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SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, et al.,

Petitioners,

v.

JAY INSLEE, et al.,

Respondents.

**RESPONDENTS' BRIEF IN RESPONSE TO BRIEFS OF AMICI
CURIAE**

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE3

III. ARGUMENT4

 A. Amici Do Not Address the Legal Requirements for
 Mandamus.....4

 B. Amici Supporting Petitioners Advocate a Policy Position
 that Disregards Public Safety, Victims’ Rights, and
 Community Health.....9

 1. An Order Directing the Large-Scale Release
 Petitioners Seek Would Jeopardize Public Safety.....9

 2. The Large-Scale Release Petitioners Seek Would
 Harm Crime Victims12

 3. Releasing the Majority of Incarcerated Individuals in
 Washington State Would Threaten Community
 Health by Overwhelming Local Government Efforts
 to Contain and Mitigate the Impacts of COVID-1914

 C. Like Petitioners, Amici Ignore that Governor Inslee and
 Secretary Sinclair Have Taken Significant, Discretionary
 Action to Mitigate the Risk of COVID-19 to the
 Incarcerated Population17

IV. CONCLUSION20

TABLE OF AUTHORITIES

Cases

<i>Burg v. City of Seattle</i> , 32 Wn. App. 286 (1982)	6
<i>Comm. for Pub. Counsel Servs. v. Chief Justice of Trial Court</i> , __ N.E.3d __, 484 Mass. 431 (2020)	8
<i>Cougar Business Owners Ass'n v. State</i> , 97 Wn.2d 466, 647 P.2d 481 (1982)	7
<i>Disability Rights Montana v. Montana Judicial Districts 1-22, Montana Courts of Limited Jurisdiction, Montana Department of Corrections, and Montana Board of Pardons and Parole</i> , No. OP 20-0189 (Montana Supreme Court April 14, 2020)	9
<i>Kanekoa v. Wash. State Dep't of Soc. & Health Servs.</i> , 95 Wn.2d 445, 626 P.2d 6, 8 (1981)	3
<i>Money v. JB Pritzker</i> , No. 20-CV-2093, 2020 WL 1820660 (U.S. Dist. Ct., N.D. Ill. Apr. 10, 2020)	9
<i>Plata v. Newsom</i> , No. 01-CV-01351, 2020 WL 1908776 (U.S. Dist. Ct., N.D. Cal. April 17, 2020)	8

Statutes

RCW 43.06.220	7
RCW 72.09.214	13

Other Authorities

Cal. Dep't of Corr. & Rehab., April 1, 2020, <i>Monthly Report of Population as of Midnight March 31, 2020</i> , https://www.cdcr.ca.gov/research/wp- content/uploads/sites/174/2020/04/Tpop1d2003.pdf	19
--	----

Ctrs. for Disease Control & Prevention,
Coronavirus Disease 2019 (COVIC-19): Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,
<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Apr. 21, 2020) 5

Penn. Dep’t of Corr. Monthly Population Report as of March 31, 2020,
<https://www.cor.pa.gov/About%20Us/Statistics/Documents/Monthly%20Population%20Reports/Mtptop2003.pdf>..... 19

Prison Law Office,
Dr. Bruce Gage Supplemental Report Regarding COVID-19 Risks in Riverside County Jails, available at: <https://prisonlaw.com/wp-content/uploads/2020/04/20.04.06-Doc-178-1-Exhibits-A-K-to-Norman-Decl.pdf> 5

Ryland Barton, *Unpacking Bevin’s Claims About Kentucky’s Surging Prison Population*, WFPL News Louisville (October 10, 2019)
(<https://wfpl.org/unpacking-bevins-claims-about-ky-surg-ing-prison-population/>)..... 19

Sara Jean Green, *Police, prosecutors and victim advocates worry coronavirus stay-at-home order will cause spike in domestic violence*,
Seattle Times, (Mar. 30, 2020, updated Apr. 7, 2020),
<https://bit.ly/3aki9AM>..... 13

Constitutional Provisions

Wash. Const. art. I, § 35..... 13

I. INTRODUCTION

At issue in this matter is whether the Court may intervene through the extraordinary writ of mandamus to direct the manner in which Governor Inslee and Corrections Secretary Sinclair manage the state's emergency response to the COVID-19 pandemic with respect to prisons. The Governor and Secretary have taken aggressive action to mitigate the risk the virus presents to the incarcerated population. These efforts have included implementing all Centers for Disease Control COVID-19 guidelines, drastically reducing the community custody violator population in prisons, and targeted rapid releases of non-violent and medically vulnerable individuals whose release dates are within eight months. These actions take into account the vital public health and safety concerns raised by amici supporting Respondents, which include law enforcement, local authorities, and nonprofit organizations advocating for vulnerable populations, such as Legal Voice and the Sexual Violence Law Center.

Despite the fact that the infection rate within the incarcerated population remains significantly lower than in the broader community, Petitioners and amici curiae who support them are not satisfied with the Governor's and Secretary's efforts. They narrowly focus on mass prison releases as the only effective option to mitigate the risk. Amici who argue in support of mass releases ignore the law and push their position to the

exclusion of common sense considerations, such as the impact of releases on public safety and crime victims; the availability of housing, employment, and other critical safety net supports; and the possibility that individuals released may actually be more at risk of contracting the virus in the community than in prison.

Amici who oppose mass prison releases highlight these important considerations. As victims' rights advocates, law enforcement, prosecutors, and representatives of county government, these amici provide a real world assessment of the relief Petitioners seek. The problems they identify illustrate exactly why crisis management is a uniquely executive branch function. Circumstances evolve rapidly, resource restraints necessitate prioritization, and competing interests require difficult decisions. Subject only to mandatory statutory duties, the Governor and Secretary have the discretion to balance competing positions, such as those represented by these amici, and choose a course of action they deem most appropriate. Petitioners and the amici supporting them have not shown that the Governor or Secretary violated any mandatory lawful duty in managing the COVID-19 crisis. "[T]he remedy by mandamus contemplates the necessity of indicating the precise thing to be done. It is not adapted to cases calling for continuous action, varying according to circumstances, inasmuch as a command to act according to circumstances would be futile." *Kanekoa v.*

Wash. State Dep't of Soc. & Health Servs., 95 Wn.2d 445, 450, 626 P.2d 6, 8 (1981). Judicial intervention is not appropriate here.

II. STATEMENT OF THE CASE

Petitioners in this action seek a writ of mandamus directing Governor Inslee and Secretary Sinclair to immediately release more than 11,700 incarcerated individuals—nearly two-thirds of Washington’s prison population—to mitigate the risk of COVID-19 to the incarcerated population. In extensive reports to the Court, Governor Inslee and Secretary Sinclair have shown the aggressive action they and the Washington Department of Corrections (DOC or Department) have taken to mitigate the risk of COVID-19 to the incarcerated population. Advocacy groups, law enforcement, and local government have filed amici curiae briefs in support of and in opposition to Petitioners’ claims.

As identified and grouped in the briefs filed, amici supporting Petitioners are: (1) Amici Curiae Fred Korematsu Center for Law and Equality, American Civil Liberties Union of Washington, Public Defender Association, and Washington Innocence Project (collectively “Korematsu”); (2) Amici Curiae Seattle Chapter of the National Lawyers Guild, Washington Defender Association, and Washington Association of Criminal Defense Lawyers (“National Lawyers Guild”); (3) Amici Curiae COVID-19 Mutual Aid Seattle, Community Passageways, and Surge

Reproductive Justice (“COVID-19 Mutual Aid”); (4) Amici Curiae Pioneer Human Services, Seattle/King County Coalition on Homelessness, Revive Reentry Homes & Services, and the Star Project (“Pioneer”); (5) Amici Curiae Public Health and Human Rights Experts (“Public Health”); and (6) Amicus Curiae Disability Rights Washington (“DRW”).

Amici opposing Petitioners claims, or the specific relief Petitioners seek, are: (1) Amici Curiae Sexual Violence Law Center, Legal Voice, King County Sexual Assault Resource Center, Organization for Prostitution Survivors, Anderson, York & Stratton, PC, Lifewire, Northwest Justice Project, and National Crime Victims Law Institute (“Sexual Violence Law Center”); (2) Amicus Curiae Washington Association of Prosecuting Attorneys (“WAPA”); (3) Amicus Curiae Washington Association of Sheriffs and Police Chiefs (“WASPC”); (4) Amicus Curiae Washington State Association of Counties (“WSAC”); and (5) Amicus Curia South Correctional Entity (“SCORE”).

Respondents in this brief address the issues and arguments amici curiae raise in support of Petitioners’ request for a writ of mandamus.

III. ARGUMENT

A. Amici Do Not Address the Legal Requirements for Mandamus

The law governing when this Court will exercise its original jurisdiction to issue the extraordinary writ of mandamus is well established,

but amici who support Petitioners largely ignore it. The COVID-19 Mutual Aid, Public Health/Human Rights Experts, and Pioneer Human Services briefs cite no legal authority at all.¹ They therefore do not rebut Respondents' argument that mandamus is not available here. *See* Brief of Respondents at 22-27. The only legal authority Disability Rights Washington (DRW) cites addresses solitary confinement under the Eighth Amendment; they do not address how mandamus (or any other relief) could compel the unprecedented relief Petitioners seek. DRW Brief at 14-15.² The Korematsu Brief argues that mandamus is proper to enforce constitutional rights, and asserts that "the record establishes cruel punishment," but the brief lacks any facts or legal analysis to support that contention. Korematsu

¹ COVID-19 Mutual Aid Brief at ii-iv; Public Health Brief at ii-iv; Pioneer Brief at 8-14.

² DRW equates medical isolation and solitary confinement and argues DOC is harming individuals by isolating them. This contention ignores that isolation of suspected or confirmed COVID-19 cases is a Centers for Disease Control (CDC) recommendation. "Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission." Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Apr. 21, 2020). DRW also misleadingly cites a statement from Bruce Gage, M.D. Dr. Gage is a court appointed monitor in a proceeding involving the Riverside County jails. He also is the Chief of Psychiatry for the Washington Department of Corrections. As DRW notes, Dr. Gage explained in a recent report in the Riverside County proceedings that medical isolation of COVID-19 inmates can be harmful. What DRW neglected to point out is that Dr. Gage also stated in his report that strategies exist to mitigate the harm, and that the Department had implemented the strategies and found them helpful. *See* Prison Law Office, *Dr. Bruce Gage Supplemental Report Regarding COVID-19 Risks in Riverside County Jails*, available at: <https://prisonlaw.com/wp-content/uploads/2020/04/20.04.06-Doc-178-1-Exhibits-A-K-to-Norman-Decl.pdf>.

Brief at 14-16. Last, the National Lawyers Guild brief focuses at length on the origins of the state's special duty to protect individuals in its custody, but omits any discussion of how the existence of that duty permits enforcement of the relief sought by Petitioners through mandamus (or any other remedy).

To the extent amici offer any rationale for the relief Petitioners seek, it appears to be that the urgency of the situation justifies an exception to the rules governing mandamus. No case law supports such an exception, and courts have declined to apply mandamus in situations where no mandatory duty existed, even when the circumstances were extreme. For example, in *Burg v. City of Seattle*, 32 Wn. App. 286 (1982), the court reversed a trial court writ of mandamus directing a city to repair a public road that washed out during a landslide and provided the only access to the petitioners' homes. The court concluded that the decision whether to repair the public road was discretionary and could not be ordered through mandamus because it would involve "countless decisions regarding the exercise of judgment and discretion," including "[s]election of the type or method of repair, valuation of feasibility studies, acceptance of cost estimates in light of funds available, and the competing demands for street repair." *Id.* at 292.

Similarly, decisions about whether and when to release incarcerated individuals during the COVID-19 pandemic are inherently discretionary,

for good reason. They require careful balancing of many important interests, including the dangerousness of individuals considered for release, the safety and wellbeing of victims, the availability of critical reentry resources, and the impact on local government and the already strained community health system. These considerations are uniquely within the prerogative of the executive branch. As the prosecutors point out in their brief, Washington's constitution and laws assign to the Governor exclusive authority and full discretion to commute sentences. WAPA Brief at 13 (citing Wash. Const. art. III, § 9; RCW 10.01.180). Moreover, the Governor's emergency powers are similarly, and necessarily, discretionary. RCW 43.06.220 (authorizing but not mandating emergency powers); *Cougar Business Owners Ass'n v. State*, 97 Wn.2d 466, 476, 647 P.2d 481 (1982) (emergency proclamation falls within the Governor's discretionary powers).

As this Court recognized in *Cougar Business Owners*, there are sound reasons that discretionary emergency powers rest with the executive:

In times of natural catastrophe or civil disorder, immediate and decisive action by some component of state government is essential. The legislative police power can of course be exercised to deal with crises affecting the public health, safety, and welfare. In practice, however, the ravages of nature and the exigencies of rioting, labor strife, and civil rights emergencies usually necessitate prompt governmental response. Since the executive is inherently better able than the legislature to provide this immediate response, state chief executives have frequently been given substantial discretionary authority in the form of emergency powers to

deal with anticipated crises. Consequently, when public emergencies arise, the center of governmental response is usually the governor's office.

Id. (citations and internal quotations omitted). Decisions regarding how many incarcerated individuals should be released in response to the COVID-19 crisis, and which factors should be used to determine the categories of persons released, fall squarely within the discretionary powers of the Governor and Corrections Secretary. There is no mandatory, ministerial duty the Court may compel through mandamus to order the Governor and Secretary to ignore the essential balancing of interests involved in these decisions, and instead to immediately release more than half of Washington State's prison population. Amici fail to show otherwise.

And although amici seek to draw the Court's attention to the worst-case scenarios faced by some other states, they fail to show any instance across the nation in which a court has ordered relief comparable to that sought here. To the contrary, in recent weeks courts have rejected claims seeking court-ordered, mass releases of incarcerated individuals prompted by the COVID-19 pandemic.³

³ *Plata v. Newsom*, No. 01-CV-01351, 2020 WL 1908776 (U.S. Dist. Ct., N.D. Cal. April 17, 2020) (declining to find California Department of Corrections and Rehabilitation officials deliberately indifferent in violation of the Eighth Amendment); *Comm. for Pub. Counsel Servs. v. Chief Justice of Trial Court*, __ N.E.3d __, 484 Mass. 431 (2020) (denying request to order release of convicted and incarcerated individuals, acknowledging the court's limited superintendence powers absent a constitutional

B. Amici Supporting Petitioners Advocate a Policy Position that Disregards Public Safety, Victims’ Rights, and Community Health

Respondents share amici’s concern for the safety and well-being of individuals in state custody. That concern underlies DOC’s comprehensive response to the COVID-19 pandemic. However, by advocating for mass releases as the only acceptable option to protect incarcerated individuals, Petitioners and amici ignore the very real consequences of the relief they seek on public safety, crime victims, and community health.

1. An Order Directing the Large-Scale Release Petitioners Seek Would Jeopardize Public Safety

Amici supporting Petitioners disregard completely the impact to public safety of the releases Petitioners seek. Five of the six amicus briefs supporting Petitioners fail to mention the subject at all. The one brief that acknowledges a threat to public safety does so dismissively, accusing Respondents of attempting “to stoke fear by focusing on the tiny percentage of people in custody who have committed highly publicized crimes or could present an immediate and serious threat to the community....” DRW Brief at 10. DRW and the other amici supporting Petitioners are not experts in

violation); *Money v. JB Pritzker*, No. 20-CV-2093, 2020 WL 1820660 (U.S. Dist. Ct., N.D. Ill. Apr. 10, 2020) (denying preliminary injunction motion seeking release of one-third of Illinois prison population); *Disability Rights Montana v. Montana Judicial Districts 1-22, Montana Courts of Limited Jurisdiction, Montana Department of Corrections, and Montana Board of Pardons and Parole*, No. OP 20-0189 (Montana Supreme Court April 14, 2020).

risk assessment or public safety; they cannot advise the Court on public safety and do not even attempt to do so. However, the law enforcement authorities who are experts in public safety can and have spoken to the implications of Petitioners' proposed mass releases, and the risks they identify are real and considerable.

A large-scale prison release of the groups of individuals identified by Petitioners will cause a large increase in recidivist crime. WAPA Brief at 6. Under normal circumstances, 21 percent of violent offenders and 37 percent of high violent offenders (those at high risk to offend violently) recidivate within three years of release. As WAPA points out, Petitioners Rhone and Duncan are prime examples of this, with Rhone receiving life without parole after committing four strike offenses, and Duncan committing 43 crimes in 21 years. WAPA Brief at App. 18-20, 31-32. WASPC similarly cautions against the one-size-fits-all mass release process sought by Petitioners, and stresses the importance of individualized decision making that takes into account public safety. WASPC Brief at 2-4. As they note, “[a]ssuming recidivism rates remain the same or rise due to reduced support, a sudden mass release would increase the number of new crimes committed, creating public safety concerns.” WASPC Brief at 4.

There is good reason to believe that mass prison releases during the COVID-19 crisis would result in even higher recidivism rates than usual.

Unemployment rates are at record levels and high unemployment correlates with increased crime. WASPC Brief at 18. People with a history of incarceration are seven times more likely to experience homelessness than the un-incarcerated, and the lack of stable support systems can put formerly incarcerated people back into circumstances that led to their offending. WSAC Brief at 5; Declaration of Kristen Jewell (submitted with the WSAC Brief) ¶¶ 7-10. This is of particular concern to local law enforcement, which already is experiencing resource constraints from the isolation and quarantine of officers, National Guard call-ups, and an increase in domestic violence calls statewide. WASPC brief at 18-19.

If the assumption underlying amici's support of Petitioners' requested mass release is that the individuals sought to be released are not dangerous, they are wrong. Of the 11,715 individuals who fall within the three classes Petitioners seek to be released, 5,272 have committed serious violent offenses such as murder, assault, and rape; 1709 are under Indeterminate Sentence Review Board jurisdiction for a serious pre-1984 Sentence Reform Act offense or a sex crime; 470 are serving life without the possibility of parole; and 610 have serious mental illness. Respondents' Court Record, App. C at 3-4. Far from the "tiny percentage" Amici DRW suggests, these thousands of violent offenders, if released into the community, would almost certainly cause more crime and new victims. As

noted by amici victim rights advocates: “It is irresponsible to request release of incarcerated individuals without considering their criminal history, the underlying crime for which they are currently incarcerated, or assessment of risk.” Sexual Violence Law Center Brief at 3. Although Petitioners and amici concede at least some individuals are too dangerous to release, they propose no method for making individual exceptions to the broad relief they seek. Such exceptions, of course, would require the exercise of discretion.

2. The Large-Scale Release Petitioners Seek Would Harm Crime Victims

It is hard to overstate the harm to crime victims that Petitioners’ proposed releases would cause, harm that is powerfully set forth in the briefs and victim statements submitted by the Sexual Violence Law Center, Legal Voice, King County/Seattle Sexual Assault Resource Center, Lifewire, and the Northwest Justice Project, as well as by WAPA. But the amici who support the releases completely ignore victims’ perspectives. And the immediate, mass releases they and Petitioners propose would effectively deny victims a voice, given that locating victims takes time, even under normal circumstances. As WAPA explains in its brief: “Petitioner’s April 13th motion for release pending final determination sent agencies scrambling to locate the victims of the five named Petitioners. Given the

short time permitted and pandemic conditions, agencies have been largely unsuccessful.” WAPA Brief at 9.

Under the Washington Constitution, crime victims have the right to make a statement during judicial proceedings where the court is considering the defendant’s release. Wash. Const. art. I, § 35. Also, by statute, victims of violent crimes, sex crimes, and domestic violence protection order violations have the right to 30-day notice before the perpetrator is released from confinement. (RCW 72.09.214). As explained in the Sexual Violence Law Center Brief, these rights are critical not only to give victims a voice regarding their own safety, but also to allow sufficient time for safety planning and access to services before the perpetrator’s release. Sexual Violence Law Center Brief at 10-12; WAPA Brief at 8-9. News accounts have detailed the concerns of law enforcement and victim advocates about the rise in domestic violence during the high stress and forced proximity caused by COVID-19 and the associated stay-at-home orders.⁴ An order directing the releases of persons convicted of violent crimes, without sufficient opportunity for their victims to protect themselves, during a crisis when access to the courts and even the most basic services is already limited, would eviscerate these protections and place victims in immediate

⁴ See, e.g., Sara Jean Green, *Police, prosecutors and victim advocates worry coronavirus stay-at-home order will cause spike in domestic violence*, Seattle Times, (Mar. 30, 2020, updated Apr. 7, 2020), <https://bit.ly/3aki9AM>.

danger. “[A] release of thousands into a world of shuttered courts, public services, and businesses, and exhausted and infected first responders poses an exponentially greater danger to victims.” WAPA Brief at 9.

The harm to victims is not hypothetical—it already is occurring. The accounts of trauma and fear in the statements gathered by the prosecutors and victims’ rights advocates are heartbreaking and cannot be lost in these proceedings. *See* Appendix to Sexual Assault Law Center Brief (compiling victim statements that describe horrific crimes and the very real fears Petitioners’ request has caused). Victims of attempted murder, assault, rape, and domestic violence should not have to worry that their assailants will be ordered released, in disregard of their safety, without even the opportunity to make their voice heard. As one victim stated: “The impact of COVID-19 is devastating, but to think that the person who killed the father of my children could go free because of it is something that never, ever crossed my mind.” Re: Isaac Zamora, Victim Impact Statement of Joann Kennedy.

3. Releasing the Majority of Incarcerated Individuals in Washington State Would Threaten Community Health by Overwhelming Local Government Efforts to Contain and Mitigate the Impacts of COVID-19

Amici Pioneer Human Services, Seattle/King County Coalition on Homelessness, Revive Reentry, and the Star Project concede that the COVID-19 pandemic has strained existing safety net resources for

individuals releasing from prison. Pioneer Brief at 1-4. They further agree that a “well-funded, robust network of reentry services is a vital component in ensuring the safety and security of our communities during the COVID-19 pandemic.” Pioneer Brief at 4-5. Nevertheless, despite this lack of resources critical to ensuring public safety, amici urge the Court to order the release of two thirds of the state prison population into Washington communities. They argue the resources needed to accomplish this “depopulation” of prisons are available if the state simply redirects money appropriated for incarceration to community reentry. While reentry services are important—supporting incarcerated individuals as they transition back into the community is priority work for DOC—a policy decision to depopulate prisons and shift funds away from incarceration and to community services is one for the legislature, not the courts. Appropriating funds is a legislative prerogative.

The reality of the mass releases Petitioners seek is that they would “overwhelm counties’ efforts to contain and mitigate the impacts of COVID-19 and escalate threats to the health and lives of individuals in communities and to the inmates who are released.” WSAC Brief at 3. Kristen Jewell, chair of the Washington State Advisory Council on Homelessness, describes in stark terms the homelessness crisis in our state. Local governments are unable to meet current demands for services, let

alone the sudden need for housing and other social safety net programs that would arise with the release of thousands of inmates into local communities. *See generally* Jewell Decl. (filed with the WSAC Brief). Moreover, as explained by Spokane and Asotin County Health Officer Dr. Bob Lutz, “[t]he release of many prisoners at once, many of whom have underlying health conditions, would put at risk public health officials’ response to COVID-19 as well as threaten the success of nonpharmaceutical measures in reducing the impact to the health care systems.” Declaration of Bob Lutz, M.D., M.P.H. (filed with the WSAC Brief) ¶ 9.

The notion that releasing thousands of individuals from prison, without adequate housing or resources, would somehow protect them from COVID-19, ignores the reality that the virus is widespread in the community, and especially among the homeless population. WSAC Brief at 12. “The sudden introduction of non-infected individuals whose social service needs cannot be met and who do not have the ability to socially distance will increase their potential for being infected by COVID-19.” Lutz, M.D., Decl. ¶ 16.

The financial impact of mass releases would also fall heavily on counties, who already are straining to meet COVID-19 emergency response needs in the face of rapidly falling tax revenues. WSAC Brief at 17-20. Counties are expending funds not appropriated in their annual budgets to

address the emergency created by the pandemic. A sudden influx of formerly incarcerated individuals in need of safety net services would exacerbate an already dire fiscal situation for counties and other local governments. *See generally* Declaration of Trisha Logue and Declaration of Gary Rowe (filed with the WSAC Brief).

C. Like Petitioners, Amici Ignore that Governor Inslee and Secretary Sinclair Have Taken Significant, Discretionary Action to Mitigate the Risk of COVID-19 to the Incarcerated Population

Petitioners' and some amici's narrow focus on mass releases as the only acceptable option to mitigate the risk of COVID-19 to the incarcerated population ignores the many significant actions the Governor and Secretary have taken. Respondents presented that work in detail to the Court in their reports filed on April 13 and 17, 2020. At a high level, the Department's response has included implementing all Centers for Disease Control COVID-19 recommendations for correctional facilities, mandating the use of face coverings by all staff and incarcerated individuals, and reducing the incarcerated population where releases can be done safely, taking into account a range of considerations, including the vital public health and safety concerns discussed above. Though Petitioners and Amici do not acknowledge it, the Department's COVID-19 response has been successful.

The infection rate within the incarcerated population thus far is significantly lower than the infection rate in the broader community. WSAC Brief at 17.

Instead of addressing the situation here in Washington, the Korematsu brief highlights worst-case scenarios in other states, and the National Lawyers Guild brief pushes the nonsensical fallacy that because jailers in New Orleans abandoned inmates during Hurricane Katrina and then tried to cover up their actions, the Court should expect the same of Respondents here. Korematsu Brief at 4-8; Nat'l Lawyers Guild Brief at 8-9. The Court should recognize these arguments for what they are—distractions from the relevant analysis.

The relevant analysis should focus on the steps Respondents have taken to mitigate the risk of COVID-19 to the incarcerated population, including Governor Inslee's emergency proclamation and commutation order authorizing the release of approximately 1,100 individuals from the state's prison population of approximately 18,000. Resp't Suppl. Report at 13-17. Amici offer loose comparisons with several other states that ordered inmates released to support their assertion that Washington has not done enough. Amici fail to demonstrate the relevance of other states' experiences here, but in any event, the comparisons undermine rather than prove their point. Washington compares favorably with the other states' actions described by amici. For example, amici point out that California Governor

Newsom authorized the accelerated release of 3,500 prisoners who were serving time for nonviolent crimes. Korematsu Brief at 13. Considering that California’s prison population was 116,886 on March 31, 2020,⁵ the releases Governor Inslee authorized last week are, per-capita, far greater than those ordered in California. Those releases, combined with DOC’s reduction of its average daily violator population by approximately 1,200, represent a 12 percent overall reduction in Washington’s prison population. In contrast, Governor Newsom’s order represents about 3 percent of the California prison population. Similarly, Kentucky’s release of 929 inmates (3.9 percent of KY’s prison population of 24,000⁶) and Pennsylvania’s release of up to 1,800 (3.8 percent of PA’s prison population of 46,882⁷), both cited by amici supporting Petitioners, are substantially smaller reductions than those occurring here.

While Petitioners and amici who advocate for prison “depopulation” may ignore or disagree with Respondents’ approach, they identify no legal basis to find that it is constitutionally inadequate, much less to compel the

⁵Cal. Dep’t of Corr. & Rehab., April 1, 2020, *Monthly Report of Population as of Midnight March 31, 2020*, <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/04/Tpop1d2003.pdf>

⁶ Ryland Barton, *Unpacking Bevin’s Claims About Kentucky’s Surging Prison Population*, WFPL News Louisville (October 10, 2019) (<https://wfpl.org/unpacking-bevins-claims-about-ky-surg-ing-prison-population/>).

⁷ Penn. Dep’t of Corr. Monthly Population Report as of March 31, 2020, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Monthly%20Population%20Reports/Mtpop2003.pdf>.

state to ignore the complex public health and safety concerns at issue and instead adopt Petitioners' requested approach. Notably, Washington's incarceration rate is among the lowest in the nation. Although amici nonetheless express broad-based policy concerns about state criminal justice policies unrelated to COVID-19, these positions are best directed to the legislature. They cannot serve as a basis for an order directing the Governor and Secretary to respond to this unprecedented public health crisis by immediately releasing a majority of incarcerated individuals in Washington State. Properly exercising their discretion, Governor Inslee and Secretary Sinclair have taken significant and decisive action to protect the incarcerated population during this statewide emergency, including the targeted release of incarcerated individuals. There is no legal basis for the relief Petitioners seek.

IV. CONCLUSION

Governor Inslee and/or Secretary Sinclair respectfully request that the Court deny mandamus.

RESPECTFULLY SUBMITTED this 21st day of April 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the Respondents’ Brief in Response to Briefs of Amici Curiae to be electronically filed with the Clerk of the Court, which will send notification of such filing to the following parties and all other attorneys of record not specifically listed below.

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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.

DATED this 21st day of April 2020 at Olympia, Washington.

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