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SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

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

Respondents.

**PETITIONERS' CONSOLIDATED ANSWER TO
AMICI CURIAE BRIEFS**

Nicholas Allen, WSBA #42990
Nicholas B. Straley, WSBA #25963
Janet S. Chung, WSBA #28535
COLUMBIA LEGAL SERVICES
101 Yesler Way, Suite 300
Seattle, WA 98104
Telephone: (206) 464-1122
Attorneys for Petitioners

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I. INTRODUCTION

Petitioners file this Consolidated Answer to *Amici Curiae* Briefs. Specifically, Petitioners respond to briefs filed with the Court by the Washington Association of Prosecution Attorneys, the Washington Association of Counties, the Washington Association of Sheriffs and Police Chiefs, the South Correctional Entity (SCORE), and Sexual Violence Law Center, et al.

Amici cast this case as a Hobson's choice: Respondents must choose between protecting people in their custody or negatively impacting communities outside prison. But this is not an accurate characterization of the options. Respondents have both a constitutional and statutory duty to Petitioners, and they can work with communities to ensure successful reentry upon release. Indeed, Respondents are in the business of not only incarcerating people, but releasing people – 8,178 individuals in fiscal year 2019 alone.¹

A substantial reduction of the prison population is necessary to protect people in Department of Corrections' (DOC) facilities from the threat posed by exposure to COVID-19. This is particularly true for populations that are most susceptible to harm from contracting the virus.

¹ Br. of Amici Curiae Pioneer Human Services, Seattle/King County Coalition on Homelessness, Revive Reentry Homes & Services, and the STAR Project in Support of Petitioners at 12 (internal citation omitted).

As described by several Amici, jail reduction efforts have been occurring in several jurisdictions throughout the State to protect vulnerable populations and increase social distancing within the jails. DOC only recently introduced a limited release plan despite several community requests to do so over the last month and warnings about likely outbreaks that would occur absent meaningful reductions. DOC's plan is not sufficient to meet the level of reduction needed to effectively mitigate the risk of harm presented by COVID-19; moreover, the plan was not implemented with the urgency required during a pandemic.

As a result, any concerns raised by Amici regarding communities' ability to handle the return of people back into their cities and towns are not due to a lack of capacity or resources, but instead result from DOC's delay in releasing people from DOC custody and failure to act quickly. Finally, the Amici addressed in this Answer make unsubstantiated claims regarding community safety, homelessness, and the prevalence of COVID-19 in prisons and the community to support their arguments against release. Petitioners respond to those allegations, and respectfully request that the Court take Petitioners' Answer into account when determining the usefulness of the briefing submitted by these Amici.

II. STATEMENT OF THE CASE

The facts giving rise to the present action have been extensively briefed by the parties, and in the interest of economy, Petitioners will not

restate them here. However, due to the emergency and evolving nature of the situation, Petitioners did not object to the additions to the record by Amici. To the extent these additions are helpful to the Court, they should be viewed as “Brandeis briefing,” as opposed to evidence in the record.²

III. ARGUMENT

A. **There is broad consensus that reducing the populations of correctional facilities is a vital step in combatting COVID-19.**

Reduction of the prison population is not a novel concept for addressing the spread of COVID-19 and protecting vulnerable populations in those institutions. As pointed out by at least three Amici, reduction has occurred with regard to jail populations in several jurisdictions in Washington.³ Amicus Washington Association of Sheriffs and Police Chiefs (WASPC) explains in detail the efforts that officials around the state have taken to reduce jail populations.⁴ According to WASPC, early and prompt cooperation between law enforcement, sheriffs, prosecutors, and defense attorneys allowed for an orderly process to reduce the jail population.⁵ These proactive efforts resulted in a voluntary reduction of

² See RAP 1.2, 9.1, 18.8 Motion of *Amicus Curiae* Washington State Association of Counties to Supplement Record, No. 98317-8 (filed Apr. 16, 2020), at 6 (explaining appropriate boundaries for “Brandeis Briefs” by amici).

³ Br. of Amicus Curiae Washington Association of Prosecuting Attorneys at 4 (WAPA); Br. of Amicus Curiae Washington Association of Sheriffs and Police Chiefs at 10 (WASPC); Br. of Amicus Curiae South Correctional Entity at 2 (SCORE).

⁴ See WASPC at 10 -16.

⁵ WASPC at 10. WASPC also credits this Court’s Emergency Order for resulting in reduced inmate population – though the statistics it cites are all about jails, with no specific evidence of the downstream impact on DOC populations. *Id.* at 8-9.

the overall county jail population from 12,000 to 6,000 individuals.⁶ News reports cited by WASPC indicate that cities and counties across Washington understood the importance of taking immediate action and cooperating to reduce their jail population as quickly as possible.⁷

Similarly, Amicus South Correctional Entity (SCORE) emphasizes the need to reduce the jail population to prevent the spread of COVID-19. With a facility that can house up to 802 individuals, and averages a population of 600, SCORE reduced its population to less than 400.⁸ However, “SCORE was **only able** to implement many of the measures described above due to the cooperation of SCORE’s Member Cities and partners in reducing SCORE’s population in half.”⁹ SCORE’s success in coordinating and reducing its jail population was the result of early action and planning, beginning as early as March 13th.¹⁰

While it is unclear from Amici’s submissions whether the different approaches taken in each County are evidence-based, or whether they have racially disproportionate outcomes, what is clear is that these methods have all recognized a common goal: keeping communities safe from the spread of COVID-19 requires reducing inmate populations. If it is true that Washington’s jail inmate population is half of the historical

⁶ WASPC at 15.

⁷ See generally *Id.* at 10-14.

⁸ SCORE at 10.

⁹ *Id.* at 12 (emphasis added).

¹⁰ *Id.* at 4.

average, then that also demonstrates another important point: Where there is a will, there is a way. Through coordination and swift action, reductions in population for people in confinement *is possible*. By contrast, Respondents began incremental releases only in reaction to this Court’s order. Furthermore, they have not stopped accepting new people from county jails into the institutions,¹¹ thus negating any correlating reduction in the population. Amici’s information regarding jail depopulation only serves to underscore the inadequacy of DOC’s response to safeguard people in its custody.

B. There Remains a High Risk of Both Infection Within Correctional Facilities and Spread to Communities That Would Be Reduced by Depopulating Prisons.

1. It is currently impossible to know the true rate of COVID-19 infection in DOC facilities given the extremely limited testing of DOC residents and staff.

Both Respondents and various Amici cite statistics that suggest the rate of infection among those in DOC custody is significantly less than in the non-incarcerated community – arguing that, therefore, people confined to DOC are safer from COVID-19.¹² However, these figures do not take into account the egregious lack of testing at DOC facilities.

¹¹ Wash. St. Dep’t of Corrections, *WA State DOC COVID-19 Screening, Testing, and Infection Control Guidelines Version 14*, 1 (Apr. 15, 2020), <https://www.doc.wa.gov/news/2020/docs/wa-state-doc-covid-19-screening-testing-infection-control-guideline.pdf> (outlining screening guidelines for individuals who are coming into or being transferred between DOC facilities.)

¹² WAPA at 5, citing Resp’ts’ Br. at 2 (“Incidence of the virus inside DOC facilities (0.039%) is significantly less than the incidence in Washington as a whole (0.14%)”);

As of Monday, April 20, 2020, only 282 of the approximately 18,000 residents in DOC have been tested for COVID-19. On this same day, DOC reported that 128 individuals in its custody are currently in isolation and 789 are currently in quarantine; both of these figures change daily.¹³ These numbers *do not* include individuals who were previously isolated and/or quarantined and have since been released back into the general population in DOC custody.

DOC has tested only a fraction of the individuals who have been isolated and/or quarantined over the course of this public health crisis. The extremely limited testing (and information about where testing is occurring) makes it impossible to assert with any assurance that there is no incidence of the virus among people in DOC custody outside of the Minimum Security Unit (MSU) and Twin River Unit (TRU) at the Monroe Correctional Complex (MCC). Therefore, it is also impossible to accurately compare the rate of infection amongst individuals in DOC custody to that in the community outside of DOC custody.

Similarly, Respondents and Amici erroneously rely on the assertion that there is “no incidence of the virus in 11 out of 12 [DOC] facilities” to show that DOC is a safer environment than the community.¹⁴

¹³ Wash. St. Dep’t of Corrections, *COVID-19 Information*, <https://www.doc.wa.gov/news/covid-19.htm> (last visited Apr. 20, 2020).

¹⁴ WAPA at 5 (citing Resp’ts’ Ct. R. at 23, App. D at 1).

However, they neglect the fact that as of April 20, 2020, there are confirmed cases of COVID-19 from *at least* 13 DOC staff members working directly within *four* of its correctional facilities; seven at MCC, two at Airway Heights, two at Coyote Ridge, and two at Washington Corrections Center.¹⁵ There have also been at least six other DOC staff members who have tested positive for COVID-19 at DOC headquarters, a regional performance center, one work release site, and one community corrections section.¹⁶ Significantly, DOC relies on self-reporting from its staff members rather than conduct its own testing of staff.¹⁷ As a result, the reported numbers of confirmed cases among staff are unreliable and may paint an incomplete picture of the true, current impact of COVID-19 within its correctional facilities.

Public health experts resoundingly acknowledge the high risk in congregate settings of COVID-19 transmission, including in jails and prisons.¹⁸ Amici's assertion that people who are incarcerated are safer than those who are released is not supported by medical or correctional health experts. This virus poses a very real threat to those inside DOC facilities, and Respondents' refusal to engage in more rigorous testing of

¹⁵ Wash. St. Dep't of Corrections, *COVID-19 Information*, *supra* note 11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See generally* Pacholke Decl. at Pet'rs' Submitted Documents (PSD) 235-247; Greifinger Decl. at PSD 195-219; Puisis and Shansky Decl. at PSD 168-193; Altice Decl. at PSD 221-233; Simonsen Decl. at 426-427, ¶ 6.

both residents and staff has resulted in an inaccurate measure of the scope of this risk. “Given the dearth of testing, these numbers understate (and likely dramatically understate) the problem. Indeed, in some areas, jails have seen infection rates *nine* times higher than the broader community.”¹⁹ For example, just this week, on April 19, 2020, a prison in Ohio reported that **more than 1,800 inmates (out of approximately 2,500) and 109 staff members had tested positive, after the institution began testing everyone in its custody.**²⁰ “‘Because we are testing everyone – including those who are not showing symptoms – we are getting positive tests results on individuals who otherwise would have never been tested because they were asymptomatic,’ [The Ohio Department of Rehabilitation and Correction] said in its daily release of information.”²¹

Testing asymptomatic individuals is critical not only to capture a realistic picture of the scope of COVID-19 transmission and infection, but more importantly, to limit its spread in correctional facilities. “Recent estimates suggest that as many as 1 in 4 cases of coronavirus will not

¹⁹ Br. of Amicus Curiae Public Health and Human Rights Experts (hereinafter PHHRE) at 9-10 (internal citation omitted.)

²⁰ *More Than 1,800 Inmates at Marion Prison Test Positive for Coronavirus*, NBC4i.com (Apr. 19, 2020; updated Apr. 20, 2020), <https://www.nbc4i.com/community/health/coronavirus/more-than-1800-inmates-at-marion-prison-test-positive-for-coronavirus/> (emphasis added).

²¹ *Id.*

present symptoms and yet remain contagious.”²² The daily influx/outflux of people from DOC facilities, both staff and people in custody alike, “make[s] it effectively impossible” to protect against the COVID-19 pandemic.²³ This situation is “made worse by the fact that it is difficult to identify and isolate those individuals who are infected with COVID-19, who may suffer from only mild symptoms or even be entirely asymptomatic, but still be carrying and spreading the disease.”²⁴

2. DOC facilities remain high-risk environments for the spread of COVID-19, regardless of the robustness or accuracy of testing data.

The first three individuals with confirmed COVID-19 diagnoses at MCC were each staff members,²⁵ which has since led to (at least) 12 confirmed cases among people who are incarcerated at MCC.²⁶ This outbreak vividly demonstrates that “[e]ach entrant potentially carries COVID-19 and introduces it into the facility’s population.”²⁷

The numbers provided by Respondents and Amici are not an accurate snapshot of the potential vectors for spreading of COVID-19 within DOC facilities. The people coming into DOC facilities on a day-to-

²² PHHRE at 11 (internal citation omitted.)

²³ *Id.* at 11.

²⁴ *Id.* at 11.

²⁵ Austin Jenkins, *1st Inmate Inside a Washington Prison Tests Positive for COVID-19*, Oregon Public Broadcasting (Apr. 6, 2020), <https://www.opb.org/news/article/washington-doc-prison-monroe-correctional-complex-covid-19/>.

²⁶ Wash. St. Dep’t of Corrections, *COVID-19 Information*, *supra* note 11.

²⁷ PHHRE at 10 (internal citation omitted.)

day basis continue to put the residents at every DOC facility at risk. Despite these risks, DOC has not implemented mandatory testing for staff, individuals who are being brought into DOC custody, or for those individuals being transferred between DOC facilities. Without immediate action, it is simply a matter of time before COVID-19 is transmitted to residents at DOC facilities outside of MCC, if it has not already occurred.

Finally, Amici's unreliable statistics about COVID-19 incidence in DOC ignore the fact that even one positive case can result in an outbreak, as demonstrated in communities outside prison. The COVID-19 risk is not limited solely to the Monroe facility, where there are multiple confirmed cases. In fact, the way that the disease has spread thus far in DOC facilities seems to closely mirror the initial spread of the virus in Washington State outside of correctional facilities. Beginning with just one case in Snohomish County,²⁸ followed shortly by more confirmed cases in King and Snohomish Counties,²⁹ in quick succession, COVID-19 erupted into a statewide – and national – epidemic.³⁰ Outside of the correctional context,

²⁸ *Snohomish County Man Has the United States' First Known Case of the New Coronavirus*, Seattle Times (Jan. 21, 2020; updated Mar. 11, 2020), <https://www.seattletimes.com/seattle-news/health/case-of-wuhan-coronavirus-detected-in-washington-state-first-in-united-states/>.

²⁹ Kim Malcolm, Isolde Raftery, and Megan Farmer, *The Ominous Days Leading Up to the Coronavirus Outbreak at Life Care Center in Kirkland*, KUOW (Mar. 6, 2020), <https://www.kuow.org/stories/the-days-leading-up-to-the-outbreak-at-life-care-center-in-kirkland>.

³⁰ Wash. St. Dep't of Health, *2019 Novel Coronavirus Outbreak (COVID-19): Current Status in Washington State*, <https://www.doh.wa.gov/emergencies/coronavirus> (last visited Apr. 20, 2020).

Governor Inslee has responded on a statewide basis; the closure of schools and non-essential businesses, and the Stay Home Stay Healthy orders, are directed at Washingtonians residing in every county, even those counties that have thus far shown limited transmission of the virus.³¹ The Respondents must act to protect those living in all DOC facilities around the State in the same manner.

C. Supportive and Effective Reentry Can Be Accomplished if the Court Orders DOC to Release a Significant Number of People from Custody.

Amici present a worst-case scenario that vastly overstates the lack of services and funding that would be available to individuals returning to the community after release. For example, the Washington State Association of Counties (WSAC) contends that early releases will exacerbate the crisis of homelessness in our State and overwhelm county finances.³² This concern is based on a faulty assumption of 11,000 people being released at once, and ignores that Respondents have the ability to

³¹ Washington Governor Jay Inslee, News & Media, *Inslee announces statewide school closures, expansion of limits on large gatherings*, <https://www.governor.wa.gov/news-media/inslee-announces-statewide-school-closures-expansion-limits-large-gatherings> (March 13, 2020); Washington Governor Jay Inslee, News & Media, *Inslee extends 'Stay Home, Stay Healthy' through May 4*, <https://www.governor.wa.gov/news-media/inslee-extends-stay-home-stay-healthy-through-may-4> (April 2, 2020).

³² See WSAC at 5, 7.

reallocate resources to invest in – and create – partnerships across the state to support individuals released from prison.³³

1. Respondents have the ability to ensure that each person released has access and connection to supportive services and housing resources prior to release.

As a preliminary matter, cost or administrative difficulty can never excuse unconstitutional conditions or violations of constitutional rights.³⁴

Costs must therefore not excuse or prevent Respondents from releasing people -- the one thing they have now acknowledged is absolutely necessary to ameliorate the severe risk of COVID-19.³⁵

Through release, Respondents have the ability to end the unconstitutional conditions in DOC facilities *and* to support those who are released with the services and resources they need to meet their housing

³³ Amici’s concerns about release numbers are overstated. First, Petitioners have never contemplated the mass release of over 11,000 persons back into the community within the next several weeks. What Petitioners seek is some release of individuals who are categorized as vulnerable and those within 18 months of their release date. After the release of those individuals, as well as Petitioners, Petitioners propose a special master be appointed to work with DOC to analyze the capacity of each prison to determine the number of individuals who must be released to allow for adequate social distancing and placements in each facility, to determine subsequent releases, and, to allow those who are in vulnerable categories but not released to be housed in the least restrictive and safest manner that ensures protection from COVID-19.

³⁴ See *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) (Shortage of funds is not a justification for continuing to deny citizens their constitutional rights); *Johnson v. Bowers*, 884 F.2d 1053, 1055 (8th Cir. 1989) (“the lack of adequate funds cannot justify unconstitutional treatment of prisoners”); *Toussaint v. McCarthy*, 801 F.2d 1080, 1110 (9th Cir. 1986) (cost is not basis to deny remedy for unconstitutional prison condition).

³⁵ See, e.g., Governor Inslee Press Conference on COVID-19, TVW (April 15, 2020) at 28:04- 28:24: <https://www.tvw.org/watch/?eventID=2020041048> (emphasis added) (“[W]e do have a court order that has ordered the governor to produce a plan to [do] whatever is necessary to provide for the physical health of these inmates. **And the only way to do that is to reduce the population in these facilities so that there’s more distance to reduce the risk.**”).

and medical needs. Much has been done during this emergency pandemic to reallocate funds to address urgent issues in a variety of contexts. For example, just a couple of weeks ago, King County moved 400 vulnerable individuals into hotels, and multiple counties have applied for emergency FEMA funding so that they can utilize hotels, trailers, and modular units as housing for individuals experiencing homelessness.³⁶

Respondents' actions in this case demonstrate that they have the ability to take meaningful action, but that it has taken this Court's orders to prompt them to do so. For instance, Respondents asserted on March 30 that they had "limited resources and authority" for early release of individuals to electronic home monitoring, making it seem as if it were impossible to allocate the resources for early release to this type of program.³⁷ Yet, within two weeks, after this Court ordered Respondents to take all meaningful steps to protect individuals in DOC custody from COVID-19,³⁸ Respondents created a Rapid Reentry program allowing at

³⁶ Sydney Brownstone & Anna Patrick, *Here's what the Seattle area has —and hasn't — done to protect its homeless population from coronavirus*, Seattle Times (Apr. 11, 2020), <https://www.seattletimes.com/seattle-news/homeless/heres-what-the-seattle-area-has-and-hasnt-done-to-protect-its-homeless-population-from-coronavirus/> (providing examples of some changes that have been implemented).

³⁷ Resp'ts' Cr. R., Appendix E, Declaration of Mac Pevey at 4, ¶¶ 10-11 ("and the Department cannot successfully implement a largescale release of individuals to EHM...Current training also does not allow for the largescale release to EHM requested by Petitioners.").

³⁸ Order on Motion, No. 98317-8 (Apr. 10, 2020) at 2 ("The Court directs the Governor and Secretary Sinclair to immediately exercise their authority to take all necessary steps to protect the health and safety of the named petitioners and all Department of Corrections inmates in response to the COVID-19 outbreak...")

least 665 individuals an opportunity to serve an expanded portion of their sentence of confinement on electronic monitoring.³⁹ DOC has also entered into a temporary agreement with the Department of Social and Health Services Community Services Division allowing individuals transferring from prison to submit cash and food benefits applications prior to transfer, thereby allowing for expedited access to needed public benefits.⁴⁰

Partnerships and effective coordination with other agencies and social services organizations can enable Respondents to implement effective reentry and provide released individuals with the services or support they may need. For example, Amici in support of Petitioners include four nonprofit organizations who provide reentry services to individuals experiencing homelessness; they have asserted that it is possible, with resources, to make sure that all who are released are appropriately housed and supported.⁴¹ In fact, Amicus Pioneer Human Services “welcomes opportunities to partner” with the State on any releases.⁴² These Amici emphasize that not only is this allocation of resources possible and necessary, it is also more economical. The average annual cost of incarcerating a person in 2018 was \$38,946 per person,

³⁹ Resp’ts’ Suppl. R. on the Dep’t. of Corrections’ COVID-19 Response at 15.

⁴⁰ DSHS, *Expedited Access to Public Benefits for Rapid Reentry*, DSHS (April 15, 2020), <https://doc.wa.gov/news/2020/docs/2020-0415-expedited-access-to-public-benefits-for-rapid-reentry.pdf>.

⁴¹ *Id.* at 9.

⁴² *Id.* at 2.

while Amici Pioneer Human Services spends an average cost of \$9,519.78 per person in supportive reentry, programming, and housing services.⁴³

Furthermore, in response to this case, Governor Inslee waived the “county of origin” requirement,⁴⁴ which would otherwise require people who are released from custody to be returned to the county where they were convicted – a longstanding policy of concern for some of the Amici supporting Respondents.⁴⁵ This waiver creates an opportunity to more equitably distribute the release of individuals into community custody around the state and avoid disproportionately impacting any one county financially or because it is a major “origin” county.

Thus, contrary to fears expressed by Amicus WSAC, the responsibilities and costs of supporting reentry do not have to fall on individual counties.⁴⁶ While the crisis of homelessness in our State is an unfortunate reality, Respondents can reallocate resources to comply with their mandatory constitutional duties, and they must do so at the direction

⁴³ *Id.* at 13 (“If a portion of state and federal funds were redistributed to or earmarked for community organizations helping with the re-entry of formerly justice-involved individuals, they could increase their capacity to provide services at larger savings).

⁴⁴ Proclamation No. 20-50, (April 15, 2020)

<https://www.governor.wa.gov/sites/default/files/proclamations/20-50%20-%20COVID-19%20Reducing%20Prison%20Population.pdf>.

⁴⁵ RCW 72.09.270(8).

⁴⁶ WSAC’s supplemental materials include requests from the State Advisory Council on Homelessness in a letter to Governor Inslee recommending changes to the Earned Release Date Housing Voucher Program and other similar recommendations. Additional Evidence on Review to Support Amicus Curiae Brief of Washington State Association of Counties, Declaration of Kirsten Jewell, Exhibit A. This and other changes could help support an expansion of reentry and housing services.

of this Court. Release to homelessness and a poor impact on county finances is not an inevitable or likely result of Petitioners' request for relief.

Also contrary to WSAC's assertions, many individuals have families and homes to which they can be released and welcomed. It is simply not accurate to assert that homelessness will be the default for most people who are released. As Amici COVID-19 Mutual Aid Seattle, Community Passageways, and Surge Reproductive Justice have powerfully stated, "the families of incarcerated persons care about their loved ones; are prepared to support them upon release; and for their health, well-being and safety as well as the safety of the community at large, desperately want them returned home."⁴⁷ Likewise, Amicus Disability Rights Washington has "also received calls from family members of people who are months from release, people who have housing and supports ready but remain incarcerated as COVID-19 spreads through the system."⁴⁸

⁴⁷ Br. of Amici Curiae COVID-19 Mutual Aid Seattle, Community Passageways, and Surge Reproductive Justice in Support of Petition for Writ of Mandamus at 19.

⁴⁸ Br. of Amicus Curiae Disability Rights Washington in Support of Petitioners' Writ of Mandamus at 3.

Respondents are in the “business of releasing inmates — releasing 8,178 individuals in fiscal year 2019 alone,”⁴⁹ and they deal with issues of release and housing every single day. Moreover, in times of emergency, DOC has demonstrated that it can act immediately and decisively to address the release of a large number of people while providing reentry supports.⁵⁰ The State has the ability to reallocate funds and take action to ensure that anyone who is released has necessary shelter or housing. And this Court has the power to order the State to remedy unconstitutional conditions caused by lack of funding.⁵¹

The concerns outlined by Amici demonstrate a complete lack of planning, coordination, and communication by Respondents,⁵² which highlights the importance of Petitioners’ request for a special master. Appointment of a special master would ensure DOC acts promptly and responsibly so neither released individuals nor the communities into which

⁴⁹ Br. of Amici Curiae Pioneer Human Services, Seattle/King County Coalition on Homelessness, Revive Reentry Homes & Services, and the STAR Project in Support of Petitioners at 12 (internal citation omitted).

⁵⁰ See Declaration of Dan Pacholke, describing actions by DOC to address sentencing miscalculations that resulted in approximately 3,600 people being released early. Pacholke Decl. at PSD 240, ¶ 11.

⁵¹ See, e.g., *McCleary v. State*, 173 Wn.2d 477, 513, 269 P.3d 227, 245 (2012) (requiring the legislature to establish the actual cost of providing all children with education as mandated by the Constitution and reporting to the Court on provisions of such funding).

⁵² Amici identify a host of concerns that can be generally summarized as follows: public safety, victim safety and notification, transitional support services, recidivism rates, access to justice, access to medical care, and county resources. See generally, Br. of WAPA at 6-13; Br. of Amicus Curiae Washington State Association of Counties at 3-10 (hereinafter WSAC); Br. of Amici Curiae Sexual Violence Law Center, et al. (hereinafter SVLC); Br. of WSPA at 3-20; Br. of SCORE at 13.

they are released are placed at undue risk. Furthermore, Petitioners urge that any plan to reduce the prison population should incorporate a race equity analysis to be mindful of the history of racial discrimination noted by this Court.⁵³

2. DOC’s continued delay in implementing meaningful release can negatively impact successful reentry and access to services.

As noted above, release itself will not create negative outcomes for people who are released and the communities to which they will return. However, Respondents’ continued lack of action in taking basic steps may exacerbate any concerns, given the immediacy of action that is required during this crisis.

Respondents have been continually slow to act. Shortly after the COVID-19 outbreak reached Washington State, incarcerated individuals, their family members, and advocates began sounding the alarm over the risk of COVID-19 in Washington prisons.⁵⁴ Petitioners and others reached out to DOC on multiple occasions requesting a release plan, to no avail.⁵⁵ Rather than taking proactive steps to address this crisis, Respondents

⁵³ This Court has recognized that “[t]he fact of racial and ethnic disproportionality in [Washington’s] criminal justice system is indisputable.” *State v. Gregory*, 192 Wn.2d 1, 23, 427 P.3d 621 (2018) (quoting *State v. Saintcalle*, 178 Wn.2d 34, 45, 309 P.3d 326 (2013)) (plurality opinion) (internal quotation omitted).

⁵⁴ See Letter to Secretary Sinclair (Mar. 16, 2020) at PSD 106-112; Letter to Governor Inslee (Mar. 16, 2020) at PSD 114-118.

⁵⁵ Straley Decl. at PSD 94-100, ¶¶ 14, 17-43.

refused to release anyone from custody, despite public health and correctional experts from across the country explaining the necessity of such action.⁵⁶ Only after Petitioners filed this action and a mandate from the Court to take all steps necessary to protect all people in DOC custody – and approximately one month after initial release demands – did the Governor and DOC announce the release of between 600-950 individuals.

As noted above, Amici raise several concerns regarding release of people back to the community. Quicker and more decisive action by the Respondents' could have helped ameliorate these concerns. Despite the delay, release in light of COVID-19 can still be done safely and effectively, but the longer Respondents delay on meaningful release, the more difficult this work becomes.

IV. CONCLUSION

Based on the foregoing, Petitioners respectfully request that this Court recognize the need for additional reduction of prison population to mitigate against the harms of COVID-19, that the community is a safer alternative for most persons who are vulnerable to exposure to COVID-19,

⁵⁶ See generally Pacholke Decl. at PSD 235-247; Greifinger Decl. at PSD 195-219; Puisis and Shansky Decl. at PSD 168-193; Altice Decl. at PSD 221-233; Simonsen Decl. and Attach. 1-10 at PSD 423-619.

and that safe and effective community reentry can be accomplished should additional releases be granted.

RESPECTFULLY SUBMITTED this 21st day of April, 2020.

COLUMBIA LEGAL SERVICES

/s/ Nicholas Allen

Nicholas Allen, WSBA #42990

Nicholas B. Straley, WSBA #25963

Janet S. Chung, WSBA #28535

101 Yesler Way, Suite 300

Seattle, WA 98104

Telephone: (206) 464-1122

Attorneys for Petitioners

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I certify that on the date below, I electronically filed **Petitioners' Consolidated Answer to *Amici Curiae* Briefs**, with the Clerk of the Court using the electronic filing system, which will send notification of filing to all parties of record at their email addresses as follows:

DAdreBCunningham@gmail.com
John.Samson@atg.wa.gov
PCpatcecf@piercecountywa.gov
andrea@smithalling.com
caedmonc@gmail.com
changro@seattleu.edu
correader@atg.wa.gov
cwallace@perkinscoie.com
dadre@defensenet.org
djohnson@paulweiss.com
dkimballstanley@paulweiss.com
dvasquez@karrtuttle.com
heatherm@dr-wa.org
hhatrup@karrtuttle.com
hsebens@co.skagit.wa.us
janet.chung@columbialegal.org
jaufderh@co.kitsap.wa.us
jmidgley@aclu-wa.org
jstarr@perkinscoie.com
kcpaciv@co.kitsap.wa.us
leeme@seattleu.edu
ltsuji@perkinscoie.com
mmc@smithalling.com
nblock@co.skagit.wa.us
nf@neilfoxlaw.com
nick.allen@columbialegal.org
nick.straley@columbialegal.org
nikkita.oliver@gmail.com
pleadings@aclu-wa.org
rachaels@dr-wa.org
rtyler@perkinscoie.com
sbuergel@paulweiss.com
talner@aclu-wa.org

tdavis@aclu-wa.org
teresa.chen@piercecountywa.gov
tim.lang@atg.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 21st day of April 2020, at Tacoma, WA.

s/ Maureen Janega
MAUREEN JANEGA, Paralegal
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104
206-287-9662
maureen.janega@columbialegal.org

COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

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- dkimballstanley@paulweiss.com
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- elizabethh@nwjustice.org
- evangeline@aysattorneys.com
- greg@seaemplaw.com
- heatherm@dr-wa.org
- hhatrup@karrtuttle.com
- hsebens@co.skagit.wa.us
- jamie.lisagor@pacificlawgroup.com
- janet.chung@columbialegal.org
- jaufderh@co.kitsap.wa.us
- jmidgley@aclu-wa.org
- jstarr@perkinscoie.com
- julia.bladin@columbialegal.or
- kcpaciv@co.kitsap.wa.us
- kim.gunning@columbialegal.org

- laurel.simonsen@columbialegal.or
- leeme@seattleu.edu
- ltsuji@perkinscoie.com
- matthew.segal@pacificalawgroup.com
- mmc@smithalling.com
- nblock@co.skagit.wa.us
- nf@neilfoxlaw.com
- nick.straley@columbialegal.org
- nikkita.oliver@gmail.com
- pamloginsky@waprosecutors.org
- pleadings@aclu-wa.org
- rachael@dr-wa.org
- riddhi@svlawcenter.org
- rtyler@perkinscoie.com
- sara@seaemplaw.com
- sarah.jackson@kingcounty.gov
- sbuergel@paulweiss.com
- talner@aclu-wa.org
- tdavis@aclu-wa.org
- teresa.chen@piercecounywa.gov
- tim.lang@atg.wa.gov
- tony.gonzalez@columbialegal.org

Comments:

Sender Name: Maureen Janega - Email: maureen.janega@columbialegal.org

Filing on Behalf of: Nicholas Brian Allen - Email: nick.allen@columbialegal.org (Alternate Email: nick.allen@columbialegal.org)

Address:

Columbia Legal Services, Institutions Project
101 Yesler Way, Suite 300
Seattle, WA, 98104
Phone: (206) 287-9662

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