

*In the Court of Appeals of Maryland*

September Term, 2019

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

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IN RE THE PETITION OF THE LIFER FAMILY SUPPORT NETWORK,  
LORIE FRIEND, AND JULIE MAGERS FOR AN EXTRAORDINARY WRIT

*Petitioners.*

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**PETITION FOR EXTRAORDINARY WRIT**

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## **I. INTRODUCTION**

This petition presents an extraordinary issue of public safety: the urgent need to protect the health of all Maryland residents, prevent the overwhelming of our health care system, and save lives by limiting the spread of COVID-19. In nearly every respect, the State of Maryland has taken extraordinary steps to slow the COVID-19 pandemic, heeding the expert advice of public health officials to order a statewide “shelter-in-place,” extending school, court and business closures, and postponing elections. In many regards, Maryland has led the nation in implementing these critical measures.

But there has been one blind spot in Maryland’s leadership on the COVID-19 pandemic: jails and prisons. In contrast to the speed with which Maryland has followed public health officials’ other warnings, Maryland has failed almost completely to act in any coordinated way to prevent COVID-19 from spreading rapidly through correctional facilities and overwhelming medical resources in nearby communities.

This blind spot is glaring: COVID-19 does not discriminate between correctional facilities and other places where people live, and the U.S. Centers for Disease Control and Prevention (“CDC”), together with leading public health experts, is clear that critically important measures must be taken to prevent the spread of the virus in correctional facilities. Such measures include social

distancing, preventive hygiene, and the medical isolation of confirmed or suspected COVID-19 cases. As Maryland’s federal court explained on April 3, “once the Coronavirus is introduced into a detention facility, the nature of these facilities makes the mitigation measures introduced elsewhere in the country difficult or impossible to implement . . . the crowded nature of the facilities can make social distancing recommended by the CDC impossible.”<sup>1</sup>

Leading public health officials have warned that once COVID-19 gets into a detention facility it will spread like wildfire, and that unless courts act **now**, the “epicenter of the pandemic will be jails and prisons.”<sup>2</sup> Heeding this warning, numerous other jurisdictions have taken action to reduce population density to facilitate compliance with CDC guidance. Maryland has not.

Exposing the 24,000 people incarcerated in Maryland’s jails and prisons (8,000 of them being held pre-trial) and thousands of staff who work in these facilities to unnecessary health risks is inhumane and violates their rights under the Eighth and Fourteenth Amendments to the United States Constitution and Articles 16, 24 and 25 of the Maryland Constitution. Indeed, for at-risk individuals, continued detention may literally be tantamount to a death sentence.

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<sup>1</sup> *Coreas v. Bounds*, No. 8:20-cv-0780-TDC, 2020 WL 1663133, at \*2 (D. Md. Apr. 3, 2020) (attached as Ex. P) (addressing conditions at local detention centers in Worcester and Howard Counties).

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

But this is not just a prisoners' rights or correctional staff issue. Prisons and jails are not hermetically sealed. Once the virus enters a detention center, the regular movement of staff in and out of the facility means that the virus will spread back to the community. Whether COVID-19 cases occur in detention centers or in the community, they exacerbate the strain on the healthcare system. If we are all in this together, our public health response needs to protect everyone in the State.

It is for this reason that this extraordinary petition is being filed, to ensure that the highest levels of state government are acting to protect the health of all Maryland residents and save lives by limiting the spread of COVID-19 among incarcerated people and staff of Maryland's state and local correctional facilities, and the communities surrounding them.

This Court, recognizing the public health threat presented by COVID-19 and acknowledging the need to address the "threat of imminent and potentially lethal harm to individuals," issued emergency orders on March 12 and 25 restricting access to Maryland courts and other judicial facilities. Public health imperatives require the Court to extend such measures to protect Marylanders living and working in our places of detention. It is for these reasons that many other jurisdictions have recognized that the public health emergency compels evaluation and release of significant numbers of people who pose little threat to public safety

and will be endangered by continued imprisonment: jurists in the highest courts of California, Ohio, Pennsylvania, Michigan, New Jersey, Massachusetts, Washington, Kentucky, South Carolina, Maine, Montana, and Wyoming have all taken measures to significantly reduce their jail and prison populations. As these courts have shown, legitimate concerns about public safety can be addressed through procedures that require individualized determinations, expedite decision-making, employ existing community corrections authority, and prioritize the most vulnerable prisoners.

This Court has the legal authority — under Maryland Constitution Article IV, Section 18, Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure, as well as this Court’s inherent common law authority — to follow these other jurisdictions by granting extraordinary relief. Justice demands no less.

Time is of the essence. Last Monday (March 30), the Maryland Department of Public Safety and Correctional Services (DPSCS) reported the first case of coronavirus in a Maryland detention center – at Jessup Correctional Institution.<sup>3</sup> By Friday (April 3), that number had grown to 17, in Jessup, Baltimore Central

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<sup>3</sup> Justin Fenton & Phillip Jackson, *Maryland prison system confirms first coronavirus cases*, Baltimore Sun (Mar. 30, 2020) <https://www.baltimoresun.com/coronavirus/bs-md-prison-coronavirus-20200330-umzsebnxfhbxcf2yrookepewi-story.html>

Booking, and Hagerstown.<sup>4</sup> And additional cases have been reported in the Prince George’s County detention center.<sup>5</sup> While certain judges and officials — most notably in Baltimore — have taken steps to reduce their jail populations, no one in the State (neither DPSCS nor any local jurisdiction) has taken a systemic approach to significantly reduce jail and prison populations. Without a clear mandate from this Court, too many jurisdictions and corrections officials will continue to take a business-as-usual approach, failing to address, or even recognize, the looming public health catastrophe. As the correctional workers’ union has warned, “business as usual is not acceptable.”<sup>6</sup>

This Court has the power to compel the necessary broad-based reduction of jail and prison populations. On Friday, the Office of Public Defender sent specific, concrete recommendations to the Chief Justice to significantly reduce the populations. And earlier today, Attorney General Frosh wrote Governor Hogan that:

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<sup>4</sup> Phillip Jackson, *Maryland reports 17 confirmed coronavirus cases inside state’s correctional system*, Baltimore Sun (Apr. 3, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-17-covid-cases-maryland-prisons-20200403-qpkllqmtknsjj5dvwys6ils6y-story.html>.

<sup>5</sup> Keith L. Alexander, et al., *As inmates in D.C., Maryland and Virginia test positive for the coronavirus, jail officials scramble to reduce the risk*, Washington Post (Apr. 1, 2020), [https://www.washingtonpost.com/local/public-safety/as-inmates-in-dc-maryland-and-virginia-test-positive-for-the-coronavirus-jail-officials-scramble-to-reduce-the-risk/2020/04/01/b0d9cfd8-7363-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/local/public-safety/as-inmates-in-dc-maryland-and-virginia-test-positive-for-the-coronavirus-jail-officials-scramble-to-reduce-the-risk/2020/04/01/b0d9cfd8-7363-11ea-85cb-8670579b863d_story.html); see also Ex. J, Declaration of Gina Elleby (“Elleby Decl.”) at ¶ 5.

<sup>6</sup> American Federation of State, County and Municipal Employees, “Overview of COVID-19 Response at State Agencies and USM Schools,” (Mar. 27, 2020) (“AFSCME Letter”), available at [https://www.afscmemd.org/system/files/overview\\_covid-19\\_response\\_3\\_27\\_20.pdf](https://www.afscmemd.org/system/files/overview_covid-19_response_3_27_20.pdf).



The reality is that we need a broader and faster release of a larger swath of inmates. Such action is necessary to stave off a catastrophe that will not only result in avoidable illness and death in the prisons, but will also put our correctional officers, who already put their lives on the line, at much greater risk. This increased danger will in turn augment spread of the disease in the community at large. . . . Taking more comprehensive action to protect prison workers, inmates, and the public is imperative. . . . I strongly recommend that, working with the Parole Commission, you exercise your commutation authority to release as soon as possible a larger number of inmates who pose little risk to public safety but whose continued incarceration greatly enhances risk to public health.

For the reasons cited in this Petition, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter and instruct the Administrative Judge of each jurisdiction and the Department of Public Safety and Correctional Services and the Maryland Parole Commission to take measures to expeditiously reduce their jail populations.

## II. PETITIONERS

The Petitioners in this case are the Lifer Family Support Network, Lorie Friend, and Julie Magers.

- The **Lifer Family Support Network (FSN)** is an organization made up of people who gather regularly to share information and advocate for the safety and humanity of their loved ones serving sentences inside Maryland's prisons and jails. FSN includes parents, children, relatives, and "adoptive" family for those inside who have lost their family during their incarceration. FSN also includes members who have recently returned from incarceration and their families who are the primary mechanism for re-entry. FSN and its members are extremely concerned about the effect the coronavirus pandemic will have on loved ones inside, if immediate and

dramatic action is not taken to prevent spread of the virus in Maryland's prisons. FSN Founder Martina Hazelton and FSN member Earl Young have submitted declarations in support of this Petition, attached as Exhibits K ("Hazelton Decl.") and L ("E. Young Decl."), respectively.

- **Lorie Friend**, is a mother and registered nurse who petitions the Court for immediate release to community supervision of her 28-year-old son Christopher Friend, who is serving a four-month sentence for a nonviolent misdemeanor at the Garrett County Detention Center. Ms. Friend fears for Christopher's health and safety if he remains incarcerated during the pandemic. Christopher poses no safety risk to his community and suffers from an anxiety disorder, which is exacerbated by fears of infection with COVID-19, especially given that he is unable to protect himself from infection with the virus while incarcerated at GCDC. He will be able to live at home with his mother and fully supported by his family if he is released to community supervision. Ms. Friend's declaration in support of this Petition is attached as Exhibit M ("Friend Decl.").
- **Julie Magers**, wife of Michael Mehaffie, petitions the Court for her husband's immediate release to home detention. Mr. Mehaffie, who is serving a sentence at Roxbury Correctional Institution for a non-violent burglary, suffers from chronic illness, including multiple sclerosis, heart disease, and is permanently disabled – unable to walk without assistance. He has a clean institutional record. Given his disabilities and poor health, Mr. Mehaffie is highly susceptible to serious complications if he contracts the coronavirus. Ms. Magers fears for her husband's life, health and safety if he remains incarcerated during the pandemic. Given his disabilities and clear record, Mr. Mehaffie poses no safety risk to his community. He will be able to live at home with his wife and fully supported by his family if he is released to home detention. Ms. Magers' declaration in support of this Petition is attached as Exhibit N ("Magers Decl.").

This Petition is supported by the Declarations of numerous public health and public safety experts, including two former Maryland Secretaries of the

Department of Health and a former Secretary of the Department of Public Safety and Correctional Services.<sup>7</sup>

It is impossible to capture the breadth and the individual accounts of all the people at risk in Maryland’s prisons and jails, nor the many missed opportunities to mitigate the spread of COVID-19. But the declarations submitted with this petition from people and lawyers in various Maryland jurisdictions describe law enforcement officials opposing release of people who can safely return to the community on the false view that “they are safer in jail;”<sup>8</sup> individuals with serious medical conditions and those in their 70s and 80s unable to practice social distancing in facilities where there have been confirmed COVID-19 cases;<sup>9</sup> egregious failures to practice basic social distancing and hygiene leading to the spread of the virus among multiple residents of a local jail not yet reported in the press;<sup>10</sup> and healthcare and corrections staff who are already overworked and stretched thin and being confronted with increasingly impossible demands every day.<sup>11</sup>

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<sup>7</sup> See Ex. A, Declaration of Dr. Georges C. Benjamin (“Benjamin Decl.”); Ex. B, Declaration of Dr. Joshua M. Sharfstein (“Sharfstein Decl.”); Ex. C, Declaration of Stuart Simms (“Simms Decl.”); Ex. D, Declaration of Dr. Chris Beyrer (“Beyrer Decl.”); Ex. E, Declaration of Dr. Jonathan L. Golob (“Golob Decl.”); Ex. F, Declaration of Dr. Robert B. Greifinger (“Greifinger Decl.”); Ex. G, Joint Declaration of Johns Hopkins University Physicians (“Hopkins Physicians Decl.”).

<sup>8</sup> Ex. H, Declaration of Erica Suter (“Suter Decl.”) at ¶¶ 4-8.

<sup>9</sup> E. Young Decl. ¶¶4-8; Hazelton Decl. ¶¶ 9-16.

<sup>10</sup> Elleby Decl. ¶ 5.

<sup>11</sup> See Ex. I, Declaration of Leslie Schell (“Schell Decl.”) at ¶ 7, Hopkins Physicians Decl. ¶ 11.

### III. FACTUAL BACKGROUND<sup>12</sup>

#### A. COVID-19 Poses a Rapidly Spreading Public Health Crisis and Risk of Illness, Injury or Death

1. The coronavirus that causes COVID-19 has led to a global pandemic that continues to spread at a dizzying rate worldwide and across Maryland.<sup>13</sup> On March 11, 2020, the World Health Organization (WHO) labeled the outbreak a “global pandemic,” when the organization had identified 118,000 cases in 110 countries.<sup>14</sup> Now, only weeks later, the WHO reports (as of April 5, 2020), there were more than 1,090,000 reported COVID-19 cases throughout the world across 208 countries and more than 58,000 deaths.

2. Nationally, the outbreak looks vastly different than it did just a month ago, with fewer than 70 reported U.S. cases at the beginning of March spiking to over 277,000 cases (and over 6,500 deaths) across every state, plus Washington,

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<sup>12</sup> All statistics cited in this petition from the World Health Organization, The New York Times, or other organizations generating up-to-date coronavirus-related information, are current as of the date of this filing.

<sup>13</sup> Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, Wall Street Journal (Mar. 11, 2020), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

<sup>14</sup> Jamie Ducharme, *World Health Organization Declares COVID-19 a ‘Pandemic.’ Here’s What That Means*, Time (Mar. 11, 2020), <https://time.com/5791661/who-coronavirus-pandemic-declaration/>.

D.C. and four U.S. territories, by April 4.<sup>15</sup> These numbers mark the highest incidence in any country of COVID-19 cases and virus-related deaths, surpassing the total case count and fatality numbers of both China (where the virus originated) and Italy.<sup>16</sup> Projections indicate that as many as 240,000 people in the U.S. will die from COVID-19, accounting for existing interventions.<sup>17</sup>

3. Maryland was one of the first states to report cases of COVID-19, and at present, 4,045 residents have contracted the virus.<sup>18</sup> At least 91 have died.<sup>19</sup> In many respects, Maryland's response was ahead of the curve. Governor Hogan issued a state of emergency for Maryland on March 5, 2020,<sup>20</sup> a week before the President would declare one nationally.<sup>21</sup> In the weeks to follow, the Governor

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<sup>15</sup> See Mitch Smith, et al., "Coronavirus in the U.S.: Latest Map and Case Count," New York Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#g-cases-by-county> (last accessed Apr. 6, 2020).

<sup>16</sup> Talal Ansari, et al., *U.S. Coronavirus Cases Surpass Those of China, Italy*, Wall Street Journal (Mar. 27, 2020), <https://www.wsj.com/articles/governments-clamp-down-as-coronavirus-infections-surge-11585218656>.

<sup>17</sup> Philip Rucker & William Wan, *Trump projects up to 240,000 coronavirus deaths in U.S., even with mitigation efforts* (Mar. 31, 2020), [https://www.washingtonpost.com/politics/trump-white-house-projects-up-to-240000-coronavirus-deaths-in-us-even-with-mitigation-efforts/2020/03/31/62df5344-7367-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/trump-white-house-projects-up-to-240000-coronavirus-deaths-in-us-even-with-mitigation-efforts/2020/03/31/62df5344-7367-11ea-87da-77a8136c1a6d_story.html).

<sup>18</sup> See Maryland Dep't of Health Coronavirus Disease 2019, <http://coronavirus.maryland.gov> (last accessed Apr. 5, 2020).

<sup>19</sup> See *id.*

<sup>20</sup> Meredith Cohn & Pamela Wood, *First three coronavirus cases confirmed in Maryland, all in Montgomery County; Hogan declares state of emergency*, The Baltimore Sun (Mar. 6, 2020), <https://www.baltimoresun.com/coronavirus/bs-hs-coronavirus-wrap-up-20200306-ipbh7t5r4zhxpidx3kgeiq3seu-story.html>.

<sup>21</sup> Charlie Savage, *Trump Declared an Emergency Over Coronavirus. Here's What It Can Do.*, New York Times (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/us/politics/coronavirus-national-emergency.html>.

issued a series of orders aimed at stopping the spread of the virus within the State, culminating in a March 30, 2020 “shelter-in-place” order that requires all persons to stay at home unless participating in an “essential activity,” prohibits large gatherings and events, and closes senior centers and all “non-essential” businesses and other establishments.<sup>22</sup>

4. The virus spreads from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.<sup>23</sup> There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection.<sup>24</sup> Social distancing—deliberately keeping at least six feet of space between persons to avoid spreading illness<sup>25</sup>—and a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, are the only known effective measures for protecting against transmission of

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<sup>22</sup> Order of the Governor of the State of Maryland (“Hogan Order”), No. 20-03-30-01 (Mar. 30, 2020), available at <https://context-cdn.washingtonpost.com/notes/prod/default/documents/fe7f3c1f-018c-43f0-aa81-99ce230b1a79/note/5add430e-c774-4ddf-babc-dfbd199c1e3b.#page=1>.

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

<sup>24</sup> World Health Organization (WHO), *Q&A on coronavirus (COVID-19)*, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (“To date, there is no vaccine and no specific antiviral medicine to prevent or treat COVID-2019.”); Declaration of Dr. Robert B. Greifinger at ¶ 8, ECF No. 4, *Dawson v. Asher*, 2:20-cv-00409-JLR-MAT (W.D. Wash.) (“Social distancing and hand hygiene are the only known ways to prevent the rapid spread of COVID-19.”).

<sup>25</sup> Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*, <https://cutt.ly/VtYYiDG>.

COVID-19.<sup>26</sup> Because the coronavirus spreads among people who do not show symptoms, staying away from people is the best way to prevent contraction.

5. In other words, and as all of us have been forced to apprehend by the ways our lives have changed dramatically over the course of less than one month, *everyone* must act as if *everyone* has the disease. There is no exception for those who live or work in places of detention.

6. For certain categories of people, particularly people over the age of 50 and those with certain medical conditions, the risk of serious COVID-19 infection is greater and more likely to lead to serious injury or death.<sup>27</sup>

7. People over the age of 50 face a greater risk of serious illness or death from COVID-19.<sup>28</sup> In a February 29, 2020, preliminary report, individuals age 50-59 had an overall mortality rate of 1.3 percent; 60 to 69-year-olds had an overall 3.6 percent mortality rate, and those 70-79 years old had an 8 percent mortality rate.<sup>29</sup>

8. People of any age who suffer from certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease

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<sup>26</sup>See Declaration of Dr. Jonathan Louis Golob at ¶ 8, ECF No. 5, *Dawson v. Asher*, 2:20-cv-00409-JLR-MAT (W.D. Wash. Mar. 16, 2020) [hereinafter “*Dawson Golob Decl.*”].

<sup>27</sup> See Golob Decl. ¶ 3; Beyrer Decl. ¶ 13; Benjamin Decl. ¶ 22; Sharfstein Decl. ¶ 13.

<sup>28</sup> Xianxian Zhao, et al., *Incidence, clinical characteristics and prognostic factor of patients with COVID-19: a systematic review and meta-analysis*, medRxiv (preprint) (Mar. 20, 2020), available at <https://www.medrxiv.org/content/10.1101/2020.03.17.20037572v1>.

<sup>29</sup> *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths*, <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (data analysis based on WHO-China Joint Mission Report).

(including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and asthma, also have an elevated risk.<sup>30</sup> Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2 percent, 9.2 percent for diabetes, 8.4 percent for hypertension, 8.0 percent for chronic respiratory disease, and 7.6 percent for cancer.<sup>31</sup>

9. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs, such as the heart and liver.<sup>32</sup>

10. In serious cases, COVID-19 causes acute respiratory disease syndrome (ARDS), a life-threatening condition with a 30 percent mortality rate for those who receive ideal medical care.<sup>33</sup> Even in non-ARDS cases, COVID-19 can severely

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<sup>30</sup> World Health Organization, *Coronavirus disease (COVID-19) advice for the public: Myth busters*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> (“Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”).

<sup>31</sup> World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (Feb. 28, 2020), at 12, available at [https://www.who.int/publications-detail/report-of-the-who-china-joint-mission-on-coronavirus-disease-2019-\(covid-19\)](https://www.who.int/publications-detail/report-of-the-who-china-joint-mission-on-coronavirus-disease-2019-(covid-19)) (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”).

<sup>32</sup> Golob Decl. ¶ 99; *see also* CDC Guidance.

<sup>33</sup> Beyrer Decl. ¶ 14; *see also* Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland (Mar. 25, 2020), available at <https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>.



damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause permanent loss of breathing capacity.<sup>34</sup> COVID-19 may also target the heart, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can reduce the heart's ability to pump.<sup>35</sup> COVID-19 can also trigger an over-response of the immune system and result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.<sup>36</sup>

11. Most people in higher risk categories who develop serious illness will need advanced support. This requires highly specialized equipment like ventilators that are in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians.<sup>37</sup> Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.<sup>38</sup>

12. For people in the highest-risk populations, the fatality rate of COVID-19 infection is about 15 percent.<sup>39</sup>

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<sup>34</sup> *Dawson Golob Decl.* at ¶ 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at ¶ 6.

<sup>38</sup> *Id.* at ¶ 5.

<sup>39</sup> *Id.* at ¶ 4.

13. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage, loss of digits, and loss of respiratory capacity.<sup>40</sup>

**B. Prevention of COVID-19 Spread and the Grave and Immediate Danger to People Who Live and Work in Detention Centers and a Threat to the Public Health System**

14. In light of these high rates of serious injury and fatality, and because there is no cure or vaccine, the only known effective measure to reduce the risk of serious illness and death that COVID-19 presents for vulnerable people is to prevent them from being infected in the first place.

15. Public health experts have warned that the best way to slow and prevent transmission is primarily through a practice known as “social distancing.”<sup>41</sup> Social distancing requires all people to stay at least six feet away from all other people to control the spread of the virus. These measures are particularly important because the coronavirus spreads aggressively, and people can spread it even if they do not feel sick or exhibit any symptoms.<sup>42</sup> The only assured way to curb the

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<sup>40</sup> *Id.*

<sup>41</sup> World Health Organization, *Q&A on coronavirus (COVID-19)*, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (“To date, there is no vaccine and no specific antiviral medicine to prevent or treat COVID-2019.”) (last accessed Apr. 6, 2020); Declaration of Dr. Robert B. Greifinger at ¶ 8, ECF No. 4, *Coreas v. Bounds*, 8:20-cv-00780 (D. Md. Apr. 1, 2020) (“Social distancing and hand hygiene are the only known ways to prevent the rapid spread of COVID-19.”); Beyrer Decl. ¶ 22 (“The best way to slow and prevent spread of the virus is through ‘social distancing.’”).

<sup>42</sup> CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid->

pandemic is through dramatically reducing contact for all.<sup>43</sup> Consequently, every American institution—from schools<sup>44</sup> to places of worship,<sup>45</sup> from businesses<sup>46</sup> to legislatures<sup>47</sup>—has been exhorted to reduce the number of people in close quarters.

16. Places of detention are the perfect storm for the spread of COVID-19 because they are “congregate” environments in which high numbers of people with chronic, often untreated, illnesses live, eat and sleep in close proximity in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, presence of many high-contact surfaces, and no possibility of staying at a distance from others.<sup>48</sup> Every aspect of movement — even access to medical care — typically involves people in close proximity.

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[spreads.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Ftransmission.html](https://www.cdc.gov/coronavirus/2019-ncov/2Fprepare%2Ftransmission.html) (last accessed Apr. 5, 2020); *see also* Beyrer Decl. ¶ 31.

<sup>43</sup> Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to ‘Flatten the Curve,’* Washington Post (Mar. 14, 2020), <https://www.washingtonpost.com/graphics/2020/world/corona-simulator/>.

<sup>44</sup> CDC, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs* (Mar. 25, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools-h.pdf>.

<sup>45</sup> CDC, *Interim Guidance for Administrators and Leaders of Community-and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html> (last accessed Apr. 5, 2020).

<sup>46</sup> CDC, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last accessed Apr. 5, 2020).

<sup>47</sup> Nat’l Conf. of State Legislatures, *Coronavirus and State Legislatures in the News*, <https://www.ncsl.org/research/about-state-legislatures/coronavirus-and-state-legislatures-in-the-news.aspx> (last accessed Apr. 5, 2020).

<sup>48</sup> Letter from Johns Hopkins Faculty.

17. The CDC Guidance for detention centers reiterates that the only known effective measures for protecting vulnerable people are physical social distancing (i.e., remaining at least six feet away from other people), quarantining or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water.<sup>49</sup> And the National Commission on Correctional Health Care specifically recommends that they be implemented in correctional facilities to increase the physical space between all persons incarcerated and detained at such facilities.<sup>50</sup>

18. People in jails specifically and in “congregate” environments (where people live, eat, and sleep in close proximity) generally, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships<sup>51</sup> and nursing homes.<sup>52</sup>

19. As one expert noted:

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<sup>49</sup> CDC Guidance.

<sup>50</sup> See Nat’l Comm’n on Correctional Health Care, *COVID-19 Weekly Roundtable for Law Enforcement and Correctional Health Care* (Mar. 27, 2020), [https://www.ncchc.org/filebin/COVID/COVID-19\\_Roundtable\\_Week\\_2\\_March\\_27.pdf](https://www.ncchc.org/filebin/COVID/COVID-19_Roundtable_Week_2_March_27.pdf).

<sup>51</sup> The CDC is currently recommending that travelers defer cruise ship travel worldwide. See CDC, *COVID-19 and Cruise Ship Travel*, <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship> (last accessed Apr. 5, 2020).

<sup>52</sup> The CDC notes that long-term care facilities and nursing homes pose a particular risk because of “their congregate nature” and the residents served. CDC, *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html) (last accessed Apr. 5, 2020).

[B]ehind bars, some of the most basic disease prevention measures are against the rules or simply impossible. Separating sick people from well people to prevent the disease from spreading can be nearly impossible in prison, since prisoners are already grouped according to security and other logistical considerations. Even so-called social distancing can prove impossible. People in prisons and jails live every minute of the day in close proximity to each other.<sup>53</sup>

Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, in which jails and prisons dealt with a disproportionately high number of cases.<sup>54</sup>

20. Thus, people in detention face increased danger of contracting COVID-19, as well as increased danger of spreading it to those around them, including staff.

21. There is no material dispute among public health experts on this point.<sup>55</sup> Numerous public health experts, including the faculty at Johns Hopkins schools of nursing, medicine, and public health,<sup>56</sup> Dr. Gregg Gonsalves (Yale School of Public Health),<sup>57</sup> Ross MacDonald (chief medical officer for Correctional

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<sup>53</sup> The Justice Collaborative, *Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks* (Mar. 2020) (emphasis removed) [https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19\\_Explainer.pdf](https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19_Explainer.pdf).

<sup>54</sup> See, e.g., Benjamin Decl. ¶ 28. This H1N1 “swine flu” pandemic outbreak spread dramatically in jails and prisons in 2010, but that strain of virus had a low fatality rate because of the characteristics of the virus—COVID-19’s fatality rate is far higher. See David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

<sup>55</sup> See; Beyrer Decl. ¶¶ 23-36; Benjamin Decl. ¶¶ 29-31; Sharfstein ¶¶ 19-25.

<sup>56</sup> See Letter from Johns Hopkins Faculty.

<sup>57</sup> See Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, Connecticut Mirror (Mar. 11, 2020), <https://ctmirror.org/2020/03/11/elderly-prison-population-vulnerable-to-potential-coronavirus-outbreak/>.

Health Services),<sup>58</sup> Dr. Marc Stern (University of Washington School of Public Health),<sup>59</sup> Dr. Oluwa Damilola T. Oladeru (physician at Massachusetts General Hospital),<sup>60</sup> Dr. Anne Spaulding (Emory School of Public Health),<sup>61</sup> Homer Venters (former chief medical officer for NYC’s jail system),<sup>62</sup> Dr. Jaimie Meyer (Yale School of Medicine),<sup>63</sup> and Josiah Rich (Brown University)<sup>64</sup> have all strongly cautioned that people in prisons and jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

22. The inability of correctional facilities to contain spread are demonstrated by dramatic outbreaks in the Cook County Jail<sup>65</sup> and Rikers Island in New York City, where the rate of COVID-19 transmission is estimated to be the

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<sup>58</sup> See Craig McCarthy & Natalie Musumeci, *Top Rikers Doctor: Coronavirus ‘Storm is Coming,’* New York Post (Mar. 19, 2020), <https://nypost.com/2020/03/19/top-rikers-doctor-coronavirus-storm-is-coming/>.

<sup>59</sup> Memorandum from Dr. Marc F. Stern, Affiliate Assistant Professor, School of Public Health, University of Washington on “Washington State Jails Coronavirus Management Suggestions in 3 ‘Buckets,’” (Mar. 5, 2020), available at <https://prisonlaw.com/wp-content/uploads/2020/03/20.03.14-Prison-Law-Office-to-ADC-re-covid19.pdf>.

<sup>60</sup> Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America’s Incarcerated Population – And How to Ensure It’s Not Left Behind*, Health Affairs (Mar. 10, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/>.

<sup>61</sup> Anne C. Spaulding, MD, MPH, “Coronavirus COVID-19 and the Correctional Jail” (Mar. 9, 2020), available at [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF\\_HCW\\_3.9.20.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf).

<sup>62</sup> Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother Jones (Mar. 12, 2020), <https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/>.

<sup>63</sup> Declaration of Dr. Jaimie Meyer, ECF No. 42, *Velesaca v. Decker*, 1:20-cv-01803-AKH (S.D.N.Y. Mar. 16, 2020).

<sup>64</sup> Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, The Guardian (Mar. 13, 2020), <https://www.theguardian.com/us-news/2020/mar/13/coronavirus-us-prisons-jails>.

<sup>65</sup> Sam Kelly, *134 inmates at Cook County Jail confirmed positive for COVID-19*, Chicago Sun-Times (Mar. 30, 2020), <https://chicago.suntimes.com/coronavirus/2020/3/29/21199171/cook-county-jail-coronavirus-positive-134-cases-covid-19>.

highest in the world — over seven times the rate of infection in New York City generally, and 85 times greater than the rate of spread in the general population.<sup>66</sup> At the peak of the outbreak in Wuhan, China —the province where COVID-19 originated—over half of all reported COVID-19 cases were incarcerated people.

23. New York City’s Rikers Island facility provides a chilling “case study” of the devastating impact of COVID-19 infection in a jail setting. Rikers reported its first case of coronavirus on March 17;<sup>67</sup> as of April 1, there were 231 cases among inmates and 233 among staff.<sup>68</sup> Indeed, as the interim chair of the New York City Board of Correction recently noted in a letter urging judges and prosecutors to act quickly to release incarcerated individuals at a higher risk for contracting COVID-19:

Given the nature of jails (e.g. dense housing areas and structural barriers to social distancing, hygiene, and sanitation), the number of patients diagnosed with COVID-19 is certain to rise exponentially. The best path forward to protecting the community of people housed

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<sup>66</sup> These numbers likely underestimate the infection rate on Rikers Island, as they do not include the number of people who contracted COVID-19 on Rikers Island but who have already been released. The rates of infection rely on publicly released data collected by the Legal Aid Society. Legal Aid Society, “Analysis of COVID-19 Infection Rate in NYC Jails” (last visited Mar. 30, 2020, 11:00 AM), <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>; see also Verified Petition for Writ of Habeas Corpus, *People ex rel. Stoughton v. Brann*, No. 260154/2020, at ¶ 3 (N.Y. Sup. Ct. Mar. 25, 2020).

<sup>67</sup> Chelsea Rose Marcius, *Rikers Island inmate has contracted coronavirus*, NY Daily News (Mar. 18, 2020), available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzlqmwrmuevzz3y-story.html>

<sup>68</sup> Miranda Bryant, *Coronavirus spread in Rikers is a ‘public health disaster,’ says jail’s top doctor*, The Guardian (Apr. 1, 2020), available at <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

and working in the jails is to rapidly decrease the number of people housed and working in them.<sup>69</sup>

**C. Existing Procedures and Protocols in Maryland Will Not Be Sufficient to Ensure the Safety of Incarcerated Persons**

24. Over the five days since the first case of COVID-19 was detected in one Maryland prison on March 30, reported positive results rose to 17 in seven different state facilities, as well as at least one in a local jail. Given the lack of testing in these facilities and rapid spread of the virus, there is no doubt that the numbers of people infected are actually higher. Indeed, based on reports, there are now several cases at the Prince George’s jail.<sup>70</sup>

25. Former senior administrators of Maryland detention centers and witnesses confirm the facilities lack the capacity or space to implement the critical public health recommendations to prevent COVID-19 spread within their facilities — social distancing, quarantining, and medical isolation — without significant reductions in the number of incarcerated persons.<sup>71</sup> Corrections staff have consistently expressed concerns about the challenges they face in trying to implement these measures.<sup>72</sup>

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<sup>69</sup> Letter from Jacqueline Sherman, Interim Chair of NYC Board of Correction to NYC Criminal Justice Leaders (Mar. 21, 2020), available at <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>.

<sup>70</sup> Elleby Decl. ¶ 5,

<sup>71</sup> Simms Decl. ¶¶ 8-9; Schell Decl. ¶¶ 3, 9; Ex. O, Declaration of Lauren Young (“L. Young Decl.”) ¶ 7.

<sup>72</sup> AFSCME Letter.



26. Unless immediate measures are taken to reduce population at detention centers in Maryland, the same phenomenon seen at Rikers Island is likely to repeat itself in Maryland’s prisons and jails. When issuing Maryland’s statewide shelter-in-place order, Governor Hogan warned that failure to do so could cause the region to soon resemble the New York City metropolitan area, which “has become a global epicenter for the pandemic.”<sup>73</sup> That same sense of urgency and the same drastic measures are needed here.

27. Instead of a plan, or even mere *guidance* urging officials and community members to work together to allow for some modicum of social distancing, hygiene, isolation, screening and rapid response, Maryland leaders have largely been silent with respect to plans for those living and working in Maryland’s places of detention. other than to state they are taking preventive measures. The Governor has erroneously described those who are in Maryland’s prisons as jails as being “safer where they are.”<sup>74</sup> There are reports that the plans are not being followed,<sup>75</sup> and the plans that have been announced do not apply to County

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<sup>73</sup> Antonio Olivo, et al., *Hogan, Northam, Bowser order residents in Maryland, Virginia, D.C. to stay at home*, Washington Post (Mar. 30, 2020), [https://www.washingtonpost.com/local/hogan-northam-coronavirus-stay-home-orders/2020/03/30/5f36e146-722f-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/local/hogan-northam-coronavirus-stay-home-orders/2020/03/30/5f36e146-722f-11ea-85cb-8670579b863d_story.html).

<sup>74</sup> Brandon Weigel, *Hogan heightens restrictions on gatherings and travel, urges limit to transit ridership*, Baltimore Fishbowl (Mar. 19, 2020), <https://baltimorefishbowl.com/stories/hogan-heightens-restricts-on-gatherings-and-travel-urges-limit-to-transit-ridership/>.

<sup>75</sup> Magers Decl. ¶ 8 (describing lack of sanitation, limits on soap); Elleby Decl. ¶ 7 (describing limited soap & lines to get meals); Hazelton Decl. ¶ 12 (describing insufficient sanitation); E. Young Decl. ¶ 8 (describing limits on soap).

facilities, are not comprehensive, and confirm the failure to follow the CDC Guidance.<sup>76</sup>

28. The lack of urgency this silence communicated has had real impact, as local officials have made statements indicated a lack of understanding of the public health risks posed in places of detention and the response urged by public health experts, sometimes repeating the erroneous claim that people are safer in detention or that cleanliness obviates any such need.<sup>77</sup> Precious time has been lost to implement the most urgently needed measure: population reduction to allow the correctional facilities to practice social distancing for residents and staff.

29. Maryland's prisons and jails suffer from the same overall challenges and risks as jails and prisons across the country, due to the disproportionate prevalence of people with chronic health conditions; lack of adequate sanitation; pre-existing and persistent corrections and health care staff shortages; and the like.<sup>78</sup>

30. Instead, Maryland detention centers have not and cannot implement the CDC's recommended preventative measures in at least four respects.

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<sup>76</sup> Simms Decl. ¶ 10; Sharfstein Decl. ¶¶ 29-31; Beyrer Decl. ¶¶ 35; L. Young Decl. ¶ 12.

<sup>77</sup> Rachel Weiner & Tom Jackman, *As the coronavirus spreads, some in criminal justice system resist call to keep people out of jail*, Washington Post (Mar. 24, 2020), [https://www.washingtonpost.com/local/public-safety/as-the-coronavirus-spreads-some-in-criminal-justice-system-resist-call-to-keep-people-out-of-jail/2020/03/24/ca3585d6-6ab1-11ea-abef-020f086a3fab\\_story.html](https://www.washingtonpost.com/local/public-safety/as-the-coronavirus-spreads-some-in-criminal-justice-system-resist-call-to-keep-people-out-of-jail/2020/03/24/ca3585d6-6ab1-11ea-abef-020f086a3fab_story.html); Jeremy Arias, *Courts, jails see impact of coronavirus*, Frederick News-Post, (Mar. 21, 2020), [https://www.fredericknewspost.com/news/continuing\\_coverage/coronavirus/courts-jails-see-impact-of-coronavirus/article\\_dd81dd00-f467-5c5c-85bb-6fa542fa4957.html](https://www.fredericknewspost.com/news/continuing_coverage/coronavirus/courts-jails-see-impact-of-coronavirus/article_dd81dd00-f467-5c5c-85bb-6fa542fa4957.html).

<sup>78</sup> L. Young Decl ¶ 7; Hopkins Physicians Decl. ¶¶ 7-9; E. Young Decl. ¶ 9; Hazelton Decl ¶ 5.

## 1. Maryland Detention Facilities Have Not Implemented Sufficient Social Distancing

31. Social distancing is the most important means to prevent the spread of COVID-19 because the disease is primarily transmitted between people who are in close contact with one another (within about six feet) via respiratory droplets produced when an infected person coughs or sneezes.<sup>79</sup>

32. Governor Hogan recognized the critical importance of social distancing by taking dramatic action to order mass closures of and mandating that people throughout the state shelter at home.<sup>80</sup> But when it comes to Maryland's places of detention, state *inaction* has been the rule.

33. CDC Guidance on correctional and detention facilities demand social distancing (“ideally 6 feet between individuals, regardless of the presence of symptoms”) for incarcerated persons during all activities, including sleeping, meals, transportation, court sessions, recreation, headcounts.<sup>81</sup> Yet Maryland has failed systematically to implement social distancing within its prisons and jails, even as signs develop that the virus is penetrating there. For example:

- DPSCS Secretary Robert Green has stated that Maryland state correctional facilities are “utilizing social distancing where possible,” but the specific measures he described are limited to inmate recreation (groups of no more than 10) and meals (a “grab-and-go”

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<sup>79</sup> CDC Guidance.

<sup>80</sup> See Hogan Order.

<sup>81</sup> CDC Guidance.

system).<sup>82</sup> Neither Green nor anyone else from DPSCS has suggested that “social distancing” has been implemented for housing, or that DPSCS has done anything to implement the CDC’s recommendation that there be “6 feet between all individuals, regardless of the presence of symptoms.”<sup>83</sup>

- The Baltimore County Detention Center continues to house individuals in groups of up to three per cell, and detainees continue to be sent for recreation in groups of 30.<sup>84</sup>
- At the Prince George’s County Detention Center, which has reported cases of COVID-19, detainees, including those at risk of serious harm, are unable to maintain social distancing in housing and continue to be released in groups of 25 for meals and recreation.<sup>85</sup>
- Detainees at the Baltimore City Correctional Center are unable to practice social distancing in their cells and in common areas.<sup>86</sup>
- At the Eastern Correctional Institution, the minimum-security unit (Dorchester building) houses 70 men in a group dorm where beds are one foot apart. Other units house incarcerated persons in pods with four individuals in each “pod” with their beds 18 inches apart. While group meals have been suspended, meal pick up is conducted in groups of 10.<sup>87</sup>
- People in DOC institutions who are very vulnerable to COVID because they are in their 70s or 80s are not able to practice social

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<sup>82</sup> See Ex. Q, Email from Robert L. Green, Secretary of the Maryland Dep’t of Public Safety & Correctional Servs., to Hon. Phil Caroom, Executive Committee Member, Maryland Alliance for Justice Reform (Mar. 28, 2020, 2:29 PM) (“Green Email”). Secretary Green’s description is consistent with the conditions reported by the correctional officer’s union. See AFSCME Letter.

<sup>83</sup> CDC Guidance.

<sup>84</sup> Elleby Decl. ¶ 4.

<sup>85</sup> Elleby Decl. ¶ 5.

<sup>86</sup> Elleby Decl. ¶ 6.

<sup>87</sup> Elleby Decl. ¶ 7.

distancing in their cells or in common areas, nor to take adequate hygiene measures.<sup>88</sup>

- At the Frederick Detention Center, detainees continue to be housed in “pods” with 10 people, where individuals continue to be double-celled within the pod.<sup>89</sup>
- At the Western Correctional Institution, most incarcerated persons are double-celled, and people who are vulnerable continue to share the same dayrooms and showers, and it is not possible to social distance.<sup>90</sup>
- At the Montgomery County Detention Center, neither staff nor detainees are using social distancing
- At the Roxbury Correctional Institution social distancing is not possible because there are too many individuals incarcerated at the facility, the facility continues to double-cell some incarcerated persons, and there are frequent lines for medication, to enter the infirmary, or to get food or the commissary, and that groups of 80 individuals are sent for meals and 20-30 individuals are sent for recreation at the same time.<sup>91</sup>
- At the Garrett County Detention Center, incarcerated persons report being held six people to a cell, sharing communal bathrooms and showers, with no ability to engage in social distancing.<sup>92</sup>

34. Former senior administrators confirm that it is not possible to achieve the CDC’s social distancing standards in Maryland’s jails and prisons.<sup>93</sup> In these circumstances, Maryland’s detention facilities will not be able to prevent

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<sup>88</sup> E. Young Decl. ¶¶ 4-7.

<sup>89</sup> Suter Decl. ¶ 6.

<sup>90</sup> Hazelton Decl. ¶¶ 11-12.

<sup>91</sup> Magers Decl. ¶¶ 8-9.

<sup>92</sup> Friend Decl. ¶¶ 6, 9.

<sup>93</sup> Simms Decl. ¶ 8; Schell Decl. ¶ 5.

COVID-19 transmission once the virus is inevitably introduced into the jail or prison.

**2. Maryland Correctional Healthcare Is Not Equipped to Deal with the Pandemic and Are Not Providing for Proper Isolation**

35. The CDC Guidance recommends “medical isolation of confirmed or suspected COVID-19 cases.”<sup>94</sup> Because of forced contact between many individuals in crowded facilities, people who are exposed will need to be quarantined. Most Maryland correctional facilities lack the space to isolate individuals with symptoms or to provide treatment, particularly in the event of an outbreak.<sup>95</sup> Facilities at or near capacity simply lack sufficient space to house people consistent with the CDC-recommended quarantine protocol, which requires separating people to prevent further spread of the disease, or to house those who test positive in true isolation units.<sup>96</sup>

36. Maryland’s prison population includes a significant number of individuals in the higher-risk category that make them particularly vulnerable to COVID-19, including people who are immunocompromised, or have respiratory

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<sup>94</sup> CDC Guidance.

<sup>95</sup> Schell Decl. ¶¶ 3, 5.

<sup>96</sup> CDC Guidance.

conditions, heart disease, chronic liver or kidney disease, diabetes, or other medical conditions.<sup>97</sup>

37. Based on the reports from Maryland detention facilities, they have not taken steps to prepare for the medical emergency or medical isolation, and certainly not on the scale necessary to address an outbreak. For example:

- DPSCS Secretary Robert Green’s statements on COVID-19 have been silent on what measures DPSCS are taking to implement medical isolation protocols.
- Maryland contracts with Corizon, a private provider, to provide medical services. Corizon has been responsible for extreme failures to provide adequate care in Maryland and elsewhere. In 2015, Corizon lost its contract with Rikers due to egregious failures.<sup>98</sup>
- Leslie Schell, who until 2018 worked as the Health Services Administrator for the Baltimore City Detention Center and the Jessup Correctional Institution, reports that staff were not properly trained to respond to emergency medical calls and were not equipped with sufficient medical equipment to respond to patients with respiratory distress, such as oxygen tanks and oxygen face masks.<sup>99</sup>
- Reports from detention centers in Baltimore County and Prince George’s County indicate that there has been little to no effort to medically isolate symptomatic individuals, and efforts that have been made do not appear adequate.<sup>100</sup>
- Reports from Eastern Correctional Institution, Western Correctional Institution, and Roxbury Correctional Institution describe failure to

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<sup>97</sup> Schell Decl. ¶ 4; L. Young Decl. ¶ 7.

<sup>98</sup> Hopkins Physicians Decl. ¶¶ 10-11.

<sup>99</sup> Schell Decl. ¶ 9.

<sup>100</sup> Elleby Decl. ¶ 4, 5

medically isolate individuals with symptoms in the manner or for the period recommended by the CDC Guidance.<sup>101</sup>

**3. Maryland Detention Facilities Have Not Been Distributing Sufficient Supplies to Promote Enhanced Hygiene and Disinfecting Necessary to Prevent the Spread of COVID-19**

38. The CDC Guidance also describes procedures necessary for individual hygiene (including marking readily available access to sanitation solutions, including sufficient soap, and lifting any ban on alcohol-based hygiene supplies (e.g., hand sanitizer, cleaning wipes) and to thoroughly clean and disinfect areas where a person with confirmed or suspected COVID-19 spent time.<sup>102</sup> In jails and prisons, people share toilets, sinks, and showers, without disinfection between each use. Yet individuals in detention facilities in the State have not been meeting the CDC Guidance for hygiene. For example:

- DPSCS Secretary Robert Green has stated that Maryland state correctional facilities have provided inmates with a “sufficient supply of soap” and introduced a “germicidal cleaning agent.”<sup>103</sup> But DPSCS has not reported that it has distributed hand sanitizer — a point the correctional officers union has specifically criticized<sup>104</sup> — and DPSCS has not reported following other CDC Guidance regarding distribution of masks and personal protective equipment (PPE) to correctional officers — another point the correctional officers have specifically criticized.

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<sup>101</sup> Elleby Decl. ¶ 7; Hazelton Decl. ¶ 9.

<sup>102</sup> CDC Guidance.

<sup>103</sup> Ex. Q, Green Email.

<sup>104</sup> AFSCME Letter.



- Numerous witnesses report that DPSCS has not been providing an adequate supply of soap across the system — with specific reports from Roxbury, Eastern, Western and Jessup Correctional Institutions — and that other hygienic practices remain insufficient.<sup>105</sup> The bars of soap to which DOC refers are tiny, hotel-sized bars and individuals do not have the ability to wash their hands when outside of their cells.<sup>106</sup>
- The DPSCS plans for improved hygiene do not appear to have been implemented in County detention facilities, and there are specific complaints about lack of hygiene or cleaning supplies or failure to clean and disinfect facilities at the detention centers in Baltimore City, or Prince George’s, Frederick or Garrett Counties.<sup>107</sup>
- The *Coreas* court found that as of April 3, communal facilities such as showers and bathrooms at Worcester and Howard County jails were not being disinfected, nor conducting any testing, even though there was evidence that certain individuals among the jail population displayed symptoms of COVID-19.<sup>108</sup>

39. Failure to provide necessary cleaning supplies and protective equipment while requiring individuals in custody to use shared bathroom facilities and to eat in common spaces creates an intolerably high risk of infectious spread.

#### **4. Maryland Correctional Facilities Are Not Properly Screening Individuals Entering Their Facilities**

40. Jails and prisons in Maryland cannot implement the screening measures necessary to prevent introduction of the virus into their facilities. The

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<sup>105</sup> Magers Decl. ¶ 8; Elleby Decl. ¶ 7; E. Young Decl. ¶¶ 7-8; Hazelton Decl. ¶ 12.

<sup>106</sup> E. Young Decl. ¶ 8.

<sup>107</sup> Elleby Decl. ¶¶ 6-7; Suter Decl. ¶ 6; Friend Decl. ¶ 6.

<sup>108</sup> See *Coreas*, 2020 WL 1663133, at \*13.

correctional officers’ union has warned that screening announced by DOC officials is more aspirational than real, and that testing is not standardized and not applied to “everyone who enters [the facilities] uniformly.”<sup>109</sup> The CDC recommends that such institutions adopt intensive pre-intake screening of all incarcerated individuals, and screen all staff and individuals entering the facility.<sup>110</sup> Maryland detention facilities are not meeting these standards.

41. Neither the DPSCS nor County detention centers have announced the steps they have implemented to address new detainees into the system – either screening or medical isolation.<sup>111</sup> Nor have they reported whether COVID-19 testing is available in detention facilities.<sup>112</sup>

42. As the *Coreas* court found, testing is nonexistent at jails in Worcester and Howard Counties, as neither facility “has the capacity to test anyone for the Coronavirus.”<sup>113</sup>

43. For DPSCS, Secretary Green reports that state correctional facilities are screening staff by conducting a temperature check and using a standardized

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<sup>109</sup> AFSCME Letter.

<sup>110</sup> CDC Guidance.

<sup>111</sup> Elleby Decl. ¶ 4 (noting that in Baltimore County, new intakes are housed with the population within 36 hours of entering the facility).

<sup>112</sup> Elleby Decl. ¶¶ 4 (noting lack of testing in Baltimore County Detention Center), 7 (noting lack of testing in Eastern Correctional Institution).

<sup>113</sup> *Coreas*, 2020 WL 1663133, at \*13.

screening form.<sup>114</sup> But use of a thermometer or standardized screens—i.e., asking a person for a subjective report of symptoms—cannot adequately screen for new, asymptomatic or pre-symptomatic infections and asymptomatic individuals can transmit COVID-19.<sup>115</sup> As COVID-19 has a typical incubation period of five days, and transmission often occurs before presentation of symptoms, such inadequate screening presents a critical problem. The possibility of asymptomatic transmission means that monitoring staff or incarcerated people for fevers is inadequate to identify all who may be infected and preventing transmission.<sup>116</sup>

#### **D. Outbreaks in Detention Facilities Put All Marylanders At Risk**

44. Transmission in detention facilities endangers not only the incarcerated, but also the broader community. This is true for at least two reasons.

45. First, as correctional staff enter and leave the facility, they will carry the virus with them.<sup>117</sup> Like the incarcerated people in the facilities where they work, correctional officers face an increased risk of COVID-19 exposure because they are less able to engage in required social distancing. Indeed, last Monday, the

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<sup>114</sup> Ex. Q, Green Email.

<sup>115</sup> Beyrer Decl. ¶ 21; Golub Decl. ¶ 6; Greifinger Decl. ¶ 22.

<sup>116</sup> Greifinger Decl. ¶ 22.

<sup>117</sup> Beyrer Decl. ¶ 21; Schell Decl. ¶ 10; *see also* Josiah Rich, et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, Washington Post (Mar. 17, 2020), [www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus](https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus) (warning that unless the government acts swiftly to release people from jails and prisons, the virus threatens not only prisoners and corrections workers but the general public as well).

State reported that two DPSCS employees who work at Jessup and Baltimore Central Booking tested positive.<sup>118</sup> By Friday, that number had grown to 15.<sup>119</sup>

46. Beyond the risk they pose to those incarcerated at the facility when they enter, correctional staff expose their families and broader communities to substantial risk every time they leave a correctional facility at the end of their daily shifts.<sup>120</sup> It is for this reason that the Baltimore City State’s Attorney, Marilyn Mosby, advocated in a March 23 letter to Governor Hogan that the State should be viewed “as an interconnected community where the health and COVID-19 risks inside prison and jail wall[s] impacts the broader public health, and to address these in a way that meets the twin goals of public health and public safety.”<sup>121</sup>

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<sup>118</sup> Danielle E. Gaines, *With COVID-19 Diagnoses in State Prison, Advocates Intensify Calls for Inmate Releases*, Maryland Matters (Mar. 31, 2020), available at <https://www.marylandmatters.org/2020/03/31/with-covid-19-diagnoses-in-state-prison-advocates-intensify-calls-for-inmate-releases/>

<sup>119</sup> Phillip Jackson, *Maryland reports 17 confirmed coronavirus cases inside state’s correctional system*, Baltimore Sun (Apr. 3, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-17-covid-cases-maryland-prisons-20200403-qpkllqmtknasjj5dvwys6ils6y-story.html>.

<sup>120</sup> See Beyrer Decl. ¶ 21; Friend ¶ 13; Schell ¶ 10

<sup>121</sup> Letter from Marilyn J. Mosby, Baltimore City State’s Attorney, to Gov. Larry Hogan (Mar. 23, 2020), [https://content.govdelivery.com/attachments/MDBALTIMORESAAO/2020/03/23/file\\_attachments/1408962/Gov%20Hogan%20Proposal.pdf](https://content.govdelivery.com/attachments/MDBALTIMORESAAO/2020/03/23/file_attachments/1408962/Gov%20Hogan%20Proposal.pdf) (calling for wide-ranging releases “to reduce the prison population to enable social distancing and self-isolation, and to facilitate adequate health care resources inside these institutions”).

47. Second, COVID-19 is a serious disease, and treatment for serious cases of COVID-19 requires significant medical support, including ventilator assistance for respiration and intensive care support.<sup>122</sup>

48. Because many jails and prisons lack the necessary medical resources to care for COVID-19 cases, an outbreak of COVID-19 within a detention center would increase the number of individuals who need to be treated by the community healthcare system.<sup>123</sup>

49. The projected numbers of COVID-19 cases will result in a significant strain on healthcare providers nationally. Many hospitals already operate near full capacity and do not have the ability to rapidly expand to account for the expected surge in COVID-19 patients.<sup>124</sup> The experiences of other countries including China, Italy, and Spain show that around 20 percent of COVID-19 cases require hospitalization, 5 percent of cases require the Intensive Care Unit (ICU), and around 2.5 percent require very intensive help, with items such as ventilators or extracorporeal oxygenation.<sup>125</sup>

50. Without sufficient ICU units the fatality rate is certain to rise.<sup>126</sup>

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<sup>122</sup> Beyrer Decl. ¶ 32; Sharfstein Decl. ¶¶ 23, 32; Schell Decl. ¶ 9.

<sup>123</sup> Beyrer Decl. ¶ 32; Sharfstein Decl. ¶¶ 23, 32; Schell Decl. ¶ 9...

<sup>124</sup> Sharfstein Decl. ¶ 15.

<sup>125</sup> Sharfstein Decl. ¶ 16.

<sup>126</sup> Sharfstein Decl. ¶ 18.

**E. Significant Reduction in the Population of Incarcerated Persons Is Practical, Can Be Done Without Impacting Public Safety, and is the Only Way to Prevent an Outbreak of COVID-19 and to Prevent the Death of Those at Highest Risk**

51. Because of the severity of the threat posed by COVID-19, and its potential to rapidly spread throughout a correctional setting, public health experts recommend the rapid release from custody of people most vulnerable to COVID-19.<sup>127</sup>

52. People in prisons and jails are disproportionately likely to have chronic health conditions, including diabetes, high blood pressure, and HIV, that put them at higher risk of severe health consequences upon contracting the virus.<sup>128</sup> Large numbers of seriously ill incarcerated people will strain the already extremely limited medical infrastructure in the jails, heightening the risk that infected individuals will

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<sup>127</sup> See ; Beyrer Decl. ¶ 36 (“It is therefore an urgent priority in this time of public health emergency to reduce the number of persons in detention as quickly as possible”); Benjamin Decl. ¶ \_\_; Sharfstein ¶ 32 (“Maryland should adopt a plan to discharge incarcerated persons who can safely be released”). Greifinger Dec., ¶ 32 (“In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.”).

<sup>128</sup> Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus*, *The New Yorker* (Mar. 16, 2020), <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>; see also I.A. Binswanger, et al., *Prevalence of chronic medical conditions among jail and prison inmates in the USA compared with the general population*, 63 *Journal of Epidemiology & Community Health* 912–919 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/19648129> (concluding that people incarcerated in U.S. jails and prisons had a higher burden of most chronic medical conditions than the general population, even when adjusting for sociodemographic differences and alcohol consumption).

suffer serious harm. Maryland’s jails include a significant number of individuals with chronic conditions that put them at high risk.<sup>129</sup>

53. Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for people remaining incarcerated or working inside, as well as the broader community.<sup>130</sup> Release of the most vulnerable people from custody also reduces the burden on the region’s health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time. This last issue is particularly acute in our state’s most remote jurisdictions, such as Garrett County, where Petitioner Friend’s son is held.

54. Release is needed not only to prevent irreparable harm to medically vulnerable persons, but also to reduce the incarcerated population to ensure proper social distancing to reduce transmission for all class members and the wider public.<sup>131</sup>

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<sup>129</sup> Schell Decl. ¶ 4; E. Young Decl. ¶¶ 4-6; Friend Decl. ¶ 5.

<sup>130</sup> Beyrer Decl. ¶ 36; Sharfstein ¶ 32; Greifinger Dec., ¶ 32.

<sup>131</sup> Further, in the prison context, the ABA urges that “Governmental authorities in all branches in a jurisdiction should take necessary steps to avoid crowding that... adversely affects the ... protection of prisoners from harm, including the spread of disease.” ABA Standard on Treatment of Prisoners 23-3.1(b).

55. Domestically, jail administrators in Cuyahoga County, Ohio;<sup>132</sup> Los Angeles, California;<sup>133</sup> San Francisco, California;<sup>134</sup> Jefferson County, Colorado;<sup>135</sup> and Montgomery, Alabama;<sup>136</sup> among others, have concluded that widespread jail release is a necessary and appropriate public health intervention. Each jurisdiction employed a decision making strategy that took into account public safety concerns and expedited the release of large numbers of prisoners.

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In sum, to effectively mitigate the risk of infection and subsequent spread of the virus, the population of incarcerated persons must be reduced. Reducing the overall number of individuals in detention facilities allows social distancing for all inside, and allows infected individuals and their contacts, to be properly quarantined and monitored for health complications that require transfer to a local

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<sup>132</sup> Scott Noll & Camryn Justice, *Cuyahoga County Jail Releases Hundreds of Low-Level Offenders to Prepare for Coronavirus Pandemic*, (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>.

<sup>133</sup> Alene Tchekmedyan, *More L.A. County Jail Inmates Released Over Fears of Coronavirus Outbreak*, L.A. Times, (Mar. 19, 2020), <https://www.latimes.com/california/story/2020-03-19/la-jails-coronavirus-sheriffs-department>.

<sup>134</sup> Megan Cassidy, *Alameda County Releases 250 Jail Inmates Amid Coronavirus Concerns, SF to Release 26*, San Francisco Chronicle (Mar. 20, 2020), <https://www.sfchronicle.com/crime/article/Alameda-County-releases-250-jail-inmates-amid-15147332.php>.

<sup>135</sup> Jenna Carroll, *Inmates Being Released Early From JeffCo Detention Facility Amid Coronavirus Concerns*, KDVR Colorado (Mar. 19, 2020), <https://kdvr.com/news/coronavirus/inmates-being-released-early-from-jeffco-detention-facility-amid-coronavirus-concerns/>.

<sup>136</sup> *See In Re: Covid-19 Pandemic Emergency Response*, Administrative Order No. 4, Montgomery County Circuit Court (Mar. 17, 2020).



hospital, further straining a health care system already burdened by COVID-19. It also lessens the risk to corrections officers, who, if short-staffed, will have difficulty maintaining order and proper personal protective measures. Protecting corrections staff in turn protects the communities they come from. Unless this Court orders measures to reduce the population of incarcerated persons, contagion will be more widespread, already taxed hospitals strained further, and the mortality rate likely to increase. As is widely recognized, even by the prosecuting attorney community, “[i]f these facilities become breeding grounds for the coronavirus, it will not only impact those incarcerated, but our entire community.”<sup>137</sup> The time to act is now.

#### **IV. ARGUMENT**

##### **A. This Court Has Authority to Consider Petitioners’ Petition and Grant the Extraordinary Relief Requested**

This Court has authority under Article IV, Section 18 of the Maryland Constitution, Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure, and this Court’s inherent common law authority to grant extraordinary writs to grant the relief sought here.

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<sup>137</sup> Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody (Mar. 25, 2020), available at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

Time and again, this Court has found the granting of an extraordinary or prerogative writ is warranted where “[b]oth the public interest and [the Court’s] responsibility in exercising the supreme judicial authority of this State . . . compel the exercise of this Court’s discretion in [an] extraordinary case.” *St. Joseph Med. Ctr., Inc. v. Turnbull*, 432 Md. 259, 271 (2013) (citing *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 718 (2000)). Dating back to 1799, this Court has recognized its power to grant an extraordinary writ “where the public justice of the state is concerned . . . to prevent disorder [or] a failure of justice.” *Runkel v. Winemiller* 4 H. & McH, 429, 449 (Gen. Ct. Oct. Term 1799) (cited with approval in *Wilson v. Simms*, 380 Md. 206 (2004) and *In re Writ of Prohibition*, 312 Md. 280, 307 (1988)).

Given the emergency caused by the ongoing global pandemic, this Court has authority to consider and grant this petition for extraordinary relief. The relief sought concerns “the public justice of the state” and is necessary “to prevent disorder” and a “failure of justice.” The Court’s authority to issue “prerogative writs” or “extraordinary writs” derives from the Court’s common law power to “command[] the execution of an act where otherwise justice would be obstructed.” *Wilson*, 380 Md. at 217 (quoting *Runkel v. Winemiller*, 4 H. & McH. 429, 449 (Gen. Ct. Oct. Term 1799)). Indeed, this Court’s precedent makes clear that the Court has jurisdiction to decide these kinds of petitions for extraordinary relief,

even where the Court may lack appellate jurisdiction. *See Matter of White*, 451 Md. 630, 650 (2017) (finding that a writ of mandamus is an “original action”); *see also Wilson*, 380 Md. at 217 (2004); *Goodwich v. Nolan*, 343 Md. 130, 145 (1996).

This Court has also recognized that an extraordinary writ may be granted as “a summary remedy, for the want of a specific one, where there would otherwise be a failure of justice.” *Dep’t of Human Res., Baltimore City Dep’t of Soc. Servs. v. Hayward*, 426 Md. 638, 646 (2012) (quoting *State ex rel. McClellan v. Graves*, 19 Md. 351, 374 (1863)).

One component of the relief sought by this petition – ordering Administrative Judges in each County to take measures to protect persons incarcerated persons held pending their criminal trials – is supported by the common law power to grant a writ, as well as this Court’s general supervisory authority over “other courts of this State” under Article IV Section 18 of the Maryland Constitution, and the recently enacted Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure. But this Court also has the power to order the Department of Public Safety and Correctional Services and the Maryland Parole Commission to take measures as well. As this Court has repeatedly noted that it can grant an extraordinary writ to “to compel inferior tribunals, public officials or administrative agencies to perform their function or

perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear legal right.” *City of Seat Pleasant v. Jones*, 364 Md. 663, 673 (2001) (quoting *Criminal Injuries Compensation Board v. Gould*, 273 Md. 486, 514 (1975)). Indeed, “[c]ommanding official action is the writ’s most common use.” *Wilson*, 380 Md.at 218 (citing *Walter v. Board of Comm’rs of Montgomery County*, 179 Md. 665 (1941)).

This Court has already recognized, in its administrative orders of March 18 and 25, that the emergency presented by the virus warrants extraordinary steps to protect the public. This Petition calls upon the Court to meet the unprecedented health challenge by directing each Administrative Judge in each jurisdiction to take reasonable and necessary measure to prevent widespread contagion.

Petitioners call upon the Court to take this necessary action to protect not just the people held within its correctional facilities, but correctional staff, their families, their respective communities and ultimately the public health of all Maryland residents.

**B. The Petition Should Be Granted**

Under the standards this Court applies to requests for extraordinary relief, this Petition should be granted.

1. Petitioners’ have a “clear and undisputed right” under both the U.S. Constitution (Eighth and Fourteenth Amendments) and the Maryland Constitution (Article 16)<sup>138</sup> not to be “expos[ed] . . . to serious, communicable disease.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Hutto v. Finney*, 437 U.S. 678, 682 (1978) (the government violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”); *Webb v. Deboo*, 423 F. App’x. 299, 300 (4th Cir. 2011) (prisoner stated Eighth Amendment claim by alleging that severe overcrowding was causing unsanitary conditions, the spread of disease, and lack of access to medical care). “[H]old[ing] convicted criminals in unsafe conditions” constitutes cruel and unusual punishment. *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982). And under the Fourteenth Amendment, incarcerated people have a constitutionally protected liberty interest in avoiding “atypical and significant hardship . . . in relation to the ordinary incidents of prison life.” *Sanding v. Conner*, 515 U.S. 472, 484 (1995).

These rights extend to individuals being detained prior to trial. *See, e.g., City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)) (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth

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<sup>138</sup> Similar to the Eighth Amendment to the U.S. Constitution, Article 16 of the Maryland Constitution’s Declaration of Rights provides “[t]hat sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time.” Md. Const. Decl. of Rts. art. 16.

Amendment protections available to a convicted prisoner”). Under the Fourteenth Amendment, the governmental interest in depriving an individual of liberty (*e.g.*, via pretrial detention) must outweigh its curtailment of an individual’s fundamental rights. See *United States v. Salerno*, 481 U.S. 739, 748, 750 (1987).

As the Supreme Court has emphasized, “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.” *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974). Under the current circumstances, releasing people in the categories listed above is necessary to dramatically reduce the number of incarcerated individuals and the threat of disastrous outbreaks.

2. Absent the requested relief, there is no other adequate legal remedy. Under the current circumstances, the only adequate remedy is one that compels implementation of immediate measures to reduce the risk of COVID-19 transmission in prisons, the most important of which is reduction of the population density of Maryland’s correctional facilities to a level that allows such facilities to implement the CDC Guidelines pertaining to social distancing and hygiene.

Other than granting this writ, there is no other adequate legal remedy to grant this relief. Considering this Court’s March 25, 2020, order limiting all state

courts to “emergency operations,”<sup>139</sup> the courts do not have the resources to adjudicate thousands of petitions for habeas corpus on an emergency basis. Given the rate at which the virus is spreading, even if the courts were willing to entertain emergency habeas petitions from the thousands of at-risk individuals, the amount of time it would take for courts to consider such all such petitions on a case-by-case basis could ultimately amount to no relief at all for most individuals. As the Supreme Court has held, the Due Process Clause dictates that a person deprived of a property or liberty interest must be afforded an adequate hearing at a “meaningful time” and in a “meaningful manner.” *See Fuentes v. Shevlin*, 407 U.S. 67, 80 (1972). And “[a]t some point, a delay in the post-[deprivation] hearing would become a constitutional violation.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 547 (1985) (citing *Barry v. Barchi*, 443 U.S. 55, 66 (1979)).

It is for these reasons that courts across the country, in recognition of the extraordinary public health risk posed by the transmission of COVID-19 in custodial settings, have taken steps to reduce prison populations. These are some examples where the Supreme Courts of other states have acted:

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<sup>139</sup> Court of Appeals of Maryland, “Administrative Order Extending the Length of Statewide Judiciary Operations Due to the COVID-19 Emergency,” (Mar. 25, 2020), *available at* <https://www.courts.state.md.us/sites/default/files/admin-orders/20200325extendinglengthofrestrictedoperations.pdf>.

- On March 22, 2020, the Supreme Court of New Jersey ordered the release of *all* prisoners serving county jail sentences.<sup>140</sup>
- On April 3, the Pennsylvania Supreme Court ordered the chief judge of all counties to “immediately” engage in a review of the “current capabilities of their county correctional institutions . . . to address the spread of COVID-19,” “to ensure that the county correctional institutions in their districts address the threat of COVID-19,” as necessary “to identify individuals of incarcerated persons for potential release” and “to undertake efforts to limit the introduction of new inmates into the county prison system.”<sup>141</sup>
- On April 3, the Massachusetts Supreme Court ruled that pre-trial detainees not charged with certain violent offenses, as well as incarcerated individuals held on technical probation and parole violations, is entitled to a rebuttable presumption of release.<sup>142</sup>
- The Kentucky Supreme Court’s Chief Justice told state judges and court clerks to release jail inmates “as quickly as we can,” noting that “jails are susceptible to worse-case scenarios due to the close proximity of people and the number of pre-existing conditions,” and that courts have the responsibility “to work with jailers and other county officials to safely release as many defendants as we can as quickly as we can.”<sup>143</sup>
- In California, the Chief Justice of the Supreme Court issued guidance encouraging the state’s superior courts to, *inter alia*, (a) “lower bail amounts significantly”; (b) “consider a defendant’s existing health

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<sup>140</sup> *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 082430 (N.J. Mar. 22, 2020), <https://www.njcourts.gov/notices/2020/n200323a.pdf?c=9cs>. The order provided a mechanism for prosecutors, within 24 to 48 hours, object to the release of specific prisoners who “would pose a significant risk to the safety of the inmate or the public,” with such objections to be considered by judges or special masters appointed by the Supreme Court.

<sup>141</sup> *In re: The Petition of the Pennsylvania Prison Society et al.*, No. 70 MM 2020 (Pa. Apr. 3, 2020).

<sup>142</sup> See Deborah Becker, *Mass. High Court Rules Some Prisoners Will Be Eligible For Release Due To COVID-19*, WBUR News (Apr. 3, 2020), <https://www.wbur.org/news/2020/04/03/sjc-prisoners-emergency-petition-ruling>.

<sup>143</sup> Kyle C. Barry, *Some Supreme Courts Are Helping Shrink Jails to Stop Outbreaks. Others Are Lagging Behind*, The Appeal (Mar. 25, 2020), <https://theappeal.org/politicalreport/some-supreme-courts-are-helping-shrink-jails-coronavirus/>; John Cheves, *Chief Justice Pleads for Kentucky Inmate Release Ahead of COVID-19 but Progress Slow*, Lexington Herald Leader (Mar. 23, 2020), <https://www.kentucky.com/news/coronavirus/article241428266.html>.



conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody”: and (c) “identify detainees with less than 60 days in custody to permit early release.”<sup>144</sup>

- The Chief Justice of the Michigan Supreme Court, together with the Michigan Sheriff Association, issued a joint statement urging judges to (a) “reduce and suspend jail sentences for people who do not pose a public safety risk”; (b) “release far more people on their own recognizance while they await their day in court”; and (c) “use probation and treatment programs as jail alternatives.”<sup>145</sup>
- The Chief Justice of the Ohio Supreme Court urged “judges to use their discretion and release people held in jail and incarcerated individuals who are in a high-risk category for being infected with the virus.”<sup>146</sup>
- In Montana, the Chief Justice of the Supreme Court wrote to all judges in the state asking each judge to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”<sup>147</sup>
- The Chief Justice of the South Carolina Supreme Court ordered that everyone held in jail on bond in a non-capital case be released, unless there exists an “unreasonable danger” or “extreme flight risk.”<sup>148</sup>

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<sup>144</sup> Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges and Court Executive Officers of the California Courts (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

<sup>145</sup> Joint Statement of Chief Justice Bridget M. McCormack, Mich. Sup. Ct. and Sheriff Matt Saxton, Exec. Dir., Mich. Sheriff Ass’n (Mar. 26, 2020), [https://courts.michigan.gov/News-Events/press\\_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%20%20\(003\).pdf](https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%20%20(003).pdf).

<sup>146</sup> Press Conference, Ohio Chief Justice Maureen O'Connor and Gov. Mike DeWine (Mar. 19, 2020); see also WLWT5, *Release Ohio Jail Inmates Vulnerable to Coronavirus, Chief Justice Urges* (Mar. 19, 2020), <https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560>.

<sup>147</sup> Letter from Mike McGrath, Chief Justice of Montana Supreme Court, to Montana Courts of Limited Jurisdiction Judges (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

<sup>148</sup> Memorandum from Donald W. Beatty, Chief Justice of South Carolina Supreme Court, to Magistrates, Municipal Judges, and Summary Court Staff (Mar. 16, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461>.

- The Washington Supreme Court directed that all trial courts in the state prioritize hearings that could result in the release of a defendant in custody, providing that courts “shall hear motions for pretrial release on an expedited basis” and that any person fitting within the CDC’s definition of vulnerable populations would be presumed to have demonstrated a “material change in circumstances” justifying reconsideration of previously ordered bail conditions.<sup>149</sup>
- In an effort to prevent new admissions to county jails, the chief judge of Maine’s trial courts, with the approval of the chief justice of the Maine Supreme Court, vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.<sup>150</sup> The order resulted in the vacatur of more than 12,000 warrants.<sup>151</sup>

Similarly, local authorities have acted to sharply reduce prison populations:

- Cuyahoga County, Ohio, which encompasses Cleveland, has decreased its prison population by more than 30 percent, releasing approximately 600 out of a total of 1,900 incarcerated people.<sup>152</sup>
- The Los Angeles County Sheriff authorized the release of 1,700 prisoners, reducing the county jail population by 10 percent.<sup>153</sup>

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<sup>149</sup> *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf>.

<sup>150</sup> See Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Mar. 17, 2020), <https://www.courts.maine.gov/covid19/emergency-order-vacating-warrants-fines-fees.pdf>.

<sup>151</sup> Judy Harrison, *Maine courts vacate warrants for unpaid fines and fees*, Bangor Daily News (Mar. 17, 2020), <https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid-fines-and-fees/>.

<sup>152</sup> Scott Noll & Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic* (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>.

<sup>153</sup> *L.A. County releases 1,700 inmates to lessen jail population due to COVID-19 crisis* (Mar. 25, 2020), <https://www.foxla.com/news/1-a-county-releases-1700-inmates-to-lessen-jail-population-due-to-covid-19-crisis>.

- Officials in two other California counties, Alameda County and Santa Clara County, released more than 300 prisoners from each jurisdiction’s respective jails.<sup>154</sup>
- In Colorado, the Jefferson County Sheriff’s Office announced it would release all prisoners who had served more than half their sentence,<sup>155</sup> and Larimer County temporarily released all 142 people sentenced to its work release program.<sup>156</sup>

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

**C. This Court Should Exercise Its Plenary and Supervisory Jurisdiction to Expediently Grant Relief to Reduce County Jail Populations**

This Court’s intervention is necessary to protect the people of Maryland.

As discussed above, this Court may act where it is “imperative” to “prevent disorder” and a “failure of justice.” If ever there were a case that was

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<sup>154</sup> Robert Salonga, *Bay Area courts, authorities ramp up release of inmates to stem COVID-19 risks in jails*, The Mercury News (Mar. 19, 2020), <https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/>.

<sup>155</sup> Elise Schmelzer, *Uneven response to coronavirus in Colorado courts leads to confusion, differing outcomes for defendants*, The Denver Post (Mar. 21, 2020), [https://www.denverpost.com/2020/03/21/colorado-courts-coronavirus-judges/?fbclid=IwAR0Da1qjZSsU48THOo-Hi24ibgCW\\_ed1nMVfmRJ1BaZNFJJsVo1BJO0lSk](https://www.denverpost.com/2020/03/21/colorado-courts-coronavirus-judges/?fbclid=IwAR0Da1qjZSsU48THOo-Hi24ibgCW_ed1nMVfmRJ1BaZNFJJsVo1BJO0lSk).

<sup>156</sup> Carina Julig, *Larimer County inmate in community corrections program tests positive for coronavirus*, The Denver Post (Mar. 22, 2020), [https://www.denverpost.com/2020/03/22/coronavirus-larimer-county-inmate/?fbclid=IwAR0\\_M2BhVxD42BjIfTh\\_bYVwSfg6nH68cwLArtGt7GPp158FqpE4g\\_Bnfgo](https://www.denverpost.com/2020/03/22/coronavirus-larimer-county-inmate/?fbclid=IwAR0_M2BhVxD42BjIfTh_bYVwSfg6nH68cwLArtGt7GPp158FqpE4g_Bnfgo).

“imperative,” it is this one, which necessarily involves a myriad of constitutional rights. Granting an extraordinary writ is particularly warranted here because of the exigent public health crisis. Experts are urging this Court to act, and to act now to mitigate a swelling public health catastrophe. For the reasons stated above, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter and instruct the Administrative Judge of each jurisdiction and the Department of Public Safety and Correctional Services and the Maryland Parole Commission to enact measures that both expeditiously reduce their jail populations.

Petitioners recognize that the extraordinary threat that COVID-19 poses to prisoners, staff, and to the public health if the virus spreads within correctional settings must be balanced against public safety concerns and practical challenges that courts and correctional officials must address to reduce incarcerated populations sufficiently that social distancing can be maintained. To address these concerns, Petitioners propose a series of measured actions that this Court and the Circuit and District Courts of the State should take on an expedited basis based on measures taken by other courts and local authorities around the country.

Petitioners urge the Court to:

- Prioritize for release prisoners at the highest risk as defined by the guidance from the Centers for Disease Control, including prisoners above the age of 60, those with chronic illnesses or disabilities;

- Require Courts to expedite individualized determinations of suitability for release consistent with public health and public safety;
- Cease new admissions to the system unless necessary to address a threat to public safety;
- Expand the discretion of the Courts to make release decisions by eliminating certain procedural obstacles, include the waiver of certain time limits, and through the use of telephonic or video hearings;
- Require the State to exercise its existing authority to release prisoners through the parole proceedings, good time credits, medical parole, home detention and clemency;
- Mandate that the State take all measures for screening, cleaning, hygiene and social distancing that the CDC recommends for correctional facilities;
- Undertake measures that will reduce the number of detained juveniles; and
- Encourage the Governor to work with the Parole Commission to exercise his commutation authority to release as soon as possible incarcerated persons who pose little risk to public safety.

Released prisoners will be able to engage in social distancing in the community while those that remain will be in less crowded conditions and better able to avoid infection. These measures will reduce transmission and infection and help to ensure that hospitals and health care providers are not unnecessarily overwhelmed by preventable infections from prisons and jails.

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CERTIFICATION OF WORD COUNT AND COMPLIANCE  
WITH RULE 8-112

1. This brief contains 12,334 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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