

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 98317-8

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' MOTION TO AMEND PETITION FOR A WRIT
OF MANDAMUS, FOR LEAVE TO FILE OVERLENGTH
PETITION, FOR ACCELERATED REVIEW, AND FOR
PETITIONERS' RELEASE PENDING FINAL DETERMINATION**

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I. INTRODUCTION AND RELIEF REQUESTED

Petitioners seek the Court's permission to file a motion for leave to amend their Petition for a Writ of Mandamus, pleading in the alternative as Writ of Habeas Corpus and/or a Personal Restraint Petition (PRP). Moreover, Petitioners request that the relief requested in their Petition apply to all persons in DOC custody, regardless of whether the Petition is addressed as a Writ of Mandamus or a PRP. Petitioners also request leave to file an overlength Amended Petition. Given the strong policy in favor of allowing parties to amend their pleadings and the lack of prejudice to Respondents, Petitioners' request should be granted. Petitioners have attached their proposed amended Petition to this Motion as Exhibit A.

Petitioners further request that this Court grant accelerated review of this Motion. Finally, Petitioners further request that the Court order their release from DOC custody pursuant to RAP 16.15 pending final determination of this action.

II. FACTS RELEVANT TO MOTION

On April 9, 2020, in response to an outbreak of six positive COVID-19 tests among persons in prison at the Monroe Correctional Complex Minimum Security Unit (MCC-MSU), Petitioners filed with this Court an Emergency Motion to Accelerate Review, for Appointment of a

Special Master and For Immediate Relief. On April 10, 2020, the Court granted Petitioners' Motion for Accelerated Review and Petitioners' Motion for Immediate Relief, in part. Order on Motion, No. 98317-8 (Apr. 10, 2010).

Pursuant to that Order, Petitioners now seek leave to file a motion to amend their Petition, to file an overlength Petition, for Accelerated Review, and for Petitioners' release pending a final determination on this action by the Court. Exhibit A hereto is the proposed Amended Petition. The following is a summary of the proposed Amended Petition makes the following amendments:

- The Title is changed to reflect the relief requested.
- Adds new ¶ 13 to Section II. Parties.
- Adds new ¶¶ 18 and 19 to Section III. Jurisdiction.
- Updates information in Section IV. Factual Background – specifically, new ¶ 64, ¶¶ 66-67 (Colvin), ¶ 69, note 99 (Duncan); ¶ 74 & note 117; ¶ 76 note 125, ¶¶ 118-122 (Monroe CC outbreak)
- Adds new ¶¶ 138-141 to Section V. Demand for Judgment and Grounds for Remedy.
- Adds new ¶ 4 to Section VI. Relief Requested.

Exhibit B hereto is a copy of the proposed Amended Petition that includes the proposed changes as tracked changes.

III. ARGUMENT

A. This Court Should Grant Plaintiffs Leave to File an Amended Petition Because Doing So Will Not Prejudice the Respondents.

The Court should grant the Petitioners' Motion to Amend as the request is neither frivolous nor will it prejudice the Respondents. "The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the non-moving party." *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999). "Factors which may be considered in determining whether permitting the amendment would cause prejudice include undue delay, unfair surprise, and jury confusion." *Id.* at 505-06.

Petitioners' request to amend their Petition is not frivolous. At least three Justices have suggested the Petition can be decided through a writ of mandamus or a PRP. Order on Motion, No. 98317-8, at 6-7 (Apr. 10, 2010) (Gordon McCloud, González, and Montoya-Lewis, JJ., concurring). Thus, clarifying the Petition to add alternative bases for relief is a legitimate reason to amend the Petition.

Further, no prejudice would result from the granting of the Petitioners' Motion to Amend. Petitioners filed this Motion upon receiving guidance from the Court in its Order from April 10, 2020, at 5:19 P.M.,

that a PRP may be an appropriate alternative vehicle for bringing this action. Thus, it should not have come as a surprise to Respondents that Petitioners would seek this Motion to Amend. Other proposed amendments are merely factual updates of which Respondents are aware through other pleadings in this case.

Moreover, Petitioners moved swiftly to file this Motion for Leave to Amend – on the first available day after receiving the Court’s April 10th Order. Accordingly, there has been no undue delay in seeking to amend the Petition. Respondents will presumably be given a reasonable opportunity to respond to Petitioners’ Motion, and thus, will suffer no prejudice from the proposed amendments.

B. This Court Should Allow Petitioners Leave to File an Overlength Petition.

The Court accepted Petitioners’ initial petition despite its length, noting that while “[g]enerally, a petition for a writ of mandamus should not exceed 20 pages in length, ... due to the emergency nature of the petition.” *See* Letter Ruling dated March 27, 2020. In so doing, the Court also stated that any future filings exceeding the page limits should be accompanied with a motion for permission to file an overlength document.

Because their Amended Petition also exceeds 20 pages, Petitioners request leave to file an overlength Petition. As noted *supra*, the

amendments would not cause delay or prejudice to Respondents, and all pleadings have been of an emergency nature due to the COVID-19 crisis. Thus, Petitioners request that this Court grant leave to file their overlength Amended Petition, for the same reasons as it allowed the original Petition to be filed.

C. The Court Should Allow Petitioners to Seek in the Alternative a Writ of Habeas Corpus or a Personal Restraint Petition.

In the alternative to a Petition for a Writ of Mandamus, the Court should allow Petitioners to seek relief through a writ of habeas corpus or a Personal Restraint Petition. “Personal restraint petitions are modern versions of ancient writs, most prominently, habeas corpus, that allow petitioners to challenge the lawfulness of confinement.” *In re Coats*, 173 Wn.2d 123, 127, 267 P.3d 324 (2011). “The purpose of judicial review of restraint, through the PRP process, is to protect against governmental oppression and power exercised without law.” *In re Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010).

A personal restraint petition shall be granted where the petitioner’s restraint is unlawful.¹ RAP 16.4. As set forth in their original Petition for

¹ For example, in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Supreme Court made a distinction between claims that challenge the fact of, or duration of, confinement and claims that do not, noting that claims that “seek[] immediate release or a speedier release from that confinement [are] the heart of habeas corpus.” *Id.* at 498. The *Preiser* Court

Writ for Mandamus, Petitioners’ restraint is unlawful because “the conditions or manner of the restraint are in violation of the Constitution of the United States or the Constitution or law of the State of Washington,” and “other grounds exist to challenge the legality of the restraint” of the Petitioners. RAP 16.4(c)(6), (7). *See* Petition for A Writ of Mandamus, ¶¶ 115-128 (alleging various constitutional and statutory violations).

The State’s refusal to release the Petitioners and other people in prison from its custody in light of their heightened risk of severe illness or even death from exposure to COVID-19 serves as an unlawful restraint upon Petitioners sufficient for relief under a writ of mandamus, a writ of habeas, or a PRP.

D. The Court Has Broad Authority to Grant Relief to Petitioners and All Other Individuals in DOC Custody.

1. Because All People in Prison Stand to Benefit from the Relief Sought, Petitioners May Seek Relief for all Similarly Situated People via a Writ of Mandamus or Habeas Corpus or a PRP.

Washington’s Constitution grants this Court the power to order people released from Washington’s prisons. “Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition

recognized that although generally, conditions of confinement are usually challenged via Section 1983 claims, they may also give rise to a habeas claim “[w]hen a prisoner is put under additional and unconstitutional restraints during his lawful custody.” *Id.* at 499.

by or on behalf of any person held in actual custody.”² Const. art. IV, § 4.

This provision explicitly grants this Court the power to order the release upon a petition brought “on behalf of any person held in actual custody.” (Emphasis added). RAP 16.6 reflects this authority.³

Furthermore, this Court has recognized:

On occasion, this court has taken a less rigid and more liberal approach to standing when necessary to ensure that an issue of substantial public importance does not escape review. An issue is of substantial public importance when it immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally.⁴

Under the unprecedented circumstances presented here, any person with standing to bring a writ action or PRP in their own name, also has standing to seek relief on behalf of all other similarly situated

² In addition, art. IV § 4 grants the Court “original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers.” RAP 16.3-16.15 lay out the rules relevant to personal restraint petitions.

³ RAP 16.6 states in relevant part: “The [personal restraint] petition may be brought by the person who is under a restraint or in the person's name by that person's guardian, conservator, parent, or attorney.” This Court can “waive or alter the provisions of any of [the Rules of Appellate Procedure] in order to serve the ends of justice,” to the extent that this or any other applicable PRP rule may limit the broad relief the Petitioners seek here. RAP 1.2; *see also State v. McClendon*, 131 Wn.2d 853, 858, 935 P.2d 1334 (1997) (“This Court's authority to make rules carries with it the inherent power to waive rules when justice requires it.”); *O'Connor v. Matzdorff*, 76 Wn.2d 589, 597, 458 P.2d 154(1969) (“we have the inherent power to waive the requirements of our rules”).

⁴ *Washington State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 718, 445 P.3d 533 (2019) (internal citations and quotations omitted).

people, because the release of any people from DOC custody will benefit every person living in Washington's prisons.

The doctrine of standing requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit. This Court has described this requirement as one seeking relief must show a clear legal or equitable right and a well-grounded fear of immediate invasion of that right.⁵ Petitioners have standing “to vindicate the rights of a third party where (1) the litigant has suffered an injury-in-fact, giving him or her a sufficiently concrete interest in the outcome of the disputed issue; (2) the litigant has a close relationship to the third party; and (3) there exists some hindrance to the third party’s ability to protect his or her own interests.”⁶

⁵ *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987) (quoting *DeFunis v. Odegaard*, 82 Wn.2d 11, 24, 507 P.2d 1169 (1974)) (internal quotations omitted).

⁶ *Ludwig v. Dep't of Ret. Sys.*, 131 Wn.App. 379, 385, 127 P.3d 781 (2006); *see also*, *Powers v. Ohio*, 499 U.S. 400, 411, 111 S. Ct. 1364, 1371, 113 L. Ed. 2d 411 (1991). Washington courts and court rules recognize that individuals or organizations have standing to bring actions on behalf of other people in a number of different situations. *See e.g.*, *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213, 45 P.3d 186 (2002) (an association has standing to bring suit on behalf of its members); *also*, *Lamar Outdoor Advert. v. Harwood*, 162 Wn. App. 385, 392–93, 254 P.3d 208, 212 (2011) (“our courts have increasingly recognized that in some instances a party can assert the rights of a nonparty. *See State v. Mendez*, 157 Wn. App. 565, 577, 238 P.3d 517 (2010) (discussing cases permitting criminal defendant to assert rights of public at trial). In particular, parties can assert the rights of another when those rights are intertwined with their own rights. *Hallmann*, 31 Wn. App. at 52 n.1, 639 P.2d 805; *Skilcraft Fiberglass, Inc. v. Boeing Co.*, 72 Wn.App. 40, 863 P.2d 573 (1993) (requiring notice to Boeing before default where a contractor working for Boeing had already appeared”); *cf.*, Wash. R. Civ. P. 23 (authorizing class action litigation); *Moeller v. Farmers Ins. Co.*

The Petitioners satisfy each of these elements. They have concrete and direct interests in the outcome of this action. Each Petitioner, like each other person currently incarcerated in Washington’s prisons, seeks safety from COVID-19. The primary public health tool to mitigate the likelihood of a massive outbreak is a large reduction in the number of people in prisons. Even if the individual Petitioners are not released, they will each be dramatically safer if many other people are released.⁷

This same interest also creates the close relationship to their fellow people living in Washington’s prisons. Every person incarcerated in Washington is at risk from this illness, and each will become safer as the number of people in Washington’s prisons is reduced. The fewer the people, the more that DOC will be able to appropriately direct resources to the people who remain and will be able to allow people to spread out and truly implement social distancing. The order that the Petitioners seek from

of Washington, 173 Wn.2d 264, 278, 267 P.3d 998 (2011) (“CR 23 is liberally interpreted because the rule avoids multiplicity of litigation, saves members of the class the cost and trouble of filing individual suits,] and also frees the defendant from the harassment of identical future litigation.”)(internal punctuation and quotations omitted); *see also* William B. Rubenstein, et al., “Historical Origins Of The Class Action Device,” Newberg on Class Actions § 1.2 (5th ed. 2015) (discussing historical ability of courts to litigate cases on behalf of many different people who share common interests); *id.* at § 1.1 (“It is typically imagined that class action lawsuits are a modern invention, but in fact, forms of group litigation have long existed.”).

⁷ In fact, the Petitioners who are particularly at risk from COVID-19 have even stronger interests in DOC reducing the population of people to mitigate the chances that COVID-19 spreads throughout the prisons.

this Court – the release of many people from DOC custody – will dramatically and positively impact the Petitioners and all of the people with whom they are incarcerated.

Finally, this litigation is the only realistic means by which the Petitioners and others can receive the relief they need. The courts do not have time or capacity to consider individual personal restraint petitions or other lawsuits brought by every person living in Washington’s prisons who is currently being affected by the State’s inadequate COVID-19 response.

Washington’s Constitution grants this Court the judicial power to order the relief that the Petitioners seek. The Court should exercise this power to do so.

2. This Court Has the Authority to Provide Broad Relief to All Persons in DOC Custody.

Regardless of whether this Court construes Petitioners’ Petition as a writ of mandamus or a habeas writ or a PRP, it still retains broad authority to provide relief that extends to all persons in DOC custody. The Court could employ any of these jurisdictional alternatives to ensure application of any relief extends to all people in DOC custody.

The Court could allow relief to a group of people beyond the Petitioners without calling the Petition a PRP because it challenges

unlawful conditions of confinement. *See Johnson v. Moore*, 80 Wn.2d 531, 496 P.2d 334 (1972). In *Johnson*, petitioners filed a class action on behalf of themselves and all other persons arrested and held in the city jail without charge, to terminate the alleged practice within King County of holding individuals in the city jail on suspicion of various crimes without bringing them promptly before the magistrate. *Id.* at 335. They sought relief under various procedural-remedial categories, including habeas corpus. *Id.* The trial court denied the class action on the assumption that petitioners were seeking a habeas class action. *Id.* at 336. This Court reversed. While the habeas petitions had been denied prior to the class certification motion at issue on appeal, the Court held that the class action for declaratory and injunctive relief should have been certified, where the petitioners were asking for an injunction requiring their release, which amounts to the same relief as under a habeas petition. *Id.* (“the possibility that some individuals held on suspicion of various crimes in the Seattle city jails might not be entitled to release under constitutional standards of reasonable detention, does not bar a class action.”).⁸ The Court reasoned that class action relief “is not precluded by the possibility that individual

⁸ The Court also did not decide whether a class habeas would be inappropriate. *Id.* at 336 (“While we do not decide whether this class action would be inappropriate if brought solely to obtain habeas corpus relief, we do conclude that as an action for injunctive and declaratory relief it is an appropriate class action and was incorrectly dismissed.”).

issues may predominate once the general illegality of the questioned practice is determined.” *Id.* at 336-37. Likewise, in this case, the Petition for a Writ of Mandamus seeks a declaration of the illegality of the Respondents’ derelictions of duty, and this relief may extend to a class of people beyond the individual Petitioners. As with a law or practice that is held to be unconstitutional, the State could not then continue to apply the law or practice to any individual in a constitutional manner.

The Court could also consider the Petitioners’ motions as individual PRPs or writs of mandamus, and then order the Department of Corrections (DOC) to provide equal treatment to people in prison who are similarly situated to the people the Court finds are entitled to relief on the individual writs. *See State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) (applying relief broadly to all death penalty cases).

Further, if the Court construes the Petition as a PRP, it could convert the case to a class PRP, or a class statutory habeas under either RCW 2.04.010⁹ or RCW 7.36.010.¹⁰ Like this Court, the U.S. Supreme Court likewise “has never addressed whether . . . habeas relief can be pursued in a class action.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 858 n.7,

⁹ “Supreme Court shall have original jurisdiction in habeas corpus...and mandamus as to all state officers...”

¹⁰ “Every person restrained of his or her liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.” RCW 7.36.010.

200 L.Ed. 2d 122 (2018) (Thomas, J., concurring in part) (citing *Schall v. Martin*, 467 U.S. 253, 261 n.10, 104 S.Ct. 2403, 81 L.Ed 2d 207 (1984) (reserving this question)). *See also Bell v. Wolfish*, 441 U.S. 520, 526 n.6, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (case brought as a class habeas, which petitioners never contested, “[t]hus we leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself.”).

Many other courts, however, have authorized group or class relief based on habeas petitions, where principles of judicial economy favored resolution of the legal claims in one legal action rather than many individual petitions. *See, e.g., Bijeol v. Benson*, 513 F.2d 965, 967-68 (7th Cir. 1975); *see also Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed. 2d 1 (1993) (class action seeking relief pursuant to 28 U.S.C. § 2241); *U.S. ex rel. Morgan v. Sielaff*, 546 F.2d 218, 221 (7th Cir. 1976); *Ali v. Ashcroft*, 346 F.3d 873, 889-91 (9th Cir. 2003) (holding that the district court did not exceed its habeas jurisdiction in certifying a nationwide habeas class), *withdrawn and amended on other grounds on reh’g, Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005); *Cleveland v. Ciccone*, 517 F.2d 1082 (8th Cir. 1974) (court consolidated habeas claims and designated class of all prisoners who were the subjects of unexecuted

federal parole violation warrants to relieve the court of the burden of multiple individual transfers of petitioners, which might otherwise raise jurisdictional problems or questions of mootness). *See also Geraghty v. U.S. Parole Commission*, 429 F. Supp. 737, 740 (M.D. Pa. 1977) (“procedures analogous to a class action have been fashioned in habeas corpus actions where necessary and appropriate”); *U.S. ex rel. Green v. Peters*, 153 F.R.D. 615, 617 (N.D. Ill. 1994) (granting class certification in habeas context, stating, “the obvious undesirability of a large number of individual petitioners clamoring for preference in the allocation of scarce resources . . . counsels strongly in favor of certification”); *Adderly v. Wainwright*, 58 F.R.D. 389, 400-01 (M.D. Fla. 1972) (class certification in state prisoners’ habeas action was appropriate to ensure that the writ was “administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected”) (internal citations omitted).

Other states likewise have recognized courts’ ability to grant group relief through a habeas procedure. *See In re Lugo*, 164 Cal.App.4th 1522, 1543 (2008) (habeas class action on behalf of parole-eligible life prisoners), *In re Head*, 147 Cal.App.3d 1125, 1131 (Ct. App. 1983) (rejecting appellant’s argument that consolidated habeas case should have been dismissed as an inappropriate class action and upholding trial court

order requiring prison authorities to comply with certain procedural safeguards in denying people the opportunity to participate in the work furlough program; habeas corpus procedure may be properly utilized to obtain a declaration of rights in the prevailing circumstances); *Harshaw v. Farrell*, 55 Ohio. App. 2d 246, 247, 380 N.E.2d 749 (Ohio Ct. App. 1977) (finding that Civ. R. 23 is not inherently inapplicable to habeas corpus actions; “In some instances, a class action in habeas corpus may be the swiftest, fairest, and most effective way to obtain common relief for a large group of persons who are confined unlawfully under similar or identical circumstances.”); *State v. Johnson*, 11 Conn. App. 251, 235, 527 A.2d 250, 252 (1987) (defendant introduced into evidence a class action habeas settlement to show that per the settlement the State was not allowed to employ the procedures used to find he violated a condition of probation) ; *V.W. v. Cuyahoga Cty. Welfare Dep’t*, No. 47338 WL 5029 *1 (Ohio Ct. App., Mar. 29, 1984) (habeas class action can be certified as a class action if it meets the requirements of Civ. R. 23(A) and one of the alternative conditions in 23(B)); *Com ex rel. Paulinski v. Isaac*, 483 Pa. 467, 473 n.2, 397 A.2d 760 (1979) (rejecting appellant’s claim that no habeas proceeding should be brought on behalf of more than one person, citing, e.g. *Supreme Court ex rel. Cardona v. Singerman*, 63 Misc.2d 509, 312 N.Y.S.2d 229 (Supreme Ct. 1970); *Britt v. McKenny*, 529 F.2d 44 (1st

Cir. 1976); *Burgener v. California Adult Auth.*, 407 F. Supp. 561 (N.D. Cal 1976)).

Finally, requiring each individual person who lives in DOC custody to file an individual PRP or other action to litigate the same issues raised here will create a large burden on the courts and upon litigants. The courts do not have time or capacity to consider individual personal restraint petitions or other lawsuits brought by every person living in Washington's prisons who is currently being affected by the State's inadequate COVID-19 response in the expedited fashion that this crisis mandates. Addressing the common issues of law and fact, regardless of the precise procedural vehicle, would be in the interests of judicial economy, particularly in these extraordinary circumstances when every day adds to the risk for vulnerable people in DOC custody.

IV. CONCLUSION

Given these unprecedented, exigent circumstances involving the imminent risk to the health and safety of thousands of Washingtonians, this Court should grant Petitioners' Motion and (1) allow leave to their Amended Petition for a Writ of Mandamus or Habeas Corpus and/or Personal Restraint Petition, (2) allow leave to file an overlength Amended Petition, and (3) as quickly as possible.

DATED this 13th day of April, 2020.

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CERTIFICATE OF SERVICE

I certify that on the date below, I electronically filed Petitioners' Motion to Amend Petition for a Writ Of Mandamus, for Leave to File Overlength Petition, for Accelerated Review, and for Petitioners' Release Pending Final Determination, 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:

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

EXECUTED this 13th day of April 2020, at Tacoma, WA.

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EXHIBIT A

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**AMENDED PETITION FOR A WRIT OF MANDAMUS OR
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PERSONAL RESTRAINT PETITION**

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PETITIONERS, Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Rhone, hereby bring this original action in the nature of a petition for a writ of mandamus and/or a personal restraint petition and/or a writ of habeas corpus seeking relief for themselves and all other people who are similarly situated and allege as follows:

I. INTRODUCTION

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

practices that can reduce the likelihood of infection: 1) regular and thorough cleaning of hands, surfaces, and objects that may have come in contact with the virus; and 2) appropriate social distancing – the practice of increasing the physical space between people. Recent actions by Governor Inslee have resulted in directives to Washingtonians to engage in these practices. In the weeks since the COVID-19 outbreak in Washington, Governor Inslee has entered increasingly restrictive emergency orders meant to reduce the proximity of people to one another and increase opportunities for appropriate social distancing. These measures have included restrictions on the number of people allowed to gather in public spaces; closing of public schools and colleges; temporary shut-down of restaurants and bars; and prohibiting visitation of long-term care facilities. And, just today, the Governor entered a “stay-at-home” order, directing all Washington residents to stay home except for necessary activities such as buying groceries or seeking medical care.

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

protecting those who are most susceptible to harm resulting from infection.

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

II. PARTIES

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

10. Terry Kill is a resident at the Monroe Correctional Complex in Monroe, Washington.
11. Leondis Berry is a resident at Stafford Creek Corrections Center in Aberdeen, Washington.
12. Theodore Rhone is a resident at the Stafford Creek Corrections Center in Aberdeen, Washington.
13. Petitioners bring this action seeking relief for themselves and all other persons who are similarly situated in Washington's prisons or who are under the DOC's control.
14. Steven Sinclair is the Secretary of the Washington State DOC.
15. Jay Inslee is the Governor of the State of Washington.

III. JURISDICTION

16. The events giving rise to this action occurred at DOC facilities that are all located in the State of Washington.
17. This Court has original jurisdiction over a petition seeking a writ of mandamus against state officers, including the Governor and the Secretary of the DOC, pursuant to Wash. Const. art. IV, § 4 and RCW 7.16.160.
18. This Court has original jurisdiction over a petition seeking a writ of habeas corpus against state officers pursuant to Wash. Const. art. IV, § 4, RCW 2.04.010, and RCW 7.36.010.

19. This Court has original jurisdiction over this personal restraint petition pursuant to Wash. Const. art. IV, § 4 and RAP 16.3-16.15.

IV. FACTUAL BACKGROUND

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

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

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

² Id.

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

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

COVID-19 in the U.S. to grow exponentially in the coming weeks and months. The Centers for Disease Control and Prevention (CDC) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.5 million deaths.⁵

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

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

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

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

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

⁹ Id.

severity of symptoms, all infected persons are contagious and can rapidly transmit the virus from person to person without proper public health interventions.¹⁰

22. All individuals are at risk of transmission of COVID-19.¹¹ There is no available vaccine, and no one is immune.¹² There is also no known cure for COVID-19.¹³ The only way to reduce risks to vulnerable people is to prevent them from becoming infected. The CDC and other public health agencies have universally prescribed social distancing (maintaining physical space/separation from those who have, or have potentially, been exposed, to COVID-19) and rigorous hygiene — including regular and thorough hand washing with soap and water, the use of alcohol-based hand sanitizer, proper sneeze and cough etiquette, and thorough environmental cleaning — as the best and only ways to mitigate the spread of this disease.¹⁴

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

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

¹² Id.

¹³ Id.

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

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

23. While many people who become infected will recover with minimal medical intervention, people over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19.¹⁵ The CDC, WHO, and other public health organizations have determined that underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (e.g., cancer, HIV, autoimmune disease, etc.), and/or pregnancy, place individuals of any age at an exponentially higher risk of serious illness or death from the COVID-19 virus.¹⁶
24. For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe, and complications can manifest at an alarming pace. Individuals who have contracted the virus may first display symptoms in as little as two days after exposure, and their condition can rapidly deteriorate.

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

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

25. The illness can quickly progress to more life-threatening symptoms as the virus spreads to the lungs and other organs. Serious permanent damage to the lungs and organs may also occur.¹⁷
26. In the most severe cases, COVID-19 can be deadly.¹⁸ The overall case mortality rate in the U.S. from the disease is 2.3%; however, based on the number of deaths and cases reported by the Washington State Department of Health website, the Washington death rate is 5.2%.¹⁹ As a result, the virus is 10 times more deadly than the common flu (Influenza A) and other flu-like viral infections.²⁰
27. Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

¹⁷ Altice Declaration, at ¶ 11.

¹⁸ *Id.* at ¶ 12.

¹⁹ Puisis-Shansky Declaration, pg. 3-4 at ¶ 6.

²⁰ Altice Declaration, at ¶10.

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

28. The Washington State Department of Corrections (“DOC”) operates 12 prisons²¹ and 12 work-release facilities throughout Washington.²² Many of these facilities are in rural areas, geographically isolated from hospitals that may be needed to provide support in the event of a COVID-19 outbreak.
29. Washington State has had one of the largest COVID-19 outbreaks in the United States, and one of the largest known outbreaks in the world.²³
30. Approximately 19,000 people are currently in DOC custody.²⁴ Due to the congregate nature of prisons and other deficiencies, each of these individuals is at constant risk of harm from a serious outbreak of COVID-19 while in DOC custody. For people in DOC custody who are over the age of 50 and those living with certain underlying medical conditions, exposure to COVID-19 presents a grave risk of serious illness and or death.

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

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

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

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

31. Congregate environments, (e.g., cruise ships, long-term care facilities, etc.) have become the epicenters of several outbreaks of COVID-19, such as the Life Care Center of Kirkland in Washington State²⁵ or the Diamond Princess cruise ship which held its passengers in quarantine off the coast of California.²⁶
32. Because correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another, infectious diseases are more likely to spread rapidly between individuals.²⁷ This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.²⁸
33. The public health risks inside prisons are even greater than in congregate environments outside a correctional setting. The World Health Organization states that people who are incarcerated and

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

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

²⁷ Anne C. Spaulding, Coronavirus and the Correctional Facility, Emory Center for the Health of Incarcerated Persons, 17 (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF Administrators_3.9.2020.pdf.

²⁸ Id.

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

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

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

³⁰ Id.

³¹ Id. at 11.

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

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

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

³³ Id.

adequately distance themselves from infected residents or staff.³⁴

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

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

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

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

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

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

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

³⁶ Altice declaration at ¶¶ 10,13

³⁷ Id. at ¶ 15.

day, increasing the chances that the virus will spread throughout the prison.³⁸

41. As Dr. Altice explains, prisons have been the settings for previous outbreaks of infectious diseases: “In addition to HIV, viral hepatitis, and tuberculosis, we have experienced endemic outbreaks of strains of staphylococcus aureus bacteria that are resistant to methicillin (MRSA), which occurs in crowded congregate settings.”³⁹ And prisons have not always proven successful at treating these diseases once they make their way into the institutions. For instance, tuberculosis outbreaks in prison have had devastating and sometimes deadly impacts on prisoners due to the prisons’ inability to diagnose and treat people with the disease.⁴⁰ This is troubling given that tuberculosis is a much less infectious disease than COVID-19.⁴¹
42. Social distancing is imperative in mitigating the spread of COVID-19. To achieve this result in prisons, reduction of the population is necessary, not only to protect prisoners from spread of the virus, but also to reduce burdens on community health systems that will

³⁸ Id. at ¶ 16.

³⁹ Id. at ¶ 14.

⁴⁰ Id. at ¶ 17.

⁴¹ Id., Puisis-Shansky Declaration at ¶ 9.

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

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

⁴² *Id.* At ¶¶ 18, 20.

⁴³ *Id.* at ¶ 25.

⁴⁴ *Id.* at ¶ 22.

⁴⁵ Declaration of Dr. Robert Greifinger, at ¶ 18.

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

⁴⁶ Id. at ¶ 15.

⁴⁷ Id.

⁴⁸ Id. at ¶ 16.

⁴⁹ Id. at ¶ 17.

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

⁵⁰ Id. at ¶ 21.

⁵¹ Id. at ¶ 23.

⁵² Declaration of Dan Pacholke at ¶ 5.

⁵³ Id.

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

⁵⁴ Id. at ¶ 6.

⁵⁵ Id. at ¶ 7.

⁵⁶ Id. at ¶ 8.

⁵⁷ Id. at ¶ 9.

⁵⁸ Id. at ¶ 10.

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

⁵⁹ Id. at ¶ 11.

⁶⁰ Id.

⁶¹ Declaration of Cassie Sauer, at ¶¶ 2; 8.

⁶² Id. at ¶ 9.

⁶³ Id. at ¶ 11.

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

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

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

⁶⁴ Id.

⁶⁵ Id. at ¶¶ 10; 12.

⁶⁶ Id. at ¶ 12.

⁶⁷ Id. at ¶ 13.

⁶⁸ Id. at ¶ 15.

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

56. In order to help alleviate the spread of COVID-19 and decrease the demand on hospitals, WSHA recommends that DOC follow federal and state guidance to protect older adults and people with severe underlying medical issues, test when appropriate, promote social distancing, and other proactive measures.⁷⁰ WSHA also recommends that DOC coordinate with hospitals to take actions best targeted to reduce a surge in need for hospital care.⁷¹ Without action, Ms. Sauer concludes that a surge in patients from prisons would contribute to the strain hospitals are already experiencing and "lead to difficult discussions to ration care based on limited hospital resources."⁷²
57. Dr. Michael Puisis is an internist who has worked in correctional medicine for 35 years, including serving as the Chief Operating Officer for the medical program at the Cook County, Illinois Jail from 2009 to 2012.

⁶⁹ *Id.* at ¶¶ 14-15.

⁷⁰ *Id.* at ¶¶ 18-19.

⁷¹ *Id.* at ¶ 20.

⁷² *Id.* at ¶ 21.

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

⁷³ Id. at pg. 6 ¶ 10.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id. at pg. 10, ¶ 13.

⁷⁷ Id.

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

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

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

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. at. pg. 11, ¶ 1.

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

64. Thousands of other people currently living in facilities operated by DOC or in other facilities while under DOC's control are equally at risk from contracting COVID-19 and developing serious complications or dying.

65. **Petitioner Shyanne Colvin** is a resident at Washington Corrections Center for Women (WCCW) in Gig Harbor, Washington.⁸¹ She is 21 years old and seven months pregnant.⁸² She has a due date of May 27, 2020, and has not been able to see a doctor since entering DOC detention at the beginning of March.⁸³ At the end of 2019, Ms. Colvin suffered a grand-mal seizure.⁸⁴ She

⁸¹ Declaration of Shyanne Colvin at ¶ 4.

⁸² *Id.* at ¶ 1.

⁸³ *Id.* at ¶¶ 6; 26.

⁸⁴ *Id.* at ¶ 27

had never had seizures before and is now on preventative seizure medication that are low risk for her baby.⁸⁵

66. Ms. Colvin was housed in the Reception and Diagnostic Center and shared a cell with two other women.⁸⁶ Her cell in the receiving unit had a bunk bed with two beds and one woman slept on the ground.⁸⁷ They shared a sink and toilet in close proximity; the woman who slept on the floor was only about a foot from the edge of the toilet.⁸⁸

67. In the receiving unit in which Ms. Colvin lived, there are 23 total cells and most have three women per cell.⁸⁹ Ms. Colvin is exposed to a crowd of about 50 women six times a day.⁹⁰ They eat three meals together, and share three hours of outside time to shower, clean, and use the phone.⁹¹ WCCW just started making people leave one empty seat between them during meals, but has made no other efforts at social distancing or increased cleaning.⁹² Two women who arrived at the facility right after Ms. Colvin have

⁸⁵ Id.

⁸⁶ Id. at ¶¶ 8, 10. Ms. Colvin was moved to a different unit at WCCW after the filing of the original Petition.

⁸⁷ Id. at ¶ 10.

⁸⁸ Id. at ¶ 11-14.

⁸⁹ Id. at ¶ 15.

⁹⁰ Id. at ¶ 20.

⁹¹ Id.

⁹² Id. at ¶¶ 21-23.

been quarantined because one had a fever and one had a cough.⁹³

One of the women was in the neighboring cell to Ms. Colvin's, the other was one cell down.⁹⁴

68. Ms. Colvin worries about her pregnancy while detained at WCCW.⁹⁵ The impacts of coronavirus on pregnant women and unborn children is still unknown and she is scared to be exposed.⁹⁶ This is her first child, she does not know what to expect, and she is away from her support systems.⁹⁷ Ms. Colvin would immediately move back into her family home upon release.⁹⁸

69. **Petitioner Shanell Duncan** is a resident at Monroe Correctional Complex in the minimum-security unit (MSU).⁹⁹ Mr. Duncan is 40 years old and has been at MCC for 6 months.¹⁰⁰ Mr. Duncan has an early release date of December 27, 2020, and has a partner who lives in Spokane working as a nurse.¹⁰¹ DOC has already approved

⁹³ Id. at ¶ 18.

⁹⁴ Id. at ¶ 19.

⁹⁵ Id. at ¶ 28.

⁹⁶ Id.

⁹⁷ Id. at ¶ 29.

⁹⁸ Id. at ¶ 33.

⁹⁹ Declaration of Shanell Duncan, at ¶ 2. DOC experienced a large outbreak of COVID-19 at the Minimum Security Unit at the Monroe Correctional Center after the filing of the original petition.

¹⁰⁰ Id. at ¶¶ 1, 3.

¹⁰¹ Id. at ¶¶ 4, 5, 7.

placement at his partner's house.¹⁰² Mr. Duncan believes he will be able to find employment within a week of his arrival.¹⁰³

70. **Petitioner Terry Kill** is a resident at the Monroe Correctional Complex, Minimum Security Unit.¹⁰⁴ He is 52 years old and has been in DOC custody since the summer of 2017 and at MCC specifically since February 2018.¹⁰⁵ Mr. Kill has an early release date of June 2021.¹⁰⁶
71. He lives in a dormitory that has two tiers, 12 cubicles in each tier, and most cubicles have three beds, but some have two.¹⁰⁷ The cubicles themselves are six and a half feet by six and a half feet, which allows for one bunkbed and a single bed to be placed inside.¹⁰⁸ There are no sinks, showers, or toilets and the walls of the cubicle do not extend to the ceiling.¹⁰⁹ Mr. Kill says he can see into his neighbor's cubicle by standing on the bed, so they are all breathing the same air as other men cough and sneeze all day and night.¹¹⁰

¹⁰² Id. at ¶ 6.

¹⁰³ Id. at ¶ 7.

¹⁰⁴ Declaration of Terry Kill, at ¶ 4.

¹⁰⁵ Id. at ¶¶ 4; 6

¹⁰⁶ Id. at ¶ 8.

¹⁰⁷ Id. at ¶¶ 9-10.

¹⁰⁸ Id. at ¶ 10.

¹⁰⁹ Id. at ¶¶ 12-13.

¹¹⁰ Id. at ¶¶ 12; 14.

72. There is another unit at MCC with room-style tiers composed of eighteen two-man cells and yet another unit with four men per cubicle.¹¹¹
73. MCC provides two “day rooms” where people congregate for most of the day.¹¹² Each tier has a communal bathroom shared by approximately thirty individuals.¹¹³ Hand sanitizer is available for each unit and so is bleach.¹¹⁴ Bathroom cleaning depends on the person cleaning, so it can vary.¹¹⁵ Everyone shares the same microwave and ice machine, but Mr. Kill does not know how often these are cleaned.¹¹⁶
74. Mr. Kill worked in the kitchen, serving food and cleaning the dining hall, and he has noticed MCC has started implementing a few changes.¹¹⁷ MCC has started slowing down the serving process in the last day or so and is no longer filling up the dining rooms.¹¹⁸ MCC has reduced group meals from two hundred-forty people at a

¹¹¹ Id. at ¶¶ 10-11.

¹¹² Id. at ¶ 15.

¹¹³ Id. at ¶ 17.

¹¹⁴ Id. at ¶ 19.

¹¹⁵ Id. at ¶ 20.

¹¹⁶ Id. at ¶¶ 21-22.

¹¹⁷ Id. at ¶¶ 26; 30. Mr. Kill worked in the kitchen at MSU at MCC until after this petitioner was filed. Concerned for his health, he asked to be reassigned and is now working as a porter on his unit at MSU.

¹¹⁸ Id. at ¶ 26-27.

time to groups of forty or eighty.¹¹⁹ MCC has started cleaning the tables more often.¹²⁰ MCC has also required increased hand washing for kitchen workers and using bleach on the door handles.¹²¹

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

76. He has not heard about anyone at MCC being tested for coronavirus or having their temperatures taken regularly.¹²⁵ Mr.

¹¹⁹ *Id.* at ¶ 27.

¹²⁰ *Id.* at ¶ 28.

¹²¹ *Id.* at ¶¶ 31-32.

¹²² *Id.* at ¶¶ 33-35.

¹²³ *Id.* at ¶ 37.

¹²⁴ *Id.* at ¶¶ 38-41.

¹²⁵ *Id.* at ¶ 44. There has been a large outbreak of COVID-19 in Mr. Kill's unit since the filing of the original petition.

Kill views the dormitory as a breeding ground for the coronavirus and is especially concerned about the older people in MCC.¹²⁶ Mr. Kill has been programming extensively during his detention, preparing himself for employment.¹²⁷ If released, he would immediately move in with his wife and care for her since she has severe mobility issues.¹²⁸

77. **Petitioner Leondis Berry** is a resident at Stafford Creek Corrections Center (SCCC).¹²⁹ Mr. Berry is 46 years old and has been at SCCC since 2018.¹³⁰ He has been in DOC custody since 2001.¹³¹ Mr. Berry has a history of severe heart conditions, including two massive heart attacks and four heart surgeries in twelve years.¹³² He has a pacemaker and has been diagnosed for sudden cardiac death because of the damage caused by the heart attacks.¹³³ He sees a cardiologist at least two times per year, and his ejection fraction (EF) is 30%.¹³⁴ Mr. Berry is very concerned

¹²⁶ Id. at ¶¶ 34, 36.

¹²⁷ Id. at ¶¶ 56-58.

¹²⁸ Id. at ¶¶ 48-55.

¹²⁹ Declaration of Leondis Berry, at ¶ 4.

¹³⁰ Id. at ¶¶ 2, 4.

¹³¹ Id. at ¶ 34.

¹³² Id. at ¶¶ 20-23.

¹³³ Id. at ¶¶ 21-22.

¹³⁴ Id. at ¶¶ 24-25.

that he is at risk of severe illness or death if he is exposed to the COVID-19 virus.¹³⁵

78. Mr. Berry resides in H-5 Unit in B-Wing, which houses approximately 136 men.¹³⁶ The residents share communal facilities such as showers, toilets and urinals, sinks, a dayroom, microwave, phones, yard, gym, school, and work areas.¹³⁷ He reports that these common areas and facilities are cleaned no more than 3 times a day (sinks and toilets), and other facilities like the ice machine and community sinks are not cleaned or maintained even daily.¹³⁸
79. While DOC has suspended visitation, Mr. Berry says that DOC has not taken other measures to protect against a COVID-19 outbreak, such as providing hand sanitizer (though it is available to staff), implementing more rigorous cleaning standards, or promoting social distancing amongst the residents.¹³⁹ DOC has not held any informational or training sessions to alert residents to the seriousness of COVID-19.¹⁴⁰

¹³⁵ Id. at ¶ 26

¹³⁶ Id. at ¶¶ 4, 6.

¹³⁷ Id. at ¶¶ 7-17.

¹³⁸ Id. at ¶¶ 12-13, 16.

¹³⁹ Id. at ¶¶ 11, 15, 18-19.

¹⁴⁰ Id. at ¶ 18.

80. Out of concern for his health and safety, Mr. Berry has been engaging in social distancing at mealtimes and is eating his meals in his room.¹⁴¹ This means he only eats food available from commissary, which depletes his limited financial resources.¹⁴² This also puts his health at risk, as he must maintain a healthy diet due to his heart issues.¹⁴³
81. When Mr. Berry is released, he will move home with his wife, who lives in Arlington, Washington.¹⁴⁴ He has many extended family members and community members who are able and willing to help support him, and he will have a job in the community.¹⁴⁵
82. **Petitioner Theodore Roosevelt Rhone** is a resident at Stafford Creek Corrections Center (SCCC).¹⁴⁶ Mr. Rhone is 62 years old and is living with diabetes.¹⁴⁷ Due to his diagnosis, he has high blood pressure, neuropathy, and has some eye problems.¹⁴⁸ He also has a history of heart injury, which requires monitoring to ensure his heart is healthy.¹⁴⁹ Mr. Rhone is very afraid of being exposed to

¹⁴¹ Id. at ¶ 30.

¹⁴² Id. at ¶ 32.

¹⁴³ Id. at ¶ 30.

¹⁴⁴ Id. at ¶ 35.

¹⁴⁵ Id., ¶¶ 35, 37.

¹⁴⁶ Declaration of Theodore Rhone, at ¶ 1.

¹⁴⁷ Id. at ¶¶ 2-3.

¹⁴⁸ Id. at ¶ 3.

¹⁴⁹ Id.

and/or infected with the COVID-19 virus, because of his heightened risk of serious illness and/or death due to his underlying health conditions.¹⁵⁰

83. **Declarant William Burkett** is a resident at Stafford Creek Corrections Center (SCCC) in Aberdeen, Washington.¹⁵¹ He is a 70-year-old disabled veteran with an early release date (ERD) of March 10, 2029.¹⁵² He has several serious medical conditions that require ongoing treatment: Stage 4 liver disease, compensated cirrhosis, type 2 diabetes, chronic obstructive pulmonary disease (COPD), asthma, arrhythmia, and arthritis.¹⁵³ Mr. Burkett has also had his gall bladder removed, broken his back twice, and metal implants in his right arm and foot.¹⁵⁴ To control his various ailments, he takes 24 medications.¹⁵⁵ He has also had two recent bouts of pneumonia.¹⁵⁶ He has been at SCCC since 2015 and in DOC custody for 25 years.¹⁵⁷

¹⁵⁰ Id. at ¶ 4.

¹⁵¹ Declaration of William Burkett, at ¶ 6.

¹⁵² Id. at ¶¶ 5, 22.

¹⁵³ Id. at ¶ 22.

¹⁵⁴ Id. at ¶¶ 22-23.

¹⁵⁵ Id. at ¶ 26.

¹⁵⁶ Id. at ¶ 25.

¹⁵⁷ Id. at ¶¶ 5-6.

84. Mr. Burkett is a resident in H-6 unit, A Tier, Cell 34-L.¹⁵⁸ He is in a cell for people with disabilities and his cellmate helps him navigate the complex by pushing his wheelchair.¹⁵⁹ There are 228 individuals in his unit, and they all share the same four bathrooms, dayroom, and phones.¹⁶⁰ There are five sinks, two toilets, and two urinals in each bathroom and they are cleaned daily with Hepastat.¹⁶¹ There is one handicap-accessible shower available to him; it is used by about 30 other individuals throughout the course of the day.¹⁶² The dayroom has 20 tables, four seats per table, spaced about three feet apart.¹⁶³ The room is crowded during the day and evening with people sitting in close contact to each other.¹⁶⁴ There are seven phones for his unit and no protocols for regular cleaning.¹⁶⁵
85. According to Mr. Burkett, there has been no formal response from DOC about COVID-19 and no efforts to promote social distancing.¹⁶⁶ There are a few posted notices, and while visitation

¹⁵⁸ Id. at ¶ 7.

¹⁵⁹ Id. at ¶ 8.

¹⁶⁰ Id. at ¶¶ 9-15.

¹⁶¹ Id. at ¶ 11.

¹⁶² Id. at ¶ 10.

¹⁶³ Id. at ¶ 13.

¹⁶⁴ Id.

¹⁶⁵ Id. at ¶¶ 15.

¹⁶⁶ Id. at ¶¶ 17, 19.

and other programming has stopped, DOC continues to transport people to the doctor for non-critical visits, allows up to 300 people into the yard at any given time, and has placed no restrictions on social distancing in the dining hall.¹⁶⁷

86. Mr. Burkett made requests for DOC to provide hand sanitizer or make it available for purchase but was denied and told to use the soap in the bathroom.¹⁶⁸ There are no masks available for residents to use.¹⁶⁹ Mr. Burkett understands he is at high risk of contracting COVID-19 due to his age and extensive medical history.¹⁷⁰ He worries about his health and the possibility of facing harm or even death should COVID-19 make its way to SCCC.¹⁷¹

87. **Declarant Francis Donald Cota** is a resident at Airway Heights Corrections Center (AHCC) in Airway Heights, Washington.¹⁷² Mr. Cota is 65 years old and has been at AHCC since 2006.¹⁷³ He has been in DOC custody for 20 years.¹⁷⁴ He recently applied for Emergency Medical Placement for release from DOC.¹⁷⁵ Mr. Cota

¹⁶⁷ Id. at ¶¶ 17-21.

¹⁶⁸ Id. at ¶ 16.

¹⁶⁹ Id.

¹⁷⁰ Id. at ¶ 22.

¹⁷¹ Id. at ¶ 29.

¹⁷² Declaration of Francis Cota, at ¶¶ 1, 6.

¹⁷³ Id. at ¶¶ 2, 6.

¹⁷⁴ Id. at ¶ 5.

¹⁷⁵ Id. at ¶ 7.

has a serious heart condition, which resulted in major surgery to place three regular stents and one medicine stent in his heart.¹⁷⁶ He is supposed to go back for another heart surgery in two months to have three-five additional stents put in to replace the medicine stent.¹⁷⁷ His nitroglycerin dosage was recently increased from 30 mg to 100 mg per day.¹⁷⁸ Mr. Cota also suffers from degenerative disk disease, bulging disks, and arthritis, and uses a wheelchair for mobility.¹⁷⁹

88. Mr. Cota resides in NA-1 Unit at AHCC.¹⁸⁰ He resides in a shared cell, and he and his cellmate are kept in extremely close proximity for up to 22 hours per day.¹⁸¹ There are approximately 128 men in his unit, all of whom share facilities such as showers, dayroom, an ice machine, phones, and other facilities.¹⁸² During his trips to the dining hall, approximately 200 men are served in crowded quarters and sit in very close proximity to one another.¹⁸³ Mr. Cota states that there are a lot of people coughing and sneezing in close

¹⁷⁶ Id. at ¶ 21.

¹⁷⁷ Id. at 22.

¹⁷⁸ Id.

¹⁷⁹ Id. at ¶ 23.

¹⁸⁰ Id. at ¶ 8.

¹⁸¹ Id.

¹⁸² Id. at ¶¶9-13.

¹⁸³ Id. at ¶ 19.

proximity in/around these shared facilities.¹⁸⁴ These facilities are not properly disinfected on a regular basis, even though large numbers of people congregate in these spaces, particularly for meals.¹⁸⁵

89. Mr. Cota reports that DOC has not provided any formal training or information to AHCC residents about COVID-19 or what they can do to protect themselves.¹⁸⁶ DOC did shut down the library and stop visitation for two weeks, but the gym and yard are still open.¹⁸⁷ Despite the outbreak, there is no hand sanitizer or additional cleaners available to residents for cleaning or disinfecting, and no common areas with soap and water.¹⁸⁸ Due to the lack of hygiene, medical services, and because of his underlying health conditions, Mr. Cota fears for his safety and wellbeing if there is an outbreak of COVID-19 at AHCC.¹⁸⁹
90. When Mr. Cota is released from custody, he will move home to live with his fiancé on the Washington coast.¹⁹⁰

¹⁸⁴ Id. at ¶12.

¹⁸⁵ Id. at ¶¶ 9-16.

¹⁸⁶ Id. at ¶ 17.

¹⁸⁷ Id.

¹⁸⁸ Id. at ¶ 15.

¹⁸⁹ Id. at ¶ 27.

¹⁹⁰ Id. at ¶ 26.

91. **Declarant Daniel Ralph Maples** is a resident at Stafford Creek Correctional Center (SCCC) in Aberdeen, Washington.¹⁹¹ He is 62 years old and has been incarcerated since December 2005.¹⁹² He has resided at SCCC for the past ten years.¹⁹³ Mr. Maples shares a two-bed cell with another individual in what is known as a “dry cell,” which means it has no sink, toilet, or shower.¹⁹⁴ There are four communal bathrooms that residents in 78 other dry cells need to share.¹⁹⁵ Mr. Maples is in what is known as “A side,” there is an identical “B side” with just as many dry cells.¹⁹⁶
92. Mr. Maples suffers from young onset Parkinson’s disease and Chronic Obstructive Pulmonary Disease (COPD).¹⁹⁷ He uses a cane and walker to help with his mobility issues.¹⁹⁸ He also takes medications to control his tremors and other symptoms.¹⁹⁹ High stress causes Mr. Maples to get short on breath, and he requires an inhaler to recover.²⁰⁰ Due to his mobility issues, Mr. Maples relies

¹⁹¹ Declaration of Daniel Ralph Maples, at ¶ 2.

¹⁹² Id. at ¶¶ 1, 3.

¹⁹³ Id. at ¶ 3.

¹⁹⁴ Id. at ¶ 8.

¹⁹⁵ Id. at ¶¶ 6, 13.

¹⁹⁶ Id. at ¶ 7.

¹⁹⁷ Id. at ¶¶ 22, 29.

¹⁹⁸ Id. at ¶ 23.

¹⁹⁹ Id. at ¶¶ 27-28.

²⁰⁰ Id. at ¶¶ 31-32.

on his cellmate to help him get dressed and uses a catheter to urinate.²⁰¹ As long as Mr. Maples has access to his medications, he does fine, but as the medications wear off or he experiences stressful situations, he begins to suffer from cognitive issues.²⁰² Mr. Maples started losing his vision last October and is deaf in his right ear.²⁰³ He has asked to see an eye specialist and that a note be placed on his cell to inform the corrections officers that he may not be able to hear them, but he has been ignored.²⁰⁴

93. Mr. Maples works in the kitchen at SCCC folding napkins.²⁰⁵ He works next to the “dish pit,” the area where all the trays, glass, and silverware are washed.²⁰⁶ Everything is washed by hand because there are no dish washers.²⁰⁷ Sometimes the people washing dishes run out of cleaning supplies and resort to using oven or floor cleaner.²⁰⁸ Mr. Maples does not have access to hand sanitizer and

²⁰¹ Id. at ¶ 24, 26.

²⁰² Id. at ¶¶ 32-33.

²⁰³ Id. at ¶¶ 35-39.

²⁰⁴ Id. at ¶¶ 37-40.

²⁰⁵ Id. at ¶ 42.

²⁰⁶ Id.

²⁰⁷ Id. at ¶¶ 43-44.

²⁰⁸ Id. at ¶ 45.

the only accessible soap is in the communal bathrooms.²⁰⁹ There is no way for people to wash their hands while in their cells.²¹⁰

94. Mr. Maples believes that SCCC will go into lockdown sometime soon.²¹¹ He has been informed that if a lockdown occurs, pre-made food will be dropped off at each cell.²¹² The trays, dishes, and silverware will be picked up from the cell and taken back to be washed.²¹³ Food preparation and cleaning will continue as normal, but DOC staff will deliver the food to the cells.²¹⁴ DOC staff have commented to Mr. Maples that staff have their temperature checked when they walk into SCCC, but it is not accurate or being done correctly.²¹⁵

95. Mr. Maples believes there is a large population of elderly people at SCCC.²¹⁶ There has been no indication at SCCC that COVID-19 testing will begin or become available. Mr. Maples believes that if lockdown or quarantine occurs, they will be left in their cells to die.²¹⁷ For that reason, he believes there is no incentive to inform

²⁰⁹ Id. at ¶ 59.

²¹⁰ Id.

²¹¹ Id. at ¶ 48.

²¹² Id. at ¶ 49.

²¹³ Id. at ¶ 50.

²¹⁴ Id. at ¶¶ 49-52.

²¹⁵ Id. at ¶ 54.

²¹⁶ Id. at ¶ 56.

²¹⁷ Id. at ¶ 57.

SCCC if anyone becomes sick.²¹⁸ At the same time, he is aware that his various medical conditions make him particularly vulnerable to contracting COVID-19 and suffering severe symptoms.²¹⁹ He worries about his health condition while detained at SCCC and as a veteran, he believes the Veterans Administration will offer free medical care to him if he is released.²²⁰

96. **Declarant Maurice Phillip Meadows** is a resident at the Twin-Rivers Unit at the Monroe Correctional Complex (MCC) in Monroe, Washington.²²¹ Mr. Meadows is 59 years old and has been in DOC custody for 20 years.²²² He has resided at MCC since 2007.²²³ Mr. Meadows has a history of heart attacks.²²⁴ He underwent triple-bypass surgery in 2018 and is currently on medication for hypertension (high blood pressure).²²⁵ Even after his heart attacks, he had to fight DOC for medical treatment and was told his “chest pains” did not warrant treatment by a cardiologist.²²⁶ He has not been permitted to see his cardiologist in

²¹⁸ Id. at ¶¶ 68-70.

²¹⁹ Id. at ¶¶ 65-66.

²²⁰ Id. at ¶¶ 64-65.

²²¹ Declaration of Maurice Phillip-Meadows, at ¶ 4.

²²² Id. at ¶¶ 1, 7.

²²³ Id. at ¶ 6.

²²⁴ Id. at ¶ 24.

²²⁵ Id. at ¶¶ 24, 22, 33.

²²⁶ Id. at ¶ 25.

over a year, despite the fact that his last ejection fraction (EF) test read at 16%.²²⁷ He still experiences numbness from his surgery.²²⁸ He said that DOC has encouraged people to go to sick call if they feel unwell, but people waiting for sick call must sit in a small room together, often with up to 15 other people.²²⁹

97. Mr. Meadows lives in a single cell in A unit, B wing.²³⁰ The men in his unit are out most of the day, and at least half of the men from his wing are usually in the dayroom.²³¹ His entire unit goes to yard and to meals at the same time as other units.²³² They share communal facilities, such as showers and an ice machine.²³³ MCC has locked one unit down, but his unit is still going to yard with other units.²³⁴
98. Mr. Meadows works in the kitchen.²³⁵ There is no hand-sanitizer available.²³⁶ The men eat in close proximity, and the area is not regularly sanitized.²³⁷ Mr. Meadows said DOC has not provided

²²⁷ Id. at ¶¶ 30, 31.

²²⁸ Id. at ¶ 32.

²²⁹ Id. at ¶ 38.

²³⁰ Id. at ¶ 9.

²³¹ Id. at ¶¶ 13-15.

²³² Id.

²³³ Id. at ¶¶ 12, 16.

²³⁴ Id. at ¶¶ 18-21.

²³⁵ Id. at ¶ 39.

²³⁶ Id. at ¶ 42.

²³⁷ Id. at ¶¶ 39-45.

any training or protocols on how to keep the kitchen area clean or prevent the spread of COVID-19, despite the exposure at MCC.²³⁸

99. When Mr. Meadows is released, he will move home with his wife in Edmonds, Washington.²³⁹ He has a job waiting for him when he returns home.²⁴⁰

100. **Declarant Linda Graham** is the spouse of John Graham who is currently a resident at Washington Corrections Center (WCC) in Shelton, Washington.²⁴¹ Mr. Graham is 67 years old and he entered DOC custody in January of 2020.²⁴² He has an early release date of September 17, 2020.²⁴³ Mr. Graham currently has no serious medical needs and he is low risk and low security.²⁴⁴ Mrs. Graham has not been able to see her husband since he entered prison because DOC requires people to get approved for visitation first, which takes weeks.²⁴⁵ She recently received approval, but WCC has also barred visitation and there is no video visitation at WCC.²⁴⁶

²³⁸ Id. at ¶ 48.

²³⁹ Id. at ¶ 51.

²⁴⁰ Id.

²⁴¹ Declaration of Linda Graham, at ¶ 3.

²⁴² Id. at ¶¶ 4-5.

²⁴³ Id. at ¶ 5.

²⁴⁴ Id. at ¶¶ 7-8.

²⁴⁵ Id. at ¶¶ 15-17.

²⁴⁶ Id. at ¶¶ 18-19.

101. DOC apparently has opened a quarantine wing at WCC and is pushing more people into the existing cells.²⁴⁷ Mrs. Graham knows this because she was able to speak to Mr. Graham on the phone.²⁴⁸ He is now in a cell designed for two people, but there is a third living there now who is sleeping on the floor.²⁴⁹
102. With so many people in the wing due to the quarantine, it is really hard to get phone time.²⁵⁰ Mr. Graham says the younger men always beat him to the phone.²⁵¹ All of the men are concerned about what is going on and trying to reach loved ones, resulting in long lines for the phone.²⁵²
103. The Grahams have been married for 28 years and own a home together.²⁵³ Mrs. and Mr. Graham would be happy to do home monitoring to serve out the rest of Mr. Graham's sentence.²⁵⁴
104. **Declarant Timothy Pauley** is a resident at the Monroe Correctional Center (MCC) and is 61 years old.²⁵⁵ He has been at

²⁴⁷ Id. at ¶ 13.

²⁴⁸ Id. at ¶ 12.

²⁴⁹ Id.

²⁵⁰ Id. at ¶ 20.

²⁵¹ Id. at ¶ 22.

²⁵² Id. at ¶ 21.

²⁵³ Id. at ¶ 6.

²⁵⁴ Id. at ¶¶ 9-10.

²⁵⁵ Declaration of Timothy Pauley, at ¶¶ 4, 1.

MCC for approximately ten years and incarcerated since 1980.²⁵⁶

Mr. Pauley has previously suffered from bowel obstruction and internal bleeding requiring emergency surgery at a nearby hospital.²⁵⁷

105. Mr. Pauley lives in a single cell in Unit C.²⁵⁸ He has access to a sink and a toilet in his cell.²⁵⁹ He also has soap and warm water available.²⁶⁰ There are three community showers for 38 people on his tier.²⁶¹

106. Mr. Pauley works as a shift porter at MCC.²⁶² Porters are given bleach to clean the common areas and they clean several times a day.²⁶³ Mr. Pauley cleans the hallways and shift office using spray bottles with bleach and soap.²⁶⁴

107. According to Mr. Pauley, it is impossible to practice social distancing at MCC.²⁶⁵ When he goes to the yard, there are sometimes 50 people there.²⁶⁶ At the law library, the computers are

²⁵⁶ Id. at ¶¶ 6, 8.

²⁵⁷ Id. at ¶¶ 28-29.

²⁵⁸ Id. at ¶ 10.

²⁵⁹ Id. at ¶ 11.

²⁶⁰ Id.

²⁶¹ Id. at ¶¶ 13-14.

²⁶² Id. at ¶¶ 12, 31-32.

²⁶³ Id. at ¶ 12.

²⁶⁴ Id. at ¶ 31.

²⁶⁵ Id. at ¶ 15.

²⁶⁶ Id. at ¶ 16.

close together and there can be 8-16 people sitting together.²⁶⁷ The day room can have 30-40 people at one time and at the chow hall, the seats are at communal tables.²⁶⁸ The tables are closer than six feet apart from each other and there are a couple hundred people there at any one time, as many as 350 people.²⁶⁹ There are no hand sanitizers for men at the chow hall, no place to wash hands, and Mr. Pauley has never witnessed the chow hall be cleaned.²⁷⁰ He has noted that the corrections officers carry bottles of hand sanitizer, but they are not provided to inmates.²⁷¹

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

109. Mr. Pauley has been classified as low risk in prior psychological evaluations and his last general infraction was in 2012.²⁷⁴ He has not had a serious infraction since 1995.²⁷⁵ If released, he has

²⁶⁷ Id. at ¶ 18.

²⁶⁸ Id. at ¶ 19, 23.

²⁶⁹ Id. at ¶ 19.

²⁷⁰ Id. at ¶¶20-22.

²⁷¹ Id. at ¶25.

²⁷² Id. at ¶ 24.

²⁷³ Id.

²⁷⁴ Id. at ¶¶36-37.

²⁷⁵ Id. at ¶ 37.

family support, various housing options, and plans to work as soon as he can.²⁷⁶

110. **Declarant Joseph Siriani** is a resident at Stafford Creek Corrections Center (SCCC).²⁷⁷ Mr. Siriani is 65 years old, and because of his age, is very worried about the risk of COVID-19.²⁷⁸ He is afraid that if he becomes ill with the virus, that DOC cannot and/or will not provide him with proper medical care.²⁷⁹

111. **Declarant Brian Stark** is a resident at the Washington Correction Center (WCC).²⁸⁰ Mr. Stark is 47 years old and has been found by the Indeterminate Sentence Review Board to be safe to be released into the community; his early release date was March 11, 2020.²⁸¹ Mr. Stark is awaiting an exact release date from DOC and hopes to be released very soon.²⁸²

112. Mr. Stark is currently residing on the EF tier in Cedar Hall, which houses 60 men, all of whom share a common day room and bathroom/shower facilities.²⁸³ He shares his cell with another

²⁷⁶ *Id.* at ¶¶ 38-39.

²⁷⁷ Declaration of Joseph Siriani, at ¶ 1.

²⁷⁸ *Id.* at ¶¶ 2-3.

²⁷⁹ *Id.* at ¶ 3.

²⁸⁰ Declaration of Brian Stark, at 1

²⁸¹ *Id.* at ¶¶ 2-3.

²⁸² *Id.* at ¶ 4.

²⁸³ *Id.* at ¶ 6.

resident who is 52 years old and living with diabetes.²⁸⁴ Cedar Hall has three other tiers and houses a total of 240 individuals.²⁸⁵ The residents of Cedar Hall share meals in the same space, usually 150-200 men at a time.²⁸⁶ Mr. Stark indicates that the only time he can maintain six feet of space between himself and other residents is when he is alone in his cell and his cellmate is gone.²⁸⁷ DOC has provided cleaning supplies and hand sanitizer.²⁸⁸ However, Mr. Stark reports that there is no indication that DOC has adopted any routine screenings to check residents for symptoms of COVID-19.²⁸⁹ Mr. Stark is afraid for his safety and wellbeing and is concerned that if he were to be exposed to/become infected with COVID-19, DOC would be unable to provide him with the necessary medical care.²⁹⁰

113. **Declarant Hozie Holley** is a resident at Stafford Creek Corrections Center (SCCC).²⁹¹ He is 60 years old and has several serious underlying health conditions, including irregular heartbeat

²⁸⁴ Id.

²⁸⁵ Id.

²⁸⁶ Id.

²⁸⁷ Id.

²⁸⁸ Id. at ¶ 7.

²⁸⁹ Id.

²⁹⁰ Id. at ¶5.

²⁹¹ Declaration of Hozie Holley, at ¶ 1.

and COPD.²⁹² A lung scan also recently diagnosed a node in his lungs.²⁹³ Mr. Holley is very worried about the introduction and spread of COVID-19 in SCCC and does not believe that the prison has adequate medical resources to care for him if he becomes ill and develops severe symptoms.²⁹⁴

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

114. As of March 23, 2020, there were 2,221 confirmed cases of COVID-19 and 110 deaths from COVID-19 in Washington State.²⁹⁵ This is an increase from 1,012 cases and 52 deaths on March 17, 2020, just six days earlier.²⁹⁶
115. The COVID-19 outbreak in Washington State has prompted unprecedented emergency measures to protect public health and enforce social distancing. On March 11, 2020, Governor Jay Inslee issued an emergency proclamation that limited public gatherings to fewer than 250 people, and only with significant public health

²⁹² Id. at ¶ 2.

²⁹³ Id.

²⁹⁴ Id. at 3.

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

²⁹⁶ Id.

protections in place.²⁹⁷ On March 12, 2020, Governor Inslee announced the closure of all K-12 schools in King, Snohomish, and Pierce Counties.²⁹⁸ On March 13, 2020, Governor Inslee announced that all K-12 schools statewide would be closed for a minimum of six weeks.²⁹⁹ On March 16, 2020, Governor Inslee mandated the closure of all bars, restaurants, entertainment and recreation facilities, and gatherings of more than 50 people for at least two weeks.³⁰⁰ Governor Inslee stated, “If we are living a normal life, we are not doing our jobs as Washingtonians... We need to make changes... All of us need to do more. We must limit the number of people we come into contact with. This is the new normal.”³⁰¹ On March 23, 2020, Governor Inslee issued official “stay-at-home” orders to all Washington State residents, in further effort to fight against the rampant COVID-19 outbreak.³⁰²

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

²⁹⁸ Id.

²⁹⁹ Id.

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

³⁰¹ Id.

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

116. On March 13, 2020, DOC confirmed that an employee working at the Monroe Correctional Complex-Washington State Reformatory (MCC-WSR) tested positive for COVID-19.³⁰³ DOC responded by asking anyone in close contact with the officer to self-quarantine for 14 days. MCC also placed MCC-WSR A and B units (in which the officer worked) into a “precautionary quarantine” with modified restricted movement until the 14-day quarantine period ends.³⁰⁴ DOC further indicated that they were cleaning and disinfecting affected units and providing extra cleaning supplies to the residents.³⁰⁵ The following day, a second correctional officer at DOC headquarters tested positive for COVID-19.³⁰⁶ On March 18th, a third DOC officer who works at Peninsula Work Release (PWR) tested positive for COVID-19.³⁰⁷ By March 20, a second employee at PWR had been diagnosed with COVID-19.³⁰⁸

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

³⁰⁴ Id.

³⁰⁵ Id.

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

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

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

117. In a matter of seven days, four individual officers at three individual facilities were diagnosed. As of March 23, 2020, DOC had tested 31 residents for COVID-19 infection; six tests came back negative, while the other 25 results were still pending.³⁰⁹ The full impact that these exposures will have on the individuals in custody at DOC facilities is not yet known, but we know that residents who have come into contact with these DOC employees are at serious risk of harm.

COVID-19 has gotten into at least one DOC facility since the filing of the original petition.

118. On April 5, 2020 DOC announced an outbreak of COVID-19 at the Minimum Security Unit at the Monroe Correctional Complex (MCC-MSU).

119. Since that time, at least 7 people who are incarcerated in that unit have tested positive for COVID-19.

120. It is unclear whether other people have also been infected at the time of the filing of this amended petition.

121. Two of the Petitioners, Terry Kill and Shanell Duncan, currently live in MCC-MSU.

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

122. Neither of the Respondents have ordered any of the Petitioners or anyone else held in any DOC facility or under its control released as a response to the COVID-19 pandemic.

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

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

³¹⁰ Declaration of Alex Bergstrom, at 4.

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

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

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

**V. DEMAND FOR JUDGMENT AND
GROUNDS FOR REMEDY**

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

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

³¹³ Letter from C.J. Mike McGrath, Mont. Sup. Ct., to JJ. Mont. Ct. Ltd. Jurisdiction (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

³¹⁴ Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Grounds for Remedy Pursuant to RAP 16.4

138. The Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control are "under a restraint" sufficient to allow this Court to exercise jurisdiction over this personal restraint petition. *See* RAP 16.4.
139. The restraints described herein are unlawful because the Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control are held in conditions or manners of restraint in violation of the Constitution and laws of the State of Washington as described herein.
140. Or in the alternative, other grounds, as described herein, exist to challenge the legality of the restraint of the Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control.
141. This petition is not barred by any restriction outlined in RAP 16.4(d) or by any other applicable court rule, statute or other legal authority.

VI. RELIEF REQUESTED

Petitioners ask this Court to grant the following relief to each of them and to other similarly situated people held in Washington's prisons or other facilities under the DOC's control pursuant to the Court's authority to issue a Writ of Mandamus and/or Habeas Corpus and/or grant relief pursuant to a Personal Restraint Petition:

1. Declare that the Department of Corrections Secretary and the Governor must take actions necessary to prevent the spread of a highly infectious virus to vulnerable populations in State custody to satisfy their duties under Article 1, § 12 of the Washington Constitution, RCW 43.60.220, Article I, § 14 of the Washington Constitution, and the Law Against Discrimination, RCW 49.60.
2. Order Governor Inslee to exercise his broad emergency authority under RCW 43.06.220 and any other statutory authority detailed below to:
 - a. Direct Department of Corrections Secretary Sinclair to immediately identify all people incarcerated in any DOC facility, or any other institution operated by any other Washington State agency; all people held in any local or county institution under any DOC warrant or hold; and all people incarcerated in any out-of-state facility at DOC's

request, who fall into any one of the following three categories:

- i. People who are 50 years of age and older;
- ii. People who have serious underlying medical conditions that put them at particular risk of serious harm or death from COVID-19, including but not limited to: currently pregnant individuals, those with chronic lung disease or moderate to severe asthma, people with heart disease, people who are immunocompromised due to cancer or other medical conditions or treatment, people with severe obesity, people with any other underlying serious medical conditions such as those with diabetes, renal failure, liver disease, and any other condition specifically identified by CDC either now or in the future as being a particular risk for severe illness caused by COVID-19; or
- iii. People who do not fall under (i) or (ii) above and have early release dates within the next 18 months or those people who are currently on work release.

- b. Direct Department of Corrections Secretary Sinclair to provide this list of people to the Clemency and Pardons Board.
- c. Call an emergency meeting of the Clemency and Pardons Board and direct the Board to recommend that Governor Inslee should exercise his commutation or pardon power to meet the present COVID-19 emergency pursuant to RCW 9.94A.870(2) by commuting the sentences of people who fall into one of the three categories listed above.
- c. Direct the Clemency and Pardons Board to waive the 30-day hearing notice under RCW 9.94A.885(3).
- d. Direct DOC Secretary Sinclair to take all necessary steps to ensure the immediate release of people whose sentences are commuted or granted extraordinary release as described above.
- e. Direct DOC Secretary Sinclair to release people so that local and community hospital systems in the areas in which prisons or work release facilities lie are not compromised.
- b. Direct DOC Secretary Sinclair to ensure that any person being released is provided with the resources and supports necessary to meet their housing and medical needs.

- c. Direct the Clemency and Pardons Board and the Department of Corrections to ensure that release decisions are based on equitable criteria that do not exacerbate racial or socioeconomic disproportionality, that ongoing assessment of racial or socioeconomic disproportionality will occur, and that these criteria and results of assessments are made available to the public.
- d. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting furlough to people in one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- e. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting extraordinary medical placement to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- f. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section release pursuant to graduated reentry.

- g. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from removing any warrant, hold, or other order that prohibits people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.
- h. Waive any statutory or regulatory obligation or limitation to prohibit DOC Secretary Sinclair from ordering Community Corrections Officers' detaining of persons under DOC supervision for alleged Community Custody violations.
- i. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting commutation or clemency to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- j. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting extraordinary release pursuant to RCW 9.94A.728

(1)(d) to people who fall into one or more of the three categories listed above.

- k. Waive any statutory or regulatory obligation or limitation that prohibits the Sentencing Guidelines Commission or Governor Inslee from revising the standard ranges and other standards to allow for release of people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- l. Direct DOC Secretary Sinclair to identify any statutory or regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay the immediate release from custody of people who fall into one or more of the three categories listed above or the provision of resources and supports necessary to meet their housing and medical needs.
- m. Issue an order or orders concerning waiver or suspension of the obligations or limitations that DOC Secretary Sinclair identifies pursuant to the prior directive.

- n. Issue an order prohibiting any other activity that should be prohibited to help preserve and maintain life, health, property, or the public peace, related to the subject matter of this lawsuit.
3. Order Department of Corrections Secretary Sinclair to:
- a. Immediately take all necessary action to furlough and implement emergency medical releases for all people who fall within one of the three categories identified in (2)(a)(i) - (iii) of this section.
 - b. Immediately release any individuals who qualify for graduated reentry under RCW 9.94A.733.
 - c. Immediately implement a plan ensuring that all people in custody who need it receive appropriate medical care, including COVID-19 screening, testing, and treatment.
 - d. Immediately issue an order removing any DOC warrant, hold, or other order that prohibits individuals in any of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.
 - e. Immediately provide written and verbal education to individuals in custody on the hazards of COVID-19 and appropriate precautions and disseminate accurate and

timely information about COVID-19 and its spread to individuals in custody.

- f. Immediately provide all people in custody unfettered access to soap and water, single use towels, and hand sanitizer.
- g. Immediately suspend any DOC orders, policies, and/or regulations that designate ethyl-alcohol based hand sanitizer as contraband and that charge any individuals for soap or hand sanitizer and immediately communicate this change in policy to those in DOC custody via public address announcements in all housing units and yards and visible postings in in all housing units, medical clinics, dining and programming spaces. Postings must be available in English, Spanish, and in any other predominantly spoken language. For inmates incarcerated in maximum custody, detention, or any other units where they may not hear or see these changes in policies, they must be provided individual written and verbal notification in English, Spanish, and any other predominantly spoken language.
- h. Ensure that people held in custody by DOC receive medical care that meets or exceeds the community standard of care,

and that this medical care follows appropriate and ongoing COVID-19 federal, state, and local public health guidelines and recommendations, including those related to access to personal protective equipment, ventilators, intensive care units, and trained medical personnel.

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

23-hour lockdown. This anti-retaliation policy shall be immediately communicated to all DOC staff and individuals in custody and included in any announcement, posting, or other communication made for the purpose of training or providing information about COVID-19.

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

- 4. Appoint a Special Master or monitor to ensure that the Respondents appropriately protect the health and safety of the Petitioners and all

other people held in Washington's prisons or other facilities under the DOC's control throughout the current emergency.

5. Award Petitioners all costs and attorney fees under any applicable authority.
6. All other and further relief this Court deems just and proper.

DATED this 13th day of April, 2020.

By: s/ Nicholas Allen
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EXHIBIT B

No. 98317-8

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
STEVEN SINCLAIR, Secretary of the Washington State Department of
Corrections,

Respondents.

AMENDED PETITION FOR A WRIT OF MANDAMUS OR
HABEAS CORPUS AND/OR
PERSONAL RESTRAINT PETITION

Nicholas Allen, WSBA #42990
Nicholas B. Straley, WSBA #25963
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Attorneys for Petitioners

PETITIONERS, Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Rhone, hereby bring this original action in the nature of a petition for a writ of mandamus and/or a personal restraint petition and/or a writ of habeas corpus seeking relief for themselves and all other people who are similarly situated and allege as follows:

I. INTRODUCTION

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

practices that can reduce the likelihood of infection: 1) regular and thorough cleaning of hands, surfaces, and objects that may have come in contact with the virus; and 2) appropriate social distancing – the practice of increasing the physical space between people. Recent actions by Governor Inslee have resulted in directives to Washingtonians to engage in these practices. In the weeks since the COVID-19 outbreak in Washington, Governor Inslee has entered increasingly restrictive emergency orders meant to reduce the proximity of people to one another and increase opportunities for appropriate social distancing. These measures have included restrictions on the number of people allowed to gather in public spaces; closing of public schools and colleges; temporary shut-down of restaurants and bars; and prohibiting visitation of long-term care facilities. And, just today, the Governor entered a “stay-at-home” order, directing all Washington residents to stay home except for necessary activities such as buying groceries or seeking medical care.

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

protecting those who are most susceptible to harm resulting from infection.

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

II. PARTIES

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

10. Terry Kill is a resident at the Monroe Correctional Complex in Monroe, Washington.
11. Leondis Berry is a resident at Stafford Creek Corrections Center in Aberdeen, Washington.

12. Theodore Rhone is a resident at the Stafford Creek Corrections Center in Aberdeen, Washington.

~~12.13.~~ Petitioners bring this action seeking relief for themselves and all other persons who are similarly situated in Washington's prisons or who are under the DOC's control.

~~13.14.~~ Steven Sinclair is the Secretary of the Washington State DOC ~~Department of Corrections~~.

~~14.15.~~ Jay Inslee is the Governor of the State of Washington.

III. JURISDICTION

~~15.16.~~ The events giving rise to this action occurred at DOC facilities that are all located in the State of Washington.

17. This Court has original jurisdiction over a petition seeking a writ of mandamus against state officers, including the Governor and the Secretary of the ~~Department of Corrections~~ DOC, pursuant to Wash. Const. art. IV, § 4 and RCW 7.16.160.

18. This Court has original jurisdiction over a petition seeking a writ of habeas corpus against state officers pursuant to Wash. Const. art. IV, § 4, RCW 2.04.010, and RCW 7.36.010.

~~16.19.~~ This Court has original jurisdiction over this personal restraint petition pursuant to Wash. Const. art. IV, § 4 and RAP 16.3-16.15.

IV. FACTUAL BACKGROUND

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

17.20. The novel coronavirus, or COVID-19, is a recently discovered viral strain that has reached global pandemic status.¹ The first cases of COVID-19 were first diagnosed in December 2019 and originated in Hubei Province, China.² By March 23, 2020, nearly 333,000 people worldwide had confirmed diagnoses, and over 14,500 people had died as a result of the virus.³ In the U.S. alone, there are over 33,400 confirmed cases and at least 400

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

² Id.

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

deaths.⁴ Based on the curve of infection in countries where the initial infections occurred weeks before the introduction of the virus in the United States, public health officials expect the transmission of COVID-19 in the U.S. to grow exponentially in the coming weeks and months. The Centers for Disease Control and Prevention (CDC) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.5 million deaths.⁵

~~18.21.~~ Common symptoms of COVID-19 include fever, cough, and shortness of breath.⁶ Other symptoms, including nasal congestion, sneezing, fatigue, or diarrhea may also be present but are less common.⁷ Many individuals who become infected with COVID-19 may have mild or moderate symptoms; some may

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

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

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

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

experience no symptoms at all.⁸ Other patients may experience severe symptoms requiring intensive medical intervention.⁹ However, even with hospitalization and intensive treatment, thousands of individuals have died as a result of this infection. Regardless of the type or severity of symptoms, all infected persons are contagious and can rapidly transmit the virus from person to person without proper public health interventions.¹⁰

19-22. All individuals are at risk of transmission of COVID-19.¹¹

There is no available vaccine, and no one is immune.¹² There is also no known cure for COVID-19.¹³ The only way to reduce risks to vulnerable people is to prevent them from becoming infected. The CDC and other public health agencies have universally prescribed social distancing (maintaining physical space/separation from those who have, or have potentially, been exposed, to COVID-19) and rigorous hygiene — including regular and thorough hand washing with soap and water, the use of alcohol-

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

⁹ Id.

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

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

¹² Id.

¹³ Id.

based hand sanitizer, proper sneeze and cough etiquette, and thorough environmental cleaning — as the best and only ways to mitigate the spread of this disease.¹⁴

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

~~20.23.~~ While many people who become infected will recover with minimal medical intervention, people over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19.¹⁵ The CDC, WHO, and other public health organizations have determined that underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (e.g., cancer, HIV, autoimmune disease, etc.), and/or pregnancy, place individuals of any age at an exponentially higher risk of serious illness or death from the COVID-19 virus.¹⁶

~~21.24.~~ For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe, and

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

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

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

complications can manifest at an alarming pace. Individuals who have contracted the virus may first display symptoms in as little as two days after exposure, and their condition can rapidly deteriorate.

22-25. The illness can quickly progress to more life-threatening symptoms as the virus spreads to the lungs and other organs. Serious permanent damage to the lungs and organs may also occur.¹⁷

23-26. In the most severe cases, COVID-19 can be deadly.¹⁸ The overall case mortality rate in the U.S. from the disease is 2.3%; however, based on the number of deaths and cases reported by the Washington State Department of Health website, the Washington death rate is 5.2%.¹⁹ As a result, the virus is 10 times more deadly than the common flu (Influenza A) and other flu-like viral infections.²⁰

24-27. Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread

¹⁷ Altice Declaration, at ¶ 11.

¹⁸ *Id.* at ¶ 12.

¹⁹ Puisis-Shansky Declaration, pg. 3-4 at ¶ 6.

²⁰ Altice Declaration, at ¶10.

damage to other organs, including permanent injury to the kidneys and neurologic injury.

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

~~25.28.~~ The Washington State Department of Corrections (“DOC”) operates 12 prisons²¹ and 12 work-release facilities throughout Washington.²² Many of these facilities are in rural areas, geographically isolated from hospitals that may be needed to provide support in the event of a COVID-19 outbreak.

~~26.29.~~ Washington State has had one of the largest COVID-19 outbreaks in the United States, and one of the largest known outbreaks in the world.²³

~~27.30.~~ Approximately 19,000 people are currently in DOC custody.²⁴ Due to the congregate nature of prisons and other deficiencies, each of these individuals is at constant risk of harm from a serious outbreak of COVID-19 while in DOC custody. For people in DOC custody who are over the age of 50 and those living

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

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

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

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

with certain underlying medical conditions, exposure to COVID-19 presents a grave risk of serious illness and or death.

28.31. Congregate environments, (e.g., cruise ships, long-term care facilities, etc.) have become the epicenters of several outbreaks of COVID-19, such as the Life Care Center of Kirkland in Washington State²⁵ or the Diamond Princess cruise ship which held its passengers in quarantine off the coast of California.²⁶

29.32. Because correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another, infectious diseases are more likely to spread rapidly between individuals.²⁷ This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.²⁸

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

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

²⁷ Anne C. Spaulding, Coronavirus and the Correctional Facility, Emory Center for the Health of Incarcerated Persons, 17 (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF Administrators_3.9.2020.pdf.

²⁸ Id.

~~30.~~33. The public health risks inside prisons are even greater than in congregate environments outside a correctional setting. The World Health Organization states that people who are incarcerated and otherwise deprived of their liberty are generally more vulnerable to disease and illness.²⁹ “The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19.”³⁰

~~31.~~34. The World Health Organization outlines the two primary ways that COVID-19 is spread: (1) person-to-person, by breathing in droplets coughed out or exhaled by a person with the virus; and (2) by touching contaminated surfaces or objects and then touching their eyes, nose, or mouth.³¹ Both methods of transmission make people in jails and prisons especially susceptible to this contagion. Overcrowding, inadequate medical care, and the number of vulnerable people in custody make the risks associated with the

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

³⁰ Id.

³¹ Id. at 11.

spread of communicable disease even greater. It is impossible to achieve social distancing standards. Furthermore, residents share toilets, sinks, and showers, and often have limited access to soap, hot water, and other necessary hygiene items. Staff enter from and exit to the community, with inadequate infection screening procedures, especially considering staff may be asymptomatic yet still contagious.

32-35. Prisons and jails serve as “epidemiological pumps,” amplifying conditions for the spread of disease.³² An even more concerning threat posed by the infection of a prison community is the potential for the disease, while being allowed to spread out of control, to mutate into new or more treatment-resistant strains.³³

33-36. The lack of adequate medical infrastructure not only impacts the ability of prisons to screen for infectious diseases, such as COVID-19, but also prisons’ ability to provide the intensive medical treatment necessary for those who develop severe, life-threatening symptoms. Given the history of epidemiologic outbreaks in correctional facilities, such as Tuberculosis, H1N1 and MRSA, it is reasonable to expect COVID-19 will also readily

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

³³ Id.

spread in prisons, especially when people cannot engage in proper hygiene and adequately distance themselves from infected residents or staff.³⁴ Without the ability to care for vulnerable individuals who are most at-risk of serious illness from a COVID-19 infection, many of those individuals will likely die from exposure to this virus. This can and must be prevented.

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

34.37. Proactive risk mitigation, including eliminating close contact in congregate environments, is the only effective way to prevent the spread of the COVID-19 infection. In fact, a study published in the Journal of Travel Medicine found that **the number of COVID-19 cases on the Diamond Princess cruise ship would have been more than eight times lower if the ship had been evacuated in a timely manner**, rather than requiring the passengers to quarantine within the close confines of the ship.³⁵

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

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

35-38. Public health experts with experience in correctional settings have similarly concluded that release from custody is necessary to effectively mitigate the risk of serious illness and/or death for the most vulnerable individuals in correctional facilities.

36-39. Dr. Frederick Altice, an infectious disease specialist and Professor of Medicine (infectious diseases) at Yale School of Medicine and Yale School of Public Health offers several reasons why the prison population must be reduced in light of the COVID-19 pandemic. The COVID-19 virus is highly infectious, and transmission is thought to occur mainly between people who are in close contact with one another.³⁶ Prisons, as congregate settings, are therefore highly susceptible to the spread of COVID-19. The conditions in this particular congregate setting are especially ripe for rapid outbreak of the virus. People in prison are usually required daily to share things like toilets, urinals and sinks with hundreds of other people in prison, which can contribute to the spread of infectious diseases within these institutions.³⁷

37-40. The transient nature of prisons and jails also contributes to the likelihood of outbreak. Not only are people in prison entering

³⁶ Altice declaration at ¶¶ 10,13

³⁷ Id. at ¶ 15.

and leaving prison on a regular basis, but so are staff. Correctional and medical staff usually enter and leave prisons in three shifts each day, increasing the chances that the virus will spread throughout the prison.³⁸

38.41. As Dr. Altice explains, prisons have been the settings for previous outbreaks of infectious diseases: “In addition to HIV, viral hepatitis, and tuberculosis, we have experienced endemic outbreaks of strains of staphylococcus aureus bacteria that are resistant to methicillin (MRSA), which occurs in crowded congregate settings.”³⁹ And prisons have not always proven successful at treating these diseases once they make their way into the institutions. For instance, tuberculosis outbreaks in prison have had devastating and sometimes deadly impacts on prisoners due to the prisons’ inability to diagnose and treat people with the disease.⁴⁰ This is troubling given that tuberculosis is a much less infectious disease than COVID-19.⁴¹

39.42. Social distancing is imperative in mitigating the spread of COVID-19. To achieve this result in prisons, reduction of the

³⁸ Id. at ¶ 16.

³⁹ Id. at ¶ 14.

⁴⁰ Id. at ¶ 17.

⁴¹ Id., Puisis-Shansky Declaration at ¶ 9.

population is necessary, not only to protect prisoners from spread of the virus, but also to reduce burdens on community health systems that will not be prepared to handle an influx of prisoners from prisons should an outbreak occur.⁴²

40.43. Other methods to treat the spread of COVID-19 may prove ineffective. For instance, isolation in the cruise ship setting has already proven futile. And, “[r]estricting people in prison to their living units will not contain the virus because many prisoners live in dormitory-style housing and they share many common public spaces, showers, meals, and restrooms.”⁴³

41.44. Release decisions should first prioritize those who are most at-risk of harm from COVID-19 but should also consider further reductions of the prison population as an added social distancing precaution. Decisions about who to release can be done by balancing public health benefits with public safety risks.⁴⁴

42.45. Dr. Robert Greifinger, a correctional health expert, has concluded that the most important proactive measure that prisons should take in response to the COVID-19 crisis is to “downsize the

⁴² Id. At ¶¶ 18, 20.

⁴³ Id. at ¶ 25.

⁴⁴ Id. at ¶ 22.

prison population, immediately, as appropriate based on public safety and public health risks.”⁴⁵

43.46. Dr. Greifinger explains that “prisons and jails are populated with people who disproportionately have serious underlying medical conditions such as chronic heart and lung disease and other conditions that render them immunocompromised –the very conditions that put people at a markedly increased risk of becoming severely ill or dying from COVID –19.”⁴⁶ Because of this disproportionately vulnerable population, “not only is the virus more likely to spread within prisons and jails, but the outcomes are more likely to be particularly severe and even deadly.”⁴⁷

44.47. Dr. Greifinger describes the current risk to people in correctional custody as “very serious, especially for those who are most vulnerable. [These individuals] may experience severe respiratory illness as well as damage to other major organs. Treatment for serious cases of COVID-19 requires significant advanced support.”⁴⁸ Dr. Greifinger continues on to state that it is his opinion that “prisons in Washington are not prepared to prevent

⁴⁵ Declaration of Dr. Robert Greifinger, at ¶ 18.

⁴⁶ Id. at ¶ 15.

⁴⁷ Id.

⁴⁸ Id. at ¶ 16.

the spread of COVID-19, treat those who are most medically vulnerable, and contain any outbreak.”⁴⁹

45.48. Dr. Greifinger explains that immediate downsizing of the prison population, particularly in a way that prioritizes release of those most vulnerable to COVID-19 (e.g., elderly and/or people with underlying health conditions) “reduces the likelihood that this group of individuals will contract the virus. Individuals in this category are at the highest risk of developing severe complications from COVID-19.”⁵⁰ He concludes that “if not released, those who are most medically vulnerable to severe effects of COVID-19 will have a poor prognosis if infected while in prison. Moreover, care for those who become sick with COVID-19 will overburden the limited health care resources of the prison.”⁵¹

46.49. The COVID-19 virus presents a serious and unprecedented risk to the health and safety of people in DOC custody and DOC staff, according to former DOC Secretary Dan Pacholke.⁵² As such, he recommends that DOC take immediate steps to proactively respond to the virus to protect those individuals, which

⁴⁹ Id. at ¶ 17.

⁵⁰ Id. at ¶ 21.

⁵¹ Id. at ¶ 23.

⁵² Declaration of Dan Pacholke at ¶ 5.

includes releasing people from custody to increase social distancing within prisons and allow for better access to testing and treatment.⁵³

47.50. The DOC Secretary could immediately exercise his discretion to release people from custody through several statutory provisions and DOC policies giving him the authority to do so.⁵⁴ For example, DOC has broad authority under Washington's furlough statute to authorize leave for people in state prisons or work release facilities.⁵⁵ Additionally, DOC could release people in prison through the Graduated Reentry Program, which provides DOC with authority to release certain people who are within six months of their release date to community supervision.⁵⁶

48.51. The DOC Secretary also has authority through the Extraordinary Medical Placement (EMP) statute to release prisoners with serious medical conditions to an alternative care setting in lieu of confinement.⁵⁷ In addition, release could be granted to individuals who qualify through the Community

⁵³ Id.

⁵⁴ Id. at ¶ 6.

⁵⁵ Id. at ¶ 7.

⁵⁶ Id. at ¶ 8.

⁵⁷ Id. at ¶ 9.

Parenting Alternative (CPA), a sentencing alternative that allows the Secretary to transfer a parent from prison to home detention for the final twelve months of the parent's sentence.⁵⁸

~~49-52.~~ Such action would not be unprecedented. During his time as Secretary, Mr. Pacholke exercised his discretion under the furlough statute to address sentencing miscalculation errors by DOC that resulted in the early release of several thousand people.⁵⁹ If certain conditions were met, he authorized an initial 30-day furlough, and extended it for an additional 30 days if the person continued to do well in the community.⁶⁰

~~50-53.~~ Cassie Sauer, the President and Chief Executive Officer of the Washington State Hospital Association (WSHA), explains why hospitals are already under strain by the growing number of COVID-19 cases in WA.⁶¹ Ms. Sauer notes that many hospital and health care workers are already staying home due to age, health condition, possible virus exposure, or as caregivers.⁶² At the same time that hospitals are seeing a decrease in their workforce, like

⁵⁸ Id. at ¶ 10.

⁵⁹ Id. at ¶ 11.

⁶⁰ Id.

⁶¹ Declaration of Cassie Sauer, at ¶¶ 2; 8.

⁶² Id. at ¶ 9.

any other employer, hospitals are experiencing a shortage of supplies to handle the surge in patients.⁶³ Hospital staff have already resorted to making their own protective equipment using materials purchased "off the shelf," such as fabric masks and plastic face shields.⁶⁴

~~51.54.~~ _____ According to Ms. Sauer, the demands on hospitals are projected to increase to such an overwhelming degree that hospitals have begun canceling elective procedures to increase capacity for emergency needs.⁶⁵ In the event that the health care system is overwhelmed in the coming weeks, WSHA and other health care leaders in Washington State have already started a triage strategy to determine which patients may have to be denied complete medical care.⁶⁶

~~52.55.~~ _____ Given their experience with COVID-19 thus far, WSHA and its member hospitals are concerned about the potential influx of patients that may come from the prisons and jails located around the state.⁶⁷ "If an infectious disease takes hold in a congregate

⁶³ Id. at ¶ 11.

⁶⁴ Id.

⁶⁵ Id. at ¶¶ 10; 12.

⁶⁶ Id. at ¶ 12.

⁶⁷ Id. at ¶ 13.

living facility, it is likely to spread very quickly.”⁶⁸ When considering DOC’s 12 facilities across Washington and its 17,800 residents, "the question is not if, but when COVID-19 begins to spread in Washington’s prisons and jails.”⁶⁹

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

54.57. Dr. Michael Puisis is an internist who has worked in correctional medicine for 35 years, including serving as the Chief

⁶⁸ Id. at ¶ 15.

⁶⁹ Id. at ¶¶ 14-15.

⁷⁰ Id. at ¶¶ 18-19.

⁷¹ Id. at ¶ 20.

⁷² Id. at ¶ 21.

Operating Officer for the medical program at the Cook County, Illinois Jail from 2009 to 2012.

55-58. Dr. Ronald Shansky is an internist who has worked in correctional medicine for 45 years, including serving as the Medical Director of the Illinois Department of Corrections.

56-59. Drs. Puisis and Shansky note that “jails and prisons promote spread of respiratory illness because large groups of strangers are forced suddenly in to crowded housing arrangements.”⁷³ These circumstances are exacerbated by the movement in and out of the prisons of custodial and other staff who can carry the virus into the prison and back into the community.⁷⁴ “One couldn’t devise a system more contrary to current health recommendations...than a prison....”⁷⁵

57-60. Prisons are not set up to treat people who require hospital care. Severe diseases, like COVID-19, are treated with supportive care, such as respiratory isolation and mechanical ventilation.⁷⁶ Due to the prevalence of COVID-19 in Washington, the state is

⁷³ Id. at pg. 6 ¶ 10.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id. at pg. 10, ¶ 13.

already unlikely to be able to meet the community needs for these services.⁷⁷

58-61. Prisons lack these services. Thus, prisoners who fall severely ill due to COVID-19 will need to be transported to the community, further straining available resources, particularly if an outbreak occurs in prisons. Prisoner transfer would likewise overwhelm security staff and complicate arrangements at local hospitals.⁷⁸ Finally, the geographic isolation of some prisons in Washington, such as Clallam Bay Correctional Center, means there are no hospitals in close proximity, making provision of necessary care more difficult.⁷⁹

62. To reduce the risk of outbreak and spread of COVID-19 and to reduce burdens on community health infrastructure, Drs. Puisis and Shansky have developed several recommendations. The first of these recommendations is to take steps to immediate release people in prison who are a low risk to the community.⁸⁰

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. at. pg. 11, ¶ 1.

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

63. Petitioners in this case, Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Rhone, are individuals who are particularly vulnerable to serious illness or death if infected by COVID-19 and are currently in custody at the DOC facilities in Washington State. Declarants William Burkett, Francis Cota, Daniel Ralph Maples, Maurice Phillip Meadows, Timothy Pauley, Joseph Siriani, Brian Stark, and Hozie Holley are also individuals who are at risk of significant injury should COVID-19 erupt in DOC facilities.

59.64. Thousands of other people currently living in facilities operated by DOC or in other facilities while under DOC's control are equally at risk from contracting COVID-19 and developing serious complications or dying.

60.65. **Petitioner Shyanne Colvin** is a resident at Washington Corrections Center for Women (WCCW) in Gig Harbor, Washington.⁸¹ She is 21 years old and seven months pregnant.⁸² She has a due date of May 27, 2020, and has not been able to see a

⁸¹ Declaration of Shyanne Colvin at ¶ 4.

⁸² Id. at ¶ 1.

doctor since entering DOC detention at the beginning of March.⁸³

At the end of 2019, Ms. Colvin suffered a grand-mal seizure.⁸⁴ She had never had seizures before and is now on preventative seizure medication that are low risk for her baby.⁸⁵

~~61.66.~~ Ms. Colvin ~~is currently~~was housed in the Reception and Diagnostic Center and ~~share~~ds a cell with two other women.⁸⁶ Her cell in the receiving unit ~~has~~d a bunk bed with two beds and one woman ~~sle~~pteps on the ground.⁸⁷ They ~~share~~d a sink and toilet in close proximity; the woman who sle~~pts~~sleeping on the floor ~~is~~was only about a foot from the edge of the toilet.⁸⁸

~~62.67.~~ In the receiving unit in which Ms. Colvin lived, ~~her pod,~~ there are 23 total cells and most have three women per cell.⁸⁹ Ms. Colvin is exposed to a crowd of about 50 women six times a day.⁹⁰ They eat three meals together, and share three hours of outside time to shower, clean, and use the phone.⁹¹ WCCW just started

⁸³ Id. at ¶¶ 6; 26.

⁸⁴ Id. at ¶ 27

⁸⁵ Id.

⁸⁶ Id. at ¶¶ 8, 10. Ms. Colvin was moved to a different unit at WCCW after the filing of the original Ppetition.

⁸⁷ Id. at ¶ 10.

⁸⁸ Id. at ¶ 11-14.

⁸⁹ Id. at ¶ 15.

⁹⁰ Id. at ¶ 20.

⁹¹ Id.

making people leave one empty seat between them during meals, but has made no other efforts at social distancing or increased cleaning.⁹² Two women who arrived at the facility right after Ms. Colvin have been quarantined because one had a fever and one had a cough.⁹³ One of the women was in the neighboring cell to Ms. Colvin's, the other was one cell down.⁹⁴

63-68. Ms. Colvin worries about her pregnancy while detained at WCCW.⁹⁵ The impacts of coronavirus on pregnant women and unborn children is still unknown and she is scared to be exposed.⁹⁶ This is her first child, she does not know what to expect, and she is away from her support systems.⁹⁷ Ms. Colvin would immediately move back into her family home upon release.⁹⁸

64-69. **Petitioner Shanell Duncan** is a resident at Monroe Correctional Complex in the minimum-security unit (MSU).⁹⁹ Mr. Duncan is 40 years old and has been at MCC for 6 months.¹⁰⁰ Mr.

⁹² Id. at ¶¶ 21-23.

⁹³ Id. at ¶ 18.

⁹⁴ Id. at ¶ 19.

⁹⁵ Id. at ¶ 28.

⁹⁶ Id.

⁹⁷ Id. at ¶ 29.

⁹⁸ Id. at ¶ 33.

⁹⁹ Declaration of Shanell Duncan, at ¶ 2. [DOC experienced a large outbreak of COVID-19 at the Minimum Security Unit at the Monroe Correctional Center after the filing of the original petition.](#)

¹⁰⁰ Id. at ¶¶ 1, 3.

Duncan has an early release date of December 27, 2020, and has a partner who lives in Spokane working as a nurse.¹⁰¹ DOC has already approved placement at his partner's house.¹⁰² Mr. Duncan believes he will be able to find employment within a week of his arrival.¹⁰³

~~65-70.~~ **Petitioner Terry Kill** is a resident at the Monroe Correctional Complex, Minimum Security Unit.¹⁰⁴ He is 52 years old and has been in DOC custody since the summer of 2017 and at MCC specifically since February 2018.¹⁰⁵ Mr. Kill has an early release date of June 2021.¹⁰⁶

~~66-71.~~ He lives in a dormitory that has two tiers, 12 cubicles in each tier, and most cubicles have three beds, but some have two.¹⁰⁷ The cubicles themselves are six and a half feet by six and a half feet, which allows for one bunkbed and a single bed to be placed inside.¹⁰⁸ There are no sinks, showers, or toilets and the walls of the cubicle do not extend to the ceiling.¹⁰⁹ Mr. Kill says he can see

¹⁰¹ Id. at ¶¶ 4, 5, 7.

¹⁰² Id. at ¶ 6.

¹⁰³ Id. at ¶ 7.

¹⁰⁴ Declaration of Terry Kill, at ¶ 4.

¹⁰⁵ Id. at ¶¶ 4; 6

¹⁰⁶ Id. at ¶ 8.

¹⁰⁷ Id. at ¶¶ 9-10.

¹⁰⁸ Id. at ¶ 10.

¹⁰⁹ Id. at ¶¶ 12-13.

into his neighbor's cubicle by standing on the bed, so they are all breathing the same air as other men cough and sneeze all day and night.¹¹⁰

~~67.72.~~ There is another unit at MCC with room-style tiers composed of eighteen two-man cells and yet another unit with four men per cubicle.¹¹¹

~~68.73.~~ MCC provides two “day rooms” where people congregate for most of the day.¹¹² Each tier has a communal bathroom shared by approximately thirty individuals.¹¹³ Hand sanitizer is available for each unit and so is bleach.¹¹⁴ Bathroom cleaning depends on the person cleaning, so it can vary.¹¹⁵ Everyone shares the same microwave and ice machine, but Mr. Kill does not know how often these are cleaned.¹¹⁶

~~69.74.~~ Mr. Kill ~~works~~worked in the kitchen, serving food and cleaning the dining hall, and he has noticed MCC has started

¹¹⁰ Id. at ¶¶ 12; 14.

¹¹¹ Id. at ¶¶ 10-11.

¹¹² Id. at ¶ 15.

¹¹³ Id. at ¶ 17.

¹¹⁴ Id. at ¶ 19.

¹¹⁵ Id. at ¶ 20.

¹¹⁶ Id. at ¶¶ 21-22.

implementing a few changes.¹¹⁷ MCC has started slowing down the serving process in the last day or so and is no longer filling up the dining rooms.¹¹⁸ MCC has reduced group meals from two hundred-forty people at a time to groups of forty or eighty.¹¹⁹ MCC has started cleaning the tables more often.¹²⁰ MCC has also required increased hand washing for kitchen workers and using bleach on the door handles.¹²¹

70.75. Although MCC has made some changes, the open-air dormitory, the continual close contact, and the way the kitchen runs are causes of concern for Mr. Kill.¹²² There are twenty-five men working in the kitchen; one group stands together serving food as the tray goes down the line and another group is in the dishwashing area, in close proximity of each other for hours.¹²³ As the dining hall fills up, there are fifteen to thirty men waiting for food at all times and approximately three hundred and fifty people

¹¹⁷ Id. at ¶¶ 26; 30. Mr. Kill worked in the kitchen at MSU at MCC until after this petitioner was filed. Concerned for his health, he asked to be reassigned and is now working as a porter on his unit at MSU.

¹¹⁸ Id. at ¶ 26-27.

¹¹⁹ Id. at ¶ 27.

¹²⁰ Id. at ¶ 28.

¹²¹ Id. at ¶¶ 31-32.

¹²² Id. at ¶¶ 33-35.

¹²³ Id. at ¶ 37.

go through the line at every meal, twice a day: once for lunch and again at dinner.¹²⁴

~~71.76.~~ He has not heard about anyone at MCC being tested for coronavirus or having their temperatures taken regularly.¹²⁵ Mr. Kill views the dormitory as a breeding ground for the coronavirus and is especially concerned about the older people in MCC.¹²⁶ Mr. Kill has been programming extensively during his detention, preparing himself for employment.¹²⁷ If released, he would immediately move in with his wife and care for her since she has severe mobility issues.¹²⁸

~~72.77.~~ **Petitioner Leondis Berry** is a resident at Stafford Creek Corrections Center (SCCC).¹²⁹ Mr. Berry is 46 years old and has been at SCCC since 2018.¹³⁰ He has been in DOC custody since 2001.¹³¹ Mr. Berry has a history of severe heart conditions, including two massive heart attacks and four heart surgeries in

¹²⁴ Id. at ¶¶ 38-41.

¹²⁵ Id. at ¶ 44. There has been a large outbreak of COVID-19 in Mr. Kill's unit since the filing of the original petition.

¹²⁶ Id. at ¶¶ 34, 36.

¹²⁷ Id. at ¶¶ 56-58.

¹²⁸ Id. at ¶¶ 48-55.

¹²⁹ Declaration of Leondis Berry, at ¶ 4.

¹³⁰ Id. at ¶¶ 2, 4.

¹³¹ Id. at ¶ 34.

twelve years.¹³² He has a pacemaker and has been diagnosed for sudden cardiac death because of the damage caused by the heart attacks.¹³³ He sees a cardiologist at least two times per year, and his ejection fraction (EF) is 30%.¹³⁴ Mr. Berry is very concerned that he is at risk of severe illness or death if he is exposed to the COVID-19 virus.¹³⁵

73.78. Mr. Berry resides in H-5 Unit in B-Wing, which houses approximately 136 men.¹³⁶ The residents share communal facilities such as showers, toilets and urinals, sinks, a dayroom, microwave, phones, yard, gym, school, and work areas.¹³⁷ He reports that these common areas and facilities are cleaned no more than 3 times a day (sinks and toilets), and other facilities like the ice machine and community sinks are not cleaned or maintained even daily.¹³⁸

74.79. While DOC has suspended visitation, Mr. Berry says that DOC has not taken other measures to protect against a COVID-19 outbreak, such as providing hand sanitizer (though it is available to

¹³² Id. at ¶¶ 20-23.

¹³³ Id. at ¶¶ 21-22.

¹³⁴ Id. at ¶¶ 24-25.

¹³⁵ Id. at ¶ 26

¹³⁶ Id. at ¶¶ 4, 6.

¹³⁷ Id. at ¶¶ 7-17.

¹³⁸ Id. at ¶¶ 12-13, 16.

staff), implementing more rigorous cleaning standards, or promoting social distancing amongst the residents.¹³⁹ DOC has not held any informational or training sessions to alert residents to the seriousness of COVID-19.¹⁴⁰

75.80. Out of concern for his health and safety, Mr. Berry has been engaging in social distancing at mealtimes and is eating his meals in his room.¹⁴¹ This means he only eats food available from commissary, which depletes his limited financial resources.¹⁴² This also puts his health at risk, as he must maintain a healthy diet due to his heart issues.¹⁴³

76.81. When Mr. Berry is released, he will move home with his wife, who lives in Arlington, Washington.¹⁴⁴ He has many extended family members and community members who are able and willing to help support him, and he will have a job in the community.¹⁴⁵

¹³⁹ Id. at ¶¶ 11, 15, 18-19.

¹⁴⁰ Id. at ¶ 18.

¹⁴¹ Id. at ¶ 30.

¹⁴² Id. at ¶ 32.

¹⁴³ Id. at ¶ 30.

¹⁴⁴ Id. at ¶ 35.

¹⁴⁵ Id., ¶¶ 35, 37.

77.82. **Petitioner Theodore Roosevelt Rhone** is a resident at Stafford Creek Corrections Center (SCCC).¹⁴⁶ Mr. Rhone is 62 years old and is living with diabetes.¹⁴⁷ Due to his diagnosis, he has high blood pressure, neuropathy, and has some eye problems.¹⁴⁸ He also has a history of heart injury, which requires monitoring to ensure his heart is healthy.¹⁴⁹ Mr. Rhone is very afraid of being exposed to and/or infected with the COVID-19 virus, because of his heightened risk of serious illness and/or death due to his underlying health conditions.¹⁵⁰

78.83. **Declarant William Burkett** is a resident at Stafford Creek Corrections Center (SCCC) in Aberdeen, Washington.¹⁵¹ He is a 70-year-old disabled veteran with an early release date (ERD) of March 10, 2029.¹⁵² He has several serious medical conditions that require ongoing treatment: Stage 4 liver disease, compensated cirrhosis, type 2 diabetes, chronic obstructive pulmonary disease (COPD), asthma, arrhythmia, and arthritis.¹⁵³ Mr. Burkett has also

¹⁴⁶ Declaration of Theodore Rhone, at ¶ 1.

¹⁴⁷ *Id.* at ¶¶ 2-3.

¹⁴⁸ *Id.* at ¶ 3.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at ¶ 4.

¹⁵¹ Declaration of William Burkett, at ¶ 6.

¹⁵² *Id.* at ¶¶ 5, 22.

¹⁵³ *Id.* at ¶ 22.

had his gall bladder removed, broken his back twice, and metal implants in his right arm and foot.¹⁵⁴ To control his various ailments, he takes 24 medications.¹⁵⁵ He has also had two recent bouts of pneumonia.¹⁵⁶ He has been at SCCC since 2015 and in DOC custody for 25 years.¹⁵⁷

79-84. Mr. Burkett is a resident in H-6 unit, A Tier, Cell 34-L.¹⁵⁸ He is in a cell for people with disabilities and his cellmate helps him navigate the complex by pushing his wheelchair .¹⁵⁹ There are 228 individuals in his unit, and they all share the same four bathrooms, dayroom, and phones.¹⁶⁰ There are five sinks, two toilets, and two urinals in each bathroom and they are cleaned daily with Hepastat.¹⁶¹ There is one handicap-accessible shower available to him; it is used by about 30 other individuals throughout the course of the day.¹⁶² The dayroom has 20 tables, four seats per table, spaced about three feet apart.¹⁶³ The room is

¹⁵⁴ Id. at ¶¶ 22-23.

¹⁵⁵ Id. at ¶ 26.

¹⁵⁶ Id. at ¶ 25.

¹⁵⁷ Id. at ¶¶ 5-6.

¹⁵⁸ Id. at ¶ 7.

¹⁵⁹ Id. at ¶ 8.

¹⁶⁰ Id. at ¶¶ 9-15.

¹⁶¹ Id. at ¶ 11.

¹⁶² Id. at ¶ 10.

¹⁶³ Id. at ¶13.

crowded during the day and evening with people sitting in close contact to each other.¹⁶⁴ There are seven phones for his unit and no protocols for regular cleaning.¹⁶⁵

~~80-85.~~ According to Mr. Burkett, there has been no formal response from DOC about COVID-19 and no efforts to promote social distancing.¹⁶⁶ There are a few posted notices, and while visitation and other programming has stopped, DOC continues to transport people to the doctor for non-critical visits, allows up to 300 people into the yard at any given time, and has placed no restrictions on social distancing in the dining hall.¹⁶⁷

~~81-86.~~ Mr. Burkett made requests for DOC to provide hand sanitizer or make it available for purchase but was denied and told to use the soap in the bathroom.¹⁶⁸ There are no masks available for residents to use.¹⁶⁹ Mr. Burkett understands he is at high risk of contracting COVID-19 due to his age and extensive medical

¹⁶⁴ Id.

¹⁶⁵ Id. at ¶¶ 15.

¹⁶⁶ Id. at ¶¶ 17, 19.

¹⁶⁷ Id. at ¶¶ 17-21.

¹⁶⁸ Id. at ¶ 16.

¹⁶⁹ Id.

history.¹⁷⁰ He worries about his health and the possibility of facing harm or even death should COVID-19 make its way to SCCC.¹⁷¹

82-87. **Declarant Francis Donald Cota** is a resident at Airway Heights Corrections Center (AHCC) in Airway Heights, Washington.¹⁷² Mr. Cota is 65 years old and has been at AHCC since 2006.¹⁷³ He has been in DOC custody for 20 years.¹⁷⁴ He recently applied for Emergency Medical Placement for release from DOC.¹⁷⁵ Mr. Cota has a serious heart condition, which resulted in major surgery to place three regular stents and one medicine stent in his heart.¹⁷⁶ He is supposed to go back for another heart surgery in two months to have three-five additional stents put in to replace the medicine stent.¹⁷⁷ His nitroglycerin dosage was recently increased from 30 mg to 100 mg per day.¹⁷⁸ Mr. Cota also suffers from degenerative disk disease, bulging disks, and arthritis, and uses a wheelchair for mobility.¹⁷⁹

¹⁷⁰ Id. at ¶ 22.

¹⁷¹ Id. at ¶ 29.

¹⁷² Declaration of Francis Cota, at ¶¶ 1, 6.

¹⁷³ Id. at ¶¶ 2, 6.

¹⁷⁴ Id. at ¶ 5.

¹⁷⁵ Id. at ¶ 7.

¹⁷⁶ Id. at ¶ 21.

¹⁷⁷ Id. at 22.

¹⁷⁸ Id.

¹⁷⁹ Id. at ¶ 23.

83-88. Mr. Cota resides in NA-1 Unit at AHCC.¹⁸⁰ He resides in a shared cell, and he and his cellmate are kept in extremely close proximity for up to 22 hours per day.¹⁸¹ There are approximately 128 men in his unit, all of whom share facilities such as showers, dayroom, an ice machine, phones, and other facilities.¹⁸² During his trips to the dining hall, approximately 200 men are served in crowded quarters and sit in very close proximity to one another.¹⁸³ Mr. Cota states that there are a lot of people coughing and sneezing in close proximity in/around these shared facilities.¹⁸⁴ These facilities are not properly disinfected on a regular basis, even though large numbers of people congregate in these spaces, particularly for meals.¹⁸⁵

84-89. Mr. Cota reports that DOC has not provided any formal training or information to AHCC residents about COVID-19 or what they can do to protect themselves.¹⁸⁶ DOC did shut down the library and stop visitation for two weeks, but the gym and yard are

¹⁸⁰ Id. at ¶ 8.

¹⁸¹ Id.

¹⁸² Id. at ¶¶ 9-13.

¹⁸³ Id. at ¶ 19.

¹⁸⁴ Id. at ¶ 12.

¹⁸⁵ Id. at ¶¶ 9-16.

¹⁸⁶ Id. at ¶ 17.

still open.¹⁸⁷ Despite the outbreak, there is no hand sanitizer or additional cleaners available to residents for cleaning or disinfecting, and no common areas with soap and water.¹⁸⁸ Due to the lack of hygiene, medical services, and because of his underlying health conditions, Mr. Cota fears for his safety and wellbeing if there is an outbreak of COVID-19 at AHCC.¹⁸⁹

85-90. When Mr. Cota is released from custody, he will move home to live with his fiancé on the Washington coast.¹⁹⁰

86-91. **Declarant Daniel Ralph Maples** is a resident at Stafford Creek Correctional Center (SCCC) in Aberdeen, Washington.¹⁹¹ He is 62 years old and has been incarcerated since December 2005.¹⁹² He has resided at SCCC for the past ten years.¹⁹³ Mr. Maples shares a two-bed cell with another individual in what is known as a “dry cell,” which means it has no sink, toilet, or shower.¹⁹⁴ There are four communal bathrooms that residents in 78 other dry cells need to share.¹⁹⁵ Mr. Maples is in what is known as

¹⁸⁷ Id.

¹⁸⁸ Id. at ¶ 15.

¹⁸⁹ Id. at ¶ 27.

¹⁹⁰ Id. at ¶ 26.

¹⁹¹ Declaration of Daniel Ralph Maples, at ¶ 2.

¹⁹² Id. at ¶¶ 1, 3.

¹⁹³ Id. at ¶ 3.

¹⁹⁴ Id. at ¶ 8.

¹⁹⁵ Id. at ¶¶ 6, 13.

“A side,” there is an identical “B side” with just as many dry cells.¹⁹⁶

87-92. Mr. Maples suffers from young onset Parkinson’s disease and Chronic Obstructive Pulmonary Disease (COPD).¹⁹⁷ He uses a cane and walker to help with his mobility issues.¹⁹⁸ He also takes medications to control his tremors and other symptoms.¹⁹⁹ High stress causes Mr. Maples to get short on breath, and he requires an inhaler to recover.²⁰⁰ Due to his mobility issues, Mr. Maples relies on his cellmate to help him get dressed and uses a catheter to urinate.²⁰¹ As long as Mr. Maples has access to his medications, he does fine, but as the medications wear off or he experiences stressful situations, he begins to suffer from cognitive issues.²⁰² Mr. Maples started losing his vision last October and is deaf in his right ear.²⁰³ He has asked to see an eye specialist and that a note be placed on his cell to inform the corrections officers that he may not be able to hear them, but he has been ignored.²⁰⁴

¹⁹⁶ Id. at ¶ 7.

¹⁹⁷ Id. at ¶¶ 22, 29.

¹⁹⁸ Id. at ¶ 23.

¹⁹⁹ Id. at ¶¶ 27-28.

²⁰⁰ Id. at ¶¶ 31-32.

²⁰¹ Id. at ¶ 24, 26.

²⁰² Id. at ¶¶ 32-33.

²⁰³ Id. at ¶¶ 35-39.

²⁰⁴ Id. at ¶¶ 37-40.

88-93. Mr. Maples works in the kitchen at SCCC folding napkins.²⁰⁵ He works next to the “dish pit,” the area where all the trays, glass, and silverware are washed.²⁰⁶ Everything is washed by hand because there are no dish washers.²⁰⁷ Sometimes the people washing dishes run out of cleaning supplies and resort to using oven or floor cleaner.²⁰⁸ Mr. Maples does not have access to hand sanitizer and the only accessible soap is in the communal bathrooms.²⁰⁹ There is no way for people to wash their hands while in their cells.²¹⁰

89-94. Mr. Maples believes that SCCC will go into lockdown sometime soon.²¹¹ He has been informed that if a lockdown occurs, pre-made food will be dropped off at each cell.²¹² The trays, dishes, and silverware will be picked up from the cell and taken back to be washed.²¹³ Food preparation and cleaning will continue as normal, but DOC staff will deliver the food to the cells.²¹⁴ DOC

²⁰⁵ Id. at ¶ 42.

²⁰⁶ Id.

²⁰⁷ Id. at ¶¶ 43-44.

²⁰⁸ Id. at ¶ 45.

²⁰⁹ Id. at ¶ 59.

²¹⁰ Id.

²¹¹ Id. at ¶ 48.

²¹² Id. at ¶ 49.

²¹³ Id. at ¶ 50.

²¹⁴ Id. at ¶¶ 49-52.

staff have commented to Mr. Maples that staff have their temperature checked when they walk into SCCC, but it is not accurate or being done correctly.²¹⁵

~~90-95.~~ 91-95. Mr. Maples believes there is a large population of elderly people at SCCC.²¹⁶ There has been no indication at SCCC that COVID-19 testing will begin or become available. Mr. Maples believes that if lockdown or quarantine occurs, they will be left in their cells to die.²¹⁷ For that reason, he believes there is no incentive to inform SCCC if anyone becomes sick.²¹⁸ At the same time, he is aware that his various medical conditions make him particularly vulnerable to contracting COVID-19 and suffering severe symptoms.²¹⁹ He worries about his health condition while detained at SCCC and as a veteran, he believes the Veterans Administration will offer free medical care to him if he is released.²²⁰

~~91-96.~~ 91-96. **Declarant Maurice Phillip Meadows** is a resident at the Twin-Rivers Unit at the Monroe Correctional Complex (MCC) in

²¹⁵ Id. at ¶ 54.

²¹⁶ Id. at ¶ 56.

²¹⁷ Id. at ¶ 57.

²¹⁸ Id. at ¶¶ 68-70.

²¹⁹ Id. at ¶¶ 65-66.

²²⁰ Id. at ¶¶ 64-65.

Monroe, Washington.²²¹ Mr. Meadows is 59 years old and has been in DOC custody for 20 years.²²² He has resided at MCC since 2007.²²³ Mr. Meadows has a history of heart attacks.²²⁴ He underwent triple-bypass surgery in 2018 and is currently on medication for hypertension (high blood pressure).²²⁵ Even after his heart attacks, he had to fight DOC for medical treatment and was told his “chest pains” did not warrant treatment by a cardiologist.²²⁶ He has not been permitted to see his cardiologist in over a year, despite the fact that his last ejection fraction (EF) test read at 16%.²²⁷ He still experiences numbness from his surgery.²²⁸ He said that DOC has encouraged people to go to sick call if they feel unwell, but people waiting for sick call must sit in a small room together, often with up to 15 other people.²²⁹

~~92.97.~~ Mr. Meadows lives in a single cell in A unit, B wing.²³⁰

The men in his unit are out most of the day, and at least half of the

²²¹ Declaration of Maurice Phillip-Meadows, at ¶ 4.

²²² *Id.* at ¶¶ 1, 7.

²²³ *Id.* at ¶ 6.

²²⁴ *Id.* at ¶ 24.

²²⁵ *Id.* at ¶¶ 24, 22, 33.

²²⁶ *Id.* at ¶ 25.

²²⁷ *Id.* at ¶¶ 30, 31.

²²⁸ *Id.* at ¶ 32.

²²⁹ *Id.* at ¶ 38.

²³⁰ *Id.* at ¶ 9.

men from his wing are usually in the dayroom.²³¹ His entire unit goes to yard and to meals at the same time as other units.²³² They share communal facilities, such as showers and an ice machine.²³³ MCC has locked one unit down, but his unit is still going to yard with other units.²³⁴

93-98. _____ Mr. Meadows works in the kitchen.²³⁵ There is no hand-sanitizer available.²³⁶ The men eat in close proximity, and the area is not regularly sanitized.²³⁷ Mr. Meadows said DOC has not provided any training or protocols on how to keep the kitchen area clean or prevent the spread of COVID-19, despite the exposure at MCC.²³⁸

94-99. _____ When Mr. Meadows is released, he will move home with his wife in Edmonds, Washington.²³⁹ He has a job waiting for him when he returns home.²⁴⁰

²³¹ Id. at ¶¶ 13-15.

²³² Id.

²³³ Id. at ¶¶ 12, 16.

²³⁴ Id. at ¶¶ 18-21.

²³⁵ Id. at ¶ 39.

²³⁶ Id. at ¶ 42.

²³⁷ Id. at ¶¶ 39-45.

²³⁸ Id. at ¶ 48.

²³⁹ Id. at ¶ 51.

²⁴⁰ Id.

~~95.100.~~ **Declarant Linda Graham** is the spouse of John Graham who is currently a resident at Washington Corrections Center (WCC) in Shelton, Washington.²⁴¹ Mr. Graham is 67 years old and he entered DOC custody in January of 2020.²⁴² He has an early release date of September 17, 2020.²⁴³ Mr. Graham currently has no serious medical needs and he is low risk and low security.²⁴⁴ Mrs. Graham has not been able to see her husband since he entered prison because DOC requires people to get approved for visitation first, which takes weeks.²⁴⁵ She recently received approval, but WCC has also barred visitation and there is no video visitation at WCC.²⁴⁶

~~96.101.~~ DOC apparently has opened a quarantine wing at WCC and is pushing more people into the existing cells.²⁴⁷ Mrs. Graham knows this because she was able to speak to Mr. Graham on the phone.²⁴⁸ He is now in a cell designed for two people, but there is a third living there now who is sleeping on the floor.²⁴⁹

²⁴¹ Declaration of Linda Graham, at ¶ 3.

²⁴² *Id.* at ¶¶ 4-5.

²⁴³ *Id.* at ¶ 5.

²⁴⁴ *Id.* at ¶¶ 7-8.

²⁴⁵ *Id.* at ¶¶ 15-17.

²⁴⁶ *Id.* at ¶¶ 18-19.

²⁴⁷ *Id.* at ¶ 13.

²⁴⁸ *Id.* at ¶ 12.

²⁴⁹ *Id.*

97.102. With so many people in the wing due to the quarantine, it is really hard to get phone time.²⁵⁰ Mr. Graham says the younger men always beat him to the phone.²⁵¹ All of the men are concerned about what is going on and trying to reach loved ones, resulting in long lines for the phone.²⁵²

98.103. The Grahams have been married for 28 years and own a home together.²⁵³ Mrs. and Mr. Graham would be happy to do home monitoring to serve out the rest of Mr. Graham's sentence.²⁵⁴

99.104. **Declarant Timothy Pauley** is a resident at the Monroe Correctional Center (MCC) and is 61 years old.²⁵⁵ He has been at MCC for approximately ten years and incarcerated since 1980.²⁵⁶ Mr. Pauley has previously suffered from bowel obstruction and internal bleeding requiring emergency surgery at a nearby hospital.²⁵⁷

²⁵⁰ Id. at ¶ 20.

²⁵¹ Id. at ¶ 22.

²⁵² Id. at ¶ 21.

²⁵³ Id. at ¶ 6.

²⁵⁴ Id. at ¶¶ 9-10.

²⁵⁵ Declaration of Timothy Pauley, at ¶¶ 4, 1.

²⁵⁶ Id. at ¶¶ 6, 8.

²⁵⁷ Id. at ¶¶ 28-29.

~~100.105.~~ Mr. Pauley lives in a single cell in Unit C.²⁵⁸ He has access to a sink and a toilet in his cell.²⁵⁹ He also has soap and warm water available.²⁶⁰ There are three community showers for 38 people on his tier.²⁶¹

~~101.106.~~ Mr. Pauley works as a shift porter at MCC.²⁶² Porters are given bleach to clean the common areas and they clean several times a day.²⁶³ Mr. Pauley cleans the hallways and shift office using spray bottles with bleach and soap.²⁶⁴

~~102.107.~~ According to Mr. Pauley, it is impossible to practice social distancing at MCC.²⁶⁵ When he goes to the yard, there are sometimes 50 people there.²⁶⁶ At the law library, the computers are close together and there can be 8-16 people sitting together.²⁶⁷ The day room can have 30-40 people at one time and at the chow hall, the seats are at communal tables.²⁶⁸ The tables are closer than six feet apart from each other and there are a couple hundred people

²⁵⁸ Id. at ¶ 10.

²⁵⁹ Id. at ¶ 11.

²⁶⁰ Id.

²⁶¹ Id. at ¶¶ 13-14.

²⁶² Id. at ¶¶ 12, 31-32.

²⁶³ Id. at ¶ 12.

²⁶⁴ Id. at ¶ 31.

²⁶⁵ Id. at ¶ 15.

²⁶⁶ Id. at ¶ 16.

²⁶⁷ Id. at ¶ 18.

²⁶⁸ Id. at ¶ 19, 23.

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

~~103-108.~~ When people in C unit are on quarantine, they are locked in their cell for a few days.²⁷² Mr. Pauley has seen these people escorted somewhere else, but he does not know where they go.²⁷³

~~104-109.~~ Mr. Pauley has been classified as low risk in prior psychological evaluations and his last general infraction was in 2012.²⁷⁴ He has not had a serious infraction since 1995.²⁷⁵ If released, he has family support, various housing options, and plans to work as soon as he can.²⁷⁶

~~105-110.~~ **Declarant Joseph Siriani** is a resident at Stafford Creek Corrections Center (SCCC).²⁷⁷ Mr. Siriani is 65 years old, and

²⁶⁹ *Id.* at ¶ 19.

²⁷⁰ *Id.* at ¶¶20-22.

²⁷¹ *Id.* at ¶25.

²⁷² *Id.* at ¶ 24.

²⁷³ *Id.*

²⁷⁴ *Id.* at ¶¶36-37.

²⁷⁵ *Id.* at ¶ 37.

²⁷⁶ *Id.* at ¶¶ 38-39.

²⁷⁷ Declaration of Joseph Siriani, at ¶ 1.

because of his age, is very worried about the risk of COVID-19.²⁷⁸

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

~~106.111.~~ **Declarant Brian Stark** is a resident at the Washington Correction Center (WCC).²⁸⁰ Mr. Stark is 47 years old and has been found by the Indeterminate Sentence Review Board to be safe to be released into the community; his early release date was March 11, 2020.²⁸¹ Mr. Stark is awaiting an exact release date from DOC and hopes to be released very soon.²⁸²

~~107.112.~~ Mr. Stark is currently residing on the EF tier in Cedar Hall, which houses 60 men, all of whom share a common day room and bathroom/shower facilities.²⁸³ He shares his cell with another resident who is 52 years old and living with diabetes.²⁸⁴ Cedar Hall has three other tiers and houses a total of 240 individuals.²⁸⁵ The residents of Cedar Hall share meals in the same space, usually 150-200 men at a time.²⁸⁶ Mr. Stark indicates that the only time he can

²⁷⁸ Id. at ¶¶ 2-3.

²⁷⁹ Id. at ¶ 3.

²⁸⁰ Declaration of Brian Stark, at 1

²⁸¹ Id. at ¶¶ 2-3.

²⁸² Id. at ¶ 4.

²⁸³ Id. at ¶ 6.

²⁸⁴ Id.

²⁸⁵ Id.

²⁸⁶ Id.

maintain six feet of space between himself and other residents is when he is alone in his cell and his cellmate is gone.²⁸⁷ DOC has provided cleaning supplies and hand sanitizer.²⁸⁸ However, Mr. Stark reports that there is no indication that DOC has adopted any routine screenings to check residents for symptoms of COVID-19.²⁸⁹ Mr. Stark is afraid for his safety and wellbeing and is concerned that if he were to be exposed to/become infected with COVID-19, DOC would be unable to provide him with the necessary medical care.²⁹⁰

~~108.113.~~ **Declarant Hozie Holley** is a resident at Stafford Creek Corrections Center (SCCC).²⁹¹ He is 60 years old and has several serious underlying health conditions, including irregular heartbeat and COPD.²⁹² A lung scan also recently diagnosed a node in his lungs.²⁹³ Mr. Holley is very worried about the introduction and spread of COVID-19 in SCCC and does not believe that the prison has adequate medical resources to care for him if he becomes ill and develops severe symptoms.²⁹⁴

²⁸⁷ Id.

²⁸⁸ Id. at ¶ 7.

²⁸⁹ Id.

²⁹⁰ Id. at ¶5.

²⁹¹ Declaration of Hozie Holley, at ¶ 1.

²⁹² Id. at ¶ 2.

²⁹³ Id.

²⁹⁴ Id. at 3.

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

~~109.114.~~ As of March 23, 2020, there were 2,221 confirmed cases of COVID-19 and 110 deaths from COVID-19 in Washington State.²⁹⁵ This is an increase from 1,012 cases and 52 deaths on March 17, 2020, just six days earlier.²⁹⁶

~~110.115.~~ The COVID-19 outbreak in Washington State has prompted unprecedented emergency measures to protect public health and enforce social distancing. On March 11, 2020, Governor Jay Inslee issued an emergency proclamation that limited public gatherings to fewer than 250 people, and only with significant public health protections in place.²⁹⁷ On March 12, 2020, Governor Inslee announced the closure of all K-12 schools in King, Snohomish, and Pierce Counties.²⁹⁸ On March 13, 2020, Governor Inslee announced that all K-12 schools statewide would be closed for a minimum of six weeks.²⁹⁹ On March 16, 2020,

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

²⁹⁶ Id.

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

²⁹⁸ Id.

²⁹⁹ Id.

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

~~11.116.~~ 116. On March 13, 2020, DOC confirmed that an employee working at the Monroe Correctional Complex-Washington State Reformatory (MCC-WSR) tested positive for COVID-19.³⁰³ DOC responded by asking anyone in close contact with the officer to self-quarantine for 14 days. MCC also placed MCC-WSR A and B

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

³⁰¹ Id.

³⁰² Inslee Announces "Stay Home, Stay Healthy" Order, Washington Governor Jay Inslee (Mar. 23, 2020), <https://www.governor.wa.gov/news-media/inslee-announces-stay-home-stay-healthy%20order>.

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

units (in which the officer worked) into a “precautionary quarantine” with modified restricted movement until the 14-day quarantine period ends.³⁰⁴ DOC further indicated that they were cleaning and disinfecting affected units and providing extra cleaning supplies to the residents.³⁰⁵ The following day, a second correctional officer at DOC headquarters tested positive for COVID-19.³⁰⁶ On March 18th, a third DOC officer who works at Peninsula Work Release (PWR) tested positive for COVID-19.³⁰⁷ By March 20, a second employee at PWR had been diagnosed with COVID-19.³⁰⁸

~~12.117.~~ In a matter of seven days, four individual officers at three individual facilities were diagnosed. As of March 23, 2020, DOC had tested 31 residents for COVID-19 infection; six tests came back negative, while the other 25 results were still pending.³⁰⁹ The

³⁰⁴ Id.

³⁰⁵ Id.

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

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

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

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

full impact that these exposures will have on the individuals in custody at DOC facilities is not yet known, but we know that residents who have come into contact with these DOC employees are at serious risk of harm.

COVID-19 has gotten into at least one DOC facility since the filing of the original petition.

118. On April 5, 2020 DOC announced an outbreak of COVID-19 at the Minimum Security Unit at the Monroe Correctional Complex (MCC-MSU).

119. Since that time, at least 7 people who are incarcerated in that unit have tested positive for COVID-19.

120. It is unclear whether other people have also been infected at the time of the filing of this amended petition.

121. Two of the Petitioners, Terry Kill and Shanell Duncan, currently live in MCC-MSU.

122. Neither of the Respondents have ordered any of the Petitioners or anyone else held in any DOC facility or under its control released as a response to the COVID-19 pandemic.

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

123. Information about the scope and severity of the threat that COVID-19 poses to people living in carceral facilities is readily accessible and grows in volume in each day.³¹⁰ In the past week, multiple jurisdictions have confirmed their first cases of COVID-19 among the residents of their prisons and jails.³¹¹ Other states, similar to Washington State, have confirmed cases of COVID-19 in corrections officers, while the residents in their corrections facilities remain at risk of possible exposure.³¹² The Supreme Court of the State of Montana issued an advisory letter to the state’s lower court judges to immediately begin reducing the populations in the state’s corrections facilities.³¹³ In his letter, Chief Justice Mike McGrath wrote, “at this time, there does not

³¹⁰ Declaration of Alex Bergstrom, at 4.

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

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

³¹³ Letter from C.J. Mike McGrath, Mont. Sup. Ct., to JJ. Mont. Ct. Ltd. Jurisdiction (Mar. 20, 2020), <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

appear to be an outbreak of COVID-19 in any of Montana’s correctional facilities. However, it is only a matter of time. Due to the confines of the facilities, it will be virtually impossible to contain the spread of the virus.”³¹⁴

V. DEMAND FOR JUDGMENT AND GROUND FOR REMEDY

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

~~113.124.~~ 124. The Governor declared a statewide state of emergency and has exercised emergency powers under RCW 43.06.220 to preserve the life, health, and safety of members of the public.

~~114.125.~~ 125. The Governor has failed to exercise emergency powers, or use any other statutory authority, to fulfill his duty to preserve the life, health, and safety of Petitioners and others in the custody of the state Department of Corrections.

~~115.126.~~ 126. There are no reasonable grounds for failing to act to protect the life, health, and safety of Petitioners during the state of emergency due to the COVID-19 outbreak.

~~116.127.~~ 127. The Governor has violated Washington Constitution, art. I, § 12 by failing to fulfill his duty to preserve the life, health, and safety of Petitioners during the COVID-19 state of emergency.

³¹⁴ Id.

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

~~117.128.~~ The Governor has violated his duty to protect the life, health, and safety of Petitioners during the state of emergency due to the COVID-19 outbreak by failing to exercise his emergency powers to take actions to protect Petitioners.

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

~~118.129.~~ The Secretary has an affirmative duty to provide for the health, welfare, and safety of people in DOC custody.

~~119.130.~~ The Secretary was aware of a substantial risk of serious harm to people in DOC custody due to the COVID-19 outbreak.

~~120.131.~~ The Secretary has failed to take action effective to mitigate the risk of serious harm to people in DOC custody due to the COVID-19 outbreak.

~~121.132.~~ This failure to take action to mitigate the substantial risk of serious harm, of which he was aware, violates Article I, § 14 of the Washington Constitution.

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

~~122.133.~~ The Washington Constitution, Article I, § 12, and the Washington Law Against Discrimination, RCW 49.60, establish the right of freedom from discrimination.

~~123.134.~~ Petitioners have serious medical conditions that constitute disabilities within the meaning of RCW 49.60.

~~124.135.~~ The Secretary has a duty to Petitioners not to discriminate against them based on their disabilities.

~~125.136.~~ The Secretary failed to accommodate Petitioners' disabilities by failing to take action effective to mitigate the risk of harm to them due to the COVID-19 outbreak.

~~126.137.~~ By failing to accommodate Petitioners' disabilities during the COVID-19 outbreak, the Secretary has failed to fulfill his duty not to discriminate under the Washington Constitution and the WLAD, RCW 49.60.

Grounds for Remedy Pursuant to RAP 16.4

138. The Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control are "under a restraint" sufficient to allow this Court to exercise jurisdiction over this personal restraint petition. See RAP 16.4.

139. The restraints described herein are unlawful because the Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control are held in conditions or manners of restraint in violation of the Constitution and laws of the State of Washington as described herein.

140. Or in the alternative, other grounds, as described herein, exist to challenge the legality of the restraint of the Petitioners and all other people held in Washington's prisons or other facilities under the DOC's control.

~~127.141.~~ This petition is not barred by any restriction outlined in RAP 16.4(d) or by any other applicable court rule, statute or other legal authority.

V. VI. RELIEF REQUESTED

Petitioners ask this Court to grant the following relief to each of them and to other similarly situated people held in Washington's prisons or other facilities under the DOC's control pursuant to the Court's authority to issue a Writ of Mandamus and/or Habeas Corpus and/or grant relief pursuant to a Personal Restraint Petition:

1. Declare that the Department of Corrections Secretary and the Governor must take actions necessary to prevent the spread of a highly infectious virus to vulnerable populations in State custody to satisfy their duties under Article 1, § 12 of the Washington Constitution, RCW 43.60.220, Article I, § 14 of the Washington Constitution, and the Law Against Discrimination, RCW 49.60.
2. Order Governor Inslee to exercise his broad emergency authority under RCW 43.06.220 and any other statutory authority detailed below to:
 - a. Direct Department of Corrections Secretary Sinclair to immediately identify all people incarcerated in any DOC facility, or any other institution operated by any other Washington State agency; all people held in any local or county institution under any DOC warrant or hold; and all people incarcerated in any out-of-state facility at DOC's

request, who fall into any one of the following three categories:

- i. People who are 50 years of age and older;
- ii. People who have serious underlying medical conditions that put them at particular risk of serious harm or death from COVID-19, including but not limited to: currently pregnant individuals, those with chronic lung disease or moderate to severe asthma, people with heart disease, people who are immunocompromised due to cancer or other medical conditions or treatment, people with severe obesity, people with any other underlying serious medical conditions such as those with diabetes, renal failure, liver disease, and any other condition specifically identified by CDC either now or in the future as being a particular risk for severe illness caused by COVID-19; or
- iii. People who do not fall under (i) or (ii) above and have early release dates within the next 18 months or those people who are currently on work release.

- b. Direct Department of Corrections Secretary Sinclair to provide this list of people to the Clemency and Pardons Board.
- c. Call an emergency meeting of the Clemency and Pardons Board and direct the Board to recommend that Governor Inslee should exercise his commutation or pardon power to meet the present COVID-19 emergency pursuant to RCW 9.94A.870(2) by commuting the sentences of people who fall into one of the three categories listed above.
- c. Direct the Clemency and Pardons Board to waive the 30-day hearing notice under RCW 9.94A.885(3).
- d. Direct DOC Secretary Sinclair to take all necessary steps to ensure the immediate release of people whose sentences are commuted or granted extraordinary release as described above.
- e. Direct DOC Secretary Sinclair to release people so that local and community hospital systems in the areas in which prisons or work release facilities lie are not compromised.
- b. Direct DOC Secretary Sinclair to ensure that any person being released is provided with the resources and supports necessary to meet their housing and medical needs.

- c. Direct the Clemency and Pardons Board and the Department of Corrections to ensure that release decisions are based on equitable criteria that do not exacerbate racial or socioeconomic disproportionality, that ongoing assessment of racial or socioeconomic disproportionality will occur, and that these criteria and results of assessments are made available to the public.
- d. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting furlough to people in one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- e. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting extraordinary medical placement to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- f. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from granting people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section release pursuant to graduated reentry.

- g. Waive any statutory or regulatory obligation or limitation that prohibits DOC Secretary Sinclair from removing any warrant, hold, or other order that prohibits people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.
- h. Waive any statutory or regulatory obligation or limitation to prohibit DOC Secretary Sinclair from ordering Community Corrections Officers' detaining of persons under DOC supervision for alleged Community Custody violations.
- i. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting commutation or clemency to people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- j. Waive any statutory or regulatory obligation or limitation that prohibits the Clemency and Pardons Board or Governor Inslee from immediately recommending or granting extraordinary release pursuant to RCW 9.94A.728

(1)(d) to people who fall into one or more of the three categories listed above.

- k. Waive any statutory or regulatory obligation or limitation that prohibits the Sentencing Guidelines Commission or Governor Inslee from revising the standard ranges and other standards to allow for release of people who fall into one or more of the three categories listed in (2)(a)(i) - (iii) of this section.
- l. Direct DOC Secretary Sinclair to identify any statutory or regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay the immediate release from custody of people who fall into one or more of the three categories listed above or the provision of resources and supports necessary to meet their housing and medical needs.
- m. Issue an order or orders concerning waiver or suspension of the obligations or limitations that DOC Secretary Sinclair identifies pursuant to the prior directive.

- n. Issue an order prohibiting any other activity that should be prohibited to help preserve and maintain life, health, property, or the public peace, related to the subject matter of this lawsuit.
3. Order Department of Corrections Secretary Sinclair to:
- a. Immediately take all necessary action to furlough and implement emergency medical releases for all people who fall within one of the three categories identified in (2)(a)(i) - (iii) of this section.
 - b. Immediately release any individuals who qualify for graduated reentry under RCW 9.94A.733.
 - c. Immediately implement a plan ensuring that all people in custody who need it receive appropriate medical care, including COVID-19 screening, testing, and treatment.
 - d. Immediately issue an order removing any DOC warrant, hold, or other order that prohibits individuals in any of the three categories listed in (2)(a)(i) - (iii) of this section from being released from local or county jails.
 - e. Immediately provide written and verbal education to individuals in custody on the hazards of COVID-19 and appropriate precautions and disseminate accurate and

timely information about COVID-19 and its spread to individuals in custody.

- f. Immediately provide all people in custody unfettered access to soap and water, single use towels, and hand sanitizer.
- g. Immediately suspend any DOC orders, policies, and/or regulations that designate ethyl-alcohol based hand sanitizer as contraband and that charge any individuals for soap or hand sanitizer and immediately communicate this change in policy to those in DOC custody via public address announcements in all housing units and yards and visible postings in in all housing units, medical clinics, dining and programming spaces. Postings must be available in English, Spanish, and in any other predominantly spoken language. For inmates incarcerated in maximum custody, detention, or any other units where they may not hear or see these changes in policies, they must be provided individual written and verbal notification in English, Spanish, and any other predominantly spoken language.
- h. Ensure that people held in custody by DOC receive medical care that meets or exceeds the community standard of care,

and that this medical care follows appropriate and ongoing COVID-19 federal, state, and local public health guidelines and recommendations, including those related to access to personal protective equipment, ventilators, intensive care units, and trained medical personnel.

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

23-hour lockdown. This anti-retaliation policy shall be immediately communicated to all DOC staff and individuals in custody and included in any announcement, posting, or other communication made for the purpose of training or providing information about COVID-19.

m. Immediately end the sanctioning of persons under DOC supervision for violations of Community Custody.

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

4. Appoint a Special Master or monitor to ensure that the Respondents appropriately protect the health and safety of the Petitioners and all

other people held in Washington's prisons or other facilities under the DOC's control throughout the current emergency.

5. Award Petitioners all costs and attorney fees under any applicable authority.
6. All other and further relief this Court deems just and proper.

DATED this ~~24th~~-13th day of ~~March~~April, 2020.

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