

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

CLIFTON BELTON, JR., JERRY
BRADLEY, CEDRIC FRANKLIN,
CHRISTOPHER ROGERS, JOSEPH
WILLIAMS, WILLIE SHEPHERD,
DEVONTE STEWART, CEDRIC SPEARS,
DEMOND HARRIS, and FORREST
HARDY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

SHERIFF SID GAUTREAUX, in his official
capacity as Sheriff of East Baton Rouge; LT.
COL. DENNIS GRIMES, in his official
capacity as Warden of the East Baton Rouge
Parish Prison; CITY OF BATON
ROUGE/PARISH OF EAST BATON
ROUGE,

Defendants.

Civil Action No. 3:20-cv-000278-BAJ-SDJ

**Petition for Writ of Habeas Corpus and
Complaint for Injunctive and Declaratory
Relief—Class Action**

IMMEDIATE RELIEF SOUGHT

AMENDED CLASS ACTION COMPLAINT

1. Jails and prisons are rapidly becoming the epicenter of this country’s fight against the novel coronavirus and its resulting disease, COVID-19. The rate at which this disease is ravaging the globe is unprecedented in modern society, and its impact is being felt acutely by imprisoned populations in Louisiana, the incarceration capital of America and an early hotspot for the virus.¹ Black people account for 55% of all COVID-19 deaths in Louisiana, even though they

¹ *Where are the US coronavirus hotspots?*, <https://www.aljazeera.com/news/2020/03/coronavirus-hot-spots-200331175418853.html>; The New York Times, *Louisiana Coronavirus Map and Case Count*, (May 22, 2020), <https://www.nytimes.com/interactive/2020/us/louisiana-coronavirus-cases.html>; Vera Institute of Justice, *Louisiana must overhaul its justice system practices to respond to COVID-19* (April 9, 2020), <https://www.vera.org/downloads/publications/Coronavirus-Guidance-Louisiana-Justice-System.pdf> (calling Louisiana “the incarceration capital of the world because, for nearly every year for more than two decades, it has had the highest incarceration rate in the country”); WDSU Digital Team, *Majority of COVID-19 Cases in Louisiana*

represent only 32% of the state’s population;² these numbers are primed to be even more striking in Baton Rouge Parish, where Black people make up 47% of the residents.³

2. Hundreds of individuals caged inside the East Baton Rouge Parish Prison (“EBRPP” or “jail”⁴)—overwhelmingly Black, poor, and medically vulnerable—are prohibited from meaningfully protecting themselves against this global pandemic. Almost all of these individuals—eighty-nine percent—have not been convicted of the crimes for which they are being detained and are presumed innocent.⁵ There have been at least 93 confirmed COVID-19 cases in the EBRPP as of May 14, 2020,⁶ but the jail’s lack of meaningful testing leaves no doubt that this number is grossly undercounted.

3. As COVID-19 continues to gain a powerful foothold in the jail, people detained therein are at a significant risk of becoming infected and ultimately dying. Because of the actions and inactions of the Defendants, individuals locked inside this jail are forced to fight for the recognition of their humanity and for their very survival during this perilous and extraordinary

Prisons that Mass Test Are Asymptomatic, WDSU6 News (May 22, 2020), <https://www.wdsu.com/article/majority-of-covid-19-cases-in-louisiana-prisons-that-mass-test-are-asymptomatic/32634504#> (noting that 317 women tested positive at facilities in St. Gabriel and Jetson).

² David Benoit, *Coronavirus Devastates Black New Orleans: ‘This is Bigger Than Katrina,’* Wall St. J. (May 23, 2020), <https://www.wsj.com/articles/coronavirus-is-a-medical-and-financial-disaster-for-blacks-in-new-orleans-11590226200>.

³ United States Census Bureau, *QuickFacts, East Baton Rouge Parish, Louisiana*, <https://www.census.gov/quickfacts/eastbatonrougeparishlouisiana> (last visited May 25, 2020).

⁴ Although titled a prison, this facility is actually a jail that confines predominantly pretrial detainees. See, e.g., Consol. Gov’t of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 110, available at <https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget> (The parish prison “provides for the secure custody of all persons incarcerated pending disposition by the court system, transfer to other facilities, or completion of the court-ordered period of incarceration.”).

⁵ See Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), available at <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>.

⁶ See Ex. 1, EBRPP COVID-19 Statistics (May 14, 2020).

time.

4. Defendants' response to the COVID-19 crisis has been nothing short of constitutionally inadequate, even though they have been aware that it was "only a matter of time before coronavirus arrive[d] at the jail."⁷ Defendants claim to be "operating under the guidelines set by DOC, the CDC and [Louisiana Health Department]."⁸ But declarations from individuals in the jail flatly contradict that claim and show that officials responsible for operating the jail have failed to adequately respond to the obvious and urgent threats posed by this growing pandemic.⁹

5. The jail has made no efforts to implement the standard protective measures that medical experts have advised for all people. The jail does not practice or promote social distancing, does not adequately clean or disinfect common and high-touch areas, and otherwise leaves detained individuals without sufficient soap or masks to protect themselves; it provides inadequate medical care to detainees battling the coronavirus, and it has even stopped performing routine medical checks to track and treat transmissions of the virus, despite statements to the contrary in the media. The over 1,000 people still jailed at EBRPP continue to sleep less than three feet apart from each other; breathe the same contaminated air; share showers, toilets, and telephones; and congregate in enclosed spaces for mandated roll calls and pill calls.

6. But, perhaps most shockingly, the jail has chosen to warehouse detainees who test positive for or exhibit symptoms of COVID-19 in a building that has been condemned since 2018.

⁷ Jacqueline DeRobertis & Lea Skane, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in jail*, *The Advocate* (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

⁸ Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020).

⁹ Notably, this is not the first time that public officials in Louisiana have lied to their constituents about the impact of COVID-19 on prisons and jails in the state. For example, although the state Department of Corrections reported that only 55 individuals at Angola had contracted COVID-19, 115 people actually tested positive for the virus. See Jerry Iannelli, *Louisiana's Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, *The Appeal* (May 1, 2020), <https://theappeal.org/louisiana-doc-covid-19-data>.

Those individuals are confined in their cells for almost 24 hours every day without adequate access to the medical care they need.

7. In short, the jail forces the individuals in its care to endure unconstitutional conditions that deny them the precautions and protections necessary to mitigate against the risks of COVID-19, most critically the ability to socially distance from those around them.

8. Social distancing—the practice of maintaining at least six feet between any two people—is the “cornerstone” of preventing viral transmissions.¹⁰ Public health experts agree that other protective measures are insufficient to contain the virus if social distancing cannot be achieved. Infectious disease physician and virologist Dr. Adam Luring emphasized, “[i]f social distancing cannot meaningfully be practiced, then it is impossible to prevent the spread of infections.”¹¹ Infectious disease physician Carlos Franco-Paredes, M.D., echoes Dr. Luring’s sentiments: “unless social distancing is . . . meaningfully implemented,” protective “interventions are insufficient to interrupt the transmission of COVID-19.”¹² In accord with “U.S. public health experts,” National Institutes of Health Director Dr. Francis Collins, similarly remarked, “what we need most right now to slow the stealthy spread of this new coronavirus is a full implementation of social distancing.”¹³ And UC San Francisco epidemiologists Jeff Martin, MD, MPH, and George Rutherford, III, MD, make clear, “[s]ocial distancing is currently the most important factor

¹⁰ Ex. 3, Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities 2* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidancecorrectional-detention.html>.

¹¹ Ex. 4, Declaration of Dr. Adam Luring ¶ 13, *Russell v. Wayne Cty.*, No. 20-cv-11094 (E.D. Mich. May 4, 2020), ECF No. 1-15 (“Luring Decl.”).

¹² Ex. 5, Declaration of Dr. Carlos Franco-Paredes at 1, *Cameron v. Bouchard*, No. 2:20-cv-10949 (E.D. Mich. Apr. 30, 2020), ECF No. 42 (“Paredes Decl.”).

¹³ Dr. Francis Collins, *To Beat COVID-19, Social Distancing is a Must*, NIH Director’s Blog (Mar. 19, 2020), <https://directorsblog.nih.gov/2020/03/19/to-beat-covid-19-social-distancing-is-a-must/>.

we can control in the COVID-19 outbreak, and therefore critical” to “avoid catching the virus yourself and avoid passing it on.”¹⁴

9. A mass outbreak of COVID-19 in the EBRPP is inevitable given the conditions in the facility and the communicability of the virus. Such an outbreak would further strain the limited resources in the state’s healthcare system.¹⁵ Accordingly, medical experts have stressed that urgent action to reduce jail populations is an essential public health priority to avoid skyrocketing infection and fatality rates within the jail and in the surrounding community.¹⁶

10. These experts have particularly stressed the importance of release for individuals who suffer from underlying medical conditions such as cardiac issues, asthma and other breathing difficulties, diabetes, hypertension, obesity, and blood disorders, among others, and who are thus particularly susceptible to severe illness or death upon contracting COVID-19.¹⁷ For these individuals, the only adequate protective measure is release from the prison to shelter at home.¹⁸

11. Subjecting pretrial detainees to an unreasonable risk of illness and death constitutes impermissible punishment under the Fourteenth Amendment. And disregarding these known, obvious risks to needlessly expose people to a highly fatal infectious disease violates the Eighth

¹⁴ Nina Bai, *Why Experts Are Urging Social Distancing to Combat Coronavirus Outbreak*, Univ. of Cal. S.F. (Mar. 14, 2020), <https://www.ucsf.edu/news/2020/03/416906/why-experts-are-urging-social-distancing-combat-coronavirus-outbreak>.

¹⁵ Ex. 6, Declaration of Mark Stern ¶ 11, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or. Filed March 16, 2020), ECF No. 6 (“Stern Decl.”); *see also* Ex. 7, Declaration of Dr. Jaimie Meyer ¶¶ 16, 22, *Velesaca v. Wolf*, No. 1:20-cv-01803-AKH (S.D.N.Y. Mar. 16, 2020), ECF No. 42 (“Meyer Decl.”); Ex. 8, Declaration of Elizabeth Y. Chiao ¶ 28, *Russell v. Harris Cty.*, No. 4:19-cv-00226 (S.D. Tex. Mar. 27, 2020), ECF No. 32-2 (“Chiao Decl.”).

¹⁶ ACLU, *COVID-19 Model Finds Nearly 100,00 More Deaths Than Current Estimates, Due to Failures to Reduce Jails*, https://www.aclu.org/sites/default/files/field_document/aclu_covid19-jail-report_2020-8_1.pdf (“Models projecting total U.S. fatalities to be under 100,000 may be underestimating deaths by almost another 100,000 if we continue to operate jails as usual . . . [D]eaths could be double the current projection due to the omission of jails from most public models.”).

¹⁷ *See, e.g.*, Ex. 9, Declaration of Dr. Fred Rottnek ¶ 61 (“Rottnek Decl.”); Ex. 5, Paredes Decl. at 7-8.

¹⁸ Ex. 4, Lauring Decl. ¶ 43; Ex. 6, Stern Decl. ¶¶ 12-13; Ex. 7, Meyer Decl. ¶¶ 38-39; Ex. 8, Chiao Decl. ¶¶ 41-42; Ex. 5, Paredes Decl. at 1.

and Fourteenth Amendment rights of the people jailed at the jail. Defendants' unconstitutional actions place the vulnerable people in their custody, their staff, and the broader community and health care system at risk of widespread contagion.

12. People confined in jails and prisons must "be furnished with the basic human needs, one of which is 'reasonable safety,'" *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (citations omitted). Yet Petitioners/Plaintiffs (hereinafter, Plaintiffs), as well as the class and subclass they represent, all face imminent risk of serious injury or death from COVID-19 in the jail. In the midst of a public health crisis, the people confined in the jail have not been provided adequate safeguards against the severe threat of this novel coronavirus.

13. Because Defendants' actions and inactions constitute ongoing, systemic violations of Plaintiffs' constitutional rights, Plaintiffs seek class-wide relief requiring Defendants to take basic and necessary steps to safeguard the health of people confined in the jail who, due to the nature of their confinement, are both at heightened risk of infection and death and are unable to access the most basic necessary protections available to people outside the jail. Plaintiffs further request a life-saving writ of habeas corpus for all those who are medically vulnerable and at particularly grave risk of infection and death from COVID-19, for whom release from detention is the only viable method to protect them from potentially lethal harm.

JURISDICTION AND VENUE

14. This action arises under 42 U.S.C. § 1983, 28 U.S.C. § 2241, and 28 U.S.C. § 2201, *et seq.*, as well as the Eighth and Fourteenth Amendments to the United States Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. § 2241, and 28 U.S.C. § 1651.

15. Venue is proper pursuant to 28 U.S.C. § 1391 because the events and omissions

giving rise to these claims occurred and continue to occur in this judicial district.

PARTIES

16. PLAINTIFF CLIFTON BELTON, JR., a 60-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Belton has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined in the infirmary at the jail and was previously confined in Q11-12 and Q4-5, general population housing lines. Mr. Belton suffers from congestive heart failure, diabetes, and high blood pressure. He is largely confined to a wheelchair due to fluid in his lungs and the partial amputation of his right foot. He has had four open-heart surgeries in the past year, the most recent in January 2020, and he flat-lined twice on April 15, 2019 due to the fluid around his heart, a persistent condition. He represents the Class, the Pretrial Subclass, and the Medically Vulnerable Subclass.

17. PLAINTIFF JERRY BRADLEY, a 39-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Bradley has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the A1 line and was previously confined on the C01 line, two of the jail's COVID-19 solitary confinement lines. Mr. Bradley pled guilty and was sentenced to time served on his charges on April 6, 2020, thus making him eligible for immediate release. He tested positive for COVID-19 after he accepted the plea. He represents the Class and the Post-Conviction Subclass.

18. PLAINTIFF CEDRIC FRANKLIN, a 47-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Franklin has been in Defendants' custody at the East Baton Rouge Parish Prison, where he is serving his Department of Corrections sentence. He is currently confined on the F3 housing line, a general population line. Mr. Franklin was previously confined on the J1, central booking, M1, and Q5-6 housing

lines. Mr. Franklin suffers from Type 2 Diabetes, high blood pressure, and blood clots in his legs. He represents the Class, the Post-Conviction Subclass, and the Medically Vulnerably Subclass.

19. PLAINTIFF CHRISTOPHER ROGERS, a 29-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Rogers has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the F5 housing line, a general population line. Mr. Rogers was previously confined on the B3 solitary confinement line for COVID-19-positive detainees. Mr. Rogers plans to plead to time served on his charges—for which he has already served more than the maximum amount—and seek his immediate release from the jail once he is able to get into court. Mr. Rogers represents the Class and the Pretrial Subclass.

20. PLAINTIFF JOSEPH WILLIAMS, a 21-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Williams has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the B3 line, one of the jail's COVID-19 solitary confinement lines. Four days before he was moved to solitary confinement, the charges against Mr. Williams were dropped; he remains in the jail only on a parole hold. Mr. Williams represents the Class and the Pretrial Subclass.

21. PLAINTIFF WILLIE SHEPHERD, a 38-year-old Black man, lived in Cloquet, Minnesota before his detention in East Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Shepherd has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q3 housing line, a general population line. Mr. Shepherd was previously confined on the B3 line, one of the solitary confinement lines used by the jail for COVID-19-positive detainees. Mr. Shepherd suffers from high blood pressure. He represents the Class, the Pretrial Subclass, and the Medically Vulnerable Subclass.

22. PLAINTIFF DEVONTE STEWART, a 25-year-old Black man, currently resides in Shreveport, Louisiana. At all times relevant to this Complaint, Mr. Stewart has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the B3 line, one of the jail's COVID-19 solitary confinement lines. He is confined in the jail only because of unaffordable cash bail. Mr. Stewart represents the Class and the Pretrial Subclass.

23. PLAINTIFF CEDRIC SPEARS, a 47-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Spears has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q11-12 line. Mr. Spears was previously confined on the Q9-10 and Q5-6 lines, general population housing lines, and a solitary confinement line. He is in the jail only because of unaffordable cash bail. Mr. Spears represents the Class and the Pretrial Subclass.

24. PLAINTIFF DEMOND HARRIS, a 40-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Harris has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q11-12 line, a general population housing line. Mr. Harris was previously confined on the C01 and A1 solitary confinement lines for COVID-19-positive detainees; he did not have coronavirus when he was transferred onto those lines. He serves as a minister to the men in the jail. Mr. Harris represents the Class and Pretrial Subclass.

25. PLAINTIFF FORREST HARDY, a 31-year-old Black man, currently resides in Louisiana. At all times relevant to this Complaint, Mr. Hardy has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q9-10 line, a general population housing line. He is in the jail only because of unaffordable cash bail. Mr. Hardy represents the Class and the Pretrial Subclass.

26. DEFENDANT SHERIFF SID J. GAUTREAUX, III is an adult resident of Louisiana. Gautreaux is the Sheriff of the East Baton Rouge Parish Sheriff's Office and is responsible for the hiring, training, supervision, discipline, and control of appropriate staff to maintain the care, custody, and control of prisoners in the custody of the East Baton Rouge Parish Sheriff's Office. He is responsible for all staffing at the jail. He is also responsible for the supervision, administration, policies, practices, customs, and operations of EBRPP. Gautreaux is a final policy maker who at times delegated policy making authority to other Defendants named in this lawsuit. At all pertinent times, Gautreaux was acting under color of law. He is liable both directly for the unconstitutional actions and vicariously for the state law actions complained of herein. Gautreaux is being sued in his official capacity as Sheriff of East Baton Rouge Parish.

27. DEFENDANT LIEUTENANT COLONEL DENNIS GRIMES is an adult resident of Louisiana. Defendant Grimes is the Warden of the jail, and as such is responsible for supervision, administration, policies, practices, customs, operations, training of staff, and operation of the jail. Grimes is a final policy maker and has been acting under color of law at all pertinent times. He is liable both directly for the unconstitutional actions and vicariously for the state law actions complained of herein. Grimes is being sued in his official capacity as Warden of the EBRPP

28. DEFENDANT CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE (CITY-PARISH) is a political entity capable of suing and being sued. The City-Parish contracts with CorrectHealth East Baton Rouge, LLC ("CorrectHealth") for the provision of medical and mental health care in the jail, including the jail's response to COVID-19, and oversees CorrectHealth's conduct in the jail. The City-Parish is responsible for funding operations and maintenance of the jail, including the food, clothing, medical and mental health treatment, and

related expenses for people confined in the jail. The East Baton Rouge Parish Metropolitan Council (Metro Council) is responsible for setting the policies of the City-Parish.

**THE GRAVE RISK OF HARM POSED BY THE COVID-19 PANDEMIC REQUIRES
AN EMERGENCY RESPONSE**

29. The highly contagious novel coronavirus, and its resulting infection, COVID-19, are spreading at an alarming rate. Emphasizing “deep[] concern[] both by the alarming levels of spread and severity, and by the alarming levels of inaction,” the World Health Organization has called for countries to take “urgent and aggressive action.”¹⁹

30. The virus spreads easily through respiratory droplets and contact with people.²⁰ The virus can also be spread by contact with surfaces on which the virus is present.²¹ Recent studies show that more than 50% of infected persons may never show symptoms, but can nevertheless transmit the virus to others.²² As a result, confirmed cases of the virus are likely drastically understated.

31. Dr. Amir Moheb Mohareb, an expert in infectious diseases, explains that COVID-19 can be spread through airborne or aerosolized transmission and that “virus particles in small respiratory droplets . . . that are emitted by an infected person can remain suspended in the air and remain infective over several hours and over long distances.”²³ He continues, “[p]athogens that

¹⁹ See World Health Org., *Director-General Opening Remarks* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-mediabriefing-on-covid-19--11-march-2020>; see also Bill Chappell, *Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says*, NPR (Mar. 11, 2020), <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says>.

²⁰ See Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads* (Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

²¹ *Id.*

²² Katherine Harmon Courage, *How People are Spreading Covid-19 Without Symptoms*, Vox (Apr. 22, 2020), <https://www.vox.com/2020/4/22/21230301/coronavirus-symptom-asymptomatic-carrier-spread>.

²³ Ex. 10, Expert Declaration of Dr. Amir Moheb Mohareb, *Mays v. Thomas*, No. 20-cv-2134 (N.D. Ill. Apr. 19,

travel via airborne transmission can infect persons even if they are wearing surgical or procedural masks.” Buildings or facilities that do not have negative-pressure ventilation may be at risk of spreading aerosolized pathogens between rooms. Furthermore, “[a]erosols can be generated by a number of common events, including vigorous coughing, sneezing, use of certain nasal sprays or nebulizer treatments, and toilet flushing.”²⁴ There is further reason to believe that SARS-CoV-2 can be transmitted via fecal-oral contact and that “[t]he identification of viable SARS-CoV-2 in stool of infected persons raises concern of airborne transmission via toilet flushing.”²⁵ Finally, he declares, “[h]and hygiene and the provision of surgical masks are insufficient to prevent the spread of infection in a congregate setting.”²⁶

32. On January 21, 2020, the first confirmed COVID-19 case was diagnosed in the United States.²⁷ As of May 25, 2020, more than five million people have been diagnosed with COVID-19 worldwide, with more than a million new infections being confirmed in the two weeks preceding that date, and at least 342,000 deaths confirmed.²⁸ In the United States, more than 1.6 million people have been diagnosed, and over 98,000 deaths have been confirmed.²⁹ Louisiana has been one of the states hardest hit by this crisis.³⁰ Nationally, the most recent CDC projections

2020), ECF No. 64-3 (“Mohareb Decl.”).

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4.

²⁶ *Id.* at 5.

²⁷ Derrick Bryson Taylor, *How the Coronavirus Pandemic Unfolded: a Timeline*, N.Y. Times (May 12, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html>.

²⁸ World Health Org., *Coronavirus Disease(COVID-19) Situation Report-126* (May 25, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200525-covid-19-sitrep-126.pdf?sfvrsn=887dbd66_2; *Reported Coronavirus Cases Top 5 Million Worldwide*, N.Y. Times (May 21, 2020), <https://www.nytimes.com/2020/05/21/world/coronavirus-world-news-live.html>.

²⁹ Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* (May 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>.

³⁰ *See infra* ¶¶ 60-62.

indicate that approximately four million patients will be hospitalized in the United States with COVID-19, with more than 500,000 deaths over the course of the pandemic.³¹

33. Infected people—who may be asymptomatic and not even know they are infected—can spread the disease even through indirect contact with others.³² Given that many people are asymptomatic transmitters and very few people have been tested,³³ the number of people diagnosed with COVID-19 reflects only a small portion of those infected.³⁴

34. The virus poses a grave risk of severe illness, including lung tissue damage, sometimes leading to a permanent loss of respiratory capacity. It can also cause acute respiratory distress syndrome, affect cardiac functions (including the possibility of heart failure), lead to severe damage to other organs (including causing irreversible harm to the kidneys or neurologic injury),³⁵ and cause life-threatening blood clots.³⁶ Research suggests that COVID-19 can trigger

³¹ Liz Essley Whyte, *Scientists Say New, Lower CDC Estimates for Severity of COVID-19 Are Optimistic*, Nat'l Public Radio (May 22, 2020), <https://www.npr.org/sections/health-shots/2020/05/22/860981956/scientists-say-new-lower-cdc-estimates-for-severity-of-covid-19-are-optimistic>

³² See, e.g., Marilyn Marchione/AP, *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*, TIME (Mar. 11, 2020); Jiong Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 *Emerging Infectious Diseases* 6 (2020), <https://doi.org/10.3201/eid2606.200412> (last visited May 23, 2020); see also Nathan W. Furukawa et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, 26 *Emerging Infectious Diseases* 7 (2020), https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article.

³³ See, e.g., Roni Caryn Rabin, *They Were Infected With the Coronavirus. They Never Showed Signs*, N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), <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), <https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms>; Rosa Flores et al., *2 Studies Show Many People Who Tested Positive for Covid-19 Displayed No Symptoms*, CNN (Apr. 25, 2020), <https://www.cnn.com/2020/04/24/us/2-asymptomatic-coronavirus-studies/index.html>.

³⁴ See, e.g., Melissa Healy, *True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say*, L.A. Times (Mar. 10, 2020), <https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA>; Mike Stobbe, *More Evidence Indicates Health People Can Spread Virus*, AP News (Apr. 1, 2020), <https://apnews.com/5c4992645fee551994325093858c14a4>.

³⁵ Ex. 11, Declaration of Dr. Jonathan Louis Golob ¶ 7, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or. Filed March 16, 2020), ECF No. 5 (“Golob Decl.”).

³⁶ Lydia Ramsey, *Blood Clots Are the Latest Life-Threatening Complication of the Coronavirus, but Doctors Aren't Sure How to Treat Them*, Bus. Insider (Apr. 19, 2020), <https://www.businessinsider.com/coronavirus-blood-clot->

an over-response in the immune system,³⁷ resulting in death.³⁸ People over the age of 50 are particularly at risk (accounting for 74% of patients hospitalized), as are people with certain underlying conditions, most commonly, hypertension, obesity, chronic lung disease, diabetes mellitus, and cardiovascular disease.³⁹

35. The experiences of persons infected with COVID-19 are “a lot more frightening” than the flu.⁴⁰ Suffering from acute respiratory distress syndrome has been compared to “essentially drowning in [one’s] own blood.”⁴¹ Even relatively young people with few health problems can be “wiped out” by the virus, “like they’ve been hit by a truck,” and, in some cases, “sudden[ly]” go into complete respiratory failure.⁴²

36. Further, because COVID-19-related complications can develop rapidly, local hospitals are overwhelmed with high patient volumes and shortages in health care resources. Treatment for severe COVID-19 cases requires advanced medical support with highly specialized equipment, such as ventilators and oxygen assistance, and a team of qualified health care providers.

37. The current estimated incubation period is between two and fourteen days.⁴³ The national rate of death among those infected is about 1.3%. The comparable rate of death for the

complications-in-severe-covid-19-treatment-debate-2020-4.

³⁷ Ex. 11, Golob Decl. ¶ 7.

³⁸ *Id.*

³⁹ Shiha Garg et al., *Hospitalization Rates and Characteristics of Patients Hospitalized With Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020*, Ctrs. for Disease Control & Prevention Morbidity & Mortality Weekly Report (Apr. 17, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm>.

⁴⁰ See, e.g., Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in His Young Patients*, ProPublica (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ctrs. for Disease Control & Prevention, *Symptoms of Coronavirus* (May 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>.

seasonal flu is 0.1%.⁴⁴ Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity.⁴⁵

38. Because it is unclear whether people who have recovered from COVID-19 are immune to reinfection,⁴⁶ and a vaccine appears more than one year away,⁴⁷ the only effective weapon against the virus is preventing new infections. According to health experts, the *only* guaranteed way to prevent new infections is social distancing: physically isolating oneself from any other person at a minimum distance of six feet. Dozens of the world’s experts on fighting epidemics agree that extreme social distancing approximates the type of “total freeze”⁴⁸ on transmission that is vital to halting and reversing the spread of COVID-19. Epidemiologists say that “[i]f it were possible to wave a magic wand and make all Americans freeze in place for 14 days while sitting six feet apart . . . the whole epidemic would sputter to a halt.”⁴⁹

39. As a result, Governors, mayors, and local city and county officials—including those in Louisiana—have all urged the public to practice social distancing.⁵⁰ Forty-six states and the

⁴⁴ Jake Ellison, *COVID-19: Study Reports ‘Staggering’ Death Rate in U.S. Among Those Infected Who Show Symptoms*, ScienceDaily (May 18, 2020), [sciencedaily.com/releases/2020/05/200518144915.htm](https://www.sciencedaily.com/releases/2020/05/200518144915.htm).

⁴⁵ Ex. 11, Golob Decl. ¶ 4

⁴⁶ Dr. Delaram J. Taghipour, *Questions Remain Over Whether COVID-19 Recovery Will Guarantee Immunity: Is Reinfection Still Possible*, ABC News (Apr. 12, 2020), <https://abcnews.go.com/Health/questions-remain-covid-19-recovery-guarantee-immunity-reinfection/story?id=70085581>.

⁴⁷ E.g., James Gallagher, *Coronavirus Vaccine: When Will We Have One?*, BBC News (May 18, 2020), <https://www.bbc.com/news/health-51665497>.

⁴⁸ E.g., Donald G. McNeil Jr., *The Virus Can Be Stopped, but Only With Harsh Steps, Experts Say*, N.Y. Times (Mar. 25, 2020), <https://www.nytimes.com/2020/03/22/health/coronavirus-restrictions-us.html>; see also Ctrs. for Disease Control & Prevention, *Social Distancing*, (May 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

⁴⁹ Donald G. McNeil Jr., *The Virus Can Be Stopped, but Only With Harsh Steps, Experts Say*, N.Y. Times (Mar. 22, 2020), <https://www.nytimes.com/2020/03/22/health/coronavirus-restrictions-us.html>.

⁵⁰ Assoc. Press, *11 Graphics That Officials Say Tell the Strong of Louisiana’s Fight Against Coronavirus in May*, The Advocate (May 11, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_418bba9c-93ed-11ea-8311-135ae37e6259.html; *Michigan closes bars, stops restaurant dine-in, further limits gatherings*,

District of Columbia have ordered all businesses deemed nonessential to close or to operate under restrictions that allow for social distancing.⁵¹ Three hundred sixteen million people in at least 42 states, three counties, nine cities, the District of Columbia, and Puerto Rico were urged (or ordered) to stay home.⁵² Gatherings where it was impossible to maintain social distancing were cancelled across the country and the world.⁵³

INCARCERATED PEOPLE AND CORRECTIONAL STAFF ARE AT HEIGHTENED RISK DURING THE COVID-19 PANDEMIC

40. Jail facilities become “ticking time bombs” in 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.”⁵⁴ Epidemiological research overwhelmingly “shows that mass incarceration raises contagion rates for infectious disease—both for people in jails, and for the community at large.”⁵⁵

WOODTV (Mar. 16, 2020), <https://www.woodtv.com/health/coronavirus/whitmer-orders-bars-restaurants-to-close-due-to-virus-concerns/>; Doug Mainwaring, *Governor Urges ‘Social Distancing’ Even Among Families at Home*, LifeSite (Apr. 3, 2020), <https://www.lifesitenews.com/news/governor-urges-social-distancing-even-among-families-at-home>; Christian Berthelsen, Elise Young, *N.J., N.Y. Urge Residents to Stay Put With Peak Approaching*, Bloomberg (Apr. 9, 2020), <https://www.bloomberg.com/news/articles/2020-04-09/murphy-says-social-distancing-is-slowing-virus-spread-in-n-j>; Laura Ziegler, *Act Like You Have The Virus, Kansas City Officials Urge As They Step Up Social Distance Enforcement*, KCUR (Mar. 30, 2020), <https://www.kcur.org/post/act-you-have-virus-kansas-city-officials-urge-they-step-social-distance-enforcement#stream/0>; Kendall Downing, *City, County Officials Urge Social Distancing Over Easter Holiday Weekend; City Braces for COVID-19 Budget Impact*, WMC5 (Apr. 8, 2020), <https://www.wmcactionnews5.com/2020/04/08/city-county-officials-urge-social-distancing-over-easter-holiday-weekend-city-braces-covid-budget-impact/>; *Many People Will Get COVID-19’ Says Mayor Garcetti As He Urges LA To Practice Social Distancing, Self-Quarantine*, CBSN Los Angeles (Mar. 14, 2020), <https://losangeles.cbslocal.com/2020/03/14/many-people-will-get-covid-19-says-mayor-garcetti-as-he-urges-la-to-practice-social-distancing-self-quarantine/>.

⁵¹ Eric Schumaker, *Here Are the States That Have Shut Down Nonessential Businesses*, ABC News (Apr. 3, 2020), <https://abcnews.go.com/Health/states-shut-essential-businesses-map/story?id=69770806>.

⁵² Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which Cities and States Have Told Residents to Stay at Home*, N.Y. Times (Apr. 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

⁵³ *A List of What’s Been Canceled Because of the Coronavirus*, N.Y. Times (Apr. 1, 2020), <https://www.nytimes.com/article/cancelled-events-coronavirus.html>.

⁵⁴ See St. Louis Univ., *“Ticking Time Bomb”: Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

⁵⁵ Sandhya Kajeepeta & Seth J. Prins, *Why Coronavirus in Jails Should Concern All of Us*, The Appeal (Mar. 24,

41. These facilities are inextricably linked to public life: even with the jail’s current restrictions on visitors, contractors, and vendors, the large number of staff members who keep the facility functioning pass between communities and the facilities multiple times daily, and, if infected, carry the virus with them. Similarly, rapid turnover of jail and prison populations means that people often cycle between these facilities and communities. Thus, the ability to control the spread of infection outside of facilities hinges on controlling infection and the spread of infection *inside* of these facilities. Put simply, jail health is public health.

42. According to Dr. Jaimie Meyer, an expert in public health in jails and prisons: “The risk posed by infectious diseases [such as 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.”⁵⁶ This is due to a number of factors, including:

- a. The close proximity of individuals in those facilities;
- b. Their reduced ability to protect themselves through social distancing;
- c. The lack of necessary medical and hygiene supplies ranging from hot water, soap or hand sanitizer, to protective equipment;
- d. Ventilation systems that encourage the spread of airborne diseases;
- e. Difficulties quarantining individuals who become ill;
- f. The enhanced susceptibility of the population in jails and prisons due to chronic health conditions;
- g. The fact that incarcerated people, rather than professional cleaners, are often responsible for cleaning the facilities and are not given appropriate supplies; and
- h. The fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic, as well as the loss of both

2020), <https://theappeal.org/coronavirus-jails-public-health/>.

⁵⁶ Ex. 7, Meyer Decl. ¶ 7.

medical and correctional staff to illness.⁵⁷

43. Increased risk of transmission and infection also result from the constant cycling of people in and out of the jail (including staff),⁵⁸ limited access to medical care within the Jail itself, and ineffective screening procedures. Most people do not show symptoms for two to fourteen days while being contagious. Others never exhibit any symptoms at all. Thus, while screening for fevers and other symptoms associated with COVID-19 may stop *some* infected people from entering or transmitting the disease, it cannot catch many of those actively spreading the virus. The drastic social distancing measures that have been imposed across the country are designed to combat this exact problem. To be sure, by staying at home, we can limit our contact with other persons, even the asymptomatic. This option is unavailable in the Jail.

44. Any of the revolving door of Jail staff can be asymptotically carrying and transmitting COVID-19, and the Jail has no means of stopping the spread of this disease.⁵⁹ At least 167 Department of Corrections staff members have tested positive for COVID-19,⁶⁰ and several high-level jail and prison officials across Louisiana have died from the virus, including the Warden and Medical Director at a state prison in Avoyelles Parish and a staff member at the

⁵⁷ See Ex. 7, Meyer Decl. ¶¶ 7-19; see also Laura M. Maruschak et al., *Pandemic Influenza and Jail Facilities and Populations*, 99 Am. J. of Pub. Health S2 (2009) (“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.”); see also Dr. Anne C. Spaulding, *Coronavirus and the Correctional Facility*, Emory Ctr. for the Health of Incarcerated Persons, (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

⁵⁸ See Peter Wagner & Emily Widra, *No Need to Wait for Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (Mar. 6, 2020), <https://www.prisonpolicy.org/blog/2020/03/06/pandemic>.

⁵⁹ See Linda So & Grant Smith, *In Four U.S. State Prisons, Nearly 3,300 Inmates Test Positive for Coronavirus -- 96% Without Symptoms*, Reuters (Apr. 25, 2020), <https://www.reuters.com/article/us-health-coronavirus-prisons-testing-in/in-four-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUSKCN2270RX> (noting that 95-96% of positive COVID-19 cases had no symptoms).

⁶⁰ La. Dep’t of Public Safety & Corrs., *COVID-19 Staff Positives* (May 25, 2020, 11 a.m.), <https://doc.louisiana.gov/doc-covid-19-testing/>.

Louisiana State Penitentiary (“Angola”).⁶¹ On April 2, 2020, the American Correctional Officer Intelligence Network sent a letter to the National Governors Association describing the dire impact of COVID-19 on correctional officers and staff: “[O]fficers in Michigan, New York and New Jersey have died from COVID-19. They will not be the last. Hundreds more across the nation have tested positive and thousands face quarantine. Inmates in our custody are dying as a result of this virus.”⁶² The letter also referenced a survey of over 750 correctional officers and staff about the ways in which the COVID-19 virus is impacting prisons, jails, and juvenile detention facilities, in which almost 60% of respondents said that COVID-19-related hazards inside their facility remain unaddressed.⁶³

45. Correctional officials around the country agree that particular care must be taken to stop the spread of COVID-19 within the nation’s jails. Leann Bertsch, the Director of the North Dakota Department of Corrections and Rehabilitation, concluded that, “ignoring the health of those living and working inside the walls of our nation’s correctional facilities poses a grave threat to us all,” and that “putting public health first is the best, and only, way to effectively achieve [a department of corrections’] public safety mission during the COVID-19 pandemic.”⁶⁴

⁶¹ See WDSU Digital Team, *Warden, Medical Director of Louisiana Prison Die After Contracting Coronavirus, State Says*, WDSU6 News (Apr. 20, 2020), <https://www.wdsu.com/article/2-new-covid-19-related-deaths-reported-by-louisiana-prison-system-1-inmate-1-employee/32214252>; WDSU Digital Team, *Angola Prison Employee has Died of Coronavirus: Louisiana DOC*, WDSU6 News (Apr. 14, 2020), <https://www.wdsu.com/article/angola-prison-staff-member-has-died-of-coronavirus-louisiana-doc/32146836>.

⁶² Ltr. from One Voice & ACOIN to Nat’l Governors Ass’n (Apr. 2, 2020), https://drive.google.com/file/d/13euHXAPbSyVo1vkG9k1x7ymJCl_UJhTc/view.

⁶³ *Id.* at 2.

⁶⁴ Brie Williams & Leanne Bertsch, *A Public Health Doctor and Head of Corrections Agree: We Must Immediately Release People From Jails and Prisons*, *The Appeal* (Mar. 27, 2020), <https://theappeal.org/a-public-health-doctor-and-head-of-corrections-agree-we-must-immediately-release-people-from-jails-and-prisons/>.

46. On March 30, 2020, the Centers for Disease Control and Prevention (CDC) published guidance for correctional and detention facilities, including local jails.⁶⁵ The CDC recognized that incarcerated people are forced to exist “within congregate environments” that “heighten[] the potential for COVID-19 to spread once introduced.”⁶⁶ Indeed, “[t]here are many opportunities for COVID-19 to be introduced into a correctional or detention facility” including “daily staff ingress and egress . . . transfer of incarcerated/detained persons between facilities and systems, to court appearances,” as well as “high turnover” of “admit[ted] new entrants.”⁶⁷ Accordingly, the CDC recommends that correctional facilities:

- a. Post signage throughout the facility communicating COVID-19 symptoms and hand hygiene instructions, ensure such signage is understandable for non-English speaking people as well as those with low literacy, and provide clear information about the presence of COVID-19 cases within a facility and the need to increase social distancing and maintain hygiene precautions;
- b. Ensure that sufficient stocks of hygiene supplies are on hand and available, and have a plan in place to restock as needed. Provide a no-cost supply of and access to soap to incarcerated/detained persons, sufficient to allow frequent hand washing. Provide Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing. Provide hand drying supplies, and alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions);
- c. Provide running water, hand drying machines or disposable paper towels for hand washing, and tissues (providing no-touch trash receptacles for disposal);
- d. Ensure that sufficient stocks of cleaning supplies are on hand and available, and have a plan in place to restock as needed, including tissues, cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19;
- e. Ensure that sufficient stocks of PPE and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in

⁶⁵ Ex. 3, Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities 2* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidancecorrectional-detention.html>.

⁶⁶ *Id.*

⁶⁷ *Id.*

place to restock as needed if COVID-19 transmission occurs within the facility, including standard medical supplies for daily clinic needs, and recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls);

- f. Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty;
- g. Suspend co-pays for incarcerated people seeking medical evaluation for respiratory symptoms;
- h. Even if COVID-19 cases have not been identified locally or inside, implement “intensified cleaning and disinfecting procedures” that clean and disinfect high-touch surfaces and objects “[s]everal times per day,” and ensure adequate supplies to support intensified cleaning and disinfection practices;
- i. Perform pre-intake screening and temperature checks for all new entrants, and implement daily temperature checks in housing units where COVID-19 cases have been identified;
- j. If an individual has symptoms of COVID-19 (fever, cough, shortness of breath), require the individual to wear a face mask and place her under medical isolation; and
- k. Implement social distancing strategies to increase the physical space between incarcerated people, ideally a distance of six feet “regardless of the presence of symptoms.”

47. The CDC’s guidance for jail administrators, however, is not a substitute for what is medically required to protect people’s lives during a pandemic. Nor is it a repudiation of the CDC’s scientific guidance that social distancing is required to stop the transmission of the virus.

48. The global path of the virus proves that jails and prisons are epicenters for transmission. Approximately one month into the pandemic in the province of Hubei, China, over half of the newly reported COVID-19 cases out of Wuhan were from jails.⁶⁸ In South Korea,

⁶⁸ Zi Yang, *Cracks in the System: COVID-19 in Chinese Prisons*, The Diplomat (Mar. 9, 2020), <https://thediplomat.com/2020/03/cracks-in-the-system-covid-19-in-chinese-prisons/>.

which has had tremendous success in slowing and stopping the spread of the virus, “the single largest COVID-19 outbreak and mortality cluster was from the Daenam Prison Hospital, where 101 inmates were infected and seven died.”⁶⁹

49. The coronavirus has started spreading inside other prisons, jails, and detention centers in the United States. Experts predict that a mass contagion is only a matter of time and that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility.”⁷⁰

50. Once the virus enters a jail or prison, the infection rate has been known to far exceed that of the broader community—by as much as 150%.⁷¹ In mid-March, for example, the jail at Rikers Island in New York City had not had a single confirmed COVID-19 case. By March 30, 167 detainees, 114 correction staff and 20 health workers at Rikers tested positive for COVID-19; two correction staff members had died and multiple detainees had been hospitalized. Rikers now has a rate of infection that is nearly seven times higher than that in New York City and nine times higher than the rate in New York State⁷²; over 30 times higher than the rest of America; and far higher than the infection rates of the most infected regions of the world.⁷³ More than 700 people

⁶⁹ Nancy Gertner & John Reinstein, *Compassionate Release Now for Prisoners Vulnerable to the Coronavirus*, Boston Globe (Mar. 23, 2020), <https://www.bostonglobe.com/2020/03/23/opinion/compassionate-release-now-prisoners-vulnerable-coronavirus/>.

⁷⁰ Nicole Wetsman, *Prisons and Jails Are Vulnerable to COVID-19 Outbreaks*, The Verge (May 7, 2020), <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

⁷¹ Katie Park, Tom Meagher, & Weihua Li, *Tracking the Spread of Coronavirus in Prisons*, The Marshall Project (Apr. 24, 2020), <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons>.

⁷² See Jan Ransom & Alan Feuer, ‘*We’re Left for Dead*’: Fears of Virus Catastrophe at Rikers Jail, N.Y. Times (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>; Chris Hays, *Coronavirus Infection Rate in NYC Jails 7 Times the Rest of the City*, MSNBC (Mar. 26, 2020), <https://www.msnbc.com/all-in/watch/coronavirus-infection-rate-in-nyc-jails-7-times-the-rest-of-the-city-81260101982>; Scott Hechinger (@ScottHech), Twitter (Mar. 28, 2020, 7:21 PM), <https://twitter.com/ScottHech/status/1244041855614029826/photo/1>.

⁷³ *COVID-19 Infection Tracking in NYC Jails*, The Legal Aid Soc’y (updated May 1, 2020), <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited May 3, 2020).

have tested positive for COVID-19, including more than 400 staff.⁷⁴ The Chief Medical Officer of Rikers has described COVID-19 infections as a “public health disaster unfolding before our eyes.”⁷⁵ In his view, following CDC guidelines has not been enough to stem the crisis: “infections in our jails are growing quickly despite these efforts.”⁷⁶

51. The Cook County Jail, similarly, went from two confirmed COVID-19 cases on March 23 to more than 350 confirmed cases, 238 detainees and 115 staff members, two weeks later.⁷⁷ As of May 22, 2020, over 532 detainees and 418 jail staff contracted COVID-19, and seven detainees and three jail staff have died as a result.⁷⁸ Nurses at Cook County’s Stroger Hospital have warned that the virus is a “growing beast” that threatens not only staff and people behind bars but all of Cook County.⁷⁹ An entire unit at Stroger Hospital has been converted into a space for treating COVID-19 cases from the Cook County jail, and the unit is rapidly reaching maximum capacity.⁸⁰

52. An equally gruesome pattern is already devastating Louisiana’s carceral system.

⁷⁴ Asher Stockler, *More Than 700 People Have Tested Positive for Coronavirus on Rikers Island, Including Over 440 Staff*, Newsweek (Apr. 8, 2020), <https://www.newsweek.com/rikers-island-covid-19-new-york-city-1496872>.

⁷⁵ Meagan Flynn, *Top Doctor at Rikers Island Calls the Jail a ‘Public Health Disaster Unfolding Before Our Eyes’*, Wash. Post (Mar. 31, 2020), <https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread/>.

⁷⁶ Ross MacDonald (@RossMacDonaldMD), Twitter (Mar. 30, 2020, 11:03 PM), <https://twitter.com/rossmacdonaldmd/status/1244822686280437765?s=12> (“I can assure you we were following the CDC guidelines before they were issued. We could have written them ourselves. . . . [I]nfections in our jails are growing despite these efforts.”).

⁷⁷ Timothy Williams & Danielle Ivory, *Chicago’s Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁷⁸ Cook Cnty. Sheriff’s Office, *COVID-19 Cases at CCDOC* (May 25, 2020), <https://www.cookcountysheriff.org/covid-19-cases-at-ccdod/>; cf. Andy Grimm, *Cook County Jail director defends handling of COVID-19 outbreak*, Chi. Sun Times (Apr. 23, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/23/21233570/cook-county-jail-covid-19-outbreak-tom-dart>.

⁷⁹ Shannon Heffernan, *Nurses Warn COVID-19 Cases At Cook County Jail Aren’t Just Staying Behind Bars*, WBEZ, Chicago’s NPR (Apr. 11, 2020), <https://www.wbez.org/stories/nurses-warn-covid-19-cases-at-cook-county-jail-arent-just-staying-behind-bars/44cc1e46-693b-44cc-8a5a-347737966185>.

⁸⁰ *Id.*

Even without considering infection and death rates from jails across the state—which account for about half of the Department of Corrections’ population—Louisiana reported 273 positive cases as of April 30, 2020.⁸¹ An additional 187 people in parish jails had contracted COVID-19 by April 22nd.⁸² Less than one month later, Louisiana’s prisons have 438 cases and 11 deaths.⁸³ In one prison, nearly every woman (192 out of 195) tested positive for COVID-19.⁸⁴

53. For this reason, medical and public health experts have urged emergency action to fight the spread of COVID-19 in jails and other carceral facilities, including decarceration, improved access to medical care, compliance with CDC guidelines, and more.⁸⁵ Medical experts explain that the need for action is urgent given that “[t]he window of opportunity is rapidly narrowing for mitigation of COVID-19”—outbreaks are measured in “a matter of days, not weeks,” with this type of novel virus.⁸⁶

54. Medical experts have emphasized that urgent action in the jails is an essential public health priority because outbreaks will place incredible strain on regional hospitals and health

⁸¹ Jerry Iannelli, *Louisiana’s Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, The Appeal (May 1, 2020), <https://theappeal.org/louisiana-doc-covid-19-data>.

⁸² *Id.*

⁸³ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (May 22, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

⁸⁴ Assoc. Press, *At Louisiana Prison, 192 out of 195 Inmates Test Positive for COVID-19*, MarketWatch (May 5, 2020), <https://www.marketwatch.com/story/louisiana-prison-unit-has-192-of-195-inmates-test-positive-for-covid-19-2020-05-05>.

⁸⁵ See, e.g., 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), <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>; Letter from Faculty Members of the Johns Hopkins Bloomberg School of Public Health, School of Nursing, and School of Medicine to Governor Larry Hogan (Mar. 25, 2020), <https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>; Ex. 6, Stern Decl. ¶ 11; Ex. 12, Declaration of Dr. Ranit Mishori ¶ 46, *Coreas v. Bounds*, No. 8:20-cv-00780 (D. Md., filed Mar. 24, 2020), ECF No. 2-3 (“Mishori Decl.”); Ex. 13, Declaration of Robert B. Greifinger ¶ 13, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or., filed Mar. 16, 2020), ECF No. 4 (“Greifinger Decl.”).

⁸⁶ Ex. 12, Mishori Decl. ¶ 46.

centers. Experts, like Dr. Meyer, make clear that “[r]educing 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.”⁸⁷

55. Public health experts, including Dr. Gregg Gonsalves,⁸⁸ Ross MacDonald,⁸⁹ Dr. Marc Stern,⁹⁰ Dr. Oluwadamilola T. Oladeru and Adam Beckman,⁹¹ Dr. Anne Spaulding,⁹² Homer Venters,⁹³ and Josiah Rich⁹⁴ have all strongly cautioned that people booked into and held in jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

56. According to Dr. Stern, “taking immediate and concerted efforts to implement preventive steps, as well as reducing the population to the lowest number possible prioritizing those who are elderly or have underlying medical conditions defined by the CDC, will increase public safety via reducing public health risk.”⁹⁵

57. In response to this need for immediate action, jails and prisons nationwide⁹⁶ have

⁸⁷ Ex. 7, Meyer Decl. ¶ 37.

⁸⁸ Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, The Ct. Mirror (Mar. 11, 2020), <https://cutt.ly/BtRSxCF>.

⁸⁹ Craig McCarthy & Natalie Musumeci, *Top Rikers Doctor: Coronavirus ‘Storm is Coming,’* N.Y. Post (Mar. 19, 2020), <https://cutt.ly/ptRSnVo>.

⁹⁰ Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions in 3 “Buckets,”* Washington Ass’n of Sheriffs & Police Chiefs (Mar. 5, 2020), <https://cutt.ly/EtRSm4R>.

⁹¹ Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America’s Incarcerated Population – and How to Ensure It’s Not Left Behind*, HealthAffairs Blog (Mar. 10, 2020), <https://cutt.ly/QtRSYNA>.

⁹² Anne C. Spaulding, MD MPH, *Coronavirus COVID-19 and the Correctional Jail*, Emory Ctr. for the Health of Incarcerated Persons (Mar. 9, 2020), https://www.prisonlegalnews.org/media/publications/Emory_CHIC_Coronavirus_and_the_Correctional_Facility_2020.pdf.

⁹³ Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother Jones (Mar. 12, 2020), <https://cutt.ly/jtRSPnk>.

⁹⁴ Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, The Guardian (Mar. 13, 2020), <https://cutt.ly/itRSDNH>.

⁹⁵ Ex. 6, Stern Decl. ¶ 13.

⁹⁶ Internationally, governments have also responded to the threat posed by COVID-19 by releasing people from incarceration. In Iran, more than 80,000 people were temporarily released from prison to protect them and to protect

released people, in order to prevent community outbreaks of severe illness and death from COVID-19. For example, Los Angeles County, California has released more than 3,500 people;⁹⁷ New York released more than 1,600 people;⁹⁸ New Jersey 1,000 people;⁹⁹ Cuyahoga County, Ohio more than 900 people.¹⁰⁰

58. States and other local jurisdictions have also made changes to existing carceral policies in response to the COVID-19 pandemic, including eliminating medical co-pays for incarcerated people and waiving fees for phone calls and video communication.¹⁰¹ Others have required facilities to distribute and make available sanitation supplies and hand sanitizer to everyone who is incarcerated, arranged for the immediate evaluation and treatment of anyone with symptoms, and enacted screening procedures for everyone who enters the jail or prison.¹⁰²

59. Over the past two weeks, multiple courts have also acknowledged the severe and

the community from propagation of an outbreak. See Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>. In Ethiopia, more than 4,000 people were pardoned and released from incarceration to help prevent the spread of COVID-19. See Bukola Adebayo, *Ethiopia Pardons More Than 4,000 Prisoners to Help Prevent Coronavirus Spread*, CNN (Mar. 26, 2020), <https://www.cnn.com/2020/03/26/africa/ethiopia-pardons-4000-prisoners-over-coronavirus/index.html>.

⁹⁷ CBS Los Angeles, *Los Angeles, Ventura County Jails Releasing Inmates To Cut Risk Of Coronavirus Exposure* (May 3, 2020), <https://losangeles.cbslocal.com/2020/04/15/coronavirus-jails-releasing-inmates-los-angeles-county-ventura-county/>.

⁹⁸ Rosa Goldensohn, *COVID-Sick at Rikers On \$1 Bail – And A Parole Violation*, The City (Apr. 27, 2020), <https://thecity.nyc/2020/04/rikers-island-early-release-sought-amid-coronavirus-soread.html>.

⁹⁹ Tracey Tulley, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>.

¹⁰⁰ Ronnie Dahl, *Will Reduced Crowding at Cuyahoga County Jail Continue after the Coronavirus Crisis?*, 19 News (May 3, 2020), <https://www.cleveland19.com/2020/04/23/will-reduced-crowding-cuyahoga-county-jail-continue-after-coronavirus-crisis/>.

¹⁰¹ See, e.g., Jessica Miller, *Utah Jailers Say They're Proud of Their Coronavirus Response, Reject Lawsuit*, The Salt Lake Tribune (Apr. 28, 2020), <https://www.sltrib.com/news/2020/04/27/utah-jailers-say-theyre/>; see also Prison Policy Initiative, *Responses to the COVID-19 Pandemic* (May 22, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.

¹⁰² See, e.g., Indiana Dep't of Corr., *Preparedness and Response Plan (Adult and Juvenile)* 5–8 (2020), <https://www.in.gov/idoc/files/IDOC%20Pandemic%20Response%20Plan%203-3-2020.pdf#response%20plan>.

urgent threats posed by COVID-19 and have accordingly ordered the release of detained and incarcerated persons.¹⁰³

**THE COVID-19 PANDEMIC HAS REACHED EAST BATON ROUGE
PARISH AND SWIFT ACTION IS NEEDED TO PREVENT A MASS OUTBREAK IN
THE JAIL**

60. Louisiana has been one of the “hotspots” of coronavirus in the United States and— with approximately 37,000 confirmed cases and more than 2,500 deaths—the state currently ranks sixth in the country for its fatality rate.¹⁰⁴ As of May 19th, East Baton Rouge Parish has led the state with more than 1,150 positive cases of coronavirus diagnosed since May 1, 2020 and about 9% of the state’s total deaths.¹⁰⁵ These figures were “roughly twice” that of the next closest

¹⁰³ See, e.g., *Cameron v. Bouchard*, No. 20-10948, 2020 WL 2569868 (E.D. Mich. May 21, 2020); Judgment, *Dada v. Witte*, No. 1:20-cv-00458-DDD-JPM (W.D. La. May 22, 2020), ECF No. 24; TRO & Order to Show Cause at 10, *Castillo et al. v. Barr*, No. 5:20-cv-00605 (C.D. Cal. Mar. 27, 2020), ECF No. 32 (ordering petitioners be released from immigration detention in light of COVID-19 and noting “the risk of infection in immigration detention facilities – and jails – is particularly high”); *United States v. Garlock.*, No. 18-cr-00418-VC-1, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (ordering, sua sponte, extension of convicted defendant’s surrender date and noting “[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided”); *Xochihua-Jaimes v. Barr*, 798 F. App’x 52, 52 (9th Cir. 2020) (ordering, sua sponte, that petitioner be immediately released from immigration detention “[i]n light of the rapidly escalating public health crisis [related to COVID-19], which public health authorities predict will especially impact immigration detention centers”); *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 WL 1295155, *2 (S.D.N.Y. Mar. 19, 2020) (granting motion for reconsideration of defendant’s bail conditions and releasing him from jail to home confinement, explaining that “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent” and that “inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop”); *In re. Extradition of Toledo Manrique*, No. 19-mj-71055-MAG-1 (TSH), 2020 WL 1307109, at *2 (N.D. Cal. Mar. 19, 2020) (ordering release on bond despite government assertions that facility has preparedness plan in place and no cases have been confirmed).

¹⁰⁴ *Where are the US coronavirus hotspots?*, <https://www.aljazeera.com/news/2020/03/coronavirus-hot-spots-200331175418853.html>; Dan Swenson et al., *Coronavirus in Louisiana*, nola.com (May 22, 2020), https://www.nola.com/news/coronavirus/article_7cb2af1c-6414-11ea-b729-93612370dd94.html; *Death rates from coronavirus (COVID-19) in the United States as of May 22, 2020, by state*, statista.com (May 22, 2020), <https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/>; Oliver Laughland & Lauren Zanolli, *A Virus Stalks a County with One of the Highest Death Rates in US: ‘People are Dropping Like Flies,’* The Guardian (Apr. 7, 2020), <https://www.theguardian.com/us-news/2020/apr/07/cancer-alley-coronavirus-reserve-louisiana>.

¹⁰⁵ See Holly Duchmann, *East Baton Rouge Parish leads state in new coronavirus cases in May*, Greater Baton Rouge Business Report (May 19, 2020), <https://www.businessreport.com/newsletters/east-baton-rouge-parish-leads-state-in-new-coronavirus-cases-in-ma>; Dan Swenson et al., *Coronavirus in Louisiana*, nola.com (May 25, 2020), https://www.nola.com/news/coronavirus/article_7cb2af1c-6414-11ea-b729-93612370dd94.html.

Parish.¹⁰⁶ As of May 21, 2020, 3,319 total people have been diagnosed with COVID-19 in East Baton Rouge Parish, with 225 confirmed deaths.¹⁰⁷ Portions of the state have an infection rate that is more than double that of New York City, an epicenter of the virus in this country.¹⁰⁸

61. Black people have accounted for 55% of all COVID-19 deaths in Louisiana, even though they represent only 32% of the state's population.¹⁰⁹ Approximately 47% of East Baton Rouge Parish is Black,¹¹⁰ and the jail is largely comprised of area residents.¹¹¹

62. Distressingly, since the Governor's stay-at-home order ended on May 15, 2020,¹¹² Louisiana's newly reported coronavirus cases skyrocketed by more than 327% in one day, from May 20th to May 21st.¹¹³ A mass outbreak of COVID-19 in any of Louisiana's jails or prisons, including the East Baton Rouge Parish Prison, would further strain the limited resources of state's healthcare system.

¹⁰⁶ Holly Duchmann, *East Baton Rouge Parish leads state in new coronavirus cases in May*, Greater Baton Rouge Business Report (May 19, 2020), <https://www.businessreport.com/newsletters/east-baton-rouge-parish-leads-state-in-new-coronavirus-cases-in-may>.

¹⁰⁷ Reveille Staff Report, *Louisiana Coronavirus Update*, Reveille.com (May 26, 2020), https://www.lsureveille.com/coronavirus/louisiana-coronavirus-update-37-040-positive-cases-2-560-covid-19-related-deaths/article_01bc9da4-6716-11ea-bf77-2b29230adfb.html.

¹⁰⁸ Oliver Laughland & Lauren Zanolli, *A Virus Stalks a County with One of the Highest Death Rates in US: 'People are Dropping Like Flies'*, The Guardian (Apr. 7, 2020), <https://www.theguardian.com/us-news/2020/apr/07/cancer-alley-coronavirus-reserve-louisiana>.

¹⁰⁹ David Benoit, *Coronavirus Devastates Black New Orleans: 'This is Bigger Than Katrina'*, Wall St. J. (May 23, 2020), <https://www.wsj.com/articles/coronavirus-is-a-medical-and-financial-disaster-for-blacks-in-new-orleans-11590226200>.

¹¹⁰ United States Census Bureau, *QuickFacts, East Baton Rouge Parish, Louisiana*, <https://www.census.gov/quickfacts/eastbatonrougeparishlouisiana> (last visited May 25, 2020).

¹¹¹ Grace Toohey, *East Baton Rouge Parish Jails People at Rates Far Higher than New Orleans and Lafayette: Here's Why*, The Advocate (Sept. 14, 2019), https://www.theadvocate.com/baton_rouge/news/courts/article_aa68a582-c45b-11e9-8439-a7110c42fa80.html (noting that the EBRPP "detain[s] the most local inmates among Louisiana's six most populous parishes).

¹¹² Assoc. Press, *11 Graphics that Officials Say Tell the Strong of Louisiana's Fight Against Coronavirus in May*, The Advocate (May 11, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_418bba9c-93ed-11ea-8311-135ae37e6259.html.

¹¹³ The New York Times, *Louisiana Coronavirus Map and Case Count*, (May 22, 2020), <https://www.nytimes.com/interactive/2020/us/louisiana-coronavirus-cases.html>.

63. In light of the impending pandemic, the Governor of Louisiana declared a public health emergency on March 11, 2020¹¹⁴ and a state of emergency on March 16, 2020¹¹⁵ in response to the rapidly growing presence of COVID-19 in Louisiana. The Governor also issued a stay-at-home order on March 22, 2020¹¹⁶ that was extended to May 15, 2020.¹¹⁷ During that time, although Louisiana’s citizens could venture out to purchase groceries and engage in other essential activities, individuals were mandated to maintain social distancing and avoid gatherings of more than 10 people.¹¹⁸

64. The Governor’s May 15th order moving Louisiana to Phase One of reopening does not reflect a major change from the state’s previous practices.¹¹⁹ Citizens are still required to practice social distancing, and all non-essential businesses must enforce a strict twenty-five percent occupancy limit.¹²⁰

¹¹⁴ State of Louisiana, Exec. Dep’t, Proclamation No. 25 JBE 2020, *Public Health Emergency-COVID-19* (Mar. 11, 2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf>.

¹¹⁵ State of Louisiana, Exec. Dep’t, Proclamation No. JBE 2020-30, *Additional Measures for COVID-19 Public Health Emergency* (Mar. 16, 2020), <https://www.gov.louisiana.gov/assets/Proclamations/2020/30-JBE-2020-Public-Health-Emergency-COVID-19-additional-measures.pdf>.

¹¹⁶ State of Louisiana, Exec. Dep’t, Proclamation No. 33 JBE 2020, *Additional Measures for COVID-19 Stay at Home* (Mar. 22, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>.

¹¹⁷ State of Louisiana, Exec. Dep’t, Proclamation No. 52 JBE 2020, *Renewal of State Emergency for COVID-19 Extension of Emergency Provisions* (Apr. 30, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/52-JBE-2020-Stay-at-Home-Order.pdf>

¹¹⁸ *Id.*

¹¹⁹ State of Louisiana, Exec. Dep’t, Proclamation No. 58 JBE 2020, *State of Emergency for COVID-19 Phase 1 of Resilient Louisiana* (May 14, 2020), <https://gov.louisiana.gov/news/PhaseOne>. Notably, this order states: “All individuals who are at higher risk of severe illness from COVID-19 should stay at home, unless travelling outside the home for an essential activity... Those individuals who are at higher risk of severe illness, as designated by the Centers for Disease Control (CDC) are those with conditions such as asthma, chronic lung disease, compromised immune system (including from smoking, cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS or use of corticosteroids or other immune weakening medications), diabetes, serious heart disease (including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and hypertension), chronic kidney disease undergoing dialysis, liver disease, or severe obesity or those who are 65 or older or living in a nursing home or long-term care facility.”

¹²⁰ *Id.*

65. On March 12, 2020, the Sheriff suspended all visitation, volunteer programs, and tours of the Parish Prison “indefinitely”¹²¹ and discontinued all non-emergent off-site trips.¹²² These restrictions remain in effect despite the Phase One reopening.

66. On March 17, 2020, just hours before the first reported case of COVID-19 in the Parish, Baton Rouge officials, including Defendant Sheriff Sid Gautreaux, held a press conference to inform the public they were ready.¹²³ Defendant Gautreaux admitted that it was only a matter of time before COVID-19 got into the jail.¹²⁴ He further admitted that a single case inside the facility could spread rapidly and that the jail’s close confines made social distancing all but impossible.¹²⁵ Gautreaux announced a number of steps taken at the jail, including the troubling decision to open wings of the jail that had been closed—indeed, condemned—for years in order to house COVID-19-positive individuals.¹²⁶ Gautreaux promised to “change things on a daily basis” as more information came in and as the situation developed.¹²⁷ As COVID-19 spread into

¹²¹ East Baton Rouge Sheriff’s Office, *Message From The Sheriff* (last visited May 26, 2020), <https://www.ebrso.org/> (explaining, from March through sometime in or around May 2020 that the jail was closed to visitors “indefinitely,” but recently indicating that “Visitation at the EBR Parish Prison will remain suspended until recommended by CDC and the LA Department of Corrections.”); WAFB9, *Visitation Policies Impacted by COVID-19* (last updated Mar. 23, 2020) <https://www.wafb.com/2020/03/13/visitation-policies-impacted-by-covid/>

¹²² State of Louisiana, Louisiana Dep’t of Public Safety & Corr., *Coronavirus (COVID-19) Response* (Mar. 12, 2020), <https://doc.louisiana.gov/wp-content/uploads/2020/03/3.13.20-Coronavirus-Inmate-Notification-of-Visiting.pdf>.

¹²³ WBRZ Channel 2, *Watch Live: Mayor-President Sharon Weston Broome Provides EBR Residents with an Update on the Parish’s Response to the Coronavirus Pandemic* (Mar. 17, 2020, 1:20 p.m.), <https://www.facebook.com/watch/?v=281500782819991>.

¹²⁴ Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It’s only a matter of time before coronavirus arrives in jail*, *The Advocate* (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

¹²⁵ Paul Braun, *Louisiana Considers Early Release Of Some Inmates Among Measures To Reduce COVID-19 Outbreak*, 89.9 WWNO New Orleans Public Radio (Mar. 17, 2020), <https://www.wwno.org/post/louisiana-considers-early-release-some-inmates-among-measures-reduce-covid-19-outbreak>.

¹²⁶ *Id.*

¹²⁷ WBRZ Channel 2, *Watch Live: Mayor-President Sharon Weston Broome Provides EBR Residents with an Update on the Parish’s Response to the Coronavirus Pandemic* at 3:49 (Mar. 17, 2020, 1:20 p.m.),

jail, however, Defendants failed to keep this promise.

67. Defendants well know that people incarcerated in the Jail face a significant risk of exposure to COVID-19. The CDC, the LDH-OPH, the Chief Justice of the Louisiana Supreme Court, the Parish Mayor-President,¹²⁸ medical experts, and various advocates¹²⁹ have repeatedly alerted the community and Defendants to the imminent risk of serious harm and death,¹³⁰ and the preventive measures necessary to protect against the further spread of COVID-19. Indeed, the Defendant Sheriff himself even admitted in mid-March that “it’s only a matter of time before coronavirus arrives in the jail.”¹³¹

68. On March 25, 2020, the Mayor-President held a conference call with representatives from the East Baton Rouge Parish Prison Reform Coalition, the Warden’s Office, the Sheriff’s Office, the Health Director for the Prison, and the District Attorney and the Public Defender’s Office to review procedures for addressing the COVID-19 pandemic.¹³² The Mayor-President’s comments included an acknowledgment that “[m]ost people in the parish prison have

<https://www.facebook.com/watch/?v=281500782819991>, beginning at 3:49.

¹²⁸ Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It’s only a matter of time before coronavirus arrives in the jail*, *The Advocate* (Mar. 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html (“implor[ing]” community members to practice social distancing because “[w]e’re talking about life or death issues here”).

¹²⁹ See, e.g., Vera Institute of Justice, *Louisiana must overhaul its justice system practices to respond to COVID-19* (April 9, 2020), available at <https://www.vera.org/downloads/publications/Coronavirus-Guidance-Louisiana-Justice-System.pdf>.

¹³⁰ These deaths touched Corrections officials closely. In April, the Warden and Medical Director at the state prison in Avoyelles Parish died of COVID-19-related conditions, as recognized by Department of Corrections Secretary James LeBlanc. See WDSU Digital Team, *Warden, Medical Director of Louisiana Prison Die After Contracting Coronavirus, State Says*, WDSU (Apr. 20, 2020), <https://www.wdsu.com/article/2-new-covid-19-related-deaths-reported-by-louisiana-prison-system-1-inmate-1-employee/32214252>.

¹³¹ Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It’s only a matter of time before coronavirus arrives in the jail*, *The Advocate* (Mar. 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

¹³² Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020)

not been convicted and [are] innocent until proven guilty,” and that “[w]e have a duty to look out for their well-being.”¹³³

69. On April 2, 2020, the Chief Justice of the Louisiana Supreme Court sent an open letter to Louisiana’s District Judges—including those in the 19th Judicial District Court in Baton Rouge—highlighting the importance of “minimiz[ing] the number of people detained in jails” and asking the judges to assess “all detainees” with an eye toward modifying conditions of detention; she specifically called, for example, for the release of individuals charge with misdemeanors, non-violent offenses, and city holds, and for the reduction of bail for individuals charged with other criminal matters.¹³⁴ The Chief Justice warned that “[a]n outbreak of COVID-19 in our jails would be potentially catastrophic for jail staff, the families of jail staff, and inmates” and “[t]he decisions that [Judges] make will have a significant impact on our communities and our state and will save lives.”¹³⁵

70. On April 8, 2020, the Louisiana Department of Health’s Office of Public Health (LDH-OPH) issued official recommendations regarding prisons and detention centers to the Department of Public Safety and Corrections.¹³⁶ LDH-OPH recommended several measures that it concluded were “necessary to help control and prevent further spread of COVID-19, . . . a serious and imminent threat to the public health,” and to avoid “overwhelm[ing] the state’s medical facilities.” *Id.* The thirteen bullet-pointed recommendations in the letter include activities such as providing soap for hand-washing or alcohol-based sanitizers, screen individuals suspected of having COVID-19 by a trained emergency medical personnel and “transport anyone you think

¹³³ Ex. 14, Mayor Broome West’s Comments.

¹³⁴ Ex. 15, LA Sup. Ct. Letter at 1-2 (Apr. 2, 2020).

¹³⁵ *Id.*

¹³⁶ *See* Ex. 16, LDH Office of Public Health Guidance (Apr. 8, 2020).

might have COVID-19 to a healthcare facility,” provide appropriate personal protective equipment to all staff and inmates, isolate sick individuals away from all other individuals in medically appropriate housing units, daily cleaning for surfaces, and ensure that all individuals in the facility “maintain a distance of at least 6 feet from each other” or “reduce the size of the jail population . . . to comply with this recommendation.” *Id.* This memo was rescinded within hours without explanation or alternative guidance being issued.

71. For years, Baton Rouge policymakers have acknowledged that the old part of the jail—which was condemned and closed before this pandemic—is unfit for the safe detention of people and the provision of health care. In 2015, Sheriff Gautreaux told the Parish’s Metro Council the “old part of the prison is really in deplorable condition. We have issues with ventilation; with plumbing. Really it’s laid out in the old way, that poses a problem from a safety standpoint for the safety of the inmates in the prison”¹³⁷ He concluded that the current facility is “not adequate for providing health care” and admitted the “if [investigators from the federal Department of Justice] came in that prison today, they would shut half of it down.”¹³⁸ The Metro Council also heard that Dr. Rani Whitfield, who had worked in the jail for 16 years, witnessed a “significant decline in care to patients” due to underfunding and understaffing.¹³⁹ Councilwoman Banks-Daniel presciently described the health care situation in the jail as “catastrophic.”¹⁴⁰

72. An assessment of the jail’s health care system by Health Management Associates (“HMA”), commissioned by the Baton Rouge Metro Council, confirmed that the health “care

¹³⁷ Ex. 17, City of Baton Rouge/Parish of East Baton Rouge, Jan. 14, 2015 Metro. Council Mtg., Items 13P and Q Part 1 (filed in traditional manner).

¹³⁸ *Id.*

¹³⁹ Ex. 18, City of Baton Rouge/Parish of East Baton Rouge, Aug. 26, 2015 Metro. Council Mtg. 28:10, Item 9 Part I and II (filed in traditional manner).

¹⁴⁰ *Id.* at 51:39.

provided is episodic and inconsistent”¹⁴¹ and that only about 36% of the needed doctor positions were filled.¹⁴² HMA highlighted the jail’s “notably deficient” physical plant and “inadequate medical units, dental suites, infirmary space, [and] . . . medical/MH screening space.”¹⁴³ HMA concluded to the Metro Council that “[a]ny solution will be more expensive than the current system”;¹⁴⁴ HMA believed that the Parish’s investment in the jail’s health care system would need to double from approximately \$five million in 2016 to \$ten million.¹⁴⁵ Rather than make the necessary investment, the City/Parish’s “solution” was to outsource health care to a private, for-profit company, CorrectHealth.¹⁴⁶ The total increase for the jail’s health care budget when the City/Parish hired CorrectHealth was only 12%.¹⁴⁷

73. The result has been nothing short of catastrophic. CorrectHealth failed to increase staffing levels for health care workers at the jail; instead, the company decreased them.¹⁴⁸ Not surprisingly, the death rate at the jail—which was already high compared to the national average—continued to climb under CorrectHealth’s management and now far exceeds the national mortality

¹⁴¹ Ex. 19, Health Mgm’t Assocs. Final PowerPoint at 24.

¹⁴² *Id.* at 12.

¹⁴³ *Id.* at 23.

¹⁴⁴ *Id.* at 30.

¹⁴⁵ Ex. 20, Health Mgm’t Assocs. Draft PowerPoint at 27.

¹⁴⁶ Ex. 21, CorrectHealth Contracts.

¹⁴⁷ *Compare* Consol. Gov’t of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 146, available at <https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget> (budgeting \$4,860,230 for medical services at the jail in 2016), *with* Ex. 21, CorrectHealth Contracts (contract providing CorrectHealth with \$5,292,429.96 to provide medical services in the jail).

¹⁴⁸ *Compare* Consol. Gov’t of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 66, 146-47, <https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget> (funding 36 FTE, including 20 LPN positions, and contract services for “medical director, a physician, a dentist, a psychiatrist, a psychiatric nurse practitioner, an infectious disease physician, an x-ray technician, oral surgery, and ophthalmology services”) *with* Ex. 21, CorrectHealth Contracts (providing a total of 38.9 FTE, including .5 FTE medical director and no other doctor level services).

rate.¹⁴⁹

74. Advocates have long protested against the health care crisis in the jail, and they redoubled their efforts in light of the COVID-19 pandemic. Several national and local organizations—including Court Watch NOLA, The Bail Project, The Promise of Justice Initiative, VOTE, Advancement Project, and the East Baton Rouge Parish Prison Reform Coalition—circulated a letter to the state district court and city judges on March 20, 2020 calling for “decisive, bold action” to release detainees and reduce the Prison population.¹⁵⁰

75. They followed up with a letter to the Sheriff, District Attorney, and district and city court judges (cc-ing the Mayor-President, Police Chief, and Parish Prison Warden) demanding “immediate and drastic action to protect incarcerated people from COVID-19” and highlighting the “close quarters, unsanitary conditions, a population that is more vulnerable to COVID-19, and the large number of people that cycle through the criminal justice system.”¹⁵¹ “The safest way to ensure that EBRPP does not become a vector for COVID-19’s spread is to reduce the number of people who are incarcerated.”¹⁵² The advocates also called for compliance with the CDC and other health guidelines, the release of vulnerable populations and pre-trial detainees immediately, education for detainees and staff about how to protect themselves from COVID-19, free access to

¹⁴⁹ See, e.g., Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison*, Promise of Justice Initiative (July 2018), available at <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>; see also Ex. 22, Expert Report of Dr. Jeffrey Schwartz at 6, *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-cv-656-JWD-EWD (M.D. La. 2018), ECF No. 172-1 (noting the extremely high mortality rate at the jail of “three times the national average” since CorrectHealth took over responsibility for health care at the jail).

¹⁵⁰ See Advocates’ Ltr. to Judges (Mar. 20, 2020), available at <https://bailproject.org/wp-content/uploads/2020/03/east-baton-rouge-parish-prison-covid-19.pdf>.

¹⁵¹ See Ltr. from East Baton Rouge Parish Prison Reform Coalition to Sheriff Sid Gautreaux, available at <https://promiseofjustice.org/wp-content/uploads/2020/03/COVID-19-Prevention-and-Protection-in-East-Baton-Rouge-Parish-Prison.pdf>.

¹⁵² *Id.*

hygiene supplies, and the development a plan for appropriately housing individuals suspected of being infected with coronavirus that did not include lockdown.¹⁵³ On this final point, advocates highlighted the “substantial, serious mental harm” caused by lockdowns, which can “exacerbate[e] feelings of stress and anxiety amongst those in custody” and “cause serious, persistent, sometimes permanent damage” while failing to account for viral transmissions by staff or the need for increased medical access during symptomatic periods.¹⁵⁴ “The way we treat the most vulnerable at this critical point in time will not only reveal much about our community but will directly impact the safety of all of us”¹⁵⁵

76. On April 22, 2020, the East Baton Rouge Parish Prison Reform Coalition published a community-driven public health plan for addressing the pandemic in the jail, including recommendations to provide testing of everyone detained in or employed by the jail¹⁵⁶ and to refrain from using lockdown solitary confinement.¹⁵⁷ On May 18, 2020, the Louisiana Stop Solitary Coalition also sent a letter to the Governor’s Healthcare Equity Task Force to express concern over the use of lockdown solitary confinement by the Louisiana Department of Corrections. The Coalition asked that the administration release significantly larger numbers of people from prisons and jails and immediately refrain from using lockdown as a form of medical

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ The need for mass testing is obvious. For example, when the approximately 200 women detained at Elayn Hunt Correctional Center in St. Gabriel, Louisiana, were tested for the virus, about 85% tested positive, yet about three quarters of the confirmed cases were asymptomatic. Lea Skene, *85% of Inmates in St. Gabriel Women’s Prison Got Coronavirus but Most Showed No Symptoms*, *The Advocate* (May 6, 2020, 4:01 PM), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_2c551b72-8fbb-11ea-849a-e390bbc57059.html?utm_medium.

¹⁵⁷ Ex. 23, East Baton Rouge Parish Prison Reform Coalition, *You Can’t Manage Health Care from a Jail: A Community-Driven Public Health Approach to COVID-19 at the East Baton Rouge Parish Prison* (Apr. 2020).

isolation.¹⁵⁸

77. In late April, the Jail declined a donation of N-95 masks for the people detained at the parish prison by a community organization, Voice of the Experienced (“VOTE”), asserting that they did not need the masks.¹⁵⁹

78. On March 28, 2020, the jail detected its first detainee with COVID-19.¹⁶⁰ The second would come a day later.¹⁶¹ By April 9, 2020, there were eight positive coronavirus cases in the East Baton Rouge Parish Prison, and four detainees had been sent to Our Lady of the Lake Hospital for severe medical issues from the coronavirus.¹⁶² And by May 14, 2020, the jail reported that 93 detainees tested positive for the virus.¹⁶³ As of April 5, 2020, three Sheriff’s deputies tested positive, and at least one Sheriff’s deputy who had direct contact with detainees had died from the virus.¹⁶⁴

**DEFENDANTS’ RESPONSES TO THE COVID-19 PANDEMIC ARE
CONSTITUTIONALLY DEFICIENT AND PLACE THE PEOPLE IN ITS CUSTODY
AT HEIGHTENED RISK**

79. The East Baton Rouge Parish Prison is designed to hold 1,594 people. The majority—about 89%—of detainees confined in the jail are there pretrial.¹⁶⁵ The jail also holds

¹⁵⁸ Ex. 24, Ltr. from La. Stop Solitary Coalition to Members of the Prison Subcommittee of the Governor’s Healthcare Equity Task Force re: Alternatives to Solitary and Camp J During COVID-19 (May 18, 2020).

¹⁵⁹ See Ex. 25, E-mail from Rev. Alexis Anderson to Darryl Gissel (Apr. 25, 2020).

¹⁶⁰ Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), <https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/>.

¹⁶¹ *Id.*

¹⁶² Ex. 26, EBRPP COVID-19 Update (Apr. 9, 2020).

¹⁶³ Ex. 1, EBRPP COVID-19 Statistics (May 14, 2020).

¹⁶⁴ Lea Skene, *East Baton Rouge Deputy—“A Dedicated Public Servant”—Dies from Coronavirus, Sheriff Says*, The Advocate (Apr. 5, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_27ecdac-7759-11ea-9ab3-e72613b104ed.html.

¹⁶⁵ See Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish->

individuals on work-release (both pretrial and post-conviction) and post-conviction detainees serving sentences with the Department of Corrections. Currently, the jail confines 1,235 people. Individuals in the Sheriff's custody are also held in jails across the state, which serve as overflow facilities when the jail is overcapacity.¹⁶⁶

80. Despite the repeated urgent calls to reduce jail populations and implement basic protective measures, Defendants have failed to take sufficient steps to do either. And Defendants are woefully unprepared and incapable of taking the necessary precautions to protect and provide adequate medical treatment for the people currently confined in the jail in the face of this unprecedented, life-threatening public health crisis.

81. Policymakers, including the Defendants, instead established *de facto* policies of detaining people in unconstitutional conditions of confinement and denying adequate health care to detainees. The failure to provide adequate living conditions and health care is not an unintended error but the predictable result of a *de facto* policy that denies detainees adequate health care, ensuring the suffering and even potential deaths of Plaintiffs from COVID-19.¹⁶⁷

A. The East Baton Rouge Parish Prison is Not Fit to Hold Human Beings

82. The EBRPP is a dilapidated warehouse of caged humanity. The jail was built in 1965, with no substantive renovations since the 1980s, and the A, B, and C wings have been condemned since 2018 due to a constellation of conditions that made it impossible to keep people safe.¹⁶⁸ Even the parts of the facility that are not condemned are crumbling and decrepit. The

Prison-Final.pdf.

¹⁶⁶ Ex. 26, City of Baton Rouge/Parish of East Baton Rouge, Feb. 25, 2015 Metro. Council Mtg. 00:23, Item 13 Part I (filed in traditional manner).

¹⁶⁷ See *Shepherd v. Dallas Cty.*, 591 F.3d 445, 449 (5th Cir. 2009).

¹⁶⁸ See Lea Skene, *Officials close three wings at aging East Baton Rouge Prison because of safety concerns*, The Advocate (Dec. 31, 2018), https://www.theadvocate.com/baton_rouge/news/article_56230150-0315-11e9-b84f-

buildings where people are housed are in terrible condition. The roof leaks, the walls and floors are filled with mold and rust, the showers and toilets are broken or bug-infested on many of the housing lines (“lines), the windows are so dirty that detainees cannot see out of some of them, and rats have overrun some dorm areas, requiring detainees to sleep with their food to prevent it from being eaten by vermin. On some lines, the walls are streaked with blood and other bodily fluids. The bars on the housing lines are “gunked up with mold, juice, spit, and old food.”¹⁶⁹

83. The jail has a long and ignoble history of medical issues and poor medical care, and it has one of the highest death rates—largely related to medical neglect—of all jails in the country.¹⁷⁰ The jail is responsible for the wrongful deaths of numerous men and women.¹⁷¹ All this before a pandemic that threatens a fatality rate of epic proportions.

84. Since mid or late March, the facility has been closed to visitors—including attorneys—and the people confined inside this facility have limited access to their loved ones and the outside world.

B. Critical Social Distancing, Sanitation, and Precautionary Protections are Not Possible in the Jail’s Quarantined Housing Lines

97327cf57814.html (“Three wings of the East Baton Rouge Parish Prison were closed in 2018 because of safety concerns for both guards and inmates”)

¹⁶⁹ Ex. 4 to Pls.’ Emergency Mot. for TRO and Prelim. Inj. (“TRO”), Declaration of Forrest Hardy ¶ 15 (“Hardy Decl.”).

¹⁷⁰ Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), available at <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>.

¹⁷¹ See generally *O’Quin v. Gautreaux*, No. 14-98-BAJ-SCR, 2015 WL 1478194 (M.D. La. 2015); *Lewis ex rel. Johnson v. E. Baton Rouge Parish*, No. 16-352-JWD-RLB, 2017 WL 2346838 (M.D. La. 2017); *Cleveland v. Gautreaux*, No. 15-744-JWD-RLB, 2018 WL 3966269 (M.D. La. 2018); *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-656-JWD-EWD, 2018 WL 4517461 (M.D. La. 2018); Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison*, Promise of Justice Initiative (July 2018), <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>; see also Ex. 22, Expert Report of Dr. Jeffrey Schwartz at 6, *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-cv-656-JWD-EWD (M.D. La. 2018), ECF No. 172-1 (noting the extremely high mortality rate at the jail of “three times the national average” since CorrectHealth took over responsibility for health care at the jail).

85. Since on or around March 28, 2020, all of the general population “housing lines” in which detainees are confined (“lines”) have been “quarantined.” The detainees are not permitted to leave their quarantined housing lines for any reason, except to obtain emergency medical care or when they are moved to the solitary confinement lines used for coronavirus patients. They cannot go to court, and several detainees have missed court dates that otherwise would have allowed them to walk free. They are also prevented from going to the meal hall, outdoor recreation spaces, or anywhere else in the facility. All life happens on their lines.

86. General population housing lines are made up of either one or two large dorm rooms filled with bunk beds or a row of cells that house approximated two to four people, along with a communal “day room” and a multi-person bathroom. There is no way to socially distance on these lines, even with population reductions spurred by the pandemic. The dorm-style housing lines can hold between 24 and approximately 100 people in each dorm room.

87. Detainees sleep in bunks that are no more than a few feet apart, or in some cases only a couple inches apart.¹⁷² The aisles between the rows of beds are only wide enough for two people to pass at once. The individuals on these lines cannot be six feet apart while they are sleeping or moving around these dorm rooms.

88. Detainees spend most of their days in the day rooms on each line and cannot socially distance here either. During shift change and roll call, which happens twice a day and lasts for up to an hour each time, detained people are all required to be in the day room, often clumped around the door waiting for guards to call their names. The twice-a-day “pill call” is much the same: detained men and women are required to line up one closely behind the other in

¹⁷² See Ex. 3 to TRO, Declaration of Christopher Lee Rogers Decl. ¶ 49 (“We have to climb into our beds from the foot of the bed” because they are so close together).

the day room to receive their prescribed medications—for conditions such as high blood pressure, diabetes, HIV, and mental health needs—from CorrectHealth’s nurses. They have to take their medications in front of her, without the opportunity to wash their hands first.

89. During the rest of the day, detainees cannot leave their housing line and often congregate in the day room to watch television—their primary source of information about the coronavirus—talk on the telephone with their lawyers or family, or eat. The day rooms do not have enough seating to hold everyone on the line, and the seating available forces people to be within six feet of each other when they watch TV, eat, or otherwise spend their days in the communal space.

90. The furniture in the day rooms is bolted to the floor, so individuals detained in these facilities cannot move the tables or chairs to create more distance.

91. Jail officials refused to accept donated N95 masks from local non-profit VOTE to protect against the spread of the disease.¹⁷³ The jail initially handed out masks to the people it detained. These masks were made of a flimsy material, but the jail made the detainees use one for several days at a time. The jail did not replace torn or dirty masks—neither of which are sufficient to prevent the spread of the disease. Shortly thereafter, the jail largely stopped handing out masks, even to the men suspected of having the coronavirus, and instead provided thin cloth bandanas to all the people in its custody. Guards collect these bandanas from the detainees only about once a week to launder them before redistributing them. But the laundry facilities use only the speed wash setting to clean these items.

92. The lines are not sufficiently cleaned. In lieu of cleaning themselves, guards pick detainees to clean the housing lines throughout the jail. At least one Plaintiff was picked to clean

¹⁷³ See Ex. 25, E-mail from Rev. Alexis Anderson to Darryl Gissel (Apr. 25, 2020).

some of the COVID-19 solitary confinement units and developed COVID-19 symptoms two days later; he was then sent to solitary confinement for his symptoms.

93. Guards bring limited cleaning supplies onto the lines. Often, these supplies are just a mop and bucket with water; about two to three times a week, guards might dilute some cleaning solution into the water, but that solution often is not bleach. Detainees are required to mop the floors, and they try to clean other surfaces with rags torn from old towels. But those surfaces get so many touches throughout the day that they do not stay clean for long. The tables where people eat, for example, are littered with food particles throughout the day. These high-touch communal surfaces are not and cannot be cleaned between uses and, even after they are cleaned, they do not stay clean for long.

94. The bathrooms are also cleaned, at most, once a day, even though all the detainees share the same facilities. This cleaning has little effect, though, as the shower area is covered in mold and scum so thick the men can scrape it off the wall with their fingernails even after the shower has been cleaned. On some lines, upwards of 80 men have to share 5 showers and 5 toilets.

95. It is not possible to maintain adequate social distance in the bathrooms. Toilets, sinks, and showerheads are so close that the detainees can touch each other while using them. None of the toilets in the jail have lids to contain splashes or particulate matter.

96. Detained individuals also share the limited number of telephones on the lines, and the telephones are not cleaned between uses. Without chemicals or cleaning wipes, the detainees do their best to wipe the heavily used phones on their uniforms or clean them with soap and water. But this is insufficient, and detainees are left to put a sock on the phone (and sometimes also on their hands) to attempt to protect themselves from transmission of the virus.

97. The jail is supposed to provide each detainee with one bar of soap, one roll of toilet

paper, a toothbrush, and toothpaste every week. At least during the pandemic, however, the jail has sometimes failed to meet this obligation or to provide each detainee with all of the required supplies. Detainees do not receive any supplies to help them fight transmission of the virus; the soap they receive is only deodorant soap, and is not effective against the virus.¹⁷⁴ In addition to washing their bodies, detainees had to use soap and water to clean their areas, their bandanas, and sometimes the telephone because they could not get adequate cleaning supplies for these purposes from the guards. As a result, their bars of soap generally did not last the full week, and detainees had to supplement with provisions purchased from the commissary with funds loved ones put into their jail accounts.

98. Guards feed the detainees on their housing lines during quarantine. Food for the detainees is cooked by other detainees in an unsanitary kitchen. The smell of spoiled food pervades the kitchen, and old food is crusted onto the serving area, on the counter, and on the walls. Guards let the kitchen workers clean the hot box, where warm food is stored, with the same broom they use to sweep the floor.

99. During the coronavirus pandemic, guards wheel cold food onto each housing line in a cart that the guards then use to collect the trash from the line. The guards wear the same gloves to hand food to everyone on the line and on other lines. Sometimes, the guards do not wear masks or gloves on the line at all, most recently noting that such protections were no longer necessary.

100. Jail staff do not provide detainees with sufficient information about the coronavirus, its symptoms, or how to protect themselves from the virus. On the Q9-10 lines, guards even turned off the television when news about the coronavirus came on. Jail staff keep information from

¹⁷⁴ Ex. 9, Rottnek Decl. ¶¶ 17, 42.

detainees about coronavirus in the facility and in the community, and they do not instruct detainees on proper handwashing or mask-wearing techniques.

C. Defendant City of Baton Rouge (through CorrectHealth) Provides Inadequate Medical Care to Prevent the Transmission of COVID-19

101. The first detainee at the jail was hospitalized for coronavirus on March 28, 2020 and the second followed the very next day.¹⁷⁵ Staff left the man on the Q11-12 line until he was so sick he could barely walk.

102. At that time, Defendants told the public they were checking every detainee's temperature in an effort to combat coronavirus.¹⁷⁶ But Defendants did not start universal temperature checks until sometime in early or mid-April, after the first death and after numerous men put in sick calls for COVID-19-related symptoms. Even then, Defendant CorrectHealth chose to check only temperatures, rather than examining a broader list of COVID-19 symptoms. Nurses completed temperature checks during pill call, forcing potentially sick men to stand close in line to other men in the dorm. Social distancing is not possible during pill call.

103. If an individual had an elevated temperature—supposedly over 100.4 degrees Fahrenheit¹⁷⁷—CorrectHealth employees were supposed to test him or her and directed that the detainee be moved off the line, even before any test results came back. But CorrectHealth employees did not ensure that the individuals were moved immediately, and guards often left the individuals on the line around their peers for various amounts of time, sometimes as long as twelve

¹⁷⁵ Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), <https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/>.

¹⁷⁶ Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020); Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), <https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/>.

¹⁷⁷ Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020).

hours.

104. CorrectHealth employees have not continued to check temperatures through the present, however. They stopped universal temperature checks in late April or early May and have reverted to checking only individuals who display coronavirus symptoms. Even then, they regularly choose to leave men with elevated temperatures on the housing line until they are too sick to be ignored, in violation of the CDC's guidelines. They do not provide these men with any treatment for coronavirus on the lines; they often are unable to access even over-the-counter medications such as Tylenol or Mucinex, which the jail stocks.

105. The jail stopped testing detainees for coronavirus about a week before they stopped taking temperatures. The only individuals they currently test are those who are so sick that they are moved off the line to the solitary confinement lines.

106. Individuals who need medical care beyond their regular medication or temperature checks are required to complete a sick call form, even if they need more emergent care. Detainees have to request sick call forms from the guards before they can submit them. Sometimes, these requests are met with violence by jail staff.¹⁷⁸ Other times, it takes up to a couple days for nurses to respond.

107. Other times, detainees remain on the line—visibly sick to all—without any attention from the medical staff. Nurses often do not come on the housing lines except during pill call, and jail staff ignore symptoms such as coughing. They respond only when someone is too sick to get out of their bed. Jail staff has started bringing sick people onto the housing lines and

¹⁷⁸ See, e.g., Zoe Tillman, *A Video Shows A Sheriff's Deputy Choking An Inmate. The Inmate Says He Faced Retaliation For Repeatedly Asking For Medical Care*, BuzzFeedNews (Apr. 16, 2020), <https://www.buzzfeednews.com/article/zoetillman/video-louisiana-inmate-choked-coronavirus> (showing video footage of a sheriff's deputy choking a handcuffed detainee until he became unconscious and Defendant Grimes claiming the force used was not excessive).

will leave the men for a few hours or overnight until it is obvious that the person is too sick and—in the jail’s estimation—needs to be moved to lockdown.

108. Upon information and belief, guards, nurses, and other staff at the facility do not undergo regular testing, even as they move about in a community that has a significant outbreak of COVID-19.

D. Defendants’ Solitary Confinement Lines Do Not Constitute Acceptable Medical Isolation

109. Individuals who have or are suspected of having COVID-19 are moved to a solitary confinement line in the A, B, or C wings, the same wings of the old jail that were condemned and shut down in 2018. Upon information and belief, the jail did not repair or deep clean these lines before they moved detainees onto them. The lines remain filthy and unsafe. In addition to the conditions that plague the rest of the jail, these lines are covered in black mold; are home to large rats and spiders; have showers that leak water down the hallway; and have only questionably potable water in the cells. Individuals detained on solitary confinement lines are not permitted to leave their lines for any reason.

110. Individuals on the A, B, and C lines are confined in small, often poorly ventilated units with either one or four-person cells. Detainees on the B line often share their cells with one or two other people, and the beds in those cells are less than four feet apart, making it impossible to maintain a distance of at least six feet. The cells on each of these lines are separated by thin metal walls, but the front of the cells have bars that allow for the consistent circulation of ambient air. Men can reach out of the bars on the front of their cells and into the cells next to them; they pass hygiene supplies, books, and food up and down the line this way.

111. Detainees in solitary confinement are locked in their cells by the guards for approximately 23 hours per day. Some individuals get as little as 15 minutes out of their cell each

day to shower and call their loved ones. The solitary confinement lines have no access to televisions or radios. Guards beat up, mace, or threaten men who seek extra time out of their cells to shower or make phone calls. After they've finished giving every detainee their turn out of their cells, the guards often leave the lines entirely—sometimes for hours at a time—and detainees have to beat on the door or kick their walls to get the guards' attention if they need it.

112. The same concerns regarding social distancing, sanitation, and protections against transmission that exist on the quarantined general population lines are present in the solitary confinement lines as well.

113. As in the quarantined general population lines, all detainees on a solitary confinement line share the same shower and telephone. But these amenities are generally not cleaned between each use—even though many of the men on the line are sick—and may not even be cleaned every day. Detainees put a sock over the phone to protect themselves when they call their loved ones or their attorneys. The showers on most of these lines are so cold that they're unusable, and men often have to bathe in the sinks in their cells.

114. The limited cleaning supplies provided by the guards (a mop, bucket, water, and occasional diluted, unidentified non-bleach chemicals) are insufficient to properly sanitize their living spaces. Detainees are not allowed to use these cleaning supplies in their individual cells. At one point, guards on the C01 line provided each detainee with just one paper towel to wipe down mattresses that were previously used by COVID-19-positive detainees.

115. The people detained on solitary confinement lines are not permitted access to the jail's commissary, where they could purchase hygiene supplies and more or better food. Instead, these individuals have to depend on the state-issued supplies of one bar of soap, one roll of toilet paper, a toothbrush, and toothpaste no more than once a week. At least during the pandemic, the

jail failed to meet this obligation consistently and completely—often missing weeks or missing one or more of the required items. Those individuals detained around other sick people had to conserve their soap and hygiene products, as the bars of soap they received would often last only a short period of time. In addition to washing their bodies, detainees had to use soap and water to clean their cells, their bandanas, and sometimes the telephone because they could not get adequate cleaning supplies for these purposes from the guards.

116. In short, the solitary confinement lines that Defendants use to warehouse people who have contracted COVID-19 or are displaying symptoms commensurate with the virus are incredibly punitive and indistinguishable from the lines used for disciplinary segregation.

117. Social scientists uniformly document that solitary confinement, even for a period of days or weeks can have profound psychological and physical effects, such as a heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic fatigue (including lack of energy and lack of initiative to accomplish tasks), nightmares, heart palpitations, and fear of impending nervous breakdowns. Other documented effects include obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic depression, feelings of overall deterioration, as well as suicidal ideation. Individuals in prolonged solitary confinement frequently fear that they will lose control of their anger, and thereby be punished further.

118. Although persons sent to the A, B, and C solitary confinement lines have cell- and/or line-mates, being locked up around the clock—particularly in the cramped conditions in the jail’s solitary confinement lines—does not necessarily compensate for the feelings of isolation and disorientation that these individuals frequently experience. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1265, 1299-30 (N.D. Cal. 1995).

E. The City/Parish, through Correct Health, and the Jail Fail to Provide COVID-19-Positive Detainees With Even Remotely Adequate Medical Care for the Virus in Solitary Confinement

119. Proper medical care is not provided to people even when they are placed on the COVID-19 solitary confinement lines. CorrectHealth nurses do not regularly check detainees' breathing patterns, evaluate other symptoms, offer breathing treatments, or provide access to negative pressure rooms. Nurses do not always even take the temperatures of the individuals in solitary confinement, either.

120. The only medical care the CorrectHealth nurses and the jail staff provide to coronavirus patients is Tylenol, Mucinex or some other sinus pills, Vitamin C, and sometimes Gatorade. Nurses hand these out during once or twice daily pill calls, but provide no other care for the coronavirus.

121. Defendant CorrectHealth's nurses also often reject other requests for medical care that they receive from the men on these solitary confinement lines during pill call or through a sick call, noting on at least one occasion that they do not have the resources to provide that care during the pandemic.

122. Medical emergencies in solitary confinement require that detainees pound on the door to the line or kick the walls in their cells to get the guards' attention. Sometimes, the guards respond after about fifteen to twenty minutes; sometimes, they do not respond at all. Guards screen all medical issues first and make the decision to call the medical staff if they believe it necessary. Sometimes, detainees have to ask their families to call the Warden or medical department to get any medical attention in solitary confinement. Nurses appear scared to come on the lines, physically running away as soon as they finished pill call, and some get mad at the detainees for seeking their assistance.

123. Guards and nurses do not always wear proper protective equipment, including masks, gloves, and body suits, when interacting with the detainees on the solitary confinement lines.

124. Detainees can be moved off the line and back to their quarantined lines after two negative tests in a row. Many men have trouble meeting that requirement due to the conditions in which they are housed, and some men have spent over a month on solitary confinement to date.¹⁷⁹ This is even more concerning because the solitary confinement lines include individuals who have documented medical vulnerabilities, including high blood pressure, diabetes, HIV, and other conditions.

**IMMEDIATE RELEASE IS THE ONLY RESPONSE THAT SERVES PUBLIC
HEALTH, COMMUNITY SAFETY, AND THE INDIVIDUAL SAFETY OF EACH
CLASS MEMBER**

125. Immediate release of medically vulnerable individual Plaintiffs, as well as the subclass of medically vulnerable people they represent, remains a necessary public health intervention.¹⁸⁰

126. Given the size of the jail, the configuration of its cells, and staffing, the jail population must be significantly decreased to ensure adequate social distancing. In this unique moment, release *enhances* the safety of the community and is necessary to protect the Plaintiff's own health and safety. Plaintiffs must be able to exercise self-protective measures in a sanitary,

¹⁷⁹ In early April, Defendant Gatreux and Defendant Warden also directed the transfer of sick COVID-19 positive patients to the Louisiana State Penitentiary, an infamous prison better known by the name Angola. Defendants halted this practice around mid-April, after sending the largest number of men from a single facility; more than 10 men from the jail remain at Angola today. Cf. Jacqueline DeRobertis & Lea Skane, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in jail*, The Advocate (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html; Jerry Iannelli, *Louisiana's Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, The Appeal (May 1, 2020), <https://theappeal.org/louisiana-doc-covid-19-data>.

¹⁸⁰ See, e.g., Ex. 27, Declaration of Dr. Susan Hassig ¶¶ 3-14; Ex. 9, Rottnek Decl. ¶¶ 10-12, 27-34, 61-64; see also *supra* n.17.

disinfected space and to maintain social distance from other community members to flatten the curve of the virus's spread and protect themselves from infection.

127. Release is needed not only to prevent irreparable harm to members of the medically vulnerable subclass, but also to sufficiently reduce the incarcerated population at the jail to ensure proper social distancing necessary to reduce transmission for all class members and the wider public. Because of the speed at which COVID-19 spreads and the danger it poses, immediate release is both necessary and the least intrusive intervention to ensure Class Members are provided medically and constitutionally sufficient treatment.

128. If immediate action is not taken to dramatically reduce the population of the jail, all people who remain incarcerated will be at grave and unacceptable risk of contracting COVID-19—a serious and potentially life-threatening illness. People confined in prisons and jails must “be furnished with the basic human needs, one of which is ‘reasonable safety,’” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (citations omitted), which is virtually impossible given the realities of the COVID-19 pandemic and the limitations inherent in the Jail.

129. With confirmed COVID-19 cases and deaths amongst staff and detainees, an outbreak within the facility has already begun. To meaningfully reduce the risk of serious illness and death, the jail population must be reduced drastically. After reviewing declarations from detainees detailing conditions inside the jail, Dr. Fred Rottnek, [credentials], asserted that “[s]ince social distancing is impossible at present, the only effective means of reducing risk of infection for medically vulnerable populations is their release from jail or prison.”¹⁸¹ He further stated that, “[f]rom a public health perspective, it is my strong opinion that there is no way short of release to

¹⁸¹ Ex. 9, Rottnek Decl. ¶ 57.

protect the medically vulnerable from grave risk of imminent infection and death.”¹⁸² Tulane University Professor Dr. Susan Hassig, MPH, DrPH, similarly stated, “If the jail does not have the space to implement these most basic of virus spread suppression methods, the jail needs to decrease the size of the detainee population The persons at greatest risk, those with the aforementioned pre-existing medical conditions, should be prioritized for release to family or friends.”¹⁸³

130. Medical experts specializing in correctional health similarly share Dr. Hassig’s urgent recommendations to dramatically reduce the population of detention centers, jails, and prisons. Dr. Ranit Mishori, Senior Medical Consultant for Physicians for Human Rights and an expert in correctional health issues, has concluded that “[r]eleasing people from incarceration is the best and safest way to prevent the spread of disease and reduce the threat to the most vulnerable incarcerated people” and that “[i]mmediate release is crucial for individuals with chronic illnesses or other preexisting conditions.”¹⁸⁴ Release is “both necessary and urgent” given that “[t]he window of opportunity is rapidly narrowing for mitigation of COVID-19.”

131. Dr. Jonathan Giftos, the former Medical Director for Correctional Health Services at Rikers Island, concluded 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 a focus on those at highest risk of complication.”¹⁸⁵

132. Other correctional medical and public health experts have also urged the release of people from incarceration given the heightened risk of transmission and infection, including Dr.

¹⁸² *Id.* ¶ 63.

¹⁸³ Ex. 27, Hassig Decl. ¶ 42

¹⁸⁴ Ex. 12, Mishori Decl. ¶ 46.

¹⁸⁵ ‘Recipe for disaster:’ *The spread of corona virus among detained populations*, MSNBC (Mar. 18, 2020), <https://www.msnbc.com/all-in/watch/-recipe-for-disaster-the-spread-of-coronavirus-among-detained-populations-80947781758>.

Marc Stern (the former Assistant Secretary for Health Care at the Washington State Department of Corrections),¹⁸⁶ Dr. Robert B. Greifinger (former manager of medical care for people incarcerated in the New York State prison system and current federal court monitor of medical care in three large county jails),¹⁸⁷ a group of doctors who work in New York City’s jails, hospitals and shelters,¹⁸⁸ as well as a group of more than 200 Johns Hopkins faculty in public health, bioethics, medicine, and nursing.¹⁸⁹

133. These experts have opined that unless social distancing can be achieved, it is impossible to protect public and individual health. Release is thus necessary under the Constitution to respond to this unprecedented coronavirus pandemic.

134. Releasing people from the jails would also reduce the burden on regional hospitals and health centers.

CLASS ACTION ALLEGATIONS

135. The Named Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action under Federal Rule of Civil Procedure 23(b)(2).

136. The class that Plaintiffs seek to represent is defined as all current and future persons held at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic (“Jail Class”).

137. Plaintiffs also seek to represent the following three subclasses:

- a. The “Pretrial Subclass” is defined as: “All current and future persons detained at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic

¹⁸⁶ Ex. 6, Stern Decl. ¶¶ 10-12, 14.

¹⁸⁷ Ex. 13, Greifinger Decl. ¶ 13.

¹⁸⁸ 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), <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>.

¹⁸⁹ Letter from Johns Hopkins faculty to Governor Hogan (May 4, 2020), <https://bioethics.jhu.edu/wp-content/uploads/2019/10/JohnsHopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>.

who have not yet been convicted of the offense for which they are currently held in the jail.”

- b. The “Post-Conviction Subclass” is defined as: “All current and future persons detained at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic who are have been sentenced to serve time in the jail or who are otherwise in the jail as the result of an offense for which they have already been convicted.”
- c. The “Medically Vulnerable Subclass” is defined as: “All members of the Jail Class who are also over the age of sixty-five, or who, regardless of age, experience an underlying medical condition that places them at particular risk of serious illness or death from COVID-19, including but not limited to (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g., bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy.”

138. This action is brought and may properly be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the requirements of numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a).

139. As of May 21, 2020, the jail confined over 1,235 people, all of whom are eligible members of the Jail Class. Therefore, the class and subclasses meet the numerosity requirement of Federal Rule of Civil Procedure 23(a).

140. The subclasses are also too numerous for joinder of all members to be practicable. Presumptively innocent pretrial detainees constitute approximately 89% of all people in the jail.¹⁹⁰ The Pretrial Subclass thus includes over 1,000 people, and the Post-Conviction Subclass includes

¹⁹⁰ Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), available at <https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>.

over 100 people, by the most conservative estimates. Demographic data regarding the health of correctional populations indicates that well over 30% of detained people suffer from at least one condition rendering them medically vulnerable.¹⁹¹ Thus, the medically vulnerable subclass likely contains hundreds of people as well.

Health condition	Prevalence of health condition by population			
	Jails	State prisons	Federal prisons	United States
Ever tested positive for Tuberculosis	2.5%	6.0%		0.5%
Asthma	20.1%	14.9%		10.2%
Cigarette smoking	n/a	64.7%	45.2%	21.2%
HIV positive	1.3%	1.3%		0.4%
High blood pressure/hypertension	30.2%	26.3%		18.1%
Diabetes/high blood sugar	7.2%	9.0%		6.5%
Heart-related problems	10.4%	9.8%		2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

Health conditions that make respiratory diseases like COVID-19 more dangerous are far more common in the incarcerated population than in the general U.S. population. Pregnancy data come from our report, [Prisons neglect pregnant women in their healthcare policies](#), the CDC's [2010 Pregnancy Rates Among U.S. Women](#), and data from the [2010 Census](#). Cigarette smoking data are from a 2016 study, [Cigarette smoking among inmates by race/ethnicity](#), and all other data are from the 2015 BJS report, [Medical problems of state and federal prisoners and jail inmates, 2011-12](#), which does not offer separate data for the federal and state prison populations. Cigarette smoking [may be part of the explanation](#) of the higher fatality rate in China among men, who are far more likely to smoke than women.

141. Joinder is impracticable because the class members are numerous; the class is fluid due to the inherently transitory nature of pretrial incarceration; and the class members are incarcerated and low-income, which limits their ability to institute individual lawsuits. Certifying this class supports judicial economy.

142. Common questions of law and fact exist as to all members of the class. The Named Plaintiffs seek common declarative and injunctive relief concerning whether Defendants' policies, practices, and procedures violate the constitutional rights of the class members. These common questions of fact and law include, but are not limited to:

- a. Whether the conditions of confinement at the Jail since the beginning of the COVID-19 pandemic amount to constitutional violations;

¹⁹¹ Peter Wagner & Emily Widra, *No need to wait for pandemics: The public health case for criminal justice reform*, Prison Policy Initiative (Mar. 6, 2020), www.prisonpolicy.org/blog/2020/03/06/pandemic/.

- b. What measures Defendants implemented in the Jail in response to the COVID-19 crisis;
- c. Whether Defendants' use of solitary confinement meets the requirements for medical isolation;
- d. Whether Defendants' practices during the COVID-19 pandemic exposed people confined at the Jail to a substantial risk of serious harm; and
- e. Whether Defendants knew of and disregarded a substantial risk of serious harm to the safety and health of the class.

143. Named Plaintiffs' claims are typical of the class members' claims. The injuries that the Named Plaintiffs have suffered due to Defendants' unconstitutional course of conduct are typical of the injuries suffered by the class. All class members seek the same declaratory and injunctive relief.

144. The Named Plaintiffs are adequate representatives of the class because their interests in the vindication of the legal claims they raise are entirely aligned with the interests of the other class members, each of whom has the same constitutional claims. There are no known conflicts of interest among members of the proposed class, and the interests of the Named Plaintiffs do not conflict with those of the other class members.

145. Plaintiffs are represented by counsel with experience and success in litigating complex civil rights matters in federal court. The interests of the members of the class will be fairly and adequately protected by the Named Plaintiffs and their attorneys.

146. Because the putative class challenges Defendants' system as unconstitutional through declaratory and injunctive relief that would apply the same relief to every member of the class, certification under Rule 23(b)(2) is appropriate and necessary.

147. A class action is the only practicable means by which the Named Plaintiffs and class members can challenge the Defendants' unconstitutional actions and obtain the necessary immediate declaratory and injunctive relief sought for themselves and all other members of the class.

CLAIMS FOR RELIEF

COUNT I: Declaratory and Injunctive Relief for Violation of the Fourteenth Amendment (42 U.S.C. § 1983) *Pretrial Subclass versus All Defendants*

148. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

149. Under the Fourteenth Amendment, corrections officials are required to provide for the reasonable health and safety of persons in pretrial custody. *Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (the state has an “unquestioned duty to provide adequate . . . medical care” for detained persons). Individuals who have not been adjudged guilty of a crime cannot be subject to punishment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). A condition of detention amounts to impermissible punishment when “it is not reasonably related to a legitimate goal,” if it is “excessive” in relation to a legitimate goal,” or if it is otherwise “arbitrary or purposeless.” *Wolfish*, 441 U.S. at 539. Due process claims brought by pretrial detainees under the Fourteenth Amendment are evaluated under an objective standard,¹⁹² and where, as here, Plaintiffs bring a constitutional challenge under a conditions of confinement theory, a person in detention need not demonstrate the defendant’s subjective or malicious intent to punish. *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009). Members of the Pretrial Subclass are not required to show that Defendants are subjectively aware of a substantial risk of serious harm due to COVID-19, although

¹⁹² *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 2472-73 (2015).

if such a showing is required that standard is met under the circumstances presented here. *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 644 (1996) (5th Cir. 1996).

150. The Jail has neither the capacity nor the ability to comply with public health guidelines to prevent an outbreak of COVID-19 and cannot provide for the safety of the Jail Class or the Pretrial Subclass. Defendants' actions and inactions result in the confinement of members of the Jail Class and the Pretrial Subclass in a facility where they do not have the capacity to test for, treat, or prevent COVID-19 outbreaks, which violates Plaintiffs' rights to treatment and adequate medical care.

151. Defendants violate Plaintiffs' due process rights by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease. Plaintiffs face a serious risk of intense pain, illness, lasting bodily damage, and ultimately, death in the Jail due to the Defendants' insufficient measures to prevent the spread of infection. That risk of illness and death renders their conditions excessive in relation to any legitimate government interest.

152. Defendants established *de facto* policies denying Plaintiffs health care and adequate protections from COVID-19. The policies are not reasonably related to a legitimate governmental objective and are causing the violation of the Jail's pretrial detainees' constitutional rights. Accordingly, Defendants, as supervisors, direct participants, and policy makers for the East Baton Rouge Parish Prison, have violated and are violating the rights of the Jail Class and the Pretrial Subclass under the Fourteenth Amendment.

**COUNT II: Declaratory and Injunctive Relief for Violation of the
Eighth Amendment (42 U.S.C. § 1983)
*Post-Conviction Subclass versus All Defendants***

153. Plaintiffs incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

154. Under the Eighth Amendment, as applicable to States and their political subdivisions through the Fourteenth Amendment, post-convicted persons in carceral custody have a right to be free from cruel and unusual punishment. As part of that right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. *See, e.g., Estelle*, 429 U.S. at 104; *DeShaney*, 489 U.S. at 200.

155. As part of this right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. Deliberate indifference to the serious risk COVID-19 poses to members of the Jail Class, and particularly members of the Medically Vulnerable Subclass, violates this right.

156. Plaintiffs, and the class they represent, suffer a substantial risk of serious harm to their health and safety due to the presence of, and spread of, COVID-19.

157. Defendants know of and are failing to abate the serious risks that COVID-19 poses to Plaintiffs, including severe illness, permanent physical damage, and death. These risks are well-established and obvious to Defendants.

158. Defendants are subjecting Plaintiffs to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Due to the conditions at the jail, Plaintiffs are unable to take steps to protect themselves—such as social distancing, accessing medical attention or testing, or washing their hands regularly—and Defendants have failed to provide adequate protections or mitigation measures. Defendants act

with deliberate indifference towards Plaintiffs by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease.

159. As a result of Defendants' unconstitutional actions, Plaintiffs are suffering irreparable injury.

160. Accordingly, Defendants, as supervisors, direct participants, and policy makers for the East Baton Rouge Parish Prison, have violated and are violating the rights of the Jail Class and Post-Conviction Subclass under the Eighth Amendment.

**Count III: Petition for Writ of Habeas Corpus Pursuant to
28 U.S.C. § 2241**

Medically Vulnerable Subclass versus All Defendants

161. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

162. Because the Medically Vulnerable Plaintiffs and subclass seek release in light of the immediate and urgent risks to their health and lives, there is no other available remedy that could protect their rights.

163. Defendants are holding Plaintiffs in custody in violation of the Fourteenth Amendment (applicable to pretrial detainees) and the Eighth Amendment (applicable to post-conviction detainees). Both amendments forbid exposing Plaintiffs to a severe risk of death, pain, or permanent severe injury, and no options available to Defendants at this time will adequately mitigate that risk to the Medically Vulnerable Subclass other than release from custody.

164. Section 2241(c)(3) allows this court to order the release of people like Plaintiffs who are held "in violation of the Constitution." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("It is clear, not only from the language of §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon

the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”). Habeas confers “broad discretion in conditioning a judgment granting habeas relief . . . ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. 2243). That authority includes an order of release, *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), so as “to insure that miscarriages of justice . . . are surfaced and corrected.” *Harris v. Nelson*, 395 U.S. 286, 291 (1969). Release is appropriate where, as here, there are no set of conditions under which an individual can be constitutionally detained, and the petitioner is thus “challenging the fact, not conditions, of her confinement.”¹⁹³

**COUNT IV: Declaratory and Injunctive Relief for Violation of the Fourteenth Amendment
(42 U.S.C. § 1983))**

Medically Vulnerable Subclass versus All Defendants

165. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

166. The Medically Vulnerable Plaintiffs and subclass seek release in light of the immediate and urgent risks to their health and lives. There is no other available remedy that could protect their rights.

167. Defendants are holding Plaintiffs in custody in violation of the Due Process Clause of the Fourteenth Amendment (applicable to pretrial detainees) and the Eighth Amendment (applicable to post-conviction detainees) to the Constitution of the United States. Both amendments forbid exposing Plaintiffs to a severe risk of death, pain, or permanent severe injury. At this time, with respect to the Medically Vulnerable Subclass, no options are available to Defendants that will adequately mitigate that risk other than removing the Plaintiffs from custody

¹⁹³ *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *3 (E.D. Mich. Apr. 5, 2020), as amended (Apr. 6, 2020); *accord Dada v. Witte*, No. 1:20-cv-00458-DDD-JPM (Report and Recommendation) (adopted May 22, 2020); *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *4 (S.D. Tex. Apr. 17, 2020).

at the Jail.

168. Accordingly, Plaintiffs are entitled to be transferred to a form of custody that does not expose them to an unconstitutional risk of substantial harm, including a transfer to home confinement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Putative Class Members respectfully request that the Court:

- A. Certify the proposed class and subclasses;
- B. Enter a declaratory judgment that Defendants are violating Named Plaintiffs' and Class Members' constitutional rights by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease;
- C. Enter a temporary restraining order, preliminary injunction, and permanent injunction, and/or writ of habeas corpus requiring Defendants to immediately release all Medically Vulnerable Plaintiffs and Subclass Members or transfer them to home confinement;
- D. Enter an order requiring, during the COVID-19 pandemic, that Defendants:
 1. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
 2. Provide adequate spacing of six feet or more between people incarcerated, so that social distancing can be accomplished;
 3. Ensure that each incarcerated person receives, free of charge: (1) an individual supply of liquid hand soap and paper towels sufficient to allow frequent hand

washing and drying each day, and (2) an adequate supply of disinfectant hand wipes or other products effective against the virus that causes COVID-19 for daily cleanings;

4. Ensure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;
5. Provide an adequate stock of daily cleaning supplies, such as sponges, brushes, disinfectant hand wipes, and/or disinfectant products effective against the virus that causes COVID-19;
6. Provide sufficient disinfecting supplies, free of charge, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones, tablets, tables, bathrooms, seating, and door handles) between each use;
7. Provide daily access to clean showers and clean laundry, including clean personal towels and washrags for each shower;
8. Require that all Jail staff wear personal protective equipment, including masks and gloves, when interacting with any person or when touching surfaces in cells or common areas;
9. Require that all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
10. Take each incarcerated person's temperature daily (with a functioning, properly operated, and sanitized thermometer) to identify potential COVID-19 Infections.
11. Conduct immediate testing for anyone displaying known symptoms of COVID-19 and who has potentially been exposed to infection;

12. Ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials, phone and video calls with loved ones, communications with counsel, and personal property;
 13. Respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
 14. Waive all medical co-pays for those experiencing COVID-19-related symptoms; and
 15. Cease and desist retaliatory disciplinary action in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.
- E. If immediate release is not granted on the basis of this Petition alone, expedite review of the Petition, including oral argument, via telephonic or videoconference if necessary;
- F. Enter an order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;
- G. Order such other and further relief as this Court deems just, proper, and equitable.

Respectfully submitted, this 26th day of May, 2020.

/s/ David J. Utter

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020 a copy of the foregoing was sent to all parties via electronic mail upon the following:

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