

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel.	*	
Derek Lichtenwalter	*	Case No.: 2020-0401
	*	
Relator,	*	Original Action
	*	
vs.	*	
	*	
Mike DeWine, Governor of Ohio, et al.,	*	
	*	
Respondents.	*	

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF RELATOR DEREK LICHTENWALTER**

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

The ACLU of Ohio Foundation, Inc. (ACLU) moves for leave to file the attached amicus curiae brief in support of Relator. Relator filed a *pro se* petition for a writ of mandamus and/or habeas corpus in this Court, seeking relief due to the one-in-a-lifetime Coronavirus pandemic. The Court *sua sponte* directed the State to reply by March 30, 2020, and relator to respond by April 6, 2020. Consistent with this schedule, ACLU submitted an amicus brief to the Court for filing on April 4. However, the Clerk declined to file ACLU of Ohio's brief "because the court has not set a briefing schedule."

Under most circumstances, "leave to file an amicus brief is not required." S. Ct. Pract. R. 16.06. Amicus ACLU requests the Court to grant leave to file an amicus brief at this time without awaiting a future briefing schedule.

First, this case raises significant issues of public importance, including the Constitutional right of prisoners to be free from cruel and unusual punishment. In its amicus brief, ACLU will provide helpful information about the relevant legal doctrines, the unique harms of the Coronavirus, and detailed information about the dangers of infection that exist in Ohio prisons.

Second, the amicus brief will be useful at this stage. The Court *sua sponte* ordered a briefing schedule around the State's response to the relator's requested writ. Amicus submitted its brief to the Court as part of that briefing schedule to aid the Court in its decision.

Third, time is of the essence. When facing a highly infectious and deadly pathogen, every day matters. The attached amicus brief describes the peril of further delay and urges this Court to take prompt action that could save lives.

For these reasons, ACLU requests that the Court grant it leave to file an amicus brief, and accept the attached brief for filing.

Respectfully submitted,

/s/ Joseph Mead

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CERTIFICATE OF SERVICE

I certify that on April 6, 2020, I filed the foregoing via the Court's electronic filing system, and also served copies of this brief by e-mail as follows:

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**BRIEF OF *AMICUS CURIAE* ACLU OF OHIO FOUNDATION, INC.
IN SUPPORT OF RELATOR DEREK LICHTENWALTER**

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STATEMENT OF *AMICUS* INTERESTS

The American Civil Liberties Union of Ohio Foundation, Inc. (ACLU) is the Ohio affiliate of the American Civil Liberties Union, one of the oldest and largest organizations in the nation dedicated to the preservation and defense of the Bill of Rights. With more than 1.5 million members across the country, and with approximately 200,000 members, supporters and activists in Ohio, the ACLU appears routinely in state and federal courts, both as amicus and as direct counsel, without bias or political partisanship, to hold the government accountable to the public, and to protect the rights of individuals.

The ACLU, along with its partners, have repeatedly informed the State about the unnecessary risks of overcrowded prisoners and unnecessary detention in the midst of the current pandemic. The ACLU has repeatedly urged the State to take swift action to release people unnecessarily incarcerated in order to limit the speed of transmission in order preserve the prisoners' health, as well as the health of prison staff and the general community.

INTRODUCTION

An unprecedented global pandemic is putting the lives of Ohioans at imminent risk. The risk is amplified in Ohio's prisons. There is no way for incarcerated Ohioans, like Relator Derek Lichtenwalter, to practice the social distancing and hygiene methods necessary to prevent infection. While County jails, federal halfway houses, and other detention facilities are effectuating mass releases to mitigate this disaster,¹ the nearly 49,000 Ohioans in already-overcrowded state prisons remain confined. The state has made no meaningful relief plan besides deregulating the

¹ See, e.g. Scott Noll and Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic*, News 5 Cleveland (Mar. 20, 2020) <https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic>

use of rubbing alcohol to spray surfaces. *See letter from ODRC to ACLU of Ohio*, Mar. 13, 2020, Attached as Exhibit 3. Time is of the essence, as the Covid-19 virus has already infiltrated these facilities. On April 2, a federal prison in Ohio reported its first infection-related death.² By April 4, two Ohio state prisons were under quarantine. Without immediate and drastic action, prisons and jails will become “the epicenter of the pandemic.”³ More incarcerated people will get seriously ill and die.

Relator filed as a *pro se* prisoner living with HIV in Belmont Correctional Institute. Justifiably terrified for his life, he asked this Court for emergency relief through two extraordinary writs in the alternative: mandamus or habeas corpus. The State disputes none of relator’s facts. Instead, the State argues that it has no legal obligation to prevent exposure to a deadly virus, “regardless of the potential of the risk posed” and that a *pro se* litigant who is in urgent, life-threatening danger cannot obtain relief because he sought it using the wrong procedural mechanisms.

The State has a duty under the federal and state constitutions to protect incarcerated people from unnecessary exposure to serious illness, and this Court has the power to grant Mr. Lichtenwalter the relief he seeks. Due to the uniquely dangerous and exponentially-worsening COVID-19 pandemic, immediate action is needed. Delay could result in death.

This is the first time a request for COVID-related medical release is before this Court, and

² Ohio Department of Rehabilitation and Correction, *COVID-19 Information* (Apr. 2, 2020), https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-02-2020%20Revised_1.pdf

³ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), available at <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>; *see also* Verified Petition for Writ of Habeas Corpus, *People ex rel. Stoughton v. Brann*, N.Y. Sup. Ct. No. 260154/2020, at ¶ 3 (Mar. 25, 2020), noting that the rate of viral spread at Riker’s Island is currently 85 times the rate in the outside community.

at-risk prisoners in every type of detention situation are asking the state and federal courts for similar relief. Because of the large-scale and quickly-evolving nature of this issue, this case presents the Court with a key opportunity to provide lower courts guidance for providing life-saving relief. State prisoners in Ohio urgently need an immediate and effective remedy, not only to protect themselves, but also to protect prison staff and surrounding communities. The State did not, and could not, impose a death sentence on people like Mr. Lichtenwalter, serving a 30-month sentence for a non-violent offense; however, inaction in the face of this deadly disease could mean exactly that. Those who survive the horrors imposed on the incarcerated population by the Covid-19 pandemic will do so amidst prison conditions and inadequate medical care that itself constitutes unconstitutionally cruel and unusual punishment.

STATEMENT OF FACTS

These are extraordinary times. As Governor Mike DeWine has bluntly warned: “We haven’t faced an enemy like we are facing today in 102 years. We are at war.”⁴ “No one alive has seen anything like this.”⁵ The coronavirus pandemic has caused states of emergency in Ohio and throughout the nation.⁶ In a desperate attempt to save the lives of people residing in this state, the State has issued unprecedented orders suspending elections, closing private businesses, cancelling sporting events, shuttering schools, and ordering people to stay at home.

⁴ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 22, 2020, 2:27PM) <https://twitter.com/GovMikeDeWine/status/1241793706547646464?s=20>

⁵ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 15, 2020, 4:32PM) <https://twitter.com/GovMikeDeWine/status/1239288414417178624?s=20>

⁶ Ohio. Exec. Order No. 2020-01D (Mar. 9, 2020), available at https://content.govdelivery.com/attachments/OHOOD/2020/03/09/file_attachments/1396418/Executive%202020-01D.pdf; Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>.

The United States has more confirmed cases of COVID19 than any other country in the world. As of April 4, when *amicus* was finalizing this brief, the confirmed cases in the U.S. was listed at 265,001, and that number rises exponentially each day. In the 30 minutes it takes someone to read this brief, several hundred additional people will be diagnosed with COVID19 in the United States. The number of confirmed diagnoses are just “the tip of the iceberg;”⁷ untold scores of additional people are infected and have not yet shown symptoms, been tested, or have a confirmed diagnosis, yet may be unwittingly continuing to spread the disease.

“COVID-19 is twice as contagious as the flu, and 20 times more deadly.”⁸ This tragic combination of infectious and deadly makes this a virus a once in a lifetime threat. The disease spreads “easily and sustainably” from person-to-person.⁹ Both symptomatic and asymptomatic people can spread COVID-19. A recent medical study concluded that that people may be infectious for nine days before symptoms even appear.¹⁰ The virus can live on plastic and steel surfaces for up to 72 hours,¹¹ and, powered by a single cough or sneeze, can be propelled in a gas cloud that extends up to 27 feet in length.¹² Epidemiologists estimate that the average infected person spreads

⁷ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 24, 2020, 2:29PM) <https://twitter.com/GovMikeDeWine/status/1242518916238368770?s=20>

⁸ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar 14, 2020, 2:19PM) <https://twitter.com/GovMikeDeWine/status/1238892579262992384?s=20>

⁹ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (accessed Apr. 3, 2020).

¹⁰ Ruiyun Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2)*, *Science* (2020), available at <https://science.sciencemag.org/content/early/2020/03/24/science.abb3221.long>

¹¹ Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *New England Journal of Medicine*, 2 (2020), available at <https://doi.org/10.1056/NEJMc2004973> (accessed Apr 2, 2020).

¹² Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, *JAMA* (2020), <https://jamanetwork.com/journals/jama/fullarticle/2763852> (accessed Apr 2, 2020).

the disease to between two and four others.¹³ Indeed, under certain conditions, a single person can infect hundreds more.¹⁴ Given this exponential spread, time is of the essence. As Gov. DeWine has stated, “Timing is everything. Every day and every person matters.”¹⁵

COVID-19 can cause severe respiratory illness, as well as damage to other major organs. Treating serious cases therefore “requires significant advanced support, including ventilator assistance for respiration and intensive care support.”¹⁶ For high-risk patients who survive, the effect of contracting this virus can be permanent and debilitating, and can include “profound deconditioning, loss of digits, neurologic damage, and loss of respiratory capacity.”¹⁷

COVID-19 is also a death sentence for many people. As of March 23, over 4% of people known to be infected with the virus worldwide have died.¹⁸ More Americans have now died from COVID19 than in the terrorist attacks of September 11, 2001, and the number grows exponentially each day.¹⁹ The fatality rate increases with age and among those with conditions that make them particularly susceptible to the effects of the virus. The CDC advises, “patients with underlying

¹³ Jenny Gross and Mariel Padilla, *From Flattening the Curve to Pandemic: A Coronavirus Glossary*, N.Y. Times (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/us/coronavirus-terms-glossary.html>.

¹⁴ See, e.g., *The Korean Clusters*, Reuters Graphics (Updated Mar. 20, 2020) <https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html> (explaining how a single patient in South Korea infected 1,160 people).

¹⁵ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar 16, 2020, 3:18PM) <https://twitter.com/GovMikeDeWine/status/1239632106717937664?s=20>

¹⁶ *Id.*

¹⁷ Declaration of Dr. Jonathan Golob, *Dawson v. Asher*, W.D. Wash. No. 2:20-cv-00409-JLR-MAT at ¶ 4 (Mar. 16 2020), available at <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-jonathan-golob>.

¹⁸ World Health Organization, *Coronavirus disease 2019 Situation Report – 63*, (Mar. 23, 2020) available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=b617302d_2

¹⁹ As of April 3, 2020, Center for Disease Control reported 5,443 deaths. Centers for Disease Control and Prevention, *Cases in U.S.* (updated Apr. 3, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

health conditions and risk factors, including, but not limited to, diabetes mellitus, hypertension, COPD, coronary artery disease, cerebrovascular disease, chronic renal disease, and smoking, might be at higher risk for severe disease or death from COVID-19.”²⁰ But this disease “can kill healthy adults in addition to elderly people with existing health problems.”²¹ Indeed, over half of the people hospitalized for COVID19 have been under 65 years old.²² The youngest person to die of COVID-19 was just 7 weeks old.²³

Even if a person with COVID-19 survives, the chance of serious illness requiring hospitalization is startlingly high. Approximately 20 percent of adults aged 18 to 65 infected with COVID-19 are hospitalized, and that percentage jumps for people over 65.²⁴ Roughly 25 percent of those needing hospitalization have life-threatening symptoms that require intensive care.²⁵ Even those who avoid hospitalization face high fevers, painful coughing, and pained breathing.

Because there is no vaccine or herd immunity to prevent this pernicious disease, there are only two ways to prevent its spread: physical social distancing (i.e., remaining at least six feet

²⁰ Centers for Disease Control and Prevention, *Preliminary Estimates of the Prevalence of Selected Underlying health Conditions Among Patients with Coronavirus Disease 2019 - United States, February 12-March 28, 2020* (updated Apr. 3, 2020) <https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm>

²¹ Bill Gates, *Responding to Covid-19 – A Once-in-a-Century Pandemic?*, New Eng. J. of Med. (Feb. 28, 2020), available at <https://nejm.org/doi/full/10.1056/NEJMp2003762>.

²² Centers for Disease Control and Prevention *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12-March 16, 2020* (updated Mar. 26, 2020)

https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm?s_cid=mm6912e2_w

²³ Arthur Villasanta, *Coronavirus Deaths: 7-Week Old Baby Dies of Covid-19 in Connecticut, World’s Youngest Victim*, International Business Times (Apr. 1, 2020), <https://www.ibtimes.com/coronavirus-deaths-7-week-old-baby-dies-covid-19-connecticut-worlds-youngest-victim-2951125>.

²⁴ *Severe Outcomes* at Table. Hospitalization, intensive care unit (ICU) admission and case-fatality percentages reported COVID-10 cases, by age group – United States, February 12-March 16, 2020, https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm#T1_down

²⁵ *Id.*

away from other people) and hygiene (i.e., hand washing and regular cleaning of surfaces). This makes jails and prisons especially ill-suited to the prevention of outbreaks. *See* Affidavit of Dr. Meghan Novisky (attached as Exhibit 1). The problem is exacerbated in Ohio’s prisons, strained well beyond 100% capacity. 48,857 prisoners were housed in Ohio prisons. An additional 10,952 people work in Ohio’s prisons.²⁶ As Professor Novisky, an expert on health among incarcerated people with particular knowledge of the Ohio prison system explains:

[I]f serious action is not taken swiftly, Ohio’s prisons will soon be hotspots for COVID-19, with many staff and incarcerated individuals infected and facing elevated risks for medical complications and mortality. This is due to the presence of factors that aggravate the spread of COVID-19 include lack of social distancing, concentrations of older adults, and lack of access to proper sanitation.²⁷

“Quarantine and social distancing are impossible” in most of Ohio’s prisons.²⁸ “Many prisoners in ODRC custody share cells, supplies, and living spaces, severely compromising ODRC’s abilities to follow CDC physical distancing guidelines. Typically, each Ohio prison has only a limited percentage of its cells devoted to solitary living conditions. Some prisons have housing units set up where multiple rows of bunk beds are included in a single large room.”²⁹ Further, it is impossible to avoid the close contact between prisoners and staff, required “in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise the prisoner workforce.”³⁰ Limited supplies of soap, and the unavailability of disinfectant and hand-sanitizers, also make it impossible for prisons to

²⁶ Novisky Aff. ¶ 8

²⁷ Novisky Aff. ¶ 9

²⁸ Novisky Aff. ¶ 12

²⁹ *Id.*

³⁰ Novisky Aff. ¶ 13

comply with medically-indicated sanitation regimes, further exacerbating the dangers from close living.³¹

Since the coronavirus outbreak hit Ohio, *amicus* has received hundreds of reports from state prisoners and their loved ones expressing escalating fear about spread inside the DRC—including from Belmont Correctional where Relator is confined. The reports discuss overcrowding, lack of medical care, lack of access to hygiene materials, and the impossibility of social distancing. *Amicus* has heard predominantly from family members of prisoners with compromised health—people living with HIV like Relator, and people with asthma, diabetes, heart disease, and other preexisting conditions creating particular susceptibility to COVID-19. Legitimate fear is fomenting inside the prisons as incarcerated people and their families contemplate this harsh reality: continued confinement for health-compromised people during the viral spread is a potential death sentence.

Similarly, the risk to Ohio prison staffs, the prisoners themselves, and surrounding communities is not speculative. As of April 6, at least two prison staff members and one prisoner have already tested positive for COVID19.³² The entirety of Marion, Pickaway, and Toledo Correctional Institutions are in attempted quarantine.³³ The disease is spreading so rapidly elsewhere, particularly in uncontrolled environments, that the data contained in this brief is certainly under inclusive, and will become stale just in the very short time between the finalization

³¹ Novisky Aff. ¶14

³² Ohio Department of Rehabilitation and Correction, *DRC Confirms Positive COVID-19 Test Result of Correctional Staff Member at Marion Correctional Institution* (Mar. 29, 2020), available at <https://www.drc.ohio.gov/Family/COVID-19-UPDATES>

³³ Ohio Department of Rehabilitation and Correction, *COVID-19 Information*, (updated Apr. 3, 2020), <https://www.drc.ohio.gov/Organization/Research/Reports/COVID-19-Information>

and the filing of this brief. The only certainty is that the numbers of infections and deaths will continue to rise for a significant period before they start going down.

Lessons from other states and federal prisons confirm the danger posed by the virus to incarcerated people. For example, the first case of COVID19 in the Cook County Jail in Illinois was confirmed on March 23. By April 1, 167 prisoners and 34 staff members tested positive.³⁴ In Ohio's Elkton federal prison, 3 prisoners have already tested positive, another 80 are symptomatic, and the first death has been reported,³⁵ spurring the Attorney General to order the prison to "maximize" release of "all appropriate inmates."³⁶ Nationwide, the virus-related death rate in prisons is climbing.

The ripple effects of an outbreak in prison endanger everyone in Ohio. As high numbers of prisoners become ill, they will need to be hospitalized in already-overwhelmed community hospitals. Prison staff will be exposed to extreme risk of infection, and bring that risk of infection outside of the prison to their families and communities every single day.

Given this reality, numerous state and local officials recognize the need for drastic action to reduce the risk of a massive outbreak. In New Jersey, a state court ordered the temporary release of as many as 1,000 inmates.³⁷ In New York City, more than 1,000 individuals will be released after the New York City Board of Correction called on the city to "immediately remove from jail

³⁴ *167 Cook County Jail Detainees Have Tested Positive for COVID-19, Officials Say*, NBC 5 Chicago (Apr. 1, 2020) <https://www.nbcchicago.com/news/local/167-cook-county-jail-detainees-have-tested-positive-for-covid-19-officials-say/2248892/>

³⁵ Rachel Polansky, *Exclusive: 3 inmates test positive at eastern Ohio prison for COVID-19, another 80 are showing symptoms*, WKYC (Apr. 1, 2020) <https://www.wkyc.com/article/news/investigations/3-elkton-inmates-test-positive-for-covid-19-another-80-are-showing-symptoms/95-e24580c2-dd59-4c0a-9334-1aa061b4abbe>

³⁶ United States Attorney General Memorandum to Director of Bureau of Prisons (April 3, 2020), <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>

³⁷ In the Matter of the Request to Commute or Suspend County Jail Sentences, Consent Order, (N.J. No. 084230 Mar. 22, 2020)

all people at higher risk from COVID-19 infection.”³⁸ The Iowa Department of Corrections has already begun to release 700 people from state prisons.³⁹ Similarly, multiple state supreme courts have ordered release at various levels, including the supreme courts of Hawaii, California, Michigan, Montana, and South Carolina.⁴⁰ This is in addition to the many state and federal courts ordering release of medically compromised and other at-risk incarcerated persons across the country—a list that grows by the hour.⁴¹

The State’s current responses to this health crisis in prison are not effective. But reducing the prison population *is* an effective path to limiting transmission and minimizing adverse outcomes among people who live or work in prisons.⁴² Prisoners who are at high risk of complication from the virus and/or those who pose minimal risk to public safety should be promptly released.

Faced with the stark reality of the pandemic’s likely impact on incarcerated people, Relator Derek Lichtenwalter filed an original action in mandamus or in the alternative habeas corpus, asking this Court to direct the State to take steps to protect the prison population, particularly those at high risk of death or serious illness and/or serving terms of incarceration that can be readily suspended or ended. The Court *sua sponte* ordered the State to respond by March 30, 2020. Notably, the State’s response did not contest any of the Relator’s allegations. The State’s response

³⁸ *NYC to Release More Than 1,000 Prison Inmates Due to Coronavirus Concerns*, Associated Press (Mar. 25, 2020), available at <https://www.syracuse.com/coronavirus/2020/03/nyc-to-release-more-than-1000-prison-inmates-due-to-coronavirus-concerns.html>

³⁹ Kimberly Kindy et al., *‘Disaster Waiting to Happen’: Thousands of Inmates Released as Jails and Prisons Face Coronavirus Threat*, Washington Post, (Mar. 25, 2020), available at https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html

⁴⁰ See Appendix, attached as Exhibit 2.

⁴¹ *Id.*

⁴² Novisky Aff. ¶17

did not suggest it was taking *any* steps to protect prisoners. Instead, the State made a startling claim: that it lacks any duty to protect prisoners from danger “regardless of the potential of the risk posed.” Mot. to Dismiss at 5.

Amicus writes to rebut the State’s position that Relator must risk death in prison from a preventable infection—when releasing him may save his life. The State has a constitutional duty to Relator, and must urgently deploy a release plan, with a priority focus on health-compromised prisoners whose lives are needlessly threatened by this pandemic.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Despite the State’s use of broad and unprecedented authority to protect the health of virtually everyone *not* incarcerated in Ohio, the State simultaneously disclaims its duty to protect people in the State’s custody, the prison staff who interact with them, and others who live in communities in which prison staff live, from this highly infectious and deadly threat. In fact, the State makes the shockingly broad claim that no prisoner has a right to relief “based solely on fears of COVID-19, or any other infectious disease, *regardless of the potential of the risk posed.*” Resp. Mot. To Dismiss 5 (emphasis added).

The State is wrong. Both the United States and Ohio Constitutions prohibit cruel and unusual punishment. This Constitutional mandate imposes a duty on the State to “protect[] against future harm to inmates,” including “exposure of inmates to a serious, communicable disease.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). As noted above, as contagious and deadly as Coronavirus is for the public at large, the risk to imprisoned people is far worse. The danger is not speculative; it is here. The Coronavirus has already entered Ohio’s prisons. Current medical knowledge, coupled with the experience from other states, point to a grim future of disease and death for people incarcerated, as well as prison staff and other communities that will likely be

affected by the state's failure to manage this situation.

In the midst of state action being rapidly undertaken across the country and at the local level in Ohio to depopulate prisons and protect vulnerable prisoners, the State of Ohio has failed to meaningfully act with respect to this population. Now, the state's inaction is being challenged in this Court,⁴³ and its position is that it *has no duty* to act *at all*. Every moment the State delays taking meaningful action it unlawfully subjects more people to an avoidable risk of exposure to a deadly pathogen. The State has shown a willingness to take drastic steps to slow the spread of Coronavirus among other Ohio residents and, by extension, to others living in the U.S. and around the globe. It has a Constitutional duty to also take appropriate steps to protect people in its custody. This Court has original jurisdiction under the Constitution to issue writs. The State's refusal to fulfill its Constitutional duty warrants relief from this Court in this urgent case of first impression.

I. Proposition of Law No. I: The Unnecessary Exposure of Coronavirus to Prisoners Violates the United States and Ohio Constitutions' prohibitions against Cruel and Unusual Punishment

The United States and Ohio Constitutions both prohibit cruel and unusual punishment. U.S. Const. Am. 8; Ohio Const. Art. 1, § 9. While “[t]he United States Constitution provides a floor for individual rights and civil liberties, []state constitutions are free to accord greater protections,” Article I, Section 9 provides protection “independent of” the Eighth Amendment.” *State v. Broom*, 2016-Ohio-1028, ¶ 55, 146 Ohio St. 3d 60, 51 N.E.3d 620; *see also In re C.P.*, 2012-Ohio-1446, ¶ 59, 131 Ohio St. 3d 513, 967 N.E.2d 729.

⁴³ While counsel for *amicus* were finalizing this brief, at an April 3 press conference the Governor announced he would allow 38—out of almost 49,000—state prisoners to apply to their sentencing judges for release related to COVID-19, including 23 pregnant women. This is the first, and only, signal the State has provided as to release. For context, last year, the Ohio prison system released an average of over *60 prisoners a day*. Ohio Department of Rehabilitation and Correction, *January 2020 Fact Sheet*, <https://drc.ohio.gov/Portals/0/Jan%20fact%20sheet.pdf>

The Constitutional prohibitions against cruel and unusual punishment impose “duties on [prison] officials” that include protecting “the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *see also Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982) (“[I]t is cruel and unusual punishment to hold convicted criminals in unsafe conditions.”). It is unconstitutional for the State to fail to take steps to prevent “exposure of inmates to a serious, communicable disease.” *McKinney*, 509 U.S. at 33; *see also id.* at 34 (noting “inmates were entitled to relief under the Eighth Amendment when they proved threats to personal safety” such as a risk of contracting a “serious contagious disease”); *Hutto v. Finney*, 437 U.S. 678, 682-685 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

The “remedy for unsafe conditions need not await a tragic event,” *McKinney*, 509 at 33; *see also Stefan v. Olson*, 497 F. App'x 568, 577 (6th Cir. 2012) (that “the Eighth Amendment protects against future harm to inmates is not a novel proposition.”) To the contrary, “it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Farmer*, 511 U.S. at 842. Thus, a state prisoner may be entitled to an injunction if they “prove[] an unsafe, life-threatening condition in their prison on the ground [even though] nothing yet had happened to them.” *McKinney*, 509 U.S. at 33 (holding that a person with medical conditions exacerbated by environmental tobacco smoke may have an 8th Amendment claim). It is unconstitutional for the State to ignore an “obvious, substantial risk to inmate safety,” regardless of “whether a prisoner faces an excessive risk...for reasons personal to him or because all prisoners in his situation face such a risk.” *Farmer*, 511 U.S. at 843.

Courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke,⁴⁴ contaminated water,⁴⁵ use of chemical toilets,⁴⁶ lack of sanitary supplies,⁴⁷ and paint toxins,⁴⁸ and of course the threat of contagion itself.⁴⁹ A

⁴⁴ *McKinney*, 509 U.S. at 35. The Sixth Circuit has found Constitutional issues with exposing an inmate to smoke “causes [plaintiff] sinus problems and dizziness,” *Talal v. White*, 403 F.3d 423, 427 (6th Cir. 2005), or a plaintiff has “a medical condition that is exacerbated by” second-hand smoke that also “bothers” other prisoners, *Palacio v. Hofbauer*, 106 F. App’x 1002, 1005 (6th Cir. 2004).

⁴⁵ *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001).

⁴⁶ *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995).

⁴⁷ *Flanory v. Bonn*, 604 F.3d 249, 255 (6th Cir. 2010) (prison officials violated 8th Amendment for failure to provide prisoner with toothpaste for 337 days, creating future health risk; “[t]he Supreme Court has found “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.”)

⁴⁸ *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325-325 (W.D.N.Y. 1999).

⁴⁹ *Gates v. Collier*, 501 F.2d 1291, 1300-1303 (5th Cir. 1974) (prisoners were entitled to relief under the Eighth Amendment when they proved threats to personal safety from the mingling of inmates with serious contagious diseases with other prison inmates)) (cited with approval in *Rhodes v. Chapman*, 452 U.S. 337, 352 n. 17, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981); *see also*, e.g., *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease”); *Hutto v. Finney*, 437 U.S. 678, 682 (1978) (among the prison conditions for which the Eighth Amendment required a remedy was placement of inmates in punitive isolation under conditions where infectious diseases could spread easily); *Narvaez v. City of New York*, 2017 WL 1535386, at *9 (S.D.N.Y. Apr. 17, 2017) (denying “motion to dismiss Plaintiff’s claim that the City of New York violated Plaintiff’s rights under the Due Process Clause by repeatedly deciding to continue housing him with inmates with active-TB” during his pretrial detention); *Bolton v. Goord*, 992 F. Supp. 604, 628 (S.D.N.Y. 1998) (acknowledging that prisoner could state claim under § 1983 for confinement in same cell as inmate with serious contagious disease); *Powers v. Snyder*, 484 F.3d 929, 931 (7th Cir.2007) (“knowingly exposing a prisoner to hepatitis or other serious diseases could [] amount to cruel and unusual punishment in violation of the federal Constitution.”); *Click v. Henderson*, 855 F.2d 536, 539–40 (8th Cir.1988) (plaintiff would “have a colorable [Eighth Amendment] claim ... if he could show that there is ‘a pervasive risk of harm to inmates’ of contracting the AIDS virus and if there is ‘a failure of prison officials to reasonably respond to that risk.’”) (quoting *Martin v. White*, 742 F.2d 469, 474 (8th Cir.1984)); *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir.1990) (plaintiff’s allegations that “the defendants forced him to remain in a dormitory [whose] atmosphere was filled with friable asbestos” and that “defendants knew of the health danger and yet refused to move the plaintiff to an asbestos-free environment” stated a claim for “deliberate indifference to the plaintiff’s serious medical needs.”); *Brown v. Mitchell*, 327 F.Supp. 2d 615, 631 (E.D.Va. 2004) (allowing Eighth

potential COVID-19 outbreak poses *at least* as serious a risk of serious harm to every incarcerated person in Ohio.

The State has enacted drastic protocols and issued unprecedented mandates to protect people living outside of prisons to reduce the risk of exposure to COVID19. Yet the State has failed to take any meaningful steps to protect the people in its custody from this deadly risk, a risk that is greatly magnified due to their confinement. The Constitution demands that the State protect the health and safety of people who are incarcerated. If people who are currently incarcerated were living outside of prison, they could follow the Governor and the Health Director’s directives to avoid unnecessary contact with others, maintain social distancing, follow rigorous hygiene protocols, and seek timely, individualized medical attention if needed. But because they are physically incarcerated, the State has prevented their ability to take the medically-indicated steps to secure their own safety and reduce transmission to others. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) (“when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”). The federal and state constitutions require more from the State.

Amendment claim to proceed to trial because “a reasonably jury could... conclude that the overcrowded, poorly ventilated, and dilapidated conditions at the jail... deprived [plaintiff] of the need to be free from conditions likely to result in the spread of infectious disease.”)

II. Proposition of Law No. II: This Court has Original Jurisdiction to This Grant Relief

The Relator filed his petition *pro se* from his prison cell, and identified two alternative writs that the Court could grant: mandamus and habeas corpus. Rather than defend the dereliction of its Constitutional duty to protect prisoners, the State instead spends its efforts parsing the technicalities of the relator's filing. Once again, the State's argument ignores clearly established law.

Under the Ohio Constitution, the Supreme Court has original jurisdiction in both mandamus and habeas corpus actions. Ohio Const. IV § 02(B)(1). Because this Court's original jurisdiction in these writs comes from the Constitution rather than the legislature, the Ohio Revised Code "should not be construed as controlling the exercise of original jurisdiction in habeas corpus constitutionally granted to courts of appeals and this court." *State ex rel. Pirman v. Money*, 69 Ohio St. 3d 591, 593, 635 N.E.2d 26 (1994); *see also, e.g., In re Black*, 36 Ohio St. 2d 124, 126, 304 N.E.2d 394 (1973) ("This constitutionally granted original jurisdiction of this court and of the Court of Appeals in mandamus cannot be abridged or limited by statutory enactment or by a rule based upon a statutory enactment." (quotations omitted)).

The State's quibbling over statutory procedural points—ones that don't control this Court's exercise of original jurisdiction—again reflect its abject failure to recognize the need for swift and decisive action to mitigate the massive Constitutional harms already occurring. Every additional minute that the state delays could literally mean the difference between life and death.

The Federal and State Constitutions require the State to protect prisoners from undue risk of exposure to dangerous disease. And the State Constitution vested this Court with the power to issue writs to prevent the State from violating Constitutional rights. The State's arguments to the contrary should be rejected.

CONCLUSION

As Governor DeWine recently stated: “If we don't take [drastic] actions now, it'll be too late. This is a matter of life and death.”⁵⁰ *Amicus* urges this Court to direct the State to fulfill its Constitutional duty to protect prisoners from undue risk of exposure to COVID19.

To avoid a serious and irreparable violation of relator's Constitutional right to be free from cruel and unusual punishment, *Amicus* urges this Court to order the immediate release of Mr. Lichenwalter. Given the unprecedented need for extraordinarily swift action, *Amicus* further requests that the relief the Court affords afforded relator be characterized as one that, upon comprehensive implementation by the State, will substantially lessen the likelihood that other similarly situated Ohio prisoners will endure cruel and unusual punishment due to the state-controlled conditions of confinement. Finally, in recognition of the precedential value of this case of first impression issued during a quickly escalating and life-threatening pandemic, *Amicus* urges the Court to issue an opinion that clarifies for the State its constitutional duty to promptly develop and implement a comprehensive plan to protect the all vulnerable people incarcerated in Ohio prisons who are powerless to protect themselves.

⁵⁰ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 15, 2020, 4:25PM) <https://twitter.com/GovMikeDeWine/status/1239286497347612673?s=20>

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 6, 2020, I filed the foregoing via the Court's electronic filing system, and also served copies of this brief by e-mail as follows:

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Exhibit 1



Novisky Decl.pdf

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E-Signature 1: Meghan Aileen Novisky (MN)

April 03, 2020 13:18:10 -8:00 [2FBA39027E4D] [76.189.162.36]
meghannovisky@outlook.com (Principal) (ID Verified)

E-Signature Notary: Anthony J Richardson II (AJR)

April 03, 2020 13:18:10 -8:00 [42745651A8F0] [71.129.91.2]
anthony@ajr2law.com
I, Anthony J Richardson II, did witness the participants named above electronically sign this document.



IN THE SUPREME COURT OF OHIO

State of Ohio ex rel.
Derek Lichtenwalter

Relator,

vs.

Mike DeWine, Governor of Ohio, et al.,

Respondents.

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Case No.: 2020-0401

Original Action

DECLARATION OF PROFESSOR MEGHAN NOVISKY

Meghan Novisky, being first duly cautioned and sworn, deposes and says as follows:

1. I am an Assistant Professor in the Department of Criminology, Anthropology, and Sociology at Cleveland State University. My research investigates the consequences of carceral contact on health, factors related to the conditions of confinement, and the collateral consequences of criminal justice policy. I have worked since 2009 with the University of Cincinnati's Corrections Institute (UCCI) as an evidence based programming consultant and trainer. I received my PhD in Sociology from Kent State University, where the focus of my dissertation involved identifying the barriers to health care access that exist in prisons, specifically among older adults.

2. My publications on health and incarcerated people have appeared in numerous peer-reviewed journals, including *Criminology*, *Justice Quarterly*, and *Victims & Offenders*. In 2020, I received the Early Career Investigator Award from the Academic



Consortium on Criminal Justice Health (ACCJH), and I serve on the Executive Board of the Academy of Criminal Justice Sciences(Section on Corrections), and as a Member of the Dissertation Scholarship Committee of the American Society of Criminology, Division of Corrections and Sentencing. A full copy of my CV is attached as an exhibit.

3. One of the greatest challenges facing correctional facilities regarding the provision of health services is that prisons and jails, by their very nature, are high risk sites for the spread of infectious disease. Close proximity of many people (made worse by overcrowding), shared equipment tied to risky health behaviors such as tattooing, compromised abilities to maintain general hygiene, substandard health care services, and lack of awareness about infection status combine to aggravate risk factors associated with the spread of infectious disease.¹

4. High levels of stress exposure can also weaken the immune system,² thereby increasing the susceptibility of exposure among incarcerated persons as well as recovery prognosis. Of course, these factors are all greatly exacerbated in the event of a global pandemic such as COVID-19 given that correctional facilities in the U.S. are already under-resourced, understaffed, and chronically overcrowded.

5. On Sunday, March 29th the Ohio Department of Rehabilitation and Corrections (ODRC) announced its first positive case of COVID-19.³ Specifically, a staff member at Marion Correctional Institution (MCI) tested positive after reporting

¹ <https://www.ecdc.europa.eu/sites/default/files/documents/Active-case-finding-communicable-diseases-in-prisons.pdf>

² Fali, T., Vallet, H., and Sauce, D. (2018). "Impact of stress on aged immune system compartments: overview from fundamental to clinical data. *Experimental Gerontology* 105, 19-26.

³ <https://www.drc.ohio.gov/Family/COVID-19-UPDATES>



symptoms on Wednesday, March 25th. In response, ODRC stated there would be “no staff or inmate transfers in or out of the facility at this time.”

6. Other prisons in the state have already confirmed cases, meaning the problem is not isolated to MCI.

7. Elkton Federal Prison in Eastern Ohio, for example, has 2 confirmed cases as of April 2, 2020.⁴ One prisoner has already died from COVID-19.⁵

8. Given the rapid churning of the prison population and the movement of staff members in and out of facilities, a statewide effort is indicated. ODRC’s response to limit transfers at one facility fails to sufficiently address the health risks facing the Ohio population already in the prison, and the correctional staff who work in close contact with prisoners.

9. Based on my expertise on the health related risks associated with incarceration, it is my belief that if serious action is not taken swiftly, Ohio’s prisons will soon be hotspots for COVID-19, with many staff and incarcerated individuals infected and facing elevated risks for medical complications and morality. This is due to the presence of factors that aggravate the spread of COVID-19 include lack of social distancing, concentrations of older adults, and lack of access to proper sanitation. All of these risk factors are important in assessing ODRC’s capacity to properly address risks for COVID-19.

⁴ <https://www.bop.gov/coronavirus/>

⁵ https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf



10. Ohio's prison population is extensive, often operating at or above capacity.⁶ Based on the most recent data available, ODRC employs 10,952 institutional staff, including 6,655 correctional officers,⁷ and manages a prison population of 48,857 people.⁸

11. The volume of prisoners in the state alone severely compromises the capabilities of individual facilities to implement social distancing practices.

12. Many prisoners in ODRC custody share cells, supplies, and living spaces, severely compromising ODRC's abilities to follow CDC physical distancing guidelines. Typically, each Ohio prison has only a limited percentage of its cells devoted to solitary living conditions. Some prisons have housing units set up where multiple rows of bunk beds are included in a single large room. Quarantine and social distancing are impossible in these prisons.⁹

13. Even if attempts were made to increase physical distance between prisoners, this would fail to adequately address the regular contact that exists in prisons between staff and prisoners. Correctional staff must be in close contact with prisoners in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise the prisoner workforce, for example.

⁶ https://www.scribd.com/document/399995643/2019-ACLU-Statehouse-to-Prison-Pipeline?campaign=VigLink&ad_group=xxclxx&source=hp_affiliate&medium=affiliate

⁷ <https://drc.ohio.gov/Portals/0/April%202020.pdf>

⁸ <https://drc.ohio.gov/Portals/0/Mar17.pdf>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>



14. ODRC's reduction of prisoner visitations does little to prevent transmission of the virus between the prisoner population and the community. With 10,952 institutional staff filtering in and out of Ohio's 27 prisons on a daily basis, staff can easily carry the infection from community to prison and vice versa. Further, it is difficult for prisoners to follow recommended sanitation procedures. Within Ohio's prisons, sanitation items including soap and hand sanitizers are often limited. While each prisoner is likely to have access to a rationed supply of soap, for example, disinfectant cleaning supplies and hand sanitizers are not typically uniformly provided to incarcerated persons and may be considered contraband because of their alcohol content.

15. Many incarcerated adults in Ohio's prisons also use shared, common areas for bathing and eating. These factors, in combination with the high stress environment of incarceration in general, increase risks of infectious disease exposure in prisons dramatically.¹⁰

16. Ohio's prison population also includes a significant number of older adults. Over nineteen percent of the prison population (n = 9,479) is 50 years of age or older, making this group particularly vulnerable to the virus based on age alone.¹¹ Older incarcerated adults also suffer from disproportionately more chronic health conditions

¹⁰ Massoglia, M. (2008). Incarceration as exposure: the prison, infectious disease, and other stress-related illnesses. *Journal of Health and Social Behavior*, 49, 56-71.

¹¹ https://drc.ohio.gov/Portals/0/INSTITUTION%20CENSUS_JAN%202019.pdf



than the general population of adults,^{12,13} including respiratory problems, making it likely this group will face medical complications should they become infected.

17. Significantly reducing the prison population as rapidly as possible is the best line of defense to maintain the public health interests of incarcerated persons, correctional staff, and the community. Based on the existing evidence about COVID-19, failing to do so will have grave consequences for many.

18. There are several effective measures that can be taken. For example, releasing as many of the 9,479 older incarcerated adults in the state as possible will help to reduce the prison population and remove the individuals most at risk for infection and complications that are likely to elevate mortality risks. Older adults have significantly reduced risks for recidivism compared with younger adults, so doing so is unlikely to compromise public safety, though aggravated cases where public safety is a concern should be considered.

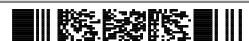
19. The Ohio prison population also houses at least 9,793 adults convicted of non-violent offenses (Drug crimes = 7,179; Property crimes = 1,422; Fraud crimes = 773; Motor Vehicle crimes = 419).¹⁴ Releasing this group would also help to reduce the prison population quickly and introduce no added public safety threats to the community.

20. These actions are meaningful, as they would enable individual facilities to free up needed space, thereby increasing competencies to develop and implement social

¹² Loeb, S.J. and AbuDagga, A. (2006). Health-Related Research on Older Inmates: An Integrative Review. *Research in Nursing and Health*, 29, 556-565.

¹³ Bedard, R., Metzger, L., & Williams, B. (2016). Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities. *International Review of the Red Cross*, 98, 917-939.

¹⁴ https://drc.ohio.gov/Portals/0/INSTITUTION%20CENSUS_JAN%202019.pdf



distancing options not currently available. Doing so would also help to ensure already limited medical supplies and resources in ODRC institutions do not become overwhelmed.

FURTHER AFFIANT SAYETH NAUGHT.

Meghan Aileen Novisky

Signed on 2020/04/03 13:18:10 -8:00

Meghan Novisky

Sworn to and subscribed before me
This ____ day of April, 2020.

04/03/2020

AR II
Signed on 2020/04/03 13:18:10 -8:00



MEGHAN A. NOVISKY, Ph.D. Curriculum Vitae

Title and Office Address

Assistant Professor of Criminology
Cleveland State University
2121 Euclid Ave. RT 1721
Cleveland, OH 44115

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Rhodes Tower 1740
m.novisky@csuohio.edu
330-671-3445
<http://www.meghananovisky.net/>

ACADEMIC POSITIONS

2016 - present *Assistant Professor of Criminology*
Cleveland State University (Department of Criminology, Anthropology & Sociology)

DEGREES AWARDED

2016 Ph.D. in Sociology, Kent State University
2008 M.A. in Justice Studies, Kent State University
2006 B.A. in Justice Studies and Psychology, Kent State University

AREAS OF SPECIALIZATION

Health Consequences of Incarceration
Victimization
Conditions of Confinement

Inequalities
Mixed Methods
Evidence Based Criminal Justice Policy

RESEARCH*Peer Reviewed Journal Articles*

2020 **Novisky, Meghan A.** and Robert L. Peralta. "Gladiator School: Returning Citizens' Experiences with Secondary Violence Exposure in Prison." *Victims & Offenders*, online first. IF: **1.338**.

2019 Stacey, Clare L., Pai, Manacy, **Novisky, Meghan A.**, and Steven M. Radwany. "Revisiting 'Awareness Contexts' in the 21st Century Hospital: How Fragmented and Specialized Care Shapes Patients' Awareness of Dying." *Social Science & Medicine* 220: 212-218. IF: **3.007**.

2018 **Novisky, Meghan A.** "Avoiding the Run Around: The Link Between Cultural Health Capital and Health Management Among Older Prisoners." *Criminology* 56(4): 643-678. IF: **3.796**.

2017 Porter, Lauren C. and **Meghan A. Novisky**. "Pathways to Depressive Symptoms among Former Inmates." *Justice Quarterly* 34(5): 847-872. IF: **2.456**.

Peer Reviewed Journal Articles (continued)

- 2016 Pesta, Racheal, Peralta, Robert L., and **Meghan A. Novisky**. "Utilizing a General Strain Framework to Examine Behavioral Responses to Psychological Intimate Partner Violence: Are Responses Gendered?" *Journal of Interpersonal Violence*. **IF: 2.443**.
- 2015 **Novisky, Meghan A.** and Robert L. Peralta. 2015. "When Women Tell: Intimate Partner Violence and the Factors Related to Police Notification." *Violence Against Women* 21(1): 65-86. **IF: 1.588**.
- 2013 Skubby, David, Bonfine, Natalie, **Novisky, Meghan A.**, Munetz, Mark R. and Christian Ritter. 2013. "Crisis Intervention Team (CIT) Programs in Rural Communities: A Focus Group Study." *The Community Mental Health Journal* 49(6): 756-764. **IF: 1.159**.

Book Chapters

- In Press* Semenza, Daniel C. and **Meghan A. Novisky**. "Mental Health and Services in Prisons and Jails." In *Prisons and Community Corrections: Critical Issues and Emerging Controversies*. Edited by Phillip Birch, Sage.

GRANTS**External total to date: \$36,931.66**

- 2020 **Novisky, Meghan A.** and Stephanie Grace Prost. Aging Research in Criminal Justice & Health (ARCH) Grant (via the NIH Institute on Aging). "Correctional Health Services for Older Adults: Older Adult and Caregiver Perspectives." Co-Principal Investigator - \$25,000.
- 2018 **Novisky, Meghan A.** Educational Testing Services, Institute of Education Sciences, U.S. Department of Education Research Grant, "The Role of Health Information Seeking Behavior and Employment Status on Prisoner Health Ratings in the U.S." Principal Investigator - \$1,362.16
- Peralta, Robert L. and **Meghan A. Novisky**. The University of Akron Faculty Research Fellowship. "Perceptions and Experiences of Health Care and Interpersonal Violence among Female Former Inmates: A Qualitative Study." Co-Principal Investigator - \$10,000.
- 2017 **Novisky, Meghan A.** Educational Testing Services, Institute of Education Sciences, U.S. Department of Education Research Grant, "Examining the Health of U.S. Prisoners with the PIAAC database." Principal Investigator - \$569.50.

Internal total to date: \$22,372.43

- 2019 **Novisky, Meghan A.** Cleveland State University Faculty Scholarship Initiative. "The Violent Nature of Carceral Contact." Principal Investigator - \$4,969.50.
- Novisky, Meghan A.** Cleveland State University Undergraduate Summer Research Award. "Incarceration-Specific Deprivations and General Strain Theory." Principal Investigator - \$4,500.

Internal Grant Funding (continued)

- 2018 **Novisky, Meghan A.** Cleveland State University Undergraduate Summer Research Award. “The Role of Violence Exposure and Medical Neglect During Incarceration on Reentry.” Principal Investigator - \$3,780.
- 2017 **Novisky, Meghan A.** Cleveland State University Faculty Scholarship Initiative. “Examining the Impact of Unmet Health Related Needs and Exposure to Trauma during Incarceration on Ease of Reentry.” Principal Investigator - \$5,822.93.
- 2013 **Novisky, Meghan A.** Kent State University Graduate Student Senate. “Older Male Inmates and the Factors that Influence Preferences for Advance Care Directives.” Principal Investigator - \$3,300.

TEACHING EXPERIENCE¹

- 2016 - present Cleveland State University - Department of Criminology, Anthropology & Sociology
Criminological Theory; Women and Crime; Sociology of Corrections; Introduction to Criminology; Prison and Society^a; Incarceration and Health (graduate)^a
- 2009 - 2016 Kent State University - Department of Sociology
Introduction to Justice Studies; Women and Crime; Issues in Law and Society; Social Problems; Introduction to Sociology; Data Analysis Lab
- 2011 - 2012 The University of Mount Union - Department of Sociology
Introduction to Criminal Justice
- Kent State University at Stark - Department of Sociology
Introduction to Justice Studies; Women and Crime; Issues in Law and Society

Supervised Undergraduate Student Presentations

- 2019 Giuffre, Gabrielle, and Shelby Smith. “When Does Punishment End? Examining the Barriers to Reentry Among Previously Incarcerated Persons.” *Annual Undergraduate Summer Research Award Poster Session*: Cleveland State University, September 5.
- 2018 Khayat, Afnan. “The Implications of Prison Overcrowding.” *The Sociology and Criminology Undergraduate Student Club Research Series*, Cleveland State University, November 29.
- 2018 Smith, Shelby and Laura Wimberley. “The Impacts of Trauma Exposure and Differential Access to Medical Services on the Incarceration Experience.” *Annual Undergraduate Summer Research Award Poster Session*: Cleveland State University, September 6.
- Oleksy, Ernest M. “On Ohio’s Criminal Justice System and Stratification of Offenders by Risk Level.” The 5th Annual *Northeast Ohio Undergraduate Sociology Symposium*: Oberlin College, April 14.
- 2017 McIntyre, Nathan. “Women in the Field: Law Enforcement.” The 4th Annual *Northeast Ohio Undergraduate Sociology Symposium*: Wooster College, April 8.

¹ ^a indicates an original course I developed

Quantitative Evidence of Teaching Excellence

STUDENT EVALUATION SCORES SUMMARY TABLE¹

	Students' Overall Assessment of Instructor	Students' Overall Assessment of Course
Spring 2019		
Corrections/CRM 348 (RR = 74%; N = 43)	Mean = 4.91* (DEPT: 4.49; COLL: 4.32)	Mean = 4.88* (DEPT: 4.39; COLL: 4.18)
Prison & Society/CRM 376 (RR = 73%; N = 34)	Mean = 4.88* (DEPT: 4.49; COLL: 4.32)	Mean = 4.88* (DEPT: 4.39; COLL: 4.18)
Fall 2018		
Intro to Criminology WEB/CRM 250 (RR = 65%; N = 34)	Mean = 4.68* (DEPT: 4.38; COLL: 4.26)	Mean = 4.73* (DEPT: 4.31; COLL: 4.14)
Criminological Theory/CRM 351 (RR = 81%; N = 42)	Mean = 4.85* (DEPT: 4.38; COLL: 4.26)	Mean = 4.88* (DEPT: 4.31; COLL: 4.14)
Prison & Society/CRM 376 (RR = 86%; N = 35)	Mean = 4.93* (DEPT: 4.38; COLL: 4.26)	Mean = 5.00* (DEPT: 4.31; COLL: 4.14)
Spring 2018		
Women & Crime/SOC 349 (RR= 64%; N = 42)	Mean = 4.74* (DEPT: 4.28; COLL: 4.29)	Mean = 4.63* (DEPT: 4.17; COLL: 4.17)
Fall 2017		
Intro to Criminology/SOC 250 (RR = 59%; N = 63)	Mean = 4.84* (DEPT: 4.34; COLL: 4.30)	Mean = 4.62* (DEPT: 4.22; COLL: 4.17)
Corrections/SOC 348 (RR = 61%; N = 41)	Mean = 4.88* (DEPT: 4.34; COLL: 4.30)	Mean = 4.72* (DEPT: 4.22; COLL: 4.17)
Women & Crime/SOC 349 (RR = 66%; N = 35)	Mean = 4.78* (DEPT: 4.34; COLL: 4.30)	Mean = 4.65* (DEPT: 4.22; COLL: 4.17)
Spring 2017		
Intro to Criminology/SOC 250 (RR = 62%; N = 50)	Mean = 4.94* (DEPT: 4.15; COLL: 4.27)	Mean = 4.87* (DEPT: 4.07; COLL: 4.15)
Corrections/SOC 348 (RR = 69%; N = 48)	Mean = 4.91* (DEPT: 4.15; COLL: 4.27)	Mean = 4.82* (DEPT: 4.07; COLL: 4.15)
Women & Crime/SOC 349 (RR = 57%; N = 14)	Mean = 4.88* (DEPT: 4.15; COLL: 4.27)	Mean = 4.88* (DEPT: 4.07; COLL: 4.15)
Fall 2016		
Women & Crime/SOC 349 (RR = 74%; N = 19)	Mean = 4.86* (DEPT: 4.27; COLL: 4.27)	Mean = 4.86* (DEPT: 4.17; COLL: 4.16)
Criminological Theory/SOC 351 (RR = 69%; N = 52)	Mean = 4.67* (DEPT: 4.27; COLL: 4.27)	Mean = 4.53* (DEPT: 4.17; COLL: 4.16)

¹ Note: Scores are assessed on a 5-point scale

*Instructor mean exceeds the Department and College means

CONSULTING AND APPLIED EXPERIENCE

2009 - present Evidence Based Programming Consultant and Trainer
The University of Cincinnati Corrections Institute (UCCI)

Utilized Curricula:

Cognitive Behavioral Interventions & Core Correctional Practices
Cognitive Behavioral Interventions for Substance Abuse
Cognitive Behavioral Interventions for Offenders Seeking Employment
Aggression Replacement Training (ART)

2015 - 2016 Statistical and Qualitative Software Consultant
Kent State University Libraries

2005 - 2010 Crime Victim Advocate
Townhall II Rape Crisis Center of Portage County - Kent, OH

PRESENTATIONS²

Conference Presentations

2019 **Novisky, Meghan A.** and Robert L. Peralta. "‘Gladiator School’: Prisons and Secondary Violence Exposure." *American Society of Criminology*: San Francisco, CA, November 13.

² β indicates student co-presenter

Conference Presentations (continued)

- 2019 Adams, Richard, **Novisky, Meghan A.**, and Rusty P. Schnellinger^β. "Health Information Seeking Behaviors in Prison: U.S. Results from the Programme for the International Assessment of Adult Competencies (PIAAC)." *American Society of Criminology*: San Francisco, CA, November 14.
- Peralta, Robert L., **Novisky, Meghan A.**, Carter, James R.^β, and Nickolaus Gotsiridze^β. "Substance Use and Violence among Former Prison Inmates: A Qualitative Study of Barriers to Health and Health Care." *Society for the Study of Social Problems*: New York City, NY, August 11.
- Novisky, Meghan A.** "Strategies for Overcoming the Methodological Pitfalls of Prison Research." *Academy of Criminal Justice Sciences*: Baltimore, MD, March 30.
- Peralta, Robert L., **Novisky, Meghan A.**, Carter, James^β, and Nickolaus Gotsiridze^β. "Disparities, Disabilities, and Perceptions: The Consequences of Being Sick or Disabled in Prison." *The North Central Sociological Association*: Cincinnati, OH, March 29.
- Novisky, Meghan A.** "Prevalence of Violent Victimization Among Older Incarcerated Men." The Academic Consortium on Criminal Justice Health (AC CJH) 12th Annual *Academic & Health Policy Conference on Correctional Health*: Las Vegas, NV, March 22.
- 2018 **Novisky, Meghan A.** "The Role of Health Information Seeking Behavior and Employment Status on Prisoner Health Ratings in the U.S." *IES-ITS (U.S. Department of Education) Commissioning PIAAC Conference*: Washington, D.C., December 5.
- Novisky, Meghan A.**, Peralta, Robert L., and Ernest M. Oleksy^β. "The Keepers: Staff Misconduct as a Specific Responsivity Factor." *American Society of Criminology*: Atlanta, GA, November 15.
- 2017 **Novisky, Meghan A.** "Off the Books: How Disease and Age Are Driving the Underground Prison Economy." *American Society of Criminology*: Philadelphia, PA, November 15.
- Novisky, Meghan A.** "The Role of Unemployment and Other Secondary Stressors on the Health of Older Prisoners." *Academy of Criminal Justice Sciences*: Kansas City, MO, March 24.
- 2016 Pesta, Racheal, Peralta, Robert, and **Meghan A. Novisky**. "Behavioral Responses to Psychological Victimization: Are Responses Gendered?" *American Society of Criminology*: New Orleans, LA, Nov 17.
- Novisky, Meghan A.** "Factors Related to Aging Prisoners' Preferences for Medical Treatment When Contemplating End of Life." *Academy of Criminal Justice Sciences*: Denver, CO, March 30.
- 2015 **Novisky, Meghan A.** "Taking Control: How Older Inmates Navigate Chronic Disease and Demonstrate Self Efficacy." *The American Society of Criminology*: Washington, DC, November 21.

Conference Presentations (continued)

- 2015 Stacey, Clare L., Pai, Manacy, **Novisky, Meghan A.** and Steven Radwany. "Revisiting Awareness Contexts in the 21st Century Hospital." *American Sociological Association*: Chicago, IL, August 22.
- 2013 **Novisky, Meghan A.** and Lauren Porter. "Sex Differences in the Incarceration-Health Link: Increased or Decreased Vulnerability among Women?" *The American Society of Criminology*: Atlanta, GA, November 22.
- 2012 **Novisky, Meghan A.** "Dying Inside: The Current State of the Literature on End of Life Care in Prison." *The American Society of Criminology*: Chicago, IL, November 14.
- Novisky, Meghan A.** "Researching Vulnerable Populations." Session Organizer. *The North Central Sociological Association*: Pittsburgh, PA, April 13.
- 2011 Clare L. Stacey, J. Zach Schiller, and **Meghan A. Novisky.** "Learning from Giving: How Philanthropy Enriches Service Learning for Students." *Society for the Study of Social Problems*: Las Vegas, NV, August 21.
- 2010 **Novisky, Meghan A.** and Robert L. Peralta. "Reconsidering Mandatory Arrest: Perceptions from Battered Women in the Midwest." *American Society of Criminology*: San Francisco, CA, November 17.

Invited Talks

- 2020 **Novisky, Meghan A.** "Research on Incarceration and Health." Washington and Lee University School of Law. Lexington, VA, April 1.
- 2019 **Novisky, Meghan A.** "Conducting Health Inequalities Research in Corrections Settings." The University of Louisville Center for Family and Community Well-Being. Louisville, KY, September 12.
- Novisky, Meghan A.** "Conditions of Confinement and the Call for Core Correctional Practices." Cleveland Marshall College of Law: Cleveland, OH, April 4.
- 2018 Dunn, Ronnie, **Novisky, Meghan A.**, Schiavoni, Sara, and Jonathan Witmer-Rich. "Professors Take On *Serial Podcast*." Scholars Strategy Network (SSN) of Northeast Ohio: Cleveland, OH, November 28.
- 2017 **Novisky, Meghan A.** "The Role of Unemployment and Other Secondary Stressors on the Health of Older Prisoners." The University of Akron Sociological Research Series: Akron, OH, April 25.

POLICY BRIEFS, OP-EDS, & OTHER PUBLICATIONS

- 2020 **Novisky, Meghan A.** and Chelsey Narvey. "COVID-19, Incarceration, and Our Public Health." *The Hill*, March 19, 2020: <https://thehill.com/opinion/criminal-justice/488394-covid-19-incarceration-and-our-public-health#>

POLICY BRIEFS, OP-EDS, & OTHER PUBLICATIONS (continued)

- 2019 **Novisky, Meghan A.** “Conditions in Our Jails and Prisons Too Often Do Not Promote Reform.” *The Hill*, June 20, 2019: <https://thehill.com/opinion/criminal-justice/449592-conditions-in-our-jails-and-prisons-too-often-do-not-promote-reform>
- Lebovits, Hannah, Nickels, Ashley E., and **Meghan A. Novisky**. “Prison Management and the Efficiency and Equity Trade-Off.” *PA Times*, March 27, 2019: <https://patimes.org/prison-management-and-the-efficiency-and-equity-trade-off/>
- Connell, Nadine M. and **Meghan A. Novisky**. “Teaching to the Five Senses about the Solitary Confinement Experience.” 2019. Pp. 6-7 in *the American Society of Criminology’s Division on Corrections & Sentencing Spring Newsletter*. <https://ascdcs.org/wp-content/uploads/2019/05/Final-DSC-Newsletter-2019.pdf>
- 2018 **Novisky, Meghan A.** “Approving State Issue 1 Likely Would Lower Crime Rates in Ohio.” *The Canton Repository*, November 1, 2018: https://www.cantonrep.com/opinion/20181101/opinion-approving-state-issue-1-likely-would-lower-crime-rates-in-ohio?fbclid=IwAR2t6cFYJAPSVH_F_fbl-76uiO4BJn4LzPsk6e7EwkDN9LqK1-xAs2jkghU
- Novisky, Meghan A.** “How Prisons Are Exacerbating Health Inequalities – Especially for Older Prisoners.” Written for: Scholars Strategy Network, July 25, 2018: <https://scholars.org/brief/how-prisons-are-exacerbating-health-inequalities-especially-aging-prisoners>

PUBLIC COVERAGE OF CONTENT EXPERTISE

- 2020 The Atlanta Journal Constitution (AJC Opinion Contributor: Manny Arora). In “[Recognize virus’ risk to GA U.S. prisoners.](#)” April 2.
- WKYC Channel 3 News (Cleveland Correspondent: Rachel Polanksy). In video coverage “[Exclusive: 3 inmates test positive at eastern Ohio prison for COVID-19, another 80 are showing symptoms.](#)” April 1.
- The Appeal (Correspondent: Joshua Vaughn). In “[Pennsylvania has few options to release elderly prisoners as COVID-19 spreads.](#)” March 23.
- The Los Angeles Times (Correspondent: Kurtis Lee). In “[Activists implore prisons to release at-risk inmates to prevent coronavirus deaths.](#)” March 19.
- 2019 WOIO Channel 19 News (Cleveland Correspondent: Shannon Houser). In video coverage “[Use of force protocol at Cuyahoga County Jail.](#)” July 12.
- 2018 ABC Channel 5 News (Cleveland Correspondent: Homa Bash). In video coverage “[Issue 1 a complex ballot measure aiming to curb drug epidemic; opponents say it makes drug laws laxer.](#)” November 6.

TECHNICAL REPORTS AND ASSISTANCE

- 2014 Sleyo, Jodi and **Meghan A. Novisky**. “Indian River Juvenile Correctional Facility Correctional Program Checklist (CPC) Program Profile for Close Units.” Submitted to the Ohio Department of Youth Services (DYS). Center for Criminal Justice Research, University of Cincinnati.
- Novisky, Meghan A.** and Cara Thompson. EPICS Performance Summary: Akron Region.” Akron, OH. Submitted to the Ohio Department of Youth Services (DYS). Center for Criminal Justice Research, University of Cincinnati.
- Novisky, Meghan A.** and Cara Thompson. “EPICS Performance Summary: Cleveland Region.” Cleveland, OH. Submitted to the Ohio Department of Youth Services (DYS). Center for Criminal Justice Research, University of Cincinnati.
- 2010 **Novisky, Meghan A.** and Natalie Bonfine. 2010. “Building Community Partnerships: Campus Safety in a Mental Health Context Collaborative Program Development Grant Project Summary Report.” Submitted to the Ohio Department of Mental Health – Columbus, Ohio. The Ohio Criminal Justice Coordinating Center of Excellence, Northeastern Ohio Universities Colleges of Medicine and Pharmacy.
- Listwan, Shelley J. and **Meghan A. Novisky**. “Final Report: Evidence Based Correctional Program Checklist.” Teens Resisting Unhealthy Choices Everyday (TRUCE) Program – Akron, Ohio. Center for Criminal Justice Research, University of Cincinnati.
- Listwan, Shelley J. and **Meghan A. Novisky**. “Final Report: Evidence Based Correctional Program Checklist.” Trumbull County Juvenile Court Adolescent Sex Offender Program – Warren, Ohio. Center for Criminal Justice Research, University of Cincinnati.
- Listwan, Shelley J. and **Meghan A. Novisky**. “Final Report: Evidence Based Correctional Program Checklist.” Stepping Stones Residential Center – Lorain, Ohio. Center for Criminal Justice Research, University of Cincinnati.

SERVICE

Service to the University and Department

- 2018 - present Committee Member, College of Liberal Arts and Social Sciences (CLASS) Research Advisory Board, Cleveland State University
- 2017 - 2018 Committee Member, Committee for Student Life, Cleveland State University
- 2017 - present Social Media and Website Development Organizer, Criminology
- 2016 - present Co-Faculty Advisor, Sociology and Criminology Undergraduate Student Club Curriculum Development Committee, Criminology

Service to the Discipline

- 2019 – present Deputy Chair, Student Affairs Committee
The Academy of Criminal Justice Sciences
- Committee Member, The Division of Corrections and Sentencing Awards Committee
The American Society of Criminology
- 2018 - present Executive Board Member – Secretary/Treasurer^y
The Academy of Criminal Justice Sciences, Section on Corrections
- Committee Member, National Membership Committee
The Academy of Criminal Justice Sciences
- 2018 – 2019 Committee Member, Student Affairs Committee
The Academy of Criminal Justice Sciences

Ad Hoc Reviewer:

Corrections: Policy, Practice and Research
Criminology
Criminology & Public Policy
International Journal of Offender Therapy and Comparative Criminology
Journal of Crime and Justice
Journal of Criminal Justice
Journal of Criminal Psychology
Journal of Family Violence
Journal of Health & Social Behavior
Journal of Interpersonal Violence
Social Science & Medicine
Trauma, Violence, and Abuse
Violence Against Women

HONORS AND AWARDS

- 2020 Academic Consortium on Criminal Justice Health (AC CJH) Early Career Investigator Award
- 2018 Golden Apple Award for Outstanding Faculty Contributions to Undergraduate Education
The Young Alumni Council, Cleveland State University Alumni Association
- Student Organization Faculty Advisor of the Year Award
The Office of Student Life, Division of Student Affairs, Cleveland State University
- 2016 The Academy of Criminal Justice Sciences (ACJS) Ph.D. Student Scholarship Award (\$600)
- Outstanding Ph.D. Student in Sociology Award (\$100)
Department of Sociology, Kent State University
- 2015 30th Annual Graduate Student Senate Research Symposium Award for Outstanding Presentation, Kent State University (\$100)

PROFESSIONAL MEMBERSHIPS

Academic Consortium on Criminal Justice Health (2018 – present)

Academy of Criminal Justice Sciences/Division Membership: Corrections (2016 – present)

American Society of Criminology/Division Membership: Corrections & Sentencing (2012 – present)

American Sociological Association/Division Membership: Crime, Law & Deviance (2016 – present)

Scholars Strategy Network/Northeast Ohio Chapter (2018 – present)

Exhibit 2

Appendix: Court Actions Across the Country to Reduce Incarceration in Light of Covid-19¹

State	Judicial Body	Forum	Nature of Relief
Alabama	Circuit Court for the 19 th Judicial Circuit of Alabama	Administrative order	<ul style="list-style-type: none"> Judge Fuller ordered “all inmates currently held on appearance bonds of \$5,000.00 or less be immediately released on recognizance with instructions to personally appear at their next schedule court appearance.”²
Arizona	Coconino County court system and jail, Judge Dan Slayton, along with other county judges	Court order	<ul style="list-style-type: none"> As of March 20, 2020, Judge Dan Slayton and other county judges have released around 50 people who were held in the county jail on non-violent charges.³
California	Supreme Court of California, Chief Justice Tani Cantil-Sakauye	Advisory	<ul style="list-style-type: none"> The Chief Justice issued guidance encouraging the state’s superior courts to, among other things: <ul style="list-style-type: none"> “Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses.” “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.” “Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.”⁴
	Sacramento Superior Court, Judge Hom	Order	<ul style="list-style-type: none"> The Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime.⁵
Hawaii	Supreme Court of Hawaii	Order	<ul style="list-style-type: none"> The Court suspended the custodial portion of all intermittent sentences and appointed a Special Master to undertake a “collaborative effort” to “establish[] a process for the expedited...consideration of the request to reduce inmate populations within correctional centers”.⁶

Kentucky	Kentucky, Chief Justice John Minton Jr.	Letter to state judges and court clerks	<ul style="list-style-type: none"> 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.”⁷
Maine	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"> 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.⁸
Michigan	Chief Justice Bridget M. McCormack, Michigan Supreme Court	Joint Statement	<ul style="list-style-type: none"> 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.”⁹
Montana	Supreme Court of Montana, Chief Justice McGrath	Letter to Judges	<ul style="list-style-type: none"> 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.”¹⁰
New Jersey	New Jersey Supreme Court, Chief Justice Rabner	Consent Order	<ul style="list-style-type: none"> 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.¹¹
New York	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"> 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.¹²

	New York Supreme Court Justice Mark Dwyer	Judicial ruling based on writ of habeas corpus	<ul style="list-style-type: none"> 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.¹³
South Carolina	Supreme Court of South Carolina, Chief Justice Beatty	Memorandum	<ul style="list-style-type: none"> The Chief Justice instructed that “any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk.”¹⁴
Texas	Travis County, Texas, Judges	Individual Court Orders	<ul style="list-style-type: none"> Travis County has begun releasing some defendants in custody with underlying health conditions, to reduce the potential spread of COVID-19 in the county’s jails. After Austin saw its first positive cases of COVID-19, judges in the county nearly doubled its release of people from local jails on personal bonds, with one judge alone reversing four bond decisions after “balancing this pandemic and public health safety of inmates against what they’re charged with.”¹⁵
Utah	Utah Supreme Court and Utah Judicial Council, Chief Justice Durrant	Administrative Order	<ul style="list-style-type: none"> The Chief Justice of the Utah Supreme Court ordered that for defendants in-custody on certain misdemeanor offenses, “the assigned judge must reconsider the defendant’s custody status and is encouraged to release the defendant subject to appropriate conditions.”¹⁶
Washington	Washington Supreme Court, Chief Justice Stephens	Order	<ul style="list-style-type: none"> Chief Justice Stephens ordered judges not to issue bench warrants for failure to appear, “unless necessary for the immediate preservation of public or individual safety” and “to hear motions for pretrial release on an expediated basis without requiring a motion to shorten time.” Additionally, for populations designated as at-risk or vulnerable by the Centers for Disease Control, the COVID-19 crisis is presumed to be a material change in circumstances to permit amendment of a previous bail order or to modify conditions of pre-trial release.¹⁷
Wyoming	Wyoming Supreme Court, Chief Justice Davis	Order	<ul style="list-style-type: none"> The Chief Justice instructed judges to issue summonses instead of bench warrants, unless public safety compels otherwise.¹⁸

Federal Criminal Detention	C.D. Cal, Judge James V. Selna	Minute Order	<ul style="list-style-type: none"> The Court granted temporary release for 90 days, pursuant to 18 U.S.C. § 3142 (i), which authorizes discretionary temporary release when necessary for a person’s defense or another compelling reason. Judge Selna held the defendant’s age and medical conditions, which place him in the population most susceptible to COVID-19, and in light of the pandemic, to constitute “another compelling reason” and granted his temporary release.¹⁹
	D. Ct., Judge Jeffrey A. Meyer	Order	<ul style="list-style-type: none"> Judge Meyer ordered the release of defendant stating that “the conditions of confinement at Wyatt are not compatible” with current COVID-19 public health guidance concerning social distancing and avoiding congregating in large groups. Judge Meyer is one of four federal judges in Connecticut who has released inmates in connection with the COVID-19 pandemic.²⁰
	D.D.C., Judge Randolph D. Moss	Minute Order	<ul style="list-style-type: none"> Judge Moss released defendant, despite acknowledging offense charged--marijuana distribution and felon in possession—“is serious” because among other factors mitigating public safety concerns “incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement.”²¹
	D.D.C., Judge Randolph D. Moss	Memorandum Opinion	<ul style="list-style-type: none"> Judge Moss released defendant while awaiting trial after weighing the risk to the public of releasing defendant [charged with distribution of child pornography] directly against risk to community safety if defendant remained incarcerated in light of the COVID-19 pandemic.²²

	D. Nev., Judge Jones	Opinion and Order	<ul style="list-style-type: none"> Judge Jones delayed defendant's date to surrender to begin his intermittent confinement by a minimum of 30 days because "[i]n considering the total harm and benefits to prisoner and society . . . temporarily suspending [defendant's] intermittent confinement would appear to satisfy the interests of everyone during this rapidly encroaching pandemic." In coming to this conclusion, the court placed weight on the fact that "incarcerated individuals are at special risk of infection, given their living situations, and may also be less able to participate in proactive measures to keep themselves safe; because infection control is challenging in these settings."²³
	D. S.C., Judge David C. Norton	Order	<ul style="list-style-type: none"> Judge Norton granted compassionate release for 73-year-old with severe health conditions under the First Step Act, "[g]iven defendant's tenuous health condition and age, remaining incarcerated during the current global pandemic puts him at even higher risk for severe illness and possible death, and Congress has expressed its desire for courts to [release federal inmates who are vulnerable to COVID-19]."²⁴
	N.D. Cal., Judge Vince Chhabria	Sua Sponte Order	<ul style="list-style-type: none"> Judge Chhabria issued a sua sponte decision extending defendant's surrender date from June 12, 2020 to September 1, 2020 stating: "By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided . . . To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed."²⁵
	N.D. Cal., Judge Hixson	Order	<ul style="list-style-type: none"> 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 circumstances also serves the United States' treaty obligation to Peru, which – if there is probable cause to believe Toledo committed the alleged crimes – is to deliver him to Peru alive."²⁶

	S.D.N.Y., Judge Paul A. Engelmayer	Amended Order	<ul style="list-style-type: none"> 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 he contract COVID-19 as compared to most other individuals.”²⁷
	S.D.N.Y., Judge Alison J. Nathan	Opinion & Order	<ul style="list-style-type: none"> Judge Nathan ordered the Defendant released subject to the additional conditions of 24-hour home incarceration and electronic location monitoring as directed by the Probation Department based in part on “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which may place “at a heightened risk of contracting COVID-19 should an outbreak develop [in a prison].”²⁸
Federal Immigration Detention	9th Cir., Judges Wardlaw, M. Smith, and Judge Siler, 6 th Cir., sitting by designation.	Sua Sponte Order	<ul style="list-style-type: none"> 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.”²⁹
	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"> Judge Halter ordered the release of two ICE detainees. The court found that in detention “[p]etitioners have not been protected [against risks associated with COVID-19]. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues.”³⁰

	D. Mass, Judge Mark L. Wolf	Oral Order	<ul style="list-style-type: none"> 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-19.³¹
	S.D.N.Y., Judge George B. Daniels	Memorandum Decision and Order	<ul style="list-style-type: none"> 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.”³²
	S.D.N.Y., Judge Alison J. Nathan	Opinion and Order	<ul style="list-style-type: none"> Judge Nathan ordered the immediate release of four detainees finding “no evidence that the government took any specific action to prevent the spread of COVID-19 to high-risk individuals . . . held in civil detention.”³³
	S.D.N.Y., Judge Analisa Torres	Memorandum Decision and Order.	<ul style="list-style-type: none"> Judge Torres granted immediate release on recognizance for ten individuals in immigration detention who have a variety of chronic health conditions that put them at high risk for COVID-19. These conditions include obesity, asthma, diabetes, pulmonary disease, history of congestive heart failure, respiratory problems, gastrointestinal problems, and colorectal bleeding. The court held detainees face serious risks to their health in confinement and “if they remain in immigration detention constitutes irreparable harm warranting a TRO.”³⁴

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

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

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

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

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

⁶ Order of Consolidation and for Appointment of Special Master, *Office of the Public Defender v. Connors*, SCPW-20-0000200 (Apr. 2, 2020), https://www.courts.state.hi.us/wp-content/uploads/2020/04/040220_SCPW20-200and20-213_OPDvConnors_OPDvIge_ORD.pdf

⁷ 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>.

⁸ 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>.

⁹ 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).

¹⁰ 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>.

¹¹ 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.

¹² *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-](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsx-nzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTlh2Pe3ZmAUcoZCiC9er2g4Z4mL_ToQ,&typo=1)

[Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsx-nzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flegalaidnyc.org%2fwp-content%2fuploads%2f2020%2f03%2fLAS-Mass-Parole-Holds-Writ.pdf&c=E,1,pDbcoVtCJ0c6j6E8cI3m276yaRsx-nzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTlh2Pe3ZmAUcoZCiC9er2g4Z4mL_ToQ,&typo=1)

[f1rq9dTlh2Pe3ZmAUcoZCiC9er2g4Z4mL_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,pDbcoVtCJ0c6j6E8cI3m276yaRsx-nzttikQuvDWwS91mRHj6RhL8o5pEJmJl-lk86sC7-f1rq9dTlh2Pe3ZmAUcoZCiC9er2g4Z4mL_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>.

¹³ *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.

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

¹⁵ 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>.

¹⁶ Order, *Administrative Order for Court Operations During Pandemic* (Utah Mar. 21, 2020),

<https://www.utcourts.gov/alerts/docs/20200320%20-%20Pandemic%20Administrative%20Order.pdf>.

¹⁷ 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>.

¹⁸ 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>.

¹⁹ Minute Order, *United States v. Michaels*, 8:16-cr-76-JVS, (C.D. Cal. Mar. 26, 2020),

https://drive.google.com/file/d/1BeWih63M7FKreKEvLJyIQevYSivGA_PU/view.

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- ²⁰ 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-oreyf4kbfbe3adv6u6ajs57u-story.html>.
- ²¹ Minute Order, *United States v. Jaffee*, No. 19-cr-88 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1AYfIU6QKCOEIpx5Vh3Af6BDqO8goZ5WE/view>.
- ²² *United States v. Harris*, No. 19-cr-356 (RDM) (D.D.C. Mar. 26, 2020), <https://drive.google.com/file/d/1aO3BNOKB8ukL20A76Mu7Fn0GyCng0Ras/view>.
- ²³ *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.
- ²⁴ *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>.
- ²⁵ *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.
- ²⁶ *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>.
- ²⁷ AM. Order, *United States v. Perez*, 19-cr-297 (PAE), at 1 (S.D.N.Y. Mar. 19, 2020), <https://drive.google.com/file/d/17xE8qdGeeTI2d2dWjNDfwmXLc8GxTtfA/view>.
- ²⁸ *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/1hEhz9oICfaKRinDvUOKqjDTcx3-nc4vq/view>.
- ²⁹ *Xochihua-Jaimes v. Barr*, No. 18-cv-71460 (9th Cir. Mar. 23, 2020), <https://drive.google.com/file/d/16eh6qMzihmNlSEq0SzmCSQx98OiLn38l/view>.
- ³⁰ *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>.
- ³¹ 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>.
- ³² *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>.
- ³³ *Coronel v. Decker*, No. 20-cv-2472 (AJN), at 10 (S.D.N.Y. Mar. 27, 2020), <https://legalaidnyc.org/wp-content/uploads/2020/03/20cv2472-Op.-Order-3.27.20.pdf>.

³⁴ *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.

Exhibit 3

March 13, 2020

J. Bennett Guess, Freda Levenson
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103

Thank you for your letter to the Governor dated March 10, 2020 pertaining to DRC's response to COVID-19. We think this is an excellent opportunity to share with you all what we are doing to care for those who work and live in our facilities. It is also our hope you will share this information with your stakeholders, as we have many in common, to help assuage anxiety amongst those we serve.

In your letter, you also refer to jails. DRC does not directly supervise the administration and operation of jails. We will continue to use our resources in the DRC Bureau of Adult Detention to provide oversight, guidance, general information, and recommendations for operational changes to these jails in response to COVID-19. We have included some of the messages we have sent to them during this time for your review.

Regarding Ohio's prisons, the health and safety of incarcerated men and women under our care and that of our staff is always one of our top priorities.

DRC has been preparing and planning for the possibility of a pandemic for many years and protocols have been put in place to deal with influenza on an ongoing basis. These plans are very similar to what is needed to safely manage COVID-19. In the recent weeks we have extensively reviewed and updated these plans with information specific to COVID-19.

The actions we have taken so far are in coordination with the Ohio Department of Health (ODH) and are associated with best practices and the recommendations made by healthcare authorities. Our future actions will also be made in coordination with the ODH. We have included a timeline of our actions so far which was started after there was evidence COVID-19 was likely to emerge in Ohio. However, as indicated before, actions to prevent the spread of infectious disease were always underway before this timeline started.

Just as you indicate in your letter, we also believe communication is very important and have been constantly communicating with as many stakeholders possible, including the men and women under our supervision. We are using memos, posters, email blasts, social media, and conference calls to communicate. On March 12, 2020 we opened special information lines for the families of incarcerated adults and our staff to call with questions.

We are continuing to educate the incarcerated people under our care about COVID-19, including the symptoms and prevention methods. Most notably, we emphasize handwashing and cough/sneeze etiquette, which is routinely referred to as one of the best healthcare practices. These same instructions have also been provided to our staff.

In addition to education materials, we try to communicate the actions we intend to take, with as much notice as possible, to try and reduce panic or surprise. We are of course subject to the uncertain and evolving nature of these sort of events where the information is fluid and can change in a matter of moments based on the information received from healthcare authorities. We have enclosed some examples of the communications we have completed.

All our pandemic preparedness plans are comprehensive and include information about staffing plans to ensure essential functions are completed while offering flexibility to address the emerging needs of a pandemic. We cannot share staffing patterns and our specific responses to reductions in available staff which are contained in our Critical Incident Management plans. These plans contain security sensitive information that cannot be shared publicly. We can assure you, however, that these plans cover all critical functions, including those roles performed routinely by incarcerated persons.

These plans have also been regularly updated to address situations such as quarantine, treatment, and protecting vulnerable populations. They also have been updated to match current ODH recommendations and best practices.

Part of our response plan also includes a task force devoted to commodities, logistics, and supply. This task force has been ensuring there are adequate sanitary and hygiene goods in all facilities. This includes personal care items such as soap, toilet paper, and paper towels to support our aggressive hand-washing efforts. In addition, we have chemicals on hand which are effective against coronavirus according to the Centers for Disease Control (CDC) published list.

Prisons have sanitation crews working throughout the day to disinfectant door handles, surfaces, and other common areas. It is important to also note, we strive to be flexible and responsive during this time. An example of this is how we approved the use of alcohol-based hand sanitizer in our prisons. Alcohol-based sanitizer is normally one of our banned substances because it is flammable. But, we will allow staff to carry it and we will deploy it for inmates in a measured and safe manner to help reduce the chances of the spread of COVID-19.

The commodities task force also ensured we have adequate stores of food to address any potential interruption in supply and they are assisting in the procurement of other mission critical items. Finally, the task force is also charged with ensuring we have an accurate inventory of critical items, such as PPE, and ensuring these items are secured and used in compliance with the recommendations of the ODH.

In addition to our historical preparedness, our agency is addressing the concerns of COVID-19 by using a measured and incremental response system, coordinated with ODH and the DRC health authority. Our healthcare authority is empowered in this process and although security is always a primary concern, the healthcare authority is directing our response to COVID-19.

Our incremental response is tied to various factors including the information we receive from the ODH, the extent of infection in the community, and the extent of the infection in our prisons.

Up until 3/10/2020, we were in the first stage of our response plan. This stage we refer to as “green”. It means we are monitoring the spread of COVID-19 and we are taking general preparedness actions. These actions include, but are not limited to:

- 1) Emphasizing general sanitation;
- 2) Sanitizing surfaces on a persistent basis;
- 3) Encouraging aggressive handwashing;
- 4) Educating staff and incarcerated persons on COVID-19 prevention and symptoms;
- 5) Emphasizing with our staff the need to stay home if you are sick or symptomatic;
- 6) Educating individuals on, and encouraging, social distancing practices. These include, but are not limited to, reducing group meetings, using teleconferencing when possible, and encouraging people to forgo handshaking and

other close contact. What we are not doing, however, is interrupting the worship and structured recreational opportunities of our incarcerated persons;

7) Offering flu shots to every incarcerated person over the past few months and making the flu shot available to staff at their worksites. Although the flu shot is not effective against COVID-19, it helps reduce the burden on our healthcare resources so we have more available to address the emerging need;

8) Updating our electronic health record system to capture specific symptoms associated with COVID-19 to assist in diagnosis, tracking, and data; and

9) Screening all incoming incarcerated persons to our facilities for symptoms of COVID-19, whether it is from jails, community supervision violations, or other agencies.

On 3/10/2020, due to the increasing likelihood that cases of community transmission would soon be confirmed, DRC increased our response level from “green” to “orange”. This new level, and the response plans associated, were made in collaboration with the Ohio Department of Health as well as other state agencies who house individuals in their facilities, including, but not limited to, the Department of Youth Services (DYS), Ohio Mental Health and Addiction Services (OMHAS), and the Department of Developmental Disabilities (DODD).

The first line of defense to prevent widespread transmission is to stop the virus from entering our facilities. Therefore, many of the actions for level orange are designed to reduce the chances of a positive case of COVID-19 in general population, or at a minimum, slow the transmission to not overwhelm medical capacity. Once someone in one of our facilities tests positive for COVID-19, the nature of this makes containment more challenging, although we have plans for this contingency as well.

In keeping with the goal of stopping the infection from entering the facilities, it became necessary to limit the entry of people into our facilities. Staff, mission critical contractors, and attorneys will still be entering facilities to ensure continuing operations, but visitors, volunteers, and non-essential contractors will not be allowed into DRC/DYS facilities until the situation changes. We have been open and transparent in this decision making, communicating clearly with our incarcerated population in advance regarding what we intended to do and why.

We want to reiterate that family/loved one support and engagement is one of the key values and goals of our agencies. For the DRC, it is enshrined in one of our core themes “Family Involvement in Offender Success”. Over the past year we have worked to significantly expand visiting opportunities and add structured family activities including Family Worship and Programming.

To lessen the impact on families and the loved ones of those incarcerated, we have worked with our vendors and service providers to provide a free video visit and 2 free phone calls per week. In addition, we plan to decrease additional video visit lengths to 15 minutes (currently 30) and decrease the price to \$3.50 to create more opportunities for contact. This will allow families and friends to stay in touch easier while limiting the financial burden.

At this orange level of response, we are also in the process of completing, or have already taken, the following actions:

1) Screening of staff, attorneys, and contractors at prison and office entry points for symptoms or risk factors of COVID-19;

2) Halting the work of incarcerated persons in jobs off state grounds;

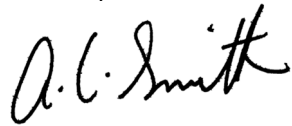
3) Reducing transfers and movement in, and between, our facilities with exceptions for mission critical needs; and

4) Halting unnecessary travel for staff and cancelling non-essential meetings and trainings.

This is not a complete inventory of the many actions we are taking on an hourly basis to care for the people under our supervision, our staff, and our communities. However, please know that our agency shares each of your concerns raised in your letter and will continue to address them as the situation evolves in accordance with the recommendations made by ODH and other healthcare authorities.

Thank you once again for your input in this matter. Attached to this letter are some of the documents we can share with you as documentation to demonstrate our efforts in responding to this critical situation. We hope you will help us communicate to all your stakeholders the details of what we are doing to address COVID-19 so we can work together to prevent panic and reduce the anxiety which naturally occurs in these circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "A.C. Smith". The signature is fluid and cursive, with a large, stylized "S" at the end.

Annette Chambers-Smith

Director

Ohio Department of Rehabilitation and Correction

Exhibit 4

April 2, 2020

Governor Mike DeWine
Vern Riffe Ctr.
77 S. High St., 30th Fl.
Columbus, OH 43215

Dear Governor DeWine:

Thank you for leading the country with Ohio's strong COVID-19 tracking response. You have been a brave, early advocate for taking effective precautions that are greatly benefiting Ohioans.

Having served Ohio as police and prosecutors, we wish to commend you, and we wish to request your attention to a vulnerability in our state's COVID-19 strategy. Public health officials are warning that COVID-19 transmission in **correctional facilities** poses a potentially catastrophic risk. Transmission between prisoners, officers, and staff would quickly spread outside the facilities to the families of officers and released prisoners, accelerating the pandemic. We have watched governors act on this issue in [Colorado](#), [California](#), and [New Jersey](#). Tragically, efforts in New York are coming too late, as [Rikers Island](#) is already facing an unmanageable crisis. We are writing to urge you to **take executive action** to address this risk. A [list of concrete recommendations](#) is attached.

There is strong public support for dramatically reducing jail and prison populations to slow the spread of the coronavirus. Sixty-six percent of likely voters, including 59% of those who identify as "very conservative," said that elected officials should be considering measures to reduce populations in prisons and jails as a response to coronavirus.¹ Criminal justice leaders are already taking action to safely reduce correctional populations.²

It is challenging for our cities and counties to respond effectively to this crisis, since it requires so many different agencies to coordinate. Our justice system needs state-level guidance in order to act swiftly, properly allocate resources, and minimize casualties.

We write to you as the sole actor with the authority to achieve system-level results with clarity, consistency, and vision. We suggest sensible, safe steps you could take right now to prevent the spread of COVID-19 in correctional facilities and beyond:

¹Fighting the Coronavirus with Decarceration: Policies and Polling, Data for Progress (March 2020) Accessed at <https://www.dataforprogress.org/memos/fighting-coronavirus-with-decarceration>. (March 16, 2020 to March 17, 2020, survey of 2509 likely voters.)

² "Jails Release Prisoners, Fearing Coronavirus Outbreak - WSJ." 22 Mar. 2020, <https://www.wsj.com/articles/jails-release-prisoners-fearing-coronavirus-outbreak-11584885600>. Accessed 23 Mar. 2020.



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ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

121 Mystic Avenue, Suite 9
Medford, Massachusetts 02155
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- 1. Immediately and safely decrease the number of people in Ohio's jails and prisons.**
- 2. Dramatically reduce new incarceration.**

The time for action is now. This pandemic is here, and – if it hasn't already – it will make its way into our state's carceral facilities. Attached to this letter is a [list of action steps that you could take immediately to address this crisis head-on.](#)

Sincerely,

Carlis McDerment
Former Deputy Sheriff
Fairfield County Sheriff's Office, OH

Chief Daniel Meloy (Ret.)
Colerain Township Police Department
Colerain County, OH

Capt. Howard Rahtz (Ret.)
Cincinnati Police Department
Cincinnati, OH

Carter Stewart
Former US Attorney
Southern District of Ohio

Chief Tom Synan
Newtown Police Department
Newtown, OH

Enc. [Recommendations for Gov DeWine.pdf](#)