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UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

HUMAN RIGHTS DEFENSE CENTER,  
Plaintiff,

v.

TOMMY JOHNSON, individually and in his  
official capacity as Director of the Hawaii  
Department of Corrections and Rehabilitation;  
PAMELA STURZ, individually and in her  
official capacity as Deputy Director of  
Correctional Institutions at the Hawaii  
Department of Corrections and Rehabilitation;  
and JOHN AND JANE DOES 1-20,  
individually and in their official capacities,  
Defendants.

Case No. 1:25-cv-00311 RT

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

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**NOTICE OF MOTION AND MOTION**

**TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiff Human Rights Defense Center (“Plaintiff”), pursuant to Federal Rule of Civil Procedure 65(a), moves this Court to issue a preliminary injunction enjoining Defendants Tommy Johnson, Pamela Sturz, and John and Jane Does 1-20 (collectively “Defendants”) from implementing unconstitutional mail policies and practices and refusing to deliver Plaintiff, Human Rights Defense Center’s (“HRDC” or “Plaintiff”) publications and correspondence to persons in Defendants’ custody in violation of Plaintiff’s rights to free speech and due process under the First and Fourteenth Amendments to the Constitution of the United States.

This Motion is based on the Notice and Memorandum of Points and Authorities, the Declarations of Paul Wright and Louis Christopher Eichenlaub filed herewith, the Complaint, and any oral argument or evidence permitted at any hearings on this motion. Plaintiff requests a hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Plaintiff files this motion to enjoin the Defendants from unconstitutionally censoring HRDC’s books, magazines and correspondence mailed to incarcerated persons, and from failing to provide due process to challenge censorship decisions. HRDC’s mission is to provide incarcerated persons with reading materials with news and analysis relevant to their constitutional and human rights and options for accessing education while incarcerated. HRDC publishes and distributes magazines and books and also mails them and other written communications to incarcerated persons.

Since April 2024, Defendants have engaged in at least fifty-six (56) separate instances of unlawful suppression of HRDC’s speech without due process, by refusing to deliver books, magazines, and correspondence mailed by HRDC to

1 persons incarcerated at the Hawaii Department of Corrections and Rehabilitation  
2 (“DCR”) in violation of the First Amendment. They have also failed to provide  
3 HRDC adequate notice and opportunity to challenge the censorship decisions, in  
4 violation of the Due Process Clause of the Fourteenth Amendment. Defendants’  
5 current written mail policies and procedures are unconstitutional on their face and as  
6 applied to HRDC, as they allow censorship of HRDC’s mailings with no rational  
7 connection to any legitimate penological interest, and do not provide the minimum  
8 procedural safeguards required to challenge the censorship.

9 HRDC’s publications and correspondence pose no threat to the safety or  
10 security of DCR and, in fact, have been successfully mailed to incarcerated persons  
11 in thousands of jails and prisons across the United States for over thirty-five years  
12 without incident. Plaintiff attempted to resolve these violations without litigation by  
13 mailing a letter to Defendants on December 16, 2024, but Defendants did not  
14 respond and the censorship continued.

15 As Defendants’ censorship is not rationally related to any legitimate  
16 penological interest, and HRDC’s free speech rights are being infringed without due  
17 process, Plaintiff’s likelihood of success on the merits is great. The violations of  
18 HRDC’s constitutional rights are causing irreparable harm, and the balance of  
19 hardships and public interest tips sharply in Plaintiff’s favor. A preliminary  
20 injunction should be granted.

## 21 **FACTUAL BACKGROUND**

### 22 **I. HRDC’S PUBLICATIONS AND BOOKS**

23 The Human Rights Defense Center is a not-for-profit charitable organization  
24 under Section 501(c)(3) of the Internal Revenue Code. *See* Declaration of Paul  
25 Wright in Support of Plaintiff’s Motion for Preliminary Injunction (“Wright Decl.”)  
26 ¶ 2. For more than thirty-five years, HRDC has focused its mission on public  
27 education, advocacy and outreach to incarcerated persons and the public about the  
28 economic and social costs of prisons to society, and to help incarcerated persons to



1 educate themselves about their constitutional and human rights and to learn about  
2 accessing education while incarcerated. *Id.* HRDC accomplishes this mission  
3 through advocacy; litigation; and publication and distribution of books, magazines,  
4 and other information about correctional facilities and the rights of incarcerated  
5 persons. *Id.*

6 HRDC publishes two soft-cover magazines, which are each printed on  
7 newsprint bound by two small staples. Wright Decl. ¶¶ 4-5. HRDC publishes and  
8 distributes an award-winning monthly magazine titled *Prison Legal News*:  
9 *Dedicated to Protecting Human Rights* (“*Prison Legal News*”), which contains news  
10 and analysis about the conditions and management of correctional facilities, the  
11 rights of incarcerated persons, court opinions, and other matters of interest to  
12 incarcerated persons. *Id.* ¶ 4. HRDC also publishes and distributes a monthly  
13 magazine titled *Criminal Legal News Dedicated to Protecting Human Rights*  
14 (“*Criminal Legal News*”), which contains news and analysis about individual rights,  
15 court rulings, and other criminal legal-related issues. *Id.* ¶ 5. HRDC’s magazines  
16 provide timely, in-depth coverage of judicial decisions and other recent events  
17 concerning the criminal legal system in a way that would be impossible through  
18 other means of communication. *Id.* ¶ 6.

19 HRDC also distributes several different soft-cover books on criminal justice,  
20 health and legal issues that are of interest to incarcerated persons and others through  
21 the U.S. Postal Service. Pertinent to this case, HRDC publishes the *Prisoners’*  
22 *Guerilla Handbook: A Guide to Correspondence Programs in the United States and*  
23 *Canada* (“*Prisoners’ Handbook*”), which provides incarcerated persons information  
24 on enrolling at accredited higher educational, vocational and training schools.  
25 Wright Decl. ¶ 7. HRDC does not publish, but is the sole national distributor of  
26 *Protecting Your Health and Safety* (“*PYHS*”), which describes the rights, protections  
27 and legal remedies available to persons concerning their health and safety while they  
28 are incarcerated. *Id.*



1 HRDC also communicates with incarcerated persons through the mail by  
 2 sending them informational brochure packets and letters that provide pertinent  
 3 information about HRDC's publications and related topics. Wright Decl. ¶ 9.

4 Since its creation in 1990, HRDC has sent its publications and books to  
 5 incarcerated persons and law librarians in more than 3,000 correctional facilities in  
 6 all fifty states, including at the highest security prisons, and at the Federal Detention  
 7 Center Honolulu. Wright Decl. ¶ 12. In fact, prior to 2024, HRDC had been  
 8 sending its publications to incarcerated persons at DCR facilities in Hawaii for more  
 9 than three decades without incident. *Id.* In its more than 35-year history, HRDC is  
 10 not aware of and has never been notified of any security incident caused by any of  
 11 its publications or correspondence at any jail, prison, or other detention facility. *Id.*  
 12 ¶ 20.

## 13 **II. DEFENDANTS' UNCONSTITUTIONAL MAIL AND BOOK** 14 **POLICIES AND PRACTICES.**

15 Since April 2024, HRDC has mailed magazines, books and other  
 16 correspondence to incarcerated persons at DCR's facilities. Wright Decl. ¶¶ 21-29.  
 17 Each of these items were individually addressed and separately mailed with postage  
 18 fully paid. *Id.* Defendants, however, have refused to deliver many of these items to  
 19 the intended recipients. *Id.* ¶¶ 31-39. Since April 2024, Defendants have censored  
 20 at least fifty-six (56) items of mail sent by HRDC to incarcerated persons at DCR  
 21 facilities including: fifteen (15) issues of *Prison Legal News*; thirteen (13) issues of  
 22 *Criminal Legal News*; ten (10) informational brochures; eight (8) copies of *PYHS*;  
 23 seven (7) copies of *Prisoners' Handbook*; and three (3) follow-up letters. *Id.* ¶ 32.<sup>1</sup>  
 24 Each item of mail was returned to HRDC by Defendants via the "Return to Sender"

25  
 26 <sup>1</sup> **Exhibit A** to the Wright Declaration is a spreadsheet of information kept in the  
 27 normal course of business by HRDC that lists all items of mail that were returned by  
 28 DCR to HRDC, excluding returned mail that was intended for incarcerated persons  
 who were no longer in custody at DCR. Wright Decl. ¶ 31. **Exhibit B** to the  
 Wright Declaration contains true and correct electronic copies of the front page or  
 mailing envelope each of the censored and returned items. *Id.*

1 service of the United States Postal Service (“USPS”), at HRDC’s expense. *Id.*  
 2 Most of the rejected items were marked with an ink stamp or a label containing the  
 3 words “RETURN TO SENDER” and “UNAUTHORIZED MAIL.” *Id.* ¶ 33. One  
 4 of the items was also marked with an ink stamp containing the word “CENSORED.”  
 5 *Id.* Other than these vague markings, Defendants never provided notice to HRDC of  
 6 any of these censorship decisions, nor was HRDC provided any opportunity to  
 7 appeal the censorship decisions. *Id.* ¶ 44.

8 DCR’s Correctional Institutions Division policies are available on DCR’s  
 9 public website at <https://dcr.hawaii.gov/policies-and-procedures/pp-cor/> (last visited  
 10 July 15, 2025). Under Chapter 15 of these policies, there is a hyperlink to the policy  
 11 # COR.15.05, which governs publications mailed to incarcerated persons (the  
 12 “Publication Policy”) at [https://dcr.hawaii.gov/wp-](https://dcr.hawaii.gov/wp-content/uploads/2024/06/COR.15.05-Inmate-Access-to-Publications.pdf)  
 13 [content/uploads/2024/06/COR.15.05-Inmate-Access-to-Publications.pdf](https://dcr.hawaii.gov/wp-content/uploads/2024/06/COR.15.05-Inmate-Access-to-Publications.pdf) (last visited  
 14 July 15, 2025). This Publication Policy states that it took effect on January 1, 2024,  
 15 and supersedes the prior February 1, 2016 version of the policy.

16 Defendants’ Publication Policy provides, in pertinent part:

17 **5.0 PROCEDURES TO RECEIVE PUBLICATIONS**

18 Facility Wardens shall designate staff to censor and approve all incoming  
 19 publications for inmates in accordance with the provisions of this policy.

- 20 .1 An inmate may receive publications only from a publisher, a book  
club or a bookstore.
- 21 .2 Inmate requests for subscriptions or individual publications shall  
22 be submitted to the Case Manager/Counselor who will ascertain  
23 whether the publication is likely to be approved. Cash on delivery  
24 orders shall not be accepted; the inmate, their family or friends  
25 must pre-pay for all orders.
- 26 .3 Facility Wardens may set limits on the number of volume of  
publications an inmate may receive or retain in his/her quarters  
(for life, sanitation, or housekeeping reasons).

27 **PROHIBITED PUBLICATIONS**

- 28 .1 Publications which may be prohibited by the Warden/designee  
include but are not limited to publications that contain pictures,  
depictions, illustrations, or information that would threaten,

1 undermine, or degrade personal safety of staff, volunteers, inmates,  
2 or others, such as:

- 3 a. Depicting or describing procedures for the construction or use  
4 of weapons, ammunition, bombs or incendiary devices;
- 5 b. Depicting, encouraging, or describing methods of escape from  
6 correctional facilities (or contains blue prints, drawings or  
7 similar descriptions of correctional facilities) including the  
8 functionality of locks and/or security devices (i.e. cameras,  
9 alarms) or how to bypass or defeat the security functions of  
10 these devices;
- 11 c. Depicting or describing procedures for the brewing of alcoholic  
12 beverages or the making or manufacture of drugs or poisons or  
13 extolling the virtues of drug use;
- 14 d. Writings in code;
- 15 e. Depicting patterns for tattoos and/or skin modification  
16 equipment which would provide, at a minimum, visual aids for  
17 inmates wishing to reproduce this type of body ornamentation  
18 and/or equipment;
- 19 f. Depicting, describing or encouraging activities which may lead  
20 to the use of physical violence or group disruption;
- 21 g. Depicting the use of hands, feet, or head as weapons, fighting  
22 weapons and techniques, self-defense and martial arts;
- 23 h. Encouraging or instructing in the commission of criminal activity;
- 24 i. Containing sexually explicit material;
- 25 j. Violating federal or Hawaii obscenity laws or encouraging  
26 criminal activity;
- 27 k. Containing any material that would have an adverse impact on  
28 the rehabilitation goals of the inmates (i.e. sex offender  
treatment) or on the management and security of the institution;
- l. Creating a hostile work environment for staff or for other inmates;
- m. Containing racism and/or religious oppression and the superiority of one race/religion/political group over another, and/or the degradation of one race/religion/political group by another;
- n. Containing any material that advocates the overthrow of the Government of the United States of America or the State of Hawaii;
- o. Containing STG or gang-related activities and plans to include terrorism; or

p. Threatening or undermine safety, security, order, discipline, control, or other legitimate penological interests.

.2 Facility Wardens may not establish an excluded list of publications. Individual publications shall be reviewed prior to rejection. Publications must be evaluated using content-neutral criteria [sic]; rejecting such publications cannot be arbitrary or irrational or based on the biases, personal beliefs or personal preferences of the Warden/designee.

.3 If any part of a publication is determined to violate content-neutral mail regulations, the publication may be rejected in its entirety. The U.S. Supreme Court has ruled that if a publication contains portions which should be rejected, the entire publication should be refused rather than simply tearing out the offending material.

#### PROCEDURES TO REJECT PUBLICATIONS

.1 When a publication for an inmate is rejected or denied, the publisher and the inmate to whom the publication was addressed shall both be notified in writing of the following:

- a. Notification of rejection or denial;
- b. Reason for rejection or denial; and
- c. Process for both the inmate and the publisher to appeal the rejection or denial to the Warden/designee.

.2 Facility mailroom staff will document receipt of prohibited publication on OCR Form# 8324 "Prohibited Publication".

.3 A copy of OCR Form# 8324 "Prohibited Publication" must be sent to the publisher. The publisher has up to seven (7) calendar days from receipt to appeal. The Warden will provide a response to the appeal from the Publisher or third parties within thirty (30) days.

.4 Inmate appeals shall be made through the inmate grievance system within fifteen (15) calendar days of a rejected publication.

.5 The publications must be retained at the facility's mailroom for the duration of the appeals process as evidence; the inmate shall pay for the postage of any rejected publications they wish either returned to the publisher for refund or sent to a private party.

.6 In the event the publication(s) is deemed appropriate based on the outcome of an investigation and/or grievance, the publication will be forwarded to the inmate.

See Wright Decl. ¶ 47, Ex. J.

In addition to DCR's Publication Policy, each of DCR's eight facilities has a separately posted policy pertaining to mail procedures. The mail procedures for seven of those facilities (including HCCC, KCCC, MCCC, OCCC, HCF, WCF and

1 WCCC) all state that “[b]ooks, magazines, food items, etc. may not be sent to an  
 2 inmate.” PDFs of each facilities’ mail procedures are posted on DCR’s public  
 3 website. As an example, OCCC’s mail procedures are available at  
 4 [https://dcr.hawaii.gov/wp-content/uploads/2022/04/OCCC-Inmate-Procedures-](https://dcr.hawaii.gov/wp-content/uploads/2022/04/OCCC-Inmate-Procedures-Update-3.30.22.pdf)  
 5 [Update-3.30.22.pdf](https://dcr.hawaii.gov/wp-content/uploads/2022/04/OCCC-Inmate-Procedures-Update-3.30.22.pdf) (last visited July 15, 2025). *See* Wright Decl. ¶ 47, Ex. K at 2.

6 Defendants’ Publication Policy is unconstitutional on its face and as applied,  
 7 and it is unduly broad and vague. This is especially true because the books and  
 8 magazines published and/or distributed by HRDC cover topics of great public  
 9 concern and contain core protected speech, including political speech and social  
 10 commentary, and educational information relating to the rights of incarcerated  
 11 persons, pertinent legal cases, and incarcerated persons’ health and safety, *id.* at  
 12 ¶¶ 4-9, 13, 50, and are thus entitled to the highest protection afforded by the First  
 13 Amendment to the United States Constitution. There is no legitimate penological  
 14 justification for Defendants to refuse to accept HRDC’s books and other  
 15 publications for delivery at DCR facilities, and Defendants failed to provide HRDC  
 16 with any pertinent information as to why its publications were being censored. *See*  
 17 Declaration of Louis Christopher Eichenlaub in Support of Plaintiff’s Motion for  
 18 Preliminary Injunction (“Eichenlaub Decl.”) ¶¶ 54-55, 57, 59-60. Although DCR’s  
 19 Publication Policy indicates that both incarcerated persons and publishers are to be  
 20 given notice of censorship and an opportunity to appeal censorship decisions, in  
 21 practice HRDC received neither notice nor an opportunity to appeal. *Id.* ¶ 59.

22 The mail procedures posted by seven out of DCR’s eight facilities are also  
 23 unconstitutional on their face and as applied. The mail procedures posted for  
 24 HCCC, KCCC, MCCC, OCCC, HCF, WCF and WCCC all expressly ban  
 25 publications stating that “[b]ooks, magazines, food items, etc. may not be sent to an  
 26 inmate.” Wright Decl. ¶ 47. Accordingly, these mail procedures also violate  
 27 HRDC’s rights to free speech afforded by the First Amendment to the United States  
 28 Constitution. There is no legitimate penological justification for Defendants to

1 refuse to accept HRDC's publications for delivery at DCR's facilities. Eichenlaub  
2 Decl. ¶¶ 55, 60, 62-63.

3 HRDC brought these problems to DCR's attention in a certified letter to  
4 Defendant Johnson, which was mailed on December 16, 2024. Wright Decl. ¶ 45,  
5 Ex. I. However, DCR did not reply to the letter, and the censorship continued. *Id.*

6 By its adoption and application of these policies and practices, Defendants are  
7 impermissibly interfering with protected expressive activities and chilling future  
8 speech from HRDC and others. Since HRDC continues, and will continue, to  
9 communicate with persons confined at the DCR's facilities, *see* Wright Decl. ¶ 46,  
10 Defendants' current policies and practices, unless enjoined, will continue to violate  
11 HRDC's constitutional rights, causing irreparable harm.

## 12 LEGAL STANDARD

13 A preliminary injunction is appropriate where a plaintiff demonstrates  
14 “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer  
15 irreparable harm in the absence of preliminary relief, [3] that the balance of equities  
16 tips in his favor, and [4] that an injunction is in the public interest.” *Stormans, Inc.*  
17 *v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def.*  
18 *Council, Inc.*, 555 U.S. 7, 20 (2008)). Ninth Circuit precedent “clearly favors  
19 granting preliminary injunctions to a plaintiff ... who is likely to succeed on the  
20 merits of his First Amendment claim.” *Klein v. City of San Clemente*, 584 F.3d  
21 1196, 1208 (9th Cir. 2009). Under the Ninth Circuit's “sliding scale” approach, “the  
22 elements of the preliminary injunction test are balanced, so that a stronger showing  
23 of one element may offset a weaker showing of another.” *Hernandez v. Sessions*,  
24 872 F.3d 976, 990 (9th Cir. 2017) (internal quotation marks and citation omitted).  
25 To grant preliminary injunctive relief, a court must only find that “a certain  
26 threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640  
27 F.3d 962, 966 (9th Cir. 2011) (*per curiam*). Under either approach, a preliminary  
28 injunction should be issued.



## ARGUMENT

### I. HRDC IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS.

#### A. Defendants Are Violating HRDC's Constitutional Rights To Communicate With Incarcerated Persons.

Defendants' policies and practices violate settled law on the First Amendment rights of publishers and incarcerated persons. "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution," *Turner v. Safley*, 482 U.S. 78, 84 (1987), nor do they bar others "from exercising their own constitutional rights by reaching out to those on the 'inside,'" *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989). Courts have long held that publishers and incarcerated persons have First Amendment rights to communicate with each other, subject only to limitations required by legitimate security concerns. "[T]here is no question that publishers who wish to communicate with those who ... willingly seek their point of view have a legitimate First Amendment interest in access to prisoners." *Thornburgh*, 490 U.S. at 408. Indeed, the interests of senders and their intended recipients are "inextricably meshed," and "censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendments rights of those who are not prisoners." *Procunier v. Martinez*, 416 U.S. 396, 409 (1974), *overruled in part on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 411-14 (1989). "Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, it is plain that the latter's interest is grounded in the First Amendment's guarantee of freedom of speech." *Id.* at 408.

HRDC's speech covers topics of great public concern and therefore "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks omitted); *see also Pell v. Procunier*, 417 U.S. 817, 830 n.7 (1974) ("[T]he conditions in this Nation's prisons are a matter that is both newsworthy and of great public importance."); *Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir.



2001) (holding speech contained in *Prison Legal News* “is core protected speech, not commercial speech or speech whose content is objectionable on security or other grounds”).

To withstand First Amendment scrutiny, a jail or prison policy must be “reasonably related to legitimate penological interests,” and must not be an “exaggerated response” to any alleged security concerns. *Turner*, 482 U.S. at 89-91. This inquiry turns on four factors:

(1) whether the regulation is rationally related to a legitimate and neutral government objective; (2) whether there are alternative avenues that remain open to the inmates to exercise the right; (3) the impact that accommodating the asserted right will have on other guards and prisoners, and on the allocation of prison resources; and (4) whether the existence of easy and obvious alternatives indicates that the regulation is an exaggerated response by prison officials.

*Cook*, 238 F.3d at 1149 (citing *Turner*, 482 U.S. at 89-90). If a correctional facility “fails to show that the regulation is rationally related to a legitimate penological objective, [courts] do not consider the other factors,” and the rule is invalid. *Ashker v. Cal. Dep’t of Corrs.*, 350 F.3d 917, 922 (9th Cir. 2003). While respectful of correctional officials’ expertise, *Turner*’s “reasonableness standard is not toothless.” *Thornburgh*, 490 U.S. at 414 (internal quotation marks omitted).

Accordingly, the Ninth Circuit has regularly ruled in favor of publishers challenging rules restricting delivery of their publications to incarcerated persons and has specifically upheld HRDC’s right to send *Prison Legal News* to them. *See, e.g., Prison Legal News v. Ryan*, 39 F.4th 1121, 1130, 1136 (9th Cir. 2022) (holding that prison officials violated the First Amendment by restricting sexual material that is not explicit and by redacting an article describing a prison riot); *Hrdlicka v. Reniff*, 631 F.3d 1044, 1055 (9th Cir. 2011) (addressing ban on unsolicited publications); *Prison Legal News v. Lehman*, 397 F.3d 692, 703 (9th Cir. 2005) (rejecting regulation that prevented delivery of *Prison Legal News*); *Cook*, 238 F.3d at 1149-50 (same); *Crofton v. Roe*, 170 F.3d 957, 960-61 (9th Cir. 1999) (rejecting

ban on gift publications). HRDC is highly likely to prevail on each of the *Turner* factors.<sup>2</sup>

**1. Defendants’ Mail Policies And Practices Are Not Rationally Related To Any Legitimate Penological Objectives.**

The first *Turner* factor looks to whether there is “a ‘valid, rational connection’ between the prison regulation and the legitimate governmental interest put forward to justify it.” *Turner*, 482 U.S. at 89. “The first factor is a sine qua non .... Therefore, if the prison fails to show that the regulation is rationally related to a legitimate penological objective, [the Court] do[es] not consider the other factors.” *Ashker*, 350 F.3d at 922 (citations omitted). Under this prong, “the ‘logical connection between the regulation and the asserted goal’ must not be ‘so remote as to render the policy arbitrary or irrational,’ and the governmental objective must be both ‘legitimate and neutral.’” *Frost v. Symington*, 197 F.3d 348, 354 (9th Cir. 1999) (quoting *Turner*, 482 U.S. at 89-90). When a plaintiff “refutes a common-sense connection between a legitimate objective and a prison regulation,” the defendant “must present enough counter-evidence to show that the connection is not so ‘remote as to render the policy arbitrary or irrational.’” *Id.* at 357 (citations omitted).

Prison authorities cannot rely on general or conclusory assertions to support their policies. Rather, they must first identify the specific penological interests involved and then *demonstrate* both that those specific interests are *the actual bases* for their policies and that the policies are reasonably related to the furtherance of the identified interests. An *evidentiary showing* is required as to each point.

*Walker v. Sumner*, 917 F.2d 382, 386 (9th Cir. 1990) (emphasis added).

Here, it cannot be reasonably argued that there is any “valid, rational connection” between Defendants’ censorship of HRDC’s mailings and any

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<sup>2</sup> While this case involves HRDC’s free speech rights (and not the rights of incarcerated persons), for purposes of this motion, HRDC assumes the Court will apply the *Turner* test to ensure that injunctive relief employs due deference for the exigencies of prison operations.

1 legitimate governmental interest. HRDC is unable to ascertain the basis for  
 2 Defendants’ censorship of the returned books, magazines, and correspondence based  
 3 on the vague markings placed on the items by DCR staff. Most of the rejected items  
 4 were marked with an ink stamp or a label containing the words “RETURN TO  
 5 SENDER” and “UNAUTHORIZED MAIL.” Wright Decl. ¶ 33 & Ex. B. One was  
 6 also marked with an ink stamp containing the word “CENSORED.” *Id.*

7 Defendants’ censorship of HRDC’s publications and correspondence has no  
 8 rational connection to any legitimate penological interest. Defendants’ Publication  
 9 Policy states that incarcerated persons “may receive publications only from a  
 10 publisher, a book club or a bookstore.” *See* Wright Decl. ¶ 47 & Ex. J at 2 (Policy  
 11 No. 15.05 § 5.1). Despite the fact that HRDC is the publisher of its magazines,  
 12 *Prison Legal News* and *Criminal Legal News*, and of the *Prisoners’ Handbook*,  
 13 Defendants refused to deliver these publications to incarcerated persons at DCR’s  
 14 facilities. While HRDC does not publish *PYHS*, there is no legitimate penological  
 15 purpose served by an arbitrary ban on publications unless they are mailed directly  
 16 from the publisher, a book club, or a bookstore, as opposed to a neutral outside book  
 17 distributor, such as HRDC. Eichenlaub Decl. ¶¶ 49-50.

18 The separately posted mail procedures for seven of DCR’s eight facilities  
 19 expressly ban the delivery of publications, stating that “[b]ooks, magazines, food  
 20 items, etc. may not be sent to an inmate.” Wright Decl. ¶ 47 & Ex. K at 2.  
 21 Defendants’ conflicting mail policies and procedures have resulted in the arbitrary  
 22 censorship of HRDC’s publications. DCR’s complete ban on publications at seven  
 23 out of eight of its facilities serves no legitimate penological interest. Eichenlaub  
 24 Decl. ¶¶ 55-56. There is no practical security risk to allowing HRDC—a not-for-  
 25 profit charitable organization that has been mailing publications to incarcerated  
 26 persons at thousands of jails and prisons for over thirty-five years without  
 27 incident—to mail books and magazines to incarcerated persons. Wright Decl. ¶¶ 2,  
 28 11-12, 20; *see also* Eichenlaub Decl. ¶ 62.

1 The publications and correspondence that Defendants rejected comply with  
 2 all other provisions of Defendants’ Publication Policy. The censored publications  
 3 do not contain any of the content that is expressly prohibited under DCR’s  
 4 Publication Policy. Wright Decl. ¶¶ 47-48 & Ex. J at 2-4 (Policy No. 15.05,  
 5 Prohibited Publications §§ .1.a. – .1.p.). In short, there is no rational basis or  
 6 penological justification for censoring HRDC’s publications and correspondence.  
 7 Eichenlaub Decl. ¶¶ 55-56, 60, 62-63; Wright Decl. ¶¶ 49-50. To the extent that  
 8 Defendants may assert the censored publications run afoul of one of the prohibited  
 9 categories of content, they are unconstitutionally too vague and overbroad, certainly  
 10 in application, for a publisher or distributor to know what is permissible and what is  
 11 prohibited. *See Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615  
 12 (2021) (“In the First Amendment context ... ‘a law may be invalidated as overbroad  
 13 if a substantial number of its applications are unconstitutional, judged in relation to  
 14 the statute’s plainly legitimate sweep.’”) (quoting *United States v. Stevens*, 559 U.S.  
 15 460, 473 (2010)); *Ryan*, 39 F.4th at 1129 (“When a plaintiff presents such a facial  
 16 challenge to a prison regulation, we evaluate it using the *Turner* framework, just as  
 17 we would if the challenge were to a specific application of the regulation.”).

18 In addition to the censored items that Defendants returned to Plaintiff, DCR  
 19 has also presumptively received and either delivered or censored multiple copies of  
 20 the same types of publications and correspondence that Defendants have censored.  
 21 Absent proof to the contrary, “a properly-addressed piece of mail placed in the care  
 22 of the Postal Service has been delivered.” *See Busquets-Ivars v. Ashcroft*, 333 F.3d  
 23 1008, 1009 (9th Cir. 2003). Defendants did not provide HRDC with any  
 24 information as to five hundred (500) items that were properly addressed to people  
 25 incarcerated DCR’s facilities, and thus presumably delivered by USPS to those  
 26 facilities, including: two hundred and twelve (212) copies of *Criminal Legal News*,  
 27 two hundred and twelve (212) copies of *Prison Legal News*, thirty-three (33)  
 28 informational brochures, twenty (20) follow-up letters, fifteen (15) copies of *PYHS*,

1 and eight (8) copies of *Prisoners' Handbook*. Wright Decl. ¶ 30. This checkered  
 2 approach of censoring some items while presumably letting in others is entirely  
 3 arbitrary and capricious and is not rationally related to any legitimate penological  
 4 interest. *See* Eichenlaub Decl. ¶ 61. If DCR withheld the mailings from their  
 5 intended recipients, and did not return them to HRDC, that constitutes a violation of  
 6 HRDC's due process right to notice. *See infra* Section III.B. Either way, these facts  
 7 are proof positive that the Defendants' policies, practices, training, and supervision  
 8 are so flawed and violative of HRDC rights that court intervention is necessary.

9 Banning reading materials actually threatens prison security because reading  
 10 helps to alleviate idleness, boredom, and frustrations that can contribute to  
 11 disturbances and disciplinary infractions. Eichenlaub Decl. ¶¶ 28-30, 38, 42, 44;  
 12 Wright Decl. ¶ 13. Such censorship also threatens public safety because the  
 13 information in HRDC's books and magazines helps prepare incarcerated persons for  
 14 reentry into society and reduce recidivism. Eichenlaub Decl. ¶¶ 28-30, 38, 42, 44;  
 15 Wright Decl. ¶ 13. The Supreme Court has recognized that since "most offenders  
 16 will eventually return to society, a paramount objective of the corrections system is  
 17 the rehabilitation of those committed to its custody." *McKune v. Lile*, 536 U.S. 24,  
 18 36 (2002) (plurality opinion) (alteration omitted) (quoting *Pell*, 417 U.S. at 823  
 19 (1974)). Further, "the weight of professional opinion seems to be that inmate  
 20 freedom to correspond with outsiders advances rather than retards the goal of  
 21 rehabilitation ...." *Martinez*, 416 U.S. at 412; *see also Paris Adult Theatre I v.*  
 22 *Slaton*, 413 U.S. 49, 63 (1973) (citing the "well nigh universal belief that good  
 23 books ... lift the spirit, improve the mind, enrich the human personality, and develop  
 24 character"). Understanding the benefits of the availability of reading materials,  
 25 corrections professionals throughout the country recognize that any minimal  
 26 security concerns associated with incoming publications are outweighed by the  
 27 safety and security benefits they bring. *See* Eichenlaub Decl. ¶¶ 26-30.

1                   **2. Defendants Have Failed To Provide Alternative Means of**  
 2                   **Exercising HRDC's Rights To Communicate With**  
 3                   **Incarcerated Persons.**

4           The second *Turner* factor looks to whether alternative means exist to exercise  
 5 the constitutional right. The absence of alternative means is evidence that the prison  
 6 regulations in question are unreasonable. *See Beard v. Banks*, 548 U.S. 521, 532  
 7 (2006).

8           Here, Defendants' censorship of HRDC's publications and correspondence  
 9 leaves HRDC without any alternative means of exercising the First Amendment  
 10 right at issue, *see Turner*, 492 U.S. at 90—the right to distribute its publications to  
 11 incarcerated person in furtherance of its mission to help them to educate themselves  
 12 about their constitutional and human rights and to learn about accessing education  
 13 while incarcerated. *See Wright Decl.* ¶¶ 13, 50. HRDC cannot reasonably be  
 14 expected to communicate its writings to incarcerated persons by telephone, email or  
 15 in-person visits, as it would neither be practical nor cost-effective to convey the  
 16 complex content in its publications in such a manner. *Id.* ¶ 51. Even if it had other  
 17 practical ways of communicating with incarcerated persons, HRDC's messages can  
 18 be conveyed effectively only through print publications. *See Morrison v. Hall*, 261  
 19 F.3d 896, 904 (9th Cir. 2001) (even if incarcerated persons can obtain information  
 20 from other means, such as television or radio, those avenues “should not be  
 21 considered a substitute for reading newspapers and magazines”). The monthly  
 22 issues of *Prison Legal News* and *Criminal Legal News* provide incarcerated persons  
 23 with timely, in-depth coverage of judicial decisions and other recent events  
 24 concerning our nation's criminal legal system in a way that no other method of  
 25 communication can match. *Wright Decl.* ¶¶ 6, 51. The books that HRDC  
 26 distributes through the mail similarly provide incarcerated persons with in-depth  
 27 information about their rights, protections and legal remedies, and about enrolling at  
 28 accredited higher educational, vocational, and training schools, which could not



1 reasonably or practically be communicated in any other form. *Id.* ¶ 8. Under  
 2 Defendants’ challenged policies and practices, HRDC is left with no practical way  
 3 to reach its intended audience.

4 **3. Defendants’ Mail Policies And Practices Fail The Third And**  
 5 **Fourth Prongs of The Turner Standard (Effect On Resources**  
 6 **And Feasibility of Alternative Policies).**

6 The third and fourth *Turner* factors turn on whether accommodating the First  
 7 Amendment right at issue will impose a significant burden on prison officials and  
 8 whether ready alternatives to the challenged policies exist. *Turner*, 482 U.S. at 90-  
 9 91. Where a plaintiff “can point to an alternative that fully accommodates the  
 10 prisoner’s rights at *de minimis* cost to valid penological interests, a court may  
 11 consider that as evidence that the regulation does not satisfy the reasonable  
 12 relationship standard.” *Id.* at 91. “[T]he existence of obvious, easy alternatives may  
 13 be evidence that the regulation is not reasonable, but is an ‘exaggerated response’ to  
 14 prison concerns.” *Id.* at 90.

15 Allowing the exercise of the First Amendment rights at issue here will create  
 16 no significant burden on DCR officials, other incarcerated persons, or the allocation  
 17 of resources. Defendants would simply be required to deliver HRDC’s publications  
 18 and correspondence along with the other mail delivered to incarcerated persons  
 19 every day. This is what thousands of other correctional facilities do with the very  
 20 HRDC mailings that Defendants are refusing to deliver, and what DCR did for  
 21 decades until 2024. Wright Decl. ¶¶ 11-12. HRDC does not send a high volume of  
 22 mail to DCR facilities, but rather sends individually addressed mailings to a limited  
 23 number of incarcerated persons who subscribe to its magazines or who place orders  
 24 for books published and/or distributed by HRDC, or who HRDC specifically  
 25 identifies as potential subscribers or people likely to be in need of the information  
 26 contained in the publications that HRDC distributes. *Id.* ¶ 14.

27 Regardless, limited effects on staff time do not justify restrictions on First  
 28 Amendment rights. *See, e.g., Lehman*, 397 F.3d at 700 (rejecting regulation



designed to reduce volume of mail); *Cook*, 238 F.3d at 1151 (rejecting administrative burden justification for banning certain type of mail where lifting the ban would result only in “the addition of 15 to 30 pieces of mail” each day); *Clement v. Cal. Dep’t. of Corr.*, 364 F.3d 1148, 1152 (9th Cir. 2004) (per curiam) (rejecting ban on certain type of mail as an “arbitrary” method to reduce the total mail volume).

Thousands of correctional facilities nationwide allow incarcerated persons to receive all types of HRDC’s mail without creating penological problems, Wright Decl. ¶¶ 12, 20, highlighting that ready alternatives to Defendants’ censorship are available. *See, e.g., Hrdlicka*, 631 F.3d at 1055 (final *Turner* factor favored publisher where it was undisputed that publisher’s magazine was already distributed in other jails); *Morrison*, 261 F.3d at 905 (looking to California prison system’s mail regulations to conclude Oregon prison mail policies were an exaggerated response). Distribution of HRDC’s books to persons incarcerated in these other facilities demonstrates that Defendants’ censorship is unnecessary and unreasonable, and is an “exaggerated response” that cannot stand. *See Turner*, 482 U.S. at 90-91.

**B. Defendants Have Violated HRDC’s Constitutional Rights To Due Process By Failing To Provide HRDC With Adequate Notice And Opportunity To Challenge Defendants’ Censorship.**

A publisher’s right to communicate with incarcerated persons is rooted not only in the First Amendment, but also the Due Process Clause of the Fourteenth Amendment:

[T]he decision to censor or withhold delivery of a particular letter must be accompanied by minimum procedural safeguards. The interest of prisoners and their correspondents in uncensored communication by letter, grounded as it is in the First Amendment, is plainly a “liberty” interest within the meaning of the Fourteenth Amendment even though qualified of necessity by the circumstance of imprisonment. As such, it is protected from arbitrary governmental invasion.

*Martinez*, 416 U.S. at 417-18. The Due Process Clause requires that each time a jail or prison refuses to deliver a publication or other correspondence to the intended recipient, it must provide both the incarcerated person and the sender notice and an

1 opportunity to challenge the censorship. *Id.* at 418-19 (requiring “that an inmate be  
 2 notified of the rejection of a letter written by or addressed to him, that the author of  
 3 that letter be given a reasonable opportunity to protest that decision, and that  
 4 complaints be referred to a prison official other than the person who originally  
 5 disapproved the correspondence”). This requirement is clearly established and is  
 6 not subject to the four-pronged *Turner* analysis. *See Krug v. Lutz*, 329 F.3d 692,  
 7 698-699 & n.5 (9th Cir. 2003); *see also Cook*, 238 F.3d at 1152-53; *Jacklovich v.*  
 8 *Simmons*, 392 F.3d 420, 433 (10th Cir. 2004).

9 Providing due process allows publishers to investigate and challenge  
 10 violations of their First Amendment rights, and helps subscribers challenge such  
 11 violations through the correctional grievance system. *See Montcalm Publ’g Corp. v.*  
 12 *Beck*, 80 F.3d 105, 109 (4th Cir. 1996) (notice to the incarcerated person alone is  
 13 insufficient because “[a]n inmate who cannot even see the publication can hardly  
 14 mount an effective challenge to the decision to withhold that publication”).  
 15 Correctional facilities in other jurisdictions provide due process to publishers and  
 16 incarcerated persons when refusing to deliver publications and other  
 17 correspondence. Eichenlaub Decl. ¶ 60. The Federal Bureau of Prisons has an  
 18 explicit policy requiring it to notify incarcerated persons and publishers, identifying  
 19 the specific materials rejected and allowing independent review of a rejection  
 20 decision. *Id.* ¶ 32; *see also Thornburgh*, 490 U.S. at 406.

21 Defendants failed to provide due process protections to HRDC when refusing  
 22 to deliver its publications and correspondence to persons incarcerated at DCR  
 23 facilities, even after HRDC brought the problem to Defendants’ attention in a  
 24 demand letter dated December 16, 2024. Wright Decl. ¶ 45. To date, Defendants  
 25 have censored at least fifty-six (56) items of HRDC’s mail, and HRDC did not  
 26 receive meaningful notice or opportunity to challenge the censorship of any of them.  
 27 *Id.* ¶¶ 32, 44. The items of mail were merely returned to HRDC via the USPS  
 28 Return to Sender service with vague markings and no further explanation as to why

1 Defendants had refused to deliver them. *Id.* Most of the rejected items were  
 2 marked with an ink stamp or a label containing the words “RETURN TO SENDER”  
 3 and “UNAUTHORIZED MAIL.” *Id.* ¶ 33 & Ex. B. One of the items was also  
 4 marked with an ink stamp containing the word “CENSORED.” *Id.* At no point did  
 5 Defendants contact HRDC to provide notice that its mailings would be rejected or  
 6 the reason(s) for the rejections. *Id.* ¶ 44.

7 Defendants may claim that rejecting the items of mail for delivery and  
 8 returning them to HRDC via the USPS Return to Sender service qualifies as  
 9 “notice,” but this is not minimally adequate notice. First, none of the returned items  
 10 contained any notice of a right to appeal the rejections, or any information on how  
 11 HRDC could challenge the censorship. *Id.* ¶¶ 32-33, 44. Second, the returned  
 12 mailings did not provide meaningful notice why the mail was rejected by  
 13 Defendants. Finally, Defendants did not return any of the five hundred (500)  
 14 additional items that were properly addressed to people incarcerated at the DCR  
 15 facilities, leaving HRDC without any information as to whether those items were  
 16 censored and why, or if they were delivered, why DCR delivered only those items  
 17 but not others. *Id.* ¶ 30.

18 Defendants wholly failed to provide HRDC with any opportunity to challenge  
 19 the censorship decisions even though DCR’s Publication Policy provides for notice  
 20 and an opportunity to appeal censorship decisions. *See* Wright Decl. ¶ 47, Ex. J.  
 21 Furthermore, any attempt to appeal would be futile because the censored items of  
 22 mail were not retained for secondary review by another DCR official, as they were  
 23 instead sent back to HRDC via the USPS Return to Sender service. *Id.* ¶ 32. HRDC  
 24 is thus likely to succeed on the merits of its due process claims.

## 25 **II. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT** 26 **IRREPARABLE HARM.**

27 Defendants’ unconstitutional policies and practices prevent HRDC from  
 28 carrying out its core function—to communicate with incarcerated persons about

1 developments in the law and protection of their health and personal safety. Wright  
 2 Decl. ¶¶ 13, 50-51. As the Supreme Court and Ninth Circuit have held, “[t]he loss  
 3 of First Amendment freedoms, for even minimal periods of time, unquestionably  
 4 constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also*  
 5 *Klein*, 584 F.3d at 1207-08; *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th  
 6 Cir. 2005). Courts have repeatedly found irreparable harm based on the denial of  
 7 First Amendment rights in correctional settings. *See, e.g., Jones v. Caruso*, 569  
 8 F.3d 258, 277 (6th Cir. 2009) (affirming grant of preliminary injunction against  
 9 prison mail policy); *Human Rights Defense Center v. Sw. Va. Reg’l Jail Auth.*, No.  
 10 1:18-cv-00013, 2018 WL 3239299, at \*6 (W.D. Va. July 3, 2018) (granting  
 11 preliminary injunction against jail authority’s ban on staples); *Prison Legal News v.*  
 12 *Cnty. of Ventura*, No. CV 14–773–GHK (ex), 2014 WL 2519402, at \*8 (C.D. Cal.  
 13 May 29, 2014) (granting preliminary injunction against jail’s postcard-only policy);  
 14 *Prison Legal News v. Betterton*, No. 2:12-CV-00699-JRG, Dkt. 59 at 13-15 (E.D.  
 15 Tex. Sept. 30, 2013) (granting preliminary injunction against jail’s impermissibly  
 16 vague and arbitrary policy on mail censorship and inadequate appeals process);  
 17 *Prison Legal News v. Cnty of Sacramento*, No. 2:11-CV-00907 JAM-DAD, 2012  
 18 WL 1075852, at \*1 (E.D. Cal. Mar. 8, 2012) (granting preliminary injunction  
 19 against jail’s ban on staples and mailing labels).

20 HRDC’s magazines cover recent events and judicial decisions that affect the  
 21 lives and legal cases of incarcerated persons, and its books provide incarcerated  
 22 persons with in-depth information about their rights, protections and legal remedies,  
 23 and on enrolling at accredited higher educational, vocational, and training schools.  
 24 Wright Decl. ¶¶ 6, 8. The ability to deliver its publications and correspondence  
 25 timely—and before news becomes stale or filing deadlines expire—is critical to  
 26 HRDC’s mission. *Id.* ¶ 50. If HRDC loses the opportunity to deliver these  
 27 publications to incarcerated persons, it has lost precious opportunities to  
 28 communicate with those persons at a time when that information will be most

1 useful, in furtherance of its mission to help incarcerated persons access educational  
 2 opportunities and educate themselves about their constitutional and human rights.  
 3 *Id.* ¶¶ 6, 8, 50. Incarcerated persons also often move quickly in and out of detention  
 4 facilities, so if publications and correspondence are not delivered to the intended  
 5 recipients jails on a timely basis, HRDC may lose contact with them permanently.  
 6 *Id.* ¶ 50. An injunction is thus necessary to prevent irreparable harm to Plaintiff.

### 7 **III. THE BALANCE OF EQUITIES FAVORS A PRELIMINARY** 8 **INJUNCTION.**

9 Given the irreparable harm suffered by HRDC if a preliminary injunction  
 10 does not issue, the balance of equities here tips toward Plaintiff. The irreparable  
 11 harm suffered by HRDC is concrete, severe and ongoing. Wright Decl. ¶¶ 46, 51,  
 12 53. HRDC is blocked from distributing its publications and correspondence to  
 13 incarcerated persons in Defendants’ custody, and without a preliminary injunction,  
 14 Defendants will continue to censor HRDC’s communications without due process,  
 15 banning HRDC’s core protected speech. By contrast, any potential injuries to  
 16 Defendants are minimal and speculative. No great cost or expenditure of time is  
 17 required to allow HRDC to deliver its publications and correspondence to  
 18 incarcerated persons and afford constitutionally mandated due process, as is already  
 19 the case in correctional facilities across the country. *Id.* ¶¶ 11-12. Given the  
 20 penological benefits of access to publications, the requested injunction would likely  
 21 improve security and rehabilitation at DCR facilities. Eichenlaub Decl. ¶¶ 28-30,  
 22 65. The balance of equities favors Plaintiff.

### 23 **IV. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.**

24 Courts have “consistently recognized the ‘significant public interest’ in  
 25 upholding free speech principles ... as the ‘ongoing enforcement of the potentially  
 26 unconstitutional regulations ... would infringe not only the free expression interests  
 27 of [plaintiffs], but also the interests of other people’ subjected to the same  
 28 restrictions.” *Klein*, 584 F.3d at 1208 (citations omitted). “The public interest

inquiry primarily addresses impact on non-parties rather than parties.” *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002), *abrogated on other grounds by Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Defendants’ mail policies and practices harm not only HRDC, but also other publishers and booksellers—who presumably have been and will continue to be censored without due process if Defendants’ unconstitutional policies and practices are not enjoined—as well as incarcerated persons at DCR’s jails and prisons.

It is in the public interest to allow incarcerated persons access to reading materials, which enable them to engage in productive activity rather than sitting idle, thus helping to avoid conflicts and incidents of violence. Eichenlaub Decl. ¶¶ 28-30, 42. By educating incarcerated persons about their rights and key legal developments that affect their lives and legal cases, HRDC encourages them to channel their energies into lawful methods of dispute resolution. Wright Decl. ¶ 13. Reading materials also help incarcerated persons keep their minds sharp, helping them prepare to become productive citizens when released back into society. *Id.*; Eichenlaub Decl. ¶ 44. This speaks to the hunger for expressive freedom that Justice Thurgood Marshall described in *Procunier v. Martinez*, 416 U.S. at 428 (Marshall, J., concurring) (“When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions .... It is the role of the First Amendment and this Court to protect those precious personal rights by which we satisfy such basic yearnings of the human spirit.”). An injunction serves the public interest.

## **V. THE BOND REQUIREMENT SHOULD BE WAIVED**

Under Federal Rule of Civil Procedure 65(c), district courts have wide discretion to set the amount of the bond accompanying a preliminary injunction, which includes setting no bond or only a nominal bond. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005).



1 Several factors here warrant waiver of the bond requirement. The “harm” to  
 2 Defendants if enjoined—*i.e.*, being forced to employ a constitutional mail policy—  
 3 is minimal and non-monetary, if it exists at all. *See Jorgensen v. Cassidy*, 320 F.3d  
 4 906, 919 (9th Cir. 2003) (“The district court may dispense with the filing of a bond  
 5 when it concludes there is no realistic likelihood of harm to the defendant from  
 6 enjoining his or her conduct.”); *United Food & Com. Workers Loc. 99 v. Brewer*,  
 7 817 F. Supp. 2d 1118, 1128 (D. Ariz. 2011) (“no realistic likelihood” defendants  
 8 would be harmed by injunction against enforcing law that violated the First  
 9 Amendment).

10 Further, HRDC is a small nonprofit organization with a staff of approximately  
 11 eleven employees, and does not have financial resources to post anything more than  
 12 a nominal bond. Wright Decl. ¶ 52; *see Save Strawberry Canyon v. Dep’t of*  
 13 *Energy*, 613 F. Supp. 2d 1177, 1191 (N.D. Cal. 2009) (not requiring small non-  
 14 profit organization to post bond because plaintiff “indicated that it would have  
 15 difficulty posting the bond”); *Cal. Indep. Sys. Operator Corp. v. Reliant Energy*  
 16 *Servs.*, 181 F. Supp. 2d 1111, 1130 (E.D. Cal. 2001) (waiving bond requirement for  
 17 not-for-profit public benefit corporation); *Prison Legal News v. County of Ventura*,  
 18 2014 WL 2519402, at \*10 (waiving bond requirement due to plaintiff’s “limited  
 19 financial resources”).

20 Requiring HRDC to post a bond would effectively deny access to prompt  
 21 judicial review. *See Flowers*, 408 F.3d at 1126. This is especially true because  
 22 HRDC alleges violations of its fundamental constitutional rights, seeks to vindicate  
 23 the public interest, and is likely to succeed on the merits. *See Hernandez v. County*  
 24 *of Monterey*, 110 F. Supp. 3d 929, 958-59 (N.D. Cal. 2015) (bond waived where  
 25 plaintiffs were “protecting constitutional rights in the public interest, and they  
 26 [were] likely to succeed on the merits”); *Baca v. Moreno Valley Unified Sch. Dist.*,  
 27 936 F. Supp. 719, 738 (C.D. Cal. 1996) (holding that “to require a bond would have  
 28 a negative impact on plaintiff’s constitutional rights, as well as the constitutional



rights of other members of the public affected by the policy”). The bond requirement should be waived.

### CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Preliminary Injunction should be granted.

Respectfully submitted,

DATED: July 24, 2025

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