravings and withdrawal, none of these programs worked. *Id.*

Beginning in 2016, T.G. sought treatment at Credo, where she was prescribed daily treatment with an agonist MOUD, methadone. *Id.* ¶ 5. Her prescribed methadone treatment had empowered her to stop using drugs and to work toward rebuilding her life. *Id.* ¶¶ 6–7. At the time her current detention began, T.G. was in active recovery and receiving daily prescribed treatment with methadone. *Id.*

When T.G. was taken into the jail's custody in January 2022, however, Defendants ended her treatment. *Id.* ¶ 8. Even though she repeatedly informed jail staff that she has a methadone prescription and pleaded to be given access to her medication, the staff told her that the jail does not provide methadone. *Id.* ¶¶ 9, 11–12. Defendants have refused to allow her access to that treatment at any point during her detention. *Id.*

The involuntary termination of her treatment has caused T.G. to suffer excruciating withdrawal symptoms: severe pain, continual nausea, vomiting, loss of appetite, anxiety, and restlessness. *Id.* ¶¶ 10, 16. She is now assaulted by constant drug cravings. *Id.* She is terrified of relapsing into addiction. *Id.* ¶ 20.

ARGUMENT

Plaintiffs move to certify a class defined as follows: all non-pregnant individuals who are or will be detained at the Jefferson County Correctional Facility and had or will have prescriptions for agonist MOUD at the time of entry into Defendants' custody. They also seek to

certify two subclasses: one of class members subject to pretrial detention and one of class members subject to postconviction detention.[2]

The Court should certify the putative class and subclasses because they satisfy the requirements of Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. *See, e.g.*, *V.W. by and through Williams v. Conway*, 236 F. Supp. 3d 554, 572–73 (N.D.N.Y. 2017) (Hurd, J.). Rule 23(a) contains four explicit prerequisites to class certification: "(1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation." *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 538 (2d Cir. 2016). In addition to these explicit requirements, courts have recognized an implicit requirement of "ascertainability." *In re Initial Pub. Offering Sec. Litig.*, 471 F.3d 24, 30 (2d Cir. 2006). Rule 23(b)(2) requires that the defendants have "acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

As the Second Circuit has explained, district courts must give these requirements "liberal rather than restrictive construction" and should "adopt a standard of flexibility." *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (cleaned up). Class actions are particularly appropriate where the plaintiffs are detained or incarcerated because "[p]risoners . . . come and go from institutions for a variety of reasons . . . [and n]evertheless the underlying claims tend to

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[2] The two putative subclasses account for the different standards that apply before and after conviction to a constitutional claim of inadequate jail medical care: Pretrial individuals can assert deliberate indifference under the Fourteenth Amendment by alleging that the defendants knew or should have known that failing to provide the requested medical care would pose a substantial risk of harm, *Charles v. Orange Cnty.*, 925 F.3d 73, 87 (2d Cir. 2019), whereas individuals serving postconviction sentences must show the defendants were actually aware of a substantial risk of harm, *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). That distinction is of little practical significance here because Defendants have actual knowledge of the harm their MOUD ban poses, which suffices to establish deliberate indifference under both the Eighth and Fourteenth Amendments. Accordingly, this memorandum treats the class and subclass together unless otherwise noted.

remain." *Clarkson v. Coughlin*, 145 F.R.D. 339, 346 (S.D.N.Y. 1993) (internal quotation marks and citation omitted).

I. The Putative Class Meets the Requirements of Rule 23(a).

A. The Putative Class (and Subclasses) Are Sufficiently Numerous.

The putative class and subclasses satisfy Rule 23's numerosity requirement that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[T]he numerosity inquiry is not strictly mathematical." *Pa. Pub. Sch. Employees' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014). It turns "not on mere numbers" but on "all the circumstances surrounding a case." *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993). "The relevant considerations include judicial economy, the geographic dispersion of class members, the financial resources of class members, and the ability of claimants to institute individual suits." *Raymond v. New York State Dep't of Corr. & Cmty. Supervision*, --- F. Supp. 3d. ---, No. 9:20-CV-1380, 2022 WL 97327, at *3 (N.D.N.Y. Jan. 11, 2022) (Hurd, J.) (citing *Robidoux*, 987 F.2d at 936). "[T]he Second Circuit has [also] relaxed the numerosity requirement where," as here, "the putative class seeks injunctive and declaratory relief pursuant to Rule 23(b)(2)." *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) (citing *Robidoux*, 390 F.2d at 935–36).

Here, "reasonable inferences drawn from the available facts" demonstrate that the putative class and subclasses are sufficiently numerous. *Hamelin v. Faxton-St. Luke's Healthcare*, 274 F.R.D. 385, 394 (N.D.N.Y. 2011) (Hurd, J.). Plaintiffs' counsel are aware of approximately a dozen individuals—both in pretrial and postconviction custody—who have been subjected to the jail's MOUD ban in the past month alone. Gemmell Class Cert. Decl. ¶¶ 8–11. Defendants' own data reflect that hundreds of people with OUD cycle through the Jefferson

County Correctional Facility annually. *See id.*, Ex. A; *see also* SAMHSA, *Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings* 3 (2019), https://store.samhsa.gov/sites/default/files/d7/priv/pep19-matusecjs.pdf (finding that approximately 19% of people in jails nationwide report regular opioid use). Of those individuals with OUD, the Court can reasonably assume that a substantial portion are, at the time they enter the jail, among the approximately 42% of New Yorkers receiving outpatient treatment for OUD who are being treated with prescribed MOUD. *See* SAMHSA, *National Survey of Substance Abuse Treatment Services State Profiles*, 200 (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt29397/2019_NSSATS_StPro_combined.pdf; *Hamelin*, 274 F.R.D. at 394 ("Courts are empowered to make common sense assumptions to support a finding of numerosity." (cleaned up)); *see also* SAMHSA, *Behavioral Health Barometer, New York, Volume 6*, 29–30 (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32849/NewYork-BH-Barometer_Volume6.pdf (showing approximately 50,000 New Yorkers received prescribed agonist MOUD on a given day in March 2019). And because the putative class and subclasses are "open," including individuals whom Defendants will detain in the future, many additional members will flow into it. *See, e.g.*, *Clarkson*, 145 F.R.D. at 348 (certifying class of current and future incarcerated individuals with hearing impairments where seven class members had been identified because of "inherently 'fluid'" nature of the class).

Beyond mere numbers, several contextual factors weigh in favor of numerosity. First, the putative class and subclasses consist entirely of current or future individuals detained at the jail, "the sort of revolving population that makes joinder of individual members a difficult proposition." *V.W.*, 236 F. Supp. 3d at 574; *see also* Gemmell Class Cert. Decl. ¶ 12; *Raymond*,

2022 WL 97327, at *4 ("Given the pace of the average federal civil suit, it would be difficult for any members of the proposed class [of incarcerated people] to manage to win relief before their release renders the case moot"); *Dean v. Coughlin*, 107 F.R.D. 331, 332–33 (S.D.N.Y. 1985) ("The fluid composition of a prison population is particularly well-suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remain constant.").

Second, "while the class members will obviously share the same geographic area, the ability of any one individual member of the class or the subclass to maintain an individual suit will necessarily be limited by the simple reality that they are being detained as part of the criminal justice process." *V.W.*, 236 F. Supp. 3d at 574. As courts have recognized, incarcerated plaintiffs "face myriad practical difficulties in maintaining individual suits because they 'enjoy very little freedom in their daily lives . . . .'" *Id.* (quoting *Redmond v. Bigelow*, No. 2:13-cv-393-DAK, 2014 WL 2765469, at *3 (D. Utah June 18, 2014)). And those difficulties would be all the more pronounced for putative class and subclass members here, who would have to litigate their individual claims while managing the crushing effects of opioid withdrawal. *See* Rosenthal Decl. ¶ 36 ("[W]ithdrawal from methadone is frequently more severe than withdrawal from heroin."); M.C. Decl. ¶ 15 ("The . . . times I was taken off methadone in jail . . . were the sickest I have ever been in my life.").

Finally, "litigating this suit as a class action promotes judicial economy, since it avoids multiple individual suits that raise the same issues and seek the same relief"—an end to Defendants' policies or practices depriving putative class and subclass members of their right to continue treatment with agonist MOUD. *See V.W.*, 236 F. Supp. 3d at 574.

B. Questions of Law and Fact Are Common to the Putative Class.

The questions of law and fact raised here are "common to the class," Fed. R. Civ. P. 23(a)(2), because their "resolution will affect all or a significant number of the putative class members." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015). In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court held that to satisfy the commonality requirement class claims "must depend upon a common contention . . . of such a nature that it is capable of classwide resolution." 564 U.S. 338, 350 (2011). "In other words, commonality is met where the determination of a single issue will resolve it as to 'the validity of each one of the claims in one stroke.'" *Raymond*, 2022 WL 97327, at *4 (quoting *Wal-Mart*, 564 U.S. at 350).

Plaintiffs challenges a single policy or practice barring agonist MOUD that applies to all class members. *See Johnson*, 780 F.3d at 137 ("Where the same conduct or practice by the same defendant give rise to the same kind of claims from all class members, there is a common question." (citation omitted)). That challenge raises a host of questions, the "[t]he common answers to [which] will drive the resolution of this litigation." *V.W.*, 236 F. Supp. 3d at 575. These include: (1) Whether Defendants maintain any policy or practice of denying prescribed agonist MOUD to individuals detained at the Jefferson County Correctional Facility; (2) Whether OUD is an objectively serious medical condition; (3) Whether involuntary cessation of prescribed agonist MOUD exposes class members to a substantial risk of serious harm; (4) Whether Defendants are deliberately indifferent to the substantial risk of serious harm to which involuntarily ceasing prescribed agonist MOUD exposes class members; (5) Whether Defendants deny class members meaningful access to the jail's medical services on account of class members' OUD by maintaining a policy or practice of denying prescribed agonist MOUD; and

(6) Whether Defendants' policy or practice of denying prescribed agonist MOUD discriminates on the basis of disability.

Any one of these questions suffices to satisfy Rule 23(a)'s commonality requirement. *See Raymond*, 2022 WL 97327, at *4 ("Even a single common question will do." (quoting *Wal-Mart*, 564 U.S. at 359) (cleaned up)). And in the context of jail and prison litigation specifically, courts frequently find commonality where incarcerated individuals share "a common interest in preventing the recurrence of the objectionable conduct." *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971); *see also, e.g.*, *V.W.*, 236 F. Supp. 3d at 575–76 (finding commonality where incarcerated plaintiffs challenged jail's isolation of juveniles and denial of educational access); *Marriott v. Cnty. of Montgomery*, 227 F.R.D. 159, 172 (N.D.N.Y. 2005) (Hurd, J.) (finding commonality where plaintiffs challenged jail strip-search procedure), *aff'd*, No. 05-1590-CV, 2005 WL 3117194 (2d Cir. Nov. 22, 2005).

"[F]actual differences in the claims of the class do not preclude a finding of commonality." *V.W.*, 236 F. Supp. 3d at 575 (quoting *Sykes v. Mel Harris & Assocs., LLC*, 285 F.R.D. 279, 286 (S.D.N.Y. 2012)) (cleaned up). What matters is "the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350 (cleaned up). Here, while certain particulars of each class member's OUD are necessarily individual, the challenge against Defendants' MOUD ban is fundamentally the same across the class, raising "common questions" that can be resolved on a class-wide basis. *Johnson*, 780 F.3d at 137; *see also, e.g.*, *A.T. by & through Tillman v. Harder*, 298 F. Supp. 3d 391, 408 (N.D.N.Y. 2018) (finding commonality where pre-trial and post-conviction subclasses challenged constitutionality of a "common course of conduct"); *Williams v. Conway*, 312 F.R.D. 248 (N.D.N.Y. 2016) (certifying class of deaf and hard-of-hearing plaintiffs who alleged jail

failed to provide them varying disability accommodations); *Brooklyn Ctr. for Independence of the Disabled v. Bloomberg*, 290 F.R.D. 409, 418 (S.D.N.Y. 2012) (certifying class with "diverse disabilities" despite finding that members "will not all be affected by the alleged omissions in the City's plan the same way").

C. Plaintiffs' Claims are Typical of Those of the Putative Class.

For substantially the reasons that Plaintiffs' claims satisfy the commonality requirement, they also satisfy Rule 23(a)(3)'s requirement of typicality. *See Sykes*, 285 F.R.D. at 287 ("The commonality and typicality requirements of Rule 23(a) tend to merge such that similar considerations inform the analysis for both prerequisites."). Rule 23(a)(3) requires that "the claims . . . of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality requirement is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar arguments to prove the defendant's liability." *V.W.*, 236 F. Supp. 3d at 576 (quoting *Stinson v. City of New York*, 282 F.R.D. 360, 370–71 (S.D.N.Y. 2012)). "When the same unlawful conduct was directed at or affected both the named plaintiffs and the prospective class, typicality is usually met." *Id.* (internal citation omitted).

Here, Plaintiffs and other putative class members share claims "based on the common application of certain challenged policies." *Id.* Specifically, Plaintiffs and other class members are all subject to the same policy or practice of denying agonist MOUD, the class of medications that all class members have been prescribed and on which all class members depend. And whatever "minor variations" among each class member's facts may exist, *id.*, Plaintiffs' constitutional and statutory arguments against the challenged policy are fundamentally the same. *See Robidoux*, 987 F.2d at 936 (finding typicality where "each class member makes similar legal

arguments to prove the defendants' liability"); *A.T.*, 298 F.Supp.3d at 408–09 (finding typicality where pretrial and postconviction subclasses challenged a "common course of conduct").

D. Plaintiffs Will Fairly and Adequately Represent the Putative Class.

Plaintiffs also satisfies the fourth and final requirement of Rule 23(a): that they "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement of Rule 23(a)(4) is twofold: First, "the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members," *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006); and second, class counsel must be "qualified, experienced and able to conduct the litigation," *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000).

Plaintiffs' interests align closely with those of the putative class because they will be "subjected to the same common course of treatment by the same officials on the basis of the same [practices]" as other members of the putative class. *V.W.*, 236 F. Supp. 3d at 577. Plaintiffs have no foreseeable conflict with other class members, let alone the sort of "fundamental" conflict that would be necessary to defeat adequacy. *Id.* at 576 (quoting *Sykes*, 780 F.3d at 287). And they have expressed a desire to end Defendants' challenged policies and practices related to agonist MOUD. *See* M.C. Decl. ¶ 15; T.G. Decl. ¶ 21.

Moreover, as a court in this District has previously recognized, putative class counsel are adequately qualified, experienced, and able for Rule 23 purposes, having "extensive litigation experience in the class action context and in effectively seeking classwide injunctive relief in federal forums." *V.W.*, 236 F. Supp. 3d at 577; *see also, e.g.*, *Peoples v. Annucci*, 180 F. Supp. 3d 294, 308 (S.D.N.Y. 2016) (approving class settlement in litigation brought by the New York Civil Liberties Union).

E. The Putative Class is Ascertainable.

To the extent Rule 23's implied requirement of ascertainability applies here,[3] the putative class satisfies that "modest threshold requirement." *In re Petrobras Securities*, 862 F.3d 250, 269 (2d Cir. 2017). To be ascertainable, a class must be "defined using objective criteria that establish membership with definite boundaries." *Id.* The ascertainability requirement "only interferes with class certification 'if a proposed class definition is indeterminate in some fundamental way.'" *Raymond*, 2022 WL 97327, at *7 (quoting *In re Petrobas*, 862 F.3d at 269).

Here, class membership is defined solely by three objective criteria: whether an individual is detained at the Jefferson County Correctional Facility, whether they were prescribed agonist MOUD when they entered Defendants' custody, and whether they were pregnant at that time. Because these criteria are definite, making clear the "general demarcations" of the class, the putative class is ascertainable. *Raymond*, 2022 WL 97327, at *7 (quoting *Floyd*, 283 F.R.D. 171–72).

II. The Putative Class Meets the Requirements of Rule 23(b).

The putative class also meets the requirements of Rule 23(b) because Plaintiffs allege that Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

"Rule 23(b)(2) comes into play when litigants seek 'institutional reform in the form of injunctive relief.'" *Raymond*, 2022 WL 97327, at *9 (quoting *Stinson*, 282 F.R.D. at 379). The

[3] As a court in this District recently noted, district courts in this Circuit have called into question whether the ascertainability requirement applies to Rule 23(b)(2) classes. *See Raymond*, 2022 WL 97327, at *7; *e.g.*, *Floyd v. City of New York*, 283 F.R.D. 153, 162 (S.D.N.Y. 2012) ("[I]t is not clear that the implied requirement of definiteness should apply to Rule 23(b)(2) class actions at all.").

Supreme Court has identified civil rights cases as "prime examples" of Rule 23(b)(2) class actions. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997). This case presents precisely such an example: Plaintiffs challenge a systemic policy or practice by which all class members face denial of prescribed agonist MOUD in violation of their constitutional and statutory rights. *See Raymond*, 2022 WL 97327, at *9. Here, members of the putative class "would benefit from the same remedy—an order enjoining defendants from application of the policies and practices resulting in the deprivations at issue." *V.W.*, 236 F. Supp. 3d at 577. And because "a single injunction or declaratory judgment would provide relief to each member of the class," *Wal-Mart*, 564 U.S. at 360, the putative class qualifies for certification under Rule 23(b)(2).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify the putative class and subclasses in accordance with the proposed definitions; appoint Plaintiffs M.C. and T.G. as class representatives; and appoint undersigned counsel as counsel for the class.

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Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

By: /s/ *Antony P.F. Gemmell*
Antony P.F. Gemmell, #700911
Terry T. Ding, #702578
Molly K. Biklen, #515729
125 Broad Street, 19th Floor
New York, New York 10004
Telephone: 212-607-3300
Facsimile: 212-607-3318
agemmell@nyclu.org

Counsel for Plaintiffs