

**EIGHTH JUDICIAL DISTRICT COURT  
COUNTY OF COLFAX  
STATE OF NEW MEXICO**

**KANDYCE JARAMILLO,**

**Petitioner,**

**v.**

**No.**

**STATE OF NEW MEXICO and  
WARDEN MARIANNA VIGIL,**

**Respondents.**

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Kandyce Jaramillo (“Ms. Jaramillo”), through her counsel, the American Civil Liberties Union of New Mexico (Lalita Moskowitz and Leon Howard), files this Petition for Writ of Habeas Corpus pursuant to Article II, Section 7 of the New Mexico Constitution. Ms. Jaramillo advises the Court of the following, as required by Rule 5-802 NMRA:

- a. **Conviction:** On or about October 16, 2019, Ms. Jaramillo was sentenced to eighteen (18) months plus a habitual offender enhancement of eight (8) years of incarceration, totally nine (9) years and six (6) months. Eighteen months of Ms. Jaramillo’s sentence was suspended, leaving her with an actual incarceration term of eight years, pursuant to the habitual offender statute. With earned meritorious good time, Ms. Jaramillo’s projected release date is in August 2023. The prior convictions leading to Ms. Jaramillo’s habitual offender sentence were also nonviolent felony possession. Ms. Jaramillo was sentenced in the Second Judicial District, cause numbers D-202-CR-2018-01749 and T-4-FR-2018-002539.

- b. **Venue:** Venue is proper in this Court because Ms. Jaramillo challenges the conditions of her confinement and is detained by Warden Marianna Vigil in the Springer Correctional Center in the town of Springer, Colfax County, New Mexico.
- c. **Exhaustion of Remedies:** Ms. Jaramillo has filed grievances regarding her medical condition. Due to the emergency nature of the relief requested, exhaustion of the full grievance process is not possible. Additionally, exhaustion of remedies in this case would be futile.
- d. **Prior petitions:** On January 24, 2020, Ms. Jaramillo filed a pro-se Motion to Amend Judgment and Sentence into her underlying criminal case, D-202-CR-2018-01749. This motion was based on a misunderstanding regarding her habitual offender enhancement and what parts of her sentence had been suspended. The motion was denied.
- e. **Purpose of Petition:** This petition challenges Ms. Jaramillo's conditions of confinement as unconstitutional as outlined further below and seeks her immediate release on community corrections, home confinement, or medical furlough.
- f. **Issues Presented in this Petition:** Whether continuing to confine Ms. Jaramillo, who is especially vulnerable to COVID-19, in the Springer Correctional Center ("SCC"), almost an hour's drive from emergency medical services, without the ability to take proper precautions to protect herself, violates the New Mexico and United States Constitutions' prohibition on cruel and unusual punishment, and/or violates her right to due process. *See* N.M. Const. art. II, §§ 13 and 18; U.S. Const. amend. VIII and XIV. Relief pursuant to Rule 5-802 is proper in that Ms. Jaramillo challenges the constitutionality of the conditions of her confinement.

## **INTRODUCTION**

On February 10, 2020, Ms. Jaramillo was rushed almost forty miles from the Springer Correctional Center to the Miners' Colfax Medical Center in Raton, New Mexico due to complications related to her severe asthma. Ms. Jaramillo stopped breathing multiple times on the way to the hospital and nearly had to be intubated upon arrival. Since that time, she has experienced several asthma attacks and has struggled to get access to the medications she needs to prevent another hospitalization.

Ms. Jaramillo is serving a sentence for drug possession, a conviction that reflects her longtime struggle with substance abuse disorder. Ms. Jaramillo poses no danger to the community. Further, while incarcerated at SCC, she has been participating in substance abuse treatment and has remained drug-free during her nearly eight months there.

As explained in detail below, the COVID-19 pandemic presents a heightened risk to incarcerated people living in close quarters and communal settings where they cannot meaningfully socially distance or take other measures to protect themselves. Due to her severe asthma, contracting COVID-19 extreme risk of serious, lasting harm or death to Ms. Jaramillo. Because of the nature of correctional settings, release is the only remedy that can protect Ms. Jaramillo from this unacceptably high risk and keeping her incarcerated is a violation of the Eighth Amendment prohibition on cruel and unusual punishment.

## **STATEMENT OF FACTS**

Petition presumes that the basic facts surrounding the current pandemic are undisputed. Nevertheless, because Petitioner further asserts that these objective facts have created unsafe conditions in New Mexico's correctional facilities, including the Springer Correctional Center, a

summary of the basic epidemiology of COVID-19 is outlined below in addition to the facts at issue in this petition.

**A. The COVID-19 pandemic presents a grave risk of harm, including serious illness and death, especially to people with certain medical conditions, such as severe asthma.**

COVID-19 is a novel coronavirus that has reached pandemic status.<sup>1</sup> As of the afternoon of May 14, 2020, there have been 4,258,666 confirmed cases worldwide, including 1,340,098 people in the United States and 5,364 in New Mexico. 294,190 people have died, including at least 80,695 in the United States and 231 in New Mexico. On May 11 alone, 23,767 new cases and 982 new deaths were reported in the United States.<sup>2</sup>

On March 11, 2020, the Governor of New Mexico declared that the spread of COVID-19 constitutes a public health emergency and extended the emergency order through at least May 31, 2020.<sup>3</sup> Presently, New Mexicans are still expected to stay in their homes except for essential outing and gatherings of more than five (5) people are still prohibited.<sup>4</sup>

COVID-19 is particularly contagious as it is spread through respiratory droplets or by touching a surface that has the virus on it.<sup>5</sup> Research also shows that controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission, rendering ineffective any screening tools dependent on identifying symptomatic

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<sup>1</sup> Nicole Winfield, et al., *WHO declares coronavirus a pandemic, urges aggressive action*, Albuquerque Journal (Mar. 11, 2020), <https://www.abqjournal.com/1430073/italy-weighs-tougher-virus-lockdown-boosts-aid-for-economy.html>.

<sup>2</sup> See World Health Organization, *COVID-19 Dashboard*, <https://who.sprinklr.com/>; New Mexico Health, *COVID-19 in New Mexico*, <https://cv.nmhealth.org/>.

<sup>3</sup> Executive Order 2020-004; Executive Order 2020-022; *State to further modify public health emergency order*, New Mexico Department of Health (May 13, 2020), <https://cv.nmhealth.org/2020/05/13/stay-at-home-order-extended/>.

<sup>4</sup> *Id.*

<sup>5</sup> World Health Organization, *Q&A on coronaviruses (COVID-19)*, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Mar. 26, 2020).

behavior.<sup>6</sup> Further, new research suggests that a mutated form of the virus may be even more contagious than the original strain.<sup>7</sup>

Older adults and those with certain medical conditions, such as hepatitis, autoimmune diseases, diabetes, asthma, hypertension, and heart disease, as well as pregnant women, face greater chances of serious illness or death from COVID-19.<sup>8</sup> See Appendix C-E. COVID-19 can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously

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<sup>6</sup> Chelsea Ritschel, *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?*, The Independent (Mar. 15, 2020); Nathan W. Furukawa, et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, Emerging Infectious Diseases July 2020 (May 4, 2020), available at <https://doi.org/10.3201/eid2607.201595>.

<sup>7</sup> See Berkeley Lovelace Jr., *The coronavirus has mutated and appears to be more contagious now, new study finds*, CNBC (May 5, 2020), <https://www.cnbc.com/2020/05/05/the-coronavirus-mutated-and-appears-to-be-more-contagious-now-new-study-finds.html>.

<sup>8</sup> Medical information in this petition not otherwise cited is drawn from the expert testimony of medical professionals filed in recent federal cases, attached as Appendix C-E, as well as the website of the Harvard Medical School. See Expert Declaration of Dr. Jonathan Golob, Appendix C; Expert Declaration of Dr. Jamie Meyer, Appendix D; Expert Declaration of Joe Goldenson, MD, Appendix E; Harvard Medical School, Coronavirus Resource Center, *As coronavirus spreads, many questions and some answers*, <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>, (last visited Mar. 19, 2020).

deteriorate in as little as five days or sooner.

Most people in higher risk categories who develop serious disease will need advanced supportive care requiring highly specialized equipment that is in limited supply, and an entire team of care providers, including 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. Patients in high-risk categories 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.

There is no vaccine for COVID-19. No one is immune. The only known methods to reduce the risk of contracting COVID-19 are to prevent infection in the first place through social distancing and improved hygiene.

**B. People incarcerated in New Mexico prisons and jails face an elevated risk of COVID-19 transmission.**

People in congregate environments (where people live, eat, and sleep in close proximity) like prisons and jails face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus on cruise ships<sup>9</sup> and in nursing homes.<sup>10</sup> For example, New Mexico's major outbreak events have thus far been in long-term care facilities.<sup>11</sup>

*1. Jails and prisons are extremely vulnerable to outbreaks.*

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<sup>9</sup> See CDC, *COVID-19 and Cruise Ship Travel*, <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship> (last visited Apr. 5, 2020); see also Barbara Starr & Ryan Browne, *Sailor aboard USS Theodore Roosevelt dies of coronavirus*, CNN (Apr. 13, 2020), available at <https://www.cnn.com/2020/04/13/politics/theodore-roosevelt-sailor-coronavirus/index.html> (with 92% of crew members tested, “[n]early 600 sailors on the Roosevelt have tested positive for Covid-19,” one has died, and four more have been hospitalized).

<sup>10</sup> CDC, *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html) (last visited Apr. 5, 2020).

<sup>11</sup> Department of Health, *City of Albuquerque announce COVID-19 outbreak, deaths at long-term care facility*, NM Department of Health, (Apr. 3, 2020), <https://nmhealth.org/news/alert/2020/4/?view=894> (reporting “an outbreak of COVID-19 at the La Vida Llena long-term care facility in Albuquerque where two residents have died, and 19 residents and three staff members have tested positive for COVID-19 with additional test results still pending”).

Conditions in jails and prisons pose an even higher risk of the spread of COVID-19 than in non-carceral locations like a nursing home or cruise ship. Jails have a greater risk because of closer quarters, the proportion of vulnerable people detained, and scant medical care resources. According to one epidemiology professor, “If you wanted to set up a situation that would promote rapid transmission of a respiratory virus, you would say prison: it’s close quarters, unsanitary, individuals in frequent contact.”<sup>12</sup>

Experts have predicted that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility.”<sup>13</sup> In fact, according to data from the New York Times, eight of the top ten hotspots for COVID-19 cases in the United States are connected to jails and prisons.<sup>14</sup>

COVID-19 has spread to correctional facilities across the country, even in facilities that stated they were implementing screening protocols.<sup>15</sup> In less than two months, the Bureau of Prisons went from having one case of COVID-19 to, as of Wednesday, May 13, having at least 2,820 federal inmates and 266 prison staff sick with the disease.<sup>16</sup> In just over one month, 43 federal inmates have died from the COVID-19.<sup>17</sup> Eight of those deaths happened at the Oakdale

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<sup>12</sup> Daniel A. Gross, “It Spreads Like Wildfire”: The Coronavirus Comes to New York’s Prisons, *The New Yorker* (Mar. 24, 2020), <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>.

<sup>13</sup> See Nicole Wettsman, *Prisons and jails are vulnerable to COVID-19 outbreaks*, *The Verge* (Mar. 7, 2020), <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

<sup>14</sup> See C.J. Ciaramella, *8 of The Top 10 Biggest U.S. Coronavirus Hotspots Are Prisons and Jails*, *Reason* (Apr. 29, 2020), <https://reason.com/2020/04/29/8-of-the-top-10-biggest-u-s-coronavirus-hotspots-are-prisons-and-jails/>; *Coronavirus in the U.S.: Latest Map and Case Count*, *The New York Times* (updated May 8, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage&action=click&module=Spotlight&pgtype=Homepage#states>.

<sup>15</sup> See, e.g., Tess Sheets & Monivette Cordeiro, *Central Florida Jails Ready Coronavirus Plans as State Prisons Cut Visitation, Add Screening*, *Orlando Sentinel* (Mar. 13, 2020), <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-jails-prisons-florida-20200312-m675t3zssjhaf13j5nud7gzbuq-story.html>; Fed. Bureau of Prisons COVID-19 Action Plan, Fed. BOP (Mar. 13, 2020), [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp).

<sup>16</sup> Kimberly Kindy, *Inside the deadliest federal prison, the seeping coronavirus creates fear and danger*, *Washington Post* (Apr. 9, 2020), [https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0\\_story.html](https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html); *COVID-19 cases*, Federal Bureau of Prisons (May 13, 2020), <https://www.bop.gov/coronavirus/> (indicating that another 1,353 inmates and 282 staff have recovered from the disease).

<sup>17</sup> *Id.*

prison in Louisiana, one of the worst-hit federal prisons.<sup>18</sup>

Similarly, the Marion Correctional Institution in Ohio presents an example of how COVID-19 can spread throughout a prison. As of April 21, 2020, 2,011 out of the approximately 2,500 total inmates at the facility had tested positive for the virus.<sup>19</sup> Additionally, almost half of the prison's approximately 350 employees had tested positive.<sup>20</sup> When asked about the situation, the Ohio health director said that "The large number of inmates who aren't showing symptoms is indicative of the virus' ability to quietly spread through populations and reinforces the need for social distancing policies the state has put into place."<sup>21</sup> As of May 13, 2020, 4,449 Ohio inmates had tested positive for COVID-19, with 51 deaths system-wide.<sup>22</sup>

In New Mexico, at least four state prison employees have tested positive for COVID-19, but the state only recently conducted wide-spread testing of correctional staff.<sup>23</sup> The results of those tests have not been announced. Based on nationwide reporting on the results of widespread testing in prisons, it is extremely likely that a significant number of New Mexico Corrections Department ("NMCD") inmates and staff are indeed infected despite not presenting with fever, cough, or other symptoms.<sup>24</sup>

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<sup>18</sup> Nicholas Chrastil, *Oakdale inmate dies from COVID-19 two days after scheduled release*, The Lens (May 12, 2020), <https://thelensnola.org/2020/05/12/oakdale-inmate-dies-from-covid-19-two-days-after-scheduled-release/>.

<sup>19</sup> Andrew Welsh-Huggins, *Virus outbreak in Ohio prisons highlights risk at US lockups*, AP News (Apr. 21, 2020), <https://apnews.com/6698bb0643491f97ff8b961758966eab>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *COVID-19 Inmate Testing*, Ohio Department of Rehabilitation & Correction (May 13, 2020), available at [https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2005-13-2020%201327\\_1.pdf](https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2005-13-2020%201327_1.pdf).

<sup>23</sup> Phaedra Haywood, *Three more prison staffers test positive for coronavirus*, Santa Fe New Mexican (May 4, 2020), [https://www.santafenewmexican.com/news/coronavirus/three-more-prison-staffers-test-positive-for-coronavirus/article\\_87839d28-8e37-11ea-a4f0-775741691c57.html](https://www.santafenewmexican.com/news/coronavirus/three-more-prison-staffers-test-positive-for-coronavirus/article_87839d28-8e37-11ea-a4f0-775741691c57.html); KRQE Staff, *Department of Health completes testing of New Mexico Corrections Department facility staff ahead of schedule*, KRQE (May 8, 2020), <https://www.krqe.com/health/coronavirus-new-mexico/departments-of-health-completes-testing-of-new-mexico-corrections-department-facility-staff-ahead-of-schedule/>.

<sup>24</sup> See Patrick Cooley and Jim Woods, *More than 1,800 inmates at Marion Correctional test positive for coronavirus*, Columbus Dispatch (Apr. 19, 2020), *republished by The Marion Star at* <https://www.marionstar.com/story/news/local/2020/04/19/1-800-inmates-marion-correctional-positive-coronavirus/5163285002/>; Angie Jackson and Kristi Tanner, *Coronavirus cases at Michigan prison surge as widespread testing begins*, Detroit Free Press (Apr. 25, 2020) ("The number of inmates confirmed to have the novel



The CDC Guidance for detention centers reiterates that the only known effective measures for protecting vulnerable people are social distancing, quarantining or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and hot water.<sup>25</sup> The National Commission on Correctional Health Care also recommends that measures be implemented in correctional facilities to increase the physical space between all individuals in custody.<sup>26</sup>

2. *Because of close quarters and asymptomatic transmission, current precautions in New Mexico prisons, including SCC, are insufficient.*

In an interview with KUNM Radio, New Mexico Corrections Department Secretary Alisha Tafoya Lucero agreed that NMCD facilities are unable to implement social distancing in their “closed environment.”<sup>27</sup> For instance, the facilities cannot “open new units and separate beds out,” in order for inmates to remain six feet apart.<sup>28</sup>

SCC has limited movement within the facility in an apparent attempt to stop the spread of COVID-19. Women incarcerated there are now limited to their pods, housing about 28 people each, except for lunch, which they eat in the usual chow hall. Though SCC has reduced the number of people at meals together, individuals still sit at communal tables in close proximity to

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coronavirus at one Michigan prison is surging as the Department of Corrections begins its first wave of widespread testing of prisoners who don't show symptoms of the virus.”), <https://www.freep.com/story/news/local/michigan/2020/04/25/coronavirus-cases-michigan-prison-surge-widespread-testing-prisoners/3002811001/>; Tim Carpenter & Sherman Smith, *Kansas coronavirus update: Lansing prison locked down as all inmates get tested*, Topeka Capital-Journal (Apr. 30, 2020) (“Initial testing results from a sample earlier this week of 240 men who live in a single unit at Lansing show that 75% have the coronavirus but no symptoms.”), <https://www.cjonline.com/news/20200430/kansas-coronavirus-update-lansing-prison-locked-down-as-all-inmates-get-tested>.

<sup>25</sup> CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

<sup>26</sup> Nat’l Comm’n on Correctional Health Care, *COVID-19 Weekly Roundtable for Law Enforcement and Correctional Health Care* (Mar. 27, 2020), [https://www.ncchc.org/filebin/COVID/COVID-19\\_Roundtable\\_Week\\_2\\_March\\_27.pdf](https://www.ncchc.org/filebin/COVID/COVID-19_Roundtable_Week_2_March_27.pdf).

<sup>27</sup> Marisa Demarco, et al., *YNMG & COVID: Behind The Walls*, KUNM (Mar. 30, 2020), <https://www.kunm.org/post/ynmg-covid-behind-walls>.

<sup>28</sup> *Id.*

each other. The women in Ms. Jaramillo’s pod sleep in bunks approximately three (3) feet apart. Additionally, although inmate movement is limited, staff enter from the outside world and move throughout the entire facility during the course of a shift. For this reason, once it enters the facility, COVID-19 is likely to spread through SCC, despite some safety measures rightfully being taken.

Despite taking some measures intended to limit inmate and staff exposure to coronavirus, the protocols put in place by NMCD do not address contact within housing units and focus entirely on symptomatic transmission. NMCD have failed to account for commonly known realities of the coronavirus pandemic.

NMCD plans to conduct a “COVID-19 specific screening review” of inmates who are new arrivals at a facility and staff members before they begin their shifts and plans to test inmates who present symptoms of the virus.<sup>29</sup> This screening and testing process overlooks the fact that many who are infected with COVID-19 do not show signs of illness.<sup>30</sup> Secretary Tafoya Lucero has recognized that the most immediate risk to the incarcerated population will be exposure by staff who enter the prison from the larger community.<sup>31</sup>

It appears that many facilities plan to warehouse all of their symptomatic detainees together, in communal living spaces.<sup>32</sup> This measure will do little to prevent transmission among detainees, especially since some “symptomatic” detainees may actually have another ailment and then *become* infected with COVID-19 as a *consequence* of the facility’s quarantine protocol.

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<sup>29</sup> See Secretary of the New Mexico Department of Corrections’ And Probation and Parole Director’s Verified Response to Emergency Petition for Writ of Mandamus and/or Habeas Relief, *New Mexico Law Officers of the Public Defender v. State of New Mexico*, S-1-SC-38252 (Apr. 23, 2020).

<sup>30</sup> CDC, *Coronavirus Disease 2019 (COVID-19) Symptoms*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Mar. 19, 2020).

<sup>31</sup> Marisa Demarco, et al., *YNMG & COVID: Behind The Walls*, KUNM (Mar. 30, 2020), <https://www.kunm.org/post/ynmg-covid-behind-walls>.

<sup>32</sup> See *id.* (NMCD plans to house symptomatic individuals within its medical units).

Without including rapid testing in the protocol, group isolation actually results in forced exposure.

Recently, NMCD has tested all of its staff and twenty-five percent (25%) of individuals in its custody.<sup>33</sup> Testing is an important first step to preventing or limiting an outbreak in New Mexico prisons. However, as explained further below, testing itself will not prevent an outbreak in NMCD facilities. Further, the results of recent testing may in fact reveal that an outbreak is already underway.

Therefore, the dangers of asymptomatic transmission continue to threaten New Mexico detention facilities. Most facilities have revealed only symptom-reactive policies in response to COVID-19—that incarcerated people will be separated and treated if they display symptoms—which are ineffective to stop the rampant asymptomatic transmission of the disease.<sup>34</sup> The Santa Fe County Detention Center, for example, could not avoid an inmate becoming infected, despite increased safety protocols, including medically screening and separately housing those newly booked.<sup>35</sup>

**C. Release is necessary to address the risk of serious harm or death to Ms. Jaramillo from COVID-19.**

Ms. Jaramillo suffers from severe asthma that requires treatment with a rescue inhaler and steroid inhaler to prevent serious attacks. Merely three months ago, she was hospitalized for

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<sup>33</sup> See KRQE Staff, *Department of Health completes testing of New Mexico Corrections Department facility staff ahead of schedule*, KRQE (May 8, 2020), <https://www.krqe.com/health/coronavirus-new-mexico/department-of-health-completes-testing-of-new-mexico-corrections-department-facility-staff-ahead-of-schedule/>.

<sup>34</sup> See Chelsea Ritschel, *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?*, The Independent (Mar. 15, 2020); Nathan W. Furukawa, et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, Emerging Infectious Diseases July 2020 (May 4, 2020), available at <https://doi.org/10.3201/eid2607.201595>.

<sup>35</sup> Kyle Land, *Inmate tests positive for virus at Santa Fe County jail*, ABQ Journal (Apr. 13, 2020), <https://www.abqjournal.com/1443328/inmate-tests-positive-for-virus-at-santa-fe-county-jail.html> (noting test results pending for 8 staff members and 33 other inmates with whom the sick inmate lived in a dorm-style pod).

this condition. As explained above, COVID-19 poses an extreme risk of permanent disability and death to individuals with respiratory conditions such as Ms. Jaramillo’s severe asthma.<sup>36</sup>

As the Governor has acknowledged, “The only real way to attack this virus is to stay away from it.”<sup>37</sup> Public health officials and correctional oversight boards around the country are urging correctional institutions to use any means available to immediately reduce the prison and jail populations.<sup>38</sup>

Confronted with this reality, courts across the country have already taken steps to limit incarceration during this crisis. *See* Appendix B. In late March, United States Attorney General William Barr directed the Bureau of Prisons to increase the use of home confinement for inmates in an effort to slow the spread of coronavirus in federal prisons.<sup>39</sup> Subsequently, Barr “directed federal prison officials to accelerate and expand early release programs for the sickest inmates.”<sup>40</sup> As of May 12, the Federal Bureau of Prisons had released at least 2,431 inmates to home confinement.<sup>41</sup>

Dr. Marc Stern, a correctional health expert, has recommended the “release of eligible individuals from detention, with priority given to the elderly and those with underlying medical

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<sup>36</sup> See CDC, *People with Moderate to Severe Asthma*, (updated Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>.

<sup>37</sup> See Gabrielle Burkhart, *What could coronavirus caseload look like at its peak in New Mexico?*, KRQE (Apr. 8, 2020), <https://www.krqe.com/health/coronavirus-new-mexico/what-could-coronavirus-caseload-look-like-at-its-peak-in-new-mexico/>.

<sup>38</sup> See Vera Institute of Justice, *Guidance for Preventative Measures to Coronavirus for Jails, Prisons, Immigration Detention Centers and Youth Facilities* (Mar. 18, 2020), <https://www.vera.org/downloads/publications/coronavirus-guidance-jails-prisons-immigration-youth.pdf>; Andrew Naughtie, *Coronavirus: US Doctors Demand Immediate Release of Prisoners and Detainees to Avert Disaster*, Independent (Mar. 9, 2020); <https://www.independent.co.uk/news/world/americas/coronavirus-us-prison-release-doctors-medical-workers-symptoms-a9410501.html>.

<sup>39</sup> Barr tells federal prisons to use home confinement, CBS News (Mar. 27, 2020), <https://www.cbsnews.com/video/barr-tells-federal-prisons-to-use-home-confinement-amid-virus-outbreak/?ftag=CNM-00-10aac3a>.

<sup>40</sup> Kimberly Kindy, *Inside the deadliest federal prison, the seeping coronavirus creates fear and danger*, Washington Post (Apr. 9, 2020), [https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0\\_story.html](https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story.html).

<sup>41</sup> *COVID-19 Home Confinement Releases*, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/index.jsp> (last accessed May 12, 2020).

conditions most vulnerable to serious illness or death if infected with COVID-19.”<sup>42</sup> Another correctional health expert, Dr. Robert Greifinger, concluded that “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.”<sup>43</sup>

Here in New Mexico, a group of sixty medical professionals wrote a letter urging state officials to release people convicted of non-violent crimes in order to avoid a COVID-19 outbreak in the prisons and jails. The authors agreed with experts across the country that “The safest way to ensure that a jail or prison does not become a site for COVID-19 to spread is to reduce the number of people who are incarcerated.”<sup>44</sup>

For the reasons described above, although NMCD is taking some precautions to reduce the spread of COVID-19, those measures are unlikely to prevent the virus from entering NMCD facilities. When the virus reaches SCC, Ms. Jaramillo will be at serious risk for contracting the virus, which has a high likelihood of killing her or leaving her with lasting damage to her vital organs.

This risk is exacerbated by the fact that, upon information and belief, SCC medical staff are not equipped to treat patients who contract severe cases of COVID-19 and require a ventilator. Therefore, individuals who contract COVID-19 at SCC will likely have to be transported to the nearest hospital, a forty (40) minute drive from the facility. Additionally,

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<sup>42</sup> *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), Decl. of Dr. Marc Stern, ¶¶ 9, 11, available at <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>.

<sup>43</sup> *Id.*; Decl. of Dr. Robert Greifinger, ¶ 13, available at <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger>.

<sup>44</sup> Phaedra Haywood, *Medical providers ask state to release inmates*, Santa Fe New Mexican (Mar. 30, 2020), [https://www.santafenewmexican.com/news/coronavirus/medical-providers-ask-state-to-release-inmates/article\\_28ec48ee-7089-11ea-8873-5b52a107906d.html](https://www.santafenewmexican.com/news/coronavirus/medical-providers-ask-state-to-release-inmates/article_28ec48ee-7089-11ea-8873-5b52a107906d.html).

because SCC and surrounding hospitals are in a rural area of the state, ventilators, other medical equipment, and staff are likely to be scarce.<sup>45</sup>

The only way to protect Ms. Jaramillo from the unreasonable risk to her health and safety posed by COVID-19 is to release her from SCC so that she can appropriately socially distance herself.

### **ARGUMENT**

A petition for writ of habeas corpus under Article II, section 7 of the New Mexico Constitution and Rule 5-802 NMRA is the appropriate avenue for relief because Ms. Jaramillo challenges the unconstitutional conditions of her confinement. Specifically, Ms. Jaramillo alleges that continuing to confine her at SCC during the current pandemic violates the Eighth Amendment because it puts her at a severe risk of serious harm or death from the pandemic disease.

**A. Under New Mexico law and the Eighth Amendment, imposition of a sentence may be inherently unconstitutional if confinement would be life-threatening because of the defendant’s serious medical condition.**

In *State v. Arrington*, the New Mexico Court of Appeals held that, in some circumstances, “a term of incarceration may be found to be inherently cruel” in violation of the Eighth Amendment where that prison sentence would be life-threatening. 1993-NMCA-055, ¶¶ 10-11, 115 N.M. 559. *Arrington* addressed the case of a woman who had been sentenced to a mandatory term of incarceration under the habitual offender statute for unlawful distribution of marijuana. *Id.* ¶ 2. Like Ms. Jaramillo, the defendant in that case suffered from severe asthma,

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<sup>45</sup> See Morgan Lee, *Coronavirus tests NM rural health networks*, Albuquerque Journal (Mar. 21, 2020), <https://www.abqjournal.com/1435137/coronavirus-tests-nm-rural-health-networks.html>; Danielle Prokop, *Rural New Mexico hospitals turn to communities to help prepare for virus*, Santa Fe New Mexican (Apr. 3, 2020), [https://www.santafenewmexican.com/news/coronavirus/rural-new-mexico-hospitals-turn-to-communities-to-help-prepare-for-virus/article\\_3560ee0e-72a0-11ea-9f24-8b54f3ed9a04.html](https://www.santafenewmexican.com/news/coronavirus/rural-new-mexico-hospitals-turn-to-communities-to-help-prepare-for-virus/article_3560ee0e-72a0-11ea-9f24-8b54f3ed9a04.html).

which had also caused her to be hospitalized. *Id.* ¶ 3. The defendant presented evidence that she would not have access to adequate medical care for her condition while in prison and that incarceration would therefore be life-threatening. *Id.* ¶ 11.

The *Arrington* court explained that, although the habitual offender statute imposed a mandatory sentence that could not be suspended or deferred, “a mandatory sentence is still subject to constitutional scrutiny.” *Id.* ¶ 9. Under normal circumstances, trial courts do not have discretion to specify the place where a habitual offender serves their sentence. *Id.* ¶ 7. *Arrington* held that the trial court was not required to impose incarceration if it determined “that a prison term would violate the prohibition against cruel and unusual punishment as applied to a particular defendant.” *Id.* ¶ 9.

The court determined that, because of the *Arrington* defendant’s asthma, a term of incarceration could be deadly. *Id.* ¶ 11. Therefore, the court held that imposition of such a sentence would constitute deliberate indifference to the defendant’s serious medical needs in violation of the Eighth Amendment. *Id.* ¶ 14. Under these particular circumstances, the court permitted the defendant to serve her sentence in the custody of her parents. *Id.* ¶ 6.

COVID-19 has substantially changed the circumstances under which Ms. Jaramillo was originally sentenced. With a pandemic respiratory virus sweeping the globe and presenting a heightened risk in prisons, incarceration now poses a serious threat to Ms. Jaramillo’s life. Like the defendant in *Arrington*, the term of incarceration to which Ms. Jaramillo was sentenced now constitutes cruel and unusual punishment in violation of the constitution. Just as we have chosen not to tolerate such risk to free individuals, the constitution does not permit us to tolerate such a risk to incarcerated individuals such as Ms. Jaramillo.

**B. Continuing to incarcerate Ms. Jaramillo at SCC constitutes deliberate indifference to a serious medical need in violation of the Eighth**

### **Amendment and Article II, Section 13 of the New Mexico Constitution.**

It is cruel and unusual punishment to subject Ms. Jaramillo to the substantial risk of contracting COVID-19, which due to her severe asthma would potentially constitute a death sentence. Incarcerated persons have a “clear and undisputed right” under both the Eighth Amendment to the United States Constitution and Article II, Section 13 of the New Mexico Constitution to be free from cruel and unusual punishment and not to be “expos[ed] ... to serious, communicable disease.” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (“We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems but may ignore **a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.**”) (emphasis added); *accord Hutto v. Finney*, 437 U.S. 678, 682-85 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases). Indeed, with respect to “infectious maladies,” the Court observed:

This was one of the prison conditions for which the Eighth Amendment required a remedy, **even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.** ... Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.

*Helling*, 509 U.S. at 33 (emphasis added). Thus, the affirmative obligation to protect against infectious disease empowers courts to provide remedies designed to prevent imminent harm to future health. *Id.* (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”). New Mexico’s Cruel and Unusual Punishment Clause similarly permits consideration of future harm to an at-risk prisoner’s health. *See State v. Arrington*, 1993-NMCA-055, ¶ 11, 115 N.M. 559.



Additionally, “a total deprivation of care is not a necessary condition for finding a constitutional violation.” *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010). Deliberate indifference is established if a party disregarded a risk, “by failing to take **reasonable** measures to abate it.” *Hunt v. Uphoff*, 199 F.3d 1220, 1224 (10th Cir. 1999) (emphasis added); *see also Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980) (the constitution “requires that the State make available to inmates a level of medical care which is reasonably designed to meet the routine and emergency health care needs of inmates.”) (internal quotation marks and citation omitted).

It is well-established that, while prisoners may not be entitled to any particular treatment of their choosing, medical care in prison cannot be “so cursory as to amount to no treatment at all.” *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985). By the same token, prison officials may not adopt an “easier and less efficacious treatment” that does not adequately address a prisoner’s serious medical needs. *Estelle*, 429 U.S. at 103-06. Prison officials may not avoid liability “simply by providing some measure of treatment.” *Jones v. Muskegon Cnty.*, 625 F.3d 935, 944 (6th Cir. 2010).

Thus, the fact that NMCD may be taking some measures to address the risks to the incarcerated population does not defeat Ms. Jaramillo’s claim of deliberate indifference. Conducting some testing and screening for symptoms does not sufficiently address the risk of harm to Ms. Jaramillo. Once an individual tests positive, it is likely that person has already transmitted the virus to others.<sup>46</sup> Thus, if NMCD’s testing efforts reveal that a correctional officer who has been working in Ms. Jaramillo’s unit has tested positive for COVID-19, it will

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<sup>46</sup> It is for this reason that contact tracing has become an important component of stopping the spread of COVID-19. *See* Gabrielle Burkhart, *New Mexico testing technology to help with COVID-19 ‘contact tracing’*, KRQE (Apr. 28, 2020), <https://www.krqe.com/health/coronavirus-new-mexico/new-mexico-testing-technology-to-help-with-covid-19-contact-tracing/>.

more than likely be too late to prevent Ms. Jaramillo from having been exposed to this life-threatening disease.

As noted above, there is a substantial likelihood that hundreds of inmates and staff are already infected and experiencing “hidden” symptoms of COVID-19. Delay in removing Ms. Jaramillo, who is especially vulnerable to COVID-19, from an environment that presents significant risk of exposure constitutes deliberate indifference. *See Oxendine v. Kaplan*, 241 F.3d 1272, 1276 (10th Cir. 2001) (delay in providing medical care constitutes deliberate indifference where the delay results in substantial harm). Substantial harm is demonstrated “where the delay causes unnecessarily prolonged pain and suffering.” *Motto v. Corr. Med. Services*, 2010 WL 4781123, at \*4 (S.D.W. Va. Nov. 16, 2010) (citing *Sealock v. Colorado*, 218 F.3d 1205, 1210 n.5 (10th Cir. 2000)).

As explained above, the COVID-19 outbreak likely to occur in New Mexico prisons, including SCC, poses a substantial risk of serious harm to Ms. Jaramillo. Keeping her incarcerated constitutes cruel and unusual punishment in violation of the Eighth Amendment and Article II, Section 13, by confining her in “unsafe conditions” and exposing her “to a serious, communicable disease.” *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982).

**C. Continuing to incarcerate Ms. Jaramillo at SCC poses an atypical and significant hardship in violation of the Fourteenth Amendment’s Due Process Clause and Article II, Section 18 of the New Mexico Constitution.**

Similarly, incarcerated people have a constitutionally-protected liberty interest in avoiding “atypical and significant hardship... in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also id.* (a hardship may “exceed[] the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force”); *Cordova v. LeMaster*, 2004-NMSC-026, ¶ 20, 136 N.M. 217, 223 (adopting the

“atypical and significant hardship” standard). “Whether a particular restraint imposes an ‘atypical and significant hardship’ depends, in turn, on its ‘duration and degree.’” *Torres v. Comm’r of Corr.*, 427 Mass. 611, 618 (1998), *cert denied*, 525 U.S. 1017 (quoting *Sandin*, 515 U.S. at 486).

This situation is far from typical. A serious threat of contracting a severe, life-threatening illness is “a dramatic departure from the basic conditions” of prison life. *Sandin*, 515 U.S. at 485. Contraction of COVID-19 was not “within the sentence imposed upon” Ms. Jaramillo by the trial court prior to the pandemic. *See Montanye v. Haymes*, 427 U.S. 236, 242 (1976). If she remains confined in SCC, Ms. Jaramillo faces permanent injury or loss of life that was not imposed pursuant to due process of law.

Continuing to incarcerate Ms. Jaramillo, who has been deemed by the CDC to be especially vulnerable to a deadly pandemic, in conditions where taking the only known steps to prevent transmission are virtually impossible, represents a dramatic departure from the sentence imposed upon her by a court of law. Indeed, such circumstances could ultimately become a death sentence.

### **REQUEST FOR RELIEF**

For the foregoing reasons, Petitioner Kandyce Jaramillo respectfully requests that this Court order her immediate release from Springer Correctional Center to home confinement or community corrections. If released, Ms. Jaramillo would reside safely with her father in Albuquerque.

Respectfully Submitted,

**/s/ Lalita Moskowitz**

Lalita Moskowitz

Leon Howard

ACLU of New Mexico

P.O. Box 566  
Albuquerque, NM 87103  
P: (505) 266-5915 ext. 1015 & 1008  
F: (505) 266-5916  
[lmoskowitz@aclu-nm.org](mailto:lmoskowitz@aclu-nm.org)  
[lhoward@aclu-nm.org](mailto:lhoward@aclu-nm.org)

**Certificate of Service**

I hereby certify that on the 15<sup>th</sup> day of May, 2020, I filed the foregoing electronically and caused the following parties to be served via email:

Hector Balderas, New Mexico Attorney General  
[hbaldas@nmag.gov](mailto:hbaldas@nmag.gov)

Brian Fitzgerald, Chief Deputy General Counsel, NMCD  
[Brian.Fitzgerald@state.nm.us](mailto:Brian.Fitzgerald@state.nm.us)

Marianna Vigil, Warden  
[Marianna.Vigil@state.nm.us](mailto:Marianna.Vigil@state.nm.us)

/s/ Lalita Moskowitz  
Lalita Moskowitz

## Appendix A

**EIGHTH JUDICIAL DISTRICT COURT  
COUNTY OF COLFAX  
STATE OF NEW MEXICO**

**KANDYCE JARAMILLO,**

**Petitioner,**

**v.**

**No.**

**STATE OF NEW MEXICO and  
WARDEN MARIANNA VIGIL,**

**Respondents.**

**AFFIDAVIT OF LEON HOWARD**

I, Leon Howard, J.D., under my obligation as an officer of the Court and in accordance with the Rules of Professional Conduct, state as follows:

1. I am an attorney representing Kandyce Jaramillo. Ms. Jaramillo is presently incarcerated at the Springer Correctional Center (“SCC”).

2. Although I have been able to discuss Ms. Jaramillo’s experiences with her, I have not been able to obtain her signature in order to verify Petitioner’s Emergency Motion for Temporary Restraining Order, Application For Preliminary Injunction, Request For Expedited Hearing, And Memorandum In Support or her Emergency Petition for Writ of Habeas Corpus. This is because SCC has suspended in-person visits in light of the COVID-19 pandemic. Consequently, and given the emergency nature of the present Motion, I have not been able to arrange such a visit and obtain Ms. Jaramillo’s signature in the presence of a notary.

3. However, after talking with Ms. Jaramillo, I represent to the Court that the facts and allegations in the Motion are a true and correct representation of Ms. Jaramillo’s statements and representations during our conversation.

4. It is presently unknown when I might be able to obtain Ms. Jaramillo's signature in the presence of a notary.



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Leon Howard  
May 14, 2020

## Appendix B: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19<sup>III</sup>

*Updated April 22, 2020*

State	Judicial Body	Forum	Nature of Relief
<b>Alabama</b>	Circuit Court for the 19 <sup>th</sup> Judicial Circuit of Alabama	Administrative order	<ul style="list-style-type: none"> <li>Judge Fuller ordered “all inmates currently held on appearance bonds of \$5,000.00 or less be immediately released on recognizance with instructions to personally appear at their next schedule court appearance.”<sup>[12]</sup></li> </ul>
<b>Alaska</b>	Court of Appeals for the State of Alaska	Order	<ul style="list-style-type: none"> <li>Alaska’s intermediate appellate court holds that COVID-19 is a changed circumstance that courts must consider when deciding bail motions.<sup>[13]</sup></li> </ul>
<b>Arizona</b>	Coconino County court system and jail, Judge Dan Slayton, along with other county judges	Court order	<ul style="list-style-type: none"> <li>As of March 20, 2020, Judge Dan Slayton and other county judges have released around 50 people who were held in the county jail on non-violent charges.<sup>[14]</sup></li> </ul>
<b>California</b>	Supreme Court of California, Chief Justice Tani Cantil-Sakauye	Advisory	<ul style="list-style-type: none"> <li>The Chief Justice issued guidance encouraging the state’s superior courts to, among other things: <ul style="list-style-type: none"> <li>“Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses.”</li> <li>“Consider a defendant's existing health conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody for adult or juvenile defendants.”</li> <li>“Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.”<sup>[15]</sup></li> </ul> </li> </ul>
	Sacramento Superior Court, Judge Hom	Order	<ul style="list-style-type: none"> <li>The Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime.<sup>[16]</sup></li> </ul>
<b>Hawai‘i</b>	Supreme Court of the State of Hawai‘i	Order and Appointment of Special Master	<ul style="list-style-type: none"> <li>The court appointed a Special Master who will “work with the parties in a collaborative and expeditious manner to address the issues raised in the two petitions and to facilitate a resolution while protecting public health and public safety.”<sup>[17]</sup></li> </ul>

<b>Kentucky</b>	Kentucky, Chief Justice John Minton Jr.	Letter to state judges and court clerks	<ul style="list-style-type: none"> <li>• Kentucky, Chief Justice John Minton Jr. told state’s judges and court clerks to release jail inmates “as quickly as we can” noting, “jails are susceptible to worse-case scenarios due to the close proximity of people and the number of pre-existing conditions,” and that courts have the responsibility “to work with jailers and other county officials to safely release as many defendants as we can as quickly as we can.”<sup>[8]</sup></li> </ul>
<b>Louisiana</b>	Louisiana Supreme Court, Chief Justice Bernette J. Johnson	Letter to Louisiana District Judges	<ul style="list-style-type: none"> <li>• Louisiana Supreme Court Chief Justice Bernette J. Johnson recognized that “it is important to safely minimize the number of people detained in jails where possible.” Justice Johnson instructed all District Judges to “conduct a comprehensive and heightened risk-based assessment of all detainees.” Among other things: <ul style="list-style-type: none"> <li>○ For pre-trial detainees charged with misdemeanor and non-violent, judges should consider nominal or reduced bail or release on personal recognizance.</li> <li>○ For those convicted of misdemeanors, judges should “consider modification to a release and supervised probation or simply time-served.”</li> <li>○ For probation revocations, judges should “confer with Probation and Parole to determine whether there is an alternative to detention, especially with technical violations.”</li> <li>○ Judges should “suggest to law enforcement that, whenever practicable, they issue summons and citations on misdemeanor crimes and non-violent offenses in lieu of arrest.”<sup>[9]</sup></li> </ul> </li> </ul>
<b>Maine</b>	State of Maine Superior Court, Chief Justice Mullen and District Court Chief Judge Sparaco and Deputy Chief Judge French	Emergency Order	<ul style="list-style-type: none"> <li>• The Superior Court and District Court ordered all trial courts to immediately vacate all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.<sup>[10]</sup></li> </ul>
<b>Massachusetts</b>	Justice Gaziano, Commonwealth of Massachusetts	Order	<ul style="list-style-type: none"> <li>• The Supreme Judicial Court held that people who are held pretrial on bail and have not been found dangerous or charged with a violent or otherwise excluded offense are entitled to a hearing within two business</li> </ul>



	Supreme Judicial Court		days of filing their motions, where they will be entitled to a rebuttable presumption of release. <sup><a href="#">111</a></sup>
<b>Michigan</b>	Chief Justice Bridget M. McCormack, Michigan Supreme Court	Joint Statement	<ul style="list-style-type: none"> <li>In a Joint statement, Chief Justice McCormack urged judges to “use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk[,]... release far more people on their own recognizance while they await their day in court...[a]nd judges should use probation and treatment programs as jail alternatives. <sup><a href="#">112</a></sup></li> </ul>
<b>Montana</b>	Supreme Court of Montana, Chief Justice McGrath	Letter to Judges	<ul style="list-style-type: none"> <li>Chief Justice of the Montana Supreme Court urged judges to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”<sup><a href="#">113</a></sup></li> </ul>
<b>New Jersey</b>	New Jersey Supreme Court, Chief Justice Rabner	Consent Order	<ul style="list-style-type: none"> <li>In New Jersey, after the Supreme Court ordered briefing and argument on why it should not order the immediate release of individuals serving county jail sentences, the Attorney General and County Prosecutors agreed to create an immediate presumption of release for every person serving a county jail sentence in New Jersey. <sup><a href="#">114</a></sup></li> </ul>
<b>New York</b>	New York State Supreme Court, Bronx County, Justice Doris M. Gonzales	Judicial ruling based on writ of habeas corpus	<ul style="list-style-type: none"> <li>In a habeas petition brought by the Legal Aid Society, a Justice Doris M. Gonzales ordered the release of 106 individuals currently held at Rikers Island on a non-criminal technical parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition. <sup><a href="#">115</a></sup></li> </ul>
	New York Supreme Court Justice Mark Dwyer	Judicial ruling based on writ of habeas corpus	<ul style="list-style-type: none"> <li>In a habeas petition brought by the Legal Aid Society, a Justice Mark Dwyer ordered the release of 16 individuals currently held at Rikers Island on pretrial detention or parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition. <sup><a href="#">116</a></sup></li> </ul>
<b>Ohio</b>	Ohio Supreme Court, Chief Justice Maureen O'Connor	News Conference	<ul style="list-style-type: none"> <li>Chief Justice O'Connor urged “judges to use their discretion and release people held in jail and incarcerated individuals who are in a high-risk category for being infected with the virus.”<sup><a href="#">117</a></sup></li> </ul>
<b>South Carolina</b>	Supreme Court of South Carolina, Chief Justice Beatty	Memorandum	<ul style="list-style-type: none"> <li>The Chief Justice instructed that “any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk.”<sup><a href="#">118</a></sup></li> </ul>

<b>Texas</b>	Travis County, Texas, Judges	Individual Court Orders	<ul style="list-style-type: none"> <li>Travis County has begun releasing some defendants in custody with underlying health conditions, to reduce the potential spread of COVID-19 in the county's jails. After Austin saw its first positive cases of COVID-19, judges in the county nearly doubled its release of people from local jails on personal bonds, with one judge alone reversing four bond decisions after "balancing this pandemic and public health safety of inmates against what they're charged with."<sup>191</sup></li> </ul>
<b>Tennessee</b>	Supreme Court of Tennessee	Court Order	<ul style="list-style-type: none"> <li>The Chief Justice of the Tennessee Supreme Court ordered local judges to come up with plans for reducing their prison and jail populations by March 30<sup>th</sup>.<sup>120</sup></li> </ul>
<b>Utah</b>	Utah Supreme Court and Utah Judicial Council, Chief Justice Durrant	Administrative Order	<ul style="list-style-type: none"> <li>The Chief Justice of the Utah Supreme Court ordered that for defendants in-custody on certain misdemeanor offenses, "the assigned judge must reconsider the defendant's custody status and is encouraged to release the defendant subject to appropriate conditions."<sup>121</sup></li> </ul>
<b>Washington</b>	Washington Supreme Court, Chief Justice Stephens	Order	<ul style="list-style-type: none"> <li>Chief Justice Stephens ordered judges not to issue bench warrants for failure to appear, "unless necessary for the immediate preservation of public or individual safety" and "to hear motions for pretrial release on an expediated basis without requiring a motion to shorten time." Additionally, for populations designated as at-risk or vulnerable by the Centers for Disease Control, the COVID-19 crisis is presumed to be a material change in circumstances to permit amendment of a previous bail order or to modify conditions of pre-trial release.<sup>122</sup></li> </ul>
<b>Wyoming</b>	Wyoming Supreme Court, Chief Justice Davis	Order	<ul style="list-style-type: none"> <li>The Chief Justice instructed judges to issue summonses instead of bench warrants, unless public safety compels otherwise.<sup>123</sup></li> </ul>
<b>Federal Criminal Detention</b>	9 <sup>th</sup> Cir., Peter L. Shaw, Appellate Commissioner	Order	<ul style="list-style-type: none"> <li>After a joint motion, the case was remanded to the district court to allow the court to entertain the parties stipulation in a FRAP(9) appeal to release appellant pending sentencing.<sup>124</sup></li> </ul>
	C.D. Cal, Judge James V. Selna	Minute Order	<ul style="list-style-type: none"> <li>The Court granted temporary release for 90 days, pursuant to 18 U.S.C. § 3142 (i), which authorizes discretionary temporary release when necessary for a person's defense or another compelling reason. Judge</li> </ul>

			Selna held the defendant's age and medical conditions, which place him in the population most susceptible to COVID-19, and in light of the pandemic, to constitute "another compelling reason" and granted his temporary release. <sup>[25]</sup>
	D. Conn., Judge Janet Bond Arterton	Order	<ul style="list-style-type: none"> <li>Judge Arterton waived defendant's exhaustion requirements and concluded "[i]n light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home" under a compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i).<sup>[26]</sup></li> </ul>
	D. Conn., Vanessa L. Bryant	Memorandum	<ul style="list-style-type: none"> <li>Judge Bryant waived exhaustion requirements and granted compassionate release, pursuant to 18 U.S.C. § 3582(c), to an immunocompromised defendant with 8 weeks left to serve in light of severe risks posed by COVID-19.<sup>[27]</sup></li> </ul>
	D. Conn., Judge Jeffrey A. Meyer	Order	<ul style="list-style-type: none"> <li>Judge Meyer ordered the release of defendant stating that "the conditions of confinement at Wyatt are not compatible" with current COVID-19 public health guidance concerning social distancing and avoiding congregating in large groups. Judge Meyer is one of four federal judges in Connecticut who has released inmates in connection with the COVID-19 pandemic.<sup>[28]</sup></li> </ul>
	D. Conn., Judge Stefan R. Underhill	General Order	<ul style="list-style-type: none"> <li>Judge Underhill held, "[p]ursuant to the provisions of the Criminal Justice Act, 18 U.S.C. Section 3006A(a)(l), and (c), the Office of the Federal Public Defender for the District of Connecticut is hereby appointed to represent any then-unrepresented defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by retained counsel and is presently indigent, for purposes of issues relating to requests for early release . The Federal Public Defender, in consultation with the client, shall determine whether to present, and if appropriate shall present, any motion for modification of an imposed term of imprisonment for extraordinary and compelling reasons ("compassionate release" motion), in accordance with 18 U.S.C. Section 3582(c)(1)(A)(i), in relation to the COVID-19 pandemic.<sup>[29]</sup></li> </ul>

	D.D.C., Judge Ellen S. Huvelle	Amended Order	<ul style="list-style-type: none"> <li>Judge Huvelle granted “defendant’s unopposed motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) because of the COVID-19 global pandemic.”<sup>[30]</sup></li> </ul>
	D.D.C., Judge Amit P. Mehta	Order	<ul style="list-style-type: none"> <li>Judge Mehta found COVID-19 to present exceptional reasons under 18 U.S.C. § 1345(c) to warrant to release pending sentencing.<sup>[31]</sup></li> </ul>
	D.D.C., Judge Randolph D. Moss	Minute Order	<ul style="list-style-type: none"> <li>Judge Moss released defendant, despite acknowledging offense charged—marijuana distribution and felon in possession—“is serious” because among other factors mitigating public safety concerns “incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement.”<sup>[32]</sup></li> </ul>
	D.D.C., Judge Randolph D. Moss	Order	<ul style="list-style-type: none"> <li>Judge Moss declared “[a]s counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed – with one exception. That one exception – COVID-19 – however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”<sup>[33]</sup></li> </ul>
	D.D.C., Judge Randolph D. Moss	Memorandum Opinion	<ul style="list-style-type: none"> <li>Judge Moss released defendant while awaiting trial after weighing the risk to the public of releasing defendant [charged with distribution of child pornography] directly against risk to community safety if defendant remained incarcerated in light of the COVID-19 pandemic.<sup>[34]</sup></li> </ul>
	D. Idaho, Chief Magistrate Judge Ronald E. Bush	Order	<ul style="list-style-type: none"> <li>Magistrate Judge Bush released defendant previously detained in presumption case in light of the ongoing public health emergency relating to the COVID-19 coronavirus pandemic providing a compelling basis for release under § 3142(i).<sup>[35]</sup></li> </ul>
	D. Md., Magistrate Judge Deborah L. Boardman	Memorandum	<ul style="list-style-type: none"> <li>Magistrate Judge Boardman rejected the government’s motion for pretrial detention, considering “[t]he disruption to the attorney-client relationship caused by this public health crisis likely will have broader implications for the Court and the administration of justice” as a factor in the Bail Reform Act.<sup>[36]</sup></li> </ul>

	D. Md., Judge Theodore D. Chuang	Memorandum Order	<ul style="list-style-type: none"> <li>• “In the Court’s view ... Underwood should receive strong consideration for a furlough under the present circumstances. Even though no inmate at FCI-Cumberland has tested positive for the coronavirus to date, there is significant potential for it to enter the prison in the near future... Underwood is a non-violent offender, has no significant prior criminal record, and poses no danger to the community at all. It would therefore be in the public interest to have someone in Underwood’s condition outside of FCI-Cumberland at the present time because of the public resources necessarily required to protect him from the virus and to treat him were he to become infected.”<sup>[87]</sup></li> </ul>
	D. Nev., Judge Jones	Opinion and Order	<ul style="list-style-type: none"> <li>• Judge Jones delayed defendant’s date to surrender to begin his intermittent confinement by a minimum of 30 days because “[i]n considering the total harm and benefits to prisoner and society . . . temporarily suspending [defendant’s] intermittent confinement would appear to satisfy the interests of everyone during this rapidly encroaching pandemic.” In coming to this conclusion, the court placed weight on the fact that “incarcerated individuals are at special risk of infection, given their living situations, and may also be less able to participate in proactive measures to keep themselves safe; because infection control is challenging in these settings.”<sup>[88]</sup></li> </ul>
	D.P.R., Magistrate Judge Marshal D. Morgan	Order	<ul style="list-style-type: none"> <li>• “[G]iven the COVID-19 pandemic afflicting the world, rather than issue an arrest warrant at this time, the Court will instead issue a summons.”<sup>[89]</sup></li> </ul>
	D.S.C., Judge David C. Norton	Order	<ul style="list-style-type: none"> <li>• Judge Norton granted compassionate release for 73-year-old with severe health conditions under the First Step Act, “[g]iven defendant’s tenuous health condition and age, remaining incarcerated during the current global pandemic puts him at even higher risk for severe illness and possible death, and Congress has expressed its desire for courts to [release federal inmates who are vulnerable to COVID-19].”<sup>[90]</sup></li> </ul>
	D.S.D., Lawrence Piersol	Opinion and Order	<ul style="list-style-type: none"> <li>• Judge Piersol reducing sentence by an extra 40 months under the First Step Act in light of the extreme danger posed by COVID-19.<sup>[91]</sup></li> </ul>
	E.D. Mich., Judge Judith E. Levy	Order	<ul style="list-style-type: none"> <li>• Judge Levey ordered release under 18 U.S.C. § 3142(i)(4), both due to the risk of COVID-19 and the difficulty preparing defense while</li> </ul>

			detained due to limits facility placed in response to COVID-19. The Court also noted that “waiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release. Such a failure to act could have devastating consequences for Defendant and would create serious medical and security challenges to the existing prison population and the wider community.” <sup>142</sup>
	E.D.N.Y, Judge Pamela K. Chen	Order	<ul style="list-style-type: none"> <li>• “The Court grants Defendant Jose Maria Marin's motion ...for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A), for ... his advanced age, significantly deteriorating health, elevated risk of dire health consequences due to the current COVID-19 outbreak, status as a non-violent offender, and service of 80% of his original sentence. Although Defendant has not exhausted his administrative remedies in the manner prescribed by Section 3582(c), because the government is consenting to the requested sentencing reduction, the Court deems Section 3582(c)'s exhaustion requirement as having been met.”<sup>143</sup></li> </ul>
	M.D. Pa., Judge John E. Jones	Order	<ul style="list-style-type: none"> <li>• Judge Jones granted defendant’s compassionate release pursuant to 18 U.S.C. § 3582 (c)(1)(A), noting the “unprecedented” circumstances facing “our prison system” and finding that COVID-19 is an extraordinary and compelling basis for release; indeed, “[n]o rationale is more compelling or extraordinary.”<sup>144</sup></li> </ul>
	N.D. Cal., Judge Vince Chhabria	Sua Sponte Order	<ul style="list-style-type: none"> <li>• Judge Chhabria issued a sua sponte decision extending defendant’s surrender date from June 12, 2020 to September 1, 2020 stating: “By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided . . . To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed.”<sup>145</sup></li> </ul>
	N.D. Cal., Judge Hixson	Order	<ul style="list-style-type: none"> <li>• Judge Hixson released a 74-year old in light of COVID-19 holding “[t]he risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail. Release under the current</li> </ul>

			<p>circumstances also serves the United States’ treaty obligation to Peru, which – if there is probable cause to believe Toledo committed the alleged crimes – is to deliver him to Peru alive.”<sup>[46]</sup></p>
	N.D. Ga., Magistrate Judge Regina D. Cannon	Order	<ul style="list-style-type: none"> <li>• Magistrate Judge Cannon releasing defendant in part because “the danger inherent in his continued incarceration at the R.A. Deyton Detention Facility . . . during the COVID-19 outbreak justif[y] his immediate release from custody”<sup>[47]</sup></li> </ul>
	N.D. Ill., Judge Matthew F. Kennelly	Opinion and Order	<ul style="list-style-type: none"> <li>• Plaintiffs sought certification of a class and the temporary restraining order based, in part, “that the Sheriff has violated their Fourteenth Amendment right to constitutionally adequate living conditions by failing to implement appropriate measures to control the spread of the virus.”</li> <li>• In issuing a temporary restraining order, Judge Kennelly found “plaintiffs have demonstrated that certain of the conditions created by the intentional actions of the Sheriff enable the spread of coronavirus and significantly heighten detainees’ risk of contracting the virus.”<sup>[48]</sup></li> </ul>
	S.D. Fla., Judge Cecilia M. Altonaga	Order	<ul style="list-style-type: none"> <li>• Judge Altonaga granted an unopposed motion for compassionate release.<sup>[49]</sup></li> </ul>
	S.D. Fla., Magistrate Judge Jonathan Goodman	Order	<ul style="list-style-type: none"> <li>• Magistrate Judge Goodman released an incarcerated individual due to the “extraordinary situation of a medically-compromised detainee being housed at a detention center where it is difficult, if not impossible, for [the defendant] and others to practice the social distancing measures which government, public health and medical officials all advocate.”<sup>[50]</sup></li> </ul>
	S.D.N.Y., Judge Paul A. Engelmayer	Amended Order	<ul style="list-style-type: none"> <li>• Judge Engelmayer granted defendant temporary release from custody, pursuant to 18 U.S.C. § 3142(i), “based on the unique confluence of serious health issues and other risk factors facing this defendant, including but not limited to the defendant’s serious progressive lung disease and other significant health issues, which place him at a substantially heightened risk of dangerous complications should be contract COVID-19 as compared to most other individuals.”<sup>[51]</sup></li> </ul>
	S.D.N.Y., Chief Judge Colleen McMahon	Order	<ul style="list-style-type: none"> <li>• Chief Judge Colleen held “Releasing a prisoner who is for all practical purposes deserving of compassionate release during normal times is all but mandated in the age of COVID-19”<sup>[52]</sup></li> </ul>

	S.D.N.Y., Judge Alison J. Nathan	Opinion & Order	<ul style="list-style-type: none"> <li>Judge Nathan ordered the Defendant released subject to the additional conditions of 24-hour home incarceration and electronic location monitoring as directed by the Probation Department based in part on “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which may place “at a heightened risk of contracting COVID-19 should an outbreak develop [in a prison].”<sup>[53]</sup></li> </ul>
	S.D.N.Y., Analisa Torres	Order	<ul style="list-style-type: none"> <li>Judge Torres waived exhaustion requirements and granted immediate compassionate release in light of COVID-19 to defendant convicted in multi-million dollar fraud scheme motivated by greed; “The severity of Zukerman’s conduct remains unchanged. What has changed, however, is the environment where Zukerman is serving his sentence. When the Court sentenced Zukerman, the Court did not intend for that sentence to ‘include a great and unforeseen risk of severe illness or death’ brought on by a global pandemic”<sup>[54]</sup></li> </ul>
	S.D.N.Y., Analisa Torres	Order	<ul style="list-style-type: none"> <li>“The Court holds . . . that Perez’s exhaustion of the administrative process can be waived in light of the extraordinary threat posed—in his unique circumstances—by the COVID-19 pandemic.”<sup>[55]</sup></li> </ul>
	S.D. Tex., Judge Keith P. Ellison	Memorandum and Order	<ul style="list-style-type: none"> <li>Judge Ellison released a defendant serving a 188-month sentence for drug conspiracy in light of vulnerability to COVID-19 stating, “while the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”<sup>[56]</sup></li> </ul>
	W.D. Va., Judge James P. Jones; <i>see also</i> 4 <sup>th</sup> Cir., Patricia S. Connor, Clerk	Order	<ul style="list-style-type: none"> <li>Judge Jones granted release after reconsidering the courts prior order denying the defendant’s motion for a stay of her imprisonment pending her appeal in light of the Fourth Circuit remand requiring the lower court to specifically consider extraordinary danger posed by COVID-19.<sup>[57]</sup></li> </ul>
	W.D., Va., Judge Norman K. Moon	Order	<ul style="list-style-type: none"> <li>Judge Moon granted compassionate release; remarking “[h]ad the Court known when it sentenced Defendant in 2018 that the final 18 months of his term in federal prison would expose him to a heightened and substantial risk presented by the COVID-19 pandemic on account of</li> </ul>



			Defendant's compromised immune system, the Court would not have sentenced him to the latter 18 months" <sup>[58]</sup>
<b>Federal Immigration Detention</b>	9th Cir., Judges Wardlaw, M. Smith, and Judge Siler, 6 <sup>th</sup> Cir., sitting by designation.	Sua Sponte Order	<ul style="list-style-type: none"> <li>The panel held "[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court <i>sua sponte</i> orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court."<sup>[59]</sup></li> </ul>
	C.D. Cal, Judge Terry J. Halter, Jr.	TRO and order to show cause based on writ of habeas corpus	<ul style="list-style-type: none"> <li>Judge Halter ordered the release of two ICE detainees. The court found that in detention "[p]etitioners have not been protected [against risks associated with COVID-19]. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities - and jails - is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues."<sup>[60]</sup></li> </ul>
	C.D. Cal, Judge Terry J. Halter, Jr.	Order	<ul style="list-style-type: none"> <li>Judge Halter ordered release detainee who suffers from multiple health conditions, including asthma, stating that, "[b]ecause of the highly contagious nature of the coronavirus and the, relatively high, mortality rate of COVID-19, the disease can spread uncontrollably with devastating results in a crowded, closed facility, such as an immigration detention center....Inadequate health and safety measures at a detention center cause cognizable harm to every detainee at that center." The court further highlighted the troubling number of asymptomatic carriers, and, cited to <i>Helling v. McKinney</i>, 509 U.S. 25, 32 (1993) in stating that "[a] remedy for unsafe conditions need not await a tragic event. The Government cannot be 'deliberately indifferent to the exposure of [prisoners] to a serious, communicable disease on the ground that the complaining [prisoner] shows no serious current symptoms.'" Finally, despite a "history of various criminal convictions," including some violent offenses, the court stated that "[t]he risk that Fraihat will flee,</li> </ul>

			given the current global pandemic, is very low given, further, that he has matters pending before the BIA and the Ninth Circuit.” <sup>[61]</sup>
	C.D. Cal, Judge Terry J. Halter, Jr.	Order	<ul style="list-style-type: none"> <li>• Court ordered release of 43-years-old with multiple ailments. He has eight prior convictions and the IJ had denied bond given “multiple failures to appear in the Superior Court of California and his lack of ties to the community.” The court found, however, that “those issues are not directly before this Court,” and ordered him released. “Despite early reports, no age group is safe from COVID-19. While older people with pre-existing conditions are the most vulnerable to COVID-19-related mortality, young people without preexisting conditions have, also, succumbed to COVID-19.”<sup>[62]</sup></li> </ul>
	C.D. Cal, Judge Terry J. Halter, Jr.	Order	<ul style="list-style-type: none"> <li>• Judge Halter issued individual orders in <i>Robles v. Wolf</i> litigation granting release of six individuals. While the individuals are civil detainees, all six had criminal records.<sup>[63]</sup></li> </ul>
	D. Mass, Judge Mark L. Wolf	Oral Order	<ul style="list-style-type: none"> <li>• Judge Wolf ordered the release, with conditions, from ICE custody a member of the class in <i>Calderon v. Nielsen</i> based, in part, on the “extraordinary circumstances” posed by COVID-19.<sup>[64]</sup></li> </ul>
	D. Mass., Judge William G. Young	Memorandum and Order	<ul style="list-style-type: none"> <li>• Judge Young allowed motion for class certification, creating the class of all civil detainees held at Bristol County House of Corrections and C. Carlos Correia Immigration Detention Center. “Though there are indeed pertinent and meaningful distinctions among the various Detainees, there is a common question of unconstitutional overcrowding that binds the class together.” The court deferred ruling on petitioners’ underlying habeas petition and motion for PI.<sup>[65]</sup></li> </ul>
	E.D. Mich., Judge Judith E. Levy	Amended Order and Opinion	<ul style="list-style-type: none"> <li>• Judge Levy ordered release of 56-year-old individual stating: “As prison officials are beginning to recognize around the country, even the most stringent precautionary measures—short of limiting the detainee population itself—simply cannot protect detainees from the extremely high risk of contracting this unique and deadly disease.”<sup>[66]</sup></li> </ul>
	D.N.J., Judge John Michael Vasquez	Decision	<ul style="list-style-type: none"> <li>• Judge Vasquez granted Plaintiffs’ TRO and ordered the three individuals’ immediate release, highlighting that “[c]ounty jails were not</li> </ul>

			designed with pandemics in mind.” All three individuals have health conditions. <sup>[67]</sup>
	S.D.N.Y., Judge George B. Daniels	Memorandum Decision and Order	<ul style="list-style-type: none"> <li>• Judge Daniels ordered the release, under <i>Mapp v. Reno</i>, 241 F.3d 221 (2d Cir. 2001), of an individual as there was likelihood of success on the merits and COVID-19 risks and individual’s own medical issues constituted “extraordinary circumstances warranting release.”<sup>[68]</sup></li> </ul>
	S.D.N.Y., Judge Alison J. Nathan	Opinion and Order	<ul style="list-style-type: none"> <li>• Judge Nathan ordered the immediate release of four detainees finding “no evidence that the government took any specific action to prevent the spread of COVID-19 to high-risk individuals . . . held in civil detention.”<sup>[69]</sup></li> </ul>
	S.D.N.Y., Judge J. Paul Oetken	Opinion and Order	<ul style="list-style-type: none"> <li>• Judge Oetken ordered immediate release of detainee pursuant to <i>Mapp v. Reno</i> in light of detainee’s “several severe medical conditions.” “‘Severe health issues’ are ‘the prototypical...case of extraordinary circumstances that justify release pending adjudication of habeas.’”<sup>[70]</sup></li> </ul>
	S.D.N.Y., Judge Analisa Torres	Memorandum Decision and Order.	<ul style="list-style-type: none"> <li>• Judge Torres granted immediate release on recognizance for ten individuals in immigration detention who have a variety of chronic health conditions that put them at high risk for COVID-19. These conditions include obesity, asthma, diabetes, pulmonary disease, history of congestive heart failure, respiratory problems, gastrointestinal problems, and colorectal bleeding. The court held detainees face serious risks to their health in confinement and “if they remain in immigration detention constitutes irreparable harm warranting a TRO.”<sup>[71]</sup></li> </ul>
	M.D. Pa., Judge John E. Jones III	Memorandum and Order	<ul style="list-style-type: none"> <li>• Judge Jones III ruled that federal immigration authorities must immediately release the ten individuals in immigration detention who are at high risk for contracting COVID-19 due to their age or medical conditions or both. In his decision, Judge Jones III noted, “At this point, it is not a matter of if COVID-19 will enter Pennsylvania prisons, but when it is finally detected therein. It is not unlikely that COVID-19 is already present in some county prisons.”<sup>[72]</sup></li> </ul>

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

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

<sup>[3]</sup> *Karr v. Alaska*, Nos. A-13630/13639/13640 (Alaska Mar. 24, 2020), <https://drive.google.com/file/d/19wz01J9yX8nvw4oyORahUfcTO1dno1QA/view>.

<sup>[4]</sup> Scott Buffon, *Coconino County Jail Releases Nonviolent Inmates in Light of Coronavirus Concerns*, Arizona Daily Sun (updated Mar. 25, 2020), [https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article\\_a6046904-18ff-532a-9dba-54a58862c50b.html](https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html).

<sup>[5]</sup> Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges and Court Executive Officers of the California Courts (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

<sup>[6]</sup> *Standing Order of the Sacramento Superior Court*, No. SSC-20-PA5 (Mar. 17, 2020), <https://www.saccourt.ca.gov/general/standing-orders/docs/ssc-20-5.pdf>.

<sup>[7]</sup> Order of Consolidation and for Appointment of Special Master, SCPW-20-0000200, SCPW-20-0000213 at 6 (Haw. Apr. 1, 2020), [https://www.courts.state.hi.us/wp-content/uploads/2020/04/040220\\_SCPW20-200and20-213\\_OPDvConnors\\_OPDvIge\\_ORD.pdf](https://www.courts.state.hi.us/wp-content/uploads/2020/04/040220_SCPW20-200and20-213_OPDvConnors_OPDvIge_ORD.pdf),

<sup>[8]</sup> Kyle C. Barry, *Some Supreme Courts Are Helping Shrink Jails to Stop Outbreaks. Others Are Lagging Behind.*, The Appeal (Mar. 25, 2020), <https://theappeal.org/politicalreport/some-supreme-courts-are-helping-shrink-jails-coronavirus>; John Cheves, *Chief Justice Pleads for Kentucky Inmate Release Ahead of COVID-19 but Progress Slow*, Lexington Herald Leader (Mar. 23, 2020), <https://www.kentucky.com/news/coronavirus/article241428266.html>.

<sup>[9]</sup> Letter from Louisiana Chief Justice Bernette J. Johnson to Louisiana District Judges (Apr. 2, 2020), <http://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf>.

<sup>[10]</sup> 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>[11]</sup> Op. and Order, *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, SJC 12926 (Mass. Apr. 3, 2020) <https://www.mass.gov/files/documents/2020/04/03/12926.pdf>

<sup>[12]</sup> Joint Statement of Chief Justice Bridget M. McCormack, Mich. Sup. Ct. and Sheriff Matt Saxton, Exec. Dir., Mich. Sheriff Ass'n (Mar. 26, 2020), [https://courts.michigan.gov/News-Events/press\\_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20\(003\).pdf](https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20(003).pdf).

<sup>[13]</sup> Letter from Chief Justice Mike McGrath, Mont. Sup. Ct. to Mont. Ct. of Ltd. Jurisdiction Judges (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

<sup>[14]</sup> Consent Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. March 22, 2020), [https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22\\_-\\_Consent\\_Order\\_Filed\\_Stamped\\_Copy-1.pdf](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf).

<sup>[15]</sup> *People of the State of New York, ex rel., v. Cynthia Brann*, No. 260154/2020 (Sup. Ct. NY Mar. 25, 2020), [https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsnzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTIh2Pe3ZmAUcoZCiC9er2g4Z4mL\\_ToQ.&typo=1](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsnzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTIh2Pe3ZmAUcoZCiC9er2g4Z4mL_ToQ.&typo=1); see also Frank G. Runyeon, *NY Judges Release 122 Inmates as Virus Cases Spike in Jails*, Law360 (March 27, 2020), <https://www.law360.com/newyork/articles/1257871/ny-judges-release-122-inmates-as-virus-cases-spike-in-jails>.

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

<https://legalaidnyc.org/wp-content/uploads/2020/03/03-26-20-Legal-Aid-Wins-Release-of-16-Incarcerated-New-Yorkers-at-a-high-risk-of-COVID-19-from-City-Jails.pdf>;

see also Runyeon, *NY Judges Release 122 Inmates*, *supra* note 11.

<sup>1171</sup> Press Conference, Ohio Chief Justice Maureen O'Connor and Gov. Mike DeWine (Mar. 19, 2020); *see also* WLWT5, *Release Ohio Jail Inmates Vulnerable to Coronavirus, Chief Justice Urges* (Mar. 19, 2020), <https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560#>.

<sup>1181</sup> Memorandum from Chief Justice Beatty, Sup. Ct of S.C to Magistrates, Mun. Judges, and Summary Ct. Staff (March 16, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

<sup>1191</sup> Ryan Autullo, *Travis County Judges Releasing Inmates to Limit Coronavirus Spread*, Statesman (Mar. 16, 2020), <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>.

<sup>1201</sup> Emergency Pet. to Supplement Court's Order With Directives Necessary to Reduce COVID-19 Public Health Risks Associated with Tennessee Jails, Juvenile Detention Centers and Prisons, *In re COVID-19 Pandemic*, No. ADM2020-0428 at 2, (Tenn. Mar. 25, 2020), *available at* <https://clearinghouse.net/detail.php?id=17455&search=source%7Cgeneral%3BspecialCollection%7C62%3Borderby%7CfilingYear%3B> (see the Emergency Pet. under the documents heading).

<sup>1211</sup> Order, *Administrative Order for Court Operations During Pandemic* (Utah Mar. 21, 2020), <https://www.utcourts.gov/alerts/docs/20200320%20-%20Pandemic%20Administrative%20Order.pdf>.

<sup>1221</sup> Am. Order, *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>.

<sup>1231</sup> Order Adopting Temporary Plan to Address Health Risks Posed by the COVID-19 Pandemic, *In the Matter of the Wyoming Supreme Court's Temporary Plan Regarding COVID-19 Pandemic* (Wyo. Mar. 18, 2020), <http://www.courts.state.wy.us/wp-content/uploads/2020/03/COVID-19-Order.pdf>.

<sup>1241</sup> *United States v. Chavol*, No. 20-50075 (9th Cir. Apr. 2, 2020), <https://drive.google.com/file/d/1aTt8NVzc-J8ONEPUSdaaklStdDzbuGeJ/view>.

<sup>1251</sup> *United States v. Michaels*, 8:16-cr-76-JVS, (C.D. Cal. Mar. 26, 2020), [https://drive.google.com/file/d/1BeWih63M7FKreKEvLJyIQevYSivGA\\_PU/view](https://drive.google.com/file/d/1BeWih63M7FKreKEvLJyIQevYSivGA_PU/view).

<sup>1261</sup> *United States v. Colvin*, No. 3:19-cr-179 (JBA), 2020 WL 1613943 (D. Conn. Apr. 2, 2020), <https://drive.google.com/file/d/1yGDRB3F26VOFdAeSQHt4Lgixl18g4UHh/view>.



<sup>[27]</sup> *United States v. Jepsen*, No. 3:19-cv-00073(VLB), 2020 WL 1640232 (D. Conn. Apr. 1, 2020), [https://drive.google.com/file/d/1D0n64TlHAr\\_CeayEwjjs9GFZ6KSd6Gda/view](https://drive.google.com/file/d/1D0n64TlHAr_CeayEwjjs9GFZ6KSd6Gda/view).

<sup>[28]</sup> Edmund H. Mahony, *Courts Ponder the Release of Low Risk Inmates in an Effort to Block the Spread of COVID-19 to the Prison System*, Hartford Currant (Mar. 24, 2020), <https://www.courant.com/coronavirus/hc-news-covid-inmate-releases-20200323-20200324-oreyf4kbdfbe3adv6u6ajsj57u-story.html>.

<sup>[29]</sup> *In Re: Court Operations Under the Exigent Circumstances Created by COVID-19*, (D. Conn. April 7, 2020), <http://ctd.uscourts.gov/sites/default/files/COVID-19-General-Order-re-Appointing-Counsel.pdf>.

<sup>[30]</sup> *United States v. Powell*, No. 1:94-cr-316-ESH, (D.D.C. Mar. 28, 2020), [https://drive.google.com/file/d/1SmegVSk\\_XRf\\_oiAsFVrE7gCT6PnrjMED/view](https://drive.google.com/file/d/1SmegVSk_XRf_oiAsFVrE7gCT6PnrjMED/view).

<sup>[31]</sup> *United States v. Meekins*, No. 1:18-cr-222-APM (D.D.C. Mar. 31, 2020), [https://drive.google.com/file/d/1ltVSM4Lp1\\_NpFGZMG1GL\\_YXTaba98MpS/view](https://drive.google.com/file/d/1ltVSM4Lp1_NpFGZMG1GL_YXTaba98MpS/view).

<sup>[32]</sup> *United States v. Jaffee*, No. 19-cr-88 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1AYfIU6QKCOEIpx5Vh3Af6BDqO8goZ5WE/view>.

<sup>[33]</sup> *United States v. Mclean*, No. 19-cr-380, (D.D.C. Mar. 28, 2020), <https://drive.google.com/file/d/1cd8lSvEbu3xFss0NTRdbU7S0LrHa58YU/view>.

<sup>[34]</sup> *United States v. Harris*, No. 19-cr-356 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1aO3BNOKB8ukL20A76Mu7Fn0GyCng0Ras/view>.

<sup>[35]</sup> *United States v. Tovar*, No. 1:19-cr-341-DCN, Dkt. No. 42 (D. Idaho Apr. 2, 2020), <https://drive.google.com/file/d/1yommGarscJbJRmvkIb3B3dmpfzTRAcsI/view?usp=sharing>.

<sup>[36]</sup> *United States v. Davis*, No. 1:20-cr-9-ELH, 2020 WL 1529158 (D. Md. Mar. 30, 2020), <https://drive.google.com/file/d/1nj3tl5sDE98Rw6EU5JK18qUYhH-4IvaH/view>.

<sup>[37]</sup> *United States v. Underwood*, No. 8:18-cr-201-TDC (D. Md. Mar. 31, 2020), [https://drive.google.com/file/d/1V38hic6gK\\_ehPc7SFDd6d26W91FGG1sn/view](https://drive.google.com/file/d/1V38hic6gK_ehPc7SFDd6d26W91FGG1sn/view).

<sup>[38]</sup> *United States v. Barkma*, No. 19-cr-0052 (RCJ-WGC), 2020 U.S. Dist. LEXIS 45628, at \*3 (D. Nev. Mar. 17, 2020), [https://drive.google.com/file/d/1o35MokiprkmhzCUUieg\\_Eua6e05v4zOw/view](https://drive.google.com/file/d/1o35MokiprkmhzCUUieg_Eua6e05v4zOw/view).

<sup>[39]</sup> *United States v. Claudio-Montes*, No. 3:10-cr-212-JAG-MDM, Dkt. No. 3374 (D.P.R. Apr. 1, 2020), <https://drive.google.com/file/d/1wOBO0x84H21-8LWtYnl0M5X4QWWWhwYIT/view>.

<sup>[40]</sup> *United States v. Copeland*, No. 2:05-cr-135-DCN, at 7 (D.S.C. Mar. 24, 2020), <https://drive.google.com/file/d/1tyA8Kjvld23QTL0Wo7xbAdqLEOCCVC4q/view>.

- <sup>[441]</sup> *United States v. Hakim*, No. 4:05-cr-40025-LLP (D.S.D. Apr. 6, 2020), [https://drive.google.com/file/d/1AOaB18-6vvYQMfvovVCPgyqQ6PZb\\_6GK/view](https://drive.google.com/file/d/1AOaB18-6vvYQMfvovVCPgyqQ6PZb_6GK/view).
- <sup>[442]</sup> *United States v. Kennedy*, 18-cr-20315 (JEL) (Mar. 27, 2020 E.D. Mich.), [https://drive.google.com/file/d/1JErUoaeLellsSZPBF\\_QH4xnNO-L4oOhs/view](https://drive.google.com/file/d/1JErUoaeLellsSZPBF_QH4xnNO-L4oOhs/view).
- <sup>[443]</sup> *United States v. Marin*, No. 15-cr-252, Dkt. No. 1326 (E.D.N.Y. Mar. 30, 2020), [https://drive.google.com/file/d/12PZMb8\\_6net\\_AtTqV7r\\_J\\_4wMo-opRA4/view](https://drive.google.com/file/d/12PZMb8_6net_AtTqV7r_J_4wMo-opRA4/view).
- <sup>[444]</sup> *United States v. Foster*, No. 1:14-cr-324-02, Dkt. No. 191 (M.D. Pa. Apr. 3, 2020), <https://drive.google.com/file/d/1scecTfY9Zs7ecCrPpCZaOZGfzu1XRqhd/view>.
- <sup>[445]</sup> *United States v. Garlock*, No. 18-CR-00418-VC-1, 2020 WL 1439980, at \*1 (N.D. Cal. Mar. 25, 2020), [https://drive.google.com/file/d/1H47EQMXtQZkXFv\\_GXSffAV6Xkse3-kpl/view](https://drive.google.com/file/d/1H47EQMXtQZkXFv_GXSffAV6Xkse3-kpl/view).
- <sup>[446]</sup> *In The Matter Of The Extradition Of Alejandro Toledo Manrique*, No. 19-mj-71055-MAG, 2020 WL 1307109, at \*1 (N.D. Cal. Mar. 19, 2020), <https://drive.google.com/file/d/1AfU1ft4Lcm60QbPhjgo9HgGAHkbPKPzD/view>.
- <sup>[447]</sup> *United States v. Bolston*, No. 1:18-cr-382-MLB (N.D. Ga. Mar. 30, 2020), [https://drive.google.com/file/d/1nxvWik3P3J35jLtaJigrEisg1vS7F\\_Bd/view](https://drive.google.com/file/d/1nxvWik3P3J35jLtaJigrEisg1vS7F_Bd/view).
- <sup>[448]</sup> *Mays v. Dart*, No. 20 C 2134 (April 7, 2020), <https://drive.google.com/file/d/1Dwu7zyaRaB1BOSaRW5M5KNumLc8izsgi/view>.
- <sup>[449]</sup> *United States v. Hernandez*, No. 18-cr-20474 (S.D. Fla. Apr. 2, 2020), [https://drive.google.com/file/d/1EUBfyJ1o\\_DOX1LepSNn6Jih71CixHo5G/view](https://drive.google.com/file/d/1EUBfyJ1o_DOX1LepSNn6Jih71CixHo5G/view).
- <sup>[450]</sup> *United States v. Grobman*, No. 18-cr-20989 (S.D. Fla. Mar. 29, 2020), <https://drive.google.com/file/d/1kPSFyoKO6c-QobqllkupmAG1Lavvb2VYy/view>.
- <sup>[451]</sup> AM. Order, *United States v. Perez*, No. 19-cr-297 (PAE), at 1 (S.D.N.Y. Mar. 19, 2020), <https://drive.google.com/file/d/17xE8qdGeeTI2d2dWjNDfwmxLc8GxTtfA/view>.
- <sup>[452]</sup> *United States v. Resnik*, No. 14-cr-910 (CM), 2020 WL 1651508 (S.D.N.Y. Apr. 2, 2020), <https://drive.google.com/file/d/1PxPLYPnjNaR1jP4RbW3Bu-LFmzxttuql/view>.
- <sup>[453]</sup> *United States v. Stephens*, No. 15-cr-95-AJN, 2020 WL 1295155, at \*2-3 (S.D.N.Y. Mar. 19, 2020), <https://drive.google.com/file/d/1hEhz9olCfaKRinDvUOKqjDTcx3-nc4vq/view>.
- <sup>[454]</sup> *United States v. Zukerman*, No. 1:16-cr-194-AT, (S.D.N.Y. Apr. 3, 2020), <https://drive.google.com/file/d/1Yr5qOB1N6sZ90LcdJWe5AnvRAVky5Ia6/view>.



<sup>[55]</sup> *United States v. Perez*, No. 17-cr-513-3 (AT) (S.D.N.Y. Apr. 1, 2020), <https://www.nysd.uscourts.gov/sites/default/files/2020-04/17-cr-513.pdf>.

<sup>[56]</sup> *United States v. Muniz*, No. 4:09-cr-199 (S.D. Tex. Mar. 30, 2020), [https://drive.google.com/file/d/1dAGdoAYQOWBPnh57\\_uNEPPsjz-hRb\\_Kx/view](https://drive.google.com/file/d/1dAGdoAYQOWBPnh57_uNEPPsjz-hRb_Kx/view).

<sup>[57]</sup> *United States v. Hector*, No. 2:18-cr-3-002 (W.D. Va. Mar. 27, 2020), [https://drive.google.com/file/d/1ihAJx-fSnm-FKgGvVnkJ\\_JfPlOJcV-ge/view](https://drive.google.com/file/d/1ihAJx-fSnm-FKgGvVnkJ_JfPlOJcV-ge/view); see also *United States v. Hector*, No. 18-cr-3 (4th Cir. Mar. 27, 2020), <https://drive.google.com/file/d/1hJ-B5HFxMBHIZt4TeqGjK-Etvx0M8UrN/view>.

<sup>[58]</sup> *United States v. Edwards*, No. 6:17-cr-00003 (W.D. Va. Apr. 2, 2020), [https://drive.google.com/file/d/1MPs6LOteBkJ7svQ638aP5g\\_mLjoGPDDr/view](https://drive.google.com/file/d/1MPs6LOteBkJ7svQ638aP5g_mLjoGPDDr/view).

<sup>[59]</sup> *Xochihua-Jaimes v. Barr*, No. 18-cv-71460 (9th Cir. Mar. 23, 2020), <https://drive.google.com/file/d/16eh6qMzihmNlSEq0SzmCSQx98OiLn38l/view>.

<sup>[60]</sup> *Frailhat v. Wolf*, No. 20-cv-590 (TJH), (C.D. Cal., Mar. 30, 2020), <https://drive.google.com/file/d/1N1YfJzfkApRk1Rsx4HhDMVKOTXPNvaja/view>.

<sup>[61]</sup> *Castillo v. Barr*, No. 20-cv-605 (TJH)(AFM), at 10 (C.D. Cal. Mar. 27, 2020), <https://drive.google.com/file/d/1BeFuU-Lrjj-VVeA6QA2O7zLud7aWIVeN/view>.

<sup>[62]</sup> *Francisco Hernandez v. Wolf*, No. 20-cv-00617 (TJH), Dkt. No. 17 (C.D. Cal., Apr. 1, 2020), <https://drive.google.com/file/d/13Mk-LMG-X2LZK9DrCWTNAZLk2xjZRjMP/view>.

<sup>[63]</sup> *Robles v. Wolf*, No. 20-cv-627 (TJH) (C.D. Cal., Apr. 2, 2020), <https://drive.google.com/file/d/11SrQRImkEpfAqYUv7AoUJFxfVbuUEWGV/view>; *Rayon Vite v. Wolf*, No. 20-cv-627 (TJH) (Cal., Apr. 2, 2020), <https://drive.google.com/file/d/1kQTiODIY71AC4tkEEJi-WfQuAoj-7tSO/view>; *Lopez Salgado v. Wolf*, No. 20-cv-627 (TJH) (C.D. Cal., Apr. 2, 2020), <https://drive.google.com/file/d/1Rm9nrAW9DuWm72qU4sErerB9Vo6GHq8A/view>; *Vargas Arellano v. Wolf*, No. 20-cv-627 (TJH) (C.D. Cal., Apr. 2, 2020), [https://drive.google.com/file/d/1pK52wBS1JPl\\_P26XMamGFeHC-jviyryh/view](https://drive.google.com/file/d/1pK52wBS1JPl_P26XMamGFeHC-jviyryh/view); *Dacoff v. Wolf*, No. 20-cv-627 (TJH) (C.D. Cal., Apr. 2, 2020), <https://drive.google.com/file/d/1pfSVVputOYUJdFRgdQ9K-mhQdZPsGmJZ/view>; *Hernandez Velazquez v. Wolf*, No. 20-cv-627 (TJH) (C.D. Cal., Apr. 2, 2020), [https://drive.google.com/file/d/1w\\_H6wExZjNwFJwmM3wgCWJYkWR\\_fo-nS/view](https://drive.google.com/file/d/1w_H6wExZjNwFJwmM3wgCWJYkWR_fo-nS/view).

<sup>[64]</sup> Transcript of Oral Argument, at 3-4, 6, *Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020), <https://www.courtlistener.com/recap/gov.uscourts.mad.195705/gov.uscourts.mad.195705.507.1.pdf>.

<sup>[65]</sup> *Savino v. Souza*, 20-cv-10617 (WGY), Dkt. No. 64 at 11 (D. Mass. Apr. 6, 2020), <https://www.courtlistener.com/recap/gov.uscourts.mad.220291/gov.uscourts.mad.220291.64.0.pdf>.

<sup>[66]</sup> *Malam v. Adducci*, No. 2:20-cv-10829-JEL-APP, 2020 WL 1672662, at \*8 (E.D. Mich. Apr. 6, 2020), [https://drive.google.com/file/d/1h0rUfr\\_qTpo9oCskPl0EHJ-FMrxv9MY3/view](https://drive.google.com/file/d/1h0rUfr_qTpo9oCskPl0EHJ-FMrxv9MY3/view) (amending April 5, 2020 Order to include additional terms of supervision).

<sup>[67]</sup> *L.O. v. Tsoukaris*, No. 20-cv-2481 (JMV) at 5 (D.N.J. Apr. 9, 2020), <https://drive.google.com/file/d/15vuOZJn4b68iu2ZDsja-rwkWTEFxWiR/view>.

<sup>[68]</sup> *Jovel v. Decker*, No. 12-cv-308 (GBD), at 2 (S.D.N.Y. Mar. 26, 2020), <https://drive.google.com/file/d/1mrJ9WbCgNGeyWn1cy3xAvo61yJWnaDe8/view>.

<sup>[69]</sup> *Coronel v. Decker*, No. 20-cv-2472 (AJN), at 10 (S.D.N.Y. Mar. 27, 2020), <https://legaidnyc.org/wp-content/uploads/2020/03/20cv2472-Op.-Order-3.27.20.pdf>.

<sup>[70]</sup> *Avendaño Hernandez v. Decker*, No. 20-cv-1589 (JPO), 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020), <https://drive.google.com/file/d/1mYhq-8J4BxNFELzA6MDRe8zxUjJaLOit/view>.

<sup>[71]</sup> *Basank v. Decker*, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020), [https://drive.google.com/file/d/1FJ7tU9JCskKPh4xkoe4j3YgoQ5y2\\_y0P/view](https://drive.google.com/file/d/1FJ7tU9JCskKPh4xkoe4j3YgoQ5y2_y0P/view).

<sup>[72]</sup> *Thakker v. Doll*, No. 20-cv-480 (JEJ), at 8 (M.D. Pa. Mar. 31, 2020), [https://www.aclupa.org/sites/default/files/field\\_documents/memo\\_and\\_order\\_granting\\_tro\\_and\\_release.pdf](https://www.aclupa.org/sites/default/files/field_documents/memo_and_order_granting_tro_and_release.pdf).

## Appendix C

### 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. 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 a novel zoonotic coronavirus 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 12, 2020, there are over 140,000 confirmed cases of COVID-19. COVID-19 has caused over 5,000 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. 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.
7. The COVID-19 virus 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.
8. 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.
9. COVID-19 is known to be spreading in the Seattle, Washington-area community. As of March 11, 2020 there are 270 confirmed cases of COVID-19 (an increase of 36 from March 10, 2020) and twenty-seven deaths from COVID-19 in the Seattle area. This



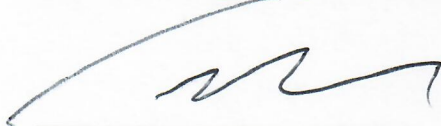
represents the largest known outbreak in the United States, and one the largest known outbreaks in the world as of March 12, 2020.

10. 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.
11. Based on the recovered genomes of the virus from the community analyzed by the Nextstrain project run by Dr. Trevor Bedford of the Fred Hutchinson Cancer Research Center in Seattle, it is known that the infection is being shared from person to person in and around Seattle. 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. The strain of virus spreading in the Seattle area is genetically related to the strain of virus that spread readily on the cruise ships.
12. The COVID-19 outbreak in Seattle has resulted in the need for unprecedented public health measures, including multiple efforts to facilitate and enforce social distancing. These include encouraging employees to work from home, bans of gathering of more than 250 people, closure of schools, closure of the University of Washington campus in Seattle, limitations of visitation to skilled nursing facilities, and cancellation of major public events. Individuals have been asked to delay or cancel health care procedures in order to free up capacity within the system.
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, particularly when residents cannot engage in proper hygiene and isolate themselves from infected residents or staff.
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 an immigration detention center, with limited access to adequate hygiene facilities 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 13<sup>th</sup> day in March, 2020 in Ann Arbor, Michigan.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

Dr. Jonathan Louis Golob

## Appendix D

### Declaration of Dr. Jaimie Meyer

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

#### **I. Background and Qualifications**

1. I am Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut. I am board certified in Internal Medicine, Infectious Diseases and Addiction Medicine. I completed my residency in Internal Medicine at NY Presbyterian Hospital at Columbia, New York, in 2008. I completed a fellowship in clinical Infectious Diseases at Yale School of Medicine in 2011 and a fellowship in Interdisciplinary HIV Prevention at the Center for Interdisciplinary Research on AIDS in 2012. I hold a Master of Science in Biostatistics and Epidemiology from Yale School of Public Health.
2. I have worked for over a decade on infectious diseases in the context of jails and prisons. From 2008-2016, I served as the Infectious Disease physician for York Correctional Institution in Niantic, Connecticut, which is the only state jail and prison for women in Connecticut. In that capacity, I was responsible for the management of HIV, Hepatitis C, tuberculosis, and other infectious diseases in the facility. Since then, I have maintained a dedicated HIV clinic in the community for patients returning home from prison and jail. For over a decade, I have been continuously funded by the NIH, industry, and foundations for clinical research on HIV prevention and treatment for people involved in the criminal justice system, including those incarcerated in closed settings (jails and prisons) and in the community under supervision (probation and parole). I have served as an expert consultant on infectious diseases and women's health in jails and prisons for the UN Office on Drugs and Crimes, the Federal Bureau of Prisons, and others. I also served as an expert health witness for the US Commission on Civil Rights Special Briefing on Women in Prison.
3. I have written and published extensively on the topics of infectious diseases among people involved in the criminal justice system including book chapters and articles in leading peer-reviewed journals (including Lancet HIV, JAMA Internal Medicine, American Journal of Public Health, International Journal of Drug Policy) on issues of prevention, diagnosis, and management of HIV, Hepatitis C, and other infectious diseases among people involved in the criminal justice system.
4. My C.V. includes a full list of my honors, experience, and publications, and it is attached as Exhibit A.
5. I am being paid \$1,000 for my time reviewing materials and preparing this report.
6. I have not testified as an expert at trial or by deposition in the past four years.

#### **II. Heightened Risk of Epidemics in Jails and Prisons**



7. The risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected. There are several reasons this is the case, as delineated further below.
8. Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more common than in the community at large. Prisons and jails are not isolated from communities. Staff, visitors, contractors, and vendors pass between communities and facilities and can bring infectious diseases into facilities. Moreover, rapid turnover of jail and prison populations means that people often cycle between facilities and communities. People often need to be transported to and from facilities to attend court and move between facilities. Prison health is public health.
9. Reduced prevention opportunities: Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by droplets through coughing and sneezing. When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are greater. When infectious diseases are transmitted from person to person by droplets, the best initial strategy is to practice social distancing. When jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. Spaces within jails and prisons are often also poorly ventilated, which promotes highly efficient spread of diseases through droplets. Placing someone in such a setting therefore dramatically reduces their ability to protect themselves from being exposed to and acquiring infectious diseases.
10. Disciplinary segregation or solitary confinement is not an effective disease containment strategy. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement also is an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms (rarely in medical units if available at all), air continues to flow outward from rooms to the rest of the facility. Risk of exposure is thus increased to other people in prison and staff.
11. Reduced prevention opportunities: During an infectious disease outbreak, people can protect themselves by washing hands. Jails and prisons do not provide adequate opportunities to exercise necessary hygiene measures, such as frequent handwashing or use of alcohol-based sanitizers when handwashing is unavailable. Jails and prisons are often under-resourced and ill-equipped with sufficient hand soap and alcohol-based sanitizers for people detained in and working in these settings. High-touch surfaces (doorknobs, light switches, etc.) should also be cleaned and disinfected regularly with bleach to prevent virus spread, but this is often not done in jails and prisons because of a lack of cleaning supplies and lack of people available to perform necessary cleaning procedures.
12. Reduced prevention opportunities: During an infectious disease outbreak, a containment strategy requires people who are ill with symptoms to be isolated and that caregivers have



access to personal protective equipment, including gloves, masks, gowns, and eye shields. Jails and prisons are often under-resourced and ill-equipped to provide sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing the risk for everyone in the facility of a widespread outbreak.

13. Increased susceptibility: People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.<sup>1</sup> This is because people in jails and prisons are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV.
14. Jails and prisons are often poorly equipped to diagnose and manage infectious disease outbreaks. Some jails and prisons lack onsite medical facilities or 24-hour medical care. The medical facilities at jails and prisons are almost never sufficiently equipped to handle large outbreaks of infectious diseases. To prevent transmission of droplet-borne infectious diseases, people who are infected and ill need to be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms if any, and these may be already in use by people with other conditions (including tuberculosis or influenza). Resources will become exhausted rapidly and any beds available will soon be at capacity. This makes both containing the illness and caring for those who have become infected much more difficult.
15. Jails and prisons lack access to vital community resources to diagnose and manage infectious diseases. Jails and prisons do not have access to community health resources that can be crucial in identifying and managing widespread outbreaks of infectious diseases. This includes access to testing equipment, laboratories, and medications.
16. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. During an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.
17. Health safety: As an outbreak spreads through jails, prisons, and communities, medical personnel become sick and do not show up to work. Absenteeism means that facilities can become dangerously understaffed with healthcare providers. This increases a number of risks and can dramatically reduce the level of care provided. As health systems inside facilities are taxed, people with chronic underlying physical and mental health conditions and serious medical needs may not be able to receive the care they need for these conditions. As supply chains become disrupted during a global pandemic, the availability of medicines and food may be limited.
18. Safety and security: As an outbreak spreads through jails, prisons, and communities, correctional officers and other security personnel become sick and do not show up to

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<sup>1</sup> *Active case finding for communicable diseases in prisons*, 391 The Lancet 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

work. Absenteeism poses substantial safety and security risk to both the people inside the facilities and the public.

19. These risks have all been borne out during past epidemics of influenza in jails and prisons. For example, in 2012, the CDC reported an outbreak of influenza in 2 facilities in Maine, resulting in two inmate deaths.<sup>2</sup> Subsequent CDC investigation of 995 inmates and 235 staff members across the 2 facilities discovered insufficient supplies of influenza vaccine and antiviral drugs for treatment of people who were ill and prophylaxis for people who were exposed. During the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases.<sup>3</sup> Even facilities on “quarantine” continued to accept new intakes, rendering the quarantine incomplete. These scenarios occurred in the “best case” of influenza, a viral infection for which there was an effective and available vaccine and antiviral medications, unlike COVID-19, for which there is currently neither.

### III. Profile of COVID-19 as an Infectious Disease<sup>4</sup>

20. The novel coronavirus, officially known as SARS-CoV-2, causes a disease known as COVID-19. The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but may also survive on inanimate surfaces. People seem to be most able to transmit the virus to others when they are sickest but it is possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. In China, where COVID-19 originated, the average infected person passed the virus on to 2-3 other people; transmission occurred at a distance of 3-6 feet. Not only is the virus very efficient at being transmitted through droplets, everyone is at risk of infection because our immune systems have never been exposed to or developed protective responses against this virus. A vaccine is currently in development but will likely not be able for another year to the general public. Antiviral medications are currently in testing but not yet FDA-approved, so only available for compassionate use from the manufacturer. People in prison and jail will likely have even less access to these novel health strategies as they become available.

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<sup>2</sup> *Influenza Outbreaks at Two Correctional Facilities — Maine, March 2011*, Centers for Disease Control and Prevention (2012),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6113a3.htm>.

<sup>3</sup> David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

<sup>4</sup> This whole section draws from Brooks J. Global Epidemiology and Prevention of COVID19, COVID-19 Symposium, Conference on Retroviruses and Opportunistic Infections (CROI), virtual (March 10, 2020); *Coronavirus (COVID-19)*, Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Brent Gibson, *COVID-19 (Coronavirus): What You Need to Know in Corrections*, National Commission on Correctional Health Care (February 28, 2020), <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>.

21. Most people (80%) who become infected with COVID-19 will develop a mild upper respiratory infection but emerging data from China suggests serious illness occurs in up to 16% of cases, including death.<sup>5</sup> Serious illness and death is most common among people with underlying chronic health conditions, like heart disease, lung disease, liver disease, and diabetes, and older age.<sup>6</sup> Death in COVID-19 infection is usually due to pneumonia and sepsis. The emergence of COVID-19 during influenza season means that people are also at risk from serious illness and death due to influenza, especially when they have not received the influenza vaccine or the pneumonia vaccine.
22. The care of people who are infected with COVID-19 depends on how seriously they are ill.<sup>7</sup> People with mild symptoms may not require hospitalization but may continue to be closely monitored at home. People with moderate symptoms may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. People with severe symptoms may require ventilation and intravenous antibiotics. Public health officials anticipate that hospital settings will likely be overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 becomes more widespread in communities.
23. COVID-19 prevention strategies include containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill or who have had contact with people who are ill, including the use of personal protective equipment. Jails and prisons are totally under-resourced to meet the demand for any of these strategies. As infectious diseases spread in the community, public health demands mitigation strategies, which involves social distancing and closing other communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease. Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations as described above.
24. The time to act is now. Data from other settings demonstrate what happens when jails and prisons are unprepared for COVID-19. News outlets reported that Iran temporarily released 70,000 prisoners when COVID-19 started to sweep its facilities.<sup>8</sup> To date, few state or federal prison systems have adequate (or any) pandemic preparedness plans in

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<sup>5</sup> *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>6</sup> *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*. *The Lancet* (published online March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

<sup>7</sup> *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, Centers for Disease Control and Prevention (March 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

<sup>8</sup> *Iran temporarily releases 70,000 prisoners as coronavirus cases surge*, Reuters (March 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

place.<sup>9</sup> Systems are just beginning to screen and isolate people on entry and perhaps place visitor restrictions, but this is wholly inadequate when staff and vendors can still come to work sick and potentially transmit the virus to others.

#### IV. Risk of COVID-19 in ICE's NYC-Area Detention Facilities

25. I have reviewed the following materials in making my assessment of the danger of COVID-19 in the Bergen, Essex, Hudson, and Orange County jails ("ICE's NYC-area jails"): (1) a declaration by Marinda van Dalen, a Senior Attorney in the Health Justice Program at New York Lawyers for the Public Interest (NYLPI); (2) the report *Detained and Denied: Healthcare Access in Immigration Detention*, released by NYLPI in 2017; and (3) the report *Ailing Justice: New Jersey, Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention*, released by Human Rights First in 2018.
26. Based on my review of these materials, my experience working on public health in jails and prisons, and my review of the relevant literature, it is my professional judgment that these facilities are dangerously under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail and prison staff, and the broader community. The reasons for this conclusion are detailed as follows.
27. The delays in access to care that already exist in normal circumstances will only become worse during an outbreak, making it especially difficult for the facilities to contain any infections and to treat those who are infected.
28. Failure to provide individuals with continuation of the treatment they were receiving in the community, or even just interruption of treatment, for chronic underlying health conditions will result in increased risk of morbidity and mortality related to these chronic conditions.
29. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected.
30. People with underlying chronic mental health conditions need adequate access to treatment for these conditions throughout their period of detention. Failure to provide adequate mental health care, as may happen when health systems in jails and prisons are taxed by COVID-19 outbreaks, may result in poor health outcomes. Moreover, mental health conditions may be exacerbated by the stress of incarceration during the COVID-19 pandemic, including isolation and lack of visitation.

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<sup>9</sup> Luke Barr & Christina Carrega, *State prisons prepare for coronavirus but federal prisons not providing significant guidance, sources say*, ABC News (March 11, 2020), <https://abcnews.go.com/US/state-prisons-prepare-coronavirus-federal-prisons-providing-significant/story?id=69433690>.

31. Failure to keep accurate and sufficient medical records will make it more difficult for the facilities to identify vulnerable individuals in order to both monitor their health and protect them from infection. Inadequate screening and testing procedures in facilities increase the widespread COVID-19 transmission.
32. Language barriers will similarly prevent the effective identification of individuals who are particularly vulnerable or may have symptoms of COVID-19. Similarly, the failure to provide necessary aids to individuals who have auditory or visual disabilities could also limit the ability to identify and monitor symptoms of COVID-19.
33. The commonplace neglect of individuals with acute pain and serious health needs under ordinary circumstances is also strongly indicative that the facilities will be ill-equipped to identify, monitor, and treat a COVID-19 epidemic.
34. The failure of these facilities to adequately manage single individuals in need of emergency care is a strong sign that they will be seriously ill-equipped and under-prepared when a number of people will need urgent care simultaneously, as would occur during a COVID-19 epidemic.
35. For individuals in these facilities, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.

## **V. Conclusion and Recommendations**

36. For the reasons above, it is my professional judgment that individuals placed in ICE's NYC-area jails are at a significantly higher risk of infection with COVID-19 as compared to the population in the community and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis) and even death.
37. Reducing the size of the population in jails and prisons can be crucially important to reducing the level of risk both for those within those facilities and for the community at large.
38. As such, from a public health perspective, it is my strong opinion that individuals who can safely and appropriately remain in the community not be placed in ICE's NYC-area jails at this time. I am also strongly of the opinion that individuals who are already in those facilities should be evaluated for release.
39. This is more important still for individuals with preexisting conditions (e.g., heart disease, chronic lung disease, chronic liver disease, suppressed immune system, diabetes) or who are over the age of 60. They are in even greater danger in these facilities, including a meaningfully higher risk of death.
40. It is my professional opinion that these steps are both necessary and urgent. The horizon of risk for COVID-19 in these facilities is a matter of days, not weeks. Once a case of

COVID-19 identified in a facility, it will likely be too late to prevent a widespread outbreak.

41. Health in jails and prisons is community health. Protecting the health of individuals who are detained in and work in these facilities is vital to protecting the health of the wider community.

I declare under penalty of perjury that the foregoing is true and correct.

March 15, 2020  
New Haven, Connecticut

  
\_\_\_\_\_  
Dr. Jaimie Meyer

## Appendix E

### Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.
2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.
3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.
4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

### The nature of COVID-19

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first began appearing sometime between December 1, 2019 and



December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.
7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.
8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.
9. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.
10. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents, heavily affected countries include Italy, Spain, Iran, South



Korea, and the US. The U.S. is now the world's most affected country. As of April 3, 2020, there have been 972,303 confirmed human cases globally and 50,322 known deaths. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.

11. In the United States alone, the CDC reports 239,279 cases and 5,443 deaths as of April 3, 2020. The Louisiana Department of Health reports 10,297 cases and 370 dead as of April 3. All these numbers are likely underestimates because of limited availability of testing.
12. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no pre-existing or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.
13. The U.S. CDC estimates that the reproduction rate of the virus, the  $R_0$ , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.
14. There is currently no vaccine for COVID-19, and no cure. The only know ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough

handwashing, frequent decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

**The risks of COVID-19 in detention facilities**

15. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Oakdale, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.
16. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.
17. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.
18. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.
19. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet, shower, and eating environments; and limits on hygiene and personal protective equipment

such as masks and gloves in some facilities. Limits on soap (copays are common) and hand sanitizer, since they can contain alcohol, are also risks for spread.

20. Additionally, the high rate of turnover and population mixing of staff and detainees increases likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff. The current outbreak in the detention facility of Riker's Island in New York City is an example—and in the first days of that outbreak, the majority of cases were among prison staff, not inmates.
21. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.
22. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.
23. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are inevitable, as evidenced in Oakdale. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention facilities, the community as a

whole. Indeed, according to the World Health Organization, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”<sup>1</sup>

24. From news reports, it is my understanding that 5 prisoners have died at FCI Oakdale. 18 detainees and 17 staff members have COVID-19, and that dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people. News outlets have reported that four detainees have already died from COVID-19 in FCI Oakdale. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.
25. It is my understanding that FCI Oakdale has five open bay / dorm housing units, eight housing units with multiple-occupancy cells, and no housing units with single occupancy cells, but a number of segregation units. It also my understanding that FCI Oakdale may have upward of 100 new admissions in a given month and roughly 1,700 detainees in the facility on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.
26. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within

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<sup>1</sup> World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf).

FCI Oakdale. Adequate social distancing would be impossible to maintain.

What's more, the infection in FCI Oakdale would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

27. It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit,<sup>2</sup> be released from FCI Oakdale immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

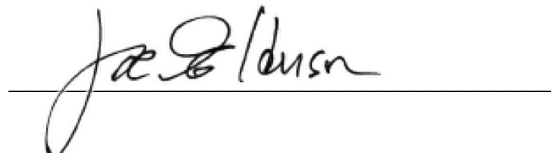
28. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in FCI Oakdale, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

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<sup>2</sup> "Persons held at Oakdale over the age of 50 , as well as all current and future persons held at Oakdale of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

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

Executed this 5<sup>th</sup> day of April 2020 in Alameda County, CA

A handwritten signature in black ink, appearing to read "Joe Goldenson", is written over a horizontal line.

Joe Goldenson, MD

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