Department of Corrections DEC 13 2024 RECEIVED 1 Fisher & Associates Attorneys at Law Director's Office DEC 12202 P.O. Box 481 Received By: GRACE Hagåtña, Guam 96932 3 Phone (671) 472-1131 CLERK'S OFFICE SUPERIOR COURT OF GUAM 4 5 IN THE SUPERIOR COURT OF GUAM HAGÅTÑA, GUAM 6 7 PEOPLE OF GUAM 8 CF 0690-24 9 Plaintiff 10 PETITION FOR A ٧. 11 WRIT OF HABEAS CORPUS and CLASS ALLEGATION 12 JESSEE/1 13 Defendant 14 15 JESSEE LEON GUERRERO 16 17 Petitioner 18 v. 19 FRED BORDALLO 20 Director, Guam Department of Corrections 21 22 Respondent 23 24 25 Leon Guerrero v. Bordallo Page 1 Writ of Habeas Corpus CF 690-24

I. PETITION FOR WRIT OF HABEAS CORPUS.

This is a petition for a writ of habeas corpus filed on behalf of Jessee Leon Guerrero and a class of individuals similarly situated seeking relief to remedy instances of unlawful detention.

Respondent Bordallo is the Director of the Guam Department of Corrections and is detaining Mr. Leon Guerrero pending resolution of two felony charges while class members are also detained for various allegations.

Mr. Leon Guerrero has not been convicted of alleged crimes and is presumed to be innocent.

Mr. Leon Guerrero has exhausted any available administrative remedy.

II. STATEMENT OF FACTS

- 1. On or about 01 October 2024 Leon Guerrero was seized from his home and arrested by the Guam Police Department. Incident to the seizure and arrest, Mr. Leon Guerrero was indicted for Possession of a Schedule II Controlled Substance for Delivery and Possession of a Firearm without Valid Identification. Mr. Guerrero has been incarcerated with the Guam Department of Corrections under the supervision and control of Respondent since his arrest.
- 2. Mr. Leon Guerrero and others similarly situated are housed in secure cells at the Department. See Declaration, Leon Guerrero, submitted herewith.
- 3. Each cell is approximately 6 feet by 8 feet in horizontal dimension or a total of 48 square feet. *Id.*

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administer the only national accreditation program for all components of adult and

- Single cells in general population provide at least 35 square feet of unencumbered space. At least 70 square feet of total floor space is provided when the occupant is confined for more than 10 hours per day. See Performance-Based Standards for Adult Local Detention Facilities (ALDF), 4th Edition, Commission on accreditation for Corrections, 2016 Standards Supplement at 4-ALDF-1A-09
- Light levels in inmate cells/rooms are at least 20 foot-candles in personal grooming areas and at the writing surface. Lighting throughout the facility is sufficient for the tasks performed. *See id at 4-ALDF-1A-14*
- All inmate rooms/cells provide access to natural light. See id at 4-ALDF-1A-15
- All inmate rooms/cells provide the occupants with access to natural light by means of at least three-square feet of transparent glazing, plus two additional square feet of transparent glazing per inmate in rooms/cells with three or more inmates. See id at 4-ALDF-1A-16
- Noise levels in inmate housing units do not exceed 70 dBA (A Scale). Measurements shall be conducted annually by a qualified source with at least one measurement taking place during night time and one measurement taking place during day time. See id at 4-ALDF-1A-17
- A ventilation system supplies at least 15-cubic feet per minute of circulated air per occupant with a minimum of five-cubic feet per minute of outside air. Toilet rooms, and cells with toilets, have no less than four air changes per hour unless state or local codes require a different number of air

juvenile corrections. Their purpose is to promote improvement in the management of correctional agencies through the administration of a voluntary accreditation program and the ongoing development and revision of relevant, useful standards

changes. Air quantities are documented by a qualified technician not less than once per accreditation cycle. See id at 4-ALDF-1A-19

- •Temperature is mechanically raised or lowered to acceptable comfort levels. See id at 4-ALDF-1A-20
- 10. The illegality of Petitioner's confinement is well known to the Respondent. See Fisher Declaration at attachment, p.2. In fact Respondent states,

"pre-trial detainees are just being housed in the detention facility with no AC units, no lights, lack of water, lack of toiletry items, lack of personal hygiene products, no laundry soap, sometimes no fire-retardant mattresses because it was damaged by prisoners, no beddings, no towels, no cups." *Id.*

"Pre-trial detainees are housed in a cell like sardines in Hagatna Detention due to being placed on quarantine. Because they are housed and overcrowded in the cell, this causes them to fight while housed in the cell together because of the lack of space inside the room or cell. They could also contract diseases or illness for being overcrowded in the room. They are also probable victims of Prison Rape or sexual harassment, bullied and assaulted daily. They have incidents almost every day of getting beat up but claims they fell from their bunk or slipped in the shower and got two black eyes. They are afraid to report the truth about how they sustained injuries on their body? (sic) Because of this, the safety level is at the Red Zone. . . . These are the consequences of being overcrowded and lack of manpower. The AC units does (sic) not work which causes them to be irritated and also claim they have difficulty breathing." *Id*.

- 11. Respondent is well aware of the Constitutional and Organic Act violations to which Petitioner is subjected, yet has not resolved any condition, See Id at p. 3.
- "All of these problems lead to the violation of their civil rights which falls under the 8th amendment of Cruel and Unusual punishment"

III. MEMORANDUM OF POINTS AND AUTHORITY

48 USC 1421b(h) guarantees to Mr. Leon Guerrero and other members of the Class the right to be free from excessive bail and cruel and unusual punishments. This code section mirrors its Federal counterpart in the 8th Amendment to the United States Constitution. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The Eighth Amendment's ban on inflicting cruel and unusual punishments, made applicable to the States by the Fourteenth Amendment, proscribe[s] more than physically barbarous punishments. It prohibits penalties that are grossly disproportionate to the offense, as well as those that transgress today's broad and idealistic concepts of dignity, civilized standards, humanity, and decency. Confinement in a prison or in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards". *Hutto v. Finney, internal citations and quotations omitted, 437 U.S. 678, 685 (1979)*.

The question of whether conditions of confinement are cruel and unusual involves both a subjective and an objective inquiry. When conditions of confinement are not formally meted out as punishment by the statute or sentencing judge, such conditions cannot qualify as cruel and unusual punishment unless the prison officials who impose them possess a culpable, wanton state of mind. *Wilson v. Seiter*, 501 US 294, (1991)

In the context of general prison conditions, this culpable state of mind is deliberate indifference. "Thus, as retired Justice Powell has concluded: Whether one characterizes the treatment received by [the prisoner] as inhumane conditions of confinement, failure to attend to his medical needs, or a combination of both, it is appropriate to apply the 'deliberate indifference' standard articulated in Estelle." *Id at 303*.

It is clear that the respondent knows of the conditions of Mr. Leon Guerrero's confinement (*See Fisher Declaration*) yet is indifferent to the pain caused but will not ameliorate the offending conditions. In short, Respondent knowingly and wantonly imposes unconstitutional and inorganic detention without relief.

IV. CLASS ACTION ALLEGATIONS

- 12. Leon Guerrero brings this action on behalf of himself and on behalf of the following class (the "Class"): all individuals held by the Respondent in pre-trial detention at any Guam Department of Corrections facility.
- 13. The members of the Class are so numerous that joinder of all members is impracticable. There may be as many as 500 class members at the Department of Corrections.
- 14. Leon Guerrero's claims are typical of the claims of the members of the Class. The injuries suffered by Leon Guerrero are caused by the same course of conduct that gave rise to the claims of other members of the Class.
- 15. Leon Guerrero will fairly and adequately protect the interest of the Class. He has no conflict of interest with other members of the Class. He is represented by experienced counsel qualified in class action litigation and competent to assert the interests of the Class.
- 16. Respondent has acted on grounds generally applicable to the Class, such that final declaratory and injunctive relief is appropriate with respect to the Class as a whole. In particular, Plaintiff seeks injunctive relief preventing continued incarceration and detention as well as declaratory relief regarding the illegality of Respondent's practices.

17. Common questions of law and fact predominate over questions which may affect only individual members of the Class because the Respondent has acted or refused to act on grounds generally applicable to the Class.

18. Among the questions of law and fact common to the members of the Class are:

Whether Class members are cruelly and unusually detained in unsafe conditions.

Whether Class members are subject to cruel, unusual, inhumane and indecent conditions where they receive no fresh air, no means by which they can adequately wash, are subject to repeated exposure to bodily waste of others, no bedding or adequate sleeping space, no light and all other conditions amounting to illegal confinement.

Whether the Respondent is deliberately indifferent to the conditions he imposes.

- 19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of claims by certain members of the Class who could not afford to litigate individually such claims against a government entity.
- 20. Plaintiffs know of no difficulty to be encountered in the management of the matter that would preclude maintenance of a class action.

1 V. RELIEF SOUGHT WHEREFORE, Leon Guerrero, individually and on behalf of the alleged Class, 2 requests the following relief: 3 A. An Order certifying the proposed Class under Rule 23 of the Guam Rules 4 of Civil Procedure and appointing Leon Guerrero to represent the Class; 5 B. An Order declaring that Respondent's actions as described above are in 6 violation of the Organic Act of Guam as set forth above; 7 D. An Order enjoining Respondent from continuing to engage in the illegal 8 practices described herein; 9 E. A Writ of Habeas Corpus issue commanding Respondent to produce the 10 body of Petitioner Leon Guerrero before this Court on 11 at the hour of _____ a.m./p.m. and thereat demonstrate his compliance with 12 this order or show cause why he need not nor a peremptory writ issue; 13 F. Attorneys' fees and costs; and 14 G. Such other relief at law or equity as the Court may deem just and 15 proper. 16 17 I verify that the facts and circumstances alleged herein are true and made upon 18 personal knowledge. 19 20 21 Counsel for Petitioner 22 23

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1 FISHER & ASSOCIATES ATTORNEYS AT LAW P.O. Box 481 Hagåtña, Guam 96932 Phone (671) 472-1131 1 IN THE SUPERIOR COURT OF GUAM 6 HAGÅTŇA, GUAM JESSE ANDREW LEON GUERRERO, Criminal Case No. CF0690-24 14 Petitioner, 14 DECLARATION OF PETITIONER JESSE ANDREW LEON GUERRERO 10 vs. FRED E. BORDALLO JR., 1 125 Respondent. 13 14 11, COMES NOW PETITIONER, Jesse Andrew Leon Guerrero, and declares under penalty and perjury that the following is true and correct to the best of my knowledge: 16 ΓT 1. I am the Petitioner in this matter, over the age of 18 and competent to testify to the 18 matters stated herein. [4] 2. I state these matters based upon my own personal knowledge. 20 3. I am a detainee at the Department of Corrections Hagatna Facility. 4. I am currently locked up in a cell with five (5) other detainees. 2.1 5. There are no mattresses in my cell and I, with five (5) other detainees, sleep on the cold floor. 23.3 6. The toilet is right where I sleep and when other detainees in my cell urinate it splashes on to me. They also defecate in very close proximity to me. 7. The department does not provide us with any hygiene products such as soap to shower or ٠,٤, toothpaste to brush my teeth.

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Jesse Andrew Leon Guerrero, Petitioner.

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<i>!</i>	JESSE ANDREW LEON GUERRERO,) Criminal Case No. CF0690-24
1)	Petitioner, vs.)) DECLARATION OF THOMAS J.) FISHER)
12	FRED E. BORDALLO JR., Respondent,))))
14	COMES NOW, Thomas J. Fisher, and declares under penalty and perjury that the following is true and correct to the best of my knowledge: 1. Lam the Attorney for Mr. Leon Guerrero in this matter, over the age of 18 and competent	
18	to testify to the matters stated herein.	
17)	2. Attached is a true and correct copy of a letter sent from Respondent to the Attorney	
21	General of Guam dated December 05, 2024. 3. Further your Declarant sayeth naught.	
22		
23		Thomas J. Fisher Attorney for Petitioner
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December 05, 2024

Memorandum

To:

Attorney General Douglas Moylan

Via:

Fred E. Bordallo, Jr., Director of Corrections

From:

Major Maryhelen S. Lizama, CFAS

Operations Commander

Subject:

Request for Release

Reference:

"non-violent crime defendants"

Hafa Adai,

This a request to release those who are non-violent crime defendants due to the overcrowding situation, living conditions, shortage of manpower, building deficiencies, and lack of supplies.

We are requesting for the release of pretrial detainees who have been charged with misdemeanor charges, due to the fact that all deficiencies have been addressed and are pending repairs or replacement. Misdemeanors include possession of controlled substances or drugs, petty theft, vandalism, perjury, prostitution, indecent exposure, trespassing, basic assault, resisting arrest, public intoxication, and DUI (Driving under the Influence). We also have Traffic Warrants or violations, making false Reports. All of these could have been booked and released which was done in the past. The GPD would charge them and they were booked and released.

They could have been booked and released. Or they could also do community service such as cleaning parks, beaches, highways, cemetery, etc. pick up trash, and they could be assigned to community projects at least ten dollars per hour deducted from their fines or one day of work has one day off their sentence.

Daily confinements are showing people getting arrested for traffic violations, making false reports, driving while intoxicated, public drunkenness, criminal mischief, possession of illegal controlled substance, etc.. usually they would be Booked and Released but everyone is being arrested and confined for these charges.

During a legislative oversight hearing in September, DOC officials said there were nearly 1,000 inmates in both the Mangilao and Hagatña facilities, half of them on pre-trial status or those who have been temporarily held until they can be tried in a court. The facilities were designed for only about 300.

The DOC director said those to be released would be "non-violent crime defendants," and proposes to work with the AG, the Guam Police Department and the Guam Behavioral Health and Wellness Center to identify detainees who can benefit from behavioral assistance.

A Hadrment

This is all true regarding the bed capacity should be in Mangilao is (695) bed capacity but now has (719) prisoners and in the Hagatna Detention Facility which is the Federal Detention which should be (100) bed capacity and the Guam Detention Facility should only be (30) bed capacity but now they have over (69). ACF has fourteen facilities plus three deactivated which is the quarantine unit, community corrections center, and the Residential Substance Alcohol Treatment Facilities. Hagatna Detention Facilities has two facilities which brings it to a total of (16) active housing units. Out of the sixteen units, we have approximately

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GRAND TOTAL ON-ISLAND: (933)
INMATES 370
DETAINEES 533
GBHWC Clients 26
ICF 2
OFF-ISLAND 12
GRAND TOTAL: (945) as of December 5, 2024.
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We are overcrowded and the fact that not all prisoners could be housed in a facility due to they are codefendants, or they testified against them, they owe people money for drugs, they have victim families in jail who also has conflicts with some of the prisoners, gang members are from different ethnic background, racial conflicts, language barriers, and lack of programs. Pre-Trial detainees are just being housed in the housing facilities with no AC Units, no lights, lack of water, lack of toiletry items, lack of personal hygiene products, no laundry soap, sometimes no fire-retardant mattresses because it was damaged by the prisoners, no beddings, no towels, and no cups.

Prisoners damaged the plumbing and electrical foctures, beddings, and mattresses and not caring that other prisoners remaining in prison or new arrestees will be using the same thing when they get released. When there is a lack of these supplies then it causes tension and stress for both officers and prisoners.

Pre-Trial Detainees are idling not doing anything but waiting in their cell or the Domes. Only one officer watching 70 to 80 prisoners in all of the Local Detainee Housing Unit due to shortage of manpower to cover all of the units. Pre-Trial Detainees are housed in a cell like sardines in Hagatna Detention due to being placed on quarantine. Because they are housed and overcrowded in the cell, this causes them to fight while housed in the cell together because of the lack of space inside the room or cell. They could also contract diseases or illness for being overcrowded in the room. They are also a probable victim of Prison Rape or sexual harassment, bullied, and assaulted daily. They have incidents almost everyday of getting beaten up but claims they fell from their bunk or slipped in the shower and got two black eyes. They are afraid to report the truth about how they sustained injuries on their body? Because of this, the safety level is at the Red Zone. Weekly incidents of assaults on prisoners, assaults on staff, and contraband.

These are all the consequences of being overcrowded and lack of manpower. The AC Units does not work which causes them to be irritated and also claim they have difficulty breathing. The one officer in the unit has to watch them for twelve to thirteen hours without a partner to assist them to serve drinks or make a count or make a check because they are basically outnumbered.

Lastly, the buildings housing the prisoners and pre-trial detainees have been damaged from the Typhoon Mawar which has not been fully repaired yet. A lot of the Generators does not work at this

time such as Post 8, Post 16, No Generators for the Domes which is Post 25a, Post 25, Post 29, and Post 29A, and Post 30's are all inoperable. Majority of the A/C Units are inoperable such as Post 2, Post 4, Post 5, Post 6, Post 7, Post 8, Post 16, Post 17, Post 18, Post 24, Post 25a, Post 25, Post 29, Post 29a, Post 30 and Post 30a all have AC units that needs to be repaired or replaced. The administration offices also have AC units that are inoperable making it uncomfortable to work such as the Attorney Interviews and the Zoom Court Hearings are all located in areas where the A/C Units are all inoperable which is caused a lot of tension in the units. Prisoners and Corrections Officers are all irritated and frustrated with the harsh working and living conditions. The problem when the AC units does not work is that they cannot open windows in the facilities because all of the windows are sealed and they need to have proper ventilation and the cooling system has to work. You cannot open the doors or windows even if you can because the mosquitos, frogs, snakes and insects enter the facility which is another added complaint. You cannot open the doors without monitoring it because they could escape. All of these problems lead to the violation of their civil rights which falls under the 8th amendment of Cruel and Unusual punishment.

All of these deficiencies have been reported and addressed and we are waiting for the Funds to make repairs and replacements of all generators. At Units, plumbing, electrical equipment, and supplies. At of these predicts to be expedited immediately and everywhing has to be done to ensure the health, safety, security, and orderly running of the facilities.

Government Supply Agency also needs to ensure that the Department of Corrections has adequate supply on a weekly basis of toilet tissue, personal hygiene, laundry soap, cleaning materials to maintain health, sanitation, safety and security. Everyone has to remember we are a PUBLIC SAFETY AGENCY and not a hotel with tenants.

We have those sentenced to serve their time in jail, those who are pre-trial detainees who have not been found guilty or not guilty, we have behavioral clients at the male units and the female units. These nine hundred and thirty-three prisoners are in our custody and we have to care for them according to the law to carry out our mission which is care, custody, control, and rehabilitation of law offenders at the same time, enforcing the law, serving the public, providing public safety, ensuring that we keep our officers and staff safe behind these walls. We only have (170) Corrections Officers, (07) CCRP Officers (11) Recruits, (1) LTA, (1) LTD, (1)TDY to Homeiand (10) Parole Officers and (16) Evilian Employees. We just lost three officers who resigned in November 2024. We now have (170) Corrections Officers versus (933) Prisoners. By reducing the prison population, you would decrease the cost for housing, supplies, utilities, meals, medical, dental, and also decrease the incidents. It would be a safe place for everyone.

Recommendation: We are recommending the following:

- 1. Expedite the funding for Generators, AC Units, plumbing, electrical, equipment, vehicle etc... to immediately repair or replace all needed for all sideen units in the Adult Correctional Facilities and the Hagatna Detention Facilities. Without the Generators working whenever there is a power outage, the buildings are pitch black and we cannot see anything which causes our facilities to be in a very high danger level.
- Release those who are non-U.S. Citizens who have committed crimes and have them deported
 to their country. Guam is too small for people coming tiere to Guam and hurting the community
 and the people. Committing a crime in our island is not folerated by the community who are

law abiding citizens. Tax payers are paying for the food, utilities, supplies, buildings, materials and for the Corrections Officer's and staff's salary while they are in prison.

- 3. Book and Release all who committed Misdemeanors or have them referred to conduct community projects such as clean up the parks, beaches and highways. Deduct \$10 off their fines for every hour they work. One day off their sentence for every day that they work.
- 4. Release Pre-Trial Detainees with misdemeanor crimes on electronic monitoring device or third-party release. House Arrest. This would reduce the population, reduce overcrowding, reduce incidents in the prison facilities for both males and female units.
- 5. Release those with Drug Possessions to attend Drug and Alcohol programs weekly or monthly while outside, attend counseling at GBHWC, get treatment at GBHWC, and conduct community service. Assist them to get a job or attend training or college.
- Active Search of all incoming shipment to the Port and all Ports in Guam to prevent more illegal
 controlled substance entering our island and communities to decrease and eliminate all drug
 activities and trafficking of drugs. To also decrease the deaths caused by meth users and
 fentanyl users.
- 7. Identify all those arrested with Drugs and locations to identify the possible source of drugs to have them arrested and prosecuted to include their finance reports or tax reports. Work with Federal Officials to see what could be done to detect, deter, decrease and end drug activities?
- 8. Continuous hiring and expedite recruitment for the Department of Corrections to monitor and watch prisoners who were arrested and are pretrial detainees. To also monitor all those sentenced to serve at the Department of Corrections.
- Pre-Trial Detainees have not been found guilty or not guilty. They are waiting for a Court Hearing or Trial.
- 10. The medical and dental costs for Pre-Trial Detainees are being paid by tax payers which is costly. Recommend that upon release that they work and they pay back their own medical/dental cost to the General Fund or the Department of Corrections revolving fund.

Your assistance and consideration on this matter is greatly appreciated.

Major M.S. Lizama, CFA5
Operations Commander
Support Section
ACF/HDF/SORT/K-9/CCRP
STIU/FAU/PAYTEL
Parole Service Division
Casework Division
Niedical Liaison

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