

**IN THE SUPREME COURT OF PENNSYLVANIA**

In re: the Petition of the Pennsylvania  
Prison Society, Brian McHale, Jeremy  
Hunsicker, Christopher Aubry,  
Michael Foundos, and Frederick  
Leonard, on behalf of all similarly  
situated individuals

*Petitioners.*

**No.** \_\_\_\_\_

**APPLICATION FOR EXTRAORDINARY RELIEF UNDER THE  
COURT’S KING’S BENCH JURISDICTION**

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. PETITIONERS .....	6
III. JURISDICTION .....	8
IV. FACTUAL BACKGROUND.....	9
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.....	9
B. The key measures to prevent spread of COVID-19 are impossible in county jails, making severe outbreaks likely in those facilities and the communities around them. ....	11
1. Social distancing is not possible in county jails at their current population levels.....	13
2. County jails do not have sufficient supplies for the enhanced hygiene and disinfecting necessary to prevent the spread of COVID-19.....	15
3. Proper isolation for symptomatic people is not possible in county jails. ....	16
4. County jails do not have the capacity to properly screen individuals entering their facilities. ....	16
C. Population reduction is the only way to prevent an outbreak of COVID-19 in the county jails and to prevent the death of those at highest risk.....	17
V. ARGUMENT.....	19
A. This Court has the legal authority to use its broad King’s Bench jurisdiction to order the requested relief. ....	19
B. Extraordinary measures in other jurisdictions demonstrate the need for population reduction in the county jails.....	22
C. This court should exercise its plenary and supervisory jurisdiction to expeditiously reduce county jail populations. ....	27
VI. CONCLUSION.....	32

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b><u>Cases</u></b>	
<i>Bd. of Revision of Taxes v. City of Phila.</i> , 4 A.3d 610 (Pa. 2010).....	27
<i>City of Revere v. Mass. Gen. Hosp.</i> , 463 U.S. 239 (1983).....	27
<i>Commonwealth v. Chimenti</i> , 507 A.2d 79 (Pa. 1986).....	21
<i>Commonwealth v. Williams</i> , 129 A.3d 1199 (Pa. 2015).....	20, 22
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993).....	27
<i>Hutto v. Finney</i> , 437 U.S. 678 (1978).....	27
<i>In re Avellino</i> , 690 A.2d 1138 (Pa. 1997).....	22
<i>In re Bruno</i> , 101 A.3d 635.....	20, 21
<i>Natale v. Camden Cty. Corr. Facility</i> , 318 F.3d 575 (3d Cir. 2003) .....	27
<i>Silver v. Downs</i> , 493 Pa. 50 (1981).....	20
<i>Stander v. Kelly</i> , 250 A.2d 474 (Pa. 1969).....	20

**Constitutions**

42 Pa. Const. Art. V,  
    § 2.....6  
    § 10(a) .....6, 9, 19, 21

**Statutes**

42 Pa.C.S.A.  
    § 502.....6  
    § 726.....9, 19, 27  
42 Pa.C.S. § 9762(b)(3) .....4  
61 Pa.C.S.A. § 102.....1

**Court Orders and Guidance**

Memorandum from Donald W. Beatty, Chief Justice of South  
Carolina Supreme Court, to Magistrates, Municipal Judges, and  
Summary Court Staff (Mar. 16, 2020).....23  
Emergency Order Vacating Warrants for Unpaid Fines, Unpaid  
Restitution, Unpaid Court-Appointed Counsel Fees, and Other  
Criminal Fees (Mar. 17, 2020) .....24  
*In the Matter of the Request to Commute or Suspend County Jail  
Sentences*, No. 082430 (N.J. March 22, 2020) .....5, 23  
*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), .....23  
Letter from Mike McGrath, Chief Justice of Montana Supreme Court,  
to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020) .....23

**Other Authorities**

I.A. Binswanger, et al., *Prevalence of chronic medical conditions  
among jail and prison inmates in the USA compared with the  
general population*, 63 *Journal of Epidemiology & Community  
Health* 912–919 (2009) .....18

Jennifer Gonnerman, <i>How Prisons and Jails Can Respond to the Coronavirus</i> , The New Yorker (Mar. 16, 2020).....	18
Judy Harrison, <i>Maine courts vacate warrants for unpaid fines and fees</i> , Bangor Daily News (Mar. 17, 2020) .....	24
Kevin Hayes, <i>Lackawanna County reviews possible release of low level inmates to mitigate spread of COVID-19</i> (March 18, 2020) .....	26
Carina Julig, <i>Larimer County inmate in community corrections program tests positive for coronavirus</i> , The Denver Post (Mar. 22, 2020) .....	25
Amanda Klonsky, <i>An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues</i> , The New York Times, Mar. 12, 2020.....	1
Marie McCullough & Lisa Gartner, <i>Philadelphia-area hospitals brace for the coronavirus surge: ‘We are no more than 2 weeks behind N.Y.C.,’</i> The Philadelphia Inquirer (March 27, 2020) .....	12
Letter from Marilyn J. Mosby, State’s Attorney for Baltimore City, to Governor Larry Hogan (Mar. 23, 2020) .....	24
Scott Noll & Camryn Justice, <i>Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic</i> (March 20, 2020).....	24
Governor Jared Polis, <i>Guidance to Counties Municipalities, Law Enforcement Agencies, and Detention Centers</i> at 5 (Mar. 24, 2020).....	24
Josiah Rich, et al., <i>We Must Release Prisoners to Lessen the Spread of Coronavirus</i> , The Washington Post (Mar. 17, 2020) .....	13
Robert Salonga, <i>Bay Area courts, authorities ramp up release of inmates to stem COVID-19 risks in jails</i> , The Mercury News (Mar. 19, 2020) .....	25
Elise Schmelzer, <i>Uneven response to coronavirus in Colorado courts leads to confusion, differing outcomes for defendants</i> , The Denver Post (Mar. 21, 2020) .....	25

Andy Sheehan, *Coronavirus In Pittsburgh: Amid Virus Pandemic, Allegheny County Jail Releases More Than 200 Inmates*, KDKA News (Mar. 20, 2020) .....26

U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (“CDC Guidance”) (Mar. 23, 2020) .....*passim*

Vera Institute, *Incarceration Trends in Pennsylvania*.....4

Verified Petition for Writ of Habeas Corpus (“NYLAS Petition”), *People ex rel. Stoughton v. Brann*, No. 260154/2020, at ¶ 3 (N.Y. Sup. Ct. Mar. 25, 2020) .....3, 12

Marissa Wenzke, *1,700 inmates in L.A. County released over coronavirus concerns* (Mar. 24, 2020) .....25

WTAE Action News, *545 inmates released from Allegheny County Jail due to coronavirus concern* (March 27, 2020).....26

## I. INTRODUCTION

This petition presents an extraordinary issue of public safety: the urgent need to protect the health of all Pennsylvania residents and save lives by limiting the spread of COVID-19 among incarcerated people and staff in Pennsylvania’s county jails.<sup>1</sup> Leading public health officials have warned that unless courts act **now**, the “epicenter of the pandemic will be jails and prisons.”<sup>2</sup> The U.S. Centers for Disease Control and Prevention (“CDC”) has explained that correctional and detention facilities “present unique challenges for control of COVID-19 transmission among incarcerated persons, detention center staff, and visitors.”<sup>3</sup> As Dr. Joseph Amon, Director of Global Health at Drexel University states, “County jails were not built for the needs of this kind of pandemic” and the “spread of COVID-19 within the jails will affect not only those who are being held there, but

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<sup>1</sup> For purposes of this petition, “county jail” means “county correctional institution,” as that term is defined in 61 Pa.C.S.A. § 102.

<sup>2</sup> Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

<sup>3</sup> U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (“CDC Guidance”) (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.



also the correctional officers who work there, and the communities they go back to.” Amon Decl. ¶¶ 19, 40.<sup>4</sup>

Across Pennsylvania, it is not possible for county jails 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.<sup>5</sup> Governor Wolf, Health Secretary Levine and this Court (in its March 16th and 18th Orders) have made efforts to enforce social distancing and limit the spread of the virus and prospective death toll. However, jails and prisons—by necessity, but in direct contravention of all public health and medical advice—force detainees and staff into tight quarters where frequent touching and unhygienic practices are the norm.<sup>6</sup> County jails simply do not have the space to keep incarcerated individuals six feet apart. Pennsylvania jails routinely double- or triple-cell people, and confine large numbers together in one room, where they

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<sup>4</sup> Dr. Amon’s Declaration is attached as Exhibit A to this Petition (“Amon Decl.”), with his C.V. attached as Exhibit B. Dr. Amon is an internationally recognized authority on infectious disease control, clinical care, and obligations of government related to individuals in detention settings.

<sup>5</sup> *See generally*, CDC Guidance; *see also* Amon Decl. ¶¶ 45-46; Declaration of Dr. Jonathan Golob at ¶ 13 (attached as Exhibit C). Dr. Golob is on the faculty of the University of Michigan School of Medicine, where he specializes in the study of spread of infection in immunocompromised patients and is actively involved in planning for the care of patients with COVID-19. *See* Ex. D.

<sup>6</sup> Petitioners are submitting the declarations of several witnesses to attest to current jail conditions, including volunteers with the Petitioner Pennsylvania Prison Society (Exhibits J, K, and L) and the individual Petitioners, each of whom is currently incarcerated (Exhibits E, F, G, H, and I).

sleep arm’s length apart, eat shoulder to shoulder, and share rarely sanitized bathrooms. Nor do jails have the capacity to isolate symptomatic individuals. Many of these facilities lack adequate onsite health care services to evaluate or quarantine infected individuals in the manner dictated by infection-control guidance.

Under these conditions, once COVID-19 enters a correctional facility, it is virtually certain to spread like wildfire through the prison population, correctional staff, and into the nearby community. This is already happening in places like New York, where viral spread is a week or more ahead of Pennsylvania.<sup>7</sup> This is not just a prisoners’ rights issue. Once the virus enters the jails, the regular movement of staff and visitors in and out means that prison walls and razor wire can neither slow nor stop viral spread. This impending viral explosion – imminently likely to occur in all sixty-seven counties – will directly impact all Commonwealth residents, including correctional staff, their families, and their respective communities. Failure to address the spread of the virus in jails will

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<sup>7</sup> In a court filing last week, the Legal Aid Society of New York noted that the virus’s exponential rate of infection in New York City jails far outpaces the national average, with Riker’s Island experiencing an infection rate *roughly 85 times* the rate in the community-at-large. Verified Petition for Writ of Habeas Corpus (“NYLAS Petition”), *People ex rel. Stoughton v. Brann*, No. 260154/2020, at ¶ 3 (N.Y. Sup. Ct. Mar. 25, 2020).

undermine the effectiveness of government-mandated measures to enforce social distancing, which now cover millions of Pennsylvanians.

Of the approximately 37,000 people currently detained in Pennsylvania's county jails, more than half are in pre-trial status, and therefore presumed innocent.<sup>8</sup> Many are held on probation detainers due to technical violations or minor offenses, cannot afford modest bail, or have been deemed eligible for work release by a judge. Of the people serving a jail sentence in a Pennsylvania county jail—which, by law, includes only those individuals sentenced to a maximum term of two years or less, 42 Pa.C.S. § 9762(b)(3)—many have already completed their minimum terms of incarceration or are mere weeks away from doing so.

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 Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections One, Thirteen, and Fourteen of the Pennsylvania Constitution. Indeed, for some individuals who are older or suffer from pre-existing medical problems, continued detention may literally be consigning them to a death sentence.

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<sup>8</sup> Vera Institute, *Incarceration Trends in Pennsylvania*, [www.vera.org/downloads/pdfdownloads/state-incarceration-trends-pennsylvania.pdf](http://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-pennsylvania.pdf) (noting that, as of 2015, people held pretrial constituted 62% of the total jail population in Pennsylvania).

This Court, recognizing the public health threat presented by COVID-19 and acknowledging the need to “restrict person-to-person contact,” issued emergency orders on March 16th and 18th closing Pennsylvania Courts to the public. Public health imperatives require that this Court take far more dramatic steps. 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. Most notably, last week, 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. *In the Matter of the Request to Commute or Suspend County Jail Sentences*, Consent Order, (N.J. No. 084230 March 22, 2020). New Jersey is not alone; jurist in the highest courts of Washington, South Carolina, Maine, and Montana have all taken similar measures.

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 populations, and one county (Allegheny County) has taken systemic steps to reduce its jail population, most judicial districts are taking a business-as-usual approach, failing to address, or even recognize, the looming public health

catastrophe. 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.

This Court has the power under Pennsylvania Constitution Article V, Sections 2 and 10(a), 42 Pa. Const. Stat. § 502, and Rule of Judicial Administration 1952(A) to provide for the necessary broad-based reduction of county jail populations. It is this relief that petitioners respectfully urge the Court to order. Specifically, for the reasons outlined below, petitioners request that the Court (1) direct the presumptive release, subject to challenge by district attorneys, of discrete categories of incarcerated people; and (2) direct the courts of the Commonwealth to institute measures that will further limit jail populations. This relief is warranted, reasonable, and, above all, essential in light of the unprecedented public health risk facing the Commonwealth's residents.

## II. PETITIONERS

Petitioner, the **Pennsylvania Prison Society**, founded in 1787, is the nation's oldest human rights organization. Petitioner's mission is to ensure humane prison conditions and to advocate for a restorative approach to criminal justice. The Prison Society advances its mission through three programmatic areas: (1) prison monitoring, (2) social services support to family members with incarcerated loved ones, and (3) education and advocacy. Written into Pennsylvania law, the

Prison Society is the Commonwealth's prison ombuds, working to stop abuse and trauma. Every month, more than 250 incarcerated people and their families ask the Society for help with issues they face inside prison. Society staff and volunteers respond to these complaints by going into correctional facilities, meeting with incarcerated people, working to resolve concerns, and providing real-time information on prison conditions. The Prison Society is the only organization that provides public witness to what happens behind prison walls. Declarations of several Prison Society volunteers attesting to current conditions in certain jails in support of this Petition are attached as Exhibits J, K, and L.

Individual petitioners are five incarcerated individuals currently in custody at different county facilities, all of whom are incarcerated for minor offenses, and are at increased risk of contracting COVID-19 as a result of their incarceration. As each individual petitioner testifies in his declaration, current living situations in each facility, including shared living quarters, make it impossible for incarcerated individuals to maintain the recommended six-foot distance from one another.

1. Petitioner **Brian McHale**, 44, is in custody on a probation detainer at the Montgomery County Correctional Facility ("MCCF") as a result of alleged technical violations of his probation for retail theft convictions. Ex. E, Declaration of Brian McHale at ¶¶ 2-3. Because of several serious health conditions, *see id.* at ¶¶ 4-7, Petitioner McHale faces an elevated likelihood of serious harm and death should he contract the virus. At MCCF, he shares a cell with two other men. *Id.* at ¶ 8.

Petitioner McHale filed an emergency habeas petition for release due to his medical condition and susceptibility to COVID-19. The Montgomery County Court of Common Pleas deferred consideration until after “the expiration of the judicial emergency.” *Id.* ¶¶ 12-16.

2. Petitioner **Jeremy Hunsicker**, 33, is detained at a Community Correction Center (“CCC”) in Lehigh County. Ex. F, Declaration of Jeremy Hunsicker at ¶ 2. While on parole for driving under the influence, Petitioner Hunsicker was arrested for driving with a suspended license. *Id.* at ¶ 3. His parole was revoked and he was resentenced to six to twelve months, with another six to twelve months for driving with a suspended license. *Id.* Petitioner Hunsicker is eligible for work release, and is currently housed in a pod with about twenty other people. *Id.* at ¶¶ 5, 8.
3. Petitioner **Christopher Aubry**, 55, is incarcerated at MCCF on a one to twenty-three month sentence for simple assault and related misdemeanor charges. Ex. G, Declaration of Christopher Aubry at ¶¶ 2-3. He is work release eligible and currently housed in a pod with approximately fifty other people. *Id.* at ¶¶ 5-6.
4. Petitioner **Michael Foundos**, 39, is detained at George W. Hill Correctional Facility in Delaware County. Ex. H, Declaration of Michael Foundos at ¶¶ 2. Charged with retail theft, he has a probation detainer and a \$50,000 bond. Foundos Decl. at ¶¶ 4-6. At his facility, each cell block contains 30 cells, and cells are generally shared by two people. *Id.* at ¶ 9.
5. Petitioner **Frederick Leonard**, 29, is incarcerated at Pike County Correctional Facility for a six to twenty-three-and-a-half month sentence for driving under the influence, driving with a suspended license, and fleeing. Ex. I, Declaration of Frederick Leonard at ¶¶ 2-3. He has several health conditions that place him at elevated risk of serious harm and death should he contract the virus. *Id.* at ¶ 4. At his facility, he shares a cell with two other individuals. *Id.* at ¶ 5.

### III. JURISDICTION

The Court has jurisdiction pursuant to its King’s Bench authority to decide this application and order the requested relief to “cause right and justice to be

done” in this matter involving “an issue of immediate public importance.”

42 Pa.C.S.A. § 726 and Pa. Const. art. V, § 10(a).

#### **IV. 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.**

COVID-19 is a disease that has reached pandemic status. According to the World Health Organization, as of March 29, there were more than 638,146 confirmed cases of COVID-19 worldwide and more than 30,105 confirmed deaths. The United States has the highest number of confirmed cases in the world—more than 135,499—and 2,381 confirmed deaths. Amon Decl. ¶ 5. In Pennsylvania, as of March 29 at 4:30 p.m., there are 3,394 confirmed cases and 38 reported deaths, more than twice the number reported three days earlier and seven times the numbers reported just a week earlier. *Id.*<sup>9</sup> 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 in the most severe projections. Golob Decl. ¶ 11.

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<sup>9</sup> The rapid rise of the pandemic means that at the time of submission, the number of confirmed cases and deaths discussed in Dr. Amon’s Declaration will have grown exponentially. The declaration was prepared based on the data available to Dr. Amon at the time.



People over the age of 45 and those with certain medical conditions face a greater risk of serious illness from COVID-19, and those over the age of 55 face the highest risk of death. Amon Decl. ¶ 9; Golob Decl. ¶ 3. 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), inherited metabolic disorders, stroke, and developmental delay. Golob Decl. ¶ 3. People with these conditions are at an increased risk of developing serious complications or dying from COVID-19, regardless of age. Golob Decl. ¶ 3; Amon Decl. ¶¶ 7-9.

The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. Golob Decl. ¶ 4. 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. *Id.* For people in the highest risk populations, the fatality rate of COVID-19 is about 15 percent. Golob Decl. ¶ 4. This means about one in seven infected individuals in this high-risk group will die from COVID-19. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound

reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity. Golob Decl. ¶¶ 4, 5 & 8.

**B. The key measures to prevent spread of COVID-19 are impossible in county jails, making severe outbreaks likely in those facilities 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. Golob Decl. ¶ 10; Amon Decl. ¶ 6. There is no vaccine to inoculate against COVID-19 and there is no known medication to treat COVID-19. Golob Decl. ¶ 10; Amon Decl. ¶ 6. 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. Golob Decl. ¶ 10; Amon Decl. ¶ 13.

People detained in county jails cannot take these necessary measures to mitigate the risk of exposure. They are, therefore, at heightened risk of COVID-19 infection. Amon Decl. ¶¶ 24-26. County jails are “congregate settings,” places where people live or sleep in close proximity. Such enclosed group environments, like cruise ships or nursing homes, have become the sites for the most severe outbreaks of COVID-19. Amon Decl. ¶¶ 19, 20. 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. *Id.* at ¶ 20; Golob Decl. ¶ 13. Recent experience in the Rikers Island facility in New York City bears out the devastating impact of COVID-19 infection in a jail setting. 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.<sup>10</sup>

As the rate of infection increases in Pennsylvania,<sup>11</sup> the same phenomenon seen at Rikers Island is likely to repeat itself in the Commonwealth’s county jails. COVID-19 has already been reported in Delaware County’s jail. *See* Amon Decl. ¶¶ 19, 20, 30. And, on March 27, 2020, Philadelphia reported that both an employee and an inmate tested positive for COVID-19 in its jails. Amon Decl. ¶ 30.

Transmission in jails will endanger not only the incarcerated, but also the broader community. As correctional staff enter and leave the facility, they will

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<sup>10</sup> *See NYLAS Petition*, n.1.

<sup>11</sup> Dr. P.J. Brennan, Chief Medical Officer of the University of Pennsylvania Health System, has stated that the Philadelphia area is “no more than two weeks behind New York City” in the rate of infection. Marie McCullough & Lisa Gartner, *Philadelphia-area hospitals brace for the coronavirus surge: ‘We are no more than 2 weeks behind N.Y.C.,’* The Philadelphia Inquirer (March 27, 2020), [www.inquirer.com/health/coronavirus/philadelphia-coronavirus-cases-hospitals-testing-covid-20200327](http://www.inquirer.com/health/coronavirus/philadelphia-coronavirus-cases-hospitals-testing-covid-20200327).

carry the virus with them. Amon Decl. ¶ 19.<sup>12</sup> Like the incarcerated people in the facilities where they work, correctional officers face an increased risk of COVID-19 exposure because they are less able to engage in required social distancing. Amon Decl. ¶ 32. In addition to staff testing positive in Philadelphia and Delaware Counties, several jurisdictions across the country have reported that correctional officers have tested positive for the virus. Amon Decl. ¶¶ 29, 30. Beyond the risk they pose to those incarcerated at the facility when they enter, correctional officers expose their families and broader communities to substantial risk every time they leave a correctional facility at the end of their daily shifts.<sup>13</sup>

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

- 1. Social distancing is not possible in county jails at their current population levels.**

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

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<sup>12</sup> Josiah Rich, et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, The Washington Post (Mar. 17, 2020), [www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus](https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus) (The authors (including a professor of medicine and epidemiology) warn that unless we act swiftly to release people from jails and prisons, the virus threatens not only prisoners and corrections workers but the general public as well).

<sup>13</sup> See Rich, et al., *supra* n. 12.

close contact with one another (within about six feet) via respiratory droplets produced when an infected person coughs or sneezes. Amon Decl. ¶ 13. Social distancing is so imperative that Governor Wolf has ordered people in 19 counties not to leave their homes. Amon Decl. ¶ 14. As of March 27, at least 25 states, 74 counties, and 14 cities were under similar stay-at-home orders. Governors in 40 states have barred even small social gatherings. The extraordinary impact on more than 200 million people due to stay-at-home orders and mandatory business closures, including several million throughout Pennsylvania, 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”)<sup>14</sup> to increase the physical space between incarcerated persons. Amon Decl. ¶ 21. Yet individuals in county jails in the Commonwealth have no ability to practice social distancing.

For example, in Montgomery County Correctional Facility, numerous cells throughout the facility are shared by three people—meaning that three people share the same confined space, one toilet, and one sink. In addition to their cellmates, each incarcerated person has close contact with thirteen other individuals on his unit and up to fifty other people on his “pod.” Amon Decl. ¶ 24. In Lehigh

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<sup>14</sup> CDC Guidance at 11.

County's Community Corrections Center, up to seventy people eat meals together at one time, and close contact with other incarcerated persons is unavoidable during regular medical checks. *Id.* In Blair County Prison, beds are just three to four feet apart. Amon Decl. ¶ 25. In Allegheny County, newly arrested individuals typically are held for more than a day in an intake cell, usually with ten or more people sharing a single toilet and sink. Amon Decl. ¶ 25.

In these circumstances, county jails will not be able to prevent COVID-19 transmission once the virus is inevitably introduced into the jail.

**2. County jails do not have sufficient supplies for 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. Amon Decl. ¶ 22. In county jails, people share toilets, sinks, and showers, without disinfection between each use. *Id.* at ¶ 20. Food preparation and service is communal with little opportunity for surface disinfection. *Id.* County jails do not have enough supplies for individuals to wash their hands or to disinfect the space around them. Amon Decl. ¶ 26. There is not sufficient hand sanitizer in Lehigh County's Community Corrections Center or the Montgomery County Correctional Facility. Amon Decl. ¶ 24. Soap is limited in Blair County Prison and Allegheny County Jail. Amon Decl. ¶ 25. 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.

**3. Proper isolation for symptomatic people is not possible in county jails.**

The CDC guidance recommends “medical isolation of confirmed or suspected COVID-19 cases.”<sup>15</sup> Yet, once a person in a county jail has symptoms, proper isolation is not possible due to population size and the physical limitations of the facility. Amon Decl. ¶¶ 25-26. Because of forced contact between many individuals in crowded facilities, people who are exposed will need to be quarantined. Because most jails are at or near capacity, there simply is insufficient 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 isolation units.<sup>16</sup>

**4. County jails do not have the capacity to properly screen individuals entering their facilities.**

County jails cannot implement screening measures necessary to prevent introduction of the virus into the jails. The CDC recommends that jails adopt intensive pre-intake screening of all prisoners, and screen all staff and individuals

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<sup>15</sup> CDC Guidance at 15-16.

<sup>16</sup> CDC Guidance at 19.

entering the facility.<sup>17</sup> Non-test based verbal screens—i.e., asking a person for a subjective report of symptoms—cannot adequately screen for new, asymptomatic or pre-symptomatic infections. *Id.* at ¶ 27. As COVID-19 has a typical incubation period of five days, and transmission often occurs before presentation of symptoms, such inadequate screening presents a critical problem. Golob Decl. ¶ 6. The possibility of asymptomatic transmission means that monitoring staff or incarcerated people for fevers is inadequate to identify all who may be infected and preventing transmission. Amon Decl. at ¶ 27.

Given the shortage of COVID-19 test kits in the United States, jails will not be able to test people newly admitted to the facility, individuals on work release, staff, visiting attorneys, or any other people who enter facilities daily. Amon Decl. ¶¶ 27, 28.

**C. Population reduction is the only way to prevent an outbreak of COVID-19 in the county jails and to prevent the death of those at highest risk.**

Significant reduction of county jail populations is the only viable option to protect incarcerated persons from COVID-19. Amon Decl. ¶ 47. Without reduction in the numbers of detained individuals, jails will be unable to implement the only scientifically recognized procedures that can reduce the risk of infection. *Id.* Reducing county jail populations will allow the facilities to reduce the risk of

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<sup>17</sup> *Id.* at 7-11.



infection for both incarcerated people and correctional officers, which in turn protects the communities to which the officers return. *Id.*

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. Amon Decl. ¶ 41.<sup>18</sup> Large numbers of seriously ill incarcerated people will strain the limited medical infrastructure in the jails, heightening the risk that infected individuals will suffer serious harm.

Some county jails simply lack the necessary medical infrastructure to address the spread of infectious disease and treatment of people most vulnerable to illness. Once COVID-19 spreads throughout a jail, the burden of caring for these sick individuals will shift to local community medical facilities. Because many rural parts of the Commonwealth have limited access to hospitals with intensive care units or trained infectious disease practitioners, and limited personal

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<sup>18</sup> Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus*, *The New Yorker* (Mar. 16, 2020), <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>; see also I.A. Binswanger, et al., *Prevalence of chronic medical conditions among jail and prison inmates in the USA compared with the general population*, 63 *Journal of Epidemiology & Community Health* 912–919 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/19648129> (concluding that people incarcerated in U.S. jails and prisons had a higher burden of most chronic medical conditions than the general population, even when adjusting for sociodemographic differences and alcohol consumption).

protective equipment and other life-sustaining supplies, thus there is an increased likelihood of death for all individuals living in such rural communities who become ill and require treatment. Amon Decl. ¶ 44.

\* \* \*

In sum, to effectively mitigate the risk of infection and subsequent spread of the virus, the jail population must be reduced. Amon Decl. ¶ 47. Reducing the overall number of individuals in detention facilities allows social distancing for all inside, and allows infected individuals and their contacts, to be properly quarantined and monitored for health complications that require transfer to a local hospital. *Id.* It also lessens the risk to corrections officers, who, if short-staffed, will have difficulty maintaining order and proper personal protective measures. *Id.* Protecting corrections staff in turn protects the communities they come from. *Id.* Unless this Court orders measures to reduce the jail population, contagion will be more widespread, already taxed hospitals strained further, and the mortality rate likely to increase. The time to act is now.

## V. ARGUMENT

### A. **This Court has the legal authority to use its broad King’s Bench jurisdiction to order the requested relief.**

The Court has King’s Bench jurisdiction to decide this application in order to “cause right and justice to be done” in a matter involving “an issue of immediate public importance.” 42 Pa.C.S.A. § 726 and Pa. Const. art. V, § 10(a). This case

raises “an issue of immediate public importance affecting operation of government throughout the Commonwealth.” *Silver v. Downs*, 493 Pa. 50, 56 (1981).

As a result of its enduring King’s Bench authority, this Court possesses “every judicial power that the people of the Commonwealth can bestow under the Constitution of the United States.” *In re Bruno*, 101 A.3d 635, 666 (Pa. 2014) (quoting *Stander v. Kelly*, 250 A.2d 474, 484 (Pa. 1969)). This Court’s precedent has long “described the King’s Bench power in the broadest of terms” and, as such, has recognized that the Court “would be remiss to interpret the Court’s supervisory authority at King’s Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power.” *In re Bruno*, 101 A.3d at 679.

The Court’s exercise of its King’s Bench authority is appropriate here, as the COVID-19 public health crisis is an unprecedented matter of public importance, which “requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015).

This Court has already recognized, in its two emergency orders of March 16th and 18th, that the COVID-19 pandemic warrants extraordinary steps to protect the public. This Petition calls upon the Court to meet this unprecedented health challenge by directing each judicial district to take reasonable and necessary measures to prevent widespread contagion. Petitioners call upon the Court to take

this necessary action to protect not just the people held within county jails, but correctional staff, their families, their respective communities and ultimately the public health of all Commonwealth residents.

Time is of the essence. Immediate intervention by this Court is necessary to avoid “the deleterious effects arising from delays incident to the ordinary process of law.” *Williams*, 129 A.3d at 1206. The risk to the general public of delaying further review cannot be overstated. To date, individual judicial districts or jurists throughout the Commonwealth have relied on a piecemeal strategy without any guidance from this Court. The lack of an urgent, unified, and concerted effort to address the grave public health risk will result in future measures that, quite simply, will be too little, too late. There will be outbreaks in county jails, an inevitable community spread, and, increased suffering.

Application of the King’s Bench power is particularly suited to this case, which asks that this Court exercise its “general supervisory and administrative authority over all the courts.” Pa. Const. art. V, § 10(a). This Court further has power under Section 10(a) “to prescribe general rules governing practice, procedure and the conduct of all courts.” *Id.* “By its ‘supreme’ nature, the inherent adjudicatory, supervisory, and administrative authority of this Court at King’s Bench ‘is very high and transcendent.’” *In re Bruno*, 101 A.3d at 669 (quoting *Commonwealth v. Chimenti*, 507 A.2d 79, 81 (Pa. 1986)). This “supervisory power

over the Unified Judicial System is beyond question.” *In re Bruno*, 101 A.3d at 678.

Under its King’s Bench authority, this Court has the power to exercise general jurisdiction over the Unified Judicial System even “where no matter is pending in a lower court.” *In re Avellino*, 690 A.2d 1138, 1140 (Pa. 1997). When exercising King’s Bench authority, this Court’s “principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.” *Williams*, 129 A.3d at 1206 (quotation and citation omitted).

The issues raised by Petitioners plainly fall within the Court’s King’s Bench authority. The urgency to respond to this historic public health crisis cannot be gainsaid.

**B. Extraordinary measures in other jurisdictions demonstrate the need for population reduction in the county jails.**

In recognition of the extraordinary public health risk posed by the transmission of COVID-19 in custodial settings, courts across the country have taken steps within the past week to reduce prison populations in their respective states, including the following:

- On March 22, 2020, the Supreme Court of New Jersey ordered the release of *all* prisoners serving county jail sentences.<sup>19</sup>
- 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.”<sup>20</sup>
- The chief justice of the South Carolina Supreme Court ordered that everyone held in jail on bond in a non-capital case be released, unless there exists an “unreasonable danger” or “extreme flight risk.”<sup>21</sup>
- 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” and that any person fitting within the CDC’s definition of vulnerable populations would be presumed to have demonstrated a “material change in circumstances” justifying reconsideration of previously ordered bail conditions.<sup>22</sup>

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<sup>19</sup> *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.

<sup>20</sup> 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%2032020.pdf?ver=2020-03-20-115517-333>.

<sup>21</sup> 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>.

<sup>22</sup> *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>.

- 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, restitution, fees, and failures to appear.<sup>23</sup> The order resulted in the vacatur of more than 12,000 warrants.<sup>24</sup>

In addition to state Supreme Courts taking action, in Maryland<sup>25</sup> and Colorado,<sup>26</sup> executive officers urged courts to take similar measures. Similarly, in other jurisdictions, local authorities have acted to sharply reduce prison populations:

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<sup>23</sup> See 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>.

<sup>24</sup> 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/>.

<sup>25</sup> Letter from Marilyn J. Mosby, State’s Attorney for Baltimore City, to Governor Larry Hogan (Mar. 23, 2020), [https://content.govdelivery.com/attachments/MDBALTIMORESASO/2020/03/23/file\\_attachments/1408962/Gov%20Hogan%20Proposal.pdf](https://content.govdelivery.com/attachments/MDBALTIMORESASO/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”).

<sup>26</sup> 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”).

- Cuyahoga County, Ohio, which encompasses Cleveland, has decreased its prison population by more than 30 percent, releasing approximately 600 out of a total of 1,900 incarcerated people.<sup>27</sup>
- The Los Angeles County Sheriff authorized the release of 1,700 people, reducing the county jail population by 10 percent.<sup>28</sup>
- Officials in two other California counties, Alameda County and Santa Clara County, released more than 300 prisoners from each jurisdiction's respective jails.<sup>29</sup>
- In Colorado, the Jefferson County Sheriff's Office announced it would release all prisoners who had served more than half of their sentence,<sup>30</sup> and Larimer County temporarily released all 142 people sentenced to its work release program.<sup>31</sup>

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<sup>27</sup> Scott Noll & Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic* (March 20, 2020), <https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic>.

<sup>28</sup> Marissa Wenzke, *1,700 inmates in L.A. County released over coronavirus concerns* (Mar. 24, 2020), <https://ktla.com/news/local-news/1700-jail-inmates-in-l-a-county-released-over-coronavirus-concerns-sheriff-says/>

<sup>29</sup> Robert Salonga, *Bay Area courts, authorities ramp up release of inmates to stem COVID-19 risks in jails*, *The Mercury News* (Mar. 19, 2020), <https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/>.

<sup>30</sup> Elise Schmelzer, *Uneven response to coronavirus in Colorado courts leads to confusion, differing outcomes for defendants*, *The Denver Post* (Mar. 21, 2020), [https://www.denverpost.com/2020/03/21/colorado-courts-coronavirus-judges/?fbclid=IwAR0Da1qjZSsU48THOo-Hi24ibgCW\\_ed1nMVfmRJ1BaZNFJJlsVo1BJO0lsk](https://www.denverpost.com/2020/03/21/colorado-courts-coronavirus-judges/?fbclid=IwAR0Da1qjZSsU48THOo-Hi24ibgCW_ed1nMVfmRJ1BaZNFJJlsVo1BJO0lsk).

<sup>31</sup> Carina Julig, *Larimer County inmate in community corrections program tests positive for coronavirus*, *The Denver Post* (Mar. 22, 2020), [https://www.denverpost.com/2020/03/22/coronavirus-larimer-county-inmate/?fbclid=IwAR0\\_M2BhVxD42BjIfTh\\_bYVwSfg6nH68cwLArtGt7GPpl58FqpE4g\\_Bnfgo](https://www.denverpost.com/2020/03/22/coronavirus-larimer-county-inmate/?fbclid=IwAR0_M2BhVxD42BjIfTh_bYVwSfg6nH68cwLArtGt7GPpl58FqpE4g_Bnfgo).



Officials in Pennsylvania have just begun to address the pending crisis in county jails. Allegheny County, through a concerted effort and collaboration by the courts, the public defender, and the sheriff, released nearly 550 people from the county jail.<sup>32</sup> It did so to address “fear that the jail would become a giant Petri dish for the virus.”<sup>33</sup> In Lackawanna County, to “minimize people in and out of the prison,” the President Judge initiated a review of the file of “every low-level offender,” including prisoners assigned to work release or those close to reaching their minimum release date.<sup>34</sup>

The actions of Allegheny and Lackawanna Counties are important, but they are limited exceptions to what has otherwise been a business-as-usual approach by almost all other county courts. Most Pennsylvania counties have released very few, if any, people to reduce prison population levels. Without immediate statewide actions, these remaining counties are likely to become the “petri dishes” that

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<sup>32</sup> WTAE Action News, *545 inmates released from Allegheny County Jail due to coronavirus concern* (March 27, 2020), <https://www.wtae.com/article/545-inmates-released-from-allegheny-county-jail-due-to-coronavirus-concerns/31953103#>

<sup>33</sup> Andy Sheehan, *Coronavirus In Pittsburgh: Amid Virus Pandemic, Allegheny County Jail Releases More Than 200 Inmates*, KDKA News (Mar. 20, 2020), <https://pittsburgh.cbslocal.com/2020/03/20/allegheny-county-jail-released-inmates/>.

<sup>34</sup> Kevin Hayes, *Lackawanna County reviews possible release of low level inmates to mitigate spread of COVID-19* (March 18, 2020), <https://www.pahomepage.com/top-news/lackawanna-county-to-release-low-level-inmates-to-mitigate-spread-of-covid-19/>.

officials in Allegheny County rightly feared will spread contagion to surrounding communities throughout the Commonwealth.

The actions taken by state courts and local executive officials across the country as described above provide a template for actions this Court must take to protect the health and safety of the county jail population, the correctional staff in those jails, and the surrounding communities.

**C. This court should exercise its plenary and supervisory jurisdiction to expeditiously reduce county jail populations.**

This Court’s intervention is necessary to protect the people of Pennsylvania. As outlined above, the path to doing so requires a reduction in county jail populations to minimize spread of the virus among those in custody and their custodians, and thereby minimize contagion in surrounding communities.

Under 42 Pa.C.S. § 726, “[t]his Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance . . . .” *Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010). If ever there were a case that is of “immediate public importance,” it is this one, which necessarily involves a myriad of rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the Federal Constitution, as well as Article I, Sections One, Thirteen, and Fourteen of the Pennsylvania Constitution. *See, e.g., Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a

convicted prisoner””) (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)) (the government violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”).

Experts urge this Court to act now to mitigate a swelling public health catastrophe. For the reasons stated above, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter and instruct the President Judge of each Judicial District to take measures that both expeditiously reduce their jail populations and limit the likelihood of near-term increase in their populations.

The numerous actions taken by state supreme courts and local law enforcement authorities 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 populations. These recent developments show that the Court can grant relief leading to the release of broad categories of prisoners who are in county jails as a result of minor charges or violations, prisoners who are nearing completion of their sentences, and prisoners who are at the greatest level of risk for serious complications or death from COVID-19 infections. Release of people in these categories poses little risk to public safety. To the contrary, as shown throughout this Petition, these releases and the resulting reduction in jail

populations are critically necessary to ensure public safety in the face of an unprecedented risk to public health.

Petitioners, based on their good faith understanding of the components of populations in the Commonwealth's county jails, urge the Court to:

1. Instruct all courts in the Commonwealth to immediately order county jails within their respective jurisdictions to release the following categories of people, subject to the objection provision outlined in ¶ 2 below:
  - a. Those who are within three months of, or beyond, their minimum sentence;
  - b. Those under a probation detainer (or serving a sentence) for a violation of probation or county parole where the violation does not arise out of the commission of a new felony offense;
  - c. Those eligible to periodically leave their correctional facilities, such as those eligible for work release or serving intermittent sentences (e.g., weekends);
  - d. Those detained pretrial solely due to an order imposing cash bail; and
  - e. Any incarcerated person at increased risk of severe COVID-19 complications and death as defined by the CDC, including those

over the age of 45, and people with any of the following underlying medical conditions: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders (including diabetes), metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy.

2. Order that, if a district attorney objects to the release of a particular person within the above categories on the ground that release of that individual would pose a significant risk to the safety of a specific person or to the public, the district attorney shall, within twenty-four (24) hours of this Court's order, lodge an objection with a judicial authority appointed by the President Judge of each district.
  - a. In the event of a district-attorney initiated objection, the appointed judicial authority shall provide counsel for the detained person, who will have an opportunity to respond to the objection prior to the judicial authority ruling on the objection.
  - b. The judicial authority shall not force the release of any detained person who opposes release for reasons of personal or family safety.

3. Order that all courts in the Commonwealth, after releasing individuals identified above, take the following measures to maintain the reduction in the jail populations:
  - a. Cease setting cash bail for any newly arrested indigent defendant, and order them released on reasonable and appropriate non-monetary conditions;
  - b. Implement a process to review and lift all probation and parole detainers;
  - c. Prioritize arraignments and preliminary hearings for any in-custody defendant;
  - d. Ensure the availability of a venue to conduct guilty pleas and sentencing hearings for any defendant where the parties anticipate that the proceeding will result in release of the defendant from detention within 30 days; and
  - e. Ensure the availability of a venue for prosecutors to file motions to nolle pros or otherwise dismiss charges.
4. Appoint a special master to administer and monitor compliance with this order; and direct the President Judge of each Commonwealth judicial district, or such official(s) designated by each President Judge, to provide

compliance reports to the special master and petitioners' counsel in this case, in a manner, and at a time interval, directed by this Court.

## **VI. CONCLUSION**

The country, and this Commonwealth, face a public health crisis of epic proportions. COVID-19 presents risks to all of us, and has forced us as a country to come together and do what is right for the community and the public health. We must allow and encourage everyone to engage in practices that flatten the curve—social distancing and vigorous hygiene. This protects the most vulnerable among us and, hopefully, gives our overtaxed healthcare systems the chance to treat those most gravely affected by COVID-19. Absent decisive action, our overcrowded jails will become petri dishes that overwhelm both correctional and healthcare systems. The only humanitarian and constitutional solution is to immediately order the release of as many people as possible from our county jails. 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.

Dated: March 30, 2020

Respectfully submitted,

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## Declaration of Joseph J. Amon, Ph.D. MSPH

I, Joseph J. Amon, declare as follows:

### Background and Expertise

1. I am an infectious disease epidemiologist, Director of Global Health and Clinical Professor in the department of Community Health and Prevention at the Drexel Dornsife School of Public Health. I also hold an appointment as an Associate in the department of epidemiology of the Johns Hopkins University Bloomberg School of Public Health. My Ph.D. is from the Uniformed Services University of the Health Sciences in Bethesda, Maryland and my Master's of Science in Public Health (MSPH) degree in Tropical Medicine is from the Tulane University School of Public Health and Tropical Medicine.
2. Prior to my current position, I have worked for a range of non-governmental organizations and as an epidemiologist in the Epidemic Intelligence Service of the US Centers for Disease Control and Prevention. Between 2010 and 2018, I was a Visiting Lecturer at Princeton University, teaching courses on epidemiology and global health. I currently serve on advisory boards for UNAIDS and the Global Fund against HIV, TB and Malaria and have previously served on advisory committees for the World Health Organization.
3. I have published 60 peer-reviewed journal articles and more than 100 book chapters, letters, commentaries and opinion articles on issues related to public health and health policy.
4. One of my main areas of research focus relates to infectious disease control, clinical care, and obligations of government related to individuals in detention settings, in which I have published a number of reports assessing health issues in prison and detention settings and more than a dozen peer-reviewed articles. In 2015-2016, I was a co-editor of a special issue of the British journal, "The Lancet," on HIV, TB and hepatitis in prisons. I also serve on the editorial boards of two public health journals. My resume is attached as Exhibit A.

### Information on COVID-19 and Vulnerable Populations

5. COVID-19 is a coronavirus disease that has reached pandemic status. As of today (3/29), according to the World Health Organization more than 638,146 cases have been diagnosed in 203 countries or territories around the world and more than 30,105 confirmed deaths.<sup>1</sup> In the United States, which has the highest number of reported cases in the world, more than 135,499 people have been diagnosed with the disease and 2,381 people have died thus far,<sup>2</sup> though these numbers likely underreport the actual infections and deaths.<sup>3</sup> In Pennsylvania, as of 4:30 pm on March 29, 2020, there were 3,394 confirmed cases and 38 deaths.<sup>4</sup> There has been an exponential increase in cases

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<sup>1</sup> See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> accessed March 29, 2020.

<sup>2</sup> See <https://coronavirus.jhu.edu/map.html> accessed March 29, 2020

<sup>3</sup> See [https://www.washingtonpost.com/national/us-deaths-from-coronavirus-top-1000-amid-incomplete-reporting-from-authorities-and-anguish-from-those-left-behind/2020/03/26/2c487ba2-6ad0-11ea-9923-57073adce27c\\_story.html](https://www.washingtonpost.com/national/us-deaths-from-coronavirus-top-1000-amid-incomplete-reporting-from-authorities-and-anguish-from-those-left-behind/2020/03/26/2c487ba2-6ad0-11ea-9923-57073adce27c_story.html) accessed March 26, 2020.

<sup>4</sup> See <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Situation%20Reports/20200325nCoVSituationReportExt.pdf>; accessed March 26, 2020 [see also:](#)

and deaths in Pennsylvania over the past two weeks:

Date	Cases (cumulative)	Deaths (cumulative)
12-Mar	28	0
13-Mar	41	0
14-Mar	58	0
15-Mar	63	0
16-Mar	76	0
17-Mar	96	0
18-Mar	133	1
19-Mar	185	1
20-Mar	268	1
21-Mar	371	2
22-Mar	479	3
23-Mar	644	6
24-Mar	851	7
25-Mar	1127	11
26-Mar	1687	16
27-Mar	2218	22
28-Mar	2751	34
29-Mar	3394	38

6. COVID-19 is a serious disease, ranging from no symptoms or mild ones for people at low risk, to respiratory failure and death. There is no vaccine to prevent COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time. The specific mechanism of mortality of critically ill COVID-19 patients is uncertain but may be related to virus-induced acute lung injury, inflammatory response, multiple organ damage and secondary nosocomial infections.
7. The World Health Organization (WHO) identifies individuals at highest risk to include those over 60 years of age and those with cardiovascular disease, diabetes, chronic respiratory disease, and cancer.<sup>5</sup> The WHO further states that the risk of severe disease increases with age starting from around 40 years.
8. The US CDC identifies “older adults [65 and older] and people of any age who have serious underlying medical conditions” as at higher risk of severe disease and death.<sup>6</sup> The CDC identifies underlying medical conditions to include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease (“including asthma or chronic obstructive pulmonary disease [chronic bronchitis or emphysema] or other chronic conditions associated with impaired lung function”), neurological and neurologic and

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<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> accessed March 29, 2020

<sup>5</sup> See [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_4) accessed March 21, 2020

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> accessed March 21, 2020

neurodevelopmental conditions, and current or recent pregnancy.<sup>7</sup>

9. Data from US COVID-19 cases published by the CDC on March 19, 2020, found that hospitalization rates and intensive care unit (ICU) admission rates were nearly identical for individuals aged 45-54 and individuals aged 55-64 (between approximately 20-30% for both groups for hospitalization and between 5-11% for both groups for ICU admission).<sup>8</sup> This suggests that individuals >45 years could be considered high risk for severe disease while those ≥54 years could be considered high risk for severe disease and death.

### Health profile of plaintiffs

11. I have reviewed the declaration of Brian McHale and Fredrick Leonard.
12. Mr. McHale is 44 years old and detained in the Montgomery County Correctional Facility. He has a number of medical conditions including hemochromatosis and chronic hepatitis C. He reports a 30 year history of smoking. Due to the likely impact of these conditions on his lungs, liver and heart, he should be considered at high risk for severe illness and death from COVID-19. Mr. Leonard is 29 years old and detained at Pike County Correctional Facility. He has a 17 year history of smoking. His declaration states that he has a history of chronic bronchitis, which is a type of chronic obstructive pulmonary disease that is most frequently caused by smoking. Due to this history, he should be considered at high risk for severe illness and death from COVID-19.

### Understanding of COVID-19 Transmission

13. According to the U.S. CDC, the disease is transmitted mainly between people who are in close contact with one another (within about 6 feet) via respiratory droplets produced when an infected person coughs or sneezes.<sup>9</sup> It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.<sup>10</sup> People are thought to be most contagious when they are most symptomatic (the sickest), however some amount of asymptomatic transmission is likely.<sup>11</sup> **This suggests that, while hand washing and disinfecting surfaces is advisable, the main strategy for limiting disease transmission is social distancing and that for such distancing to be effective it must occur before individuals display symptoms.**
14. Recognizing the importance of social distancing, public health officials have recommended extraordinary measures to combat the spread of COVID-19. Schools,

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<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf> accessed March 21, 2020

<sup>8</sup> See <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>, accessed March 21, 2020

<sup>9</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> accessed March 21, 2020

<sup>10</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> accessed March 21, 2020

<sup>11</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> accessed March 21, 2020; See also: Bai Y, Yao L, Wei T, et al. Presumed asymptomatic carrier transmission of COVID-19. JAMA. Published online February 21, 2020. doi:10.1001/jama.2020.2565 and Zhang W, Du RH, Li B, et al. Molecular and serological investigation of 2019-nCoV infected patients: implication of multiple shedding routes. Emerg Microbes Infect. 2020;9(1):386-389.

courts, collegiate and professional sports, theater and other congregate settings have been closed as part of risk mitigation strategy. 50 states, 7 territories, and the District of Columbia have taken some type of formal executive action in response to the COVID-19 outbreak.<sup>12</sup> Through one form or another, these jurisdictions have declared, proclaimed, or ordered a state of emergency, public health emergency, or other preparedness and response activity for the outbreak. Earlier this month Pennsylvania Governor, Tom Wolf, declared a state of emergency, which he buttressed on March 19 with an order closing non-essential businesses.<sup>13</sup> On Monday, March 23, 2020, Governor Wolf issued a stay at home order for residents of Allegheny, Bucks, Chester, Delaware, Monroe and Montgomery counties. On Tuesday, March 24, Governor Wolf extended the stay at home order to Erie;<sup>14</sup> the next day, March 25, Governor Wolf further extended the order to Lehigh and Northampton.<sup>15</sup> On Friday, March 27, 2020, Governor Wolf extended the order to include nine additional counties: Berks, Butler, Lackawanna, Lancaster, Luzerne, Pike, Wayne, Westmoreland, and York.<sup>16</sup> Philadelphia has been under a stay at home order since Saturday, March 21, 2020.<sup>17</sup> In total, nineteen counties are under stay at home orders in Pennsylvania.

15. As of March 28, in response to the threat of COVID-19 transmission, fifteen states prohibit gatherings of any size (California; Colorado; Idaho Illinois; Indiana; Montana; Michigan; New Jersey; New Mexico; New York; Ohio; Oregon; Washington; West Virginia; and Wisconsin); one state prohibits gatherings > 5 individuals (Connecticut); twenty-one states and the District of Columbia prohibit gatherings of >10 individuals (Alaska; Hawaii; Iowa; Kansas; Louisiana; Maine; Maryland; Massachusetts; Mississippi; Missouri; Nevada; New Hampshire; North Carolina; Oklahoma; Rhode Island; South Dakota; Tennessee; Texas; Vermont; Virginia; and Wyoming); one state prohibits gatherings of >25 individuals (Alabama) and two states prohibit gatherings of >50 individuals (Delaware; South Carolina). Many states, including California, Illinois, New Jersey, and New York have also issued quarantine orders directing residents to stay at home except under certain narrow exceptions.<sup>18</sup> These orders are expanding, increasing. Whereas at least 158 million people in 16 states, nine counties and three cities were being urged to stay home on March 23, the numbers increased on March 24, 2020 to at least 163 million people in 17 states, 14 counties and eight cities. As of March 27, at least 228 million people in 25 states, 74 counties and 14 cities and one territory are being urged to stay home.<sup>19</sup>

16. These public health measures aim to “flatten the curve” of the rates of infection so that those most vulnerable to serious complications from infection will be least likely to be

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<sup>12</sup> See <https://www.astho.org/COVID-19/> accessed March 21, 2020

<sup>13</sup> See <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>

<sup>14</sup> <https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-erie-county-to-mitigate-spread-of-covid-19/> Accessed March, 26, 2020.

<sup>15</sup> <https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-lehigh-and-northampton-counties-to-mitigate-spread-of-covid-19-counties-now-total-10/> Accessed March 26, 2020.

<sup>16</sup> <https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-nine-more-counties-to-mitigate-spread-of-covid-19-counties-now-total-19/> accessed March 28, 2020.

<sup>17</sup> See <https://www.wtae.com/article/stay-at-home-order-to-begin-tonight-for-several-pa-counties-including-allegheny/31900786> accessed March 23, 2020.

<sup>18</sup> See <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/#socialdistancing> accessed March 28, 2020.

<sup>19</sup> See <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> accessed March 28, 2020.

exposed and, if they are the numbers of infected individuals will be low enough that medical facilities will have enough beds, masks, and ventilators for those who need them.

17. In countries where the virus's course of infection began earlier, and where death rates grew steadily, governments have imposed national emergency measures to prevent contagion from human contact. In Italy and Spain, for example, the governments have imposed national lockdowns to keep people from coming into contact with each other.<sup>20</sup>
18. US cities are starting to see the level of COVID-19 cases seen in previous global hotspots. On Thursday, March 26, Governor Cuomo announced that 100 people had died of the coronavirus between Wednesday and Thursday morning.<sup>21</sup> As of Friday, March 27, the cumulative death toll in the state stood at 450.<sup>22</sup> In response, the city's health commissioner again urged all New Yorkers to follow the stay at home order, emphasizing the impact on the city's already strained health system.<sup>23</sup> Pennsylvania is roughly 10 days behind New York City, following a similar trendline of cases and deaths.<sup>24</sup>

### **Risk of COVID-19 in Jails**

19. The conditions in jails pose a heightened public health risk to the spread of COVID-19, even greater than other non-carceral institutions. Spread of COVID-19 within the jails will affect not only those who are being held there, but also the correctional officers who work there and the communities they go back to.
20. County jails are enclosed environments, much like the cruise ships that were the site of the largest concentrated outbreaks of COVID-19. Detention facilities have even greater risk of infectious spread because of conditions of crowding, the proportion of vulnerable people detained, and often scant medical care. People live in close quarters and are also subject to security measures which prohibit successful "social distancing" that is needed to effectively prevent the spread of COVID-19. Toilets, sinks, and showers are shared, without disinfection between use. Food preparation and food service is communal, with little opportunity for surface disinfection. The crowded conditions, in both sleeping areas and social areas, and the shared objects (bathrooms, sinks, etc.) will facilitate transmission.
21. CDC guidance on correctional and detention facilities,<sup>25</sup> posted March 23, 2020,

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<sup>20</sup> See <https://www.cnn.com/2020/03/14/spain-declares-state-of-emergency-due-to-coronavirus.html> accessed March 23, 2020

<sup>21</sup> See [https://www.nytimes.com/2020/03/26/world/coronavirus-news.html?action=click&pgtype=Article&state=default&module=style-coronavirus&variant=show&region=TOP\\_BANNER&context=storyline\\_menu?action=click&pgtype=Article&state=default&module=style-coronavirus&variant=show&region=TOP\\_BANNER&context=storyline\\_menu#link-18cce12f](https://www.nytimes.com/2020/03/26/world/coronavirus-news.html?action=click&pgtype=Article&state=default&module=style-coronavirus&variant=show&region=TOP_BANNER&context=storyline_menu?action=click&pgtype=Article&state=default&module=style-coronavirus&variant=show&region=TOP_BANNER&context=storyline_menu#link-18cce12f) accessed March 26, 2020.

<sup>22</sup> <https://nypost.com/2020/03/27/another-84-people-killed-by-coronavirus-in-new-york-city/> accessed March 28, 2020.

<sup>23</sup> See <https://nypost.com/2020/03/25/de-blasio-warns-half-of-all-new-yorkers-will-get-covid-19/> accessed March 26, 2020.

<sup>24</sup> See <https://www.businessinsider.com/new-york-city-coronavirus-cases-over-time-chart-2020-3> accessed March 26, 2020.

<sup>25</sup> See: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> accessed March 23, 2020

specifically recommends implementing social distancing strategies to increase the physical space between incarcerated/detained persons “ideally 6 feet between all individuals, regardless of the presence of symptoms” including: 1) increased space between individuals in holding cells, as well as in lines and waiting areas such as intake; stagger time in recreation spaces; restrict recreation space usage to a single housing unit per space; 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; limit the size of group activities; reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions.

22. The CDC guidance also describes necessary disinfection procedures including to thoroughly clean and disinfect all areas where a confirmed or suspected COVID-19 case spent time.<sup>26</sup>
23. In addition to declaration of Mr. McHale and Mr. Leonard, as identified in paragraph 11, I have also reviewed the declarations of the following individuals: Jeremy Hunsicker, Christopher Aubry, Michael Foundos, Ernest Fuller, a volunteer with the Pennsylvania Prison Society, Malik Neal, a volunteer with the Pennsylvania Prison Society, and Bret Grote, Co-Founder and Legal Director of the Abolitionist Law Center.
24. Conditions as described in the declarations reinforce the high risk of COVID-19 transmission. For example, in Montgomery County Correctional Facility, Mr. McHale reports sharing a cell, including a toilet and sink, with two other individuals and having close contact with 13 other men in his unit. In Lehigh County Community Corrections, Mr. Hunsicker reports being housed in a “pod” with 20 other people, sharing a bathroom and exposure to individuals working in the community and lack of hand sanitizer available. He also reports eating meals with up to 70 people at one time and being in close contact with other detainees during regular medical checks. Also detained in Montgomery County Correctional Facility, Mr. Aubry reports working in the community and sharing a “pod” with approximately 50 other people, sleeping in bunk beds, and sharing a bathroom. He reports no available hand sanitizer. In Delaware County’s George W. Hill Correctional Facility, Mr. Foundos reports close contact with his cell mate and during meals. In Pike County Correctional Facility, Mr. Leonard reports being confined three to an eight by twelve foot cell with a single shared toilet and sink in the cell. He reports having insufficient soap to last a full day. He also reports eating six to a table with little space between each individual.
25. Based upon Mr. Fuller’s declaration regarding Blair County Prison, between 2 and 20 detainees may be housed together in rooms, with the largest being roughly 20 x 30 feet and with bunk beds or beds placed 3 to 4 feet apart. Soap is limited and physicians are rarely present. Based upon Mr. Grote’s declaration, the infrastructure and routine practice of Allegheny County Jail raise significant challenges to maintaining distancing between detainees in the facilities. These physical infrastructure and security challenges, which are typical of most detention centers, include:
  - a) Individuals are held for extended periods of time in the intake area, typically with 10 or more people sharing a single toilet and sink. Only cursory medical screening is conducted.

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<sup>26</sup> Ibid

- b) A significant number of people housed at ACJ are double-celled.
- c) Access to soap is a constant problem in ACJ as is, in some pods, access to personal hygiene and cleaning supplies.
- d) There are only a few showers per pod, with many people sharing the same shower area, without any sanitation between individual uses.
- e) Dining tables are small and fit four people, with one person on each side. A table is only four feet by four feet, at most, so no one can social distance from others during meal times.
- f) As is true in detention facilities generally, communal bathroom facilities pose a risk of transmission and it is not usually possible for an incarcerated person to move throughout ACJ without coming into contact with many other people. The use of elevators also poses a problem bringing individuals in close contact. If someone is housed in a special unit or restrictive housing, they must also be closely escorted everywhere in the facility and security incidents can put an incarcerated person into close contact with staff members.
- g) Access to medical care is inadequate at ACJ. There are extreme delays in individuals' ability to access care, as well as huge staffing shortages.

Based on Mr. Neal's declarations regarding conditions at Curran-Fromhold Correctional Facility ("CFCF"), Riverside Correctional Facility ("RCF"), and the Detention Center ("DC"), the Philadelphia facilities share the following characteristics that heighten the risk of transmission:

- h) The majority of cells contain two people who sleep on bunk beds and share a single toilet and sink that is in close proximity to the bed.
- i) Showers are shared between many individuals without being sanitized between use. Other shared surfaces, like phones, are also not sanitized between use.
- j) Individuals in custody are responsible for custodial tasks, and people do not have access to sanitization products to clean their cells.
- k) In DC, people are brought to meals in large groups in a cafeteria. At the other facilities, Mr. Neale observed common areas on each block with tables that are not even six feet across.
- l) Intake at CFCF takes place in a single holding cell that holds upwards of ten people for the eight to twelve hours it takes to process a new intake.
- m) Access to medical care is inadequate at all facilities: individuals housed at these facilities reported that the facilities did not respond to the "sick slips" they submitted even before there was a possibility of COVID-19 infection.

26. Based upon the information provided to me, and my prior knowledge of detention facilities, I am concerned that Pennsylvania jail facilities do not have the ability to implement the critically important principle of social distancing, such as maintain six feet of separation at all times including meals and location of beds, nor are they apparently taking extraordinary measures to identify and properly isolate individuals at high risk, those with potential exposure (e.g., from work detail) or those with symptoms consistent with COVID-19. These steps are essential to preventing transmission of COVID-19. Where jails are housing detained individuals in small cells where they are bunked

together and where they are crowded together to eat meals, they will not be able to prevent COVID-19 transmission once introduced into the jail. Upon review of the declarations, jails also do not appear to have sufficient supplies available for detainees for handwashing or disinfecting. Further, through work programs and staff, detainees at each of these facilities are at risk of being exposed to COVID-19.

27. Introduction of new people into detention facilities who have had contact with the community outside the facility—be it correctional officers and other staff, new individuals coming into custody, people on work release, or individuals serving intermediate sentences—creates a link from transmission occurring in the community to those who are detained. The possibility of asymptomatic transmission means that monitoring fever of staff or detainees is inadequate for identifying all who may be infected and preventing transmission. This is also true because not all individuals infected with COVID-19 report fever in early stages of infection.
28. The alternative is to test all staff and detainees entering the facility. However, this would require frequent (daily) tests, implemented at multiple times a day as staff and detainees entered the facility. In addition to the cost and labor required to implement this approach, the United States is currently facing a shortage of COVID-19 tests that make such a solution impracticable: In a survey of U.S. cities (that included Philadelphia, Pittsburgh, Erie, and Easton), 92.1% of cities reported that they do not have an adequate supply of test kits.<sup>27</sup> Shortages are likely to become more severe over the next three to four weeks when there will be a major shortage of chemical reagents for COVID-19 testing and enormous increases in demand.<sup>28</sup> Given the shortage of COVID-19 testing in the United States, it is likely that jails are and will continue to be unable to conduct aggressive, widespread testing to identify all positive cases of COVID-19. The lack of widespread testing in communities and the current presence of COVID-19 in all 50 states means that it is impractical to ask detainees about their travel history— all communities should be assumed to have community transmission which is why statewide and national restrictions on movement and gatherings have been put in place.

### **Heightened Rates of COVID-19 Infection and Spread Within Detention Facilities**

29. As COVID-19 has spread in the United States, it has begun to enter detention facilities and spread among individuals who are held and who work there. As of March 28, in California, at least twelve state prison workers<sup>29</sup> and one individual incarcerated in state prison<sup>30</sup> had tested positive. At least three people in custody tested positive in the Orange County Jail<sup>31</sup> and one at the Santa Clara County Jail.<sup>32</sup> In Santa Clara, at least four county deputies had also contracted the virus.<sup>33</sup> A nurse at the Santa Rita jail tests positive for the

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<sup>27</sup> <https://www.usmayors.org/issues/covid-19/equipment-survey/> accessed March 28, 2020.

<sup>28</sup> <https://www.nytimes.com/2020/03/27/opinion/coronavirus-trump-testing-shortages.html> accessed March 28, 2020.

<sup>29</sup> <https://www.sacbee.com/news/politics-government/the-state-worker/article241531806.html> accessed March 28, 2020

<sup>30</sup> <https://ktla.com/news/local-news/inmate-at-state-prison-in-lancaster-tests-positive-for-covid-19/> accessed March 26, 2020.

<sup>31</sup> <https://www.ocregister.com/2020/03/26/2-more-inmates-test-positive-for-coronavirus-at-oc-jail/> accessed March 28, 2020.

<sup>32</sup> <https://www.mercurynews.com/2020/03/23/santa-clara-county-jail-inmate-tests-positive-for-covid-19/> accessed March 26, 2020.

<sup>33</sup> <https://www.mercurynews.com/2020/03/24/coronavirus-fourth-santa-clara-county-deputy-contracts-covid-19/> accessed March 28, 2020.



virus. It's the first confirmed case at the massive Alameda County complex.<sup>34</sup> In the Cook County Jail in Chicago, 89 inmates and 12 staff members have confirmed cases of the virus<sup>35</sup>, up from 38 inmates two days prior.<sup>36</sup> There have been eighteen positive tests in Massachusetts, 11 inmates and 7 employees. The Massachusetts Treatment Center in Bridgewater has returned the most positives with ten inmates and two corrections officers and one medical provider testing positive.<sup>37</sup> The other positives have been one person held at Middlesex County Jail, one employee at the Plymouth County House of Correction, two staff members at MCI-Shirley, and a worker at the Norfolk County Sheriff's Office.<sup>38</sup> New Jersey has had twelve positive tests cases: A corrections officer<sup>39</sup> and an ICE detainee<sup>40</sup> at the Bergen County Jail, two inmates at Hudson County Correctional Facility,<sup>41</sup> one inmate in the Morris County Jail<sup>42</sup> and one officer in Morris County,<sup>43</sup> two correctional officers and an ICE detainee at Essex County Correctional Facility,<sup>44</sup> an inmate at Delaney Hall in Newark,<sup>45</sup> a medical staffer at Elizabeth Detention Center,<sup>46</sup> and an employee at the state department of corrections.<sup>47</sup> On March 29<sup>th</sup> a 49 year old prisoner who had been detained in a minimum security prison in Oakdale, Louisiana died after being transferred to a hospital and placed on a ventilator.<sup>48</sup>

30. Pennsylvania jails and prisons have had thirteen positive tests so far. Three inmates and nine staff members from the George W. Hill Correctional Facility in Delaware County have tested positive for COVI-19.<sup>49</sup> On March 27, 2020, Philadelphia reported that an individual in prison and the first employee in the city's Department of Corrections had tested positive and five inmates were in quarantine.<sup>50</sup> As of March 29 at noon, one individual in custody and three employees had tested positive within the Pennsylvania

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<sup>34</sup> [https://www.mercurynews.com/2020/03/26/alameda-county-jail-reports-first-coronavirus-case-a-nurse/?utm\\_source=The+Marshall+Project+Newsletter&utm\\_campaign=0d0f98b15c-EMAIL\\_CAMPAIGN\\_2020\\_03\\_28\\_11\\_14&utm\\_medium=email&utm\\_term=0\\_5e02cdad9d-0d0f98b15c-174553411](https://www.mercurynews.com/2020/03/26/alameda-county-jail-reports-first-coronavirus-case-a-nurse/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=0d0f98b15c-EMAIL_CAMPAIGN_2020_03_28_11_14&utm_medium=email&utm_term=0_5e02cdad9d-0d0f98b15c-174553411) accessed March 28, 2020.

<sup>35</sup> <https://www.politico.com/news/2020/03/29/federal-prison-first-coronavirus-death-153387> accessed March 29, 2020.

<sup>36</sup> <https://www.nbchicago.com/news/local/cook-county-jail-says-17-inmates-have-tested-positive-for-coronavirus/2244652/> accessed March 26, 2020.

<sup>37</sup> <https://www.masslive.com/coronavirus/2020/03/coronavirus-10-inmates-at-massachusetts-treatment-center-have-covid-19-5-department-of-correction-staff-members-also-test-positive.html> accessed March 28, 2020.

<sup>38</sup> <https://www.wbur.org/commonhealth/2020/03/23/coronavirus-massachusetts-prisoner> accessed March 28, 2020.

<sup>39</sup> <https://www.fox29.com/news/nj-jail-guard-tests-positive-for-coronavirus> accessed March 26, 2020.

<sup>40</sup> <https://www.northjersey.com/story/news/new-jersey/2020/03/24/coronavirus-nj-ice-detainee-first-nation-test-positive/2911910001/> accessed March 26, 2020.

<sup>41</sup> [https://www.vice.com/en\\_us/article/epg744/2-confirmed-coronavirus-cases-in-hudson-county-correctional-facility](https://www.vice.com/en_us/article/epg744/2-confirmed-coronavirus-cases-in-hudson-county-correctional-facility) accessed March 26, 2020.

<sup>42</sup> <https://morristorynngreen.com/2020/03/24/inmate-at-morris-county-jail-tests-positive-for-covid-19/> accessed March 26, 2020.

<sup>43</sup> <https://patch.com/new-jersey/montclair/stuck-jail-during-pandemic-coronavirus-hits-nj-prisons> accessed March 28, 2020.

<sup>44</sup> <https://patch.com/new-jersey/newarknj/more-coronavirus-essex-county-prison-activists-keep-outcry> March 26, 2020.

<sup>45</sup> <https://patch.com/new-jersey/montclair/stuck-jail-during-pandemic-coronavirus-hits-nj-prisons>

<sup>46</sup> <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus> & <https://mobile.twitter.com/Haleaziz/status/1240785593535041537> accessed March 26, 2020.

<sup>47</sup> <https://www.nj.com/coronavirus/2020/03/first-person-in-njs-state-prison-system-tests-positive-for-coronavirus.html> accessed March 26, 2020.

<sup>48</sup> See <https://www.politico.com/news/2020/03/29/federal-prison-first-coronavirus-death-153387> accessed March 29, 2020

<sup>49</sup> [https://www.delcopa.gov/publicrelations/releases/2020/coronavirusupdate\\_march26.html](https://www.delcopa.gov/publicrelations/releases/2020/coronavirusupdate_march26.html) accessed March 28, 2020.

<sup>50</sup> <https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-pa-new-jersey-surge-cases-stay-at-home-20200328.html> accessed March 28, 2020

Department of Corrections.<sup>51</sup>

31. The rates of spread in the facilities that have been testing for COVID-19 illustrates the dangers the conditions in these facilities pose to those who are detained there, and to the broader community. At Rikers Island in New York, on Saturday March 21, a jail oversight agency indicated that 21 inmates and 17 employees tested positive.<sup>52</sup> Four days later, on Wednesday, March 26, 75 inmates and 37 employees tested positive.<sup>53</sup> As of Saturday, March 28, 104 staff and 132 individuals in custody had tested positive at Rikers and city jails in New York City.<sup>54</sup> **The Legal Aid Society in New York recently reported that the infection rate for COVID-19 at local jails is more than seven times higher than the rate citywide and 87 times higher than the country at large.**<sup>55</sup>
32. The data above also confirms high rates of infection among correctional officers and other staff. These individuals all face an increased risk of COVID-19 exposure as they are less able to practice the recommended strategy of social distancing in carrying out their official duties. This is consistent with Mr. Leonard’s reports that one of the correctional officers at Pike County Correctional Facility tested positive.

### **Infrastructure in County Jails Will Likely Be Insufficient to Address Needs of COVID-19 Patients**

33. If COVID-19 enters into county jails, these facilities will likely be unable to address the infectious spread and the needs of infected individuals due to lack of testing and insufficient physical and medical infrastructure.
34. In cases where there are confirmed or suspected cases of COVID-19 in county jails, the CDC recommends medical isolation, defined by the CDC confining the 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. Individuals in isolation should also be provided their own bathroom space.<sup>56</sup>
35. Individuals in close contact of a confirmed or suspected COVID-19 case - defined by the CDC as having been within approximately 6 feet of the individual for a prolonged period of time or having had direct contact with secretions of a COVID-19 case (e.g., have been coughed on) – should be quarantined for a period of 14 days. The same precautions should be taken for housing someone in quarantine as for someone who is a confirmed or suspected COVID-19 case put in isolation.<sup>57</sup>
36. The CDC guidance recognizes that housing detainees in isolation and quarantine individually, while “preferred”, may not be feasible in all county jail settings and discusses the practice of “cohorting” when individual space is limited. The term “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

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<sup>51</sup> <https://www.cor.pa.gov/Pages/COVID-19-Dashboard.aspx> accessed March 29, 2020.

<sup>52</sup> <https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/> accessed March 23, 2020.

<sup>53</sup> <https://nypost.com/2020/03/25/new-coronavirus-cases-in-nyc-jails-outpacing-rest-of-the-city/> accessed March 26, 2020

<sup>54</sup> <https://apnews.com/4e1e4ffaeb6bf9a9fabcc566fe5b110d> accessed March 29, 2020.

<sup>55</sup> See: <https://newyork.cbslocal.com/2020/03/26/coronavirus-rikers-island/> accessed March 26, 2020

<sup>56</sup> Ibid.

<sup>57</sup> Ibid

group. The guidance states specifically that "Cohorting should only be practiced if there are no other available options" and exhorts correctional officials: "**Do not cohort confirmed cases with suspected cases or case contacts.**" [emphasis in original]. Individuals who are close contacts of different cases should also not be kept together.

37. The CDC guidance also says that correctional facilities should "Ensure that cohorted cases wear face masks at all times."<sup>58</sup> This is critical because not all close contacts may be infected and those not infected must be protected from those who are if individuals are cohorted. However, it's important to note that face masks are in short supply. In a joint letter to President Trump, the American Medical Association, the American Hospital Association, and the American Nurses Association called on the administration to "immediately use the Defense Production Act to increase the domestic production of medical supplies and equipment that hospitals, health, health systems, physicians, nurses and all front line providers so desperately need."<sup>59</sup> In a survey United States cities, 91.5% of the cities reported that they do not have an adequate supply of face masks for their first responders and medical personnel.<sup>60</sup> There are also widespread shortages of personal protective equipment — particularly N-95 masks — sufficient to provide even for health care workers, in our nation's hospitals, let alone medical providers and other individuals coming into contact with the virus in county jails .<sup>61</sup> Many public health leaders are calling for masks to be reserved for health care staff, who face increased risk and are vitally needed to sustain emergency care. Hospitals in the New York City area, unable to access masks locally, are reportedly turning to a private distributor to airlift millions of protective masks out of China.<sup>62</sup> Face masks are effective only when used in combination with frequent hand-cleaning with alcohol-based hand rub or soap and water. Detainees should be instructed in how to properly put on and take off masks, including cleaning their hands every time they touch the mask, covering the mouth and nose with the mask and making sure there are no gaps, avoiding touching the mask while using it; and replacing the mask with a new one if it becomes damp (e.g., from sneezing) and not to re-use single-use masks. There are times when detainees will necessarily not be able to wear masks, if available. For example, during meals. In these instances, detainees should eat individually or with proper distancing from others.
38. Where individual rooms are not available, the CDC guidance describes a hierarchy of next best options for cohorting, which in order from lesser risk to greater risk includes housing individuals under medical isolation: 1) in a large, well-ventilated cell with solid walls and a solid door that closes fully; 2) in a large, well-ventilated cell with solid walls but without a solid door; 3) in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells; 4) 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.<sup>63</sup>

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<sup>58</sup> Ibid

<sup>59</sup> See: <https://www.aha.org/lettercomment/2020-03-21-aha-ama-and-ana-letter-president-use-dpa-medical-supplies-and-equipment> accessed March 26, 2020

<sup>60</sup> <https://www.usmayors.org/issues/covid-19/equipment-survey/> accessed March 28, 2020.

<sup>61</sup> <https://www.nytimes.com/2020/03/27/opinion/coronavirus-trump-testing-shortages.html> accessed March 28, 2020.

<sup>62</sup> See: [https://lancasteronline.com/news/health/hospital-suppliers-take-to-the-skies-to-combat-dire-shortages/article\\_0830ffb0-6f89-11ea-89ed-bbd859186614.html](https://lancasteronline.com/news/health/hospital-suppliers-take-to-the-skies-to-combat-dire-shortages/article_0830ffb0-6f89-11ea-89ed-bbd859186614.html) accessed March 26, 2020

<sup>63</sup> Ibid

39. When a single COVID-19 case is identified in a county jail, close contact and the inability of jails to implement social distancing policies due to overcrowding and the physical limitations of the facility, as described above, means that there will be many individuals who are exposed and will need to be quarantined.
40. County jails were not built for the needs of this kind of pandemic and if COVID is introduced there will likely be many more individuals identified as “close contacts” who need to be quarantined than there are safe spaces to isolate them. Some individuals identified as “close contacts” will likely be infected while others will not. “Cohorting” of all contacts together without strict attention to masking and proper hygiene and sanitation distancing could mean disease transmission will be facilitated rather than prevented. For example, according to Mr. Neal’s declaration, the quarantine spaces at CFCF do not allow six feet of distance between the people housed together, potentially facilitating transmission among individuals in quarantine.
41. Individuals in jails are also more likely to have chronic health problems that put them at a higher risk of complications from COVID-19 infections.<sup>64</sup>
42. Many county jails lack adequate medical care infrastructure to address the treatment of high-risk people in detention. As examples, detention facilities often use practical nurses who practice beyond the scope of their licenses; have part-time physicians who have limited availability to be on-site; and facilities with no formal linkages with local health departments or hospitals. Delaware County, where the George W. Hill Correctional facility is located, for example, does not have a local health department. A COVID-19 outbreak would put severe strain on this already strained system.
43. If corrections officers and medical personnel are significantly affected by COVID-19, large numbers will also be unavailable to work due to self-quarantine or isolation, at the same time that large numbers of detainees who are potentially exposed will need to be put into individual isolation or transferred to advanced medical care, putting tremendous stress on detention facilities.
44. Large numbers of ill detainees and corrections staff will also strain the limited medical infrastructure in the rural counties in which these detention facilities are located. If infection spreads throughout the detention center, overwhelming the center’s own limited resources, the burden of caring for these individuals will shift to local medical facilities. The few facilities will likely not be able to provide care to all infected individuals with serious cases. Statewide, Pennsylvania is facing a shortage the technology it needs to care for infected individuals. The state has only 2,000 ventilators, according to the state Health Department, but the state could need three times as many at the apex of the virus’ spread, according to a study from the Harvard Global Health Institute.<sup>65</sup> If the virus spreads through county jails, it is likely that many individuals will need to be transferred (while in isolation) to community hospitals, and this system will be even more taxed. The inability for overwhelmed community hospitals to provide necessary care will increase the likelihood that individuals with COVID-19 will not be able to get proper care and die.<sup>66</sup>

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<sup>64</sup> <https://www.prisonpolicy.org/health.html> accessed March 26, 2020.

<sup>65</sup> <https://www.inquirer.com/health/coronavirus/ventilator-coronavirus-hospital-covid-pennsylvania-new-jersey-health-20200324.html> accessed March 28, 2020.

<sup>66</sup> See <https://www.post-gazette.com/news/health/2020/03/20/Rural-counties-in-Pennsylvania-struggle-on-their-own-as-COVID-19-spreads/stories/202003180034> accessed March 23, 2020. Even in regions with highly developed

## Conclusions

45. CDC guidance on correctional and detention facilities,<sup>67</sup> reiterates many of the points previously made in this declaration, including: 1) Incarcerated/detained persons are at “heightened” risk for COVID-19 infection once the virus is introduced; 2) There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including from staff and transfer of incarcerated/detained persons; 3) Options for medical isolation of COVID-19 cases are limited; 4) Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19; 5) The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants; and 6) Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.
46. Under these circumstances, the only viable public health strategy available is risk mitigation. Even with the best-laid plans to address the spread of COVID-19 in detention facilities, measures will be insufficient when crowding makes social distancing measures impossible. Facilities cannot follow CDC guidelines where people are double and triple-celled, housed in large rooms where people are forced into close contact, and where people are sharing common facilities like bathrooms that cannot be properly sanitized given the sheer numbers of people using them in a day. Where quarantine is necessary, it will not be possible to isolate individuals from each other where there are so many people in a confined space.
47. To effectively mitigate risk of infection and subsequent spread, the population will need to be reduced. Reducing the overall number of individuals in detention facilities will facilitate social distancing for remaining detainees, and allow individuals who are infected, and their close contacts, to be properly isolated or quarantined in individual rooms, according to the CDC’s preferred practices, and properly monitored for health complications that may require transfer to a local hospital. It will also lessen the risk to corrections officers, who if short staffed, will have difficulty maintaining order and proper personal protective measures. Protecting corrections staff in turn protects the communities they come from.
48. The release of individuals who can be considered at high-risk of severe disease if infected with COVID-19 is also a key part of a risk mitigation strategy. In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.
49. To the extent that vulnerable detainees have had exposure to known cases with

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health systems, COVID-19 is straining ability to care, creating cause for alarm for less-equipped health care systems in regions that do not act to mitigate risk of infection. See

<https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html> accessed March 23, 2020

<sup>67</sup> See: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> accessed March 23, 2020

laboratory-confirmed infection with the virus that causes COVID-19, they should be tested immediately in concert with the local health department. Those who test positive should be continuously monitored in individual rooms, released to home quarantine or transferred to local hospitals if medically indicated. Those who test negative should be released to home quarantine for 14 days while awaiting symptoms or a positive test result. Where there is not a suitable location for home quarantine available, these individuals could be released to housing identified by the county or state Department of Health.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day in March 2020 in Princeton, New Jersey.

A handwritten signature in black ink, appearing to read "Joseph Amon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph J. Amon, PhD MSPH

## DECLARATION OF DR. JONATHAN LOUIS GOLOB

I, Jonathan Louis Golob, declare as follows:

1. I am an Assistant Professor at the University of Michigan School of Medicine in Ann Arbor, Michigan, where I am a specialist in infectious diseases and internal medicine. I am also a member of the Physicians for Human Rights. At the University of Michigan School of Medicine, I am a practicing physician and a laboratory-based scientist. My primary subspecialization is for infections in immunocompromised patients, and my recent scientific publications focus on how microbes affect immunocompromised people. I obtained my medical degree and completed my residency at the University of Washington School of Medicine in Seattle, Washington, and also completed a Fellowship in Internal Medicine Infectious Disease at the University of Washington. I am actively involved in the planning and care for patients with COVID-19. Attached as Exhibit A is a copy of my curriculum vitae.
2. COVID-19 is an infection caused by a novel zoonotic coronavirus SARS-COV-2 that has been identified as the cause of a viral outbreak that originated in Wuhan, China in December 2019. The World Health Organization has declared that COVID-19 is causing a pandemic. As of March 21, 2020, there are over 260,000 confirmed cases of COVID-19 worldwide. COVID-19 has caused over 11,000 deaths, with exponentially growing outbreaks occurring at multiple sites worldwide, including within the United States.
3. COVID-19 makes certain populations of people severely ill. People over the age of fifty are at higher risk, with those over 70 at serious risk. As the Center for Disease Control and Prevention has advised, certain medical conditions increase the risk of serious COVID-19 for people of any age. These medical conditions include: those with lung disease, heart disease, diabetes, or immunocompromised (such as from cancer, HIV, autoimmune diseases), blood disorders (including sickle cell disease), chronic liver or kidney disease, inherited metabolic disorders, stroke, developmental delay, or pregnancy.
4. For all people, even in advanced countries with very effective health care systems such as the Republic of Korea, the case fatality rate of this infection is about ten fold higher than that observed from a severe seasonal influenza. In the more vulnerable groups, both the need for care, including intensive care, and death is much higher than we observe from influenza infection: In the highest risk populations, the case fatality rate is about 15%. For high risk patients who do not die from COVID-19, a prolonged recovery is expected to be required, including the need for extensive rehabilitation for profound

deconditioning, loss of digits, neurologic damage, and loss of respiratory capacity that can be expected from such a severe illness.

5. In most people, the virus causes fever, cough, and shortness of breath. In high-risk individuals as noted above, this shortness of breath can often be severe. Even in younger and healthier people, infection of this virus requires supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.
6. The incubation period (between infection and the development of symptoms) for COVID-19 is typically 5 days, but can vary from as short as two days to an infected individual never developing symptoms. There is evidence that transmission can occur before the development of infection and from infected individuals who never develop symptoms. Thus, only with aggressive testing for SARS-COV-2 can a lack of positive tests establish a lack of risk for COVID-19.
7. A lack of proven cases of COVID-19 in the context of a lack of testing is functionally meaningless for determining if there is a risk for COVID-19 transmission in a community or institution.
8. Most people in the higher risk categories will require more advanced support: positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation. Such care requires highly specialized equipment in limited supply as well as an entire team of care providers, including but not limited to 1:1 or 1:2 nurse to patient ratios, respiratory therapists and intensive care physicians. This level of support can quickly exceed local health care resources.
9. COVID-19 can severely damage the lung tissue, requiring an extensive period of rehabilitation and in some cases a permanent loss of respiratory capacity. The virus also seems to target the heart muscle itself, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, which reduces the heart's ability to pump, leading to rapid or abnormal heart rhythms in the short term, and heart failure that limits exercise tolerance and the ability to work lifelong. There is emerging evidence that the virus can trigger an over-response by the immune system in infected people, further damaging tissues. This cytokine release syndrome can result in widespread damage to other organs, including permanent injury to the kidneys (leading to dialysis dependence) and neurologic injury.

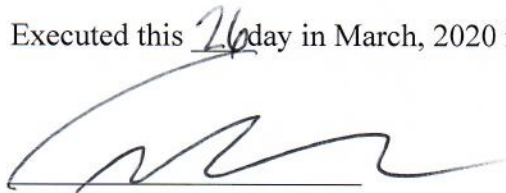


10. There is no vaccine for this infection. Unlike influenza, there is no known effective antiviral medication to prevent or treat infection from COVID-19. Experimental therapies are being attempted. The only known effective measures to reduce the risk for a vulnerable person from injury or death from COVID-19 are to prevent individuals from being infected with the COVID-19 virus. Social distancing, or remaining physically separated from known or potentially infected individuals, and hygiene, including washing with soap and water, are the only known effective measures for protecting vulnerable communities from COVID-19.
11. Nationally, without effective public health interventions, CDC projections indicate about 200 million people in the United States could be infected over the course of the epidemic, with as many as 1.5 million deaths in the most severe projections. Effective public health measures, including social distancing and hygiene for vulnerable populations, could reduce these numbers.
12. COVID-19 strains have specifically traced infection between residents and staff members of a skilled nursing facility in the Seattle area. This evidence suggests that COVID-19 is capable of spreading rapidly in institutionalized settings. The highest known person-to-person transmission rates for COVID-19 are in a skilled nursing facility in Kirkland, Washington and on afflicted cruise ships in Japan and off the coast of California.
13. During the H1N1 influenza (“Swine Flu”) epidemic in 2009, jails and prisons were sites of severe outbreaks of viral infection. Given the avid spread of COVID-19 in skilled nursing facilities and cruise ships, it is reasonable to expect COVID-19 will also readily spread in detention centers such as prisons and jails, particularly when residents cannot engage in social distancing measures, cannot practice proper hygiene, and cannot isolate themselves from infected residents or staff. With new individuals and staff coming into the detention centers who may be asymptomatic or not yet presenting symptoms, the risk of infection rises even with symptom screening measures.
14. This information provides many reasons to conclude that vulnerable people, people over the age of 50 and people of any age with lung disease, heart disease, diabetes, or immunocompromised (such as from cancer, HIV, autoimmune diseases), blood disorders (including sickle cell disease), chronic liver or kidney disease, inherited metabolic disorders, stroke, developmental delay, or pregnancy living in an institutional setting, such as a prison, or jail, or an immigration detention center, with limited access to adequate hygiene facilities, limited ability to physically distance themselves from others,

and exposure to potentially infected individuals from the community are at grave risk of severe illness and death from COVID-19.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day in March, 2020 in Ann Arbor, Michigan.

A handwritten signature in black ink, appearing to read 'Jonathan Golob', written over a horizontal line.

Dr. Jonathan Louis Golob