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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

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

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS  
BERRY, and THEODORE ROOSEVELT RHONE,

*Petitioners,*

v.

JAY INSLEE, Governor of the State of Washington, and  
STEVEN SINCLAIR, Secretary of the Washington State Department of  
Corrections,

*Respondents.*

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**PETITION FOR A WRIT OF MANDAMUS**

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PETITIONERS, Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Rhone, hereby bring this original action in the nature of a petition for a writ of mandamus and allege as follows:

## **I. INTRODUCTION**

1. For the first time in several generations, we are fully entrenched in a deadly global pandemic. As such, everyday life has rapidly changed in just the past few weeks for almost every community around the globe. Communities live in constant fear each day, as COVID-19 increasingly claims more victims, oftentimes with fatal results, especially for those who are most vulnerable.
2. Washington State has not been spared by COVID-19. In fact, as we now know, fewer communities have been impacted as significantly by the coronavirus than our state. Over the last month, as testing has become moderately more available, infections have risen exponentially, overburdening our health care system.
3. Swift and extreme measures have been taken by a number of governments around the world, including in Washington, to curb the spread of the disease and limit the harm it may cause. Most of these actions direct people to engage in two of the only known practices that can reduce the likelihood of infection: 1) regular and thorough cleaning of hands, surfaces, and objects that may have

come in contact with the virus; and 2) appropriate social distancing – the practice of increasing the physical space between people. Recent actions by Governor Inslee have resulted in directives to Washingtonians to engage in these practices. In the weeks since the COVID-19 outbreak in Washington, Governor Inslee has entered increasingly restrictive emergency orders meant to reduce the proximity of people to one another and increase opportunities for appropriate social distancing. These measures have included restrictions on the number of people allowed to gather in public spaces; closing of public schools and colleges; temporary shut-down of restaurants and bars; and prohibiting visitation of long-term care facilities. And, just today, the Governor entered a “stay-at-home” order, directing all Washington residents to stay home except for necessary activities such as buying groceries or seeking medical care.

4. As a result, the government has offered nearly every resident in Washington meaningful opportunities to restrict exposure of COVID-19 through social distancing. Consequently, we have the chance to limit spread of the virus in most communities, thereby protecting those who are most susceptible to harm resulting from infection.

5. Unfortunately, there remains one group in Washington State for which social distancing is currently impossible: men and women in the custody of the Department of Corrections (DOC). Prisons present the potential for a catastrophic outcome should COVID-19 enter these facilities.
6. This threat can be reduced by taking similar action in the prisons as has been required in the community-at-large: implementing measures to increase social distancing and providing appropriate levels of hygiene within the DOC facilities. Paramount among these actions is taking immediate and emergency action to reduce the prison population.
7. The Governor and the Secretary of DOC must take prompt action to protect people in prisons - especially those most at-risk of harm from exposure to COVID-19 - and avoid a public health crisis.

## **II. PARTIES**

8. Shyanne Colvin is a resident at Washington Corrections Center for Women in Gig Harbor, Washington.
9. Shanell Duncan is a resident at the Monroe Correctional Complex in Monroe, Washington.
10. Terry Kill is a resident at the Monroe Correctional Complex in Monroe, Washington.

11. Leondis Berry is a resident at Stafford Creek Corrections Center in Aberdeen, Washington.
12. Theodore Rhone is a resident at the Stafford Creek Corrections Center in Aberdeen, Washington.
13. Steven Sinclair is the Secretary of the Washington State Department of Corrections.
14. Jay Inslee is the Governor of the State of Washington.

### **III. JURISDICTION**

15. The events giving rise to this action occurred at DOC facilities that are all located in the State of Washington.
16. This Court has original jurisdiction over a petition seeking a writ of mandamus against state officers, including the Governor and the Secretary of the Department of Corrections, pursuant to Wash. Const. art. IV, § 4 and RCW 7.16.160.

#### IV. FACTUAL BACKGROUND

**The global COVID-19 outbreak has created a public health emergency.**

17. The novel coronavirus, or COVID-19, is a recently discovered viral strain that has reached global pandemic status.<sup>1</sup> The first cases of COVID-19 were first diagnosed in December 2019 and originated in Hubei Province, China.<sup>2</sup> By March 23, 2020, nearly 333,000 people worldwide had confirmed diagnoses, and over 14,500 people had died as a result of the virus.<sup>3</sup> In the U.S. alone, there are over 33,400 confirmed cases and at least 400 deaths.<sup>4</sup> Based on the curve of infection in countries where the initial infections occurred weeks before the introduction of the virus in the United States, public health officials expect the transmission of COVID-19 in the U.S. to grow exponentially in the coming weeks and months. The Centers for Disease Control and Prevention

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<sup>1</sup> Coronavirus 2019 (COVID-19): Situation Summary, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last visited Mar. 18, 2020).

<sup>2</sup> Id.

<sup>3</sup> Coronavirus disease 2019 (COVID-19): Situation Report 63, World Health Organization (Mar. 23, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=d97cb6dd\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=d97cb6dd_2)

<sup>4</sup> Coronavirus Disease 2019 (COVID-19): Cases in U.S., Centers for Disease Control and Prevention, [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html) (last visited Mar. 23, 2020).

(CDC) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.5 million deaths.<sup>5</sup>

18. Common symptoms of COVID-19 include fever, cough, and shortness of breath.<sup>6</sup> Other symptoms, including nasal congestion, sneezing, fatigue, or diarrhea may also be present but are less common.<sup>7</sup> Many individuals who become infected with COVID-19 may have mild or moderate symptoms; some may experience no symptoms at all.<sup>8</sup> Other patients may experience severe symptoms requiring intensive medical intervention.<sup>9</sup> However, even with hospitalization and intensive treatment, thousands of individuals have died as a result of this infection. Regardless of the type or severity of symptoms, all infected persons are contagious and can

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<sup>5</sup> Sheri Fink, Worst-Case Estimates for U.S. Coronavirus Deaths, The New York Times, (Mar. 13, 2020) <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

<sup>6</sup> Coronavirus Disease 2019 (COVID-19): Symptoms, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Mar. 18, 2020).

<sup>7</sup> Q&A on Coronaviruses (COVID-19), World Health Organization, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Mar. 18, 2020).

<sup>8</sup> Coronavirus Disease 2019 (COVID-19): Symptoms, CDC, *supra*.

<sup>9</sup> Id.

rapidly transmit the virus from person to person without proper public health interventions.<sup>10</sup>

19. All individuals are at risk of transmission of COVID-19.<sup>11</sup> There is no available vaccine, and no one is immune.<sup>12</sup> There is also no known cure for COVID-19.<sup>13</sup> The only way to reduce risks to vulnerable people is to prevent them from becoming infected. The CDC and other public health agencies have universally prescribed social distancing (maintaining physical space/separation from those who have, or have potentially, been exposed, to COVID-19) and rigorous hygiene — including regular and thorough hand washing with soap and water, the use of alcohol-based hand sanitizer, proper sneeze and cough etiquette, and thorough environmental cleaning — as the best and only ways to mitigate the spread of this disease.<sup>14</sup>

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<sup>10</sup> Coronavirus Disease 2019 (COVID-19): How It Spreads, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited on Mar. 18, 2020).

<sup>11</sup> Coronavirus 2019 (COVID-19): Situation Summary, CDC, *supra*.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (last visited Mar. 18, 2020).

**COVID-19 poses a grave risk of serious illness or death to individuals over age 50 and to those with underlying medical conditions.**

20. While many people who become infected will recover with minimal medical intervention, people over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19.<sup>15</sup> The CDC, WHO, and other public health organizations have determined that underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (e.g., cancer, HIV, autoimmune disease, etc.), and/or pregnancy, place individuals of any age at an exponentially higher risk of serious illness or death from the COVID-19 virus.<sup>16</sup>
21. For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe, and complications can manifest at an alarming pace. Individuals who have contracted the virus may first display symptoms in as little as two days after exposure, and their condition can rapidly deteriorate.

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<sup>15</sup> Coronavirus Disease 2019 (COVID-19): If You Are at Higher Risk, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited Mar. 18, 2020).

<sup>16</sup> Q&A on Coronaviruses (COVID-19), WHO, *supra*.

22. The illness can quickly progress to more life-threatening symptoms as the virus spreads to the lungs and other organs. Serious permanent damage to the lungs and organs may also occur.<sup>17</sup>
23. In the most severe cases, COVID-19 can be deadly.<sup>18</sup> The overall case mortality rate in the U.S. from the disease is 2.3%; however, based on the number of deaths and cases reported by the Washington State Department of Health website, the Washington death rate is 5.2%.<sup>19</sup> As a result, the virus is 10 times more deadly than the common flu (Influenza A) and other flu-like viral infections.<sup>20</sup>
24. 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.

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<sup>17</sup> Altice Declaration, at ¶ 11.

<sup>18</sup> *Id.* at ¶ 12.

<sup>19</sup> Puisis-Shansky Declaration, pg. 3-4 at ¶ 6.

<sup>20</sup> Altice Declaration, at ¶10.

**Incarceration at Washington State Department of Corrections prison facilities exponentially increases the risks of the COVID-19 virus for these vulnerable populations.**

25. The Washington State Department of Corrections (“DOC”) operates 12 prisons<sup>21</sup> and 12 work-release facilities throughout Washington.<sup>22</sup> Many of these facilities are in rural areas, geographically isolated from hospitals that may be needed to provide support in the event of a COVID-19 outbreak.
26. Washington State has had one of the largest COVID-19 outbreaks in the United States, and one of the largest known outbreaks in the world.<sup>23</sup>
27. Approximately 19,000 people are currently in DOC custody.<sup>24</sup> Due to the congregate nature of prisons and other deficiencies, each of these individuals is at constant risk of harm from a serious outbreak of COVID-19 while in DOC custody. For people in DOC custody who are over the age of 50 and those living with certain underlying medical conditions, exposure to COVID-19 presents a grave risk of serious illness and or death.

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<sup>21</sup> Prisons Map, Washington Department of Corrections, <https://www.doc.wa.gov/corrections/incarceration/prisons/map.htm> (last visited Mar. 19, 2020).

<sup>22</sup> Work Release Map, Washington Department of Corrections, <https://www.doc.wa.gov/corrections/incarceration/work-release/map.htm> (last visited Mar. 19, 2020).

<sup>23</sup> Coronavirus Disease 2019 (COVID-19): Cases in U.S., CDC, *supra*.

<sup>24</sup> Fact Card, Washington Department of Corrections (December 31, 2019), <https://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>.

28. Congregate environments, (e.g., cruise ships, long-term care facilities, etc.) have become the epicenters of several outbreaks of COVID-19, such as the Life Care Center of Kirkland in Washington State<sup>25</sup> or the Diamond Princess cruise ship which held its passengers in quarantine off the coast of California.<sup>26</sup>
29. Because correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another, infectious diseases are more likely to spread rapidly between individuals.<sup>27</sup> This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.<sup>28</sup>
30. The public health risks inside prisons are even greater than in congregate environments outside a correctional setting. The World Health Organization states that people who are incarcerated and

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<sup>25</sup>Jon Swaine and Maria Sacchetti, As Washington Nursing Home Assumed it Faced Influenza Outbreak, Opportunities to Control Coronavirus Exposure Passed, Washington Post, (Mar. 16, 2020) [https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136\\_story.html](https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136_story.html).

<sup>26</sup> Ana Sandoiu, COVID-19 Quarantine of Cruise Ship May Have Led to More Infections, Medical News Today, (Mar. 3, 2020) <https://www.medicalnewstoday.com/articles/quarantine-on-covid-19-cruise-ship-may-have-led-to-more-infections>.

<sup>27</sup> Anne C. Spaulding, Coronavirus and the Correctional Facility, Emory Center for the Health of Incarcerated Persons, 17 (Mar. 9, 2020), [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF Administrators\\_3.9.2020.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF Administrators_3.9.2020.pdf).

<sup>28</sup> Id.

otherwise deprived of their liberty are generally more vulnerable to disease and illness.<sup>29</sup> “The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19.”<sup>30</sup>

31. The World Health Organization outlines the two primary ways that COVID-19 is spread: (1) person-to-person, by breathing in droplets coughed out or exhaled by a person with the virus; and (2) by touching contaminated surfaces or objects and then touching their eyes, nose, or mouth.<sup>31</sup> Both methods of transmission make people in jails and prisons especially susceptible to this contagion. Overcrowding, inadequate medical care, and the number of vulnerable people in custody make the risks associated with the spread of communicable disease even greater. It is impossible to achieve social distancing standards. Furthermore, residents share toilets, sinks, and showers, and often have limited access to soap,

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<sup>29</sup> Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance, World Health Organization: Regional Office for Europe, 2 (Mar. 15, 2020), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=).

<sup>30</sup> Id.

<sup>31</sup> Id. at 11.

hot water, and other necessary hygiene items. Staff enter from and exit to the community, with inadequate infection screening procedures, especially considering staff may be asymptomatic yet still contagious.

32. Prisons and jails serve as “epidemiological pumps,” amplifying conditions for the spread of disease.<sup>32</sup> An even more concerning threat posed by the infection of a prison community is the potential for the disease, while being allowed to spread out of control, to mutate into new or more treatment-resistant strains.<sup>33</sup>
33. The lack of adequate medical infrastructure not only impacts the ability of prisons to screen for infectious diseases, such as COVID-19, but also prisons’ ability to provide the intensive medical treatment necessary for those who develop severe, life-threatening symptoms. Given the history of epidemiologic outbreaks in correctional facilities, such as Tuberculosis, H1N1 and MRSA, it is reasonable to expect COVID-19 will also readily spread in prisons, especially when people cannot engage in proper hygiene and

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<sup>32</sup> John Jacobi, Prison Health Public Health: Obligations and Opportunities, 31 Am. J. L. and Med. 447 (2005).

<sup>33</sup> Id.

adequately distance themselves from infected residents or staff.<sup>34</sup>

Without the ability to care for vulnerable individuals who are most at-risk of serious illness from a COVID-19 infection, many of those individuals will likely die from exposure to this virus. This can and must be prevented.

**Proactively releasing people from custody who are most susceptible to serious illness or death from exposure to COVID-19 would meaningfully mitigate their risk of harm.**

34. Proactive risk mitigation, including eliminating close contact in congregate environments, is the only effective way to prevent the spread of the COVID-19 infection. In fact, a study published in the *Journal of Travel Medicine* found that **the number of COVID-19 cases on the Diamond Princess cruise ship would have been more than eight times lower if the ship had been evacuated in a timely manner**, rather than requiring the passengers to quarantine within the close confines of the ship.<sup>35</sup>
35. Public health experts with experience in correctional settings have similarly concluded that release from custody is necessary to

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<sup>34</sup> See generally, Claire Fortin, A Breeding Ground for Communicable Disease: What to do About Public Health Hazards in New York Prisons, 29 *Buff. Pub. Interest L. J.* 153 (2011); Malles v. Lehigh County, 639 F.Supp.2d 566 (2009).

<sup>35</sup> Sandoiu, *supra* (Citing Rocklöv J., Sjödin H., Wilder-Smith A., COVID-19 Outbreak on the Diamond Princess Cruise Ship: Estimating the Epidemic Potential and Effectiveness of Public Health Countermeasures, *Journal of Travel Medicine*, (Feb. 28, 2020) <https://doi.org/10.1093/jtm/taaa030>.) *Emphasis added*.

effectively mitigate the risk of serious illness and/or death for the most vulnerable individuals in correctional facilities.

36. Dr. Frederick Altice, an infectious disease specialist and Professor of Medicine (infectious diseases) at Yale School of Medicine and Yale School of Public Health offers several reasons why the prison population must be reduced in light of the COVID-19 pandemic. The COVID-19 virus is highly infectious, and transmission is thought to occur mainly between people who are in close contact with one another.<sup>36</sup> Prisons, as congregate settings, are therefore highly susceptible to the spread of COVID-19. The conditions in this particular congregate setting are especially ripe for rapid outbreak of the virus. People in prison are usually required daily to share things like toilets, urinals and sinks with hundreds of other people in prison, which can contribute to the spread of infectious diseases within these institutions.<sup>37</sup>
37. The transient nature of prisons and jails also contributes to the likelihood of outbreak. Not only are people in prison entering and leaving prison on a regular basis, but so are staff. Correctional and medical staff usually enter and leave prisons in three shifts each

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<sup>36</sup> Altice declaration at ¶¶ 10,13

<sup>37</sup> Id. at ¶ 15.

day, increasing the chances that the virus will spread throughout the prison.<sup>38</sup>

38. As Dr. Altice explains, prisons have been the settings for previous outbreaks of infectious diseases: “In addition to HIV, viral hepatitis, and tuberculosis, we have experienced endemic outbreaks of strains of staphylococcus aureus bacteria that are resistant to methicillin (MRSA), which occurs in crowded congregate settings.”<sup>39</sup> And prisons have not always proven successful at treating these diseases once they make their way into the institutions. For instance, tuberculosis outbreaks in prison have had devastating and sometimes deadly impacts on prisoners due to the prisons’ inability to diagnose and treat people with the disease.<sup>40</sup> This is troubling given that tuberculosis is a much less infectious disease than COVID-19.<sup>41</sup>
39. Social distancing is imperative in mitigating the spread of COVID-19. To achieve this result in prisons, reduction of the population is necessary, not only to protect prisoners from spread of the virus, but also to reduce burdens on community health systems that will

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<sup>38</sup> *Id.* at ¶ 16.

<sup>39</sup> *Id.* at ¶ 14.

<sup>40</sup> *Id.* at ¶ 17.

<sup>41</sup> *Id.*, PUISIS-Shansky Declaration at ¶ 9.

not be prepared to handle an influx of prisoners from prisons should an outbreak occur.<sup>42</sup>

40. Other methods to treat the spread of COVID-19 may prove ineffective. For instance, isolation in the cruise ship setting has already proven futile. And, “[r]estricting people in prison to their living units will not contain the virus because many prisoners live in dormitory-style housing and they share many common public spaces, showers, meals, and restrooms.”<sup>43</sup>
41. Release decisions should first prioritize those who are most at-risk of harm from COVID-19 but should also consider further reductions of the prison population as an added social distancing precaution. Decisions about who to release can be done by balancing public health benefits with public safety risks.<sup>44</sup>
42. Dr. Robert Greifinger, a correctional health expert, has concluded that the most important proactive measure that prisons should take in response to the COVID-19 crisis is to “downsize the prison population, immediately, as appropriate based on public safety and public health risks.”<sup>45</sup>

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<sup>42</sup> *Id.* At ¶¶ 18, 20.

<sup>43</sup> *Id.* at ¶ 25.

<sup>44</sup> *Id.* at ¶ 22.

<sup>45</sup> Declaration of Dr. Robert Greifinger, at ¶ 18.

43. Dr. Greifinger explains that “prisons and jails are populated with people who disproportionately have serious underlying medical conditions such as chronic heart and lung disease and other conditions that render them immunocompromised –the very conditions that put people at a markedly increased risk of becoming severely ill or dying from COVID –19.”<sup>46</sup> Because of this disproportionately vulnerable population, “not only is the virus more likely to spread within prisons and jails, but the outcomes are more likely to be particularly severe and even deadly.”<sup>47</sup>
44. Dr. Greifinger describes the current risk to people in correctional custody as “very serious, especially for those who are most vulnerable. [These individuals] may experience severe respiratory illness as well as damage to other major organs. Treatment for serious cases of COVID-19 requires significant advanced support.”<sup>48</sup> Dr. Greifinger continues on to state that it is his opinion that “prisons in Washington are not prepared to prevent the spread of COVID-19, treat those who are most medically vulnerable, and contain any outbreak.”<sup>49</sup>

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<sup>46</sup> Id. at ¶ 15.

<sup>47</sup> Id.

<sup>48</sup> Id. at ¶ 16.

<sup>49</sup> Id. at ¶ 17.

45. Dr. Greifinger explains that immediate downsizing of the prison population, particularly in a way that prioritizes release of those most vulnerable to COVID-19 (e.g., elderly and/or people with underlying health conditions) “reduces the likelihood that this group of individuals will contract the virus. Individuals in this category are at the highest risk of developing severe complications from COVID-19.”<sup>50</sup> He concludes that “if not released, those who are most medically vulnerable to severe effects of COVID-19 will have a poor prognosis if infected while in prison. Moreover, care for those who become sick with COVID-19 will overburden the limited health care resources of the prison.”<sup>51</sup>
46. The COVID-19 virus presents a serious and unprecedented risk to the health and safety of people in DOC custody and DOC staff, according to former DOC Secretary Dan Pacholke.<sup>52</sup> As such, he recommends that DOC take immediate steps to proactively respond to the virus to protect those individuals, which includes releasing people from custody to increase social distancing within prisons and allow for better access to testing and treatment.<sup>53</sup>

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<sup>50</sup> Id. at ¶ 21.

<sup>51</sup> Id. at ¶ 23.

<sup>52</sup> Declaration of Dan Pacholke at ¶ 5.

<sup>53</sup> Id.

47. The DOC Secretary could immediately exercise his discretion to release people from custody through several statutory provisions and DOC policies giving him the authority to do so.<sup>54</sup> For example, DOC has broad authority under Washington's furlough statute to authorize leave for people in state prisons or work release facilities.<sup>55</sup> Additionally, DOC could release people in prison through the Graduated Reentry Program, which provides DOC with authority to release certain people who are within six months of their release date to community supervision.<sup>56</sup>
48. The DOC Secretary also has authority through the Extraordinary Medical Placement (EMP) statute to release prisoners with serious medical conditions to an alternative care setting in lieu of confinement.<sup>57</sup> In addition, release could be granted to individuals who qualify through the Community Parenting Alternative (CPA), a sentencing alternative that allows the Secretary to transfer a parent from prison to home detention for the final twelve months of the parent's sentence.<sup>58</sup>

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<sup>54</sup> Id. at ¶ 6.

<sup>55</sup> Id. at ¶ 7.

<sup>56</sup> Id. at ¶ 8.

<sup>57</sup> Id. at ¶ 9.

<sup>58</sup> Id. at ¶ 10.

49. Such action would not be unprecedented. During his time as Secretary, Mr. Pacholke exercised his discretion under the furlough statute to address sentencing miscalculation errors by DOC that resulted in the early release of several thousand people.<sup>59</sup> If certain conditions were met, he authorized an initial 30-day furlough, and extended it for an additional 30 days if the person continued to do well in the community.<sup>60</sup>
50. Cassie Sauer, the President and Chief Executive Officer of the Washington State Hospital Association (WSHA), explains why hospitals are already under strain by the growing number of COVID-19 cases in WA.<sup>61</sup> Ms. Sauer notes that many hospital and health care workers are already staying home due to age, health condition, possible virus exposure, or as caregivers.<sup>62</sup> At the same time that hospitals are seeing a decrease in their workforce, like any other employer, hospitals are experiencing a shortage of supplies to handle the surge in patients.<sup>63</sup> Hospital staff have already resorted to making their own protective equipment using

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<sup>59</sup> Id. at ¶ 11.

<sup>60</sup> Id.

<sup>61</sup> Declaration of Cassie Sauer, at ¶¶ 2; 8.

<sup>62</sup> Id. at ¶ 9.

<sup>63</sup> Id. at ¶ 11.

materials purchased "off the shelf," such as fabric masks and plastic face shields.<sup>64</sup>

51. According to Ms. Sauer, the demands on hospitals are projected to increase to such an overwhelming degree that hospitals have begun canceling elective procedures to increase capacity for emergency needs.<sup>65</sup> In the event that the health care system is overwhelmed in the coming weeks, WSHA and other health care leaders in Washington State have already started a triage strategy to determine which patients may have to be denied complete medical care.<sup>66</sup>

52. Given their experience with COVID-19 thus far, WSHA and its member hospitals are concerned about the potential influx of patients that may come from the prisons and jails located around the state.<sup>67</sup> "If an infectious disease takes hold in a congregate living facility, it is likely to spread very quickly."<sup>68</sup> When considering DOC's 12 facilities across Washington and its 17,800

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<sup>64</sup> Id.

<sup>65</sup> Id. at ¶¶ 10; 12.

<sup>66</sup> Id. at ¶ 12.

<sup>67</sup> Id. at ¶ 13.

<sup>68</sup> Id. at ¶ 15.

residents, "the question is not if, but when COVID-19 begins to spread in Washington's prisons and jails."<sup>69</sup>

53. In order to help alleviate the spread of COVID-19 and decrease the demand on hospitals, WSHA recommends that DOC follow federal and state guidance to protect older adults and people with severe underlying medical issues, test when appropriate, promote social distancing, and other proactive measures.<sup>70</sup> WSHA also recommends that DOC coordinate with hospitals to take actions best targeted to reduce a surge in need for hospital care.<sup>71</sup> Without action, Ms. Sauer concludes that a surge in patients from prisons would contribute to the strain hospitals are already experiencing and "lead to difficult discussions to ration care based on limited hospital resources."<sup>72</sup>

54. Dr. Michael Puisis is an internist who has worked in correctional medicine for 35 years, including serving as the Chief Operating Officer for the medical program at the Cook County, Illinois Jail from 2009 to 2012.

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<sup>69</sup> *Id.* at ¶¶ 14-15.

<sup>70</sup> *Id.* at ¶¶ 18-19.

<sup>71</sup> *Id.* at ¶ 20.

<sup>72</sup> *Id.* at ¶ 21.

55. Dr. Ronald Shansky is an internist who has worked in correctional medicine for 45 years, including serving as the Medical Director of the Illinois Department of Corrections.
56. Drs. Puisis and Shanksy note that “jails and prisons promote spread of respiratory illness because large groups of strangers are forced suddenly in to crowded housing arrangements.”<sup>73</sup> These circumstances are exacerbated by the movement in and out of the prisons of custodial and other staff who can carry the virus into the prison and back into the community.<sup>74</sup> “One couldn’t devise a system more contrary to current health recommendations...than a prison....”<sup>75</sup>
57. Prisons are not set up to treat people who require hospital care. Severe diseases, like COVID-19, are treated with supportive care, such as respiratory isolation and mechanical ventilation.<sup>76</sup> Due to the prevalence of COVID-19 in Washington, the state is already unlikely to be able to meet the community needs for these services.<sup>77</sup>

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<sup>73</sup> Id. at pg. 6 ¶ 10.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Id. at pg. 10, ¶ 13.

<sup>77</sup> Id.

58. Prisons lack these services. Thus, prisoners who fall severely ill due to COVID-19 will need to be transported to the community, further straining available resources, particularly if an outbreak occurs in prisons. Prisoner transfer would likewise overwhelm security staff and complicate arrangements at local hospitals.<sup>78</sup> Finally, the geographic isolation of some prisons in Washington, such as Clallam Bay Correctional Center, means there are no hospitals in close proximity, making provision of necessary care more difficult.<sup>79</sup>
59. To reduce the risk of outbreak and spread of COVID-19 and to reduce burdens on community health infrastructure, Drs. Puisis and Shansky have developed several recommendations. The first of these recommendations is to take steps to immediate release people in prison who are a low risk to the community.<sup>80</sup>

**Petitioners are particularly vulnerable to serious illness or death if exposed to COVID-19, and such vulnerability is exacerbated due to their current environments in DOC custody.**

60. Petitioners in this case, Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Rhone, are individuals who are particularly vulnerable to serious illness or death if infected by

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<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Id. at. pg. 11, ¶ 1.

COVID-19 and are currently in custody at the DOC facilities in Washington State. Declarants William Burkett, Francis Cota, Daniel Ralph Maples, Maurice Phillip Meadows, Timothy Pauley, Joseph Siriani, Brian Stark, and Hozie Holley are also individuals who are at risk of significant injury should COVID-19 erupt in DOC facilities.

61. **Petitioner Shyanne Colvin** is a resident at Washington Corrections Center for Women (WCCW) in Gig Harbor, Washington.<sup>81</sup> She is 21 years old and seven months pregnant.<sup>82</sup> She has a due date of May 27, 2020, and has not been able to see a doctor since entering DOC detention at the beginning of March.<sup>83</sup> At the end of 2019, Mrs. Colvin suffered a grand-mal seizure.<sup>84</sup> She had never had seizures before and is now on preventative seizure medication that are low risk for her baby.<sup>85</sup>
62. Mrs. Colvin is currently housed in the Reception and Diagnostic Center and shares a cell with two other women.<sup>86</sup> Her cell has a

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<sup>81</sup> Declaration of Shyanne Colvin at ¶ 4.

<sup>82</sup> *Id.* at ¶ 1.

<sup>83</sup> *Id.* at ¶¶ 6; 26.

<sup>84</sup> *Id.* at ¶ 27

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at ¶¶ 8, 10.

bunk bed with two beds and one woman sleeps on the ground.<sup>87</sup>

They share a sink and toilet in close proximity; the woman sleeping on the floor is only about a foot from the edge of the toilet.<sup>88</sup>

63. In their pod, there are 23 total cells and most have three woman per cell.<sup>89</sup> Mrs. Colvin is exposed to a crowd of about 50 women six times a day.<sup>90</sup> They eat three meals together, and share three hours of outside time to shower, clean, and use the phone.<sup>91</sup> WCCW just started making people leave one empty seat between them during meals, but has made no other efforts at social distancing or increased cleaning.<sup>92</sup> Two women who arrived at the facility right after Mrs. Colvin have been quarantined because one had a fever and one had a cough.<sup>93</sup> One of the women was in the neighboring cell to Mrs. Colvin's, the other was one cell down.<sup>94</sup>
64. Mrs. Colvin worries about her pregnancy while detained at WCCW.<sup>95</sup> The impacts of coronavirus on pregnant women and

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<sup>87</sup> Id. at ¶ 10.

<sup>88</sup> Id. at ¶ 11-14.

<sup>89</sup> Id. at ¶ 15.

<sup>90</sup> Id. at ¶ 20.

<sup>91</sup> Id.

<sup>92</sup> Id. at ¶¶ 21-23.

<sup>93</sup> Id. at ¶ 18.

<sup>94</sup> Id. at ¶ 19.

<sup>95</sup> Id. at ¶ 28.

unborn children is still unknown and she is scared to be exposed.<sup>96</sup>

This is her first child, she does not know what to expect, and she is away from her support systems.<sup>97</sup> Mrs. Colvin would immediately move back into her family home upon release.<sup>98</sup>

65. **Petitioner Shanell Duncan** is a resident at Monroe Correctional Complex in the minimum-security unit (MSU).<sup>99</sup> Mr. Duncan is 40 years old and has been at MCC for 6 months.<sup>100</sup> Mr. Duncan has an early release date of December 27, 2020, and has a partner who lives in Spokane working as a nurse.<sup>101</sup> DOC has already approved placement at his partner's house.<sup>102</sup> Mr. Duncan believes he will be able to find employment within a week of his arrival.<sup>103</sup>

66. **Petitioner Terry Kill** is a resident at the Monroe Correctional Complex, Minimum Security Unit.<sup>104</sup> He is 52 years old and has been in DOC custody since the summer of 2017 and at MCC

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<sup>96</sup> Id.

<sup>97</sup> Id. at ¶ 29.

<sup>98</sup> Id. at ¶ 33.

<sup>99</sup> Declaration of Shanell Duncan, at ¶ 2.

<sup>100</sup> Id. at ¶¶ 1, 3.

<sup>101</sup> Id. at ¶¶ 4, 5, 7.

<sup>102</sup> Id. at ¶ 6.

<sup>103</sup> Id. at ¶ 7.

<sup>104</sup> Declaration of Terry Kill, at ¶ 4.

specifically since February 2018.<sup>105</sup> Mr. Kill has an early release date of June 2021.<sup>106</sup>

67. He lives in a dormitory that has two tiers, 12 cubicles in each tier, and most cubicles have three beds, but some have two.<sup>107</sup> The cubicles themselves are six and a half feet by six and a half feet, which allows for one bunkbed and a single bed to be placed inside.<sup>108</sup> There are no sinks, showers, or toilets and the walls of the cubicle do not extend to the ceiling.<sup>109</sup> Mr. Kill says he can see into his neighbor's cubicle by standing on the bed, so they are all breathing the same air as other men cough and sneeze all day and night.<sup>110</sup>
68. There is another unit at MCC with room-style tiers composed of eighteen two-man cells and yet another unit with four men per cubicle.<sup>111</sup>
69. MCC provides two “day rooms” where people congregate for most of the day.<sup>112</sup> Each tier has a communal bathroom shared by

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<sup>105</sup> Id. at ¶¶ 4; 6

<sup>106</sup> Id. at ¶ 8.

<sup>107</sup> Id. at ¶¶ 9-10.

<sup>108</sup> Id. at ¶ 10.

<sup>109</sup> Id. at ¶¶ 12-13.

<sup>110</sup> Id. at ¶¶ 12; 14.

<sup>111</sup> Id. at ¶¶ 10-11.

<sup>112</sup> Id. at ¶ 15.

approximately thirty individuals.<sup>113</sup> Hand sanitizer is available for each unit and so is bleach.<sup>114</sup> Bathroom cleaning depends on the person cleaning, so it can vary.<sup>115</sup> Everyone shares the same microwave and ice machine, but Mr. Kill does not know how often these are cleaned.<sup>116</sup>

70. Mr. Kill works in the kitchen, serving food and cleaning the dining hall, and he has noticed MCC has started implementing a few changes.<sup>117</sup> MCC has started slowing down the serving process in the last day or so and is no longer filling up the dining rooms.<sup>118</sup> MCC has reduced group meals from two hundred-forty people at a time to groups of forty or eighty.<sup>119</sup> MCC has started cleaning the tables more often.<sup>120</sup> MCC has also required increased hand washing for kitchen workers and using bleach on the door handles.<sup>121</sup>
71. Although MCC has made some changes, the open-air dormitory, the continual close contact, and the way the kitchen runs are

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<sup>113</sup> Id. at ¶ 17.

<sup>114</sup> Id. at ¶ 19.

<sup>115</sup> Id. at ¶ 20.

<sup>116</sup> Id. at ¶¶ 21-22.

<sup>117</sup> Id. at ¶¶ 26; 30.

<sup>118</sup> Id. at ¶ 26-27.

<sup>119</sup> Id. at ¶ 27.

<sup>120</sup> Id. at ¶ 28.

<sup>121</sup> Id. at ¶¶ 31-32.

causes of concern for Mr. Kill.<sup>122</sup> There are twenty-five men working in the kitchen; one group stands together serving food as the tray goes down the line and another group is in the dishwashing area, in close proximity of each other for hours.<sup>123</sup> As the dining hall fills up, there are fifteen to thirty men waiting for food at all times and approximately three hundred and fifty people go through the line at every meal, twice a day: once for lunch and again at dinner.<sup>124</sup>

72. He has not heard about anyone at MCC being tested for coronavirus or having their temperatures taken regularly.<sup>125</sup> Mr. Kill views the dormitory as a breeding ground for the coronavirus and is especially concerned about the older people in MCC.<sup>126</sup> Mr. Kill has been programming extensively during his detention, preparing himself for employment.<sup>127</sup> If released, he would immediately move in with his wife and care for her since she has severe mobility issues.<sup>128</sup>

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<sup>122</sup> *Id.* at ¶¶ 33-35.

<sup>123</sup> *Id.* at ¶ 37.

<sup>124</sup> *Id.* at ¶¶ 38-41.

<sup>125</sup> *Id.* at ¶ 44.

<sup>126</sup> *Id.* at ¶¶ 34, 36.

<sup>127</sup> *Id.* at ¶¶ 56-58.

<sup>128</sup> *Id.* at ¶¶ 48-55.

73. **Petitioner Leondis Berry** is a resident at Stafford Creek Corrections Center (SCCC).<sup>129</sup> Mr. Berry is 46 years old and has been at SCCC since 2018.<sup>130</sup> He has been in DOC custody since 2001.<sup>131</sup> Mr. Berry has a history of severe heart conditions, including two massive heart attacks and four heart surgeries in twelve years.<sup>132</sup> He has a pacemaker and has been diagnosed for sudden cardiac death because of the damage caused by the heart attacks.<sup>133</sup> He sees a cardiologist at least two times per year, and his ejection fraction (EF) is 30%.<sup>134</sup> Mr. Berry is very concerned that he is at risk of severe illness or death if he is exposed to the COVID-19 virus.<sup>135</sup>

74. Mr. Berry resides in H-5 Unit in B-Wing, which houses approximately 136 men.<sup>136</sup> The residents share communal facilities such as showers, toilets and urinals, sinks, a dayroom, microwave, phones, yard, gym, school, and work areas.<sup>137</sup> He reports that these common areas and facilities are cleaned no more than 3 times a

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<sup>129</sup> Declaration of Leondis Berry, at ¶ 4.

<sup>130</sup> *Id.* at ¶¶ 2, 4.

<sup>131</sup> *Id.* at ¶ 34.

<sup>132</sup> *Id.* at ¶¶ 20-23.

<sup>133</sup> *Id.* at ¶¶ 21-22.

<sup>134</sup> *Id.* at ¶¶ 24-25.

<sup>135</sup> *Id.* at ¶ 26

<sup>136</sup> *Id.* at ¶¶ 4, 6.

<sup>137</sup> *Id.* at ¶¶ 7-17.

day (sinks and toilets), and other facilities like the ice machine and community sinks are not cleaned or maintained even daily.<sup>138</sup>

75. While DOC has suspended visitation, Mr. Berry says that DOC has not taken other measures to protect against a COVID-19 outbreak, such as providing hand sanitizer (though it is available to staff), implementing more rigorous cleaning standards, or promoting social distancing amongst the residents.<sup>139</sup> DOC has not held any informational or training sessions to alert residents to the seriousness of COVID-19.<sup>140</sup>
76. Out of concern for his health and safety, Mr. Berry has been engaging in social distancing at mealtimes and is eating his meals in his room.<sup>141</sup> This means he only eats food available from commissary, which depletes his limited financial resources.<sup>142</sup> This also puts his health at risk, as he must maintain a healthy diet due to his heart issues.<sup>143</sup>

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<sup>138</sup> Id. at ¶¶ 12-13, 16.

<sup>139</sup> Id. at ¶¶ 11, 15, 18-19.

<sup>140</sup> Id. at ¶ 18.

<sup>141</sup> Id. at ¶ 30.

<sup>142</sup> Id. at ¶ 32.

<sup>143</sup> Id. at ¶ 30.

77. When Mr. Berry is released, he will move home with his wife, who lives in Arlington, Washington.<sup>144</sup> He has many extended family members and community members who are able and willing to help support him, and he will have a job in the community.<sup>145</sup>
78. **Petitioner Theodore Roosevelt Rhone** is a resident at Stafford Creek Corrections Center (SCCC).<sup>146</sup> Mr. Rhone is 62 years old and is living with diabetes.<sup>147</sup> Due to his diagnosis, he has high blood pressure, neuropathy, and has some eye problems.<sup>148</sup> He also has a history of heart injury, which requires monitoring to ensure his heart is healthy.<sup>149</sup> Mr. Rhone is very afraid of being exposed to and/or infected with the COVID-19 virus, because of his heightened risk of serious illness and/or death due to his underlying health conditions.<sup>150</sup>
79. **Declarant William Burkett** is a resident at Stafford Creek Corrections Center (SCCC) in Aberdeen, Washington.<sup>151</sup> He is a 70-year-old disabled veteran with an early release date (ERD) of

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<sup>144</sup> *Id.* at ¶ 35.

<sup>145</sup> *Id.*, ¶¶ 35, 37.

<sup>146</sup> Declaration of Theodore Rhone, at ¶ 1.

<sup>147</sup> *Id.* at ¶¶ 2-3.

<sup>148</sup> *Id.* at ¶ 3.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at ¶ 4.

<sup>151</sup> Declaration of William Burkett, at ¶ 6.

March 10, 2029.<sup>152</sup> He has several serious medical conditions that require ongoing treatment: Stage 4 liver disease, compensated cirrhosis, type 2 diabetes, chronic obstructive pulmonary disease (COPD), asthma, arrhythmia, and arthritis.<sup>153</sup> Mr. Burkett has also had his gall bladder removed, broken his back twice, and metal implants in his right arm and foot.<sup>154</sup> To control his various ailments, he takes 24 medications.<sup>155</sup> He has also had two recent bouts of pneumonia.<sup>156</sup> He has been at SCCC since 2015 and in DOC custody for 25 years.<sup>157</sup>

80. Mr. Burkett is a resident in H-6 unit, A Tier, Cell 34-L.<sup>158</sup> He is in a cell for people with disabilities and his cellmate helps him navigate the complex by pushing his wheelchair.<sup>159</sup> There are 228 individuals in his unit, and they all share the same four bathrooms, dayroom, and phones.<sup>160</sup> There are five sinks, two toilets, and two urinals in each bathroom and they are cleaned daily with

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<sup>152</sup> Id. at ¶¶ 5, 22.

<sup>153</sup> Id. at ¶ 22.

<sup>154</sup> Id. at ¶¶ 22-23.

<sup>155</sup> Id. at ¶ 26.

<sup>156</sup> Id. at ¶ 25.

<sup>157</sup> Id. at ¶¶ 5-6.

<sup>158</sup> Id. at ¶ 7.

<sup>159</sup> Id. at ¶ 8.

<sup>160</sup> Id. at ¶¶ 9-15.

Hepastat.<sup>161</sup> There is one handicap-accessible shower available to him; it is used by about 30 other individuals throughout the course of the day.<sup>162</sup> The dayroom has 20 tables, four seats per table, spaced about three feet apart.<sup>163</sup> The room is crowded during the day and evening with people sitting in close contact to each other.<sup>164</sup> There are seven phones for his unit and no protocols for regular cleaning.<sup>165</sup>

81. According to Mr. Burkett, there has been no formal response from DOC about COVID-19 and no efforts to promote social distancing.<sup>166</sup> There are a few posted notices, and while visitation and other programming has stopped, DOC continues to transport people to the doctor for non-critical visits, allows up to 300 people into the yard at any given time, and has placed no restrictions on social distancing in the dining hall.<sup>167</sup>
82. Mr. Burkett made requests for DOC to provide hand sanitizer or make it available for purchase but was denied and told to use the

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<sup>161</sup> Id. at ¶ 11.

<sup>162</sup> Id. at ¶ 10.

<sup>163</sup> Id. at ¶ 13.

<sup>164</sup> Id.

<sup>165</sup> Id. at ¶¶ 15.

<sup>166</sup> Id. at ¶¶ 17, 19.

<sup>167</sup> Id. at ¶¶ 17-21.

soap in the bathroom.<sup>168</sup> There are no masks available for residents to use.<sup>169</sup> Mr. Burkett understands he is at high risk of contracting COVID-19 due to his age and extensive medical history.<sup>170</sup> He worries about his health and the possibility of facing harm or even death should COVID-19 make its way to SCCC.<sup>171</sup>

83. **Declarant Francis Donald Cota** is a resident at Airway Heights Corrections Center (AHCC) in Airway Heights, Washington.<sup>172</sup> Mr. Cota is 65 years old and has been at AHCC since 2006.<sup>173</sup> He has been in DOC custody for 20 years.<sup>174</sup> He recently applied for Emergency Medical Placement for release from DOC.<sup>175</sup> Mr. Cota has a serious heart condition, which resulted in major surgery to place three regular stents and one medicine stent in his heart.<sup>176</sup> He is supposed to go back for another heart surgery in two months to have three-five additional stents put in to replace the medicine stent.<sup>177</sup> His nitroglycerin dosage was recently increased from 30

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<sup>168</sup> Id. at ¶ 16.

<sup>169</sup> Id.

<sup>170</sup> Id. at ¶ 22.

<sup>171</sup> Id. at ¶ 29.

<sup>172</sup> Declaration of Francis Cota, at ¶¶ 1, 6.

<sup>173</sup> Id. at ¶¶ 2, 6.

<sup>174</sup> Id. at ¶ 5.

<sup>175</sup> Id. at ¶ 7.

<sup>176</sup> Id. at ¶ 21.

<sup>177</sup> Id. at 22.

mg to 100 mg per day.<sup>178</sup> Mr. Cota also suffers from degenerative disk disease, bulging disks, and arthritis, and uses a wheelchair for mobility.<sup>179</sup>

84. Mr. Cota resides in NA-1 Unit at AHCC.<sup>180</sup> He resides in a shared cell, and he and his cellmate are kept in extremely close proximity for up to 22 hours per day.<sup>181</sup> There are approximately 128 men in his unit, all of whom share facilities such as showers, dayroom, an ice machine, phones, and other facilities.<sup>182</sup> During his trips to the dining hall, approximately 200 men are served in crowded quarters and sit in very close proximity to one another.<sup>183</sup> Mr. Cota states that there are a lot of people coughing and sneezing in close proximity in/around these shared facilities.<sup>184</sup> These facilities are not properly disinfected on a regular basis, even though large numbers of people congregate in these spaces, particularly for meals.<sup>185</sup>

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<sup>178</sup> Id.

<sup>179</sup> Id. at ¶ 23.

<sup>180</sup> Id. at ¶ 8.

<sup>181</sup> Id.

<sup>182</sup> Id. at ¶¶ 9-13.

<sup>183</sup> Id. at ¶ 19.

<sup>184</sup> Id. at ¶ 12.

<sup>185</sup> Id. at ¶¶ 9-16.

85. Mr. Cota reports that DOC has not provided any formal training or information to AHCC residents about COVID-19 or what they can do to protect themselves.<sup>186</sup> DOC did shut down the library and stop visitation for two weeks, but the gym and yard are still open.<sup>187</sup> Despite the outbreak, there is no hand sanitizer or additional cleaners available to residents for cleaning or disinfecting, and no common areas with soap and water.<sup>188</sup> Due to the lack of hygiene, medical services, and because of his underlying health conditions, Mr. Cota fears for his safety and wellbeing if there is an outbreak of COVID-19 at AHCC.<sup>189</sup>
86. When Mr. Cota is released from custody, he will move home to live with his fiancé on the Washington coast.<sup>190</sup>
87. **Declarant Daniel Ralph Maples** is a resident at Stafford Creek Correctional Center (SCCC) in Aberdeen, Washington.<sup>191</sup> He is 62 years old and has been incarcerated since December 2005.<sup>192</sup> He has resided at SCCC for the past ten years.<sup>193</sup> Mr. Maples shares a

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<sup>186</sup> Id. at ¶ 17.

<sup>187</sup> Id.

<sup>188</sup> Id. at ¶ 15.

<sup>189</sup> Id. at ¶ 27.

<sup>190</sup> Id. at ¶ 26.

<sup>191</sup> Declaration of Daniel Ralph Maples, at ¶ 2.

<sup>192</sup> Id. at ¶¶ 1, 3.

<sup>193</sup> Id. at ¶ 3.

two-bed cell with another individual in what is known as a “dry cell,” which means it has no sink, toilet, or shower.<sup>194</sup> There are four communal bathrooms that residents in 78 other dry cells need to share.<sup>195</sup> Mr. Maples is in what is known as “A side,” there is an identical “B side” with just as many dry cells.<sup>196</sup>

88. Mr. Maples suffers from young onset Parkinson’s disease and Chronic Obstructive Pulmonary Disease (COPD).<sup>197</sup> He uses a cane and walker to help with his mobility issues.<sup>198</sup> He also takes medications to control his tremors and other symptoms.<sup>199</sup> High stress causes Mr. Maples to get short on breath, and he requires an inhaler to recover.<sup>200</sup> Due to his mobility issues, Mr. Maples relies on his cellmate to help him get dressed and uses a catheter to urinate.<sup>201</sup> As long as Mr. Maples has access to his medications, he does fine, but as the medications wear off or he experiences stressful situations, he begins to suffer from cognitive issues.<sup>202</sup>
- Mr. Maples started losing his vision last October and is deaf in his

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<sup>194</sup> *Id.* at ¶ 8.

<sup>195</sup> *Id.* at ¶¶ 6, 13.

<sup>196</sup> *Id.* at ¶ 7.

<sup>197</sup> *Id.* at ¶¶ 22, 29.

<sup>198</sup> *Id.* at ¶ 23.

<sup>199</sup> *Id.* at ¶¶ 27-28.

<sup>200</sup> *Id.* at ¶¶ 31-32.

<sup>201</sup> *Id.* at ¶ 24, 26.

<sup>202</sup> *Id.* at ¶¶ 32-33.

right ear.<sup>203</sup> He has asked to see an eye specialist and that a note be placed on his cell to inform the corrections officers that he may not be able to hear them, but he has been ignored.<sup>204</sup>

89. Mr. Maples works in the kitchen at SCCC folding napkins.<sup>205</sup> He works next to the “dish pit,” the area where all the trays, glass, and silverware are washed.<sup>206</sup> Everything is washed by hand because there are no dish washers.<sup>207</sup> Sometimes the people washing dishes run out of cleaning supplies and resort to using oven or floor cleaner.<sup>208</sup> Mr. Maples does not have access to hand sanitizer and the only accessible soap is in the communal bathrooms.<sup>209</sup> There is no way for people to wash their hands while in their cells.<sup>210</sup>
90. Mr. Maples believes that SCCC will go into lockdown sometime soon.<sup>211</sup> He has been informed that if a lockdown occurs, pre-made food will be dropped off at each cell.<sup>212</sup> The trays, dishes, and silverware will be picked up from the cell and taken back to be

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<sup>203</sup> Id. at ¶¶ 35-39.

<sup>204</sup> Id. at ¶¶ 37-40.

<sup>205</sup> Id. at ¶ 42.

<sup>206</sup> Id.

<sup>207</sup> Id. at ¶¶ 43-44.

<sup>208</sup> Id. at ¶ 45.

<sup>209</sup> Id. at ¶ 59.

<sup>210</sup> Id.

<sup>211</sup> Id. at ¶ 48.

<sup>212</sup> Id. at ¶ 49.

washed.<sup>213</sup> Food preparation and cleaning will continue as normal, but DOC staff will deliver the food to the cells.<sup>214</sup> DOC staff have commented to Mr. Maples that staff have their temperature checked when they walk into SCCC, but it is not accurate or being done correctly.<sup>215</sup>

91. Mr. Maples believes there is a large population of elderly people at SCCC.<sup>216</sup> There has been no indication at SCCC that COVID-19 testing will begin or become available. Mr. Maples believes that if lockdown or quarantine occurs, they will be left in their cells to die.<sup>217</sup> For that reason, he believes there is no incentive to inform SCCC if anyone becomes sick.<sup>218</sup> At the same time, he is aware that his various medical conditions make him particularly vulnerable to contracting COVID-19 and suffering severe symptoms.<sup>219</sup> He worries about his health condition while detained at SCCC and as a veteran, he believes the Veterans Administration will offer free medical care to him if he is released.<sup>220</sup>

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<sup>213</sup> Id. at ¶ 50

<sup>214</sup> Id. at ¶¶ 49-52.

<sup>215</sup> Id. at ¶ 54.

<sup>216</sup> Id. at ¶ 56.

<sup>217</sup> Id. at ¶ 57

<sup>218</sup> Id. at ¶¶ 68-70.

<sup>219</sup> Id. at ¶¶ 65-66.

<sup>220</sup> Id. at ¶¶ 64-65.

92. **Declarant Maurice Phillip Meadows** is a resident at the Twin-Rivers Unit at the Monroe Correctional Complex (MCC) in Monroe, Washington.<sup>221</sup> Mr. Meadows is 59 years old and has been in DOC custody for 20 years.<sup>222</sup> He has resided at MCC since 2007.<sup>223</sup> Mr. Meadows has a history of heart attacks.<sup>224</sup> He underwent triple-bypass surgery in 2018 and is currently on medication for hypertension (high blood pressure).<sup>225</sup> Even after his heart attacks, he had to fight DOC for medical treatment and was told his “chest pains” did not warrant treatment by a cardiologist.<sup>226</sup> He has not been permitted to see his cardiologist in over a year, despite the fact that his last ejection fraction (EF) test read at 16%.<sup>227</sup> He still experiences numbness from his surgery.<sup>228</sup> He said that DOC has encouraged people to go to sick call if they feel unwell, but people waiting for sick call must sit in a small room together, often with up to 15 other people.<sup>229</sup>

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<sup>221</sup> Declaration of Maurice Phillip-Meadows, at ¶ 4.

<sup>222</sup> *Id.* at ¶¶ 1, 7.

<sup>223</sup> *Id.* at ¶ 6.

<sup>224</sup> *Id.* at ¶ 24.

<sup>225</sup> *Id.* at ¶¶ 24, 22, 33.

<sup>226</sup> *Id.* at ¶ 25.

<sup>227</sup> *Id.* at ¶¶ 30, 31.

<sup>228</sup> *Id.* at ¶ 32.

<sup>229</sup> *Id.* at ¶ 38.

93. Mr. Meadows lives in a single cell in A unit, B wing.<sup>230</sup> The men in his unit are out most of the day, and at least half of the men from his wing are usually in the dayroom.<sup>231</sup> His entire unit goes to yard and to meals at the same time as other units.<sup>232</sup> They share communal facilities, such as showers and an ice machine.<sup>233</sup> MCC has locked one unit down, but his unit is still going to yard with other units.<sup>234</sup>
94. Mr. Meadows works in the kitchen.<sup>235</sup> There is no hand-sanitizer available.<sup>236</sup> The men eat in close proximity, and the area is not regularly sanitized.<sup>237</sup> Mr. Meadows said DOC has not provided any training or protocols on how to keep the kitchen area clean or prevent the spread of COVID-19, despite the exposure at MCC.<sup>238</sup>
95. When Mr. Meadows is released, he will move home with his wife in Edmonds, Washington.<sup>239</sup> He has a job waiting for him when he returns home.<sup>240</sup>

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<sup>230</sup> Id. at ¶ 9.

<sup>231</sup> Id. at ¶¶ 13-15.

<sup>232</sup> Id.

<sup>233</sup> Id. at ¶¶ 12, 16.

<sup>234</sup> Id. at ¶¶ 18-21.

<sup>235</sup> Id. at ¶ 39.

<sup>236</sup> Id. at ¶ 42.

<sup>237</sup> Id. at ¶¶ 39-45.

<sup>238</sup> Id. at ¶ 48.

<sup>239</sup> Id. at ¶ 51.

<sup>240</sup> Id.

96. **Declarant Linda Graham** is the spouse of John Graham who is currently a resident at Washington Corrections Center (WCC) in Shelton, Washington.<sup>241</sup> Mr. Graham is 67 years old and he entered DOC custody in January of 2020.<sup>242</sup> He has an early release date of September 17, 2020.<sup>243</sup> Mr. Graham currently has no serious medical needs and he is low risk and low security.<sup>244</sup> Mrs. Graham has not been able to see her husband since he entered prison because DOC requires people to get approved for visitation first, which takes weeks.<sup>245</sup> She recently received approval, but WCC has also barred visitation and there is no video visitation at WCC.<sup>246</sup>
97. DOC apparently has opened a quarantine wing at WCC and is pushing more people into the existing cells.<sup>247</sup> Mrs. Graham knows this because she was able to speak to Mr. Graham on the phone.<sup>248</sup> He is now in a cell designed for two people, but there is a third living there now who is sleeping on the floor.<sup>249</sup>

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<sup>241</sup> Declaration of Linda Graham, at ¶ 3.

<sup>242</sup> Id. at ¶¶ 4-5.

<sup>243</sup> Id. at ¶ 5.

<sup>244</sup> Id. at ¶¶ 7-8.

<sup>245</sup> Id. at ¶¶ 15-17.

<sup>246</sup> Id. at ¶¶ 18-19.

<sup>247</sup> Id. at ¶ 13.

<sup>248</sup> Id. at ¶ 12.

<sup>249</sup> Id.

98. With so many people in the wing due to the quarantine, it is really hard to get phone time.<sup>250</sup> Mr. Graham says the younger men always beat him to the phone.<sup>251</sup> All of the men are concerned about what is going on and trying to reach loved ones, resulting in long lines for the phone.<sup>252</sup>
99. The Grahams have been married for 28 years and own a home together.<sup>253</sup> Mrs. and Mr. Graham would be happy to do home monitoring to serve out the rest of Mr. Graham's sentence.<sup>254</sup>
100. **Declarant Timothy Pauley** is a resident at the Monroe Correctional Center (MCC) and is 61 years old.<sup>255</sup> He has been at MCC for approximately ten years and incarcerated since 1980.<sup>256</sup> Mr. Pauley has previously suffered from bowel obstruction and internal bleeding requiring emergency surgery at a nearby hospital.<sup>257</sup>

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<sup>250</sup> Id. at ¶ 20.

<sup>251</sup> Id. at ¶ 22.

<sup>252</sup> Id. at ¶ 21.

<sup>253</sup> Id. at ¶ 6.

<sup>254</sup> Id. at ¶¶ 9-10.

<sup>255</sup> Declaration of Timothy Pauley, at ¶¶ 4, 1.

<sup>256</sup> Id. at ¶¶ 6, 8.

<sup>257</sup> Id. at ¶¶ 28-29.

101. Mr. Pauley lives in a single cell in Unit C.<sup>258</sup> He has access to a sink and a toilet in his cell.<sup>259</sup> He also has soap and warm water available.<sup>260</sup> There are three community showers for 38 people on his tier.<sup>261</sup>
102. Mr. Pauley works as a shift porter at MCC.<sup>262</sup> Porters are given bleach to clean the common areas and they clean several times a day.<sup>263</sup> Mr. Pauley cleans the hallways and shift office using spray bottles with bleach and soap.<sup>264</sup>
103. According to Mr. Pauley, it is impossible to practice social distancing at MCC.<sup>265</sup> When he goes to the yard, there are sometimes 50 people there.<sup>266</sup> At the law library, the computers are close together and there can be 8-16 people sitting together.<sup>267</sup> The day room can have 30-40 people at one time and at the chow hall, the seats are at communal tables.<sup>268</sup> The tables are closer than six feet apart from each other and there are a couple hundred people

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<sup>258</sup> Id. at ¶ 10.

<sup>259</sup> Id. at ¶ 11.

<sup>260</sup> Id.

<sup>261</sup> Id. at ¶¶ 13-14.

<sup>262</sup> Id. at ¶¶ 12, 31-32.

<sup>263</sup> Id. at ¶ 12.

<sup>264</sup> Id. at ¶ 31.

<sup>265</sup> Id. at ¶ 15.

<sup>266</sup> Id. at ¶ 16.

<sup>267</sup> Id. at ¶ 18.

<sup>268</sup> Id. at ¶ 19, 23.

there at any one time, as many as 350 people.<sup>269</sup> There are no hand sanitizers for men at the chow hall, no place to wash hands, and Mr. Pauley has never witnessed the chow hall be cleaned.<sup>270</sup> He has noted that the corrections officers carry bottles of hand sanitizer, but they are not provided to inmates.<sup>271</sup>

104. When people in C unit are on quarantine, they are locked in their cell for a few days.<sup>272</sup> Mr. Pauley has seen these people escorted somewhere else, but he does not know where they go.<sup>273</sup>

105. Mr. Pauley has been classified as low risk in prior psychological evaluations and his last general infraction was in 2012.<sup>274</sup> He has not had a serious infraction since 1995.<sup>275</sup> If released, he has family support, various housing options, and plans to work as soon as he can.<sup>276</sup>

106. **Declarant Joseph Siriani** is a resident at Stafford Creek Corrections Center (SCCC).<sup>277</sup> Mr. Siriani is 65 years old, and

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<sup>269</sup> Id. at ¶ 19.

<sup>270</sup> Id. at ¶¶20-22.

<sup>271</sup> Id. at ¶25.

<sup>272</sup> Id. at ¶ 24.

<sup>273</sup> Id.

<sup>274</sup> Id. at ¶¶36-37.

<sup>275</sup> Id. at ¶ 37.

<sup>276</sup> Id. at ¶¶ 38-39.

<sup>277</sup> Declaration of Joseph Siriani, at ¶ 1.

because of his age, is very worried about the risk of COVID-19.<sup>278</sup>

He is afraid that if he becomes ill with the virus, that DOC cannot and/or will not provide him with proper medical care.<sup>279</sup>

107. **Declarant Brian Stark** is a resident at the Washington Correction Center (WCC).<sup>280</sup> Mr. Stark is 47 years old and has been found by the Indeterminate Sentence Review Board to be safe to be released into the community; his early release date was March 11, 2020.<sup>281</sup> Mr. Stark is awaiting an exact release date from DOC and hopes to be released very soon.<sup>282</sup>

108. Mr. Stark is currently residing on the EF tier in Cedar Hall, which houses 60 men, all of whom share a common day room and bathroom/shower facilities.<sup>283</sup> He shares his cell with another resident who is 52 years old and living with diabetes.<sup>284</sup> Cedar Hall has three other tiers and houses a total of 240 individuals.<sup>285</sup> The residents of Cedar Hall share meals in the same space, usually 150-200 men at a time.<sup>286</sup> Mr. Stark indicates that the only time he can

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<sup>278</sup> Id. at ¶¶ 2-3.

<sup>279</sup> Id. at ¶ 3.

<sup>280</sup> Declaration of Brian Stark, at 1

<sup>281</sup> Id. at ¶¶ 2-3.

<sup>282</sup> Id. at ¶ 4.

<sup>283</sup> Id. at ¶ 6.

<sup>284</sup> Id.

<sup>285</sup> Id.

<sup>286</sup> Id.

maintain six feet of space between himself and other residents is when he is alone in his cell and his cellmate is gone.<sup>287</sup> DOC has provided cleaning supplies and hand sanitizer.<sup>288</sup> However, Mr. Stark reports that there is no indication that DOC has adopted any routine screenings to check residents for symptoms of COVID-19.<sup>289</sup> Mr. Stark is afraid for his safety and wellbeing and is concerned that if he were to be exposed to/become infected with COVID-19, DOC would be unable to provide him with the necessary medical care.<sup>290</sup>

109. **Declarant Hozie Holley** is a resident at Stafford Creek Corrections Center (SCCC).<sup>291</sup> He is 60 years old and has several serious underlying health conditions, including irregular heartbeat and COPD.<sup>292</sup> A lung scan also recently diagnosed a node in his lungs.<sup>293</sup> Mr. Holley is very worried about the introduction and spread of COVID-19 in SCCC and does not believe that the prison has adequate medical resources to care for him if he becomes ill and develops severe symptoms.<sup>294</sup>

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<sup>287</sup> Id.

<sup>288</sup> Id. at ¶ 7.

<sup>289</sup> Id.

<sup>290</sup> Id. at ¶5.

<sup>291</sup> Declaration of Hozie Holley, at ¶ 1.

<sup>292</sup> Id. at ¶ 2.

<sup>293</sup> Id.

<sup>294</sup> Id. at 3.

**The Governor and the Secretary have failed to take actions targeted at preventing the spread of COVID-19 in places of confinement, including prisons and jails, to the detriment of the entire community's public health.**

110. As of March 23, 2020, there were 2,221 confirmed cases of COVID-19 and 110 deaths from COVID-19 in Washington State.<sup>295</sup> This is an increase from 1,012 cases and 52 deaths on March 17, 2020, just six days earlier.<sup>296</sup>
111. The COVID-19 outbreak in Washington State has prompted unprecedented emergency measures to protect public health and enforce social distancing. On March 11, 2020, Governor Jay Inslee issued an emergency proclamation that limited public gatherings to fewer than 250 people, and only with significant public health protections in place.<sup>297</sup> On March 12, 2020, Governor Inslee announced the closure of all K-12 schools in King, Snohomish, and Pierce Counties.<sup>298</sup> On March 13, 2020, Governor Inslee announced that all K-12 schools statewide would be closed for a minimum of six weeks.<sup>299</sup> On March 16, 2020, Governor Inslee

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<sup>295</sup> 2019 Novel Coronavirus Outbreak (COVID-19), Washington State Department of Health, <https://www.doh.wa.gov/Emergencies/Coronavirus> (last visited Mar. 23, 2020).

<sup>296</sup> Id.

<sup>297</sup> Coronavirus 2019 (COVID-19): Latest News, Washington Governor Jay Inslee, <https://www.governor.wa.gov/issues/issues/covid-19-resources> (last visited Mar. 18, 2020).

<sup>298</sup> Id.

<sup>299</sup> Id.

mandated the closure of all bars, restaurants, entertainment and recreation facilities, and gatherings of more than 50 people for at least two weeks.<sup>300</sup> Governor Inslee stated, “If we are living a normal life, we are not doing our jobs as Washingtonians... We need to make changes... All of us need to do more. We must limit the number of people we come into contact with. This is the new normal.”<sup>301</sup> On March 23, 2020, Governor Inslee issued official “stay-at-home” orders to all Washington State residents, in further effort to fight against the rampant COVID-19 outbreak.<sup>302</sup>

112. On March 13, 2020, DOC confirmed that an employee working at the Monroe Correctional Complex-Washington State Reformatory (MCC-WSR) tested positive for COVID-19.<sup>303</sup> DOC responded by asking anyone in close contact with the officer to self-quarantine for 14 days. MCC also placed MCC-WSR A and B units (in which the officer worked) into a “precautionary quarantine” with

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<sup>300</sup> Inslee Announces Statewide Shutdown of Restaurants, Bars and Expanded Social Gathering Limits, Washington Governor Jay Inslee, <https://www.governor.wa.gov/news-media/inslee-announces-statewide-shutdown-restaurants-bars-and-expanded-social-gathering-limits> (last visited Mar. 18, 2020).

<sup>301</sup> Id.

<sup>302</sup> Inslee Announces "Stay Home, Stay Healthy" Order, Washington Governor Jay Inslee (Mar. 23, 2020), <https://www.governor.wa.gov/news-media/inslee-announces-stay-home-stay-healthy%C2%A0order>.

<sup>303</sup> Press Release: First Department of Corrections Employee Tests Positive for COVID-19, Washington Department of Corrections (Mar. 13, 2020), <https://www.doc.wa.gov/news/2020/03132020p.htm>.

modified restricted movement until the 14-day quarantine period ends.<sup>304</sup> DOC further indicated that they were cleaning and disinfecting affected units and providing extra cleaning supplies to the residents.<sup>305</sup> The following day, a second correctional officer at DOC headquarters tested positive for COVID-19.<sup>306</sup> On March 18th, a third DOC officer who works at Peninsula Work Release (PWR) tested positive for COVID-19.<sup>307</sup> By March 20, a second employee at PWR had been diagnosed with COVID-19.<sup>308</sup>

113. In a matter of seven days, four individual officers at three individual facilities were diagnosed. As of March 23, 2020, DOC had tested 31 residents for COVID-19 infection; six tests came back negative, while the other 25 results were still pending.<sup>309</sup> The full impact that these exposures will have on the individuals in custody at DOC facilities is not yet known, but we know that

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<sup>304</sup> Id.

<sup>305</sup> Id.

<sup>306</sup> Press Release: Second Department of Corrections Employee Tests Positive for COVID-19, Washington Department of Corrections (Mar. 14, 2020), <https://www.doc.wa.gov/news/2020/03142020p.htm>.

<sup>307</sup> Press Release: Third Confirmed Case of COVID-19 Reported by Corrections Employee, Washington Department of Corrections (Mar. 18, 2020), <https://www.doc.wa.gov/news/2020/03182020p.htm>.

<sup>308</sup> Office of the Corrections Ombuds Bulletin: COVID-19 Testing Data for Incarcerated Individuals Has Been Released, Office of the Governor/Office of Financial Management (Mar. 21, 2020), <https://content.govdelivery.com/accounts/WAGOV/bulletins/282834a>.

<sup>309</sup> COVID-19 Testing Among Incarcerated Population, Washington Department of Corrections, <https://www.doc.wa.gov/news/covid-19.htm#testing> (last visited Mar. 23, 2020).

residents who have come into contact with these DOC employees are at serious risk of harm.

**The failure of the Governor and the Secretary to take protective actions targeted at places of confinement, including prisons and jails, must be remedied quickly before it is too late.**

114. Information about the scope and severity of the threat that COVID-19 poses to people living in carceral facilities is readily accessible and grows in volume in each day.<sup>310</sup> In the past week, multiple jurisdictions have confirmed their first cases of COVID-19 among the residents of their prisons and jails.<sup>311</sup> Other states, similar to Washington State, have confirmed cases of COVID-19 in corrections officers, while the residents in their corrections facilities remain at risk of possible exposure.<sup>312</sup> The Supreme Court of the State of Montana issued an advisory letter to the state's lower court judges to immediately begin reducing the

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<sup>310</sup> Declaration of Alex Bergstrom, at 4.

<sup>311</sup> *See generally*, 21 Inmates, 17 Employees Test Positive for COVID-19 on Rikers Island: Officials, NBC New York (Mar. 21, 2020), <https://www.nbcnewyork.com/news/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/>.

<sup>312</sup> *See generally*, Emily Hamer, Wisconsin Prison Employee Tests Positive for COVID-19; Inmate Advocates Call for Protections Amid Pandemic, Wisconsin State Journal (Mar. 20, 2020), [https://madison.com/news/local/crime-and-courts/wisconsin-prison-employee-tests-positive-for-covid--inmate-advocates/article\\_724c81a5-61e8-5bb2-b5ac-24ba210a9a76.html](https://madison.com/news/local/crime-and-courts/wisconsin-prison-employee-tests-positive-for-covid--inmate-advocates/article_724c81a5-61e8-5bb2-b5ac-24ba210a9a76.html).

populations in the state’s corrections facilities.<sup>313</sup> In his letter, Chief Justice Mike McGrath wrote, “at this time, there does not appear to be an outbreak of COVID-19 in any of Montana’s correctional facilities. However, it is only a matter of time. Due to the confines of the facilities, it will be virtually impossible to contain the spread of the virus.”<sup>314</sup>

## **V. DEMAND FOR JUDGMENT**

### **Violation of Wash. Const. Art. I, § 12 – Privileges and Immunities Clause**

115. The Governor declared a statewide state of emergency and has exercised emergency powers under RCW 43.06.220 to preserve the life, health, and safety of members of the public.
116. The Governor has failed to exercise emergency powers, or use any other statutory authority, to fulfill his duty to preserve the life, health, and safety of Petitioners and others in the custody of the state Department of Corrections.

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<sup>313</sup> Letter from C.J. Mike McGrath, Mont. Sup. Ct., to JJ. Mont. Ct. Ltd. Jurisdiction (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>314</sup> Id.

117. There are no reasonable grounds for failing to act to protect the life, health, and safety of Petitioners during the state of emergency due to the COVID-19 outbreak.

118. The Governor has violated Washington Constitution, art. I, §12 by failing to fulfill his duty to preserve the life, health, and safety of Petitioners during the COVID-19 state of emergency.

**Violation of Duty to Exercise Emergency Powers to Protect Petitioners under RCW 43.60.220**

119. The Governor has violated his duty to protect the life, health, and safety of Petitioners during the state of emergency due to the COVID-19 outbreak by failing to exercise his emergency powers to take actions to protect Petitioners.

**Violation of Wash. Const. Art. I., § 14 – Cruel Punishment**

120. The Secretary has an affirmative duty to provide for the health, welfare, and safety of people in DOC custody.

121. The Secretary was aware of a substantial risk of serious harm to people in DOC custody due to the COVID-19 outbreak.

122. The Secretary has failed to take action effective to mitigate the risk of serious harm to people in DOC custody due to the COVID-19 outbreak.

123. This failure to take action to mitigate the substantial risk of serious harm, of which he was aware, violates Article I, § 14 of the Washington Constitution.

**Violation of Washington Constitution Art. I, § 12 and Washington Law Against Discrimination (WLAD), RCW 49.60 – Failure to Accommodate**

124. The Washington Constitution, Article I, § 12, and the Washington Law Against Discrimination, RCW 49.60, establish the right of freedom from discrimination.

125. Petitioners have serious medical conditions that constitute disabilities within the meaning of RCW 49.60.

126. The Secretary has a duty to Petitioners not to discriminate against them based on their disabilities.

127. The Secretary failed to accommodate Petitioners' disabilities by failing to take action effective to mitigate the risk of harm to them due to the COVID-19 outbreak.

128. By failing to accommodate Petitioners' disabilities during the COVID-19 outbreak, the Secretary has failed to fulfill his duty not to discriminate under the Washington Constitution and the WLAD, RCW 49.60.

**VI. RELIEF REQUESTED**

Petitioners ask this Court to grant the following relief:

1. Declare that the Department of Corrections Secretary and the Governor must take actions necessary to prevent the spread of a highly infectious virus to vulnerable populations in State custody to satisfy their duties under Article 1, § 12 of the Washington Constitution, RCW 43.60.220, Article I, § 14 of the Washington Constitution, and the Law Against Discrimination, RCW 49.60.
2. Order Governor Inslee to exercise his broad emergency authority under RCW 43.06.220 and any other statutory authority detailed below to:
  - a. Direct Department of Corrections Secretary Sinclair to immediately identify all people incarcerated in any DOC facility, or any other institution operated by any other Washington State agency; all people held in any local or county institution under any DOC warrant or hold; and all people incarcerated in any out-of-state facility at DOC's request, who fall into any one of the following three categories:
    - i. People who are 50 years of age and older;
    - ii. People who have serious underlying medical conditions that put them at particular risk of serious harm or death from COVID-19, including but not

limited to: currently pregnant individuals, those with chronic lung disease or moderate to severe asthma, people with heart disease, people who are immunocompromised due to cancer or other medical conditions or treatment, people with severe obesity, people with any other underlying serious medical conditions such as those with diabetes, renal failure, liver disease, and any other condition specifically identified by CDC either now or in the future as being a particular risk for severe illness caused by COVID-19; or

iii. People who do not fall under (i) or (ii) above and have early release dates within the next 18 months or those people who are currently on work release.

- b. Direct Department of Corrections Secretary Sinclair to provide this list of people to the Clemency and Pardons Board.
- c. Call an emergency meeting of the Clemency and Pardons Board and direct the Board to recommend that Governor Inslee should exercise his commutation or pardon power to meet the present COVID-19 emergency pursuant to RCW

9.94A.870(2) by commuting the sentences of people who fall into one of the three categories listed above.

- c. Direct the Clemency and Pardons Board to waive the 30-day hearing notice under RCW 9.94A.885(3).
- d. Direct DOC Secretary Sinclair to take all necessary steps to ensure the immediate release of people whose sentences are commuted or granted extraordinary release as described above.
- e. Direct DOC Secretary Sinclair to release people so that local and community hospital systems in the areas in which prisons or work release facilities lie are not compromised.
- b. Direct DOC Secretary Sinclair to ensure that any person being released is provided with the resources and supports necessary to meet their housing and medical needs.
- c. Direct the Clemency and Pardons Board and the Department of Corrections to ensure that release decisions are based on equitable criteria that do not exacerbate racial or socioeconomic disproportionality, that ongoing assessment of racial or socioeconomic disproportionality will occur, and that these criteria and results of assessments are made available to the public.

- d. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting furlough to people in one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- e. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting extraordinary medical placement to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- f. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section release pursuant to graduated reentry.
- g. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from removing any warrant, hold, or other order that prohibits people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.

- h. Waive any statutory or regulatory obligation or limitation to prohibit DOC Secretary Sinclair from ordering Community Corrections Officers' detaining of persons under DOC supervision for alleged Community Custody violations.
- i. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting commutation or clemency to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- j. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting extraordinary release pursuant to RCW 9.94A.728 (1)(d) to people who fall into one or more of the three categories listed above.
- k. Waive any statutory or regulatory obligation or limitation that prohibits the Sentencing Guidelines Commission or Governor Inslee from revising the standard ranges and other standards to allow for release of people who fall into

one or more of the three categories listed in (2)(a)(i) - (iii) of this section.

1. Direct DOC Secretary Sinclair to identify any statutory or regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay the immediate release from custody of people who fall into one or more of the three categories listed above or the provision of resources and supports necessary to meet their housing and medical needs.
  - m. Issue an order or orders concerning waiver or suspension of the obligations or limitations that DOC Secretary Sinclair identifies pursuant to the prior directive.
  - n. Issue an order prohibiting any other activity that should be prohibited to help preserve and maintain life, health, property, or the public peace, related to the subject matter of this lawsuit.
3. Order Department of Corrections Secretary Sinclair to:

- a. Immediately take all necessary action to furlough and implement emergency medical releases for all people who fall within one of the three categories identified in (2)(a)(i) - (iii) of this section.
- b. Immediately release any individuals who qualify for graduated reentry under RCW 9.94A.733.
- c. Immediately implement a plan ensuring that all people in custody who need it receive appropriate medical care, including COVID-19 screening, testing, and treatment.
- d. Immediately issue an order removing any DOC warrant, hold, or other order that prohibits individuals in any of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.
- e. Immediately provide written and verbal education to individuals in custody on the hazards of COVID-19 and appropriate precautions and disseminate accurate and timely information about COVID-19 and its spread to individuals in custody.
- f. Immediately provide all people in custody unfettered access to soap and water, single use towels, and hand sanitizer.

- g. Immediately suspend any DOC orders, policies, and/or regulations that designate ethyl-alcohol based hand sanitizer as contraband and that charge any individuals for soap or hand sanitizer and immediately communicate this change in policy to those in DOC custody via public address announcements in all housing units and yards and visible postings in in all housing units, medical clinics, dining and programming spaces. Postings must be available in English, Spanish, and in any other predominantly spoken language. For inmates incarcerated in maximum custody, detention, or any other units where they may not hear or see these changes in policies, they must be provided individual written and verbal notification in English, Spanish, and any other predominantly spoken language.
- h. Ensure that people held in custody by DOC receive medical care that meets or exceeds the community standard of care, and that this medical care follows appropriate and ongoing COVID-19 federal, state, and local public health guidelines and recommendations, including those related to access to personal protective equipment, ventilators, intensive care units, and trained medical personnel.

- i. Immediately implement to the extent possible social distancing measures necessary to prevent the spread of COVID-19 without resorting to confining people in their cells for extended periods of time.
- j. To ensure the health and safety of all people under DOC's care at all times, immediately implement appropriate staffing plans to address likely correctional and medical staffing shortages.
- k. Immediately provide telephone and e-mail access to those in DOC custody free of cost.
- l. Ensure that no individual will be retaliated against for requesting medical care, including treatment for suspected illness or requests for COVID-19 testing, or for requesting supplies or precautionary actions as recommended by COVID-19 public health guidelines. Prohibited retaliation includes but is not limited to being infraacted or placed in 23-hour lockdown. This anti-retaliation policy shall be immediately communicated to all DOC staff and individuals in custody and included in any announcement, posting, or other communication made for the purpose of training or providing information about COVID-19.

- m. Immediately end the sanctioning of persons under DOC supervision for violations of Community Custody.
- n. Within three days of this order, notify all victims and witnesses enrolled in the Department's Advance Notification Program of the potential of a mass release of prisoners to prevent the spread of COVID-19 so that they can begin necessary safety planning. Notification shall also include referral information for domestic violence resources as well as legal services. DOC should confer with victim advocates and legal services to develop the notification and shall also take immediate action to increase staffing to Victim Services to facilitate appropriate, case-specific notifications.

5. Award Petitioners all costs and attorney fees under any applicable authority.

6. All other and further relief this Court deems just and proper.

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DATED this 24<sup>th</sup> day of March, 2020.

By: s/ Nicholas Allen  
Nicholas Allen, WSBA #42990  
Nicholas B. Straley, WSBA #25963  
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# COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

March 24, 2020 - 11:05 AM

## Filing Original Action Against State Officer

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#### Comments:

The attached corrected version of Original Action Against State Officer is intended to entirely replace the version filed last night by Columbia Legal Services.

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