

Multiple Documents

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DAVID DIXON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:19-CV-0112 AGF
)	
CITY OF ST. LOUIS, et al.,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE RENEWED MOTION FOR
PRELIMINARY INJUNCTION, TO FILE OVERLENGTH BRIEF, AND FOR
EXPEDITED BRIEFING**

Plaintiffs hereby request that this Honorable Court grant them leave to file a Renewed Motion for Preliminary Injunction in light of Defendants' continued unconstitutional practices and the COVID-19 pandemic, as summarized below and explained more fully in the attached Renewed Motion. Plaintiffs also seek leave to exceed the default 15-page limit under the Local Rules for the Memorandum in Support of the Renewed Motion. The Renewed Motion is attached as Exhibit 1 to this Motion, and the Memorandum is attached as Exhibit 2. Finally, because of the imminence of the threat to class members, Plaintiffs request that this Court order expedited briefing and direct Defendants to file any response by April 3, 2020, and Plaintiffs to file any reply by April 6, 2020.

In support of this request, Plaintiffs state as follows:

1. On June 11, 2019, this Court issued a preliminary injunction enjoining Defendant Commissioner of Corrections Dale Glass from detaining any individual on monetary release conditions unless the order imposing such conditions was accompanied by a finding, made after an opportunity for the individual to be heard, that such detention was necessary. *See* ECF No. 95 at 33-34; *see also* ECF No. 112 (modifying temporal terms of the preliminary injunction). In the same order, the Court certified a class of "all arrestees who are or will be detained in [St. Louis City's jails] . . . post-

arrest because they are unable to afford to pay a monetary release condition.” ECF No. 95 at 33.

2. Defendants appealed the preliminary injunction to the Eighth Circuit on June 13, 2019, and the Eighth Circuit granted Defendants’ motion for a stay pending appeal.

3. During the nine days that the preliminary injunction was in force, however, 119 people—who were being detained solely because they could not afford the monetary conditions of their bail—were released from jail in St. Louis City because of the requirements of this Court’s injunction.

4. On February 28, 2020, the Eighth Circuit issued an opinion vacating this Court’s preliminary injunction. The Eighth Circuit instructed this Court to consider principles of comity when evaluating whether the public interest supported an injunction. *See Dixon v. City of St. Louis*, 950 F.3d 1052, 1056 (8th Cir. 2020). The mandate for this ruling issued on March 23, 2020.

5. Plaintiffs now seek leave to file a Renewed Motion for Preliminary Injunction in light of Defendants’ continued practice of detaining recently arrested individuals on unaffordable money bail, the current global pandemic surrounding COVID-19, and the deleterious impact that the virus is expected to have on jail populations.

6. As explained further in the attached Renewed Motion, since this Court’s preliminary injunction and the effective date of amendments to the Missouri Supreme Court’s Rules, Defendants constitutional violations have persisted. The result is that scores of individuals languish in jail each month for no reason other than that they are poor.

7. In addition to all the harms attendant to detention that this Court has previously catalogued, individuals detained behind bars are now at heightened risk of exposure to COVID-19. When the virus enters St. Louis’s jail facilities, it will “spread like wildfire”¹ with the potential to be

¹ *See, e.g.*, Evan Watson, “Coronavirus threat to jails: ‘If it gets in, it’s going to spread like wildfire,’” Mar. 18, 2020, 13newsnow.com, *available at* <https://perma.cc/7A7M-VE33>.

highly fatal. This danger is a result of the close quarters in which people are held, poor sanitation practices, lack of ready access to supplies for hand-washing and other steps to prevent transmission, and sub-standard medical care. The class in this case consists of individuals who are now, or soon will be, at risk of becoming infected with COVID-19 solely because they cannot afford their monetary conditions of release. Exposure to this virus should not be based on one's financial circumstances.

8. The rate at which COVID-19 has spread across the United States and the danger it presents to individuals detained behind bars both provide good cause and changed circumstances for Plaintiffs' request for leave to file this Renewed Motion for a Preliminary Injunction and to file a memorandum in excess of the default page limits. Preventing the unnecessary detention of individuals—reducing crowding in the jail and slowing the impact of COVID-19 in the facility and in the broader community—is strongly in the public interest.

9. Because of the exponential rate at which this virus is spreading throughout the country, Plaintiffs further request an expedited briefing schedule on their Renewed Motion for Preliminary Injunction. Plaintiffs ask that this Court order Defendants to file any response by April 3, 2020, and Plaintiffs will file any reply by April 6, 2020.

For the foregoing reasons, Plaintiffs request that the Court grant this Motion.

Dated: March 30, 2020

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically filed the foregoing Motion for Leave to File Renewed Motion for Preliminary Injunction, to File Overlength Brief, and for Expedited Briefing with the Clerk of the Court for the Eastern District of Missouri using the electronic case filing system, which will send notice to all counsel of record.

Dated: March 30, 2020

/s/ Jacqueline Kutnik-Bauder
Jacqueline Kutnik-Bauder

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PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

For the reasons stated in Plaintiffs' Memorandum in Support of Plaintiffs' Renewed Motion for Preliminary Injunction, Plaintiffs respectfully move this Court to issue a class-wide preliminary injunction against Defendant Commissioner Dale Glass that restrains him from enforcing unconstitutional orders of detention.

Pursuant to Local Rule 78-4.02(B), Plaintiffs request that the Court hold a hearing on Plaintiffs' motion where oral argument and, if necessary, evidence may be presented. In light of the constitutional interests asserted and the importance of the public health crisis at issue, Plaintiffs believe that oral argument is warranted and will aid the Court's disposition of Plaintiffs' motion.

Dated: March 30, 2020

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

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**MENORANDUM IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiffs respectfully move this Court to re-issue a preliminary injunction in this case. When Plaintiffs filed this lawsuit, they challenged Defendants' practice—in violation of the Fourteenth Amendment and the Missouri Supreme Court Rules—of imposing monetary conditions of release that resulted in the detention of hundreds of arrestees without first providing those arrestees a hearing or determining that detention was necessary to advance a compelling state interest. One year and two rounds of amendments to the Missouri Supreme Court Rules later, little has changed. Defendants continue to impose unattainable monetary conditions of release, continue to flout the Constitution and their own court rules, and continue to detain arrested individuals without a meaningful hearing and without adequate justification.

Although the Eighth Circuit vacated the preliminary injunction in this case, it did so only because it concluded that this Court did not fully account for principles of comity in evaluating whether the public interest supported an injunction. Consideration of those principles would not have changed the result. The benefits to the public of an injunction—ending the unconstitutional detention of hundreds of individuals and all the harms to the community that flowed from it—outweighed any resulting tension in federal-state relations.

But whatever the calculus was at the time this Court issued its injunction, the situation now is fundamentally different and leaves no doubt that an injunction would be in the public interest. At this point, Defendants have foregone a year-long opportunity to correct their conduct and bring their practices into compliance with the Missouri Supreme Court Rules and the Fourteenth Amendment. Even more compelling, the current public health pandemic that is spreading throughout St. Louis is at the gates of the city's jails. After COVID-19 infiltrates the jails—widely recognized as “ticking time bombs”—it will exponentially increase the rate of infection in the St. Louis area, to the detriment not only of those affected inmates' health, but also to the entire St. Louis population and its healthcare infrastructure. The requested remedy here would eliminate unnecessary detention that exacerbates the grave danger the virus poses to the public.

Because a preliminary injunction would be in the public interest, and because this Court's earlier ruling resolves the remaining preliminary injunction factors, this Court should grant Plaintiffs' motion.

I. THE PUBLIC INTEREST SUPPORTS AN INJUNCTION BECAUSE DEFENDANT JUDGES CONTINUE TO VIOLATE THE MISSOURI SUPREME COURT RULES AND THE CONSTITUTION

It has long been recognized that jailing someone after conviction solely because of poverty violates the Fourteenth Amendment. “[T]he Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.” *Tate v. Short*, 401 U.S. 395, 398 (1971). Almost 40 years ago, the Supreme Court made clear that a court violates the Fourteenth Amendment where it sentences an individual to imprisonment “simply because he could not pay the fine, without considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making

alternative orders.” *Bearden v Georgia*, 461 U.S. 660, 674 (1983).

Such actions are even more egregious when they involve the detention of pretrial arrestees who are presumed innocent. Several appellate courts have recently held that the detention of a *pretrial* arrestee without meaningful consideration of that person’s indigence or other possible alternative conditions of release is unconstitutional. *ODonnell, ODonnell v. Harris Cty.*, 892 F.3d 147, 160 (5th Cir. 2018) (citing *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (holding that pretrial imprisonment solely because of indigent status violates due process and equal protection); *Brangan v. Commonwealth*, 80 N.E.3d 949, 963 (Mass. 2017); *see also United States v. Leisure*, 710 F.2d 422, 425 (8th Cir. 1983) (“[S]etting of bond unreachable because of its amount would be tantamount to setting no conditions at all.”). This Court and other district courts throughout the country have reached the same conclusion.¹

Defendants do not contest that a person cannot be detained solely due to indigence, or that federal and state law require a prompt and individualized determination of pretrial release conditions. June 11, 2019 Memorandum and Opinion, ECF No. 95 at 26. Their sole factual claim at the time of the original motion for preliminary injunction was that the procedures Defendants used were constitutionally adequate and in compliance with the Missouri Supreme Court Rules. *Id.* at 26. They were not. In fact, this Court found that

¹ *See e.g., Pierce v. City of Velda City*, 4:15-CV-570-HEA, 2015 WL 10013006 (E.D. Mo. June 3, 2015); *McNeil v. Cmty. Prob. Servs., LLC*, 1:18-CV-00033, 2019 WL 633012 (M.D. Tenn. Feb. 14, 2019); *Jones v. City of Clanton*, 215CV34-MHT, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758 (M.D. Tenn. 2015); *Schultz v. State*, 330 F. Supp. 3d 1344 (N.D. Ala. 2018); *Edwards v. Cofield*, 3:17-CV-321-WKW, 2017 WL 2255775 (M.D. Ala. May 18, 2017); *Thompson v. Moss Point*, 1:15CV182LG-RHW, 2015 WL 10322003 (S.D. Miss. Nov. 6, 2015); *Cooper v. City of Dothan*, 1:15-CV-425-WKW, 2015 WL 10013003 (M.D. Ala. June 18, 2015); *Snow v. Lambert*, CV 15-567-SDD-RLB, 2015 WL 5071981 (M.D. La. Aug. 27, 2015).

Defendants showed a pattern of “systemic non-compliance” with the rules. *Id.* at 27 & n. 10.

Since that time, amendments to the Missouri Supreme Court rules governing conditions of release have gone into effect. However, based on over 580 in-person court observations, as well as a review of the bond Orders for the month of February,² *see* Ex. 1, Decl. of Shannon Besch (“Besch Decl.”) ¶¶ 7, 12, it is apparent that Defendants continue to systemically violate arrestees’ constitutional rights and the Missouri Supreme Court Rules.

The Missouri Supreme Court Rules create a clear rebuttable presumption that arrestees should be released pending trial. “A defendant charged with a bailable offense shall be entitled to be released from custody pending trial or other stage of the criminal proceedings.”³ Mo. Sup. Ct. R. 33.01(a). The rules require that an arrestee be released on their own recognizance *unless* the courts finds that “such release will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.” Mo. Sup. Ct. R. 33.01(c). Even when such a finding is made, the court is still required to impose the least restrictive condition or combination of conditions for release. *Id.* The court “*shall* first consider non-monetary conditions,” and only upon a finding that such conditions cannot ensure the appearance of the arrestee or the safety of the community

² Confined Dockets and the related bond orders were pulled for all but one day in February. Plaintiffs’ counsel inadvertently failed to download orders for February 13, 2020. By the time the error was realized, the confined docket was no longer available on Casenet.

³ “The defendant’s release shall be upon the conditions that: (1) The defendant will appear in the court in which the case is prosecuted or appealed, from time to time as required to answer the criminal charge; (2) The defendant will submit to the orders, judgment and sentence, and process of the court having jurisdiction over the defendant; (3) The defendant shall not commit any new offenses and shall not tamper with any victim or witness in the case, nor have any person do so on the defendant’s behalf; and (4) The defendant will comply fully with any and all conditions imposed by the court in granting release.” Mo. Sup. Ct. R. 33.01(b).

can monetary conditions even be considered. *Id.* (emphasis added). Even then, before setting any monetary condition, the court must first consider the arrestee's ability to pay, and the Rules are clear that a monetary condition fixed at more than is necessary to secure the appearance of the defendant at trial or the safety of the community "is impermissible." *Id.*

Further, any determination regarding bail must be based on the individual circumstances of the arrestee and the case, including the following factors:

Based on available information, the court *shall* take into account: the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, including ability to pay, character, and mental condition; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; whether the defendant was on probation, parole or release pending trial or appeal at the time the offense for which the court is considering detention or release was committed; and any validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

Mo. Sup. Ct. R. 33.01(e) (emphasis added).

Defendant Judges continue, just as at the time this action was filed, to regularly set cash bond amounts in a manner that violates both the Constitution and the Missouri Supreme Court Rules. Between July 1, 2019, and December 11, 2019, court observers witnessed over 580 detention hearings.⁴ In 72 percent of the hearings that resulted in a cash bond being imposed, judges set the cash bond amounts either without obtaining any

⁴ Plaintiffs implemented a court observation program in spring 2019. After the Court issued its Preliminary Injunction, Plaintiffs significantly expanded their court observation program. Court observers included a combination of ArchCity Defenders' staff, legal interns, and undergraduate interns. *See* Ex. 1, Besch Decl. ¶ 3. Court observers sat in the courtroom and contemporaneously documented specific information about what was said during each hearing, including but not limited to: the individual's name and case number, the bond at the beginning and end of the hearing; and whether the judge obtained any information about the person's ability to pay a cash bond, the individual's employment status, the individual's housing situation or dependents, and the individual's physical or mental health. *See id.* ¶ 5. In addition, initial hearing dockets were pulled for all but one day in February, along with the related initial appearance orders. *See supra* n.2.

information about the individual's ability to pay or above what the evidence in front of the judge showed the person could pay. Ex. 1, Besch Decl. ¶ 7. More specifically, in 23 percent of those cases, judges set a cash bond amount without any consideration of an individual arrestee's financial circumstances or ability to pay. *Id.* In 49 percent of those cases, judges set financial conditions above what the evidence showed the person could pay. *Id.*

These jarring statistics are a result of the manner in which the Defendant Judges have implemented—or, more accurately, contravened—the Rules governing initial appearances. Defendants have systematically undermined the opportunity to be heard that the Rules, in theory, guarantee. In particular, Defendant Judges have contracted with a group of private attorneys to represent arrestees for the limited purpose of their initial bond hearings. But those attorneys are prohibited from meeting their clients before initial appearances. *See* Ex. 2, Decl. of Matthew Mahaffey (“Mahaffey Decl.”) ¶ 5. Because the clients are not physically present for the hearing, the attorneys are also prohibited from communicating privately with their clients at any time during the hearing. *See id.* ¶ 7. The only contact the attorney has with the client *at all* is through a video conference during the hearing itself, in open court, with audio available to the prosecutor, judge, and court staff. *See id.*

Because these attorneys are unable to speak with their clients confidentially, they also cannot ask them about any of the factors Defendant Judges are supposed to consider at the hearing pursuant to Rule 33.01(e). As a result, they cannot obtain, let alone present to the judge, evidence related to the arrested individual's ability to afford bail, evidence mitigating any claims of danger to the public or the weight of the evidence presented by the prosecution, evidence addressing whether the individual will likely appear at the next court date, or any other evidence particular to that individual client. Ex. 2, Mahaffey Decl. ¶ 8.

In fact, because the system Defendant Judges have established prevents the contract attorneys from gathering relevant evidence, many appointed attorneys simply come to agreements about bond amounts with the assistant circuit attorney without ever having met or conferred with the arrested person, and only inform their client of the amount agreed to by the prosecutor in open court. *See* Ex. 1, Besch Decl. ¶ 9. When judges accept these agreements, without any further inquiry and with the knowledge that they were not and could not have been the product of any conversation with the arrested person, these judges are failing to make the preliminary findings required by the Rules—that releasing someone on their own recognizance will not secure their appearance or the safety of the community. *See* Mo. R. Civ. P. 33.01(c). They also fail to “first consider non-monetary conditions” or to impose monetary conditions only *after* considering evidence of the arrestee’s ability to pay, as required by the Rules. *See also* Ex. 1, Besch Decl. ¶¶ 7.a, 9.

Even when Defendant Judges inquired into an individual’s financial circumstances before setting a cash bond, they set the bond amount above what the evidence showed that the person could pay in 49 percent of observed hearings. Some examples include:

- The arrestee told the judge she had been homeless since age 13. The judge found her indigent and told her to apply for a public defender. The judge then set bond at \$35,000, 10 percent.⁵
- The judge was informed that the arrestee was homeless. No other financial information was obtained during the hearing. The judge then set bond at \$20,000, 10 percent.
- The arrestee stated in the hearing that he could pay \$1,000. Bond was set at \$30,000, cash only. The arrestee was not released until after the Rule 33.05 hearing seven days later, when bond was reduced to \$10,000, 10 percent, the amount he said he could pay at the initial hearing.⁶

⁵ When a bond is set at “10 percent,” an individual must post at least 10 percent of the total—in this example \$3,500—as security to be eligible for release.

⁶ Rule 33.05 requires the court to review within seven days the conditions of release of any individual who is detained after their initial appearance.

- The judge asked about work history, and the arrestee informed the judge that he works 40 hours per week making \$10 per hour (\$400 per week) and has three children. The judge set the bond amount at \$30,000, 10 percent, commenting “if you somehow make this”

Ex. 1, Besch Decl. ¶ 8.

Further, Defendant Judges regularly set bond in amounts of \$5,000 or less, regardless of the individual’s ability to pay, based on the misguided understanding that the non-profit The Bail Project will automatically and immediately post the bond, even though the organization is a charity with no legal obligation to free anyone from jail and its own discretionary policies and financial constraints regarding who it will assist. Some examples of this pattern include:

- The judge asked if the arrestee could pay the proposed bond amount of \$10,000, 10 percent. The arrestee said he would have to contact The Bail Project. No other information about the arrestee’s ability to pay was introduced. Bond was set by the judge at \$10,000, 10 percent. The arrestee was not bonded out by The Bail Project until after the Rule 33.05 hearing seven days later, when the bond amount was reduced to \$5,000, 10 percent.
- The arrestee told the judge that his family could get \$300 to \$400 together. The appointed attorney asked that bail be set at or below The Bail Project’s \$5,000 limit, which the court granted by setting bail at \$5,000 cash only. The order specifically stated “Defendant to apply for the Bail Project.”
- The arrestee told the judge that he could not post the \$1,500 cash-only bond agreed to by the attorneys. No other evidence was introduced about his ability to pay bond. The arrestee’s attorney told him in open court that he could apply to The Bail Project. Bond was set by the judge at \$1,500 cash.
- The appointed attorney asked for a bond amount of \$5,000, specifically stating that The Bail Project could pay that amount. No other evidence about the arrestee’s ability to pay bond was introduced. Cash bond was set by the judge at \$5,000, and the appointed attorney told the arrestee to apply to The Bail Project. However, The Bail Project did not bond the arrestee out. At his subsequent Rule 33.05 hearing, the judge reduced bond to \$1,500, 10 percent, upon learning that the arrestee had been unemployed for three years. He has never bonded out.

Ex. 1, Besch Decl. ¶ 9.

The Defendant Judges' practice of setting cash bond amounts based on what a contract attorney suggests that *The Bail Project* might be willing to pay is not the same as considering an *arrestee's* financial circumstances and ability to pay, as required by the Constitution, the Missouri Supreme Court Rules, and common sense. As stated before, the Missouri Supreme Court Rules require the judge to take into account evidence of the arrestee's ability to pay *before* setting any cash bond and prohibit setting cash bond amounts greater than that necessary to ensure the appearance of the arrestee at trial or the safety of the community. Mo. Sup. Ct. R. 33.01(c). By setting an amount based solely on what the judge assumes that The Bail Project is willing to post—rather than what the individual arrestee is capable of paying or what is required to ensure his or her appearance or the community's safety—Defendant Judges are routinely flouting the Rules. Further, because The Bail Project posts the entire cash bail amount, these bonds do little to ensure appearances or community safety, and are really nothing more than a sponsored release. As such, the judges are setting cash bond amounts for people they clearly believe can be released on their own recognizance.

Critically, however, the actual effect on the detained individual is not the same as release on recognizance. As the above examples show, The Bail Project does not automatically bond out every person with a cash bail amount of \$5,000 or less. Thus, the judges' assumption that a bond less than \$5,000 will lead to release with help from The Bail Project actually results in many people being detained for, at least, an additional seven days, before they are given a Rule 33.05 hearing that may or may not comply with the Supreme Court Rules. And even for those whom The Bail Project does help after the initial appearance, release is not as speedy as release on recognizance, and so the individual may face an additional day (or more) of unnecessary detention. *See also* Pls.' Mem. in Support of

Mot. for Prelim. Inj., ECF No. 42-1 at 33-37 (describing harms of pretrial detention).

Not only do individual judges consistently violate constitutional and Missouri Supreme Court Rules, but many of the practices described above have actually been formalized by Defendant Judges through their template order forms. The form used for bail decisions at initial appearances has no space for the judge to list any evidence relied on in reaching the bond decision, let alone the factors required by Rule 33.01(e). *See* Ex. 3, Sample Initial Appearance Form. By contrast, the template form used at hearings pursuant to Rule 33.05 has space not only for the judge's ruling, but also for describing evidence of all the factors (including ability to pay) outlined in Rule 33.01(e) and quoted above. *See* Ex. 4, Sample Rule 33.05 Form. The stark differences in these forms evidences the Defendant Judges' failure or refusal to apply the factors in Rule 33.01(e) applicable at the initial appearance.

The unnecessary and unconstitutional detention—along with “the collateral consequences of incarceration [that] affect not only arrestees but also, by ripple effect, the stability of their entire families and thus the community,” June 11, 2019 Memorandum and Order, ECF No. 95 at 31—that prompted this Court's preliminary injunction continues. The Defendant Judges' systemic failure to provide any meaningful consideration of an individual arrestee's indigence or other possible less restrictive bail options illustrates why an injunction is both necessary to protect class members' constitutional rights and in the public interest.

II. THE PUBLIC INTEREST SUPPORTS AN INJUNCTION TO PREVENT UNNECESSARY DETENTION AND THE SPREAD OF THE CURRENT PANDEMIC BOTH INSIDE AND OUTSIDE OF THE JAIL

A. COVID-19, a global pandemic, has reached St. Louis

We are living in the midst of a pandemic—an extreme, unprecedented, world-wide

health emergency caused by the rapid spread of the deadly coronavirus, COVID-19.⁷ There is no vaccine or cure for this novel virus.⁸ On Friday, March 13, President Trump declared a national emergency.⁹ On that same day, Missouri Governor Michael Parson issued a proclamation declaring a disaster in the State of Missouri.¹⁰

COVID-19 is highly contagious. The Centers for Disease Control and Prevention (“CDC”) advise that the virus passes through coughing and by contact with surfaces.¹¹ The current estimated incubation period is between 2 and 14 days.¹² Approximately 20 percent of people infected experience life-threatening complications, and between 1 percent and 3.4 percent die.¹³ The numbers of people diagnosed reflect only a portion of those infected;¹⁴ very few people have been tested, and many are asymptomatic transmitters.¹⁵ According to

⁷ The World Health Organization has officially classified COVID-19 as a global pandemic. *See* World Health Organization, Director-General Opening Remarks (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁸ *See* Saralyn Cruickshank, “Experts Discuss Covid-19 and Ways to Prevent Spread of Disease,” John Hopkins Mag., Mar. 17, 2020, *available at* <https://hub.jhu.edu/2020/03/17/coronavirus-virology-vaccine-social-distancing-update>.

⁹ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Mar. 13, 2020, *available at* <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

¹⁰ *See* Gov. Michael Parsons, Executive Order 20-02, <https://www.sos.mo.gov/library/reference/orders/2020>.

¹¹ *See* Center for Disease Control & Prevention, “How It Spreads,” <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>.

¹² *See* Center for Disease Control & Prevention, “Coronavirus Disease COVID-19 Symptoms” (updated: Feb. 29 2020), <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>.

¹³ *See* Brian Resnick & Christina Animashaun, “Why Covid-19 is worse than the flu, in one chart,” Vox, Mar 18, 2020, *available at* <https://www.vox.com/science-and-health/2020/3/18/21184992/coronavirus-covid-19-flu-comparison-chart>.

¹⁴ *See* Melissa Healy, “True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say,” L.A. Times, Mar. 10, 2020, *available at* <https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA>.

¹⁵ *See* Roni Caryn Rabin, “They Were Infected with the Coronavirus. They Never Showed

the CDC, officials and experts urge social distancing, frequent hand-washing, alcohol-based hand sanitizers, and frequent cleaning *and* disinfecting of any surfaces touched by any person.¹⁶

By March 29, 2020, more than 720,000 people have been infected and 33,500 people have died worldwide.¹⁷ In the United States, as of the same date, 142,106 people have contracted COVID-19, the most confirmed infections in the world, and over 2,300 Americans have died from the virus.¹⁸

Missouri is no exception. As of March 29, 2020, Missouri has 903 known cases, an increase of 720 in six days, and the state's death toll has risen to 12, including a St. Louis-area nurse.¹⁹

These numbers will rise. The death toll in Italy, which began experiencing this epidemic about a week earlier than the first diagnosed American case, saw a rise of 30

Signs,” N.Y. Times, Feb. 26, 2020, updated Mar. 6, 2020, *available at* <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>; Aria Bendix, “A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,” Bus. Insider, Feb. 24, 2020, *available at* <https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms>.

¹⁶ Centers for Disease Control & Prevention, Steps to Prevent Illness: https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html; *see also supra* nn. 2 & 3.

¹⁷ *See* William Feuer, “Global Corona Virus Cases Cross 350,000, Death Toll Passes 15,000, as Pandemic Takes Hold,” CNBC.com, Mar. 23, 2020, *available at* <https://www.cnbc.com/2020/03/23/coronavirus-pandemic-global-cases-cross-350000-death-toll-passes-15000.html>.

¹⁸ *See* Donald G. McNeil, Jr., “The U.S. Now Leads the World in Confirmed Coronavirus Cases,” N.Y. Times, Mar. 26, 2020, *available at* <https://www.nytimes.com/2020/03/26/health/usa-coronavirus-cases.html>.

¹⁹ *See* Erin Heffernan, “St. Louis reports first COVID-19 death, as St. Charles County, state cases climb,” St. Louis Post-Dispatch, Mar. 23, 2020, *available at* https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/st-louis-reports-first-covid--death-as-st-charles/article_b401862f-e8f1-5180-8272-a1ed06abdaf4.html.

percent overnight in the 24 hours between March 5, 2020, and March 6, 2020, and a rise of 25 percent on March 15 alone—a day that killed 368 people in Italy.²⁰ Top infectious disease experts warn that the virus could kill 200,000 Americans alone.²¹

Officials in Missouri have taken drastic measures to prevent the spread of COVID-19. The Governor, Mayor of the City of St. Louis, and County Executive of St. Louis County have all declared states of emergency along with Stay-at-Home Orders.²² The Chief Justice of the Missouri Supreme Court has issued an en banc order directing all courts in the State to adjust operations, postponing all non-essential proceedings and continuing essential functions through technical means where possible.²³

Around the country, officials have also taken substantial steps to curb the spread of the virus. Governors of all 50 states have activated components of their Army and Air National Guard to help with COVID-19.²⁴ A total of 27 states—including California with its

²⁰ See Crispian Balmer & Angelo Amante, “Italy coronavirus deaths near 200 after biggest daily jump,” Reuters, Mar. 6, 2020, <https://www.reuters.com/article/us-health-coronavirus-italy/italy-coronavirus-deaths-near-200-after-biggest-daily-jump-idUSKBN20T2ML>.

²¹ Matt Sedensky and Michael R. Sisak, “Up to 200K COVID-19 deaths foreseen in US as Spain, Italy demand help,” Mercury News, Mar. 29, 2020, *available at* <https://www.mercurynews.com/2020/03/29/up-to-200k-coronavirus-deaths-foreseen-in-us-as-spain-italy-demand-help/>.

²² See Erin Heffernan, *supra* n.20. Although Governor Parson declared a statewide emergency, unlike the City and County of St. Louis, he has failed to issue a statewide stay at home order. Madeline McClain, “Missouri Governor Faces Criticism for Not Issuing Statewide Stay-at-Home Order,” K2Q.com, Mar. 27, 2020, *available at* <https://www.kq2.com/content/news/Missouri-Governor-faces-criticism-for-not-issuing-statewide-stay-at-home-order-569156361.html>.

²³ See Jeff Lehr, “Missouri Supreme Court extends order suspending most in-person court proceedings,” Joplin Globe, Mar. 23, 2020, *available at* https://www.joplinglobe.com/news/crime_and_courts/missouri-supreme-court-extends-order-suspending-most-in-person-court/article_f73f0c4d-dfb5-5364-a602-c24a44824bc1.html.

²⁴ See Howard Altman, “Latest Guard update: More than 12,300 troops mobilized for COVID-19 response,” MilitaryTimes, Mar. 27, 2020, *available at* <https://www.militarytimes.com/news/coronavirus/2020/03/27/latest-guard-update-more-than-12300-troops-mobilized-for-covid-19-response/>.

40 million residents—have issued “stay at home” or “shelter in place” orders.²⁵ Businesses throughout the nation have shut down their operations.²⁶ The universal goal is to minimize contact, particularly among groups of people, to prevent the spread of the virus.

B. Jails Are Not Equipped to Address COVID-19, which Presents a Serious Risk to the Jail and General Populations

During pandemics, jail facilities become “ticking time bombs” as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”²⁷ As Dr. Jaimie Meyer, an expert in public health in jails and prisons, recently explained, “[T]he risk posed by COVID-19 in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected.” *See* Ex. 5, Decl. of Dr. Jaimie Meyer (“Meyer Decl.”) at ¶ 7, Mar. 15, 2020, filed in *Velesaca v. Wolf*, 1:20-cv-01803 (S.D.N.Y.). This is due to a number of factors: the close proximity of people detained; the impossibility of social distancing; the lack of medical and hygiene supplies ranging from hand sanitizer to protective equipment; ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill; increased susceptibility of the population in jails and prisons; the fact that jails and prisons normally have to rely heavily on outside hospitals that will be unavailable during a pandemic; and loss

²⁵ Taylor Brown, “Bay Briefing: Newsom tells California residents to shelter-in-place,” S.F. Chron., Mar. 20, 2020, *available at* <https://www.sfchronicle.com/bayarea/article/Bay-Briefing-Newsom-tells-California-residents-15144692.php>; Alicia Lee, “These states have implemented stay-at-home orders. Here’s what that means for you,” CNN, Mar. 28, 2020, *available at* <https://www.cnn.com/2020/03/23/us/coronavirus-which-states-stay-at-home-order-trnd/index.html>.

²⁶ *See id.*

²⁷ *See* St. Louis Univ., “Ticking Time Bomb”: Prisons Unprepared For Flu Pandemic, ScienceDaily (2006), *available at* <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

of both medical and correctional staff to illness.²⁸

The world already knows the extreme risks that jails and prisons pose for the spread of COVID-19. Last month, the virus rapidly spread across China's prisons and jails.²⁹ The virus has also spread rapidly in Iran, where 85,000 prisoners were temporarily released to protect them and to protect the community from propagation of an outbreak.³⁰ The dangerous conditions jails pose prompted U.S. Secretary of State Mike Pompeo to call for Iran to release Americans detained there because of the "deeply troubling" "[r]eports that COVID-19 has spread to Iranian prisons," noting that "[t]heir detention amid increasingly deteriorating conditions defies basic human decency."³¹

It is only a matter of time until we face similar crises throughout the United States. Missouri confirmed its first case of COVID-19 in a correctional facility on March 23, 2020.³²

²⁸ "The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside." Laura M. Maruschak et al., *Pandemic Influenza & Jail Facilities & Populations*, Am. J. of Pub. Health (Oct. 2009); see also Dr. Anne Spaulding, *Coronavirus & the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

²⁹ See Claudia Lauer & Colleen Long, "US prisons, jails on alert for spread of coronavirus," AP News, Mar. 7, 2020, available at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

³⁰ See Parisa Hafezi, "Iran temporarily frees 85,000 from jail including political prisoners," Reuters, Mar. 17, 2020, available at <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-idUSKBN21410M>.

³¹ See *id.*; see also Jennifer Hansler & Kylie Atwood, "Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak," CNN, Mar. 10, 2020, available at <https://cnn.it/2W40pV7>.

³² See Maggie Holmes, "Missouri Department of Corrections announces offender test positive for COVID-19," KCTV, Mar. 23, 2020, available at https://www.kctv5.com/coronavirus/missouri-department-of-corrections-announces-offender-test-positive-for-covid/article_fedb5da4-6d5b-11ea-bf88-cf2ef9db2b7a.html.

In New York City, 132 detainees and 104 staff members have been infected with COVID-19 on Rikers Island as of March 28, 2020, an infection rate that would rank highest in the world if Rikers were its own city.³³ In Chicago, the numbers tell a similarly devastating tale of the spread of COVID-19. Two detainees tested positive for COVID-19 in the Cook County Jail on March 23, 2020.³⁴ Within 5 days, that number has grown to 89—a more than 4,000 percent increase.³⁵

COVID-19 continues to spread rapidly to jails and prisons around the country. Seven people detained in the Dallas County Jail have tested positive for COVID-19 as of March 27th.³⁶ The District of Columbia Jail has 4 positive cases as of March 29th.³⁷ Two people incarcerated at the Middlesex County Jail in Massachusetts have tested positive for COVID-19 as of March 28th.³⁸ One person incarcerated in the Riverside County Jail in California and three county sheriff's deputies, at least one of whom works at the county jails,

³³ See Asher Stockler, “New York to Release 1,100 Low-level Parole Violators, as Worries Over Prison System’s Vulnerability to Covid-19 Mount,” *Newsweek*, Mar. 28, 2020, *available at* <https://www.newsweek.com/new-york-city-jails-coronavirus-1494852>.

³⁴ See Megan Crepeau & Annie Sweeney, “Two COVID-19 cases identified at Cook County Jail as calls increase for early releases,” *Chi. Tribune*, Mar. 23, 2020; <https://www.chicagotribune.com/coronavirus/ct-coronavirus-jail-cases-releases-20200323-pot4pyw4zrhpnaguawwxztina-story.html>.

³⁵ See Sam Kelly, “Sheriff announces 51 new coronavirus cases at Cook County Jail, raising total to 89,” *Chi. Sun-Times*, Mar. 28, 2020, *available at* <https://chicago.suntimes.com/coronavirus/2020/3/28/21198407/cook-county-jail-coronavirus-covid-19-cases-inmates-89>.

³⁶ See Hannah Jones, “2 More Dallas County Jail Inmates Test Positive for COVID-19,” *NBC Dallas Fort Worth*, Mar. 27, 2020, *available at* <https://www.nbcdfw.com/news/coronavirus/2-more-dallas-county-jail-inmates-test-positive-for-covid-19/2340118/>.

³⁷ “2 more inmates in D.C. jail test positive for COVID-19; total now up to 4,” *ABC7*, Mar. 29, 2020, *available at* <https://wjla.com/news/coronavirus/2-more-inmates-in-dc-jail-test-positive-for-covid-19>.

³⁸ See Adam Sennott, “2 inmates at Middlesex jail test positive for COVID-19,” *Boston Globe*, Mar. 28, 2020, *available at* <https://www.bostonglobe.com/2020/03/29/metro/2-inmates-middlesex-jail-test-positive-covid-19/>.

have tested positive for COVID-19 as of March 28th.³⁹ In Orleans Parish, Louisiana, four jail healthcare workers and five Sheriff's Office employees have tested positive for COVID-19, and at least three incarcerated people were awaiting tests as of March 26.⁴⁰

Medical experts specializing in corrections health urgently recommend a dramatic reduction in the population of detention centers, jails, and prisons. Only such an immediate and drastic reduction will maximize the opportunity for appropriate distancing, for proper sanitization, and personal hygiene and for appropriate care for those who are or may be infected with COVID-19. For example:

- Dr. Mark Stern: "As a correctional health expert, I recommend release of eligible individuals from detention"⁴¹
- Dr. Jonathan Giftos, former Medical Director for Correctional Health Services at Rikers Island: "It's my view that the only way to really mitigate the harm of rapid spread of coronavirus in the jail system is through depopulation, releasing as many people as possible with focus on those at

³⁹ See Jonah Valdez, "First inmate at Riverside County jail and two more deputies test positive for coronavirus," The Press-Enterprise, Mar. 28, 2020, *available at* <https://www.pe.com/2020/03/28/first-inmate-at-riverside-county-jail-and-two-more-deputies-test-positive-for-coronavirus/>. Detainees and Sheriff's deputies in the Santa Clara County Jail and detainees in the Fulton County Jail have also tested positive for COVID-19. See Fiona Kelliher, "Santa Clara County jail inmate tests positive for COVID-19," Mercury News, Mar. 23, 2020, *available at* <https://www.mercurynews.com/2020/03/23/santa-clara-county-jail-inmate-tests-positive-for-covid-19/>; Jason Green, "Coronavirus: 3 Santa Clara County sheriff's deputies test positive," Mercury News, Mar. 23, 2020, *available at* <https://www.mercurynews.com/2020/03/23/coronavirus-3-santa-clara-county-sheriffs-office-test-positive/>; Asia Burns, "1st Fulton County Jail inmate tests positive for COVID-19," Atl. J. Const., Mar. 23, 2020, *available at* <https://www.ajc.com/news/breaking-news/breaking-first-fulton-county-jail-inmate-tests-positive-for-covid/Lh5z2tYN9vFdg8OIeDQb2N/>.

⁴⁰ "Coronavirus and Orleans Parish jail: 9 workers test positive; inmates' tests pending," WDSU NBC, Mar. 26, 2020, <https://www.wdsu.com/article/coronavirus-and-orleans-jail-6-workers-test-positive-inmates-tests-pending/31932626>.

⁴¹ Ex. 6, Decl. of Dr. Marc Stern, filed in *Dawson v. Asher*, Case No. 20-cv-409 (W.D. Wash.); see also Ex. 7, Decl. of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections, filed in *In re State & Nat'l Emergency & Protection of the Life & Health of Detainees in the County Jail & Those Who Interact With*, No. 2020 Misc. 0010 (Ill. Cir. Ct.).

highest risk of complication.”⁴²

- Professor Josiah Rich, Professor Scott Allen, and Dr. Mavis Nimoh: “Authorities should release those who do not pose an immediate danger to public safety, while also reducing arrests and delaying sentencings. . . . Those being held in jails simply due to their inability to afford bail, or for minor infractions or violations, can generally be released promptly by the judiciary or even the local sheriff. Those eligible for parole can and should be released.”⁴³
- Professor Josiah Rich, Brown University epidemiologist, is described as stating that the number one change people can make to minimize this threat is simply to reduce the number of imprisoned people.⁴⁴
- Dr. Homer Venters, former chief medical officer for New York City Correctional Health Services: “Consideration should be underway concerning the number of people entering jails and prisons and how each step can be re-evaluated and monitored.”⁴⁵
- A group of doctors who work in New York City’s jails, hospitals, and shelters recently wrote a letter to the city council urging them to take urgent measures to curtail the spread of the virus, including ordering the courts to consider release for anyone in pretrial detention over the age of 60, administratively rescheduling all criminal court proceedings for people who are not currently incarcerated, and ordering the NYPD to stop making low-level arrests for violations and misdemeanors.⁴⁶
- Johns Hopkins University faculty in public health, bioethics, medicine, and nursing wrote a letter to Maryland Governor Larry Hogan calling on him to “consider pre-trial detention only in genuine cases of security concerns” and “[e]xpeditate consideration of all older incarcerated individuals and those with chronic conditions predisposing to severe COVID-19 disease (heart disease, lung disease, diabetes, immune-compromise) for parole or other form of

⁴² “Recipe for disaster: The spread of corona virus among detained populations,” MSNBC, Mar. 18, 2020, *available at* <https://www.msnbc.com/all-in/watch/-recipe-for-disaster-the-spread-of-coronavirus-among-detained-populations-80947781758>.

⁴³ Josiah Rich, Scott Allen & Mavis Nimoh, “We must release prisoners to lessen the spread of coronavirus,” Wash. Post, Mar. 17, 2020, *available at* <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lesser-spread-coronavirus/>.

⁴⁴ Amanda Holpuch, “Calls mount to free low-risk US inmates to curb coronavirus impact on prisons,” The Guardian, Mar. 13, 2020, *available at* <https://www.theguardian.com/us-news/2020/mar/13/coronavirus-us-prisons-jails>.

⁴⁵ Dr. Homer Venters, “4 ways to protect our jails and prisons from coronavirus,” The Hill, Feb. 29, 2020, *available at* <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus>.

⁴⁶ Brad Lander, “Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus,” Medium, Mar. 12, 2020, *available at* <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>.

release from prison.”⁴⁷

- In a recent presentation to correctional healthcare workers developed in cooperation with the Centers for Disease Control and Prevention, Dr. Anne Spaulding, a professor of epidemiology and the director of the Emory Center for the Health of Incarcerated Persons, encouraged jurisdictions to consider alternatives to incarceration or detention, such as at-home electronic monitoring, diversionary courts, and community corrections.⁴⁸

In short, there is a consensus among public health experts that jails are uniquely situated to facilitating the rapid spread of COVID-19 and that immediate action, in the form of reducing inmate populations, is needed to combat that threat and protect the public as a whole.

C. St. Louis’s Jails Are at Risk of Becoming Hot Zones Absent Immediate Action

These concerns and recommendations apply with full force to the Medium Security Institution and the City Justice Center. People detained in the Medium Security Institute or the City Justice Center—and those who must interact with them—are subject to all of the potentially problematic conditions outlined in Section B above and cannot employ the CDC-recommended measures for mitigating the spread of COVID-19 detailed in Section A above. *See also* Ex. 8, Decl. of Nathan A. Walls (describing lack of compliance with basic measures to protect against spread of COVID-19, including inability to obtain cleaning supplies even after notifying guards of blood and mucus on walls); Ex. 9, Decl. of Rakeem Clemons (describing lack of sanitary conditions, including scarcity of soap and cleaning supplies). The combination of lack of adequate sanitation, close quarters, and limited medical capacity

⁴⁷ “JHU Faculty Express Urgent Concern about Covid-19 Spread in Prison,” Johns Hopkins Univ., Mar. 25, 2020, *available at* <https://bioethics.jhu.edu/news-events/news/jhu-faculty-express-urgent-concern-about-covid-19-spread-in-prison/>.

⁴⁸ *See* Dr. Anne Spaulding, Coronavirus COVID-19 and the Correctional Facility for the Correctional Healthcare Worker (Mar. 23, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf.

creates an intolerably dangerous situation and puts detainees, jail staff, and the communities to which they belong at greater risk of illness and death. The constant cycling of people in and out of the jail makes containment impossible, even if visitations are stopped.

Furthermore, if detainees incarcerated in St. Louis's jails were to become infected with COVID-19 and the virus were to spread rapidly within the jails, many prisoners and detainees would require urgent care, overwhelming the capacity of City of St. Louis Health Services to provide such care, exacerbating the death toll and the risks to all involved.

The relief Plaintiffs request in their preliminary injunction is eminently in the public interest. An order ensuring that any detention is truly necessary to advance the State's compelling interests benefits not only the health and well-being of all those confined in the Jail but also the larger community. The likely result of this preliminary injunction, moreover, will be that some currently detained will be released and others arrested in the future will never be detained at all—reducing crowding at the jail. Indeed, during the time this Court's initial preliminary injunction was in effect, for just 10 days, 171 new hearings resulted in the release of 119 individuals. Ex. 10, Decl. of Alyxandra T. Haag ¶¶ 7-8.

Bearing out both that an injunction would be in the public interest and that individuals continue to be held unnecessarily, the St. Louis Circuit Attorney has already agreed to the release of dozens pretrial detainees, who are now free.⁴⁹ Additionally, Mary Fox, the Director of the Missouri State Public Defender, and 35 other organizations and individuals wrote to the Chief Justice of the Missouri Supreme Court to request significant changes to pretrial detention and bail practices across the state. *See* Ex. 11, Ltr. From Mary

⁴⁹ *See* Laurie Skrivan, "St. Louis city and county to release more than 140 inmates amid virus concerns," St. Louis Post-Dispatch (Mar. 26, 2020), *available at* https://www.stltoday.com/news/local/crime-and-courts/st-louis-city-and-county-to-release-more-than-inmates/article_dd8b30f6-c3ea-5229-b7ac-0aa36ee8f14c.html.

Fox to Mo. Sup. Ct., Mar. 26, 2020. The letter calls on the Court to order judges to immediately release from confinement the following groups of inmates during the pendency of the COVID-19 pandemic:

(i) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a misdemeanor offense; (ii) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a municipal ordinance violation; (iii) those confined pretrial on nonviolent misdemeanor, municipal ordinance violation, or nonviolent C, D, and E felony charges; (iv) those confined on technical probation violations or probation violations based on allegations of a municipal ordinance violation, nonviolent misdemeanor, or nonviolent felony; and (v) those in high-risk categories likely to face serious illness or death.

Id.

Similarly, Dr. Fred Rottnek, the lead physician and medical director of the St. Louis County Jail from 2001 to 2016, sent a public letter to the Missouri Supreme Court that described a COVID-19 outbreak in Missouri's prisons and jails as a "public health nightmare." *See* Ex. 12, Ltr. from Dr. Rottnek to Mo. Sup. Ct., Mar. 26, 2020, at 6. Sixteen other area medical professionals signed on to his letter. *Id.* at 9-10. The letter explains that "the COVID-19 pandemic has the potential to devastate the lives of both incarcerated individuals and jail personnel, and result in a medical emergency that could overwhelm Missouri's medical infrastructure." *Id.* at 2. It further warns that Missouri's correctional facilities are under-equipped, under-staffed, and poorly set up to comply with the CDC's directives during such a pandemic. *Id.* at 3-6. Finally, the medical professionals call for the release of medically compromised people, people over the age of 55, people detained on cash bonds they are unable to afford, and "a sufficient number of inmates to guarantee the jail can accommodate adequate social distancing guidelines set forth by the CDC." *Id.* at 7.

On March 30, 2020, the Missouri Supreme Court, in response to "recent inquiries," issued a letter to judges that did not dictate action. Instead, it merely reminded them that

Rule 33.01—the very Rule that, as described above, Defendants continue to violate—governs pretrial release. Ex. 13, Ltr. from Chief Justice, George W. Draper III (Mar. 30, 2020).

The practices of other jurisdictions, however, evidence that the requested relief is in the public interest. Chief justices of state supreme courts across the country have issued orders similar to the one requested by advocates in Missouri. For example, Chief Justice Stuart Rabner of the New Jersey Supreme Court issued an order that led to the review of thousands of cases and the release of an estimated 1,000 people.⁵⁰ Chief Justice Mike McGrath of the Montana Supreme Court asked all judges in the state to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses,” in light of the COVID-19 pandemic.⁵¹ Chief Justice Donald Beatty of the South Carolina Supreme Court also issued an order urging judicial circuits to release people charged with non-violent offenses and avoid issuing bench warrants.⁵² Chief Justice John Minton, Jr. of the Kentucky Supreme Court similarly asked judges and clerks in the state “to clear out all of the jail inmates you safely can, ahead of the virus, if you aren’t doing so.”⁵³

⁵⁰ See Kara Scanell, “New Jersey is releasing about 1,000 inmates from county jails,” CNN.com, Mar. 23, 2020, *available at* https://edition.cnn.com/world/live-news/coronavirus-outbreak-03-23-20-intl-hnk/h_2f47b2dacdb0790f25dd0d08acbf954b.

⁵¹ “Montana Chief Justice requests that non-violent jail inmates be released to curb COVID-19 spread,” KRTV, Mar. 24, 2020, *available at* <https://www.krtv.com/news/montana-and-regional-news/montana-chief-justice-asks-that-non-violent-jail-inmates-be-released-to-curb-covid-19-spread>.

⁵² See Daniel J. Gross, “Dozens of inmates released from Greenville jail amid growing COVID-19 concerns,” Greenville News, Mar. 20, 2020, *available at* <https://www.greenvilleonline.com/story/news/local/south-carolina/2020/03/20/dozens-released-greenville-south-carolina-jail-due-covid-19-fears/2883854001/>.

⁵³ Toby Sells, “Reformers Urge Release of Many from Jail, Prisons to Stop Coronavirus Spread,” Memphis Flyer, Mar. 25, 2020, *available at* <https://www.memphisflyer.com/NewsBlog/archives/2020/03/25/reformers-urge-release->

Trial judges, corrections officials, and other government entities across the country have also acted on their own initiative to release detainees. In Cleveland, criminal court judges have released dozens of pretrial detainees and anticipate the eventual release of some 300 detainees from the Cuyahoga County Jail; in this release, “almost any kind of inmate was considered.”⁵⁴ District court judges in New Orleans have issued orders for immediate release from jail for individuals awaiting trial and detained on certain conditions.⁵⁵ The Texas Commission on Jail Standards advised jails to release detainees and employ cite-and-release policies to reduce bookings.⁵⁶ Travis County is releasing inmates charged with non-violent criminal offenses.⁵⁷ Fulton County, Georgia is releasing inmates early and postponing those serving intermittent “weekend” sentences.⁵⁸ The Washington County Jail in Oregon is

of-many-from-jail-prisons-to-stop-coronavirus-spread.

⁵⁴ “Ohio jail Releases Hundreds of Inmates Due to Coronavirus Concerns,” Okla. News 4, Mar. 23, 2020, *available at* <https://kfor.com/health/coronavirus/ohio-jail-releases-hundreds-of-inmates-due-to-coronavirus-concerns/>. Releases also occurred in Erie and Richland counties in Ohio. *See* Peggy Gallek, “Erie County Reducing Jail Population Due to COVID-19 Concerns,” Fox8 (Mar. 17, 2020, <https://fox8.com/news/coronavirus/erie-county-reducing-jail-population-due-to-covid-19-concerns/>); “Richland County Jail Releasing Some Non-violent, Low-level Offenders Due to COVID- 19,” Richland Source (Mar. 18, 2020), https://www.richlandsource.com/news/covid19/richland-county-jail-releasing-some-non-violent-low-level-offenders/article_0df572a8-692d-11ea-99aa-1fdd2d880565.html.

⁵⁵ *See* “Orleans Criminal Court judges order release of certain inmates amid coronavirus crisis,” NBC WDSU, Mar. 26, 2020, *available at* <https://www.wdsu.com/article/orleans-criminal-court-judges-order-release-of-certain-inmates-amid-coronavirus-crisis/31943462>.

⁵⁶ *See* Sydney Isenberg, “Texas jails to release non-violent misdemeanor inmates due to coronavirus pandemic,” KXXV, Mar. 18, 2020, *available at* <https://www.kxxv.com/news/local-news/texas-jails-to-release-non-violent-misdemeanor-inmates-due-to-coronavirus-pandemic>.

⁵⁷ *See* “Travis County Judges Releasing Inmates to Limit Coronavirus Spread, Report Claims,” KVUE, Mar 16, 2020, *available at* <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread>.

⁵⁸ *See* Blis Savidge, “Fulton County To Release Inmates Early In Light Of Pandemic” GPB, Mar. 16, 2020, *available at* <https://www.gpbnews.org/post/fulton-county-release-inmates-early-light-pandemic>.

releasing inmates and ensuring that all remaining inmates have their own cell.⁵⁹ Lackawanna and Mercer Counties in Pennsylvania are also reviewing and releasing prisoners.⁶⁰ In Charlotte, North Carolina, the Mecklenburg County Jail has begun releasing inmates and is actively considering more pretrial detainees who have misdemeanor or felony charges for release.⁶¹ Hillsborough County, Florida, is releasing non-violent, pretrial detainees.⁶² Spokane County, Washington, released low-level inmates,⁶³ and Kitsap County has released non-violent inmates and is considering more for release.⁶⁴

In addition to these efforts, attorneys on both sides of the system in other jurisdictions are working collaboratively to get people out of prisons and jails. The San Francisco Public Defender and District Attorney have both directed their staffs to agree to

⁵⁹ See Drew Reeves, “Washington County Jail Releases Some Inmates to Prevent Spread of COVID- 19,” Fox 12 Or., Mar.17, 2020, *available at* https://www.kptv.com/news/washington-county-jail-releases-some-inmates-to-prevent-spread-of/article_34cdc2c2-68d3-11ea-bfc0-3725e49b0c0c.html.

⁶⁰ See Kevin Hayes, “Lackawanna County Reviews Possible Release of Low Level Inmates to Mitigate Spread of COVID-19,” PA Homepage, Mar.18, 2020, *available at* <https://www.pahomepage.com/top-news/lackawanna-county-to-release-low-level-inmates-to-mitigate-spread-of-covid-19>; Gerry Ricciutti, “Mercer County Jail Releases Some Lower-Level Offenders Amid COVID- 19 Outbreak,” WKBN, Mar. 18, 2020, *available at* <https://www.wkbn.com/news/local-news/mercy-county-jail-releases-some-lower-level-offenders-amid-covid-19-outbreak/>.

⁶¹ See Michael Gordon & James Alexander, “Mecklenburg begins releasing jail inmates to avoid cellblock outbreak of COVID-19,” Charlotte Observer, Mar. 18, 2020, *available at* <https://www.charlotteobserver.com/news/coronavirus/article241279836.html>.

⁶² See “Hillsborough County sheriff will release 164 ‘low-level’ offenders in jail for ‘non-violent’ crimes,” Fox 13, Mar. 19, 2020, *available at* <https://www.fox13news.com/news/hillsborough-county-sheriff-will-release-164-low-level-offenders-in-jail-for-non-violent-crimes>.

⁶³ See “48 low-level inmates released from Spokane County Jail,” KHQ-Q6, Mar. 17, 2020, *available at* https://www.khq.com/coronavirus/low-level-inmates-released-from-spokane-county-jail/article_5fc7e406-68a3-11ea-b73e-132316bf68fd.html.

⁶⁴ See Andrew Binion, “Kitsap County Jail taking steps to reduce chance of COVID-19 infections,” Kitsap Sun, Mar. 18, 2020, *available at* <https://www.kitsapsun.com/story/news/2020/03/18/kitsap-county-jail-taking-steps-reduce-chance-covid-19-infections/2869893001/>.

the release of pretrial detainees who are at heightened risk for illness.⁶⁵ In Kentucky, the Department of Public Advocacy, the state's Public Defender System, has moved the state to release all pretrial detainees in county and regional jails.⁶⁶ The Salt Lake County, Utah, District Attorney announced on March 20, 2020, that up to 200 people would be released in the coming two weeks.⁶⁷ Twenty-nine pretrial defendants, who were being held on cash bond, have already been released from Boyle, Mercer, and Lincoln counties.⁶⁸ Public defenders in at least five other jurisdictions, including New York,⁶⁹ New Orleans,⁷⁰ Santa

⁶⁵ See Darwin Graham, "San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak," Appeal, Mar. 11, 2020, *available at* <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population>; Jeffrey Cawood, "San Francisco Public Defender Seeks 'Immediate Release' Of Some Jail Inmates Due To Coronavirus," Daily Wire, Mar. 16, 2020, *available at* <https://www.dailywire.com/news/san-francisco-public-defender-seeks-immediate-release-of-some-jail-inmates-due-to-coronavirus>.

⁶⁶ See "Defenders want dozens of defendants released from jail to reduce COVID-19 threat," The Advocate Messenger, Mar. 16, 2020, *available at* <https://www.amnews.com/2020/03/16/defenders-want-dozens-of-defendants-released-from-jail-to-reduce-covid-19-threat/>.

⁶⁷ See Jessica Miller, "Hundreds of Utah inmates will soon be released in response to coronavirus," Mar. 21, 2020, *available at* https://www.sltrib.com/news/2020/03/21/hundreds-utah-inmates/?fbclid=IwAR3r8BcHeEkoAOcyP3pmBu9XWkJ4MMsDC_LUH4YZn2QGd18hALk4vM9X1c.

⁶⁸ See Jim Mustian, "Inmates Fearful of Virus Argue for Release" PBS, Mar. 18, 2020, *available at* <https://www.pbs.org/newshour/health/get-out-of-jail-inmates-fearful-of-virus-argue-for-release>.

⁶⁹ See Jane Wester, "Legal Aid Sues for Release of 116 NYC Inmates, Saying Coronavirus Mitigation 'Virtually Impossible' in Jails," N.Y. Law J., Mar. 20, 2020, *available at* <https://www.law.com/newyorklawjournal/2020/03/20/legal-aid-sues-for-release-of-116-nyc-inmates-saying-coronavirus-mitigation-virtually-impossible-in-jails/?slreturn=20200229153544>.

⁷⁰ See Nicholas Chrastil, "Public Defenders Request the Release of all Non-Violent Offenders in Jail due to Coronavirus," The Lens, Mar. 12, 2020, *available at* <https://thelensnola.org/2020/03/12/public-defenders-request-the-release-of-all-non-violent-offenders-in-jail-clue-to-corona-virus>.

Barbara,⁷¹ Colorado,⁷² and Chicago⁷³ have called for the release of all low-level or non-violent detainees. The Philadelphia District Attorney's office has moved to release most people charged with non-violent offenses or misdemeanors.⁷⁴ Officials in Philadelphia, as well as Delaware and Montgomery Counties, have been working to release or parole prisoners early.⁷⁵ Thirty-three elected prosecutors from across the nation, in jurisdictions ranging from California to Mississippi, recently signed a public statement calling for urgent measures to "dramatically reduce the number of incarcerated individuals," to protect incarcerated populations from the threat of COVID-19.⁷⁶ Jurisdictions around the country have also taken steps to reduce the number of people in custody by suspending arrests⁷⁷ and

⁷¹ See Delaney Smith, "Santa Barbara Public Defender Calls for Release of Low-Level Offenders," Santa Barbara Indep., Mar. 17, 2020, *available at* <https://www.independent.com/2020/03/17/santa-barbara-public-defender-calls-for-release-of-low-level-offenders>.

⁷² See Elise Schmelzer, "Colorado public defenders, advocates call for drastic change to prevent coronavirus in jails, prisons," Denver Post, Mar. 17, 2020, *available at* <https://www.denverpost.com/2020/03/17/colorado-public-defenders-criminal-justice-coronavirus/>.

⁷³ See "Public Defenders Call for Release of Detainees Over Coronavirus Pandemic," NBC 5 Chi., Mar. 23, 2020, *available at* <https://www.nbcchicago.com/news/local/public-defenders-call-for-release-of-detainees-after-correctional-officer-tests-positive/2242701/>.

⁷⁴ See "Philly DA Larry Krasner urges for early release of low-risk prisoners to prevent spread of COVID-19," Fox 29, Mar. 19, 2020, *available at* <https://www.fox29.com/news/philly-da-larry-krasner-urges-for-early-release-of-low-risk-prisoners-to-prevent-spread-of-covid-19>.

⁷⁵ See Samantha Melamed & Mike Newall, "With Courts Closed by Pandemic, Philly Police Stop Low-level Arrests to Manage Jail Crowding," Phila. Inquirer, Mar. 18, 2020, *available at* <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html>.

⁷⁶ Henry Culvyhouse, "DPA Requests Release of Pretrial Detainees," The Daily Indep., Mar. 18, 2020, *available at* https://www.dailyindependent.com/news/dpa-requests-release-of-pretrial-detainees/article_3b8416c2-695d-11ea-b683-e3d21bdf59cc.html.

⁷⁷ The Chief Judge of the Washington, D.C., Superior Court "issued an emergency order allowing police and prosecutors to exercise discretion to determine whether a person arrested should be held until their first court appearance or given citation release with notice of their future court date." D.C. Sup. Ct. Issues Emergency Order, District of Columbia Courts Newsroom, Mar. 16, 2020, http://www.dccourts.gov/sites/default/files/Order_3-16-20.pdf. The Los Angeles County Sheriff's Department has released over 600 inmates and

refusing to book people into jails.⁷⁸ The broad-ranging relief jurisdictions are engaging in across the country demonstrates that Plaintiffs' request here is clearly within the public

directed officers to reduce arrests. *See* Alene Tchekmedyian, Paige St. John & Matt Hamilton, "L.A. County Releasing Some Inmates from Jail to Combat Coronavirus," L.A. Times, March 16, 2020, *available at* <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>. The Philadelphia Police have been instructed to delay arrests for low-level crimes—a decision supported by the Fraternal Order of the Police. *See* Samantha Melamed & Mike Newall, "With Courts Closed by Pandemic, Philly Police Stop Low-level Arrests to Manage Jail Crowding," Phila. Inquirer, Mar. 18, 2020, *available at* <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html>. The Fort Worth Police have indicated that they will stop arresting people for misdemeanors. *See* Nichole Manna, "Fort Worth police will give citations for low-level crimes amid coronavirus outbreak," Fort Worth Star Telegram, Mar. 17, 2020, <https://www.star-telegram.com/news/coronavirus/article241254951.html>. And the Collin County, Texas, Sheriff has directed police departments to cite and release people suspected of non-violent offenses. *See* Charles Scudder, "Facing coronavirus concerns, Collin County sheriff asks police not to bring petty criminals to jail," Dallas Morning News, Mar. 12, 2020, <https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail>. Racine County, Wisconsin, has suspended arrests for non-violent offenses "to protect law enforcement and the inmates confined in the Racine County Jail." Racine Cty. Sheriff's Office, Facebook (Mar. 15, 2020), <https://www.facebook.com/pg/RacineCountySheriffsOffice/posts>; Alyssa Mauk, "Sheriff suspends non-violent arrests due to COVID-19," J. Times, Mar. 14, 2020, https://journaltimes.com/news/local/crime-and-courts/sheriff-suspends-non-violent-arrests-due-to-covid/article_141c020d-b911-5453-a04a-e67b8070d17c.html. In Denver and Aurora, Colorado, the police will no longer send an officer to report low-level incidents. *See* Elise Schmelzer, "Denver, Aurora police no longer sending officers to low-level crimes to minimize spread of coronavirus" Denver Post, Mar. 14, 2020, <https://www.denverpost.com/2020/03/13/denver-aurora-police-coronavirus/>.

⁷⁸ In Wisconsin, Milwaukee County will not book alleged misdemeanants. *See* Bruce Yielmetti, "Federal, state courts curtail most activities, and the jail is booking fewer defendants," Milwaukee J. Sentinel, Mar. 13, 2020, *available at* <https://www.jsonline.com/story/news/crime/2020/03/13/coronavirus-milwaukee-county-trials-canceled-jail-bookings-limited/5040956002/>. In Youngstown, Ohio, the Mahoning County jail is refusing all non-violent misdemeanor arrests. *See* "Local county jails making changes due to coronavirus outbreak," WKBN, Mar. 12, 2020, *available at* <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>. Jails across Washington State are not booking low-level alleged offenders, including for drug and property crimes. *See* Michael Lang, "Washington Jails Limiting Inmate Bookings Over Coronavirus Concerns," N. Coast News, Mar. 11, 2020, *available at* <https://www.northcoastnews.com/news/washington-jails-limiting-inmate-bookings-over-coronavirus-concerns>.

interest.

III. PRINCIPLES OF COMITY DO NOT PRECLUDE THIS COURT FROM ISSUING A PRELIMINARY INJUNCTION

Concern about “comity between the state and federal judiciaries,” *Dixon v. City of St. Louis*, 950 F.3d 1052, 1056 (8th Cir. 2020), does not undermine the substantial public interest that supports a preliminary injunction. Although the Eighth Circuit directed this Court to consider any applicable federalism concerns when evaluating the public interest, the Circuit also was clear—in vacating and remanding for further consideration rather than reversing—that it remains within this Court’s authority to re-issue a preliminary injunction. Indeed, in *In re SDDS Inc.*, 97 F.3d 1030 (8th Cir. 1996), the case that the Eighth Circuit cited as establishing that comity should be considered in evaluating this *Dataphase* factor, the court ultimately held, after accounting for federalism concerns, that an injunction *should* issue. That was true, moreover, even though the basis for the injunction in *SDDS*—that parallel state court litigation was barred under principles of res judicata—is something that state courts are equally well-equipped to decide. The court nonetheless concluded that the interest in “judicial economy” and avoiding “duplicative litigation” overcame the notion that “interference with a state court proceeding is generally opposed by public policy.” *Id.* at 1041. Certainly, if the interest in judicial economy in a *single* dispute is weighty enough to overcome comity concerns, then so is the combined interest in preventing the unconstitutional detention of scores of individuals and slowing the spread of a virus that has precipitated a national public health crisis.

Not only are the other considerations relevant to the public interest particularly strong here, but also the federalism interest is relatively weak. This is true for four reasons.

First, the Supreme Court has explained that principles of comity are at their height in areas where the States enjoy “wide regulatory latitude,” not when a “suit . . . involve[s] any

fundamental right or classification that attracts heightened judicial scrutiny.” *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 431 (2010). This case, which concerns Plaintiffs’ core liberty and due process interests, falls into the latter category.⁷⁹ Defendants’ practice, from before this lawsuit was filed to this day, has been to issue de facto detention orders by imposing unaffordable money bail without any finding, let alone one by clear and convincing evidence, that detention is necessary to advance a compelling state interest. As this Court concluded—and the Eighth Circuit did not question—“heightened scrutiny” applies to this infringement of Plaintiffs’ fundamental rights. *See* June 11, 2019 Memorandum and Order, ECF No. 95 at 29.

Second, Defendants continue to defy the Missouri Supreme Court’s Rules. The Eighth Circuit explained that a proper accounting for federalism in this case requires that this Court look beyond the language of the new Rules as written by the Missouri Supreme Court to “their implementation” in practice by Defendants. *Dixon*, 950 F.3d at 1056. Consistent with that directive, the “gravamen” of Plaintiffs’ claims continues to be that Defendants disregard the state-wide policy established by the Missouri Supreme Court. *See* June 11, 2019 Memorandum and Order, ECF No. 95 at 27. Thus, although respect for our system of federalism dictates that “needless friction with state policies” be avoided, *Dixon*, 950 F.3d at 1056 (quoting *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941)), any such “friction” is absent here. *Cf. ODonnell v. Harris Cty.*, 260 F. Supp. 3d 810, 821 (S.D. Tex. 2017) (rejecting that the public interest warranted a stay of injunction against bail practices where “[t]he Texas legislature, indeed the Texas Constitution, d[id] not permit the type of

⁷⁹ Plaintiffs do not question that, as a general matter, Defendant Judges have “wide . . . latitude” to control their rules of practice, but the federal constitutional rights at issue here impose a limit on that discretion, as reflected in the numerous cases holding similar bail practices unconstitutional. *See supra* n.1 (collecting cases).

pretrial preventive detention in misdemeanor cases that Harris County[’s practices] systematically and routinely accomplishe[d]”).

Third, the nature of Defendant Judges’ continued unconstitutional practices weakens any comity interest here. Principles of comity can further federal-state relations by giving state authorities an opportunity to “correct” any alleged violation of federal rights. *See, e.g., Leggins v. Lockhart*, 822 F.2d 764, 768 n.5 (8th Cir. 1987). Here, however, the continued need for a preliminary injunction evidences that Defendants have already been provided and foregone that opportunity. This is especially true given this Court’s prior rigorous findings that Defendants had, for years, violated the Missouri Supreme Court Rules governing this issue, and this Court’s observation that, as the deadline for new Rules approached, they were unable to explain any plans concerning how they would even begin to implement them. *See* Hr’g Tr. at 17:11-15, June 14, 2009 (“[I]n light of these [amendments to the Missouri Supreme Court Rules] which have been published since December, coupled with this litigation, I’m somewhat appalled that there has been no consideration and discussion with respect to what is going to happen with the 700 people you tell me are sitting there.”).

Rather than correct the substance of the constitutional defects in their practices after this Court’s injunction was stayed and the new Rules took effect, Defendant Judges have, at most, altered the form of the violation. Defendant Judges still fail to provide any notice to recently arrested individuals that their ability to pay, flight risk, and danger to the community will be at issue in their initial appearance. *See Turner v. Rogers*, 564 U.S. 431, 131 (2011) (notice of “critical issue[s]” is a minimum requirement of due process). And now, rather than explicitly instruct arrested individuals not to challenge their bond until a public defender is appointed—their prior practice—Defendant Judges appoint a contract attorney to immediately argue on behalf of the arrested individual, even though the attorney has never

met with the individual, has no familiarity with his or her background, and has no means of confidentially speaking to the individual to gather evidence relevant to setting bail. This equally effective means of denying arrested individuals a meaningful opportunity to be heard—and thus of violating both the U.S. Constitution and the Missouri Supreme Court Rules—demonstrates that declining to issue an injunction under principles of comity would be in vain.

Fourth, Plaintiffs’ requested relief still leaves Defendant Judges with the full ability to ensure that the State’s compelling interests are served. *Cf. Purnell v. Mo. Dep’t of Corr.*, 753 F.2d 703, 709 (8th Cir. 1985) (“Deference is due the states, as governmental units, not their courts, their executives, or their legislatures, save as these bodies represent the state itself.” (citation omitted)). As Plaintiffs have previously explained, Plaintiffs do not seek the release of any specific individual or ask that this Court prohibit the use of money bail. Plaintiffs seek only to ensure that, when setting conditions of release, Defendant Judges provide an individualized hearing and impose no conditions greater than necessary to ensure an individual’s appearance at trial or to protect the public. Thus, Defendant Judges will remain fully capable of vindicating Missouri’s highest interests—a principle concern of the comity doctrine—even if an injunction issues.

IV. THE COURT’S ORDER SHOULD REQUIRE SPEEDY COMPLIANCE

Finally, Plaintiffs seek a preliminary injunction with the same substantive relief as that ordered in this Court’s June 11, 2019 Memorandum and Order, but that also requires Defendant Commissioner of Corrections Dale Glass to comply in a timely manner. In particular, Plaintiffs request that this Court require compliance within three days for any individuals currently detained on no higher than a Class C felony and within seven days for any individual currently detained on a Class A or B felony. For individuals not yet arrested,

Plaintiffs request that the Court order Defendant Glass not enforce any order that was not the result of a hearing within 24 hours. These abbreviated time frames is appropriate in light of the significant risk that COVID-19 poses and the likelihood that those detained on low level felonies, or even misdemeanors, are not being lawfully held.

Although Defendants objected to a seven-day compliance period when this Court issued its initial preliminary injunction, those objections lack merit here for two reasons, even beyond the immediate threat posed by COVID-19. First, the number of class members currently detained is 40 percent lower. When this Court issued its preliminary injunction, there were 902 individuals detained on state charges. Decl. of Dale Glass, ECF No. 99-1 ¶ 2. As of March 30, 2020—the most recent date for which data is available—only 528 individuals are currently held on state charges. *See* Ex. 14, “Inmate Population Data.”⁸⁰ Second, Defendants did not raise their objection to the seven-day time frame until after this Court issued its injunction, even though Plaintiffs had included that time frame in their request for relief. Appropriate preparations would have made compliance feasible.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court re-issue the preliminary injunction.

Dated: March 30, 2020

Respectfully Submitted,

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⁸⁰ The data included in Exhibit 10 is also available online at <https://www.stlouis-mo.gov/government/departments/public-safety/corrections/corrections-inmate-population-data.cfm>.

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

DAVID DIXON, et al.,

Plaintiffs,

V.

CITY OF ST. LOUIS, et al.,

Defendants.

Case 4:19-cv-00112-AGF

DECLARATION OF SHANNON BESCH

I, Shannon Besch, pursuant to 28 U.S.C. § 1746 declare, as follows:

1. I am over the age of 18 and am of sound mind.
2. I am a Paralegal at ArchCity Defenders and have been employed since March of 2018.
3. In the Summer of 2019, after the issuance of the Dixon Preliminary Injunction, I was responsible for coordinating court observers for ArchCity Defenders. These observers were a combination of ArchCity Defenders staff, legal interns, and undergraduate interns.
4. Beginning in July of 2019, all confined dockets were heard by rotating judges in Division 16B. The confined docket in Division 16B was observed daily in July and August, and most days in September. In October and November an intern observed the confined docket twice a week.
5. Observers took prepared observation sheets to court that prompted them to collect specific information during the hearings, including but not limited to:
 - a. The individual's name and case number, so that bond orders could subsequently be tracked;
 - b. The bond at the start of the hearing;
 - c. The bond at the end of the hearing;


- d. Whether any information was obtained by the judge about whether the individual could afford a cash bond amount;
 - e. Whether any information was obtained by the judge about the individual's employment;
 - f. Whether any information was obtained by the judge about the individual's housing situation or dependents;
 - g. Whether any information was obtained by the judge about the individual's physical or mental health.
6. After the hearings, court observers entered the information documented on the observation sheet into a spreadsheet. The information contained in this declaration was collected from the spreadsheet that I have maintained and checked for accuracy against copies of the observation sheets containing the observer's contemporaneous documentation of each hearing.
7. Between July 1, 2019 and December 11, 2019, court observers attended 583 hearings.
- a. In 23 percent of cases where judges set cash bond amounts, observers recorded that the judge obtained no information about the person's financial situation before setting bond;
 - b. In 49 percent of cases where judges set cash bond amounts, the amount set was above what the evidence obtained by the judge and documented by the observer indicated the individual could pay.
8. Examples of cases where the judge set a cash bond amount above what the evidence showed the individual could pay include, but are not limited to, the following:
- a. The arrestee told the judge she had been homeless since age 13. The judge found her indigent and told her to apply for a public defender. The judge then set bond

at \$35,000, 10 percent. 1922-CR03633. When a bond is set at “10 percent,” it can be satisfied by posting 10 percent of the total—in this example \$3,500—as security.

- b. The judge was informed that the arrestee was homeless. No other financial information was obtained during the hearing. The judge then set bond at \$20,000, 10 percent. 1922-CR03416.
 - c. The arrestee stated in the hearing that he could pay \$1,000. Bond was set at \$30,000, cash only. The arrestee was not released until after the Rule 33.05 hearing seven days later when bond was reduced to \$10,000, 10 percent, the amount the arrestee said he could pay at the initial hearing. 1922-CR03492.
 - d. The judge asked about work history and the arrestee informed the judge that he works 40 hours per week making \$10 per hour (\$400 per week) and has three children. The judge set the bond amount at \$30,000, 10 percent, stating “if you somehow make this . . .” 1922-CR02456.
9. Court observers also recorded multiple instances of judges setting bond amount of \$5,000, regardless of information about the individual’s ability to pay being introduced, with the goal of The Bail Project posting bond for the individual. Examples documented include, but are not limited to:
- a. The judge asked if the arrestee could pay the proposed bond amount of \$10,000, 10 percent. The arrestee said he would have to contact The Bail Project. No other information about the arrestee’s ability to pay was introduced. Bond was set by the judge at \$10,000, 10 percent. The arrestee was not bonded out by The Bail Project until after the Rule 33.05 hearing seven days later, when the bond amount was reduced to \$5,000, 10 percent. 1922-CR03464.
 - b. The arrestee told the judge that his family could get \$300-\$400 together. The appointed attorney asked that bail be set below The Bail Project’s \$5,000 limit, which the court granted by setting bail at \$5,000 cash only. The order specifically stated “Defendant to apply for the Bail Project.” 1922-CR02301.
 - c. The arrestee told the judge that he could not post the \$1,500 cash-only bond agreed to by the attorneys. No other evidence was introduced about his ability to pay bond. The arrestee’s attorney told him in open court that he could apply to The Bail Project. Bond was set by the judge at \$1,500 cash. 1922-CR03441.

- d. The appointed attorney asked for bond amount of \$5,000, specifically stating that The Bail Project could pay that amount. No other evidence about the arrestee's ability to pay bond was introduced. Cash bond was set by the judge at \$5,000 and the appointed attorney told the arrestee to apply for The Bail Project. However, The Bail Project did not bond the arrestee out. At his subsequent Rule 33.05 hearing, the judge reduced bond to \$1,500, 10 percent, upon learning that the arrestee had been unemployed for three years. He has never bonded out. 1922-CR02781.
10. In addition to in-court observations, I also pulled the confined docket and related bond orders for all but one day in February 2020.
 - a. 32 percent of the February hearings result in a cash bond being set.
 - b. It was impossible to determine what, if any, financial information was obtained before the cash bond was set because the written orders contained no factual findings specific to the individual detainee.
 11. Of the total 143 cash bond orders documented, 79 percent were in an amount that required a person to post \$5000 or less to obtain release from jail.
 12. A combined list of the case numbers for the hearings that were observed, as well as those that were pulled from the February 2020 confined dockets are included attached hereto.
- I declare under penalty of perjury that this is true and correct.

Executed on March 28, 2020.


Shannon Besch

List of Case Numbers of Observed Hearings & February Orders

1922-CR01596	1922-CR02664	1922-CR01987
1922-CR01919	1922-CR02701	1922-CR02004
1922-CR01943	1922-CR02689	1922-CR01999
1922-CR02021	1922-CR02682	1922-CR01996
1922-CR02050 & 1922-CR02057 same bond set	1922-CR02799	1922-CR02002
1922-CR02050 & 1922-CR02057 same bond set	1922-CR02811	1822-CR03801-01
1922-CR02052	1922-CR02808	1922-CR02045
1922-CR01159-01	1922-CR02805	1922-CR01346
1922-CR02038	1922-CR02781	1922-CR02044
1922-CR02293	1922-CR02803	1922-CR02049
1922-CR02307	1922-CR02876	1922-CR02000
1922-CR02393	1922-CR02887	1922-CR02120
1922-CR02454	1922-CR02888	1922-CR01802
1922-CR02456	1922-CR02883	1922-CR01965
1922-CR02027	1922-CR01912	1922-CR02009
1922-CR02455	1922-CR02933	1922-CR02047
1922-CR01622-01	1922-CR02744	1922-CR01987
1922-CR02481 & 1922-CR02265 same bond set	1922-CR02928	1922-CR02004
1922-CR02481 & 1922-CR02265 same bond set	1922-CR02958	1922-CR01999
1922-CR02544	1922-CR02956	1922-CR02109
1922-CR02301	1922-CR02982	1922-CR01996
1922-CR01811	1922-CR02197	1922-CR02110
1922-CR02428	1922-CR02785	1922-CR01648
1922-CR02694	1922-CR02289	1922-CR02124
1922-CR02700	1922-CR01979	1922-CR02035
1922-CR02690	1922-CR02002	1822-CR03765
	1922-CR02007	1922-CR02129 & 1822-CR03099-01 same bond set
	1922-CR02009	

1922-CR02129 and 1822- CR03099-01	1922-CR02099	1922-CR02419
1922-CR02099	1922-CR02287 and 1922- CR02282	1922-CR02444
1922-CR01235	1922-CR02304	1922-CR02096
1922-CR02104	1922-CR02210	1922-CR02448
1922-CR02131	1922-CR02260	1922-CR02446
1922-CR02037	1922-CR02185	1922-CR02447
1922-CR02049	1922-CR02290	1922-CR02442
1922-CR02039	1922-CR02302	1922-CR02469
1922-CR02128	1922-CR00086-01	1922-CR01406 & 1922- CR02473 same bond set
1922-CR02134	1922-CR02214	1922-CR02466
1922-CR02162	1922-CR02224	1922-CR02321
1922-CR02156	1822-CR01570	1922-CR01914
1822-CR03765	1822-CR03890-01	1922-CR02531
1922-CR01835	1922-CR02326	1922-CR02552
1922-CR02196	1922-CR01338	1922-CR02525
1922-CR02120	1922-CR02320	1922-CR02526
1922-CR02128	1922-CR02225	1922-CR02562
1922-CR01714	1922-CR02245	1922-CR02542
1922-CR02195	1922-CR02247	1922-CR02541
1922-CR01523	1922-CR02394	1922-CR02551
1922-CR02134	1922-CR02397	1922-CR01744 & 1822- CR03461 same bond set
1922-CR02133 & 1922- CR02190 same bond set	1922-CR02396	1922-CR02609
1922-CR02133 & 1922- CR02190 same bond set	1922-CR01880	1922-CR02583
1922-CR02070	1922-CR017780	1922-CR02616
1922-CR02286 & 1922- CR02280 same bond set	1922-CR62404	1922-CR02570
1922-CR01710	1922-CR02413, 1922- CR02417	1922-CR02570
	1822-CR01504	1922-CR02612

1922-CR02574	1992-CR02807 & 1992-	1922-CR02984
1922-CR02577	CR02828 same bond set	1922-CR00490
1922-CR02582	1922-CR02824	1922-CR02981
1922-CR02587	1922-CR02835	1922-CR02985
1922-CR02036 & 1922-	1922-CR02215	1922-CR02979
CR02607 same bond set	1922-CR02854	1922-CR02645 & 1922-
1922-CR02624	1922-CR02851	CR02977 same bond set
1922-CR02594	1922-CR02859	1922-CR02384
1922-CR02619	1922-CR02857	1922-CR01480
1922-CR02598	1922-CR02868	1922-CR02505
1922-CR02605	1992-CR02872	1922-CR00145-01
1922-CR02593	1922-CR02856	1922-CR02240
1922-CR02663	1922-CR02858	1922-CR000131
1922-CR02654	1922-CR02184	1722-CR03878
1922-CR02516	1922-CR02884	1922-CR02010
1922-CR02657	1922-CR02870	1922-CR01994
1922-CR02660	1922-CR02838	1822-CR03990-01
1922-CR02650	1922-CR02910	1922-CR02005 & 1922-
1922-CR02741	1922-CR02905	CR02008 same bond set
1922-CR02731	1922-CR02912 & 1922-	1922-CR01947
1922-CR02747	CR02913 same bond set	1922-CR01992
1922-CR02678	1922-CR02912 & 1922-	1922-CR01991
1922-CR02798	CR02913 same bond set	1922-CR02016
1922-CR02796	1922-CR02925	1922-CR02025
1922-CR02815	1922-CR02923	1922-CR02054
1922-CR02814	1922-CR02921	1922-CR02053
1992-CR02807 & 1992-	1922-CR02795	1922-CR01748
CR02828 same bond set	1922-CR02961	1922-CR02051
	1922-CR02963	1922-CR02055

1922-CR02048	1922-CR02183	1922-CR01864
1922-CR02083	1922-CR02200	1922-CR02458
1922-CR02046	1922-CR02168	1922-CR02477
1922-CR02058	1922-CR02192	1722-CR03329-01
1922-CR02042	1922-CR01692-01	1922-CR02474
1922-CR02093	1922-CR02191	1922-CR02503
1922-CR02087	1922-CR00104	1922-CR02445
1922-CR01728	1922-CR02283	1822-CR02376-01
1922-CR02091	1922-CR02292	1922-CR02536
1922-CR01200	1922-CR02275	1922-CR02546
1922-CR01352-01	1922-CR02279	1922-CR02278
1922-CR01565	1922-CR02269	1922-CR01753
1922-CR00412	1922-CR02132	1722-CR03686
1922-CR02123	1922-CR01934	1922-CR02519
1822-CR03379	1922-CR02319	1922-CR02623
1922-CR01908	1922-CR01427-01	1922-CR02621
1922-CR02155	1922-CR00987	1922-CR02631
1922-CR01552	1922-CR02299	1922-CR02655
1922-CR01346	1922-CR02386	1922-CR01411
1922-CR01746	1922-CR01655	1922-CR01621
1922-CR02176	1922-CR02376	1922-CR02559
1922-CR02064	1922-CR0449	1922-CR02268
1922-CR01648	1922-CR02451	1922-CR02696
1822-CR02743	1922-CR02306	1922-CR02219
1922-CR02144	1922-CR0917-01	1922-CR02220
1822-CR04305-01	1922-CR02245	1922-CR02713
1922-CR00832-01	1922-CR02439	1922-CR01702
1922-CR02198	1922-CR02440	1922-CR02703

1922-CR02698	1922-CR02964	1922-CR02461
1922-CR02641	1922-CR02695	1922-CR01882
1822-CR0362-01	1922-CR02830	1922-CR02532
1922-CR002732	1922-CR01986 & 1922- CR01973 same bond set	1922-CR02491
1922-CR02742		1922-CR02368
1922-CR02733	1922-CR02011	1922-CR02548
1922-CR02273	1922-CR02013	1922-CR02530
1822-CR01092	1922-CR01545-01	1922-CR02571
1922-CR02753	1922-CR02101	1922-CR02568
1922-CR02748	1922-CR02034	1922-CR02625
1922-CR02754	1922-CR02164	1922-CR02608
1922-CR02813	1922-CR02146	1922-CR02539
1922-CR02806	1922-CR02177	1922-CR01974
1922-CR02788	1922-CR02135	1922-CR02432
1922-CR02688	1922-CR02131	1922-CR01321
1922-CR02801	1922-CR00280-01	1922-CR02693
1922-CR02816	1922-CR01689	1922-CR02579
1922-CR02669	1922-CR02300	1922-CR02556
1922-CR02832	1922-CR02229	1922-CR02656
1992-CR02822	1922-CR02400	1922-CR02642
1922-CR02836	1922-CR02453	1922-CR02584
1822-CR04262-01	1922-CR02421	1922-CR02702
1922-CR02882	1922-CR02441	1922-CR01933
1922-CR02879	1922-CR02427	1922-CR02691
1922-CR02878	1922-CR02457	1922-CR02738
1922-CR02581	1922-CR02435	1922-CR02730
1922-CR02833	1922-CR02493	1922-CR02728
1922-CR02932	1922-CR02543	1922-CR00119
	1922-CR02377	

1922-CR02757	1922-CR02939	1922-CR03358
1922-CR02711	1922-CR02718	1822-CR04270-01
1922-CR02809	1922-CR02898	1922-CR03412
1922-CR02783	1922-CR02758	1922-CR03421
1992-CR00871	1922-CR02965	1922-CR03411
1922-CR02759	1922-CR01556	1922-CR01797
1922-CR00978	1922-CR02966	1922-CR03419
1922-CR02846	1922-CR02962	1922-CR03413
1922-CR02867	1922-CR02980	1922-CR03420
1922-CR02860	1722-CR03046-01	1922-CR03401
1992-CR02871	1922-CR01955	1922-CR03414
1922-CR02877	1922-CR02374	1922- CR03343
1922-CR02881	1992-CR02414	1922-CR03415
1992-CR02628	1922-CR02462	1922-CR03372
1922-CR02790 & 1922- CR02847 same bond set	1922-CR02549	1922-CR03417
	1922-CR02522	1922-CR03409
1922-CR02890	1922-CR00605	1922-CR03441
1922-CR02904 & 1922- CR02906 same bond set	1922-CR02567	1922-CR02218
1922-CR02915	1922-CR02714	1922-CR03440
1822-CR03109-01	1922-CR02705	1922-CR03438
1922-CR02512	1922-CR02482-01	1922-CR02207
1922-CR02908	1922-CR03337	1922-CR03436
1922-CR02914	1922-CR03334	1922-CR03416
1922-CR02927	1922-CR03323	1922-CR02350-01
1922-CR02189	1922-CR03324	1922-CR03422
1922-CR02922	1922-CR01361	1922-CR03395
1922-CR02920	1922- CR03338	1922-CR03443
1922-CR02918	1922-CR03355	1922-CR03444

1922-CR03431	1922-CR03315	1922-CR03687
1922-CR03437,	1922-CR03601	1922-CR03798
1922-CR03194	1922-CR03602	1922-CR02513
1922-CR02937	1922-CR02895-01	1922-CR03685
1922-CR03363	1922-CR03578	1922-CR03777
1922-CR02715	1922-CR01924-01	1922-CR03807
1922-CR03469	1922-CR03633	1922-CR03803
1922-CR03464	1922-CR03222	1922-CR02639
1922-CR03471	1922-CR03629	1922-CR03154
1922-CR03351	1922-CR03636	1922-CR02971-01
1922-CR03487	1922-CR03260	1922-CR03767
1922-CR03496	1922-CR03627	1922-CR01710
1922-CR03481	1922-CR03630	1922-CR03799
1922-CR03320	1922-CR03722	1922-CR03782
1922-CR03492	1922-CR03715	1922-CR03316
1922-CR03494	1922-CR03717	1922-CR03805
1922-CR02147	1922-CR03723	1922-CR03806
1922-CR03104-01 & 1922-CR03493	1922-CR03725	1922-CR03796
	1922-CR03716	1922-CR03800
1922-CR02060-01	1922-CR03724	1922-CR03804
1922-CR03558	1922-CR03670	1922-CR03819
1922-CR03543	1922-CR03599	1922-CR03823
1922-CR03591	1922-CR03718	1922-CR03822
1922-CR03592	1922-CR03190-01	1922-CR02683
1922-CR03587	1922-CR03665	1922-CR03817
1922-CR03563	1922-CR03788	1922-CR03204
1922-CR03597	1922-CR03692	1922-CR03199
1922-CR03590	1922-CR03803	1922-CR03184
1922-CR00470-01		

1922-CR02735	2022-CR00370	1922-CR03912
1922-CR03036	1922-CR01046-01	2022-CR00463
1922-CR03202	2022-CR00407	2022-CR00464
1922-CR03187	1922-CR02729-01	2022-CR00472
1922-CR03183	2022-CR00432	2022-CR00473
1922-CR03186	2022-CR00436	2022-CR00474
1922-CR03192	2022-CR00440	2022-CR00478
1922-CR03584	2022-CR00621	1922-CR01777-01
1922-CR03752	2022-CR00448	1922-CR03691
2022-CR00379	2022-CR00454	2022-CR00331
2022-CR00380	2022-CR00451	2022-CR00403
2022-CR00385	1922-CR03513-01	2022-CR00482
1922-CR03863	1822-CR02785	2022-CR00421
1722-CR02771-01	1822-CR02889-01	2022-CR00422
2022-CR00378	2022-CR00202	2022-CR00477
2022-CR00382	2022-CR00449	1922-CR01179-01
2022-CR00355	2022-CR00450	1922-CR02487
2022-CR00361	2022-CR00453	2022-CR00502
2022-CR00364	2022-CR00455	2022-CR00509
2022-CR00381	2022-CR00458	2022-CR00511
2022-CR00383	1922-CR03886	2022-CR00512
2022-CR00384	1922-CR03513-01	2022-CR00514
2022-CR00388	2022-CR00459	2022-CR00531
2022-CR00396	2022-CR00471	2022-CR00532
2022-CR00394	2022-CR00417	2022-CR00210
2022-CR00402	1822-CR03648-01	1922-CR03618
2022-CR00404	1922-CR03385	2022-CR00533
2022-CR00427	1922-CR03866	2022-CR00525

1922-CR03484	2022-CR00442	2022-CR00640
2022-CR00481	2022-CR00466	1922-CR00485
2022-CR00490	2022-CR00584	1922-CR03396
2022-CR00520	2022-CR00591	2022-CR00630
2022-CR00521	1922-CR02271	2022-Cr00638
2022-CR00529	2022-CR00557	2022-CR00639
2022-CR00530	2022-CR00576	2022-CR00654
2022-CR00542	2022-CR00581	1922-CR03593-01
2022-CR00536	1722-CR01075-01	2022-CR00655
1722-CR03285-01	2022-CR00327	1822-CR03036
1922-CR02313-01	2022-CR00571	1922-CR03185
1922-CR02463-01	2022-CR00574	2022-CR00186-01
1922-CR03612	2022-CR00586	2022-CR00233
1922-CR03753	2022-CR00593	2022-CR00269
2022-CR00545	2022-CR00348	2022-CR00631
2022-CR00548	2022-CR00597	2022-CR00644
2022-CR00549	1922-CR03061	2022-CR00649
2022-CR00553	1922-CR03768	2022-CR00650
2022-CR00550	2022-CR00603	2022-CR00651
2022-CR00556	2022-CR00604	
1922-CR03050	1922-CR01823-01	
2022-CR00442	2022-CR00609	
1922-CR03379-01	2022-CR00416	
1922-CR03910-01	1722-CR01376-01	
2022-CR00052	2022-CR00606	
2022-CR00564	2022-CR00610	
2022-CR00568	2022-CR00611	
2022-CR00569	2022-CR00635	

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

David Dixon, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 4:19-CV-0112-AGF
)	
City of St. Louis, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF MATTHEW MAHAFFEY

I, Matthew Mahaffey, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the District Defender for the St. Louis City Trial Office of the Missouri State Public Defender. That office is responsible for the representation of indigent defendants with eligible cases who apply for legal services from Missouri State Public Defender. I have served as interim District Defender or District Defender since January 2020. Prior to become the District Defender, I served as the Assistant District Defender for the same office from September 2019 until becoming interim District Defender in January 2020 and District Defender in February 2020. I am over the age of eighteen.

2. In my role as District Defender, I am responsible for overseeing Public Defender services in the Twenty-Second Judicial Circuit, including services provided at Initial Appearances pursuant to Missouri 33.01 and 33.05.

3. I have both observed and represented detainees at bond hearings pursuant to 33.01 since the new Missouri Supreme Court rules regarding pre-trial release went into effect on July 1, 2019.

4. Since the new rules went into effect, the Court has been appointing a group of private attorneys for the limited purpose of representing detainees at the initial bond hearings pursuant to

Rule 33.01. The appointed attorneys represent everyone on a detention docket who is not otherwise represented by the Public Defender or a private attorney. The appointed attorneys do not represent the detainee either before or after the 33.01 hearing.

5. No attorneys are not allowed into the jail or holdover locations to meet with detainees before their Rule 33.01 bond hearings.

6. Detainees are not brought to the courtroom for their Rule 33.01 bond hearings.

7. As a result, attorneys have no contact with the detainee before the hearing. The only time attorneys are able to even speak with their client is through a video conference during the bond hearing itself, in open court, with audio available to the prosecutor, judges, and court staff.

8. Because attorneys are unable to speak with the clients prior to the hearing, they are unable to obtain information that is relevant to the factors the judge is required to consider under Rule 33.01(e). Specifically, attorneys are unable to determine:

- a. Any information specific to the detainee's ability to pay bond, including employment or other financial resources;
- b. Any information regarding the detainee's family ties, character, mental condition, or the length of the defendant's residence in the community;
- c. Any evidence mitigating the detainee's prior convictions or ability to appear;
- d. Any mitigating facts that are relevant to the judge's the nature and circumstances of the offense charged and the weight of the evidence against the detainee;

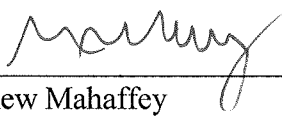
9. I have personally observed, and Assistant Public Defenders have reported to me, judges setting cash bond amounts without any inquiry into the detainee's financial situation.

10. I have personally observed, and Assistant Public Defenders have reported to me, judges setting cash bond amounts above the amount the detainee could pay.

11. I have personally observed, and Assistant Public Defenders have reported to me, judges setting cash bond amounts in the amount of \$5,000 or less for the express or suggested purpose of allowing the Bail Project to post bond for the individual detainee.

I declare under penalty of perjury that this declaration is true and correct.

Executed on March 30, 2020.

 60808

Matthew Mahaffey

EXHIBIT 3



IN THE 22nd JUDICIAL CIRCUIT, CITY OF ST. LOUIS, STATE OF MISSOURI
DIVISION 16B

Judge or Division: <u>16B</u>	Case Number: <u>2022-CR00276</u>
State of Missouri	Offense Cycle No. (OCN):
Defendant's Name: <u>Darvis Logan</u>	

FILED
JAN 27 2020
22nd JUDICIAL CIRCUIT
BY CIRCUIT CLERK'S OFFICE
(Date For Filing)

Order On Initial Appearance

This matter comes before the court on 1/27/20 (date) for initial appearance after defendant was jailed on a warrant.

- ☒ Defendant appeared within 48 hours of his/her arrest ☒ via video.
☐ Defendant did not appear within 48 hours of his/her arrest because ☐ arrested out of jurisdiction and/or ☐
☐ Defendant is read or ☒ waives the formal reading by counsel, the Complaint/Information/Indictment and is informed of the right to retain counsel, the right to request the appointment of counsel if he/she is unable to retain counsel, the right to remain silent and that any statement made may be used against him/her.
☒ Defendant enters plea of not guilty.
☐ Defendant determined to be indigent and Public Defender is appointed pursuant to Rule 31.02.
☐ Defendant is informed of the existing conditions of release, if any, and determines whether the defendant can meet the conditions.
☐ Defendant is advised of the right to modification of conditions of release under Rule 33.06.
☐ State and Defendant consent to conditions of release as set forth below.
☐ Defendant allowed to address the court and states: _____

After consideration of the arguments made at initial appearance, the Court:

- ☐ Amends the bond and informs the defendant of the conditions of release as follows: _____
☐ Reminds defendant that violation of any of the conditions of release will result in rearrest.
☒ Denies the request for modification of conditions of release.
☐ Determines, upon clear and convincing evidence, that no combination of non-monetary and monetary conditions will secure the safety of the community or other persons and **ORDERS** the defendant detained **without bond**, pending further bond hearing or trial.
☒ Sets the matter for **BOND HEARING** pursuant to Rule 33.05 (within 7 working days of the initial appearance) on 2/3/20 (date) at 10:30 (time) and directs the circuit attorney to notify any victims of this hearing, if victim notification is required.
☒ Advises the defendant that this matter is set in Division 25/26 for **first appearance and review of conditions of release compliance** on 2/27 (date) at 9:15 (time).

M. J. Jones 71661
Attorney For The State

[Signature]
Attorney For The Defendant
J. Clark usgac
Judge

Date: 1/27/20

EXHIBIT 4

IN THE 22nd JUDICIAL CIRCUIT, CITY OF ST. LOUIS, STATE OF MISSOURI
Division 16B

Judge or Division:	Case Number: <u>1922-CR00946</u>
State of Missouri	Offense Cycle No. (OCN):
Defendant's Name: <u>Cecil B. Wilson III</u>	<div style="text-align: center;"> FILED FEB - 5 2020 22nd JUDICIAL CIRCUIT CIRCUIT CLERK'S OFFICE BY <u>[Signature]</u> DEPUTY (Date File Stamp) </div>

Order on Release Hearing Following Initial Appearance

On the record, this matter comes before the Court on February 6, 2020 (date) for a Rule 33.05 hearing.
Appearing is: ☒ The State by _____ ☐ The Victim

☒ The Defendant by _____ ☐ In Person ☒ By Video ☐ Appearance waived by counsel
☐ As noticed by Defendant or his/her counsel or Circuit Attorney.

☒ As set by the Court within seven days of initial appearance pursuant to Rule 33.05.
☐ If not heard within seven days of a Defendant's initial appearance hearing, the reason for the delay was
☐ no notice to victim and/or ☐ continuance requested by defendant for jail visit

☐ No hearing was held. The parties have agreed to conditions of release by a separate memo approved by the Court.

☐ Hearing was held. The Rules of Evidence are inapplicable under Supreme Court Rule 33.07.

The Court has considered the following factors and makes the following findings regarding those factors:

1. Defendant's financial status and ability to pay on monetary condition of release: Defendant's family can pay perhaps \$350 for bond
2. Likelihood Defendant will appear at all stages of this criminal proceeding: Highly likely. Defendant would have the assistance of his family to ensure his appearance as well
3. Safety of community, crime victims, witnesses and others: _____
4. Nature and circumstances of the offense and the weight of evidence against Defendant: _____
5. Defendant's family ties: Defendant's entire nuclear family, along with much of his extended family, resides in the St. Louis metropolitan area.
6. Defendant's employment: Employed @ Post House for the last 2 years
7. Defendant's character: _____
8. Defendant's mental condition: _____
9. Defendant's length of residence in community: _____

10. Defendant's record of convictions: _____

11. Defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings: _____

12. Whether Defendant was on probation, parole, or release pending trial or appeal at the time the present offense was committed: _____

13. Validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri: (NONE APPROVED AT THIS TIME) _____

After consideration of the above, and the individual circumstances of the Defendant and this case, the Court: ☒ Amends the conditions of release as follows: _____

Report to EMAS once per week. Defendant shall reside with his mother, Demetrias Brooks, stay away from victim. Demetrias Brooks

with the following additional conditions:

- ☐ Defendant is placed in the custody of _____ who has agreed to supervise him/her and assure future court appearances.
- ☐ Restriction on travel, association or place of abode as follows: _____
- ☐ Report regularly as follows: _____
- ☐ Electronic monitoring or regular drug testing by _____
- ☐ Defendant to actively seek employment, maintain employment or commence an education program.
- ☐ Defendant shall not possess a firearm or other deadly weapon.
- ☐ Comply with the following curfew: _____
- ☐ Defendant shall not possess alcohol or any controlled substance without a valid prescription.
- ☐ Defendant shall undergo medical, psychological or psychiatric treatment as follows: _____
- ☐ Defendant is placed on house arrest with the following exceptions ☐ travel to and from court, doctor's office, and attorney's office and _____
- ☐ Work release if approved by the Sheriff.

The Court finds that the above listed conditions are *the least restrictive* for the facts of this case.

- ☐ Denies any change in the bond, finding that the clear and convincing evidence is that the current conditions are the **least restrictive to secure appearance and safety**.
- ☐ Under Supreme Court Rule 33.01(d) the court finds that **NO BOND** and conditions will secure the safety of the community because _____

Accordingly, the Court:

- ☒ Advises the defendant that this matter is set in Division 25/26 for **first appearance and review of conditions of release compliance** on 2/27/20 (date) at 9AM (time).

Jonathan J. H. Phillips 22221
Attorney For The State

C. R. #67087
Attorney For The Defendant

2/5/2020
Date

SO ORDERED:
[Signature]
Judge

EXHIBIT 5

Declaration of Dr. Jaimie Meyer

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

I. Background and Qualifications

1. I am Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut. I am board certified in Internal Medicine, Infectious Diseases and Addiction Medicine. I completed my residency in Internal Medicine at NY Presbyterian Hospital at Columbia, New York, in 2008. I completed a fellowship in clinical Infectious Diseases at Yale School of Medicine in 2011 and a fellowship in Interdisciplinary HIV Prevention at the Center for Interdisciplinary Research on AIDS in 2012. I hold a Master of Science in Biostatistics and Epidemiology from Yale School of Public Health.
2. I have worked for over a decade on infectious diseases in the context of jails and prisons. From 2008-2016, I served as the Infectious Disease physician for York Correctional Institution in Niantic, Connecticut, which is the only state jail and prison for women in Connecticut. In that capacity, I was responsible for the management of HIV, Hepatitis C, tuberculosis, and other infectious diseases in the facility. Since then, I have maintained a dedicated HIV clinic in the community for patients returning home from prison and jail. For over a decade, I have been continuously funded by the NIH, industry, and foundations for clinical research on HIV prevention and treatment for people involved in the criminal justice system, including those incarcerated in closed settings (jails and prisons) and in the community under supervision (probation and parole). I have served as an expert consultant on infectious diseases and women's health in jails and prisons for the UN Office on Drugs and Crimes, the Federal Bureau of Prisons, and others. I also served as an expert health witness for the US Commission on Civil Rights Special Briefing on Women in Prison.
3. I have written and published extensively on the topics of infectious diseases among people involved in the criminal justice system including book chapters and articles in leading peer-reviewed journals (including Lancet HIV, JAMA Internal Medicine, American Journal of Public Health, International Journal of Drug Policy) on issues of prevention, diagnosis, and management of HIV, Hepatitis C, and other infectious diseases among people involved in the criminal justice system.
4. My C.V. includes a full list of my honors, experience, and publications, and it is attached as Exhibit A.
5. I am being paid \$1,000 for my time reviewing materials and preparing this report.
6. I have not testified as an expert at trial or by deposition in the past four years.

II. Heightened Risk of Epidemics in Jails and Prisons

access to personal protective equipment, including gloves, masks, gowns, and eye shields. Jails and prisons are often under-resourced and ill-equipped to provide sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing the risk for everyone in the facility of a widespread outbreak.

13. Increased susceptibility: People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.¹ This is because people in jails and prisons are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV.
14. Jails and prisons are often poorly equipped to diagnose and manage infectious disease outbreaks. Some jails and prisons lack onsite medical facilities or 24-hour medical care. The medical facilities at jails and prisons are almost never sufficiently equipped to handle large outbreaks of infectious diseases. To prevent transmission of droplet-borne infectious diseases, people who are infected and ill need to be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms if any, and these may be already in use by people with other conditions (including tuberculosis or influenza). Resources will become exhausted rapidly and any beds available will soon be at capacity. This makes both containing the illness and caring for those who have become infected much more difficult.
15. Jails and prisons lack access to vital community resources to diagnose and manage infectious diseases. Jails and prisons do not have access to community health resources that can be crucial in identifying and managing widespread outbreaks of infectious diseases. This includes access to testing equipment, laboratories, and medications.
16. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. During an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.
17. Health safety: As an outbreak spreads through jails, prisons, and communities, medical personnel become sick and do not show up to work. Absenteeism means that facilities can become dangerously understaffed with healthcare providers. This increases a number of risks and can dramatically reduce the level of care provided. As health systems inside facilities are taxed, people with chronic underlying physical and mental health conditions and serious medical needs may not be able to receive the care they need for these conditions. As supply chains become disrupted during a global pandemic, the availability of medicines and food may be limited.
18. Safety and security: As an outbreak spreads through jails, prisons, and communities, correctional officers and other security personnel become sick and do not show up to

¹ *Active case finding for communicable diseases in prisons*, 391 The Lancet 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

work. Absenteeism poses substantial safety and security risk to both the people inside the facilities and the public.

19. These risks have all been borne out during past epidemics of influenza in jails and prisons. For example, in 2012, the CDC reported an outbreak of influenza in 2 facilities in Maine, resulting in two inmate deaths.² Subsequent CDC investigation of 995 inmates and 235 staff members across the 2 facilities discovered insufficient supplies of influenza vaccine and antiviral drugs for treatment of people who were ill and prophylaxis for people who were exposed. During the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases.³ Even facilities on “quarantine” continued to accept new intakes, rendering the quarantine incomplete. These scenarios occurred in the “best case” of influenza, a viral infection for which there was an effective and available vaccine and antiviral medications, unlike COVID-19, for which there is currently neither.

III. Profile of COVID-19 as an Infectious Disease⁴

20. The novel coronavirus, officially known as SARS-CoV-2, causes a disease known as COVID-19. The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but may also survive on inanimate surfaces. People seem to be most able to transmit the virus to others when they are sickest but it is possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. In China, where COVID-19 originated, the average infected person passed the virus on to 2-3 other people; transmission occurred at a distance of 3-6 feet. Not only is the virus very efficient at being transmitted through droplets, everyone is at risk of infection because our immune systems have never been exposed to or developed protective responses against this virus. A vaccine is currently in development but will likely not be able for another year to the general public. Antiviral medications are currently in testing but not yet FDA-approved, so only available for compassionate use from the manufacturer. People in prison and jail will likely have even less access to these novel health strategies as they become available.

² *Influenza Outbreaks at Two Correctional Facilities — Maine, March 2011*, Centers for Disease Control and Prevention (2012),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6113a3.htm>.

³ David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

⁴ This whole section draws from Brooks J. Global Epidemiology and Prevention of COVID19, COVID-19 Symposium, Conference on Retroviruses and Opportunistic Infections (CROI), virtual (March 10, 2020); *Coronavirus (COVID-19)*, Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Brent Gibson, *COVID-19 (Coronavirus): What You Need to Know in Corrections*, National Commission on Correctional Health Care (February 28, 2020), <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>.

21. Most people (80%) who become infected with COVID-19 will develop a mild upper respiratory infection but emerging data from China suggests serious illness occurs in up to 16% of cases, including death.⁵ Serious illness and death is most common among people with underlying chronic health conditions, like heart disease, lung disease, liver disease, and diabetes, and older age.⁶ Death in COVID-19 infection is usually due to pneumonia and sepsis. The emergence of COVID-19 during influenza season means that people are also at risk from serious illness and death due to influenza, especially when they have not received the influenza vaccine or the pneumonia vaccine.
22. The care of people who are infected with COVID-19 depends on how seriously they are ill.⁷ People with mild symptoms may not require hospitalization but may continue to be closely monitored at home. People with moderate symptoms may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. People with severe symptoms may require ventilation and intravenous antibiotics. Public health officials anticipate that hospital settings will likely be overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 becomes more widespread in communities.
23. COVID-19 prevention strategies include containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill or who have had contact with people who are ill, including the use of personal protective equipment. Jails and prisons are totally under-resourced to meet the demand for any of these strategies. As infectious diseases spread in the community, public health demands mitigation strategies, which involves social distancing and closing other communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease. Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations as described above.
24. The time to act is now. Data from other settings demonstrate what happens when jails and prisons are unprepared for COVID-19. News outlets reported that Iran temporarily released 70,000 prisoners when COVID-19 started to sweep its facilities.⁸ To date, few state or federal prison systems have adequate (or any) pandemic preparedness plans in

⁵ *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

⁶ *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*. *The Lancet* (published online March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

⁷ *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, Centers for Disease Control and Prevention (March 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

⁸ *Iran temporarily releases 70,000 prisoners as coronavirus cases surge*, Reuters (March 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

place.⁹ Systems are just beginning to screen and isolate people on entry and perhaps place visitor restrictions, but this is wholly inadequate when staff and vendors can still come to work sick and potentially transmit the virus to others.

IV. Risk of COVID-19 in ICE's NYC-Area Detention Facilities

25. I have reviewed the following materials in making my assessment of the danger of COVID-19 in the Bergen, Essex, Hudson, and Orange County jails ("ICE's NYC-area jails"): (1) a declaration by Marinda van Dalen, a Senior Attorney in the Health Justice Program at New York Lawyers for the Public Interest (NYLPI); (2) the report *Detained and Denied: Healthcare Access in Immigration Detention*, released by NYLPI in 2017; and (3) the report *Ailing Justice: New Jersey, Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention*, released by Human Rights First in 2018.
26. Based on my review of these materials, my experience working on public health in jails and prisons, and my review of the relevant literature, it is my professional judgment that these facilities are dangerously under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail and prison staff, and the broader community. The reasons for this conclusion are detailed as follows.
27. The delays in access to care that already exist in normal circumstances will only become worse during an outbreak, making it especially difficult for the facilities to contain any infections and to treat those who are infected.
28. Failure to provide individuals with continuation of the treatment they were receiving in the community, or even just interruption of treatment, for chronic underlying health conditions will result in increased risk of morbidity and mortality related to these chronic conditions.
29. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected.
30. People with underlying chronic mental health conditions need adequate access to treatment for these conditions throughout their period of detention. Failure to provide adequate mental health care, as may happen when health systems in jails and prisons are taxed by COVID-19 outbreaks, may result in poor health outcomes. Moreover, mental health conditions may be exacerbated by the stress of incarceration during the COVID-19 pandemic, including isolation and lack of visitation.

⁹ Luke Barr & Christina Carrega, *State prisons prepare for coronavirus but federal prisons not providing significant guidance, sources say*, ABC News (March 11, 2020), <https://abcnews.go.com/US/state-prisons-prepare-coronavirus-federal-prisons-providing-significant/story?id=69433690>.

36. For the reasons above, it is my professional judgment that individuals placed in ICE's NYC-area jails are at a significantly higher risk of infection with COVID-19 as compared to the population in the community and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis) and even death.
37. Reducing the size of the population in jails and prisons can be crucially important to reducing the level of risk both for those within those facilities and for the community at large.
38. As such, from a public health perspective, it is my strong opinion that individuals who can safely and appropriately remain in the community not be placed in ICE's NYC-area jails at this time. I am also strongly of the opinion that individuals who are already in those facilities should be evaluated for release.
39. This is more important still for individuals with preexisting conditions (e.g., heart disease, chronic lung disease, chronic liver disease, suppressed immune system, diabetes) or who are over the age of 60. They are in even greater danger in these facilities, including a meaningfully higher risk of death.
40. It is my professional opinion that these steps are both necessary and urgent. The horizon of risk for COVID-19 in these facilities is a matter of days, not weeks. Once a case of

EXHIBIT A

CURRICULUM VITAE

Date of Revision: November 20, 2019
 Name: Jaimie Meyer, MD, MS, FACP
 School: Yale School of Medicine

Education:

BA, Dartmouth College Anthropology 2000
 MD, University of Connecticut School of Medicine 2005
 MS, Yale School of Public Health Biostatistics and Epidemiology 2014

Career/Academic Appointments:

2005 - 2008 Residency, Internal Medicine, NY Presbyterian Hospital at Columbia, New York, NY
 2008 - 2011 Fellowship, Infectious Diseases, Yale University School of Medicine, New Haven, CT
 2008 - 2012 Clinical Fellow, Infectious Diseases, Yale School of Medicine, New Haven, CT
 2010 - 2012 Fellowship, Interdisciplinary HIV Prevention, Center for Interdisciplinary Research on AIDS, New Haven, CT
 2012 - 2014 Instructor, AIDS, Yale School of Medicine, New Haven, CT
 2014 - present Assistant Professor, AIDS, Yale School of Medicine, New Haven, CT
 2015 - 2018 Assistant Clinical Professor, Nursing, Yale School of Medicine, New Haven, CT

Board Certification:

AB of Internal Medicine, Internal Medicine, 08-2008, 01-2019
 AB of Internal Medicine, Infectious Disease, 10-2010
 AB of Preventive Medicine, Addiction Medicine, 01-2018

Professional Honors & Recognition:

International/National/Regional

2018 NIH Center for Scientific Review, Selected as Early Career Reviewer
 2017 Doris Duke Charitable Foundation, Doris Duke Charitable Foundation Scholar
 2016 American College of Physicians, Fellow
 2016 NIH Health Disparities, Loan Repayment Award Competitive Renewal
 2016 AAMC, Early Career Women Faculty Professional Development Seminar
 2014 NIH Health Disparities, Loan Repayment Program Award
 2014 NIDA, Women & Sex/Gender Differences Junior Investigator Travel Award
 2014 International Women's/Children's Health & Gender Working Group, Travel Award
 2014 Patterson Trust, Awards Program in Clinical Research
 2013 Connecticut Infectious Disease Society, Thornton Award for Clinical Research
 2011 Bristol Myers-Squibb, Virology Fellows Award

2006	NY Columbia Presbyterian, John N. Loeb Intern Award
2005	American Medical Women's Association, Medical Student Citation
2005	Connecticut State Medical Society, Medical Student Award
2000	Dartmouth College, Hannah Croasdale Senior Award
2000	Dartmouth College, Palaeopitus Senior Leadership Society Inductee

Yale University

2014	Women's Faculty Forum, Public Voices Thought Leadership Program Fellow
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Grants/Clinical Trials History:

Current Grants

Agency:	Center for Interdisciplinary Research on AIDS (CIRA)
I.D.#:	2019-20 Pilot Project Awards
Title:	Optimizing PrEP's Potential in Non-Clinical Settings: Development and Evaluation of a PrEP Decision Aid for Women Seeking Domestic Violence Services
P.I.:	Tiara Willie
Role:	Principal Investigator
Percent effort:	2%
Direct costs per year:	\$29,993.00
Total costs for project period:	\$29,993.00
Project period:	7/11/2019 - 7/10/2020

Agency:	SAMHSA
I.D.#:	H79 TI080561
Title:	CHANGE: Comprehensive Housing and Addiction Management Network for Greater New Haven
Role:	Principal Investigator
Percent effort:	20%
Direct costs per year:	\$389,054.00
Total costs for project period:	\$1,933,368.00
Project period:	11/30/2018 - 11/29/2023

Agency:	Gilead Sciences, Inc.
I.D.#:	Investigator Sponsored Award, CO-US-276-D136
Title:	Delivering HIV Pre-Exposure Prophylaxis to Networks of Justice-Involved Women
Role:	Principal Investigator
Percent effort:	8%
Direct costs per year:	\$81,151.00
Total costs for project	

period: \$306,199.00
 Project period: 6/19/2018 - 1/31/2020

Agency: NIDA
 I.D.#: R21 DA042702
 Title: Prisons, Drug Injection and the HIV Risk Environment
 Role: Principal Investigator
 Percent effort: 22%
 Direct costs per year: \$129,673.00
 Total costs for project period: \$358,276.00
 Project period: 8/1/2017 - 7/31/2020

Agency: Doris Duke Charitable Foundation
 I.D.#: Clinical Scientist Development Award
 Title: Developing and Testing the Effect of a Patient-Centered HIV Prevention Decision Aid on PrEP uptake for Women with Substance Use in Treatment Settings
 Role: Principal Investigator
 Percent effort: 27%
 Direct costs per year: \$149,959.00
 Total costs for project period: \$493,965.00
 Project period: 7/1/2017 - 6/30/2020

Past Grants

Agency: NIDA
 I.D.#: K23 DA033858
 Title: Evaluating and Improving HIV Outcomes in Community-based Women who Interface with the Criminal Justice System
 Role: Principal Investigator
 Percent effort: 75%
 Direct costs per year: \$149,509.00
 Total costs for project period: \$821,147.00
 Project period: 7/1/2012 - 11/30/2017

Agency: Robert Leet & Clara Guthrie Patterson Trust
 I.D.#: R12225, Award in Clinical Research
 Title: Disentangling the Effect of Gender on HIV Treatment and Criminal Justice Outcomes
 Role: Principal Investigator
 Percent effort: 10%
 Direct costs per year: \$75,000.00

Total costs for project

period: \$75,000.00
 Project period: 1/31/2014 - 10/31/2015

Agency: Bristol-Myers Squibb
 I.D.#: HIV Virology Fellowship Award
 Title: Effect of newer antiretroviral regimens on HIV biological outcomes in HIV-infected prisoners: a 13 year retrospective evaluation
 Role: Principal Investigator
 Percent effort: 10%
 Direct costs per year: \$34,390.00
 Total costs for project
 period: \$34,390.00
 Project period: 12/1/2011 - 11/30/2012

Pending Grants

Agency: NIMH
 I.D.#: R01 MH121991
 Title: Identifying Modifiable Risk and Protective Processes at the Day-Level that Predict HIV Care Outcomes among Women Exposed to Partner Violence
 P.I.: Sullivan, Tami
 Role: Principal Investigator
 Percent effort: 30%
 Direct costs per year: \$499,755.00
 Total costs for project
 period: \$4,148,823.00
 Project period: 1/1/2020 - 12/31/2024

Invited Speaking Engagements, Presentations, Symposia & Workshops Not Affiliated With Yale:**International/National**

- 2019: CME Outfitters, Washington, DC. "A Grassroots Approach to Weed out HIV and HCV in Special OUD Populations"
- 2019: US Commission on Civil Rights, Washington, DC. "An Analysis of Women's Health, Personal Dignity and Sexual Abuse in the US Prison System"
- 2018: College of Problems on Drug Dependence, College of Problems on Drug Dependence, San Diego, CA. "Research on Women who Use Drugs: Knowledge and Implementation Gaps and A Proposed Research Agenda"
- 2018: Clinical Care Options, Washington, DC. "Intersection of the HIV and Opioid Epidemics"
- 2016: Dartmouth Geisel School of Medicine, Hanover, NH. "Incarceration as Opportunity: Prisoner Health and Health Interventions"
- 2010: Rhode Island Chapter of the Association of Nurses in AIDS Care, Providence, RI. "HIV and Addiction"

Regional

- 2018: Clinical Directors Network, New York, NY. "PrEP Awareness among Special Populations of Women and People who Use Drugs"
- 2018: Frank H. Netter School of Medicine, Quinnipiac University, Hamden, CT. "HIV prevention for justice-involved women"
- 2017: Clinical Directors Network, New York, NY. "Optimizing the HIV Care Continuum for People who use Drugs"
- 2016: Frank H. Netter School of Medicine, Quinnipiac University, Hamden, CT. "Topics in Infectious Diseases"
- 2016: Connecticut Advanced Practice Registered Nurse Society, Wethersfield, CT. "Trends in HIV Prevention: Integration of Biomedical and Behavioral Approaches"

Peer-Reviewed Presentations & Symposia Given at Meetings Not Affiliated With Yale:

International/National

- 2019: CPDD 81st Annual Scientific Meeting, CPDD, San Antonio, TX. "Punitive approaches to pregnant women with opioid use disorder: Impact on health care utilization, outcomes and ethical implications"
- 2019: 14th International Conference on HIV Treatment and Prevention Adherence, IAPAC Adherence, Miami, FL. "Decision-Making about HIV Prevention among Women in Drug Treatment: Is PrEP Contextually Relevant?"
- 2019: 2019 NIDA International Forum, NIDA, San Antonio, TX. "Diphenhydramine Injection in Kyrgyz Prisons: A Qualitative Study Of A High-Risk Behavior With Implications For Harm Reduction"
- 2019: 11th International Women's and Children's Health and Gender (InWomen's) Group, InWomen's Group, San Antonio, TX. "Uniquely successful implementation of methadone treatment in a women's prison in Kyrgyzstan"
- 2019: Harm Reduction International, Porto, Porto District, Portugal. "How does methadone treatment travel? On the 'becoming-methadone-body' of Kyrgyzstan prisons"
- 2019: APA Collaborative Perspectives on Addiction Annual Meeting, APA Collaborative Perspectives on Addiction Annual Meeting, Providence, RI. "Impact of Trauma and Substance Abuse on HIV PrEP Outcomes among Women in Criminal Justice Systems. Symposium: "Partner Violence: Intersected with or Predictive of Substance Use and Health Problems among Women.""
- 2019: Society for Academic Emergency Medicine (SAEM), Worcester, MA. "Effects of a Multisite Medical Home Intervention on Emergency Department Use among Unstably Housed People with Human Immunodeficiency Virus"
- 2019: Conference on Retroviruses and Opportunistic Infections (CROI), IAS, Seattle, WA. "Released to Die: Elevated Mortality in People with HIV after Incarceration"
- 2019: 12th Academic and Health Policy on Conference on Correctional Health, 12th Academic and Health Policy on Conference on Correctional Health, Las Vegas, NV. "PrEP Eligibility and HIV Risk Perception for Women across the Criminal Justice Continuum in Connecticut"
- 2019: Association for Justice-Involved Female Organizations (AJFO), Atlanta, GA. "Treatment of Women's Substance Use Disorders and HIV Prevention During and Following Incarceration"

- 2018: American Public Health Association (APHA) Annual Meeting, American Public Health Association (APHA) Annual Meeting, San Diego, CA. "New Haven Syringe Service Program: A model of integrated harm reduction and health care services"
- 2018: 12th National Harm Reduction Conference, 12th National Harm Reduction Conference, New Orleans, LA. "Service needs and access to care among participants in the New Haven Syringe Services Program"
- 2018: 22nd International AIDS Conference, 22nd International AIDS Conference, Amsterdam, NH, Netherlands. "HIV risk perceptions and risk reduction strategies among prisoners in Kyrgyzstan: a qualitative study"
- 2018: 22nd International AIDS Conference, 22nd International AIDS Conference, Amsterdam, NH, Netherlands. "Methadone Maintenance Therapy Uptake, Retention, and Linkage for People who Inject Drugs Transitioning From Prison to the Community in Kyrgyzstan: Evaluation of a National Program"
- 2018: NIDA International Forum, NIDA, San Diego, CA. "HIV and Drug Use among Women in Prison in Azerbaijan, Kyrgyzstan and Ukraine"
- 2018: 2018 Conference on Retroviruses and Opportunistic Infections (CROI), CROI, Boston, MA. "From prison's gate to death's door: Survival analysis of released prisoners with HIV"
- 2018: 11th Academic and Health Policy on Conference on Correctional Health, Academic Consortium on Criminal Justice Health, Houston, TX. "Assessing Concurrent Validity of Criminogenic and Health Risk Instruments among Women on Probation in Connecticut"
- 2017: IDWeek: Annual Meeting of Infectious Diseases Society of America, Infectious Diseases Society of America, San Diego, CA. "Predictors of Linkage to and Retention in HIV Care Following Release from Connecticut, USA Jails and Prisons (Oral presentation)"
- 2017: International AIDS Society (IAS) Meeting, International AIDS Society, Paris, Île-de-France, France. "Late breaker: Predictors of Linkage to and Retention in HIV Care Following Release from Connecticut, USA Jails and Prisons"
- 2017: NIDA International Forum, NIDA, Montreal, QC, Canada. "A Mixed Methods Evaluation of HIV Risk among Women with Opioid Dependence in Ukraine"
- 2017: International Women's and Children's Health and Gender Working Group, International Women's and Children's Health and Gender Working Group, Montreal, QC, Canada. "Assessing Receptiveness to and Eligibility for PrEP in Criminal Justice-Involved Women"
- 2017: International Women's and Children's Health and Gender Working Group, International Women's and Children's Health and Gender Working Group, Montreal, QC, Canada. "A Mixed Methods Evaluation of HIV Risk among Women with Opioid Dependence in Ukraine"
- 2017: Annual Meeting of the Society for Applied Anthropology, Society for Applied Anthropology, Santa Fe, NM. "Where rubbers meet the road: HIV risk reduction for women on probation (Oral presentation)"
- 2016: International Women's and Children's Health and Gender Working Group, International Women's and Children's Health and Gender Working Group, Palm Springs, CA. "An Event-level Examination of Successful Condom Negotiation Strategies among College Women"
- 2015: CDC National HIV Prevention Conference, CDC, Atlanta, GA. "Beyond the Syndemic: Condom Negotiation and Use among Women Experiencing Partner Violence (Oral presentation)"

- 2015: International Harm Reduction Conference, International Harm Reduction, Kuala Lumpur, Federal Territory of Kuala Lumpur, Malaysia. "Evidence-Based Interventions to Enhance Assessment, Treatment, and Adherence in the Chronic Hepatitis C Care Continuum"
- 2015: International Women's and Children's Health and Gender Working Group, International Women's and Children's Health and Gender Working Group, Phoenix, AZ. "Violence, Substance Use, and Sexual Risk among College Women"
- 2014: International Women's and Children's Health and Gender Working Group, International Women's and Children's Health and Gender Working Group, San Juan, San Juan, Puerto Rico. "Gender Differences in HIV and Criminal Justice Outcomes"
- 2014: College on Problems in Drug Dependence (CPDD), College on Problems in Drug Dependence (CPDD), San Juan, San Juan, Puerto Rico. "Gender Differences in HIV and Criminal Justice Outcomes"
- 2014: Conference on Retroviruses and Opportunistic Infections (CROI), Conference on Retroviruses and Opportunistic Infections (CROI), Boston, MA. "Longitudinal Treatment Outcomes in HIV-Infected Prisoners and Influence of Re-Incarceration"
- 2013: HIV Intervention and Implementation Science Meeting, HIV Intervention and Implementation Science Meeting, Bethesda, MD. "Women Released from Jail Experience Suboptimal HIV Treatment Outcomes Compared to Men: Results from a Multi-Center Study"
- 2013: Conference on Retroviruses and Opportunistic Infections (CROI), Conference on Retroviruses and Opportunistic Infections (CROI), Atlanta, GA. "Women Released from Jail Experience Suboptimal HIV Treatment Outcomes Compared to Men: Results from a Multi-Center Study"
- 2012: IDWeek: Infectious Diseases Society of America Annual Meeting, Infectious Diseases Society of America, San Diego, CA. "Correlates of Retention in HIV Care after Release from Jail: Results from a Multi-site Study"
- 2012: IDWeek: Infectious Diseases Society of America Annual Meeting, Infectious Diseases Society of America, San Diego, CA. "Frequent Emergency Department Use among Released Prisoners with HIV: Characterization Including a Novel Multimorbidity Index"
- 2012: 5th Academic and Health Policy Conference on Correctional Health, 5th Academic and Health Policy Conference on Correctional Health, Atlanta, GA. "Effects of Intimate Partner Violence on HIV and Substance Abuse in Released Jail Detainees"
- 2011: IAPAC HIV Treatment and Adherence Conference, IAPAC, Miami, FL. "Adherence to HIV treatment and care among previously homeless jail detainees"

Regional

- 2019: Connecticut Infectious Disease Society, New Haven, CT. "Preliminary Findings from a Novel PrEP Demonstration Project for Women Involved in Criminal Justice Systems and Members of their Risk Networks"
- 2017: Connecticut Public Health Association Annual Conference, Connecticut Public Health Association, Farmington, CT. "The New Haven syringe services program"
- 2014: Connecticut Infectious Disease Society Annual Meeting, Connecticut Infectious Disease Society, Orange, CT. "Longitudinal Treatment Outcomes in HIV-Infected Prisoners and Influence of Re-Incarceration"

- 2013: Connecticut Infectious Disease Society Annual Meeting, Connecticut Infectious Disease Society, Orange, CT. "Women Released from Jail Experience Suboptimal HIV Treatment Outcomes Compared to Men: Results from a Multi-Center Study"
- 2011: Connecticut Infectious Disease Society Annual Meeting, Connecticut Infectious Disease Society, Orange, CT. "Emergency Department Use by Released Prisoners with HIV"

Professional Service:

Peer Review Groups/Grant Study Sections

- 2019 - present Reviewer, NIDA, NIH Reviewer: RFA-DA-19-025: HEAL Initiative: Justice Community Opioid Innovation Network (JCOIN) Clinical Research Centers
- 2019 - present Reviewer, Yale DCFAR Pilot Projects
- 2018 - present Reviewer, Center for Interdisciplinary Research on AIDS (CIRA)
- 2015 - present Reviewer, University of Wisconsin-Milwaukee Research Growth Initiative

Advisory Boards

- 2017 Advisor, HIV Prevention and Treatment in Cis-Gendered Women, Gilead Sciences, Inc.

Journal Service

Editor/Associate Editor

- 2019 - present Associate Editor, Journal of the International Association of Providers of AIDS Care (JIAPAC), Section Editor: Sex and Gender Issues

Reviewer

- 2019 - present Reviewer, JAIDS
- 2012 - present Reviewer, Addiction Sci and Clin Pract
- 2012 - present Reviewer, Addictive Behav Reports
- 2012 - present Reviewer, AIDS Care
- 2012 - present Reviewer, Social Science and Medicine
- 2012 - present Reviewer, SpringerPlus
- 2012 - present Reviewer, Substance Abuse Treatment Prevention and Policy
- 2012 - present Reviewer, Women's Health Issues
- 2012 - present Reviewer, Yale Journal of Biology and Medicine
- 2012 - present Reviewer, AIMS Public Health
- 2012 - present Reviewer, American Journal on Addictions
- 2012 - present Reviewer, American Journal of Epidemiology
- 2012 - present Reviewer, American Journal of Public Health
- 2012 - present Reviewer, Annals Internal Medicine
- 2012 - present Reviewer, BMC Emergency Medicine
- 2012 - present Reviewer, BMC Infectious Diseases
- 2012 - present Reviewer, BMC Public Health
- 2012 - present Reviewer, BMC Women's Health

2012 - present Reviewer, Clinical Infectious Diseases
 2012 - present Reviewer, Critical Public Health
 2012 - present Reviewer, Drug and Alcohol Dependence
 2012 - present Reviewer, Drug and Alcohol Review
 2012 - present Reviewer, Epidemiologic Reviews
 2012 - present Reviewer, Eurosurveillance
 2012 - present Reviewer, Health and Justice (Springer Open)
 2012 - present Reviewer, International Journal of Drug Policy
 2012 - present Reviewer, International Journal of Prisoner Health
 2012 - present Reviewer, International Journal of STDs and AIDS
 2012 - present Reviewer, International Journal of Women's Health
 2012 - present Reviewer, JAMA Internal Medicine
 2012 - present Reviewer, Journal of Family Violence
 2012 - present Reviewer, Journal of General Internal Medicine
 2012 - present Reviewer, Journal of Immigrant and Minority Health
 2012 - present Reviewer, Journal of International AIDS Society
 2012 - present Reviewer, Journal of Psychoactive Drugs
 2012 - present Reviewer, Journal of Urban Health
 2012 - present Reviewer, Journal of Women's Health
 2012 - present Reviewer, Open Forum Infectious Diseases
 2012 - present Reviewer, PLoS ONE
 2012 - present Reviewer, Public Health Reports

Professional Service for Professional Organizations

AAMC Group on Women in Medicine and Science (GWIMS)

2016 - present Member, AAMC Group on Women in Medicine and Science (GWIMS)

American College of Physicians

2016 - present Fellow, American College of Physicians
 2013 - 2016 Member, American College of Physicians

American Medical Association

2005 - present Member, American Medical Association

American Medical Women's Association

2011 - present Member, American Medical Women's Association

American Society of Addiction Medicine

2009 - present Member, American Society of Addiction Medicine

Connecticut Infectious Disease Society

2011 - present Member, Connecticut Infectious Disease Society

Infectious Disease Society of America

2008 - present Member, Infectious Disease Society of America

InWomen's Network, NIDA International Program

2013 - present Member, InWomen's Network, NIDA International Program

New York State Medical Society

2005 - 2008 Member, New York State Medical Society

Yale University Service

University Committees

2016 - 2018 Council Member, Leadership Council, Women's Faculty Forum

Medical School Committees

2015 - 2016 Committee Member, US Health and Justice Course, Yale School of Medicine

2014 - present Committee Member, Yale Internal Medicine Traditional Residency Intern Selection Committee

Public Service

2019 - present Faculty Member, Yale University Program in Addiction Medicine

2017 - present Faculty Member, Arthur Liman Center for Public Interest Law, Yale Law School

2013 - present Mentor, Women in Medicine at Yale Mentoring Program

2012 - present Faculty Member, Yale Center for Interdisciplinary Research on AIDS

2009 - 2011 Instructor, Preclinical Clerkship Tutor, Yale School of Medicine

2002 Fellow, Soros Open Society Institute

1998 - 1999 Fellow, Costa Rican Humanitarian Foundation

Bibliography:

Peer-Reviewed Original Research

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3. Chitsaz E, **Meyer JP**, Krishnan A, Springer SA, Marcus R, Zaller N, Jordan AO, Lincoln T, Flanigan TP, Porterfield J, Altice FL. Contribution of substance use disorders on HIV treatment outcomes and antiretroviral medication adherence among HIV-infected persons entering jail. *AIDS And Behavior* 2013, 17 Suppl 2:S118-27.

4. Chen NE, **Meyer JP**, Avery AK, Draine J, Flanigan TP, Lincoln T, Spaulding AC, Springer SA, Altice FL. Adherence to HIV treatment and care among previously homeless jail detainees. *AIDS And Behavior* 2013, 17:2654-66.
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7. **Meyer JP**, Wickersham JA, Fu JJ, Brown SE, Sullivan TP, Springer SA, Altice FL. Partner violence and health among HIV-infected jail detainees. *International Journal Of Prisoner Health* 2013, 9:124-41.
8. **Meyer JP**, Qiu J, Chen NE, Larkin GL, Altice FL. Frequent emergency department use among released prisoners with human immunodeficiency virus: characterization including a novel multimorbidity index. *Academic Emergency Medicine : Official Journal Of The Society For Academic Emergency Medicine* 2013, 20:79-88.
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10. **Meyer JP**, Zelenev A, Wickersham JA, Williams CT, Teixeira PA, Altice FL. Gender disparities in HIV treatment outcomes following release from jail: results from a multicenter study. *American Journal Of Public Health* 2014, 104:434-41.
11. **Meyer JP**, Cepeda J, Wu J, Trestman RL, Altice FL, Springer SA. Optimization of human immunodeficiency virus treatment during incarceration: viral suppression at the prison gate. *JAMA Internal Medicine* 2014, 174:721-9.
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13. Boyd AT, Song DL, **Meyer JP**, Altice FL. Emergency department use among HIV-infected released jail detainees. *Journal Of Urban Health : Bulletin Of The New York Academy Of Medicine* 2015, 92:108-35.
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16. Wickersham JA, Gibson BA, Bazazi AR, Pillai V, Pedersen CJ, **Meyer JP**, El-Bassel N, Mayer KH, Kamarulzaman A, Altice FL. Prevalence of Human Immunodeficiency Virus and Sexually Transmitted Infections Among Cisgender and Transgender Women Sex Workers in Greater Kuala Lumpur, Malaysia: Results From a Respondent-Driven Sampling Study. *Sexually Transmitted Diseases* 2017, 44:663-670.
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Chapters, Books, and Reviews

29. Azar MM, Springer SA, **Meyer JP**, Altice FL. A systematic review of the impact of alcohol use disorders on HIV treatment outcomes, adherence to antiretroviral therapy and health care utilization. *Drug And Alcohol Dependence* 2010, 112:178-93.
30. **Meyer JP**, Springer SA, Altice FL. Substance abuse, violence, and HIV in women: a literature review of the syndemic. *Journal Of Women's Health (2002)* 2011, 20:991-1006.
31. **Meyer JP**, Chen NE, Springer SA. HIV Treatment in the Criminal Justice System: Critical Knowledge and Intervention Gaps. *AIDS Research And Treatment* 2011, 2011:680617.
32. Springer SA, Spaulding AC, **Meyer JP**, Altice FL. Public health implications for adequate transitional care for HIV-infected prisoners: five essential components. *Clinical Infectious Diseases : An Official Publication Of The Infectious Diseases Society Of America* 2011, 53:469-79.

33. Chen NE, **Meyer JP**, Springer SA. Advances in the prevention of heterosexual transmission of HIV/AIDS among women in the United States. *Infectious Disease Reports* 2011, 3.
34. **Meyer J**, Altice F. HIV in Injection and Other Drug Users. Somesh Gupta, Bhushan Kumar, eds. *Sexually Transmitted Infections* 2nd ed. New Delhi, India: Elsevier, 2012: 1061-80. ISBN 978-81-312-2809-8.
35. **Meyer JP**, Althoff AL, Altice FL. Optimizing care for HIV-infected people who use drugs: evidence-based approaches to overcoming healthcare disparities. *Clinical Infectious Diseases : An Official Publication Of The Infectious Diseases Society Of America* 2013, 57:1309-17.
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39. **Meyer JP**, Womack JA, Gibson B. Beyond the Pap Smear: Gender-responsive HIV Care for Women. *The Yale Journal Of Biology And Medicine* 2016, 89:193-203.
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Peer-Reviewed Educational Materials

43. The Fortune Society Reentry Education Project Detailing Kit. New York City Department of Health and Mental Hygiene. October 2014
44. United Nations Office on Drugs and Crime. Vienna, Austria

Invited Editorials and Commentaries

45. **Meyer JP**. Capsule Commentary on Pyra et al., sexual minority status and violence among HIV infected and at-risk women. *Journal Of General Internal Medicine* 2014, 29:1164.
46. Brinkley-Rubinstein L, Dauria E, Tolou-Shams M, Christopoulos K, Chan PA, Beckwith CG, Parker S, **Meyer J**. The Path to Implementation of HIV Pre-exposure Prophylaxis for People Involved in Criminal Justice Systems. *Current HIV/AIDS Reports* 2018, 15:93-95.
47. **Meyer JP**. The Sustained Harmful Health Effects of Incarceration for Women Living with HIV. *Journal Of Women's Health (2002)* 2019, 28:1017-1018.

Case Reports, Technical Notes, Letters

48. **Paul J.** Bullous pemphigoid in a patient with psoriasis and possible drug reaction: a case report. Connecticut Medicine 2004, 68:611-5.
49. How J, Azar MM, **Meyer JP.** Are Nectarines to Blame? A Case Report and Literature Review of Spontaneous Bacterial Peritonitis Due to *Listeria monocytogenes*. Connecticut Medicine 2015, 79:31-6.
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Scholarship In Press

54. Hoff E, Adams Z, Dasgupta A, Goddard D, Sheth S, **Meyer J.** Reproductive Health Justice and Autonomy: A systematic review of pregnancy planning intentions, needs, and interventions among women involved in US criminal justice systems. J Women's Health

EXHIBIT 6

Declaration of Dr. Marc Stern

I, Marc Stern, declare as follows:

1. I am a physician, board-specialized in internal medicine, specializing in correctional health care. I most recently served as the Assistant Secretary for Health Care at the Washington State Department of Corrections. I also have considerable familiarity with the immigration detention system. I served for four years as a medical subject matter expert for the Officer of Civil Rights and Civil Liberties, U.S. Department of Homeland Security, and as a medical subject matter expert for one year for the California Attorney General's division responsible for monitoring the conditions of confinement in Immigration and Customs Enforcement (ICE) detention facilities. I have also served as a consultant to Human Rights Watch in their preparation of two reports on health-related conditions of confinement in ICE detention facilities. In those capacities, I have visited and examined more than 20 ICE detention facilities and reviewed hundreds of records, including medical records and detention death reviews of individuals in ICE detention. Attached as Exhibit A is a copy of my curriculum vitae.
2. COVID-19 is a serious disease and has reached pandemic status. At least 132,758 people around the world have received confirmed diagnoses of COVID 19 as of March 13, 2020, including 1,629 people in the United States. At least 4,955 people have died globally as a result of COVID-19 as of March 13, 2020, including 41 in the United States. These numbers will increase, perhaps exponentially.
3. COVID-19 is a novel virus. There is no vaccine for COVID-19, and there is no cure for COVID-19. No one has immunity. The only way to control the virus is to use preventive strategies, including social distancing.
4. The time course of the disease can be very rapid. Individuals can show the first symptoms of infection in as little as two days after exposure and their condition can seriously deteriorate in as little as five days (perhaps sooner) after that.
5. The effects of COVID-19 are very serious, especially for people who are most vulnerable. Vulnerable people include people over the age of 50, and those of any age with underlying health problems such as – but not limited to – weakened immune systems, hypertension, diabetes, blood, lung, kidney, heart, and liver disease, and possibly pregnancy.
6. Vulnerable people who are infected by the COVID-19 virus can experience severe respiratory illness, as well as damage to other major organs. Treatment for serious cases of COVID-19 requires significant advanced support, including ventilator assistance for respiration and intensive care support. An outbreak of COVID-19 could put significant pressure on or exceed the capacity of local health infrastructure.
7. Detention facilities are congregate environments, i.e. places where people live and sleep in close proximity. In such environments, infectious diseases that are transmitted via the air or touch are more likely to spread. This therefore presents an increased danger for the spread of COVID-

19 if and when it is introduced into the facility. To the extent that detainees are housed in close quarters, unable to maintain a six-foot distance from others, and sharing or touching objects used by others, the risks of spread are greatly, if not exponentially, increased as already evidenced by spread of COVID-19 in another congregate environment: nursing homes and cruise ships.

8. Social distancing in ways that are recommended by public health officials can be difficult, if not impossible in detention facilities, placing people at risk, especially when the number of detainees is high.

9. For detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a critically important way to meaningfully mitigate that risk. Additionally, the release of detainees who present a low risk of harm to the community is also an important mitigation strategy as it reduces the total number of detainees in a facility. Combined, this has a number of valuable effects on public health and public safety: it allows for greater social distancing, which reduces the chance of spread if virus is introduced; it allows easier provision of preventive measures such as soap for handwashing, cleaning supplies for surfaces, frequent laundering and showers, etc.; and it helps prevent overloading the work of detention staff such that they can continue to ensure the safety of detainees.

10. The release of detainees, especially those with increased health-related vulnerability, also supports the broader community because carceral and detention settings, regardless of the level of government authorities that oversee them, are integral parts of the community's public health infrastructure. Reducing the spread and severity of infection in a Federal immigration detention center slows, if not reduces, the number of people who will become ill enough to require hospitalization, which in turn reduces the health and economic burden to the local community at large.

11. As a correctional public health expert, I recommend release of eligible individuals from detention, with priority given to the elderly and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19.


12. Conditions related to COVID-19 are changing rapidly and may change between the time I execute this Declaration and when this matter appears before the Court. One of the most worrisome changes would be confirmation of a case of COVID-19 within the detention center, either among staff or detainees. In the event of this occurring, and eligible detainees being quarantined or isolated due to possible exposure to the virus, I recommend that the detainee(s) be tested for the virus if testing is available. Armed with the results of that test if it is available, or in the absence of other instructions from the health authority of the municipality to which they will be returning or the Washington State public health authority, those who can easily return to a home without exposure to the public, should be released to that home for continued quarantine or isolation for the appropriate time period. All others can be released to appropriate housing as directed or arranged in coordination with the relevant health authority.

13. I have reviewed Plaintiffs' complaint and on the basis of the claims presented, conclude that Plaintiffs have underlying medical conditions that increase the risk of serious illness or death if exposed to COVID-19. Due to the risks caused by the congregate environment in immigration

detention, compounded by the marked increase in risk conferred by their underlying medical conditions, I recommend their release.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this __15th__ day in March, 2020 in Tumwater, Washington.



Dr. Marc Stern

EXHIBIT 7

Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and Illinois Department of Corrections

Dr. Michael Puisis, Dr. Robert Cohen, Dr. John Raba, Dr. Sergio Rodriguez, and Dr. Ron Shansky

1. Dr. Michael Puisis is an internist who has worked in correctional medicine for 35 years. He was the Medical Director of the Cook County Jail from 1991 to 1996 and Chief Operating Officer for the medical program at the Cook County Jail from 2009 to 2012. He has worked as a Monitor or Expert for Federal Courts on multiple cases and as a Correctional Medical Expert for the Department of Justice on multiple cases. He has also participated in revisions of national standards for medical care for the National Commission on Correctional Health Care and for the American Public Health Association. Additionally, he participated in revision of tuberculosis standards for the Centers for Disease Control and Prevention (CDC).
2. Dr. Robert Cohen is an internist. He has worked as a physician, administrator, and expert in the care of prisoners and persons with HIV infection for more than thirty years. He was Director of the Montefiore Rikers Island Health Services from 1981 to 1986. In 1986, he was Vice President for Medical Operations of the New York City Health and Hospitals Corporation. In 1989, he was appointed Director of the AIDS Center of St. Vincent's Hospital. He represented the American Public Health Association (APHA) on the Board of the National Commission for Correctional Health Care for 17 years. He has served as a Federal Court Monitor overseeing efforts to improve medical care for prisoners in Florida, Ohio, New York State, and Michigan. He has been appointed to oversee the care of all prisoners living with AIDS in Connecticut, and also serves on the nine member New York City Board of Corrections.
3. Dr. Raba is an internist who was the Medical Director of the Cook County Jail from 1980 to 1991. He was the Medical Director of the Fantus Health Center of the Cook County Health and Hospital System from 1992 to 2003. He was the Co-Medical Director of Ambulatory and Community Health Network for the Cook County Bureau of Health Services from 1998 to 2003. He has monitored multiple jail and prison systems for

- Federal Courts. He has also provided consultations for many jail systems in the United States.
4. Dr. Sergio Rodriguez is a practicing internist. He was Medical Director of the Cook County Jail from 2005 to 2008. He was Medical Director of the Fantus Health Center of the Cook County Health and Hospital System until 2015.
 5. Dr. Ronald Shansky is an internist who has worked in correctional medicine for 45 years. He was the Medical Director of the Illinois Department of Corrections from 1982 to 1992 and from 1998 to 1999. He was a Court Appointed Receiver of two correctional medical programs. He has been appointed by U.S. Courts as Medical Expert or Monitor in ten separate Court cases and has been a Court appointed Special Master in two cases. He has been a consultant to the Department of Justice involving correctional medical care. He also participated in revision of national standards for medical care for the American Public Health Association and of standards for the National Commission on Correctional Health Care.
 6. Coronavirus disease of 2019 (COVID-19) is a pandemic. This is a novel virus for which there is no established curative medical treatment and no vaccine.
 7. The number of cases of COVID-19 in the United States are rising rapidly. As of March 19, 2020, cases in the United States have been doubling almost every day and a half. Cases in Illinois total 288 as of March 19, 2020. There were 170 cases on March 18, 2020, indicating that the doubling rate was slightly over 1 day, which suggests a significantly expanding infection rate.
 8. UpToDate¹ reports an overall case mortality rate from the disease of 2.3%.
 9. Medical care for COVID-19 focuses on prevention, which emphasizes social distancing, handwashing, and respiratory hygiene. Currently, severe disease is treated only with supportive care including respiratory isolation, oxygen, and mechanical ventilation as a last resort. In cities with widespread disease, hospitals are anticipating a lack of ventilation

¹ UpToDate is an online widely used medical reference in hospitals, health organizations and by private physicians.

equipment to handle the expected cases. Cook County Health and Hospital System has suspended scheduled appointments for outpatient care. Chicago may experience a similar lack of ventilation equipment, but we will not know for a week or two if that will occur, and if it occurs there will be little time to adjust to the situation.

10. COVID-19 is transmitted by infected people when they cough. Droplets of respiratory secretions infected with the virus can survive as an aerosol for up to three hours². Droplets can be directly transmitted by inhalation to other individuals in close proximity. Droplets can land on surfaces and be picked up by the hands of another person who can then become infected by contacting a mucous membrane (eyes, mouth, or nose) with their hand. Infected droplets can remain viable on surfaces for variable lengths of time, ranging from up to 3 hours on copper, 24 hours on cardboard, and 2-3 days on plastic and stainless steel.³
11. There is no evidence that asymptomatic persons can transmit COVID-19. A recent study of a cruise ship⁴ demonstrated that about 17% of persons infected with COVID-19 had no symptoms. However, infected individuals become symptomatic in a range of 2.5 to 11.5 days with 97.5% of infected individuals becoming symptomatic within 11.5 days. The total incubation period is thought to extend up to 14 days. Thus, persons coming into jails or prisons can be asymptomatic at intake screening only to become symptomatic later during incarceration. For that reason a correctional intake screening test for COVID-19 is reasonable in our opinion. Screening inmates daily for cough, shortness of breath, or fever daily would be a logistically daunting task that would not be fully effective in these institutions. Because testing kits are not currently available in the volume necessary to screen all inmates, and because the range of symptom acquisition ranges from 2 to 11 days,

² National Institute of Health, available at <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>.

³ *Id.*

⁴ Kenji Mizumoto, Kayaya Katsushi, Alexander Zarebski, Gerardo Chowll; *Estimating the asymptomatic proportion of coronavirus disease 2019 (COVID-19) cases on board the Diamond Princess cruise ship, Yokohama, Japan, 2020*, EUROSURVEILLANCE (Mar. 12, 2020), <https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.10.2000180>.

symptom screening at booking alone will not identify all persons who will become ill.

12. Supply of testing material for COVID-19 is limited. The CDC reports as of March 19, 2020 that CDC and public health laboratories have performed only 37,824 tests for COVID-19 nationwide. The CDC's current recommendation for testing for COVID-19 is that physicians should use their judgment to determine if a patient has signs or symptoms of the disease and whether the person should be tested. They include priorities for testing as hospitalized patients, symptomatic older adults especially with co-morbid conditions, and any person who has had close contact with a known case of COVID-19. These guidelines are apparently based on the limitation of testing material. There are numerous examples in the press of physicians being unable to order tests and people who have symptoms being unable to obtain testing.
13. Medical personnel are hampered by the inability to readily access testing. Testing resources are so scarce that, nationwide, rationing of this test is occurring even for persons who are symptomatic.
14. An individual's immune system is the primary defense against this infection. As a result, people over 65 years of age and persons with impaired immunity have a higher probability of death if they are infected. It is important to note that the older a person is, the higher likelihood of death; this is thought to be due to impaired immunity with aging. Persons with severe mental illness in jails and prisons are also, in our opinion, at increased risk of acquiring and transmitting infection because they may be unable to communicate symptoms appropriately.
15. Jails and prisons are long known to be a breeding ground for infectious respiratory illnesses. Tuberculosis is a bacteria which is significantly less transmissible than COVID-19 yet has been responsible for numerous outbreaks of illness in prisons and jails over the years. For this reason, the CDC still recommends screening for this condition in jails and prisons.
16. At a time when the President's task force on COVID-19 recommends limiting gatherings to no more than 10 persons, the County of Cook is forcing 5,500 people to live in congregate living conditions at the Cook County Jail with an influx of approximately 100 to 150 new inmates a day. These inmates intermingle and it is not possible to attain the President's

- aim of limiting gatherings of less than 10 individuals. This is contrary to the President's recommendation and contrary to current public health recommendations. This is likely to result in spread of disease.
17. Jails and prisons promote the spread of respiratory illnesses because large groups of strangers are forced suddenly into crowded congregate housing arrangements. This situation is complicated by the fact that custody and other personnel who care for detainees live in the community and can carry the virus into the Jail with them.
 18. The current CDC recommendations for social distancing and frequent handwashing measures, which are the only measures available to protect against infection, are not possible in the correctional environment. Furthermore, repeated sanitation of horizontal surfaces in inmate living units and throughout a jail is not typically done and would be an overwhelming task. Jails in this regard are similar to cruise ships and nursing homes where COVID-19 is known to have easily spread. Jails also recirculate air which contributes to spread of airborne infectious disease.
 19. A large number of employees are required to work in jails and prisons. These individuals have frequent contact with inmates, often requiring breaking the recommended CDC guidelines for social distancing. Frequent handwashing is not easily available for inmates or staff. Their risk is considerable. Tuberculosis outbreaks in jails and prisons have often resulted in custody employees becoming infected. These employees return to the community and can and will transmit the infection to others in their family and community. In this sense, jails act as incubators of respiratory infectious disease. COVID-19 would have a rapid and dramatic spread within the correctional environment and if this occurs, the outbreak would inevitably result in spread to the community.
 20. It is our opinion that steps should be taken to release any inmate who is a low risk to the community. The risk of promoting the spread of the infection to the inmate population, and thereby to the community, needs to be weighed against the reason for not releasing the inmate from incarceration. Release measures should prioritize inmates over 65, inmates with immune disorders, inmates with significant cardiac or pulmonary conditions, or inmates with cognitive disorders. We say this

- because of the unlikelihood of effective screening and protective housing for all inmates.
21. It is our opinion that at this time, if and when COVID-19 testing becomes widely and readily available, all inmates coming into a jail or prison should be tested for COVID-19 prior to congregate housing. This is our expert opinion because inmates will be forced to live with one another with the uncertain risk that one of them is infected. Inmates cannot engage in social distancing. In our experience, spread of contagious respiratory disease can be prevented by screening. Also, intake symptom screening alone will not identify all inmates who may have disease but are not yet symptomatic.
 22. It is our opinion that all persons with any symptom consistent with COVID-19 or with fever be placed in respiratory isolation and tested for COVID-19.
 23. It is our opinion that all inmates over 65, all persons with severe mental illness, all persons with immune disorders or with serious cardiac or pulmonary disease, and all persons with any cognitive disorder should have a daily symptom and temperature screening. Any positive symptom or temperature should require respiratory isolation and testing for COVID-19.
 24. It is our opinion that all inmates coming into the jail on any day be housed in separate housing (quarantined).⁵ Pending release from quarantine, all individuals in such housing should have a symptom and temperature screening daily. The CDC recommends a 14 day isolation and this should be considered.
 25. It is our opinion that convicted inmates in the Cook County Jail who are not screened and tested should not be transferred to the Illinois Department of Corrections. If such inmates are properly quarantined for 14 days prior to transfer and present without symptoms, this transfer would be acceptable.
 26. We did not address the personal protection equipment of health care and custody personnel and presume that this is being done at the facility.

⁵ 97.5 % of infected individuals become symptomatic by day 11.5 as reported in UpToDate.

Lack of this equipment places both inmates and staff at high risk of infection and transmission.

Executed this 20th day in March, 2020 in Chicago, Illinois

/s/ Dr. Michael Puisis
Dr. Michael Puisis

/s/ Dr. Robert Cohen
Dr. Robert Cohen

/s/ Dr. Jack Raba
Dr. Jack Raba

/s/ Dr. Ron Shansky
Dr. Ron Shansky

/s/ Dr. Sergio Rodriguez
Dr. Sergio Rodriguez

EXHIBIT 8

Declaration of Nathan A. Walls

I, Nathan A Walls, pursuant to 28 USC 1746, hereby declare as follows:

1. I was jailed at the St. Louis City Justice Center (“CJC”) from Wednesday, March 18 until Friday, March 20, 2020.
2. When I was booked on March 18, I received no Covid-19 specific advice from the nurse.
3. During the two days I was in the jail, I was not told anything specifically by any jail employee about the COVID-19 virus or how to protect myself.
4. There were no signs up in the dorm or anywhere else about how to protect myself from the COVID-19 virus.
5. After I was booked, I was placed in a cell, approximately ten feet by five feet, with another person.
6. There was blood and mucus on the wall of my cell, which I believe was on the fifth floor.
7. I told the guard that there was blood on the wall. I asked for cleaning supplies several times, and I was never given any.
8. I was given one very small bar of soap to use. I had to ask for that soap; I was not provided it when I was booked. The bar of soap is about one by one and a half inches. I was not provided any additional hand sanitizer or cleaning supplies.
9. The only way that I could have obtained additional soap was by purchasing it from the commissary.
10. While many CJC employees, including corrections officers, were wearing personal protective equipment such as gloves or masks, no detainees at the jail were given any gloves or masks.
11. The only way to get cleaning supplies is to nag the guards. I asked several times to get cleaning supplies and I was never provided any.
12. The work crew that was responsible for food preparation and bringing food to my dorm was wearing gloves, but they were not wearing any facial protection.

I swear that the foregoing is true and correct.

/s/ Nathan Walls

EXHIBIT 9

Declaration of Rakeem Clemons

I, Rakeem Clemons, pursuant to 28 USC 1746, hereby declare as follows:

1. I have been an inmate at MSI since March 21, 2019.
2. In regard to Covid-19, the only real guidance regarding the virus is coming from volunteer church staff, and not from the jail staff.
3. If I ask staff about the virus, I am not really told anything or given any updates.
4. The showers here still have mold, and those are only scrubbed if there are inspectors coming, or mold is painted over.
5. In regard to soap, we are given a type of antibacterial dial soap, but we have to submit a written statement to the nurse, and we have to wait about 3 weeks to get it. If not requested, soap is given about once every month and a half.
6. We are not given hand sanitizer.
7. It is my understandings that several people at MSI are showing symptoms of having gotten Corona virus.
8. We are not being screened for symptoms.
9. They only just put up signs 2 days ago regarding information regarding proper hand washing.
10. We get toilet paper roughly every month, we get one roll per cell but supposedly we should get four. We often need to ask our neighbors for toilet paper.
11. Sometimes the CO has a mask on, other times they do not wear masks or gloves.
12. I asked for a mask and was denied one.
13. We are only given a small amount of cleaning supplies; the staff is telling me that they are very low on supplies. They have one bottle of mixed cleaner for a group 75 people.
14. The food staff does have hairnets and gloves, and we are told to wash our hands before eating, but food staff are not wearing proper PPE.

I swear that the foregoing is true and correct.

/s/ Rakeem Clemons

EXHIBIT 10

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

David Dixon, <i>et al.</i> ,)	
)	
Plaintiffs-Appellees,)	No. 19-2251
)	
v.)	
)	
City of St. Louis, <i>et al.</i> ,)	
)	
Defendants-Appellants.)	

DECLARATION OF ALYXANDRA T. HAAG

I, Alyxandra T. Haag, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 18 and am of sound mind.
2. I am an Undergraduate Intern at ArchCity Defenders and a student at the University of Missouri.
3. In June 2019, I surveyed Case.net (Missouri's electronic docket system) for records of the hearings held after the United States District Court's June 11, 2019 Order in *Dixon, et al. v. City of St. Louis*. I surveyed the records for June 12, June 13, June 14, June 17, June 18, June 19, June 20, and June 21.
4. I searched Case.net for the names of individuals scheduled to have a bond review hearing on each day. I determined whether a hearing was held for that person, what their bond was before the hearing, and how (if at all) their bond was modified after the hearing. I also determined how long the person had been incarcerated for, and, if their bond was set to an affordable amount, on what day they were released.
5. I created a list of people released on their own recognizance, people released on affordable bonds, people whose cases were dismissed *nolle prosequi*, people who were

not given an affordable bond, and people who were given no bond. I calculated the difference in bond amount after the hearings for each person. I also calculated how long each released person had been incarcerated.

6. Because many hearings were held without advance notice, I do not have a record of every hearing held during this time period.
7. Between June 12 and June 21, my search identified 171 hearings held. Within that sample:
 - a. 59 people were released on their own recognizance;
 - b. 47 people were released with a bond they could afford;
 - c. 52 people were given no bond or a bond the person could not afford; and
 - d. 13 people were released with their cases dismissed.
8. Of the 171 hearings, 119 people were released (69%).
9. Those 119 released people spent an average of 93 days in jail and a combined 11,149 days in jail.
10. Of those released, bond was reduced on average from \$20,702 to \$277. The released population saw their total bond decrease an average of \$17,856 a person, for a total of \$2,123,700.

I declare under penalty of perjury that this declaration is true and correct.

Executed on June 25, 2019

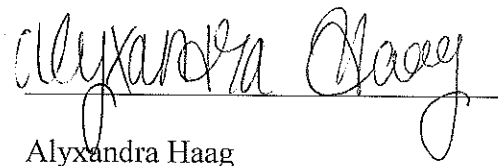

Alyxandra Haag

EXHIBIT 11



MISSOURI STATE PUBLIC DEFENDER

Office of the Director
1000 West Nifong, Building 7, Suite 100
Columbia, MO 65203
Telephone: (573) 526-5212
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Mary Fox, Director
Email: Mary.Fox@mspd.mo.gov

March 26, 2020

Hon. George W. Draper, III, Chief Justice, and
Hon. Laura Denvir Stith,
Hon. Mary R. Russell,
Hon. Patricia Breckenridge
Hon. Zel M. Fischer
Hon. Paul C. Wilson
Hon. W. Brent Powell
Members of the Court
207 W. High St.
Jefferson City, MO 65101

Dear Chief Justice Draper and Judges of the Court:

“People refer to cruise ships as petri dishes, but nobody has invented a more effective vector for transmitting disease than a city jail,” a former city corrections commissioner told ABC News a few days ago.¹ Those who will be affected by COVID-19’s inevitable entry into Missouri’s city and county jails include not only inmates, but corrections workers, health care workers, police officers, judicial department employees, attorneys, and the families of many of these people.

We are writing to request that the Supreme Court of Missouri, pursuant to its authority to superintend and supervise Missouri’s judicial system under Article V, Section 4 of the Missouri Constitution, order judges to immediately release from confinement the following groups of inmates during the pendency of the COVID-19 pandemic: (i) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a misdemeanor offense; (ii) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a municipal ordinance violation; (iii) those confined pretrial on nonviolent misdemeanor, municipal ordinance violation, or nonviolent C, D, and E felony charges; (iv) those confined on technical probation violations or probation violations based on allegations of a municipal ordinance violation, nonviolent misdemeanor, or nonviolent felony; and (v) those in high-risk categories likely to face serious illness or death. This action is necessary to combat the spread of COVID-19 to protect the health and safety of inmates, corrections workers, nurses, and all those involved in Missouri’s justice system.

¹ Chris Franciscani and Luke Barr, “Fearing outbreaks and riots, nation’s prison and jail wardens scramble to respond to coronavirus threat,” ABC News (March 19, 2020), available at <https://abcnews.go.com/Health/fearing-outbreaks-riots-nations-prison-jail-wardens-scramble/story?id=69676840>.

are requesting certain narrowly tailored relief appropriate to address the current emergency circumstances. As the Court has acknowledged through its two recent orders regarding COVID-19, the threat of the virus is not speculative. The inmates covered by this request can be safely and swiftly released without unduly affecting the administration of justice or endangering the safety of the community.

Positive tests for COVID-19 by inmates have already been reported at jails across the country – including, for example, Rikers Island in New York (with fifty-two confirmed cases as of the date of this letter), Cook County Jail in Illinois, and Santa Clara County Jail in California.² The first positive test in a Missouri correctional facility was reported this week, as well as a confirmed case of an infected juvenile in a Division of Youth Services facility.³ The number of infected individuals in Missouri may look low now, but that undoubtedly is a function of how few tests are being performed. Even any ongoing screening of inmates for symptoms upon admission would not identify individuals who carry the virus but only later become symptomatic after entering the general population, which is a real risk with COVID-19.⁴ With the virus rapidly spreading across Missouri and the rest of the country, and people cycling in and out of city and county jails daily, it is a matter of when – not if – the virus will infiltrate Missouri’s jails.

On March 22, 2020, the Supreme Court of New Jersey granted relief similar to that requested in this letter.⁵ Like New Jersey, Missouri is currently under a state of emergency due to COVID-19.⁶ Like New Jersey’s Supreme Court, this Court has previously acted to alleviate the effects of COVID-19 on the judicial system, exercising its broad supervisory authority to suspend certain normal operations during the pandemic.⁷ And, like New Jersey’s inmates, Missouri’s inmates are at an elevated risk of serious and potentially deadly infection, and will remain so while the risk of transmission of COVID-19 persists. Similar requests will be made to state Supreme Courts across the country, and relief will be granted. Just this week, a circuit judge responded to a release request from a terrified inmate in a county jail who was newly-confined only for the charge of passing a bad check by saying that he would be okay and the judge would see him again in a week. This attitude cannot be Missouri’s answer to this health emergency.

Places of incarceration are considered “ticking time bombs” during a pandemic, as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”⁸ To make matters worse, it is also practically impossible for those in Missouri’s jails to comply with many of the precautionary measures recommended by the Centers for Disease Control and Prevention, such as avoiding close contact with other people, using alcohol-based hand sanitizers,

² See Julia Craven, “Rikers Island Has 52 Confirmed COVID-19 Cases,” Slate (March 25, 2020); David Struett, “6 detainees at Cook County Jail contract COVID-19, doubling count from previous day,” Chicago Sun-Times (March 25, 2020); Fiona Kelliher, “Santa Clara County jail inmate tests positive for COVID-19,” San Mateo County Times (March 23, 2020).

³ See “First Missouri DOC prisoner tests positive for COVID-19,” St. Louis Post-Dispatch (March 23, 2020); see also “Youth at State Facility in St. Louis tests positive for COVID-19,” St. Louis Post-Dispatch (March 24, 2020).

⁴ See Kenji Mizumoto, Kayaya Katsushi, Alexander Zarebski, Gerardo Chowll, “Estimating the asymptomatic proportion of coronavirus disease 2019 (COVID-19) cases on board the Diamond Princess cruise ship, Yokohama, Japan, 2020,” Eurosurveillance (March 12, 2020).

⁵ See In the Matter of the Request to Commute or Suspend County Jail Sentences (N.J. March 22, 2020). Similar relief has been sought in, among other places, the Circuit Court of Cook County, Illinois, in the matter styled In re State and National Emergency and the Protection of the Life and Health of Detainees in the County Jail and Those Who Interact With and Massachusetts in the matter styled Committee for Public Counsel Services and Massachusetts Association of Criminal Defense Lawyers v. Chief Justice of the Trial Court. In addition, the Chief Justice of the Supreme Court of Montana recently wrote judges throughout the state requesting that they “review [their] jail rosters and release, without bond, as many prisoners as [they] are able, especially those being held for non-violent offenses.” See Letter from Montana Chief Justice Mike McGrath to Montana Courts of Limited Jurisdiction, dated March 20, 2020, available at <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>. These efforts are part of a nationwide push from judges, the defense bar, prosecutors, and other law enforcement officials to reduce the incarcerated population during the pandemic. See also Fair and Just Prosecution, “Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody,” (last updated March 23, 2020), at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

⁶ See Executive Order 2 (March 13, 2020).

⁷ See In re: Response to the Coronavirus Disease (COVID-19) Pandemic (Mo. banc March 16, 22 2020).

⁸ Saint Louis University, “Ticking Time Bomb: Prisons Unprepared For Flu Pandemic,” ScienceDaily (2006).

When COVID-19 enters Missouri jails, the results will be devastating. There is no known cure for COVID-19 or any vaccine for the virus which causes it. *Id.* Medical services in Missouri’s jails, strained and often ineffective in the best of times, are simply not up to the task of treating such a novel, highly-transmissible, and deadly disease. When medical services inside of Missouri’s jails inevitably fail to adequately treat inmates or stop the spread of the disease, large-scale releases of inmates will become necessary. It is in the Court’s authority to order appropriate releases now and avoid future death and suffering by those in jail and increased risk to the rest of the population.

We note that the Court’s March 22 order halts (subject to certain exceptions) in-person proceedings in Missouri’s courts through April 17, 2020, in order to prevent the spread of the disease and protect public health. While Missouri’s judicial officers, judicial staff, attorneys, jurors, and parties to litigation certainly are entitled to such protection, the treatment of Missouri’s incarcerated population and those who care for them directly in jails represents a blind spot in the current precautionary plan. While all other relevant parties are subject to an order to enforce social distancing for their health, those inside of Missouri’s jails are forced to live and work each day in close quarters under often unsanitary conditions.

It is manifestly unjust that this population, which is exposed to one of the highest risks of exposure in the state, currently finds no relief even as the wheels of judicial administration slow to protect all other involved parties. Furthermore, as no jail is completely isolated from the rest of the community given the myriad people who visit jails each day, failure to address the grave risk in our jails threatens to undermine all of the Court’s other efforts to protect public health. It is well within this Court’s authority to correct this injustice and prevent Missouri’s jails from contributing to the present crisis.

Piecemeal litigation on the part of zealous attorneys to win the release of individual inmates or to require implementation of heightened health screenings or cleanliness procedures cannot effectively address a problem of this magnitude growing with this swiftness, particularly because many of the inmates whose release is requested by this letter are unlikely to be currently represented by counsel. The Court, pursuant to its authority to supervise the administration of justice in Missouri, can provide the quick and decisive relief necessary to protect many of those currently in Missouri’s jails who have no practical means of petitioning the Court.

There is no precedent for the current crisis. The number of known cases in Missouri – over three hundred and fifty at the time of this writing – will grow. Action to address the public health risk inside of our jails is inevitable, and the only question is when such action will be taken. Action now can avoid death, suffering, and the creation of hundreds more contagious individuals desperately looking for beds in an overburdened healthcare system. We applaud the Court’s attention to the risk of COVID-19 to date, and strongly urge the granting of the relief requested in this letter to address the special risk posed to an often overlooked, marginalized, and unrepresented population.

We have enclosed with this letter a proposed form of order and a letter regarding the risk posed to jail populations by COVID-19 from Dr. Fred Rottnek, Professor and Director of Community Medicine at Saint Louis

⁹ See “How to Protect Yourself,” Centers for Disease Control and Prevention (March 18, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

Sincerely,

Mary Fox
Director, Missouri State Public Defender

Blake Strobe
Executive Director, ArchCity Defenders

Amy Breihan
Executive Director, Roderick and Solange MacArthur Justice Center

Nimrod Chapel
Missouri NAACP

Adolphus M. Pruitt, II
President, St. Louis City Branch of NAACP

Luz Henriquez,
Executive Director, ACLU of Missouri

Michael A. Wolff
Judge, retired; Dean, retired
Professor *Emeritus*
Former Senior Advisor to St. Louis County Prosecuting Attorney

J. Miles Sweeney
Judge, retired

Vernon Betts
Sheriff, City of St. Louis

Adam Woody
President, Missouri Association of Criminal Defense Lawyers

Fr. Christopher Collins, S.J.,
Office of Mission and Identity, St. Louis University

Tricia Bushnell
Executive Director, Midwest Innocence Project

Bob Fox
Chair, Clark-Fox Family Foundation

Professor Brendan Roediger
Professor and Director of Civil Litigation Clinic, St. Louis University School of Law

Professor John J. Ammann,
McDonnell Professor of Justice in American Society (retired), St. Louis University School of Law

Professor Karen Tokarz
Professor of Public Interest Law & Policy, Washington University School of Law

Joseph Yancey
Executive Director, Places for People, Inc.

John M. Simon, Jr., Attorney

Kenneth S. Powell III, Attorney

Missouri Catholic Conference

Metropolitan Congregations United

Reverend Darryl Gray,
Chairperson, Social Justice Commission, Midwest Progressive National Baptist Convention

Reverend Linden Bowie
President, Missionary Baptist State Convention of Missouri

Rabbi Susan Talve
Central Reform Congregation

National Council of Jewish Women

Missouri Faith Voices

The Bail Project

Missouri Appleseed

Empower Missouri

Women's Voices Raised for Social Justice

Heartland Center for Jobs and Freedom

Generate Health

Behavioral Health Response

Behavioral Health Network of Greater St. Louis

EXHIBIT 12

March 26, 2020

Hon. George Draper III, Chief Justice
Hon. Patricia Breckenridge
Hon. W. Brent Powell
Hon. Mary R. Russell
Hon. Laura Denvir Stith
Hon. Paul C. Wilson
Hon. Zel M. Fischer
Missouri Supreme Court
207 W High St.
Jefferson City, MO 65101

Dear Chief Justice Draper and Judges of the Court:

I write to you as a board-certified family physician and certified correctional health care physician with over 15 years of experience practicing correctional health care in Saint Louis County, Missouri. The undersigned are public health and medical professionals who serve Missourians in settings ranging from community-based clinics to large referral hospitals. We are increasingly concerned about the thousands of individuals confined in close quarters in local jails and state prisons, and believe these institutions are unable to comply with the Centers for Disease Control and Prevention (CDC) recommendations for treating or preventing the spread of COVID-19. We urge you to take swift action to avert the catastrophic loss of life that would result when Missouri jails and prisons experience an outbreak of COVID-19.

Background and Qualifications

I am Fred Rottnek, MD, MAHCM, a Professor of Medicine in the Saint Louis University School of Medicine, Professor in the Physician Assistant Program at the Doisy College of Health Sciences, and Professor in the Center for Health Law Studies in the School of Law. I am the Director of Community Medicine in the Department of Family and Community Medicine and the Program Director of the Addiction Medicine Fellowship. I am board-certified in Family Medicine and Addiction Medicine, and I am a certified Correctional Health Care Physician through the National Commission on Correctional Health Care. I completed my undergraduate medical education at Saint Louis University in 1995, my residency in Family Medicine in 1998 at Family Medicine of St. Louis, and a faculty development fellowship at the University of North Carolina-Chapel Hill in 1999. I hold a Master of Arts in Health Care Mission from the Aquinas Institute of Theology in St. Louis, Missouri.

I was the lead physician and medical director of the Saint Louis County Jail from June 2001 through September 2016. In this role, contracted through the Saint Louis County Department of Health, I saw patients three days/week, took call on average 16 days/month, and participated in the leadership teams that were responsible for the health and well-being of inmates, correctional medicine staff, correctional staff, and visitors to the jail, which is located in the Buzz Westfall Justice Center as well as Juvenile Detention in the Family Courts of Saint Louis County. As a large urban jail, during my years in this role, I was responsible for directing the medical care and supporting the correctional medicine staff in the care of a daily census of patients that varied from 900 to 1400, as well as annual intake screenings of 30,000 to 34,000 arrestees. The Saint Louis County Jail was (and is) the only jail in the State of Missouri that meets standards for accreditation by the American Correctional Association. Juvenile Detention is accredited by the National Commission on Correctional Health Care.

I have worked and served on the boards and committees of several community agencies that address the needs and assets of marginalized and underserved communities and populations. Many of these organizations have developed initiatives addressing individuals impacted by the criminal justice system, including the St. Louis Regional Health Commission, the St. Louis Integrated Health Network, Alive and Well Communities, and Criminal Justice Ministries.

I have published on the topics of correctional health care, addiction medicine, professional development, and social justice and the common good.

Heightened Risk of Epidemics in Jails and Prisons

Based on my review of information from the CDC, National Commission on Correctional Health Care (NCCHC), and the National Institute of Corrections (NIC) on COVID-19, my experience working in primary care and public health in both jail and juvenile detention settings, and my review of the relevant medical literature, it is my professional judgment that the COVID-19 pandemic has the potential to devastate the lives of both incarcerated individuals and jail personnel, and result in a medical emergency that could overwhelm Missouri's medical infrastructure.

An outbreak in any jail or prison will affect all of Missouri. Jails and prisons do not exist in isolation. Staff, contractors, vendors, and visitors regularly pass between communities and facilities, thereby carrying infectious disease both into and out of these facilities. The rapid turnover of jail and prison populations means that people often cycle between facilities and their local community. Even in times of limited visitation and movement, inmates will still need to be transported to and from facilities to attend court, move between facilities, and be released upon serving their sentence.

This poses a grave threat to the health and safety of Missourians, as an outbreak in a jail or prison could limit the ability of health professionals to contain, mitigate, and treat the spread of COVID-19. In my professional opinion, jails and prisons are particularly under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which I will detail further in the following points.

Missouri Jails and Prisons Cannot Implement Adequate Prevention, Containment, and Mitigation Strategies

COVID-19 is a highly infectious and easily communicable disease.¹ The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing), but survives on inanimate surfaces for up to three days. The latest medical information indicates people are most contagious when they are actively symptomatic, but it is still possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. Current research indicates transmission person to person can occur at a distance of three to six feet.

COVID-19 prevention strategies necessitate both containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill. Moreover, the use of appropriate personal protective equipment (PPE) is necessary for those tasked with decontaminating surfaces and interacting with potentially infected individuals.² The CDC recommends mitigation strategies such as social distancing and closing communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease.³

Jails and prisons are unable to adequately implement containment strategies. During an infectious disease outbreak, most people can protect themselves by washing their hands. Unfortunately, inmates have limited opportunities to clean themselves, shower, or wash hands while incarcerated. Many jails and prisons charge money to inmates for hand soap or other personal hygiene products. Most facilities also ban the use of alcohol-based antibacterial hand sanitizer. Further, under CDC guidance, high-touch surfaces (doorknobs, light switches, etc.) should be cleaned and disinfected several times a day with bleach or other approved cleansers, and the cleaner should use disposable gloves to prevent virus spread.⁴ Yet many jails and prisons place limitations on the amount of cleaning supplies available to inmates, and also have insufficient staff available to clean, particularly during a public health pandemic like this. Spaces within jails and prisons are often also poorly ventilated and share HVAC systems, which facilitates and accelerates the spread of diseases through droplets.

¹ *Coronavirus (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

² *Id.*

³ *Id.*

⁴ *Disinfecting Your Facility if Someone is Sick*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>

Jails and prisons are also unable to practice effective mitigation strategies. Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person-to-person.⁵ When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are far greater than normal. As such, when jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. The CDC suggests that jails and prisons implement social distancing strategies such as staggering meals, moving all bunks six feet apart, and limiting the distance inmates need to be transported to access medical care.⁶ From my professional experience, these distancing strategies will be difficult if not impossible for most Missouri jails and prisons to implement.

The latest guidance from the CDC suggests that jails and prisons have a long list of hygiene supplies, cleaning supplies, PPE, and medical supplies on hand and available.⁷ For example, the CDC recommends facilities provide liquid soap, as harsh bar soap can irritate the skin and reduce handwashing. The CDC also recommends jails and prisons have enough face masks to require every individual displaying COVID-19 symptoms to wear one. In my professional experience, it is unlikely most Missouri jails and prisons have or reasonably could obtain the required supplies to comply with this guidance.

Jails and Prisons Cannot Adequately Treat Those Infected

To prevent transmission of droplet-borne infectious diseases, people who are infected and symptomatic should be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms and, in my experience, many Missouri jails and prisons have none. This makes both containing the illness and caring for those who have become infected much more difficult.

Administrative or disciplinary segregation, or solitary confinement, of those who may be infected is not an effective disease containment strategy. The detrimental mental health effects of solitary confinement are well-known.⁸ Studies show the isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death.⁹ Solitary isolation is also an ineffective way to prevent transmission of the virus to others, because of the

⁵ *Active Case Finding for Communicable Diseases in Prisons*, 391 *The Lancet* 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext)

⁶ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (hereinafter CDC Interim Guidance).

⁷ *Id.*

⁸ David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105 *Am. J. Pub. Health* 18, 18 (2015).

⁹ Metzner & Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 *J. Am. Academy Psychiatry and Law* 104–108 (2010).

aforementioned lack of negative pressure rooms, and because correctional staff will still have to come into close proximity to check on these individuals. Moreover, placing inmates in solitary confinement will place a greater burden on already limited staff and resources. Per NCCHC guidelines, correctional facilities are responsible for meeting the medical and mental health needs of people in solitary or restrictive housing--particularly those with acute medical and mental health needs--which includes regular access to medicine and mental health treatment.¹⁰ Put simply, solitary confinement will not solve the problem.

During an infectious disease outbreak, a containment strategy requires that caregivers for people who are ill must have access to adequate PPE supplies. According to NCCHC guidance, jails and prisons must have adequate PPE, including gloves, masks, and respirators, eye protectors, gowns, uniforms and shoe covers.¹¹ In my experience, many Missouri jails and prisons are already under-equipped with medical supplies. A pandemic only exacerbates the shortage. These institutions just simply do not have sufficient PPE for increasing cases of COVID-19 among people who are incarcerated and staff who are required to care for those people, increasing the risk for everyone in the facility of a widespread outbreak.

Jails and prisons are often poorly equipped to diagnose infectious disease outbreaks. Most jails and prisons lack urgent or emergent access to testing equipment, laboratories, and ventilators, which means that they will be slow to adequately diagnose and address the outbreak.

Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. It is unlikely jails or prisons will have adequate staff or PPE to safely transport individuals to these facilities, and guard the individuals while there. It can also create tremendous liability for a jail or prison if there are infected inmates and those outside facilities are over capacity.

A COVID-19 Outbreak in a Jail or Prison Creates Dangerous Staffing Shortages

Absenteeism can pose a substantial safety and security risk. As an outbreak spreads through jails, prisons, and communities, medical personnel and correctional staff will become sick and stop reporting to work. There is a physical limit to how much overtime other correctional staff can work to make up for lost employees.

¹⁰ *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/250321.pdf> (Nov. 2016).

¹¹ *Covid-19 Coronavirus: What You Need to Know in Corrections*, NCCHC, <https://www.ncchc.org/covid-resources>.

In my experience, many jails and prisons are already dangerously understaffed both in terms of correctional healthcare providers and correctional staff.¹² Many jails and prisons do not have 24 hour on-site health professionals. A shortage of doctors or nurses onsite will impact the already limited ability to conduct testing, treat symptoms, and recommend care for sick individuals. Further, as health systems inside facilities are taxed with COVID-19, people with other serious physical or mental health conditions may not be able to receive the medical care they need for these conditions.

A staffing shortage for correctional staff will greatly impact the ability of a facility to respond to a COVID-19 outbreak, as guards or supervisors need to facilitate prevention measures, transport inmates to medical, rearrange housing, and many other tasks. Moreover, a staffing shortage for correctional staff also creates an unacceptable general risk of danger to inmates and other staff members in a facility.

Contagious Disease Outbreaks in Jails and Prisons is a Public Health Nightmare

Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more acute than in the community at large. In my experience, past epidemics have taken a greater toll on jails and prisons even when the outbreak is of a disease with available vaccines and medication. For example, during the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases. In 2002, an outbreak of MRSA in a Missouri prison caused significant health problems.¹³ And currently, jails and prisons across the United States are experiencing COVID-19 outbreaks. In New York, thirty-eight inmates in Rikers Island have tested positive for COVID-19, and officials report they expect the numbers to rise exponentially.¹⁴

To deal with a pandemic, society at large can increase resources and take emergency measures, like adding hundreds of hospital beds in a new facility. Jails and prisons have real and hard limitations of space, staffing, and supplies. It is unlikely most facilities will be able to reasonably put into place sufficient resources to address an outbreak.

¹² See, e.g., Kurt Erickson, *Parson Calls for More Downsizing in Missouri Prison System*, St. Louis Post-Dispatch (Jan. 20, 2020).

¹³ Tyrabelidze, et al. *Personal Hygiene and Methicillin-resistant Staphylococcus aureus Infection*, 12 Emerg. Infect. Dis. 422.

¹⁴ Katie Shepherd, *‘Trapped on Rikers’: Jails and prisons face coronavirus catastrophe as officials slowly authorize releases*, Washington Post (Mar. 23, 2020), <https://www.washingtonpost.com/nation/2020/03/23/coronavirus-rikers-island-releases/>.

Recommendations

In order to successfully contain and mitigate the spread of COVID-19, I recommend that jails and prisons should prioritize the following common-sense policies regarding release:

1. Evaluate for release all medically vulnerable people in the jail, including the following:
 - a. Individuals with an advanced chronic illness, who require a higher acuity of care
 - b. Individuals with any immunodeficiency (for example, those with HIV, individuals receiving immunosuppressant medication, and those with cancer),
 - c. As well as anyone else recommended for release by a medical professional;
2. Evaluate for release anyone 55 or over;
3. Evaluate for release any individuals currently incarcerated who are assigned a cash bond and unable to pay it;
4. Evaluate for release a sufficient number of inmates to guarantee the jail can accommodate adequate social distancing guidelines set forth by the CDC.

To the extent there are resources or staffing to do so, all Missouri jails and prisons should also immediately implement policies and procedures from the CDC, NCCHC, and NIC to mitigate infectivity among those who remain incarcerated.¹⁵ To echo these best practices, I make the following specific recommendations:

5. All jails and prisons should immediately implement robust training for correctional health staff, correctional staff, and all inmates to make sure the symptoms, risks, and strategies for COVID-19 are known. This should include adequate signage. This training and education should be understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
6. Anyone remaining in a jail or prison should be given access to free medical care and all available testing for COVID-19.
7. Anyone remaining in a jail or prison should be regularly evaluated with temperature checks and other inquiries to identify COVID-19 cases.

¹⁵ *CDC Interim Guidance; Infectious Disease Prevention and Control*, NCCHS https://www.ncchc.org/filebin/news/Infection_Prevention_and_Control.pdf; *Guidance for Coronavirus Clinical Care in Corrections*, NCCHC, https://www.ncchc.org/filebin/news/Coronavirus_one_pager_3.9.2020_national.pdf

8. All detention facilities need to adopt *and require* adequate sanitation practices that comply with CDC recommendations at no cost to inmates, including free provision of hand soap and adequate cleaning supplies to clean inmate cells and living areas daily. Facilities should also consider relaxing restrictions on alcohol based hand sanitizers in accordance with CDC guidelines.
9. All jails and prisons should implement shifts for inmate access to showers, phones, dining halls, etc., with regular sanitation between shifts.
10. All detention facilities should, to the degree possible, avoid complete isolation of inmates whenever possible. But, if a part of any COVID-19 containment or response strategy involves isolation of inmates, the detention facility must acknowledge this requires increased monitoring of inmate safety, inmate mental health, and suicidality wellness checks, and increase staffing accordingly;
11. All jails and prisons need to have written policies and protocols in place to capture the above recommendations.

Although these mitigation and containment strategies are vital, they are merely one piece of the puzzle. The lower the jail or prison population, the more effective these strategies will be. Fewer people in a facility means best practices will be more effective, fewer community resources will be needed, and other inmates and correctional staff will be safer.

Fred Rottnek, MD, MAHCM

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Professor and Medical Director, Physician Assistant Program, Doisy College of Health Sciences
Professor, Center for Health Law Studies, School of Law

Community Support

My career in community medicine has allowed me to collaborate with many medical and public health professionals. These colleagues represent diverse organizations from traditional hospital-based health care to grassroots community organizations focused on social influences on individual and community health. They recognize that the health and well-being of all of us depends on the health and well-being of incarcerated individuals.

The undersigned individuals agree with my analysis and recommendations above:

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EXHIBIT 13



Supreme Court of Missouri

Post Office Box 150
Jefferson City, Mo. 65102

GEORGE W. DRAPER III
CHIEF JUSTICE
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March 30, 2020

Re: Jail Populations and the Coronavirus Disease (COVID-19)

Dear Judges,

As a result of recent inquiries regarding the risk of exposure to COVID-19 in prisons and county and city jails, the Supreme Court of Missouri wants to call attention to the following rules and statutes.

In 2019, this Court revised its bond and pretrial release rules. Rule 33.01 addresses a defendant's right to be released from custody pending trial. Rule 29.18 provides individuals detained as a result of a probation or parole violation also have a right to release prior to any final hearing on the matter. Likewise, Rule 37.15 addresses a defendant's right to be released from custody following an ordinance violation.

Once a defendant has been convicted and sentenced, the power of courts to order release of an incarcerated offender is governed by statute. Missouri courts have the statutory authority to release an offender sentenced to a term in the county jail on judicial parole. Specifically, section 559.100.1 provides:

The circuit courts of this state shall have power, herein provided, to place on probation or to parole persons convicted of any offense over which they have jurisdiction, except as otherwise provided in section 559.115, section 565.020, sections 566.030, 566.060, 566.067, 566.125, 566.151, and 566.210, section 571.015, section 579.170, and subsection 3 of section 589.425.

This authority is limited by section 559.115.1, which provides: “Neither probation nor parole shall be granted by the circuit court between the time the transcript on appeal from the offender’s conviction has been filed in appellate court and the disposition of the appeal by such court.”

Section 559.115.2 further provides that, subject to the limitations in section 559.115.1 and 559.115.8, courts “have the power to grant probation to an offender anytime up to one hundred twenty days after such offender has been delivered to the department of corrections but not thereafter.”

The Court appreciates your continued efforts to prevent the spread of COVID-19 in your respective jurisdictions.

Sincerely,

A handwritten signature in black ink, appearing to read "George W. Draper III". The signature is fluid and cursive, with the last name "Draper" being more prominent.

GEORGE W. DRAPER III
Chief Justice

/kkf

EXHIBIT 14

Inmate Population Data

Division of Corrections daily population data

Inmate Data For 03/30/2020

Capacity

Total Capacity Available	1296
CJC	860
MSI	436

Offenses^[1]

Confined on Felony Offenses	746
Confined on Misdemeanor Offenses	6
Confined on Ordinance Violations	1
Confined Federal Detainees ^[2]	225

Total Confined

Total Confined	753
CJC	615
MSI	138

Gender

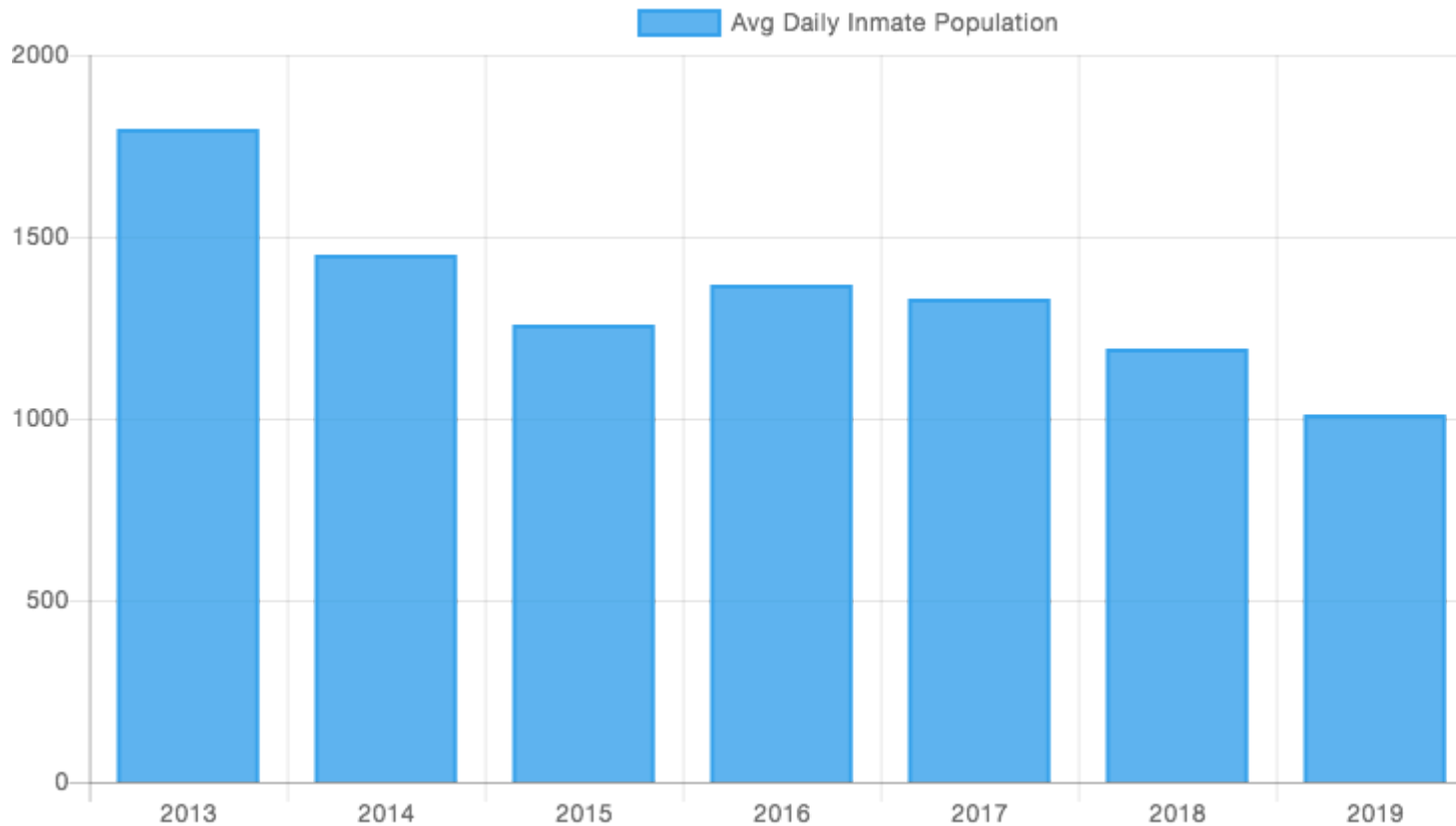
Total Confined	753
Male	711
Female	42


Disclaimers

1. An individual may be charged with multiple classifications of crimes. The number herein represents the highest classification of crime charged.
2. Number of confined federal detainees are factored into the total confinement number.

Average Daily Inmate Population By Year

Showing average daily inmate population data from 2013 to 03/30/2020:



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General Information

Court	United States District Court for the Eastern District of Missouri; United States District Court for the Eastern District of Missouri
Federal Nature of Suit	Civil Rights - Other[440]
Docket Number	4:19-cv-00112
Status	OPEN