In The Supreme Court of Virginia

RECORD NO: _____

INTERFAITH ACTION FOR HUMAN RIGHTS, JAMES STUCKEY, AMBER BROWN, ANGELA WELLS, MILDRED ANN WHEELER,
Petitioners,

v.

COMMONWEALTH OF VIRGINIA, RALPH NORTHAM, BRIAN MORAN, HAROLD CLARKE, VALERIE BOYKIN, ADRIANNE BENNETT, & ALL VIRGINIA CIRCUIT AND DISTRICT COURTS,
Respondents.

PETITION FOR WRIT OF MANDAMUS
MEMORANDUM OF LAW

Eden Heilman (VSB No. 93554)
Jennifer Safstrom (VSB No. 93746)
Vishal Agraharkar (VSB #93265)
Nicole Tortoriello (VSB #91129)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA, INC.
701 E. Franklin St., Suite 1412
Richmond, VA 23219
(804) 523-2152 – Telephone
(804) 649-2733 – Facsimile
eheilman@acluva.org
jsafstrom@acluva.org
vagraharkar@acluva.org
ntortoriello@acluva.org

Counsel for Petitioners

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INTRODUCTION

This Petition seeks extraordinary relief to mitigate the extraordinary risks imposed by the novel coronavirus, SARS-CoV-2, upon incarcerated people, corrections and health staff, and all of our communities. Only one body—the Supreme Court of Virginia—has the authority to effectively and systemically address this crisis. To mitigate the imminent and severe harm in carceral institutions of Coronavirus Disease 2019 (COVID-19), the disease caused by SARS-CoV-2, this Petition asks the Court to exercise its authority pursuant to Article VI, Section 1 of the Constitution of Virginia to issue a Writ of Mandamus, to reduce the number of people who are now in or who will enter Virginia's jails, prisons, and houses of correction.[1]

Leading public health officials have warned that unless courts act now, the "epicenter of the pandemic will be jails and prisons."[2] The U.S. Centers for Disease Control and Prevention ("CDC") has explained that correctional and detention facilities

[1] This request encompasses state correctional facilities pursuant to Va. Code Title 53.1, Chapter 2 (§§ 53.1-18 through 53.1-67.9), local correctional facilities under Va. Code Title 53.1, Chapter 3 (§§ 53.1-68 through 53.1-133.10), and juvenile correctional facilities covered by Va. Code Title 66, Chapter 2 (§§ 66-13 through 66-25.2:1).

[2] Matthew J. Akiyama, *et al.*, *Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons*, NEW ENG. J. OF MED. (Apr. 2, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2005687?query=featured_home; *see also* Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. TIMES (Mar. 12, 2020), https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html.

"present unique challenges for control of COVID-19 transmission among incarcerated persons, detention center staff, and visitors," as well as health professionals.[3]

The world is facing an unprecedented health crisis caused by the emergence of the novel, sometimes fatal disease, COVID-19. There is no vaccine, and there is no cure. No person is immune. The number of confirmed cases of COVID-19 is increasing by the hour; the number of hospitalizations and fatalities is increasing exponentially. This exponential rise in the prevalence of COVID-19 is caused in part by the fact that SARS-CoV-2 is highly transmissible. The CDC has urged social distancing, whereby persons must remain at least six feet away from other people. The CDC has also recommended the implementation of various prevention measures, including best practices for cleaning and hygiene and the isolation of confirmed or suspected COVID-19 cases. In order to slow the spread of the disease, states across the country—including Virginia—have implemented "stay-at-home" or "shelter-in-place" orders, closed schools, governmental offices, and countless commercial and other establishments, and restricted public gatherings.[4]

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[3] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 27, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html [hereinafter "CDC Guidance"] (Exhibit 1).

[4] Va. Exec. Order No. 55 (Mar. 30, 2020), https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf (referencing Executive Orders 51 (Declaration of State of Emergency) and 53 (restrictions on businesses and schools), issued March 12 and March 23, respectively); *see also*, Sarah Mervosh, *et al.*, *See Which*

Yet, those in correctional institutions across Virginia are at heightened risk because it is not possible for them to implement the most critical preventive measures set forth in the CDC Guidance: social distancing, preventive hygiene, and the medical isolation of confirmed or suspected COVID-19 cases. The conditions in jails and prisons provide a breeding ground for COVID-19.[5] Facilities typically force detainees and staff into tight quarters where there is direct contact with each other and contact with shared surfaces. Individuals are regularly in close proximity, often sleeping an arm's length apart and eating shoulder to shoulder, in direct contravention of all public health and medical advice. Due to facility design or capacity, individuals are unlikely to be able to maintain the social distancing recommended by the CDC. Limited staff and resources mean that surfaces are unlikely to be frequently cleaned, if at all. Like cruise ships or nursing homes, these institutions represent environments in which the coronavirus can easily gain a foothold and, when it does, spread rapidly. Many of those detained are older or have been diagnosed with underlying health conditions that place them at heightened risk for suffering serious, potentially fatal, illness as a result of COVID-19.

States and Cities Have Told Residents to Stay at Home, N.Y. TIMES (Mar. 28, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html.

[5] *Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks*, JUSTICE COLLABORATIVE (2020), https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf (emphasis removed).

The spread of SARS-CoV-2 will be rapid in these facilities, where sanitation and healthcare are already poor. Under these conditions, once SARS-CoV-2 enters a correctional facility, it is virtually certain to spread like wildfire through the prison population, correctional staff, and into the nearby community. This has already happened in places like New York and Chicago, where viral spread is ahead of Virginia's. This impending viral explosion will directly impact all Commonwealth residents, including correctional and health staff, their families, and their respective communities. There is already rapid spread of the virus occurring in Virginia's facilities—such as at Bon Air where 25 youth between 11 and 20 years old at the juvenile facility have tested positive and Haynesville Correctional Center where 46 adults are ill.[6] These hot spots will continue to undermine comprehensive efforts to eradicate COVID-19 and continue to put both detainees and staff in mortal risk as the virus proliferates within detention facilities, absent the relief requested in this petition.

In light of the looming public health catastrophe, keeping such persons imprisoned where they face unnecessary health risks is inhumane and violates their rights under the Eighth and Fourteenth Amendments to the U.S. Constitution and

[6] Vermon Freeman Jr., *25 youth at Bon Air Juvenile Correctional Center test positive for COVID-19*, CBS (Apr. 17, 2020), https://www.wtvr.com/news/coronavirus/25-inmates-at-bon-air-juvenile-correctional-center-test-positive-for-covid-19; Tyler Thrasher & Ben Dennis, *Coronavirus update: 46 confirmed cases of COVID-19 at Haynesville Correctional Center*, ABC (Apr. 19, 2020), https://www.wric.com/health/coronavirus/coronavirus-update-46-confirmed-cases-of-covid-19-at-haynesville-correctional-center/.

Article I, Sections 9 and 11 of the Virginia Constitution. Indeed, for some individuals who are older or who suffer from pre-existing medical problems, continued detention may literally be consigning them to a death sentence.

Public health imperatives require that this Court take dramatic steps to effectively respond to this crisis. Indeed, for this same reason, courts in many other jurisdictions around the country have recognized that the public health emergency compels evaluation and release of significant numbers of people who pose little threat to public safety and will be endangered by continued imprisonment. Confronted with this reality, at least twelve state and local court systems—in Alabama, Alaska, Hawaii, Maine, Massachusetts, Montana, New Jersey, Ohio, Pennsylvania, South Carolina, Texas and Washington—as well as the District of Columbia, have already taken steps to limit incarceration during this crisis.[7] Most notably, in response to the "dangers posed by the Coronavirus," the New Jersey Supreme Court ordered the presumptive release of all people currently serving a county jail sentence, an order likely to result in the release of more than 1,000 people.[8]

This Court has the legal authority to follow the precedent set by New Jersey and these other jurisdictions. Justice demands no less. While a limited number of counties in the Commonwealth have adopted incremental case-by-case measures to limit jail

[7] *See generally, infra* Argument, Section B (2).
[8] *In the Matter of the Request to Commute or Suspend County Jail Sentences*, Consent Order, (N.J. No. 084230 March 22, 2020).

populations, many judicial districts are taking a business-as-usual approach, failing to address, or even recognize, the looming public health catastrophe.[9] Such a piecemeal approach, relying on individual law enforcement and judicial officers to decide what action to take, is insufficient to address the urgency of the moment. It also results in a criminal legal system that is experienced differently by Virginians depending on which side of a jurisdictional line they live.

For the reasons explained below, Petitioners respectfully ask this Court to join these other courts and take immediate steps to reduce the number of incarcerated people in Virginia in a manner that is consonant with public health and public safety. This relief is warranted, reasonable, and, above all, essential in light of the unprecedented public health risk facing the Commonwealth's residents. Specifically, the Petition asks this Court to:

1. Order the Governor and all relevant state agencies to exercise their existing authority and discretion to review and release, with or without conditions, the following categories of individuals:
    - Individuals whose sentences would be completed within the next year (365 days or fewer of incarceration);
    - Individuals whose sentences would end in the next two years and who also are at increased risk of serious illness from COVID-19, including but not limited to individuals who meet the CDC high risk criteria or who are pregnant;
    - Individuals who are incarcerated as a result of a technical violation of parole;
    - Individuals who are currently eligible for discretionary or geriatric parole;

[9] Ned Oliver, *Some Virginia cities are pushing to clear jails of nonviolent offenders. Others? Not so much.*, VA. MERCURY (Mar. 26, 2020), https://www.virginiamercury.com/2020/03/26/some-virginia-cities-are-pushing-to-clear-jails-of-nonviolent-offenders-others-not-so-much/.

- Any other individual for whom release is appropriate.

2. Order the Governor and all relevant state agencies to undertake specific measures to reduce the number of juveniles detained in state custody.

3. Order the Governor and all relevant state agencies to adhere to the CDC's *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.

4. Order the Governor and all relevant state agencies to submit for the Court's review a plan for each detainment facility to provide adequate measures for the prevention of the spread of the SARS-COV-2 virus; adequate screening and treatment of people showing symptoms of COVID-19 in accordance with contemporary standards of care; adequate medical personnel and equipment for the provision of care, including oxygen assistance equipment and ventilators for incarcerated persons in the event of an outbreak; and compliance with health officials' recommendations for all those who are detained, employed, or visiting.

5. Order all courts to immediately take all actions within their power to reduce the populations of the jails and prisons, including but not limited to, releasing as many people as possible who are the highest risk, as defined by the guidance from the CDC, including individuals who are above the age of 60, or those with chronic illnesses or disabilities, or who are pregnant, unless their continued confinement is necessary to prevent an imminent and serious threat to public safety.

6. Order all courts to expedite individualized determinations of suitability for release consistent with public health and public safety, and to consider the serious health risks posed by detention to the defendant, other incarcerated individuals, and the community in probation detention hearings, bail determination and reconsideration hearings, and dangerousness hearings.

7. Order all courts to cease new admissions to the system unless necessary to address an imminent and serious threat to public safety, including vacating all bench warrants and ceasing to issue new bench warrants for failures to appear or failures to pay outstanding fees and fines.

8. Order courts to suspend all probation, parole, or pretrial conditions whose adherence would require the individual to violate the CDC's social distancing or self-quarantine instructions.

9. Appoint an expert or Special Master to make recommendations to this Court, the Governor, and the lower courts regarding how many and which individuals to order released so as to ensure that the number of individuals remaining in custody can be housed consistently with CDC Guidance on best practices to prevent the spread of COVID-19, including the requirement that prisoners be able to maintain six feet of space between them.

Outbreaks in our prisons will imperil the lives of incarcerated people, but they will also endanger correctional officers and medical staff, their families, and their communities as staff cycle through the facilities. The more people who contract the virus, the more treatment that will be needed. Failure to address the spread of the virus in jails will undermine the effectiveness of government-mandated measures to contain the spread of the virus. Prison outbreaks imperil us all.[10] However, if taken immediately, these emergency measures will mitigate the spread of COVID-19 among and beyond the incarcerated population. These measures will keep the wheels of justice turning and save lives.[11]

PARTIES

The Petitioners in this case are the Interfaith Action for Human Rights, James Stuckey, Amber Brown, Angela Wells, and Mildred Ann Wheeler.

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[10] John Hilliard, *Mass. DOC Putting Prisoners' Lives at Risk Amid Coronavirus Outbreak, Advocates Say*, BOS. GLOBE (Mar. 22, 2020), https://www.bostonglobe.com/2020/03/22/metro/mass-doc-putting-prisoners-lives-risk-amid-coronavirus-outbreak-advocates-say/.

[11] Siobhan Roberts, *The Exponential Power of Now*, N.Y. TIMES (Mar. 13, 2020), https://www.nytimes.com/2020/03/13/science/coronavirus-math-mitigation-distancing.html (explaining how, assuming a constant 30% growth rate, stopping even a single infection today averts "four times as many infections in the next month: roughly 2,400 averted infections, versus just 600 if you wait one week").

- **Interfaith Action for Human Rights** represents people of faith from Virginia, the District of Columbia, and Maryland who are committed to ending practices that promote torture in our society and countering bigotry directed toward vulnerable communities and individuals. This work has included defending human dignity, ending abusive treatment in detention facilities, and countering bigotry. IAHR is committed to the physical and mental health of incarcerated persons, conducting pastoral outreach, educational efforts and legislative advocacy to engage and mobilize faith communities, families, the media, elected and appointed officials, and the general public.

- **James Stuckey** has been detained at Southside Regional Jail since February 10, twice had his preliminary hearing postponed, and was denied bond on April 13 for a non-violent offense. Stuckey is diagnosed with an immune deficiency disorder, high blood pressure, anxiety, and bipolar disorder.

- **Amber Brown** petitions for her boyfriend Quincy Roderick Woodson who is in pretrial detention at Middle River Regional Jail and has high blood pressure, congestive heart failure, and renal failure.

- **Angela Wells** pleads for William Williams, her fiancé, who is currently incarcerated at Piedmont Regional Jail for a six-month probation violation sentence. Williams suffers from Type II diabetes and is scheduled to be released June 25, 2020.

- **Mildred Ann Wheeler** pleads for her partner of over twenty years, David Hensley, who is currently serving a one-year sentence for a misdemeanor shoplifting charge at Rappahannock Regional Jail. Hensley is 60 years old, has chronic obstructive pulmonary disease ("COPD") and emphysema.

The Respondents in this case are the Commonwealth of Virginia, Ralph Northam, Brian Moran, Harold Clarke, Valerie Boykin, Adrianne Bennett, and all Virginia Circuit and District Courts.

- **Commonwealth of Virginia**, in whose custody Petitioner Stuckey resides and to whom all other detained individuals are entrusted.

- **Ralph Northam**, Governor, Commonwealth of Virginia, in his official capacity, as chief executive of the state and director of state agencies.

- **Brian Moran**, Secretary, Public Safety and Homeland Security, in his official capacity as secretariat of ten public safety agencies that encompass Virginia's detention facilities, probation and parole offices, and reentry services.

- **Harold Clarke**, Director, Virginia Department of Corrections ("VDOC"), in his official capacity, as administrator of the agency that operates prison facilities and probation and parole offices.

- **Valerie Boykin**, Director, Department of Juvenile Justice ("DJJ"), in her official capacity, as supervisor of the juvenile justice system and juvenile detention facilities.

- **Adrianne Bennett**, Chair, Parole Board, in her official capacity as head of the body with the authority to grant parole, to deny parole, to detain parole violators, and to revoke parole.

- **All Virginia Circuit & District Courts**, regarding all criminal proceedings, including pretrial, probation, and parole hearings.

FACTUAL BACKGROUND

A. In the absence of preventive measures, COVID-19 is a rapidly spreading public health crisis, resulting in serious medical conditions or death for large numbers of high-risk individuals.

The coronavirus pandemic has caused states of emergency in both this Commonwealth and the nation.[12] According to the World Health Organization ("WHO"), as of April 20, there were more than 2,314,600 confirmed cases of COVID-

[12] Va. Exec. Order No. 51 (Mar. 12, 2020), https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-(COVID-19).pdf; Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak.

19 worldwide and more than 157,800 confirmed deaths.[13] The United States has the highest number of confirmed cases in the world—more than 723,600—and nearly 34,200 confirmed deaths.[14] The Virginia Department of Health reports that, as of April 21, there are 9,630 confirmed cases and 324 reported deaths in the Commonwealth.[15] VDOC is currently reporting 147 COVID-19 cases among detained individuals, 53 cases infected guards or contractors, and one fatality at their facilities.[16] Given the limitation of testing capacity, there may be many times more people infected than are presently known.[17] CDC's projections show that, without effective public health intervention, more than 200 million people in the United States could be infected with COVID-19, with as many as 1.5 million deaths.[18]

Common symptoms of COVID-19 include fever, cough, and shortness of breath; less common symptoms include muscle pain, diarrhea, and sore throat. While the

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[13] *Coronavirus disease 2019 (COVID-19): Situation Report—85*, WORLD HEALTH ORG. (Apr. 20, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200420-sitrep-91-covid-19.pdf?sfvrsn=fcf0670b_4.

[14] *Id.*

[15] *COVID-19 in Virginia*, VA. DEP'T OF HEALTH, http://www.vdh.virginia.gov/coronavirus/ (last visited Apr. 21, 2020).

[16] *COVID-19/Coronavirus Updates*, VA. DEP'T OF CORRECTIONS, https://vadoc.virginia.gov/news-press-releases/2020/covid-19-updates/ (last visited Apr. 21, 2020).

[17] Andrew Ryan, *et al.*, *State Figures on Testing Raise Questions About Efforts to Contain Outbreak*, BOS. GLOBE (Mar. 14, 2020), https://www.bostonglobe.com/2020/03/14/metro/baker-sets-up-virus-command-center/ (citing Harvard School of Public Health professor of epidemiology who reports that we are "essentially blind to the state of this epidemic" due to lack of testing capacity).

[18] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. TIMES (Mar. 13, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html.

majority of cases result in these mild symptoms, some persons progress to pneumonia, organ failure, or even death. Treating serious cases therefore requires significant advanced support, including ventilator assistance for respiration and intensive care support.[19] For high-risk patients who survive, the effect of contracting this virus can be permanent and debilitating, including permanent respiratory or neurologic damage.[20]

SARS-CoV-2 is highly contagious; experts indicate that it may be several times more contagious than the seasonal flu.[21] The virus may be transmitted through proximity to others who have the virus or with objects that have been contacted by those persons.[22] It typically spreads from person to person through small droplets from the nose or mouth that are expelled when a person with the virus coughs or exhales. These droplets may either be inhaled directly or may land on objects or surfaces around the infected person; when they land on surfaces, where the virus remains for a few hours

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[19] *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 26, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm.

[20] *See, e.g.*, Erin Shumaker, *What we know about coronavirus' long-term effects*, ABC (Mar. 28, 2020), https://abcnews.go.com/Health/coronavirus-long-term-effects/story?id=69811566; Roni Caryn Rabin, *Some Coronavirus Patients Show Signs of Brain Ailments*, N.Y. TIMES (Apr. 1, 2020), https://www.nytimes.com/2020/04/01/health/coronavirus-stroke-seizures-confusion.html.

[21] Brian Resnick and Christina Animashaun, *Why COVID-19 Is Worse Than The Flu, In One Chart*, VOX (Mar. 18, 2020), https://www.vox.com/science-and-health/2020/3/18/21184992/coronavirus-covid-19-flu-comparison-chart.

[22] *Coronavirus Disease 2019 (COVID-19): How it Spreads*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html (last visited Apr. 21, 2020).

or several days, the disease may be transmitted when that surface is touched by another person and then that person touches his or her eyes, nose, or mouth.[23] The disease may be transmitted even when an infected person is asymptomatic or is experiencing only mild symptoms. The average infected person spreads the disease to between two and four others.[24] Indeed, under certain conditions, a single person can infect hundreds more.[25] Given this exponential spread, time is of the essence.

COVID-19 can be fatal. According to recent estimates, the fatality rate for people with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems.[26] The fatality rate increases for people over the age of 60. Additionally, those with certain medical conditions face a greater risk of becoming seriously ill from COVID-19. At present, scientists estimate that the overall case fatality rate is less than 2%, for people in the

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[23] *How Coronavirus Spreads*, CTRS. FOR DISEASE CONTROL & PREVENTION https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html (last visited Apr. 21, 2020); *What You Need To Know About Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 20, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

[24] Jenny Gross and Mariel Padilla, *From Flattening the Curve to Pandemic: A Coronavirus Glossary*, N.Y. TIMES (Mar. 18, 2020), https://www.nytimes.com/2020/03/18/us/coronavirus-terms-glossary.html.

[25] *See, e.g.*, *The Korean Clusters*, REUTERS https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html (last visited Apr. 21, 2020) (explaining how a single patient in South Korea infected 1,160 people).

[26] Darren Thackeray, *How COVID-19 compares to seasonal flu, and why you should take it seriously*, WORLD ECON. FORUM (Apr. 1, 2020), https://www.weforum.org/agenda/2020/04/coronavirus-covid19-flu-influenza/.

highest risk populations, the fatality rate of COVID-19 is over 13% for some groups.[27] This means about one in seven infected individuals in this high-risk group will die from COVID-19. The medical conditions that increase the risk of serious complications from COVID-19 include lung disease, heart disease, chronic liver or kidney disease (including patients with hepatitis and those requiring dialysis), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), metabolic disorders, and stroke, among others.[28] People with these conditions, who are overrepresented in custodial facilities, are at an increased risk of developing serious complications or dying from COVID-19, regardless of age.[29] Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation. Thus, although the

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[27] Brian Resnick, *12 things everyone needs to know about the coronavirus pandemic*, Vox (Apr. 2, 2020), https://www.vox.com/science-and-health/2020/4/2/21197617/coronavirus-pandemic-covid-19-death-rate-transmission-risk-factors-lockdowns-social-distancing (referencing research that found the global fatality rate for those under age 60 was 1.4%; for those over age 60, the fatality rate jumps to 4.5%; and the fatality rate continues to grow with age, with those over 80 experiencing a 13.4% fatality rate).

[28] *Groups at Higher Risk for Severe Illness*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html (last visited Apr. 21, 2020).

[29] I.A. Binswanger, *et al.*, *Prevalence of chronic medical conditions among jail and prison inmates in the USA compared with the general population*, 63 J. OF EPIDEMIOLOGY & CMTY. HEALTH 912–919 (2009), https://www.ncbi.nlm.nih.gov/pubmed/19648129 (concluding that incarcerated people had a higher burden of most chronic medical conditions than the general population, even when adjusting for sociodemographic differences and alcohol consumption).

elderly and those with existing health problems are at highest risk, even healthy adults may face serious complications or death.[30]

B. The key measures to prevent spread of COVID-19 are impossible in correctional facilities, making severe outbreaks likely in those institutions and the communities around them.

The only known effective measure to reduce the risk of serious illness and death that COVID-19 presents for vulnerable people is to prevent them from being infected in the first place. There is no vaccine to inoculate against COVID-19 and there is no known medication to treat COVID-19. Social distancing, quarantining or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures for protecting vulnerable people.[31]

During this pandemic, correctional facilities are at particularly high risk for the spread of SARS-CoV-2. This is due to several factors: the close proximity of individuals in those facilities;[32] their reduced ability to protect themselves through

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[30] Bill Gates, *Responding to Covid-19 – A Once-in-a-Century Pandemic?*, NEW ENG. J. OF MED. (Feb. 28, 2020), nejm.org/doi/full/10.1056/NEJMp2003762.

[31] CDC Guidance, *supra* note 3.

[32] Declaration of Amber Brown (Apr. 16, 2020), at ¶ 4 ("individuals are housed two to a cell, kept together in close quarters") (Exhibit 2); Declaration of Angela Wells (Apr. 20, 2020), at ¶ 2 ("Proper social distancing is not possible in the setting where William is held. […] His pod is one room with approximately 11bunk beds stacked four high, housing approximately 30 people. The bunks are bolted in place, so they cannot be rearranged. The bunk beds are approximately 2-3 feet apart from each other[.]") (Exhibit 3); Declaration of Beth Yates (Apr. 15, 2020), ("There are approximately 25 people in each housing pod. Although James has his own cell, others in the pod share cells. Cells are approximately 4x5 feet, about as big as a bathroom.") (Exhibit 4);

social distancing;[33] the lack of necessary medical and hygiene supplies ranging from hand sanitizer to protective equipment;[34] ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill;[35] the

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Declaration of Mildred Ann Wheeler (Apr. 15, 2020), at ¶ 4 ("Proper social distancing is not possible in the setting where David is held. Others in the facility have cell mates, and cells are still full. Until recently, David had two cell mates. All three of them were in a cell about the size of a closet.") (Exhibit 5).

[33] Decl. Brown, at ¶ 4 ("congregate meals and congregate showers in each pod that everyone in the pod uses and where individuals are in close proximity"); Decl. Wells, at ¶ 4 ("William works in the kitchen… where he prepares the food trays and cleans them in the afternoon. […] The residents of the pod pick up their tray from the cart and eat in the large pod. They are not six feet apart during food delivery."); Decl. Yates, at ¶ 7 ("The facility is not maintaining social distancing or taking necessary additional sanitation steps. I do not believe anyone in the in the facility is wearing masks or gloves (guards or incarcerated persons), there is no enhanced cleaning/sanitation protocols, and no sanitation of common items between uses (like telephones)."); Decl. Wheeler, at ¶ 6 (To my knowledge, there have been no additional cleaning or sanitation measures implemented at Rappahannock Regional Jail… [and he] has not been provided with soap or hand sanitizer.").

[34] Decl. Brown, at ¶ 5 ("I do not believe Quincy has been provided with sanitation supplies and there has been no enhanced cleaning/sanitation protocol. No one who is incarcerated or works at the facility is wearing masks or gloves."); Decl. Wells, at ¶ 3 ("The residents are given soap and hygiene supplies when they first arrive at Piedmont Regional Jail, but after this initial supply they have to purchase hygiene supplies, including toilet paper and soap, from their commissary accounts. If they have less than $5 on their commissary, they are provided hygiene supplies at no cost."); Decl. Yates, at ¶ 6 ("On April 14, 2020, the water was shut off three times, so he had no water for the sink and could not flush the toilet."); Decl. Wheeler, at ¶ 6 ("The incarcerated population has not been provided with personal protective equipment, and the guards are not wearing masks or gloves either.").

[35] Decl. Brown, at ¶ 4 ("He goes to the medical unit to receive his vitals for his blood pressure twice a week. In the medical unit, inmates sit in a waiting cell in which they cannot stay six feet apart."); Decl. Wells, at ¶ 5 (There are "23 people that are experiencing COVID-19 symptoms [that] are isolated in an empty pod, but none of the other residents that they came in contact with are isolated or being monitored for symptoms. There has been no testing that he is aware of in the jail, nor any temperature taking or symptom monitoring. The incarcerated population has not been provided any

increased susceptibility of the population in jails and prisons;[36] the fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic; and loss of both medical and correctional staff to illness.[37] The ability of inmates to disinfect their own living area and to practice frequent hand hygiene may also be affected by the fact that each inmate must purchase their own hygiene products. People detained in jails and prisons cannot take these necessary measures to mitigate the risk of exposure.[38] They are, therefore, at heightened risk of SARS-CoV-2 infection.

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personal protective equipment."); Decl. Yates, at ¶ 7 ("He has not been provided with hand sanitizer, and the people incarcerated there are given a single three-ounce bar of soap to last for showers and hand-washing for an entire week if they do not have funds in their account to purchase any.").

[36] Decl. Brown, at ¶ 2 ("Quincy has high blood pressure, congestive heart failure, and renal failure. Quincy needs a pacemaker, as he has severe heart disease. […] I'm afraid his damaged heart wouldn't survive the virus.); Decl. Wells, at ¶ 2 ("William was diagnosed with Type II diabetes in January of 2020" and suffers "lightheadedness and exhaustion from his diabetes"); Decl. Yates, at ¶ 4 ("James was diagnosed with an immune deficiency disorder and high blood pressure two years ago, and also suffers from anxiety and panic attacks."); Decl. Wheeler, at ¶ 2 ("David has chronic obstructive pulmonary disease (COPD) and emphysema. He has had these diagnoses for over ten years. He needs to treat his emphysema with the medication albuterol via a breathing machine.").

[37] Josiah Rich, *et al.*, *We Must Release Prisoners to Lessen the Spread of Coronavirus*, WASH. POST (Mar. 17, 2020), https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus.

[38] Decl. Brown, at ¶ 5 ("If they do have personal protective equipment, they don't wear them or supply the inmates with anything. Recently, his cellmate got written up for asking for a mask."); Decl. Yates, at ¶ 5 ("James was sick for a week with COVID-19 symptoms around March 16th or 17th, including chills and pounding headache. […] Despite the fact that James and other people incarcerated with him had similar symptoms, there was no testing for COVID-19. They did not isolate him or encourage him to social distance, even with those symptoms.").

Recent experience in the Rikers Island facility in New York City bears out the devastating impact of COVID-19 infection in a jail setting. New York City's Rikers Island went from just one confirmed case of COVID-19 on March 18 to 231 confirmed cases two weeks later.[39] The Legal Aid Society in New York reported that the COVID-19 infection rate at Rikers is more than *seven times* higher than the rate across New York City and *85 times* greater than the country at large.[40] Rikers' top doctor has not minced words, calling the jail a "public health disaster unfolding before our eyes."[41] Similarly, Chicago has seen an exponential growth in COVID-19 cases in its jails. Cook County Jail had two COVID-19 diagnoses; a week later, 167 incarcerated people and 34 staff members have tested positive for the virus.[42] Just three days later, it was

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[39] *Compare* Chelsia Rose Marcius, *Rikers Island Inmate has Contracted Coronavirus: Officials*, N.Y. DAILY NEWS (Mar. 18, 2020), https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzlqmwrmuevzz3y-story.html, *with Covid-19 Tracking in NYC Jails*, LEGAL AID SOC'Y (Apr. 2, 2020), https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails.

[40] Verified Petition for Writ of Habeas Corpus, *People ex rel. Stoughton v. Brann*, No. 260154/2020, at ¶ 3 (N.Y. Sup. Ct. Mar. 25, 2020).

[41] Megan Flynn, *Top Doctor at Rikers Island Calls the Jail a 'Public Health Disaster Unfolding Before our Eyes*, WASH. POST (Mar. 31, 2020), https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread.

[42] *Compare* Andy Grimm, *Two Cook County Jail Detainees Test Positive for Coronavirus*, CHICAGO SUN-TIMES (Mar. 23, 2020), https://chicago.suntimes.com/2020/3/23/21191438/two-cook-county-jail-detainees-test-positive-covid-19-coronavirus, *with 167 Cook County Jail Detainees Have Tested Positive for COVID-19, Officials Say*, NBC CHICAGO (April 1, 2020), https://www.nbcchicago.com/news/local/167-cook-county-jail-detainees-have-tested-positive-for-covid-19-officials-say/2248892.

reported 210 prisoners and 60 employees had tested positive.[43] As the rate of infection increases in Virginia, the same phenomenon seen in New York City and Chicago are likely to repeat itself in the Commonwealth's carceral institutions.

The possibility of a COVID-19 outbreak among incarcerated people, the staff, and the communities around them is exacerbated because facilities cannot implement the CDC's recommended preventative measures in at least four respects.

1. Social distancing is not possible in correctional institutions.

Social distancing is the most important means to prevent the spread of COVID-19 because the disease is primarily transmitted between people who are in close contact with one another (within about six feet) via respiratory droplets produced when an infected person coughs, sneezes, or exhales. Social distancing is so imperative that Governor Northam has ordered Virginians not to leave their homes except for necessities and banned all public and private in-person gatherings of more than ten individuals.[44] At least 40 states and DC have issued some form of a stay-at-home order.[45] The extraordinary impact of these stay-at-home orders and mandatory business

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[43] *Cook County Jail Now Reports 210 Inmates Have Tested Positive for COVID-19*, NBC CHICAGO (Apr. 4, 2020), https://www.nbcchicago.com/news/coronavirus/cook-county-jail-now-reports-210-inmates-have-tested-positive-for-covid-19/2250366/.

[44] Va. Exec. Order No. 55 (Mar. 30, 2020), https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf.

[45] Jorge L. Ortiz, *Coronavirus in the US: How all 50 states are responding – and why there is no federal stay-at-home order*, USA TODAY (Mar. 30, 2020), https://www.usatoday.com/story/news/nation/2020/03/30/coronavirus-stay-home-shelter-in-place-orders-by-state/5092413002/.

closures, including on millions of Virginians, has been deemed necessary for one reason: to ensure appropriate social distancing. CDC Guidance on correctional and detention facilities specifically recommends implementing social distancing ("ideally 6 feet between individuals, regardless of the presence of symptoms") to increase the physical space between incarcerated persons. Yet individuals in jails and prisons in the Commonwealth have limited or no ability to practice social distancing.

2. Correctional facilities do not have sufficient supplies to meet the enhanced hygiene and disinfecting necessary to prevent the spread of COVID-19.

The CDC Guidance also describes procedures necessary for individual hygiene and to thoroughly clean and disinfect areas where a person with confirmed or suspected COVID-19 spent time.[46] In facilities throughout the Commonwealth, people share toilets, sinks, showers, phones, and other surfaces, without disinfection between each use. There is a concern that these facilities will not have enough supplies for individuals to wash their hands or to disinfect the space around them. Failure to provide these supplies while requiring individuals in custody to use shared bathroom facilities and to eat in common spaces creates an intolerably high risk of infectious spread.[47]

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[46] CDC Guidance, *supra* note 3.

[47] *See generally*, Keith L. Alexander, *et al.*, *As inmates in D.C., Maryland and Virginia test positive for the coronavirus, jail officials scramble to reduce the risk*, WASH. POST (Apr. 1, 2020), https://www.washingtonpost.com/local/public-safety/as-inmates-in-dc-maryland-and-virginia-test-positive-for-the-coronavirus-jail-officials-scramble-to-reduce-the-risk/2020/04/01/b0d9cfd8-7363-11ea-85cb-8670579b863d_story.html.

3. Proper isolation for symptomatic, exposed, or at-risk populations is not possible in correctional facilities.

The CDC Guidance recommends "medical isolation of confirmed or suspected COVID-19 cases."[48] Yet, once a person in a jail or prison has symptoms, proper isolation is not likely to be possible due to population size and the physical limitations of the facility. Without sufficient space to house people consistent with the CDC-recommended quarantine protocol, which requires separating people to prevent further spread of the disease, or to house those who test positive in true medical isolation units, the spread of COVID-19 will worsen in these facilities.

4. Facilities do not have the capacity to properly screen individuals entering their institutions.

The CDC recommends that facilities adopt intensive pre-intake screening of all individuals to be incarcerated, in addition to screening all staff and individuals entering the facility.[49] Yet Virginia prisons and jails are wholly unequipped to be able to implement screening measures that are robust enough to prevent introducing the virus into the facilities, especially for asymptomatic or pre-symptomatic infections. Since SARS-CoV-2 has an incubation period as long as 14 days, and transmission often occurs before presentation of symptoms, screening for symptoms alone is insufficient to prevent the spread of the virus.[50] Given the shortage of SARS-CoV-2 test kits

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[48] CDC Guidance, *supra* note 3.
[49] *Id.*
[50] Laura Wamsley & Selena Simmons-Duffin, *The Science Behind A 14-Day Quarantine After Possible COVID-19 Exposure*, NPR (Apr. 1, 2020),

throughout the U.S., carceral facilities simply do not have the capacity to test people newly admitted to the facility, individuals on work release, staff, contractors, health professionals, attorneys, or any other visitor entering the facility, on a daily basis.[51]

C. Population reduction is the only way to prevent an outbreak of COVID-19 in Virginia's jails and prisons and protect those at highest risk of death.

Significant reduction of prison and jail populations is the only viable option to protect incarcerated persons from COVID-19. Without reduction in the numbers of detained individuals, prisons and jails will be unable to implement the only scientifically recognized procedures that can reduce the risk of infection. People in prisons and jails are disproportionately likely to have chronic health conditions, including diabetes, high blood pressure, and HIV, that put them at higher risk of severe health consequences upon contracting the virus.[52] Large numbers of seriously ill incarcerated people will strain the limited carceral system's medical infrastructure, heightening the risk that infected individuals will suffer serious harm.[53]

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https://www.npr.org/sections/health-shots/2020/04/01/824903684/the-science-behind-a-14-day-quarantine-after-possible-covid-19-exposure; Stephanie M. Lee, *"Silent Carriers" Are Helping Spread The Coronavirus. Here's What We Know About Them.*, BUZZFEED (Apr. 2, 2020), https://www.buzzfeednews.com/article/stephaniemlee/coronavirus-asymptomatic-silent-carrier-spread-contagious.

[51] Donald Judd, *et al.*, *America is ramping up Covid-19 testing, but a shortage of basic supplies is limiting capabilities*, CNN (Mar. 28, 2020), https://www.cnn.com/2020/03/28/politics/coronavirus-swabs-supplies-shortage-states/index.html.

[52] Binswanger, *et al.*, *supra* note 29.

[53] Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus*, NEW YORKER (Mar. 16, 2020), https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus.

By reducing the overall number of individuals in detention, facilities will be able to comply with recommended social distancing practices, allow infected individuals to be properly quarantined and monitored, and reduce the impact of COVID-19 on vulnerable populations in our carceral institutions. It also lessens the risk to corrections officers, who, if short-staffed, will have difficulty maintaining order and proper personal protective measures. This also protects the families and communities of correctional officers and healthcare providers, whose risk is also heightened by the rampant spread of COVID-19 in our jails and prisons.

D. Existing procedures and protocols in Virginia are not sufficient to ensure the safety of incarcerated persons and staff.

Conditions in correctional facilities create heightened public health risks for the spread of COVID-19 far greater than in non-custodial institutions because of crowding, security-related restrictions, scant medical resources, and the proportion of vulnerable people detained. COVID-19 has already been reported in Virginia's facilities, with the first fatality occurring on April 14, 2020 at the Virginia Correctional Center for Women ("VCCW"), where nearly twenty detainees and forty staff have been diagnosed.[54] The proliferation of this virus in prisons and jails across Virginia—including at Haynesville Correctional Center (50 individuals, including one staff member), Central Virginia Correctional Unit #13 (47 people, including two staff), Sussex II (20 individuals,

[54] *COVID-19/Coronavirus Updates*, VA. DEP'T OF CORRECTIONS, https://vadoc.virginia.gov/news-press-releases/2020/covid-19-updates (last visited Apr. 21, 2020).

including three staff), Harrisonburg Men's CCAP (17 detainees), and Bon Air Juvenile Correctional Center (25 youth, which is one-eighth of the facility's population)—poses an imminent threat to all who are confined in Virginia's detention facilities.[55]

The window for action is narrowing. Transmission in our jails and prisons will endanger not only the incarcerated, but also the broader community. As correctional and health staff enter and leave the facility, they will carry the virus with them. VDOC houses nearly 30,000 persons in close proximity to one another and to employees of correctional facilities, with county jails and juvenile facilities housing thousands more, all of whom are at high risk of exposure to COVID-19 due to the conditions of their confinement.[56]

Yet, despite the high risk and urgent need, Virginia's leaders have been largely silent with respect to plans for those living and working in Virginia's correctional facilities. The Governor has abdicated much of his responsibility, including by waiting for the General Assembly to act to release individuals in state custody.[57] He has

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[55] *Id.*; Mallory Noe-Payne, *Virginia Juvenile Correctional Facility Overwhelmed By Coronavirus*, NPR (Apr. 20, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838790229/virginia-juvenile-correctional-facility-overwhelmed-by-coronavirus.

[56] *Monthly Population Report*, VA. DEP'T OF CORRECTIONS (Feb. 2020), https://vadoc.virginia.gov/media/1490/vadoc-monthly-offender-population-report-2020-01.pdf (reporting that in January 2020, 29,233 individuals were incarcerated in 43 facilities across the Commonwealth).

[57] Frank Green, *ACLU, others call for urgent prison and jail releases in response to COVID-19*, RICHMOND TIMES DISPATCH (Apr. 9, 2020), https://www.dailyprogress.com/news/state/aclu-others-call-for-urgent-prison-and-jail-releases-in-response-to-covid-19/article_8a0f442d-e9a2-53d3-a19d-afdd01b7313f.html (noting the

provided insufficient guidance to local criminal justice officials and the public, with only a few bullet points on his webpage about vulnerable populations in custody.[58] His administration has provided insufficient responses to advocates despite advocates documenting specific concerns and imploring him to take action that is within this authority.[59] He has provided insufficient resources to those who are detained and those who work at these facilities, undermining their ability to stay safe.[60] Secretary Moran and others have made limited public statements, that have given little to no instruction on comprehensive planning and responsive efforts to address the threat of COVID-19.[61]

Given the lack of action necessary to safeguard the lives of those who are in Virginia's correctional facilities, it is incumbent upon this Court to require these officials to comply with their federal and state constitutional duties to protect the health

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Governor's authority to release people through individualized clemency and pardon decisions, similar to how Gov. McAuliffe made "176,000 individualized restoration decisions in about a six-month period").

[58] *Coronavirus Actions and Support*, VA., https://www.virginia.gov/coronavirus/healthcare-and-health-professionals/#855791 (last visited Apr. 21, 2020).

[59] *ACLU of Virginia Sends COVID-19 Executive Guidance For Criminal Legal System*, AM. CIVIL LIBERTIES UNION OF VA., https://www.acluva.org/en/press-releases/aclu-virginia-sends-covid-19-executive-guidance-criminal-legal-system (last visited Apr. 21, 2020).

[60] *Virginia prisoners sue, claiming state isn't doing enough to protect them against coronavirus*, NBC (Apr. 8, 2020), https://www.nbc12.com/2020/04/08/virginia-prisoners-sue-claiming-state-isnt-doing-enough-protect-them-against-coronavirus/.

[61] Frank Green, *Advocates call for quick action in response to spread of virus in Va. prisons. Officials say solutions are not simple.*, RICHMOND TIMES DISPATCH (Apr. 8, 2020), https://www.richmond.com/news/virginia/advocates-call-for-quick-action-in-response-to-spread-of-virus-in-va-prisons-officials/article_135109bf-28cb-535c-b4a0-5949018e4572.html.

and safety of those in custody by ordering this Petition and granting the requested mandamus relief. Unless this Court orders measures to reduce the carceral population and ensure compliance with health recommendations, the contagion will be more widespread, tax already-strained health resources, and increase the mortality rate.

ARGUMENT

A. This Court has the legal authority to issue a mandamus ordering the requested relief, in keeping with several courts from other jurisdictions.

This Court has broad authority to take jurisdiction of original proceedings seeking extraordinary writs, such as a writ of mandamus. Respondents have a clear legal duty to protect all currently incarcerated persons. Unfortunately, at present, Respondents have failed to act in a way which uniformly and adequately satisfies this duty. In addition, there is no speedy and adequate remedy that exists in the ordinary course of the law.

Accordingly, the Court can—and should—issue a writ of mandamus. This Court has the power under Virginia Constitution Article VI, Section 1 to provide for the necessary broad-based reduction of jail and prison populations. Petitioners respectfully urge the Court to order this relief. Such action would be consistent with the steps that courts across the country have swiftly taken to safeguard the health and safety of countless numbers of detained persons.

1. This Court has the legal authority to use its broad mandamus jurisdiction to order the requested relief.

A mandamus action consists of three elements: "(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." *Evans v. Chief of Police*, 20 Va. Cir. 487 (1990) (citing *Early Used Cars, Inc. v. Province*, 218 Va. 605, 609 (1977)). "Mandamus is an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him by law." *Richlands Med. Ass'n v. Commonwealth*, 230 Va. 384, 386, 337 S.E.2d 737, 739 (1985); *accord In re Commonwealth's Attorney for the City of Roanoke*, 265 Va. 313, 317, 576 S.E.2d 458, 461 (2003). "A ministerial act is 'one which a person performs in a given state of facts and prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of, his own judgment upon the propriety of the act being done.'" *Richlands Med. Ass'n*, 230 Va. at 386, 337 S.E.2d at 739 (quoting *Dovel v. Bertram*, 184 Va. 19, 22, 34 S.E.2d 369, 370 (1945)). In summary, a party seeking a writ of mandamus must establish that the plaintiff has a right to the performance of the duty, that the defendant's duty is non-discretionary, and that the Petitioners have no adequate remedy at law.

In these exceptional times, exceptional relief is warranted. Those in our jails and prisons have a clear legal right—grounded in both Virginia and federal law—to the performance of duties by Respondents. These duties are non-discretionary. And there

is no other adequate remedy at law. Absent relief, the lives of those in and out of our carceral system are at stake.

1.1 Respondents are obligated under the Fourteenth Amendment and Eighth Amendment of the U.S. Constitution to safeguard the life and health of those in custody.

The Supreme Court of Virginia has found mandamus is "appropriately used and is often used to compel [state officials] to act where they refuse to act and ought to act, but not to direct and control the... discretion to be exercised in the performance of the act to be done." *In re Horan*, 271 Va. 258, 259 (2006) (quoting *Page v. Clopton*, 71 Va. (30 Gratt.) 415, 418 (1878)). Here, it is clear that the issuance of the writ is proper because "it is within the power of the defendant, as well as his duty, to do the act in question." *Carver v. Spotsylvania Cty. Bd. of Supervisors*, 12 Va. Cir. 94 (1987) (quoting *Bd. of Supervisors v. Combs*, 160 Va. 487 (1933)). The Respondents, who are collectively responsible for the health and wellness of the thousands of people in custody in our state's jails and prisons, have the power and duty to take actions consistent with safeguarding constitutional rights. They do not have the discretion to disregard these obligations through inaction to this developing crisis.

Each Respondent's duty to protect the lives of the thousands of people currently in their custody from COVID-19 stems directly from the U.S. and Virginia Constitutions. The prohibitions against cruel and unusual punishment contained in Article I, § 9 of the Virginia Constitution and the Eighth Amendment of the United States Constitution, demand that the state provide for the "basic human needs" of

prisoners in its custody. *See Helling v. McKinney*, 509 U.S. 25, 32 (1993). The Eighth Amendment to the United States Constitution prohibits state officials from acting with deliberate indifference to a convicted prisoner's serious medical needs. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 828–29 (1994); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "[W]hen the State . . . fails to provide for [prisoners'] basic human needs . . . it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989); *see also Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (finding the State has a duty to provide services and care to institutionalized persons in its custody).

"[I]t is cruel and unusual punishment to hold convicted criminals in unsafe conditions." *Youngberg*, 457 U.S. at 315–316. In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke, contaminated water, use of chemical toilets, and paint toxins.[62]

[62] Cases concluding that this standard is satisfied by hazards considerably less dangerous that COVID-19 are legion. *See, e.g.*, *Helling*, 509 U.S. at 28–29 (exposure to tobacco smoke); *Hinojosa v. Livingston*, 807 F.3d 657, 669 (5th Cir. 2015) ("extremely dangerous temperatures"); *Johnson v. Epps*, 479 Fed. App'x 583, 590-91 (5th Cir. 2012) (exposure to unsterilized barbering instruments potentially contaminated with HIV-positive blood); *Powers v. Snyder*, 484 F.3d 929, 931 (7th Cir. 2007) (exposure to hepatitis or other serious diseases); *Vinning-El v. Long*, 482 F.3d 923, 924 (7th Cir. 2007) (flooding or exposure to blood and feces in cells); *Morgan v. Morgensen*, 465 F.3d 1041, 1047 (9th Cir. 2006) (a "safety hazard in an occupational area"); *Atkinson v. Taylor*, 316 F.3d 257, 266-69 (3d Cir. 2003) (exposure to tobacco smoke); *DeSpain v. Uphoff*, 264 F.3d 965, 977-79 (10th Cir. 2001) (cells flooded with sewage); *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001) (exposure to human waste); *Herman v. Holiday*, 238 F.3d 660, 664 (5th Cir. 2001) (exposure to "unreasonably high levels of environmental toxins"); *Loftin v. Dalessandri*, 3 Fed.

See, e.g., *Helling*, 509 U.S. at 35 (tobacco smoke); *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001) (water); *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995) (chemical toilets); *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325–325 (W.D.N.Y. 1999) (toxic paint).

The Eighth Amendment requires that "inmates be furnished with . . . reasonable safety," and the U.S. Supreme Court has explicitly recognized that the risk of contracting "serious contagious diseases" may constitute such an "unsafe, life-threatening condition" that it threatens "reasonable safety." *Helling*, 509 U.S. at 33–34 (internal quotations omitted); *see also Hutto v. Finney*, 437 U.S. 678, 682–685 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases). Moreover, the Supreme Court has recognized that the risk of contracting a "serious, communicable disease" constitutes an "unsafe, life-threatening condition" that threatens prisoners' "reasonable safety." *Helling*, 509 U.S. at 33. This

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App'x 658, 660-63 (10th Cir. 2001) (exposure to tuberculosis); *Warren v. Keane*, 196 F.3d 330, 332-33 (2d Cir. 1999) (exposure to both second-hand smoke and asbestos); *LaBounty v. Coughlin*, 137 F.3d 68, 74 (2d Cir. 1998) (exposure to "friable asbestos"); *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996) (exposure to raw sewage); *Keenan v. Hall*, 83 F.3d 1083, 1089-90 (9th Cir. 1996) (deprivation of outdoor exercise, excessive noise and lighting, lack of ventilation, inadequate access to basic hygiene supplies, and inadequate food and water); *Wallis v. Baldwin*, 70 F.3d 1074, 1076-77 (9th Cir. 1995) (exposure to asbestos); *Kelley v. Borg*, 60 F.3d 664, 666-67 (9th Cir. 1995) (unidentified "fumes" which rendered an inmate unconscious); *Henderson v. DeRobertis*, 940 F.2d 1055, 1059 (7th Cir. 1991) (inadequate heat and shelter); *DeGidio v. Pung*, 920 F.2d 525, 531-33 (8th Cir. 1990) (exposure to tuberculosis); *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (inadequate heat).

line of cases makes clear that correctional officials have an affirmative obligation to protect confined individuals from infectious disease.

Supreme Court precedent makes clear that, pursuant to this principle, the Eighth Amendment does not tolerate "exposure of inmates to a serious, communicable disease." *Id.* Given the impossibility of physical distancing, the lack of adequate hygiene, and the reported cases of COVID-19 in Virginia's correctional facilities, everyone incarcerated is currently exposed to a serious, communicable disease, in violation of the Eighth Amendment. *Id.* ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition . . . on the ground[s] that nothing yet had happened to them.").

This analysis has even been applied in the case of other communicable diseases. For instance, the Fourth Circuit permitted claims to proceed when "inmates assert[ed] that universal precautions—protective measures designed to prevent the spread of communicable diseases—[that] are necessary to prevent the spread of infectious diseases" were not provided to them, and that such "fail[ure] to provide them with the equipment necessary to permit them to comply with universal precautions" provided sufficient grounds for their Eighth Amendment claim. *Rish v. Johnson*, 131 F.3d 1092, 1095 (4th Cir. 1997). In *Fraher v. Heyne*, a prisoner with a preexisting heart condition that "mandated extra care to avoid infection" was refused a swine flu test because, in the prison medical staff's view, her fever "was not high enough" to warrant testing. 2011 WL 5240441, *2 (E.D. Cal. Oct. 31, 2011). The federal district court refused to

dismiss the case, determining that, under those circumstances, the prisoner could state a claim for violation of her constitutional rights. *Id.*

Further, "the due process clauses of the Federal and Virginia Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law." *Walton v. Commonwealth*, 255 Va. 422, 497 S.E.2d 869 (1998) (citing U.S. Const. amend. XIV, § 1; Va. Const. art. I, § 11). Confining incarcerated people to a setting where they will likely contract a deadly disease violates due process. A valid criminal conviction may extinguish due process concerns with respect to a lawfully imposed sentence, but the criminal process does not authorize deprivations "qualitatively different from the punishment characteristically suffered by a person convicted of crime." *Vitek v. Jones*, 445 U.S. 480, 493 (1980). Incarcerated people have a constitutionally-protected liberty interest in avoiding "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also id.* (a hardship may "exceed[] the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force").

The current global pandemic is anything but typical. A serious threat of contracting a severe, life-threatening illness is "a dramatic departure from the basic conditions" of prison life. *Sandin*, 515 U.S. at 485. Contraction of COVID-19 was not "within the sentence imposed upon" these individuals by trial courts prior to the pandemic. *Montanye v. Haymes*, 427 U.S. 236, 242 (1976). People confined in our jails

and prisons therefore face a substantial risk of permanent injury or loss of life that was not imposed pursuant to due process of law.

Similar standards hold for pretrial detainees under the Fourteenth Amendment's due process clause. Due process is "flexible and calls for such procedural protections as the particular situation demands." *Harvey v. Commonwealth*, 297 Va. 403, 417, 829 S.E.2d 534, 540 (2019) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)); *see also Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017) (explaining that the Due Process clause of the Fourteenth Amendment demands protection of serious medical needs of people held in pre-trial confinement). Inaction under the current circumstances would also run afoul of the Due Process Clause of the Fourteenth Amendment and Article 1, Section 11 of the Virginia Constitution. Because detention always burdens the fundamental right to liberty, this Court has long recognized that it must comport with substantive and procedural due process of law. *Harvey*, 297 Va. at 419 (noting that "freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.") (internal citation omitted). Due process demands a balancing of the liberty interest at stake, the risk of erroneous deprivation, and the government's asserted interest. *See Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976) ("[d]eprivation of greater individual liberty interests requires greater procedures and stronger countervailing State interests").

In light of the pandemic, detention now not only deprives individuals of their freedom, but also subjects them to a serious risk of loss of life or permanent injury,

which implicates substantive and procedural due process concerns that demand action. To comport with substantive due process, the governmental interest in detention must outweigh its curtailment of an individual's fundamental rights. *United States v. Salerno*, 481 U.S. 739, 748, 750 (1987). It is unconscionable to knowingly expose a person to a severe disease without taking precautions to mitigate their risk of acquiring it.

The deliberate indifference standard that animates Eighth and Fourteenth Amendment violations involves both an objective and a subjective component. *Helling*, 509 U.S. at 26. To satisfy the objective component, the alleged harm must be "sufficiently serious." *Id*. Respondents' failure to adequately respond to COVID-19 will inevitably result in serious injury to prisoners' health, at best, and numerous fatalities, at worst. The unprecedented, sweeping steps that federal and state governments have taken to limit exposure to the virus demonstrate that society does, in fact, "consider[] the risk . . . so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." *Id.* at 36. On the subjective component, prison officials show deliberate indifference when they know and disregard an excessive risk to the health or safety of an incarcerated person. *Id.* ("[T]he subjective factor . . . should be determined in light of the prison authorities' current attitudes and conduct"). Here, again, Respondents are well aware of the extraordinary risk that

COVID-19 poses to people in Virginia's prisons and jails.[63] Yet, Respondents have not acted sufficiently to mitigate that risk.

The severe threat imposed by COVID-19 demands coordinated, immediate, and comprehensive action, guided by both public health and safety considerations, including the conditions within correctional facilities that limit their ability to adequately prepare, respond, and operate in the event of a COVID-19 outbreak. Continuing to detain individuals without any modification in the face of the current crisis raises significant Eighth and Fourteenth Amendment concerns. An incarcerated individual need not demonstrate with certainty that harm will befall him or her; the Constitution does not tolerate the exposure to environmental hazards that create even a significant risk of serious injury. *See, e.g.*, *Id.* at 32–35.

1.2 Respondents are obligated by statute to protect the life and health of those in DOC custody.

The second prong of the mandamus analysis "requires the petitioner to establish a clear legal duty on the part of the respondent to act," as a mandamus cannot be issued "to do a discretionary act." *Evans v. Chief of Police*, 20 Va. Cir. 487 (1990) (citing *Giles County Board of Supervisors v. Carr*, 222 Va. 379, 382 (1981)). There is no discretion in the "clear and unequivocal duty imposed by law" on the Respondents to safeguard those in their custody in compliance with federal and state constitutional standards.

[63] *See, e.g.*, Laura Perrott, *et al.*, *"This is serious": Gov. Northam gives update on COVID-19 outbreak in Virginia*, ABC (Mar. 15, 2020), https://www.wric.com/health/coronavirus/northan-to-addresses-virginia-about-coronavirus-outbreak/.

Carver v. Spotsylvania Cty. Bd. of Supervisors, 12 Va. Cir. 94 (1987) (citing *May v. Whitlow*, 201 Va. 533 (1960)). "[P]risoners may not be deprived of their basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—and they may not be exposed to conditions that pose an unreasonable risk of serious damage to [their] future health." *Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) (citation omitted).

Correspondingly, detainees in our Commonwealth's jails and prisons have an indisputable right to relief under both the U.S. and Virginia Constitutions. Given this clear legal right—grounded in both state and federal law—to the performance of duties to ensure the health and safety of those who are in custody, the requested relief is non-discretionary. Therefore, there is no question that "correctional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease." *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996); *Helling*, 509 U.S. at 33. Absent relief, the lives of those in Virginia's correctional institutions are at stake. Because safeguarding the health and safety of inmates is not discretionary, this Court must require Respondents to act in accordance with their constitutional duties to safeguard those in custody.

1.3 Plaintiffs have no adequate remedy at law.

Here, no adequate remedy at law exists to redress Respondents' inaction in the face of the COVID-19 crisis in Virginia's correctional institutions. The mandamus court is empowered to "read the law and apply it to the facts of the case." *Id*. There are no other adequate mechanisms for relief to quickly head off the dramatic escalation of this

global health crisis. This is the exact type of efficient relief a mandamus is meant to provide in situations of urgent need. Per the Court's own rules, this body "may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading or reply of the petitioner is filed" or "shorten the period within which a responsive pleading must or reply may be filed," in order to most quickly respond to urgent needs. Rule 5:7(c), *Rules of Va. Supreme Court* (2018). Moreover, while some detainees and prisoners may have the ability to file individual motions seeking release, that would be inadequate here given the dramatic pace at which the crisis is unfolding, the increased exposure that detainees and prisoners face with each passing day, and the difficulties that prisoners and detainees will have in obtaining legal counsel and access to courts in the midst of a public health emergency.[64]

Virginia's courts do not have the resources to adjudicate thousands of petitions for habeas corpus on an emergency basis. Given the rate at which the virus is spreading, even if the courts were willing to entertain emergency habeas petitions from thousands of at-risk individuals, the amount of time it would take for courts to consider all such petitions on a case-by-case basis could ultimately amount to no relief at all for most individuals. In considering whether to issue this writ, this Court should consider "the urgency which prompts an exercise of the discretion, the interests of the public and third

[64] *See, e.g.*, Alexa Dorion, *Coronavirus: Virginia courts operating on limited capacity*, WILLIAMSBURG YORKTOWN DAILY (Mar. 17, 2020), https://wydaily.com/local-news/2020/03/17/coronavirus-virginia-courts-close-after-judicial-emergency-order/.

persons, the results which would follow upon a refusal of the writ, as well as the promotion of substantial justice." *Front Royal & Warren Cty. Indus. Park Corp. v. Town of Front Royal*, 29 Va. Cir. 226 (1992). To ensure the health and well-being of incarcerated persons in Virginia during the current crisis, immediate action must be taken to reduce the carceral population and take steps to mitigate the spread of COVID-19 before irreparable harm occurs.

2. Extraordinary measures in other jurisdictions demonstrate the need for population reduction in Virginia's prisons and jails.

Given the dire threat that COVID-19 presents, many state and local officials have recognized the need for drastic action to reduce the risk of a massive outbreak. For instance, thirty-one elected prosecutors—including four in Virginia—recently signed on to a letter calling for leaders in the criminal justice system "to dramatically reduce the number of incarcerated individuals and the threat of disastrous outbreaks" of COVID-19 in prisons.[65] There is widespread public support for such action, including steps to decarcerate currently confined individuals, especially those who are high-risk of illness or fatality.[66]

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[65] *Joint Statement from Elected Prosecutors on COVID- 19 and Addressing the Rights and Needs of Those in Custody*, FAIR AND JUST PROSECUTION (Mar. 2020), https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf (including Virginia Commonwealth Attorneys Buta Biberaj, Loudoun County; Parisa Dehghani-Tafti, Arlington County & City of Falls Church; Jim Hingeley, Albermarle County; and Stephanie Morales, Portsmouth).

[66] *ACLU Poll Shows Wide-Ranging Support for Releasing Vulnerable People from Jails and Prisons*, AM. CIVIL LIBERTIES UNION (Mar. 30, 2020), https://www.aclu.org/press-releases/aclu-poll-shows-wide-ranging-support-

Courts across the country have responded to analogous circumstances by ordering the release of those in state custody and acting to prevent new admissions to penal institutions.[67] The New Jersey Supreme Court, which ordered presumptive release of every person in county jail in the state;[68] a New York trial court, which ordered the release of 106 people held at Rikers Island on technical parole violations;[69] and the South Carolina Supreme Court, which released every person charged with a non-capital crime, without bond, pending trial.[70] Meanwhile, the Massachusetts Supreme Court has appointed a special master and heard arguments in a mass writ requesting release of numerous categories of pre-trial detainees and prisoners,

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releasing-vulnerable-people-jails-and-prisons (finding that "63 percent of registered voters support releasing people from jails and prisons to stop the spread of COVID-19" and that "72 percent of voters support clemency for elderly incarcerated people in the midst of this pandemic").

[67] *See generally* Court Actions to Reduce Incarceration in Light of COVID-19 (cataloging orders releasing prisoners and unlocking release mechanisms, by 17 courts across 15 state courts, as well as numerous release orders by federal courts with respect to federal and immigration detention) (Exhibit 6).

[68] *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 082430 (N.J. March 22, 2020), https://www.njcourts.gov/notices/2020/n200323a.pdf?c=9cs. The order provided a mechanism for prosecutors, within 24 to 48 hours, to object to the release of specific prisoners who "would pose a significant risk to the safety of the inmate or the public," with such objections to be considered by judges or special masters appointed by the Supreme Court.

[69] Timothy Williams, Benjamin Weiser, and William K. Rashbaum, *'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html (reporting that, after the New York City corrections department's physician warned the mayor that "'a storm is coming,'" the city "released at least 650 people").

[70] Memorandum from Donald W. Beatty, Chief Justice of South Carolina Supreme Court, to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020), https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461.

including those incarcerated for technical violations and those whose medical conditions will make COVID-19 infection more lethal. In Montana, the Chief Justice of the Supreme Court wrote to all judges in the state asking each to "review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses."[71] Similarly, the Washington Supreme Court directed that all trial courts in the state prioritize hearings that could result in the release of a defendant in custody, providing that courts "shall hear motions for pretrial release on an expedited basis"; additionally, the court held that any person fitting the CDC's definition of a member of a vulnerable population would be presumed to have demonstrated a "material change in circumstances" justifying reconsideration of previously ordered bail conditions.[72] In an effort to prevent new admissions to county jails, the chief judge of Maine's trial courts, with the approval of the chief justice of the Maine Supreme Court, vacated all outstanding warrants for unpaid fines,

[71] Letter from Mike McGrath, Chief Justice of Montana Supreme Court, to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020), https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333.

[72] *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf.

restitution, fees, and failures to appear. The order resulted in the vacatur of more than 12,000 warrants.[73] There are similar calls for action in Maryland[74] and Colorado.[75]

These courts and others have acted in recognition of the extraordinary public health risk posed by the transmission of COVID-19 in custodial settings.[76] These steps by the judiciary are in addition to the many actions taken by governors, parole boards, and departments of correction in other states to quickly enact comprehensive plans for reducing pre-trial populations, granting early release, expediting the transition to parole, and generally ensuring that a person's arrest or sentence to a correctional

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[73] Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Mar. 17, 2020), https://www.courts.maine.gov/covid19/emergency-order-vacating-warrants-fines-fees.pdf; *see also* Judy Harrison, *Maine courts vacate warrants for unpaid fines and fees,* BANGOR DAILY NEWS (Mar. 17, 2020), https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid-fines-and-fees/.

[74] Letter from Marilyn J. Mosby, State's Attorney for Baltimore City, to Governor Larry Hogan (Mar. 23, 2020), https://content.govdelivery.com/attachments/MDBALTIMORESAO/2020/03/23/file_attachments/1408962/Gov%20Hogan%20Proposal.pdf (calling for wide-ranging releases "to reduce the prison population to enable social distancing and self-isolation, and to facilitate adequate health care resources inside these institutions").

[75] Governor Jared Polis, *Guidance to Counties Municipalities, Law Enforcement Agencies, and Detention Centers* at 5 (Mar. 24, 2020), https://drive.google.com/file/d/17wBJHdmlu3yRyF2CYQiLTVGjCgLPAB4P/view (encouraging "the courts together with prosecutors and defense attorneys, to work to evaluate the detention centers' populations and determine how to reduce the number of individuals in custody").

[76] *See generally*, *Responses to the COVID-19 Pandemic*, PRISON POLICY INITIATIVE (Apr. 1, 2020), https://www.prisonpolicy.org/virus/virusresponse.html (detailing, among other actions, the Rhode Island Department of Corrections' efforts to evaluate people with less than four years left of their sentences for release; the Iowa Department of Corrections' planned expedited release of 700 incarcerated people eligible for parole; and the governor of Colorado's executive order granting broad authority to the state's Department of Correction to release people within 180 days of their parole eligibility dates).

facility is not a death sentence because of this pandemic.[77] The numerous actions taken in other parts of the country illustrate the variety of measures available to this Court to accomplish the necessary reduction of the Commonwealth's jail and prison populations.

COVID-19 public health experts have sounded the alarm that prisons are in extremely high-risk settings for the spread of COVID-19 since the pandemic's arrival in the United States. Incarcerated people will be disproportionately affected by the coming wave of infections in Virginia's correctional facilities–from county jails to state prisons. This request for relief seeks dramatic changes in the way our courts, correctional facilities, and other public agencies operate. The key goals of Petitioners' requests are, first, to reduce the population of our correctional facilities to allow individuals in our facilities a chance to pursue the social distancing and hygiene measures urgently recommended by public health experts; and second, to reduce the chance of a catastrophic and uncontrollable outbreak of COVID-19 in a correctional facility that could spread to the general public.[78]

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[77] *Id.*

[78] *See, e.g.*, Dr. Lipi Roy, *Infections And Incarceration: Why Jails And Prisons Need To Prepare For COVID-19 Now*, FORBES (Mar. 11, 2020), https://www.forbes.com/sites/lipiroy/2020/03/11/infections-and-incarceration-why-jails-and-prisons-need-to-prepare-for-covid-19-stat; Brie Williams, *et al.*, *Correctional Facilities in the Shadow of COVID-19: Unique Challenges and Proposed Solutions*, HEALTH AFFAIRS (Mar. 26, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200324.784502/full/ (cataloguing the significant differences between combatting the virus inside of prison versus outside of it).

CONCLUSION

As the Supreme Court has emphasized, "[t]here is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell*, 418 U.S. 539, 555–556 (1974). Under the current circumstances, dramatically reducing the number of incarcerated individuals and ensuring compliance with health experts' recommendations will in turn minimize the threat of disastrous outbreaks. Absent decisive action, our overcrowded jails will become petri dishes that overwhelm both correctional and healthcare systems. We urge this Court, in the strongest terms, to join the growing chorus of courts who have decided to act in an effort to save lives. The time to act is now. Accordingly, Petitioners respectfully request that this Court grant the instant Petition and issue a Writ of Mandamus ordering Respondents to take immediate steps to significantly reduce the population of its correctional facilities, and any and all other relief the Court deems appropriate, to prevent the extraordinary loss of life and harm that the spread of COVID-19 would cause in such facilities.

Respectfully Submitted,

/s/ Eden B. Heilman

Eden B. Heilman (VSB #93554)
Jennifer Safstrom (VSB #93746)
Vishal Agraharkar (VSB #93265)
Nicole Tortoriello (VSB #91129)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA
701 E. Franklin Street, Ste. 1412
Richmond, VA 23219
Phone: (804) 523-2152
Fax: (804) 649-2733
eheilman@acluva.org
jsafstrom@acluva.org
vagraharkar@acluva.org
ntortoriello@acluva.org

Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies on this 22 day of April, 2020, that the foregoing brief complies with Rule 5:7 and that four paper copies have been delivered to the Clerk's Office of the Supreme Court of Virginia. This same day a copy of the foregoing brief has been delivered via email to the following:

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
service@oag.state.va.us

Ralph S. Northam
Executive Mansion
Capitol Square
Richmond, VA 23218
ralph.northam@governor.virginia.gov

Secretary Brian J. Moran
Secretary of Public Safety
1111 E Broad St # 5035
Richmond, VA 23219
Brian.moran@governor.virginia.gov

Director Harold Clarke
Virginia Department of Corrections
6900 Atmore Dr.
Richmond, VA 23225
Harold.clarke@vadoc.virginia.gov

Director Valerie Boykin
Department of Juvenile Justice
P.O. Box 1110
Richmond, VA 23218
Valerie.boykin@djj.virginia.gov

Adrianne Bennett
Virginia Parole Board
6900 Atmore Drive
Richmond, VA 23225
adrianne.bennett@vpb.virginia.gov

Karl R. Hade
Executive Secretary
100 North Ninth Street
Richmond, Virginia 23219
khade@vacourts.gov

Respectfully Submitted,

/s/ Eden B. Heilman

Eden B. Heilman (VSB #93554)
Jennifer Safstrom (VSB #93746)
Vishal Agraharkar (VSB #93265)
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA
701 E. Franklin Street, Ste. 1412
Richmond, VA 23219
Phone: (804) 523-2152
Fax: (804) 649-2733
eheilman@acluva.org
jsafstrom@acluva.org
vagraharkar@acluva.org
ntortoriello@acluva.org

Counsel for Petitioners

Exhibit 1

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

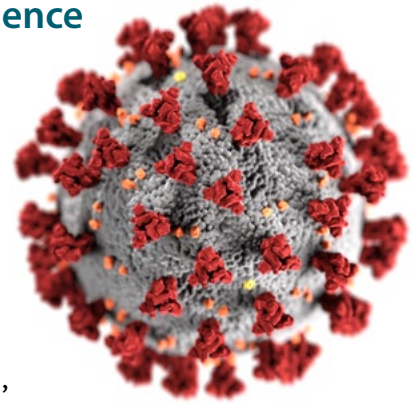
This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: https://www.cdc.gov/coronavirus/2019-ncov/index.html.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

Who is the intended audience for this guidance?



This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- √ Operational and communications preparations for COVID-19
- √ Enhanced cleaning/disinfecting and hygiene practices
- √ Social distancing strategies to increase space between individuals in the facility
- √ How to limit transmission from visitors
- √ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- √ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- √ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- √ Healthcare evaluation for suspected cases, including testing for COVID-19
- √ Clinical care for confirmed and suspected cases
- √ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define "local community" in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, "incarcerated/detained persons" refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e, detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance below). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term "medical isolation" to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this CDC publication.

Staff—In this document, "staff" refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, "staff" does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—Symptoms of COVID-19 include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the CDC website for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness**. This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

√ **Develop information-sharing systems with partners.**

- o Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- o Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- **For all:** symptoms of COVID-19 and hand hygiene instructions
- **For incarcerated/detained persons:** report symptoms to staff
- **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- Review policies to ensure that they actively encourage staff to stay home when sick.
- If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- Determine which officials will have the authority to send symptomatic staff home.

- √ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - o Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - o Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- √ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - o Allow staff to work from home when possible, within the scope of their duties.
  - o Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - o Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - o Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- √ **Consider offering revised duties to staff who are at** higher risk of severe illness with COVID-19**.** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
  - o Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- √ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- √ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**
- √ **Review** CDC's guidance for businesses and employers to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

- √ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - o Standard medical supplies for daily clinic needs
  - o Tissues
  - o Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - o Hand drying supplies
  - o Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - o Cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See PPE section and Table 1 for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated

√ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**

- See CDC guidance optimizing PPE supplies.

√ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, CDC recommends cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.

√ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See Hygiene section below for additional detail regarding recommended frequency and protocol for hand washing.)

- Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.

√ **If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**

√ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See Table 1 for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

√ **Stay in communication with partners about your facility's current situation.**

- State, local, territorial, and/or tribal health departments
- Other correctional facilities

√ **Communicate with the public about any changes to facility operations, including visitation programs.**

- √ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - o Strongly consider postponing non-urgent outside medical visits.
  - o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- √ **Implement lawful alternatives to in-person court appearances where permissible.**
- √ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- √ **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

- √ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- √ **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.
  - o Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - o Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - o Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - o Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- √ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- √ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

- √ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**
- √ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis.** Sample signage and other communications materials **are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
    - o **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
    - o **Practice good** hand hygiene**:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
    - o **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
    - o **Avoid sharing eating utensils, dishes, and cups.**
    - o **Avoid non-essential physical contact.**
- √ **Provide incarcerated/detained persons and staff no-cost access to:**
    - o **Soap—**Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
    - o **Running water, and hand drying machines or disposable paper towels for hand washing**
    - o **Tissues** and no-touch trash receptacles for disposal
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.
- √ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

- √ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).
    - o **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
        - Require the individual to wear a face mask.
        - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
        - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
        - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a close contact of a known COVID-19 case (but has no COVID-19 symptoms):**
  - Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

√ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
  - Arrange bunks so that individuals sleep head to foot to increase the distance between them
  - Rearrange scheduled movements to minimize mixing of individuals from different housing areas
- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- √ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- √ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- √ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- √ **Provide** up-to-date information about COVID-19 **to incarcerated/detained persons on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Reminders to report COVID-19 symptoms to staff at the first sign of illness
- √ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

- √ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - o Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Employers' sick leave policy
  - o **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
  - o **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
  - o **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - o Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

- √ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- √ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

- √ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o Staff performing temperature checks should wear recommended PPE.
  - o Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- √ **Provide visitors and volunteers with information to prepare them for screening.**
  - o Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
  - o If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
  - o Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- √ **Promote non-contact visits:**
  - o Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
  - o Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
  - o Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- √ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
  - o If moving to virtual visitation, clean electronic surfaces regularly. (See Cleaning guidance below for instructions on cleaning electronic surfaces.)
  - o Inform potential visitors of changes to, or suspension of, visitation programs.
  - o Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
  - o If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

√ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

√ **Implement alternate work arrangements deemed feasible in the** Operational Preparedness **section.**

√ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**

- If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.

√ **When possible, arrange lawful alternatives to in-person court appearances.**

√ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**

- Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
  - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
  - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
  - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

- √ **Coordinate with state, local, tribal, and/or territorial health departments.**
  - o When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
  - o When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
  - o Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

Hygiene

- √ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)
- √ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

Cleaning and Disinfecting Practices

- √ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)
- √ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

- √ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**
- √ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
  - o Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
  - o Serve meals to cases inside the medical isolation space.
  - o Exclude the individual from all group activities.
  - o Assign the isolated individual a dedicated bathroom when possible.
- √ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.
- √ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
  (NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

√ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:

- **Cover** their mouth and nose with a tissue when they cough or sneeze
- **Dispose** of used tissues immediately in the lined trash receptacle
- **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.

√ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- The individual has had no subsequent illness

√ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.

- Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).

√ **Hard (non-porous) surface cleaning and disinfection**

- o If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- o For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

√ **Soft (porous) surface cleaning and disinfection**

- o For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.

√ **Electronics cleaning and disinfection**

- o For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - Follow the manufacturer's instructions for all cleaning and disinfection products.
  - Consider use of wipeable covers for electronics.
  - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

√ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)

√ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ Laundry from a COVID-19 cases **can be washed with other individuals' laundry.**

- o Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

√ **Consult** cleaning recommendations above **to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

√ **Incarcerated/detained persons who are close contacts of a** confirmed or suspected COVID-19 case **(whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**

- If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.

√ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**

- Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
- Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

√ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**

- Provide medical evaluation and care inside or near the quarantine space when possible.
- Serve meals inside the quarantine space.
- Exclude the quarantined individual from all group activities.
- Assign the quarantined individual a dedicated bathroom when possible.

√ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually.** Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.

- If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
- If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
- Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

√ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

√ **In order of preference, multiple quarantined individuals should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

√ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

√ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

- √ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
  - o If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
  - o See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- √ **If an individual who is part of a quarantined cohort becomes symptomatic:**
  - o **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
  - o **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
  - o **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- √ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- √ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- √ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- √ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
  - o Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
  - o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

- √ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- √ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See Medical Isolation section above.**

- √ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.
- √ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
  - o If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
  - o If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- √ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
  - o Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- √ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.
- √ **Consider additional options to intensify** social distancing within the facility.

Management Strategies for Staff

- √ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- √ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
  - o See above for definition of a close contact.
  - o Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

- √ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).

√ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).

√ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

√ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**

- If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
- The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.

√ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**

√ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.

√ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**

√ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**

√ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

√ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
- For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.

√ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**

√ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (**see Table 1). **Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**

√ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**

√ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection—**goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
  - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
  - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

√ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- **Guidance in the event of a shortage of N95 respirators**
  - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
- **Guidance in the event of a shortage of face masks**
- **Guidance in the event of a shortage of eye protection**
- **Guidance in the event of a shortage of gowns/coveralls**

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/ Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

- √ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**
  - *Today or in the past 24 hours, have you had any of the following symptoms?*
    - *Fever, felt feverish, or had chills?*
    - *Cough?*
    - *Difficulty breathing?*
  - *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*
- √ **The following is a protocol to safely check an individual's temperature:**
  - Perform hand hygiene
  - Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
  - Check individual's temperature
  - **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
  - Remove and discard PPE
  - Perform hand hygiene

Exhibit 2

DECLARATION OF AMBER BROWN

I, Amber Brown, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief.

1. My name is Amber Brown. I am over the age of 18 years, and competent to give testimony. I am Quincy Roderick Woodson's girlfriend and we have been dating for three years. Quincy is currently incarcerated at Middle River Regional Jail ("Middle River"). His Offender ID number is 00-11321. He is currently 47 years old and is in pretrial detention awaiting the scheduling of his bond hearing. His next anticipated court date is scheduled for May 5, 2020 in Augusta Circuit Court for possession of a controlled substance, failure to stop at the scene of an accident, and disregarding police.

2. Quincy has high blood pressure, congestive heart failure, and renal failure. Quincy needs a pacemaker, as he has severe heart disease. As COVID-19 proves to be a "stress test" for the cardiovascular system, I'm afraid his damaged heart wouldn't survive the virus.

3. I speak with Quincy two to three times a day and have heard from him about the issues he has faced with his health treatment while incarcerated at Middle River. Although on consistent medication since his hospitalization for a heart attack two years ago, the facility has switched his prescriptions and is giving him different medication. They have added one medication without the consultation of his primary care doctor. The facility has given him generics of the same medications he had been taking. Quincy must pay $40 per week for his medication while incarcerated, even though these medications would not cost him anything if he were not incarcerated, as he qualified for Medicaid. This cost of medication is in addition to the $3 daily charge for housing.

4. The conditions at Middle River prevent Quincy from complying with social distancing and other recommendations provided by health officials. Quincy is housed in a medical pod, MA-6, where individuals are housed two to a cell, kept together in close quarters. There are approximately twenty people per pod. There are congregate meals and congregate showers in each pod that everyone in the pod uses and where individuals are in close proximity. There is no outdoor recreation time, but individuals congregate in the open area on the pod. According to Quincy, he gets his medication through the same door as they get their food trays. He goes to the medical unit to receive his vitals for his blood pressure twice a week. In the medical unit, inmates sit in a waiting cell in which they cannot stay six feet apart.
5. I do not believe Quincy has been provided with sanitation supplies and there has been no enhanced cleaning/sanitation protocol. No one who is incarcerated or works at the facility is wearing masks or gloves. If they do have personal protective equipment, they don't wear

them or supply the inmates with anything. Recently, his cellmate got written up for asking for a mask. It is my understanding that any cleaning done has been by pod trustees, who do routine cleaning in the evening, without additional precautions or protocols for COVID-19.

6. Quincy heard that a prisoner transferred from New York was suspected of having COVID-19, and although that individual reportedly tested negative, Quincy has reported that other individuals are potentially exhibiting symptoms but remain untested.

7. If released, Quincy would live with me or his mother. He has a solid home plan and family support that can adequately take care of him and make sure he is able to follow all requirements of release and probation. He is a strong candidate for a safe release, and in the current state of his incarceration and medical vulnerability, he is at serious risk if not released.

Signed: Amber Brown (Apr 16, 2020) Date: Apr 16, 2020

Amber Brown

Amber Brown (for Quincy Roderick Woodson) Declaration

Final Audit Report 2020-04-16

Created:	2020-04-16
By:	Mateo Gasparotto (mgasparotto@acluva.org)
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"Amber Brown (for Quincy Roderick Woodson) Declaration" History

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Exhibit 3

DECLARATION OF ANGELA WELLS

I, Angela Wells, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief.

1. My name is Angela Wells. I am over the age of 18 years, and competent to give testimony. I am the fiancé of William Williams. William is currently incarcerated at Piedmont Regional Jail. His Offender ID number is 995765. He is 51 years old and is serving a 6-month sentence for a probation violation. His initial charge was for drug possession. His probation violation was for driving under the influence. His release date is June 25, 2020.

2. William was diagnosed with Type II diabetes in January of 2020 by a nurse at Piedmont. He has seen a doctor once during his incarceration at Piedmont. He takes insulin shots two times per day and two pills called Metformin, both of which are self-administered. He lines up with the other incarcerated people to receive their medications from a nurse that comes to the pod daily. He experiences light headedness and exhaustion from his diabetes. Proper social distancing is not possible in the setting where William is held. William is housed in L2, general population. He is in a trustee pod, housed with other incarcerated persons that work in either the kitchen, on the grounds or as maintenance workers. His pod is one room with approximately 11bunk beds stacked four high, housing approximately 30 people. The bunks are bolted in place, so they cannot be rearranged. The bunk beds are approximately 2-3 feet apart from each other, and you cannot sit up fully without ducking to prevent hitting your head on the bed above you. The residents can walk around the pod at night. There has been no lockdown or schedule changes due to the current health crisis.

3. To my knowledge, there have been no additional cleaning or sanitation measures implemented in William's pod. The residents are given bleach and mops every day to wipe down their bunk and floors. They shower in the pod, and there are no extra measures to sanitize the showers between uses. The residents are given soap and hygiene supplies when they first arrive at Piedmont Regional Jail, but after this initial supply they have to purchase hygiene supplies, including toilet paper and soap, from their commissary accounts. If they have less than $5 on their commissary, they are provided hygiene supplies at no cost. They can access the sinks or showers in the pod at any time.

4. William works in the kitchen. He gets up at 2:30am to work, where he prepares the food trays and cleans them in the afternoon. The trays are brought into the pod by the resident workers who are accompanied by a guard. They are stackable trays on carts. The residents of the pod pick up their tray from the cart and eat in the large pod. They are not six feet apart during food delivery.

5. William has heard that 23 people in the jail are sick and that there is a separate pod for quarantine. He heard this information from a correctional officer that he communicates with regularly. He also heard that 4 people have been hospitalized with COVID 19 symptoms. William also heard this information from other residents at Piedmont Regional Jail. The 23 people that are experiencing COVID-19 symptoms are isolated in an empty pod, but none of the other residents that they came in contact with are isolated or being monitored for symptoms. There has been no testing that he is aware of in the jail, nor any temperature taking or symptom monitoring. The incarcerated population has not been provided any personal protective equipment. Guards usually wear gloves when handling the property of the residents, even prior to the COVID-19 pandemic. Some guards are wearing masks, others aren't. He prepares the 23 isolated persons food on styrofoam trays so that they do not return the trays to the kitchen.

6. Since visitation has been suspended, William is provided two five-minute calls every Friday. I am able to talk to William for ten minutes every night by phone, though sometimes our calls are shorter depending on how much money is in his account. I use these phone calls to get updates as to how he is feeling and how he is being treated. William has said that it is chaotic and that everyone is scared and freaking out. The residents are frustrated and worried. He is thankful that he is working in the kitchen because that gives him a chance to pass the time and get his mind off of things.

7. I am concerned about his health and safety. The institution is reluctant to provide healthcare services. He had a cold two weeks ago and they did not even take his temperature. They are not giving him all of his medication daily, he did not receive his dosage of Metformin for the past two days and this resulted in his blood sugar level spiking. I am scared that if he gets sick, he could end up in a coma because of his diabetes.

8. My aunt Gloria Link passed away from COVID-19. She was in a nursing home where there was an outbreak. I have already lost one family member to COVID-19, I am terrified of losing William, too.

9. If William were released, he would live with me. He has a solid home plan and family support that can adequately take care of him and make sure he is able to follow all requirements of release and probation. He is a strong candidate for a safe release, and in the current state of his incarceration and medical vulnerability, he is at serious risk if not

Signed: Angela Wells Date: 4-14-2020

Angela Wells

Exhibit 4

DECLARATION OF ELIZABETH YATES

I, Elizabeth Yates, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief.

1. My name is Elizabeth Yates. I am over the age of 18 years, and competent to give testimony. I am the fiancé of James Stuckey. We have been together for 2 years and engaged for approximately eight months. We have an eight-month-old daughter together. James is currently incarcerated at Southside Regional Jail ("Southside"). His Offender ID number is 20-0161. He is currently 34 years old and is in pretrial detention awaiting his preliminary hearing.

2. Although James was supposed to have preliminary hearings on February 11th, 2020 and March 17th, 2020, both were continued, with the March hearing being continued due to court closures related to COVID-19.

3. James was arrested in Indiana for a non-violent credit card offense, was bailed, and then re-arrested for a pending warrant in Virginia. As a result, James has been in Southside since February 10, 2020.

4. James was diagnosed with an immune deficiency disorder and high blood pressure two years ago, and also suffers from anxiety and panic attacks. He was diagnosed with anxiety and bipolar disorder when he was 12.

5. James was sick for a week with COVID-19 symptoms around March 16th or 17th, including chills and pounding headache. He went to the medical unit and had a fever of 102.4 degrees Fahrenheit. He was given a dose of Tylenol, which they charged $15 for, and sent back to the pod. He was not provided with extra bedding or clothing to stay warm during his fever. Because the unit was locked down while he was in the medical unit, he was not able to return to his cell and had to stay in the congregate area with other incarcerated persons. Despite the fact that James and other people incarcerated with him had similar symptoms, there was no testing for COVID-19. They did not isolate him or encourage him to social distance, even with those symptoms. To my knowledge, James has not been re-checked since that initial visit.

6. James is housed in a general population unit, referred to as HA 606 or 607, since being admitted to Southside. There are approximately 25 people in each housing pod. Although James has his own cell, others in the pod share cells. Cells are approximately 4x5 feet, about as big as a bathroom. His housing unit is regularly placed on intermittent lockdowns several times a day. On April 14, 2020, the water was shut off three times, so he had no water for the sink and could not flush the toilet.

7. James has faced several challenges at Southside that prevent him from complying with social distancing and other recommendations provided by health officials. He has not been provided with hand sanitizer, and the people incarcerated there are given a single three-ounce bar of soap to last for showers and hand-washing for an entire week if they do not have funds in their account to purchase any. Individuals have been permitted in the open area on the pod, when not on lockdown, where groups congregate on the pod and play cards or watch television. There is no outdoor recreation time and individuals are required to eat in their cells. Although most time is spent locked in their cells, individuals may not be able to return to their cells to maintain social distancing. If they are out of their cells, the door to their cell gets locked and they cannot get back in, they are thus forced to be around people in the pod and congregate. Because the toilets are in their cells, if they are locked out of their cell they are unable to access the toilet or sink, if they need to use the toilet they are forced to hold it.

8. The facility is not maintaining social distancing or taking necessary additional sanitation steps. I do not believe anyone in the in the facility is wearing masks or gloves (guards or incarcerated persons), there is no enhanced cleaning/sanitation protocols, and no sanitation of common items between uses (like telephones). Meals are brought to cells and trays are removed by individuals who are not wearing masks or gloves.

9. This entire COVID-19 situation has increased his anxiety. I am concerned that when he does get out he will have to be institutionalized because his anxiety about dying in jail is so bad. Because he is immune compromised, I am also concerned about his lungs and having respiratory problems because he does get sick so often, even in the best circumstances.

10. If released, James would live with me. James' boss is my neighbor and would help provide James work as a mechanic. He has a solid home plan and family support that can adequately take care of him and make sure he is able to follow all requirements of release and probation. He is a strong candidate for a safe release, and in the current state of his incarceration and medical vulnerability, he is at serious risk if not released.

Elizabeth Yates (Apr 15, 2020)

Elizabeth Yates

Apr 15, 2020

(Date)

Exhibit 5

DECLARATION OF MILDRED ANN WHEELER

I, Mildred Ann Wheeler, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief.

1. My name is Mildred Ann Wheeler. I am over the age of 18 years, and competent to give testimony. I am the partner of over 20 years of David Hensley. David is currently incarcerated at Rappahannock Regional Jail. His Offender ID number is 9903875. He is 60 years old and is serving a one-year sentence for the misdemeanor of shoplifting cat food. He was originally held in the Central Virginia Regional Jail, but was transferred to Rappahannock.

2. David has chronic obstructive pulmonary disease (COPD) and emphysema. He has had these diagnoses for over ten years. He needs to treat his emphysema with the medication albuterol via a breathing machine. Recently, he has been having headaches, stomach aches, and sounds short of breath and tired when we speak on the phone.

3. David collapsed in his cell in February and no one assisted him for an hour. His cell mate had to push the call button for the guards to come assist David. To my knowledge, the jail does not have record of this event. Now he does not have a cell mate, so I am concerned that no one is with him to assist him or call for help if he has another health issue. I am scared that the virus will impact his ability to breathe.

4. Proper social distancing is not possible in the setting where David is held. Others in the facility have cell mates, and cells are still full. Until recently, David had two cell mates. All three of them were in a cell about the size of a closet.

5. Rappahannock has been locked down continuously since David has been there. To my knowledge David has had no recreation time.

6. To my knowledge, there have been no additional cleaning or sanitation measures implemented at Rappahannock Regional Jail. David has access to the toilet in his cell, but has not been provided with soap or hand sanitizer. The incarcerated population has not been provided with personal protective equipment, and the guards are not wearing masks or gloves either.

7. Rappahannock has had no confirmed cases, although David has heard a rumor that someone on C block has COVID-19. There is no testing occurring that I am aware of, nor are temperatures being taken.

8. I am afraid that if he gets the virus he will not survive. He needs to be home so that we can help each other and make sure that we are safe. I have COPD, high blood pressure

and was diagnosed with bronchitis last Thursday, April 2nd. We rely on each other and take care of each other. I am worried that if he gets sick, he won't recover.

9. If David were released, he would live with me. He has a solid home plan and family support that can adequately take care of him and make sure he is able to follow all requirements of release and probation. He is a strong candidate for a safe release, and in the current state of his incarceration and medical vulnerability, he is at serious risk if not released.

Signed:  Date: 4-15-2020

Mildred Ann Wheeler

Exhibit 6

Appendix: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19[1]

State	Judicial Body	Forum	Nature of Relief
Alabama	Circuit Court for the 19th Judicial Circuit of Alabama	Administrative order	• Judge Fuller ordered "all inmates currently held on appearance bonds of $5,000.00 or less be immediately released on recognizance with instructions to personally appear at their next schedule court appearance."[2]
Arizona	Coconino County court system and jail, Judge Dan Slayton, along with other county judges	Court order	• As of March 20, 2020, Judge Dan Slayton and other county judges have released around 50 people who were held in the county jail on non-violent charges.[3]
California	Supreme Court of California, Chief Justice Tani Cantil-Sakauye	Advisory	• The Chief Justice issued guidance encouraging the state's superior courts to, among other things: o "Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to $0 for many lower level offenses." o "Consider a defendant's existing health conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody for adult or juvenile defendants." o "Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment."[4]
	Sacramento Superior Court, Judge Hom	Order	• The Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime.[5]
Kentucky	Kentucky, Chief Justice John Minton Jr.	Letter to state judges and court clerks	• Kentucky, Chief Justice John Minton Jr. told state's judges and court clerks to release jail inmates "as quickly as we can" noting, "jails are susceptible to worse-case scenarios due to the close proximity of people and the number of pre-existing conditions," and that courts have the responsibility "to work with jailers and other county officials to safely release as many defendants as we can as quickly as we can."[6]

Maine	State of Maine Superior Court, Chief Justice Mullen and District Court Chief Judge Sparaco and Deputy Chief Judge French	Emergency Order	• The Superior Court and District Court ordered all trial courts to immediately vacate all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.[7]
Michigan	Chief Justice Bridget M. McCormack, Michigan Supreme Court	Joint Statement	• In a Joint statement, Chief Justice McCormack urged judges to "use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk[,]... release far more people on their own recognizance while they await their day in court...[a]nd judges should use probation and treatment programs as jail alternatives.[8]
Montana	Supreme Court of Montana, Chief Justice McGrath	Letter to Judges	• Chief Justice of the Montana Supreme Court urged judges to "review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses."[9]
New Jersey	New Jersey Supreme Court, Chief Justice Rabner	Consent Order	• In New Jersey, after the Supreme Court ordered briefing and argument on why it should not order the immediate release of individuals serving county jail sentences, the Attorney General and County Prosecutors agreed to create an immediate presumption of release for every person serving a county jail sentence in New Jersey.[10]
New York	New York State Supreme Court, Bronx County, Justice Doris M. Gonzales	Judicial ruling based on writ of habeas corpus	• In a habeas petition brought by the Legal Aid Society, a Justice Doris M. Gonzales ordered the release of 106 individuals currently held at Rikers Island on a non-criminal technical parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.[11]
	New York Supreme Court Justice Mark Dwyer	Judicial ruling based on writ of habeas corpus	• In a habeas petition brought by the Legal Aid Society, a Justice Mark Dwyer ordered the release of 16 individuals currently held at Rikers Island on pretrial detention or parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.[12]

Ohio	Ohio Supreme Court, Chief Justice Maureen O'Connor	News Conference	• Chief Justice O'Connor urged "judges to use their discretion and release people held in jail and incarcerated individuals who are in a high-risk category for being infected with the virus."[13]
South Carolina	Supreme Court of South Carolina, Chief Justice Beatty	Memorandum	• The Chief Justice instructed that "any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk."[14]
Texas	Travis County, Texas, Judges	Individual Court Orders	• Travis County has begun releasing some defendants in custody with underlying health conditions, to reduce the potential spread of COVID-19 in the county's jails. After Austin saw its first positive cases of COVID-19, judges in the county nearly doubled its release of people from local jails on personal bonds, with one judge alone reversing four bond decisions after "balancing this pandemic and public health safety of inmates against what they're charged with."[15]
Utah	Utah Supreme Court and Utah Judicial Council, Chief Justice Durrant	Administrative Order	• The Chief Justice of the Utah Supreme Court ordered that for defendants in-custody on certain misdemeanor offenses, "the assigned judge must reconsider the defendant's custody status and is encouraged to release the defendant subject to appropriate conditions."[16]
Washington	Washington Supreme Court, Chief Justice Stephens	Order	• Chief Justice Stephens ordered judges not to issue bench warrants for failure to appear, "unless necessary for the immediate preservation of public or individual safety" and "to hear motions for pretrial release on an expediated basis without requiring a motion to shorten time." Additionally, for populations designated as at-risk or vulnerable by the Centers for Disease Control, the COVID-19 crisis is presumed to be a material change in circumstances to permit amendment of a previous bail order or to modify conditions of pre-trial release.[17]
Wyoming	Wyoming Supreme Court, Chief Justice Davis	Order	• The Chief Justice instructed judges to issue summonses instead of bench warrants, unless public safety compels otherwise.[18]

Federal Criminal Detention	C.D. Cal, Judge James V. Selna	Minute Order	• The Court granted temporary release for 90 days, pursuant to 18 U.S.C. § 3142 (i), which authorizes discretionary temporary release when necessary for a person's defense or another compelling reason. Judge Selna held the defendant's age and medical conditions, which place him in the population most susceptible to COVID-19, and in light of the pandemic, to constitute "another compelling reason" and granted his temporary release.[19]
	D. Ct., Judge Jeffrey A. Meyer	Order	• Judge Meyer ordered the release of defendant stating that "the conditions of confinement at Wyatt are not compatible" with current COVID-19 public health guidance concerning social distancing and avoiding congregating in large groups. Judge Meyer is one of four federal judges in Connecticut who has released inmates in connection with the COVID-19 pandemic.[20]
	D.D.C., Judge Randolph D. Moss	Minute Order	• Judge Moss released defendant, despite acknowledging offense charged--marijuana distribution and felon in possession—"is serious" because among other factors mitigating public safety concerns "incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant's release to home confinement."[21]
	D.D.C., Judge Randolph D. Moss	Memorandum Opinion	• Judge Moss released defendant while awaiting trial after weighing the risk to the public of releasing defendant [charged with distribution of child pornography] directly against risk to community safety if defendant remained incarcerated in light of the COVID-19 pandemic.[22]

	D. Nev., Judge Jones	Opinion and Order	• Judge Jones delayed defendant's date to surrender to begin his intermittent confinement by a minimum of 30 days because "[i]n considering the total harm and benefits to prisoner and society . . . temporarily suspending [defendant's] intermittent confinement would appear to satisfy the interests of everyone during this rapidly encroaching pandemic." In coming to this conclusion, the court placed weight on the fact that "incarcerated individuals are at special risk of infection, given their living situations, and may also be less able to participate in proactive measures to keep themselves safe; because infection control is challenging in these settings.[23]
	D. S.C., Judge David C. Norton	Order	• Judge Norton granted compassionate release for 73-year-old with severe health conditions under the First Step Act, "[g]iven defendant's tenuous health condition and age, remaining incarcerated during the current global pandemic puts him at even higher risk for severe illness and possible death, and Congress has expressed its desire for courts to [release federal inmates who are vulnerable to COVID-19]."[24]
	N.D. Cal., Judge Vince Chhabria	Sua Sponte Order	• Judge Chhabria issued a sua sponte decision extending defendant's surrender date from June 12, 2020 to September 1, 2020 stating: "By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided . . . To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed."[25]
	N.D. Cal., Judge Hixson	Order	• Judge Hixon released a 74-year old in light of COVID-19 holding "[t]he risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail. Release under the current circumstances also serves the United States' treaty obligation to Peru, which – if there is probable cause to believe Toledo committed the alleged crimes – is to deliver him to Peru alive."[26]

	S.D.N.Y., Judge Paul A. Engelmayer	Amended Order	• Judge Englemayer granted defendant temporary release from custody, pursuant to 18 U.S.C. § 3142(i), "based on the unique confluence of serious health issues and other risk factors facing this defendant, including but not limited to the defendant's serious progressive lung disease and other significant health issues, which place him at a substantially heightened risk of dangerous complications should be contract COVID-19 as compared to most other individuals."[27]
	S.D.N.Y., Judge Alison J. Nathan	Opinion & Order	• Judge Nathan ordered the Defendant released subject to the additional conditions of 24-hour home incarceration and electronic location monitoring as directed by the Probation Department based in part on "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic" which may place "at a heightened risk of contracting COVID-19 should an outbreak develop [in a prison]."[28]
Federal Immigration Detention	9th Cir., Judges Wardlaw, M. Smith, and Judge Siler, 6th Cir., sitting by designation.	Sua Sponte Order	• The panel held "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court."[29]
	C.D. Cal, Judge Terry J. Halter, Jr.	TRO and order to show cause based on writ of habeas corpus	• Judge Halter ordered the release of two ICE detainees. The court found that in detention "[p]etitioners have not been protected [against risks associated with COVID-19]. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues."[30]
	D. Mass, Judge Mark L.Wolf	Oral Order	• Judge Wolf ordered the release, with conditions, from ICE custody a member of the class in *Calderon v. Nielsen* based, in part, on the "extraordinary circumstances" posed by COVID-19.[31]

	S.D.N.Y., Judge George B. Daniels	Memorandum Decision and Order	• Judge Daniels ordered the release, under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), of an individual as there was likelihood of success on the merits and COVID-19 risks and individual's own medical issues constituted "extraordinary circumstances warranting release."[32]
	S.D.N.Y., Judge Alison J. Nathan	Opinion and Order	• Judge Nathan ordered the immediate release of four detainees finding "no evidence that the government took any specific action to prevent the spread of COVID-19 to high-risk individuals . . . held in civil detention."[33]
	S.D.N.Y., Judge Analisa Torres	Memorandum Decision and Order.	• Judge Torres granted immediate release on recognizance for ten individuals in immigration detention who have a variety of chronic health conditions that put them at high risk for COVID-19. These conditions include obesity, asthma, diabetes, pulmonary disease, history of congestive heart failure, respiratory problems, gastrointestinal problems, and colorectal bleeding. The court held detainees face serious risks to their health in confinement and "if they remain in immigration detention constitutes irreparable harm warranting a TRO."[34]

[1] This chart provides only a sample of the judicial action taken throughout the country as judges continue to respond to the COVID-19 pandemic.

[2] Administrative Order, No. 2020-00010, Ala. Ct. App. (Mar. 18, 2020), https://drive.google.com/file/d/1I4QLwsytSVkdOuo5p6qb1JcuFWcAV4oA/view?usp=sharing. Note: the original order has been revised to provide discretion to the Sheriffs. See Mike Carson, *Alabama Judge Orders Jail Inmates Released, then Leaves it Up to Sheriffs,* AL.Com (Mar. 19, 2020), https://www.al.com/news/2020/03/alabama-judge-orders-jail-inmates-released-then-leaves-it-up-to-sheriffs.html.

[3] Scott Buffon, *Coconino County Jail Releases Nonviolent Inmates in Light of Coronavirus Concerns*, Arizona Daily Sun (updated Mar. 25, 2020), https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html.

[4] Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges and Court Executive Officers of the California Courts (Mar. 20, 2020), https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-

on-emergency-relief-measures.

[5] *Standing Order of the Sacramento Superior Court*, No. SSC-20-PA5 (Mar. 17, 2020), https://www.saccourt.ca.gov/general/standing-orders/docs/ssc-20-5.pdf.

[6] Kyle C. Barry, *Some Supreme Courts Are Helping Shrink Jails to Stop Outbreaks. Others Are Lagging Behind.*, The Appeal (Mar. 25, 2020), https://theappeal.org/politicalreport/some-supreme-courts-are-helping-shrink-jails-coronavirus; John Cheves, *Chief Justice Pleads for Kentucky Inmate Release Ahead of COVID-19 but Progress Slow*, Lexington Herald Leader (Mar. 23, 2020), https://www.kentucky.com/news/coronavirus/article241428266.html.

[7] Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Mar. 17, 2020), https://www.courts.maine.gov/covid19/emergency-order-vacating-warrants-fines-fees.pdf.

[8] Joint Statement of Chief Justice Bridget M. McCormack, Mich. Sup. Ct. and Sheriff Matt Saxton, Exec. Dir., Mich. Sheriff Ass'n (Mar. 26, 2020), https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20(003).pdf.

[9] Letter from Chief Justice Mike McGrath, Mont. Sup. Ct, to Mont. Ct. of Ltd. Jurisdiction Judges (Mar. 20, 2020), https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333.

[10] Consent Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. March 22, 2020), https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.

[11] *People of the State of New York, ex rel., v. Cynthia Brann*, No. 260154/2020 (Sup. Ct. NY Mar. 25, 2020), https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsx-nzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTIh2Pe3ZmAUcoZCiC9er2g4Z4mL_ToQ,&typo=1; see also Frank G. Runyeon, *NY Judges Release 122 Inmates as Virus Cases Spike in Jails*, Law360 (March 27, 2020), https://www.law360.com/newyork/articles/1257871/ny-judges-release-122-inmates-as-virus-cases-spike-in-jails.

[12] *Jeffrey v. Bran,* (Sup. Ct. NY Mar. 26, 2020). See Press Release, Redmon Haskins, *Legal Aid Wins Release of 16 Incarcerated New Yorkers at a High Risk of COVID-19 from City Jails* (Mar. 26, 2020),

https://legalaidnyc.org/wp-content/uploads/2020/03/03-26-20-Legal-Aid-Wins-Release-of-16-Incarcerated-New-Yorkers-at-a-high-risk-of-COVID-19-from-City-Jails.pdf;
see also Runyeon, *NY Judges Release 122 Inmates, supra* note 11.

[13] Press Conference, Ohio Chief Justice Maureen O'Connor and Gov. Mike DeWine (Mar. 19, 2020); *see also* WLWT5, *Release Ohio Jail Inmates Vulnerable to Coronavirus, Chief Justice Urges* (Mar. 19, 2020), https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560#.

[14] Memorandum from Chief Justice Beatty, Sup. Ct of S.C to Magistrates, Mun. Judges, and Summary Ct. Staff (March 16, 2020), https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461.

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