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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' EMERGENCY MOTION TO ACCELERATE
REVIEW, FOR APPOINTMENT OF A SPECIAL MASTER AND
FOR IMMEDIATE RELIEF**

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I. IDENTITY OF MOVING PARTIES

Petitioners Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Roosevelt Rhone seek the relief designated below on their own behalf and on behalf of all other similarly situated people.

II. FACTUAL BACKGROUND

There has been an outbreak of COVID-19 in the Minimum Security Unit at the Monroe Correctional Complex (MCC-MSU).¹ The Department of Corrections (DOC) has issued two press releases in which it acknowledges that three people living in that one housing unit have tested positive for the disease.² However, DOC on its website admits that in fact at least six people living in MCC-MSU and five staff members have tested positive.³ These six positive tests have all occurred within the last two or three days. At present, it is unclear how many other people

¹ See Wash. St. Dep't of Corrections; *COVID-19 Information* (Apr. 8, 2020), <https://www.doc.wa.gov/news/covid-19.htm>.

² Wash. St. Dep't of Corrections, *Press Release: First Positive COVID-19 Test for Incarcerated Individual within Washington State Correctional Facility* (Apr. 5, 2020), <https://www.doc.wa.gov/news/2020/04052020p.htm> (hereinafter April 5 DOC Press Release); Wash. St. Dep't of Corrections, *Press Release: Additional Positive COVID-19 Tests for Incarcerated Individuals within Monroe Correctional Complex* (Apr. 7, 2020), <https://www.doc.wa.gov/news/2020/04072020p.htm> (hereinafter April 7 DOC Press Release).

³ DOC COVID-19 Information *supra* n. 1. DOC's reported numbers of staff infections are uncertain because DOC itself is not testing any staff members. Instead, DOC is relying upon "self-reports" from staff as to their positive tests. DOC has no independent verification regarding the actual number of staff who are or have been infected with COVID-19. *Id.*

have already become infected with COVID-19, among the more than 400 people who live in MCC-MSU.

Two of the Petitioners, Terry Kill and Shanell Duncan, live in the affected unit at MCC-MSU and are in immediate danger of contracting COVID-19, if they have not already. While refusing to provide any information or take steps that the Petitioners, people living in Washington's prisons and public health officials have demanded for weeks, DOC has instead called in many members of the Washington State Patrol to intimidate the people living in MCC-MSU.⁴ DOC's response to the COVID-19 crisis has proven dangerously ineffective, and as a result people are falling ill. Accordingly, the Court must step in and take immediate action.

III. RELIEF REQUESTED

This Court has already expedited review of the original petition for a writ of mandamus and oral argument is currently scheduled for April 23. The Petitioners respectfully urge the Court to take steps before that date in order to address the immediate emergency at MCC-MSU. The Court should act now to protect the Petitioners and all other people living in that unit.⁵

⁴ Supplemental Declaration of Terry Kill at ¶ 35.

⁵ In compliance with RAP 17.4, Petitioners' counsel informed Respondents' counsel of this motion seeking accelerated review by electronic mail at 8:28 p.m. on April 8, 2020.

The Petitioners ask the Court to expedite consideration of this emergency motion pursuant to RAP 17.4, appoint a special master pursuant to RAP 16.2(d) to provide the Court with information regarding the current emergency at MSU-MCC and about DOC's other actions to address the COVID-19 pandemic there and elsewhere, and issue an emergency order requiring DOC to immediately test every person who has been held in MCC-MSU at any point in the last 14 days for COVID-19, take all necessary and proper steps to ensure that appropriate screening, isolation and quarantine are done, and begin immediate releases of people living in MCC-MSU who fall within one of the categories the Petitioners have previously identified, as medically appropriate.⁶

IV. REASONS WHY RELIEF SHOULD BE GRANTED

A party may seek "expedited consideration" on a motion in an emergency.⁷ The party moving for accelerated review must demonstrate that "adequate relief cannot be given if the motion is considered in the

⁶ The Petitioners, acting upon the best available public health science, have asked the Court to order the Governor and Secretary Sinclair to immediately begin releasing people who fall within one of the following categories; (1) people over the age of 50; (2) people with underlying medical conditions, including pregnancy, which render them more vulnerable to COVID-19; and (3) people who are within 18 months of their release date. *See* Petition for a Writ of Mandamus at 57-67. Such releases are essential in order to meet the COVID-19 pandemic that threatens the people who live in Washington's prisons.

⁷ RAP 17.4(b).

normal course.”⁸ The court considers the urgency of the request and the consequence of delay.⁹

The outbreak that Petitioners and many other stakeholders have been warning about for weeks has begun, the Court must immediately step in to address it because the Governor and Secretary Inslee refuse to do so. An interim ruling and interim relief is appropriate because of the urgency of the circumstances. The emergency relief that the Petitioners have requested in this motion cannot wait until the Court hears oral arguments on April 23.

As discussed in the Petition and Petitioners’ brief in support, this Court has the authority to enter a declaration and issue a writ of mandamus requiring both the Governor and Secretary Sinclair to take immediate actions.¹⁰ Furthermore, this Court has authority to appoint a special master pursuant to RAP 16.2(d). It cannot be credibly argued that time is not of the essence here.

⁸ RAP 17.4(b).

⁹ *Louthan v. King Cty.*, 94 Wn.2d 422, 423, 617 P.2d 977 (1980) (court granted direct and accelerated review “because of an imminent deadline in the sale of certain King County general obligation bonds.”); *see also*, 3 Wash. Prac., Rules Practice, RAP 18.12 (8th ed.) (explaining under a different expedited review procedure that “[t]here are times when it is necessary for the court to act swiftly, particularly in matters relating to affairs of the state ... or when irreparable harm to a party would result from delay”).

¹⁰ Petitioners’ Petition and their Brief In Support of The Writ of Mandamus filed in this Court on Monday, April 7, lay out in significant detail relevant facts and legal argument. The Petitioners respectfully refer the Court to those pleadings rather than restate those allegations and arguments, herein. In addition, the Petitioners’ have provided the Court with two additional supplemental declarations that directly address the emergency at MCC-MSU. *See* Supplemental Declaration of Terry Kill; Declaration of Julia Bladin.

At least six people living in MCC-MSU and five DOC staff members who work at MCC have now tested positive for COVID-19.¹¹ DOC has only publicly provided information regarding three people who have tested positive and has begun restricting information about the current circumstances at MCC-MSU and elsewhere.¹² One of the few people that DOC has publicly acknowledged having tested positive is 68 years old.¹³ Many Washington State Patrol officers arrived on the MCC campus on Wednesday morning. It appears that DOC may be using a show of force rather than take other more appropriate public health measures to resolve the legitimate concerns of people trapped in MCC-MSU. People living in MCC-MSU are scared and not being appropriately protected.¹⁴

As Petitioners' experts opined more than two weeks ago, no matter what steps DOC put in place to keep COVID-19 out of the prisons, it would be unable to do so. Those opinions have proven correct and yet DOC continues to refuse to take the basic steps that other jurisdictions and

¹¹ See DOC COVID-19 Information *supra* n.1.

¹² See April 5 DOC Press Release *supra* n. 2; April 7 DOC Press Release *supra* n. 2.

¹³ See April 7 DOC Press Release *supra* n. 2.

¹⁴ Any disturbance that may occur at MCC-MSU is an absolutely foreseeable event given DOC's unwillingness to meet its basic constitutional duties to protect the people under its care. Rather than take appropriate public health steps, DOC has ignored the best available science, threatened the health and safety of hundreds of people, and now, responded with overwhelming force that has only exacerbated an already awful situation for which DOC is responsible.

all independent public health officials agree is essential, reducing the number of people who can become infectious in Washington's prisons.¹⁵

Unfortunately, DOC is hiding information from the public, from the Petitioners and from this Court. DOC announced on Wednesday that it will provide no further details about any subsequent positive test that may occur in any DOC facility beyond the three tests that it has publicly acknowledged.¹⁶ The two press releases that DOC has issued include no information about the three additional people who have tested positive at MCC-MSU, about any of the staff members who have tested positive, about how the disease may have gotten inside MCC-MSU, about why six people became infected so quickly, or any explanation regarding why many Washington State Patrol officers arrived at MCC on Wednesday morning.¹⁷

As detailed, in the declarations of Mr. Kill and others, DOC does not have the facilities at MSU-MCC to properly quarantine and isolate people who have become infected from the many other people who live in

¹⁵ See Petitioners' Brief at III.C.1 at 12-14, II.D.1 at 22-23 (discussing scientific consensus that prisons must reduce population in order to appropriately combat COVID-19 and protect the most vulnerable people currently living behind bars and all people who will not be released).

¹⁶ See April 7 DOC Press Release *supra* n.1.

¹⁷ Compare April 5 DOC Press Release and April 7 DOC Press Release (neither press release includes essential, basic information).

that unit.¹⁸ The outbreak itself proves that DOC's efforts at screening and effectively quarantining people have been disastrously ineffective.

Given these unfortunate but utterly foreseeable facts, this Court must require DOC to be candid about what is happening. It is therefore essential that the Court appoint a special master to get answers and provide the Court and the Petitioners with accurate and unbiased information about DOC's actions and plans.¹⁹ Furthermore, the Court must take immediate steps to protect the people living in MCC-MSU, because neither the Governor nor Secretary Inslee are willing to do so.

The Respondents continue to refuse to take the most basic public health step and reduce the number of people in Washington's prisons. They have had over two weeks to respond to the initial Petition and have yet to provide any statement or response. The outbreak has begun and rather than address it properly, the Respondents have brought in overwhelming force to keep people in line. This Court must immediately step in because as discussed in detail herein, in the Petition and the

¹⁸ See Supp. Kill Decl. at ¶¶ 3-35 (describing how fluidly people move between units in MCC-MSU and the lack of appropriate social distancing or even effective quarantine between people and tiers at MCC-MSU); also, Kill Decl. at PSD 301-03; ¶¶ 9-25 (describing open air, dormitory style sleeping hall in MCC-MSU where 30 to 40 people share same bathrooms and other facilities).

¹⁹ This Court has previously recognized that appointing a special master is one way the Court may meet its own obligation to ensure the State's compliance with its duties. In *McCleary v. State*, the Court stated, "[o]ur prior experience and the experience of other courts suggests there are numerous options, including retaining jurisdiction in the trial court, retaining jurisdiction in this court, or perhaps appointing a special master or oversight entity." *McCleary v. State*, 173 Wn.2d 477, 546, 269 P.3d 227 (2012) (citation omitted).

Petitioners' Brief in Support, the Respondents must be ordered to meet their constitutional and statutory obligations to protect the life, health, and safety of people in DOC custody.

IV. CONCLUSION

The Court should agree to hear this emergency motion on an expedited schedule, it should appoint a special master pursuant to RAP 16.2 and it should immediately order the Respondents to take the other actions requested herein to protect the people currently living in MCC-MSU.

RESPECTFULLY SUBMITTED this 9th day of April, 2020.

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v.

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Respondents.

DECLARATION OF JULIA BLADIN

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I, Julia Bladin, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge:

1. I am an employee of Columbia Legal Services (CLS) where I work as a Legal Assistant.
2. As a Legal Assistant, I am responsible for managing CLS's attorney collect line, which allows people from institutions, including prisons to contact CLS to make confidential calls to CLS at no charge.
3. For the past several weeks, we have been hearing concerns from people who are in Department of Corrections facilities and their family members regarding fears about COVID-19. These concerns have been increasing, especially since DOC first confirmed cases among staff.
4. Since Monday, April 6, 2020 – the date that the first person in a Washington Department of Corrections prison tested positive for COVID-19 – CLS has received over one hundred calls from the collect line from people in prison across the State who are concerned about COVID-19 entering the prisons.
5. In the past 48 hours, I spoke with at least 15 people from the Monroe Correctional Complex Minimum Security Unit (“MCC-MSU”), who have raised their concerns about COVID-19 in that facility

given that a number of staff and people in prison have tested positive for COVID-19 in that prison.

6. Many of the people I have talked with at MCC-MSU have serious concerns about their safety and are really scared because they are older and/or have underlying health conditions, such as respiratory issues.

7. The people I spoke with have also shared with me that many staff are not consistently wearing masks in the units, even though staff have access to masks and other protective gear, while the people incarcerated in the prison generally do not have access to these materials. Another said that they heard that wearing of masks for staff is supposed to be mandatory, but that it seems optional because there is no consistency among staff. One person explained to me that people were given masks at work, but that correctional officers would confiscate them from people when they returned to the unit.

8. The people I talked with at MCC-MSU also feel at risk of catching COVID-19 because social distancing is impossible within their units, and many of the other people in their units are sick and have symptoms of COVID-19, such as coughing. One prisoner stated that people in B unit are “falling like flies.”

9. Callers also mentioned that sanitation and screening protocols remain insufficient. DOC had allowed yellow hazardous waste

bags to pile up in the hallway where people enter and exit for chow hall. They have been given hand soap and bleach, too; however, the bleach is heavily diluted so as not to be effective.

10. Screening protocols consist solely of taking a person's temperature and asking them about their symptoms.

11. Callers also mentioned that DOC has created a tense environment due to the quarantining of people and the lack of information that is being shared with people in the units. One caller noted that inmates in B-unit were "going off" due to being quarantined. Several callers noted that on April 7, 2020, people in B-unit barricaded themselves in their cells and that the correctional officers brought in McDonald's food to try to calm them down.

12. Adding to the tension is that that people are just taken off the unit without any explanation, creating confusion and uncertainty. Additionally, there was mention of staff taking the temperatures of people in the unit, and then telling those individuals what their temperature were in front of other individuals. These actions have the potential to create conflict in the unit. If other prisoners have access to this medical information, it could lead to stigma or violence against an individual whose temperature may be symptomatic of COVID-19.

13. I have also received numerous calls and voicemails from family and friends of people at MCC-MSU, who are very concerned about their loved one's safety in light of transmission of COVID-19 in the facility.

DATED this 8th day of April, 2020 at Seattle, Washington.



Julia Bladin
Columbia Legal Services

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Respondents.

**SUPPLEMENTAL DECLARATION OF PETITIONER TERRY
KILL**

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I, Terry Kill, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge:

1. My birthday is October 1, 1967

2. I am over the age of 18 and competent to testify as to the contents of this declaration.

3. I am a petitioner in this matter.

4. I am currently in DOC custody at the Monroe Correctional Complex – Minimum Security Unit. I currently reside in A-Unit

5. **Initial Outbreak and Quarantine:** On Friday, April 3, 2020, DOC placed four people from B-Unit in quarantine in A-Unit. Doc put these four people on an empty tier. These residents used JPay and the phones on their first day, but they haven't come back out since then to my knowledge.

6. One inmate was pulled out of B-Unit and taken to the Inmate Services Building. They tested him and took him away. There were four other guys in pumpkin suits that were taken away.

7. On Sunday evening, April 5, 2020, somebody from B-Unit came over to A-unit an complaining of chest pains. He was sent back to B-Unit. DOC staff came in and tested him for COVID-19, and his test came

back positive. That night, both A-Unit and B-Unit were locked down and we received a memo that someone had tested positive for the virus.

8. DOC talked to tier reps about the positive test and they passed it on to prisoners. There has been a daily update, but we have not been getting updates on who is sick and who is not.

9. On Monday morning, April 6, 2020, A-Unit got to come off their tiers, and B-Unit stayed on quarantine that day. Then B-Unit started acting out in response – tearing signs off doors that said they were supposed to stay in quarantine, running around in the hallways, and not listening to staff. The correctional program manager (CPM) came in and calmed them down.

10. DOC eased up on the quarantine that same day. Inmates who were supposed to be in quarantine were out spraying door handles, etc. People were allowed out in breezeway which is a common area between the two units that separates A- Unit and B-Unit. But residents in both units have been using that area at the same time, as it is the only entry/exit that are being used to both units. So really, people from A and B Units have been in contact with each other since the quarantine started.

11. On Monday, April 6, 2020, B-Unit inmates came over into A-Unit to use the A-Unit communal ice chest, which is incredibly insane.

12. That night, B-Unit got to go to the gym, and then A-Unit went in right behind them. The people who don't care/don't think this is a big deal went into the gym and went back to A-Unit.

13. B-Unit is no longer under quarantine, but they are separated from the other units with their activities. However, people from B-Unit are still being allowed to come from B-Unit to A-Unit, which they shouldn't be. DOC has said this is not allowed, but they are not enforcing this. Also, DOC is sending people from A-Unit to both A and B-Units to clean up messes or grab laundry bags. The guards are requiring people to go over there despite prostrations from other residents.

14. I heard on that D unit was locked down, but I am not sure if they are still locked down or not, considering both B-Unit and D-Unit are supposed to be locked down. They pulled all inmates from D-Unit out of the kitchen and locked them down in the unit.

15. There are 119 people in B-Unit, and A-Unit has 50-52. We are living on top of each other. Having lots of people coughing and sneezing is creating a lot of irritability and frustration. Forcing everyone to stay contained in those conditions can result in violence.

16. **Social Distancing:** I have been avoiding a lot of areas at the prison. I quit working in the kitchen because of the social distancing

issue. I only go to the dayroom to check my kiosk and have to go to the phone 2-3 times per day.

17. I try to do my best to social distance but it is almost impossible. Phones are about 2 feet apart from each other with a ¼ piece of plexiglass as a partition. The phone mouthpiece is not easily sanitizable. I avoid the gym, try to go to bathrooms only when there are not a lot of people in there. They remain very close quarters.

18. Everyone still has access to the same shared spaces, like the breezeway, patio, gym, and the yard. They've been rotating yard and gym time between the units, but everyone is still using the same common spaces and engaging in the same activities, with many people all together.

19. They are still allowing handball games to take place in the gym, which can be 2-4 people playing at a time.

20. I have heard they are considering increasing the number of people in the dayroom from 10 to 15 people. With 10 people there is already not enough space to address social distancing, and 15 people at a time would be very dangerous.

21. In response to COVID-19, DOC bought board games for people in the unit, which actually increases the proximity between people and opportunities to spread the disease, as these games require two or

more people to play within close proximity of each other while talking, coughing, etc.

22. DOC has significantly dropped the dining room activity down. They first started by limiting the number of people in the chowhall at a time, but we were still required to sit together (I tried to sit at a table by myself, but they wouldn't let me.) Starting today (Wednesday, 4/8), they stopped having us eat in the chowhall. They now send us down to the chowhall 12 at a time and we pick up our meals and return with them to our living units.

23. Since the first positive test, I have been hyper aware and becoming more and more stressed. I only have one surgical mask that I cannot clean, and the attitude and morale around me is deteriorating. People are getting more agitated. I think they are getting ready to lock us all down and keep us in our units, which is going to create all kinds of problems. So now I am concerned about COVID, but also violence. That is creeping up around here.

24. **Sanitation:** DOC has been sending people over from A-Unit which is not on quarantine, to B-Unit which is supposed to be quarantined.

25. The cleaning practices practices within my unit remain poor, at best.

26. They implemented a new group of inmates to clean gym after every use. I am not sure how effective that will be given

27. We continue to receive Hepastat to clean. Hepastat is supposed to “set” before wiping it off a surface, but people are using Hepastat by just spraying and wiping immediately, which is not effective.

28. When bleach is used, there are leaving dried bleach on phones, toilet surfaces, and not wiping it down. Nothing is really being thoroughly cleaned.

29. **Health and Safety Measures:** I know that at least three people have been diagnosed with COVID-19, and I believe two other as well. DOC has been moving sick people from MSU and placing them into close observation cells in the Special Offenders Unit (SOU) or in isolation at the IMU Violators Unit. DOC says they’re taking care of them, but I’m concerned that they are not taking adequate care of the people who are ill or rounding on them as often as necessary, especially given how DOC has handled cross-contamination issues here in MSU.

30. I received a surgical mask on Monday, which I have been using. DOC has not distributed any masks, but I was able to get one from another inmate at work. Most of the 27 people on my tier got surgical mask, but most people in A-Unit do not have them.

31. One officer told an inmate from A-Unit to go to B-Unit to do work. He said he couldn't because he didn't have a mask. He was yelled at and DOC threatened to take his job if he didn't go over there.

32. Not everyone is being screened or tested for the virus.

33. People who have compromised immune systems are not getting proper care. For instance, there is one inmate who is continually coughing and has a history of tuberculosis, but DOC has not taken them to get an X-ray.

34. On Tuesday night, April 7, 2020, the MCC Superintendent went into B-Unit with the CPM and around four officers, carrying a bunch of boxes. I heard from my tier rep and other residents that they passed out McDonald's to all of the residents in B-Unit. I haven't talked to anyone directly in B-Unit, because I am trying to avoid close contact.

35. On Wednesday morning, April 8, 2020, they took away phone access until 8:00 AM. I believe this was because there were around 20 Washington State troopers as well as a bunch of media out on the hill.

36. My wife, with family members of other people here in Monroe, has been outside picketing, wanting to get DOC to take action to keep us safe.

37. I'm really concerned about what it's taking to get DOC to take action. There are fewer staff on site. More and more people are

getting sick and not enough is happening to keep people safe. DOC is trying to improvise as they go.

I am unable to sign this document as it was prepared in Seattle, Washington, but I have had it read to me over the telephone and authorize Laurel Simonsen to sign it on my behalf.

DATED this 8th day of April, 2020 at Seattle, Washington.

/s/ Laurel Simonson

Terry Kill, by Laurel Simonson, WSBA #47904

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BY SUSAN L. CARLSON
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CERTIFICATE OF SERVICE

I certify that on the date below, I electronically filed: 1) Petitioners' Emergency Motion For Accelerated Review, for Appointment of a Special Master, and for Immediate Relief, 2) Supplemental Declaration of Terry Kill, and 3) the Declaration of Julia Bladin, 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 9th day of April 2020, at Tacoma, WA.

s/ Maureen Janega
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COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

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Comments:

Emergency Motion to Accelerate Review, for Appointment of Special Master, and for Immediate Relief

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