IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2019

NO. _____

IN RE: J.B., L.H., L.S., R.P.,

AND ON BEHALF OF ALL SIMILARLY SITUATED INDIVIDUALS

Petitioner,

v.

The Honorable W. Timothy Finan, Administrative Judge for Allegany County; The Honorable Laura S. Ripkin; Administrative Judge for Anne Arundel County; The Honorable Audrey J.S. Carrion, Administrative Judge for Baltimore City; The Honorable Kathleen Cox, Administrative Judge for Baltimore County; The Honorable Mark S. Chandlee, Administrative Judge for Calvert County; The Honorable Jonathan Newell, Administrative Judge for Caroline County; The Honorable Fred S. Hecker, Administrative Judge for Carroll County; The Honorable Keith A. Baynes, Administrative Judge for Cecil County; The Honorable H. James West, Administrative Judge for Charles County; The Honorable Brett W. Wilson, Administrative Judge for Dorchester County; The Honorable Julie R. Stevenson Solt, Administrative Judge for Frederick County; The Honorable Raymond G. Strubin, Administrative Judge for Garrett County; The Honorable Angela M. Eaves, Administrative Judge for Harford County; The Honorable William Tucker, Administrative Judge for Howard County; The Honorable Harris P. Murphy, Administrative Judge for Kent County; The Honorable Robert Greenberg, Administrative Judge for Montgomery County; The Honorable Sheila R. Tillerson Adams, Administrative Judge for Prince George's County; The Honorable C. Lynn Knight, Administrative Judge for Queen Anne's County; The Honorable Michael J. Stamm, Administrative Judge for St. Mary's County; The Honorable Daniel W. Powell, Administrative Judge for Somerset County; The Honorable Stephen H. Kehoe, Administrative Judge for Talbot County; The Honorable Daniel P. Dwyer, Administrative Judge for Washington County; The Honorable S. James Sarbanes,

Administrative Judge for Wicomico County and; The Honorable Brian D. Shockley, Administrative Judge for Worcester County

Respondents

APPLICATION FOR IMMEDIATE AND EXTRAORDINARY RELIEF

BRIEF OF PETITIONERS

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INTRODUCTION

This petition seeks extraordinary relief for extraordinary circumstances. To mitigate the potential catastrophic harm that the COVID-19 pandemic will inflict upon incarcerated youth, corrections staff, and all of our communities, Petitioners ask the Court to exercise its plenary authority to immediately reduce the number of youth in juvenile jails and juvenile prisons in Maryland.[1]

As of April 2, 2020, 1,011,490 people worldwide have been diagnosed with COVID-19, the novel, lethal, and highly contagious coronavirus. Over 52,863 people are already confirmed dead.[2] This past week, the U.S. became the world leader in infections with 242,182 reported cases and 5,316 confirmed deaths.[3] Maryland has at least 2,331

[1] The Maryland Department of Juvenile Services (DJS) operates seven youth jails (Alfred D. Noyes Children's Center, Baltimore City Juvenile Justice Center, Charles H. Hickey, Jr. School, Cheltenham Youth Detention Center, Lower Eastern Shore Children's Center, Thomas J.S. Waxter Children's Center, and the Western Maryland Children's Center) as well as six youth prisons (Backbone Mountain Youth Center, Green Ridge Youth Center, J. DeWeese Carter Center, Meadow Mountain Youth Center, Savage Mountain Youth Center, Victor Cullen Center.) The J. DeWeese Carter Center has been closed since March 20, 2020 due to losing a food vendor due to the pandemic. All youth were transferred out of Savage Mountain Youth Center on March 16, 2020. Although euphemistically called "children's centers" these facilities are jails and prisons in every sense of the word - replete cells, locks, bars, and fences. For descriptions and photographs that demonstrate the conditions of these facilities, please see the Maryland Office of the Attorney General Juvenile Justice Monitoring Unit Pictorial Report, http://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU2011picReport.pdf.

[2] *Coronavirus COVID-19 Global Cases by Johns Hopkins CSSE: Totals,* JOHNS HOPKINS CORONAVIRUS RES. CTR., https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6 (last visited Apr. 2, 2020*).*

[3] *Coronavirus COVID-19 Global Cases by Johns Hopkins CSSE: US,* JOHNS HOPKINS CORONAVIRUS RES. CTR., https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6 (last visited Apr. 2, 2020*).*

cases and 36 deaths as of April 2, 2020.[4] There is no vaccine or cure for COVID-19. No one is immune, including teenagers.[5]

Experts anticipate the numbers of infection and deaths to continue to increase exponentially. In the week between March 23 and April 1, 2020 Maryland experienced a 709% percentage increase in cases.[6] Maryland has the highest number of infected cases in the greater metropolitan Washington region, more than both the District of Columbia and Virginia. All 24 counties in Maryland have confirmed COVID-19 cases and there have already been confirmed outbreaks in state run facilities: eight patients and one staff member tested positive at the maximum security hospital, Clifton T. Perkins Medical Center, two employees and one incarcerated person tested positive at Jessup Correctional Institution, an employee at a Metropolitan Transit Center facility in Baltimore, and two Baltimore City Sheriff's deputies have tested positive.[7]

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[4] *Coronavirus Disease 2019 (COVID-19) Outbreak*, MD. DEP'T OF HEALTH, https://coronavirus.maryland.gov/ (last visited Apr. 2, 2020).

[5] *Coronavirus: Young People Are Not Invincible, WHO Warns*, BBC NEWS (Mar. 20, 2020), https://www.bbc.com/news/world-51982495.

[6] *COVID-19: Timeline of Events in Maryland*, WBOC.COM (Mar. 27, 2020), http://www.wboc.com/story/41938636/covid19-timeline-of-events-in-maryland; *Coronavirus Disease 2019 (COVID-19) Outbreak*, MD. DEP'T OF HEALTH, https://coronavirus.maryland.gov/ (last visited Apr. 1, 2020).

[7] Justin Fenton & Phillip Jackson, *Maryland Prison System Confirms First Coronavirus Cases*, BALT. SUN (Mar. 30, 2020), https://www.baltimoresun.com/coronavirus/bs-md-prison-coronavirus-20200330-umznsebnxfhbxcf2yrookepewi-story.html; Dan Morse, *Outbreak of Coronavirus Reported at Maryland Psychiatric Hospital*, WASH. POST (Mar. 20, 2020), https://www.washingtonpost.com/local/public-safety/outbreak-of-coronavirus-reported-at-maryland-psychiatric-hospital/2020/03/30/84ea5bea-72c8-11ea-85cb-8670579b863d_story.html.

There is a lot about COVID-19 we still do not know and death rates vary. But conservative estimates are that between 100,000 and 240,000 people in the U.S. will die.[8] We must ask ourselves what public officials can do to decrease that number.

Governor Larry Hogan issued a "stay-at-home" executive order, prohibiting any gathering larger than 10 people, and closed all schools and non-essential businesses.[9] Violation of the order is a misdemeanor offense subject to imprisonment not exceeding one year and/or a fine not exceeding $5,000.[10] These measures are important, but leading public health officials have warned that unless courts act immediately the "epicenter of the pandemic will be jails and prisons."[11] As the Centers for Disease Control and Prevention ("CDC") has explained, correctional facilities "present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, [detention center] staff, and visitors."[12] More specifically, medical professionals have called on state governors, courts, and departments of corrections to "[i]mmediately release youth in detention and correctional facilities who can safely return to the home of their families

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[8] Michael D. Shear et al., *Coronavirus May Kill 100,000 to 240,000 in U.S. Despite Actions, Officials Say*, N.Y. TIMES (Mar. 31, 2020), https://www.nytimes.com/2020/03/31/us/politics/coronavirus-death-toll-united-states.html.

[9] GOV. LAWRENCE J. HOGAN, MD. EXEC. ORDER NO. 20-03-40-01 (Mar. 30, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf.

[10] *Id.*

[11] Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. TIMES (Mar. 16, 2020), https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html.

[12] *Coronavirus Disease 2019 (COVID-19): Interim Guidance on Management of Coronavirus (COVID-19)in Correctional & Detention Facilities*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter *CDC Guidance*], https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Apr. 2, 2020).

and/or caretakers, with community-based supports and supervision, in order to alleviate potential exposure to COVID-19."[13] And indeed, jurisdictions around the country and around the world have begun to do so.[14]

Outbreaks in detention and correctional facilities will not only put at risk the lives and health of incarcerated youth, but they also will endanger correctional officers and medical staff, their families, and their communities as staff cycle through the facilities. The more people who contract the virus, the more treatment they will need, and the more depleted our precious resources for their treatment will become. Outbreaks in jails and prisons imperil us all.

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[13] PHYSICIANS FOR CRIMINAL JUSTICE REFORM, OPEN LETTER: COVID-19 RISKS FOR DETAINED AND INCARCERATED YOUTH (2020), https://pfcjreform.org/covid-19-risks-for-detained-and-incarcerated-youth/.

[14] *See, e.g.*, GOV. GAVIN NEWSOM, STATE OF CAL., GOVERNOR NEWSOM ISSUES EXECUTIVE ORDER ON STATE PRISONS AND JUVENILE FACILITIES IN RESPONSE TO THE COVID-19 OUTBREAK (Mar. 24, 2020), https://www.gov.ca.gov/2020/03/24/governor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak/; Judge Steven Teske (@scteskelaw), Twitter (Mar. 28, 2020, 9:32 AM), https://twitter.com/scteskelaw/status/1243893853314256896; Annie Sweeney & Megan Crepeau, *Hearings Start on Releasing Some Youths from Cook County Juvenile Detention Over COVID-19 Fears*, CHI. TRIBUNE (Mar. 24, 2020), https://www.chicagotribune.com/news/criminal-justice/ct-coronavirus-juvy-release-20200324-3j3pnks6ivdwthqnl7vl4e3x7m-story.html; Liz Robbins, *Coronavirus Prompts Urgent Calls for Minors in Detention to be Released*, APPEAL (Mar. 30, 2020), https://theappeal.org/coronavirus-prompts-urgent-calls-for-minors-in-detention-to-be-released/; N.J. SUP. CT., CONSENT ORDER 4, *In re* Request to Commute or Suspend County Jail Sentences, No. 084230 (N.J. Mar. 22, 2020), https://www.njcourts.gov/notices/2020/n200323a.pdf?c=9cs; LETTER FROM MONT. SUP. CT C.J. MIKE MCGRATH TO MONTANA CTS. OF LIMITED JURISDICTION JUDGES (Mar. 20, 2020), https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333; MEM. FROM S.C. SUP. CT. C.J. DONALD W. BEATTY TO MAGISTRATES, MUNICIPAL JUDGES, & SUMMARY CT. STAFF (Mar. 16, 2020), https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461; WASH. SUP. CT. AM. ORDER, *In re* Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency, No. 25700-B-607 (Wash. Mar. 20, 2020), http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf.

It is not a question of if, but when COVID-19 will arrive in Maryland's juvenile facilities. On April 1, 2020 an employee of Washington D.C.'s Department of Youth Rehabilitative Services in his 40s died as a result of COVID-19 and a youth has also tested positive.[15] The only effective way for an individual to stop the spread of COVID-19 is physical distancing. In crowded, congregate facilities it is impossible for young people to maintain the recommended distance or take the necessary steps to sanitize the surfaces they encounter.[16] Release is the only effective means of protecting young people from contracting and transmitting COVID-19. In fact, confining a large number of people to an enclosed area – like the Princess cruise ship or Life Care nursing home outbreaks demonstrate – creates the ideal breeding ground for the pandemic.[17]

To the extent that the Department of Juvenile Services (DJS) attempts to mitigate the physical risks, however, it will most likely exacerbate the extreme mental health risks that isolation poses for children. DJS has developed "medical isolation" units at the jails where youth are placed alone in a cell. Such isolation has long been shown to have particularly harmful effects on adolescents, causing anxiety, depression, self-harm,

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[15] Sam Ford, *DC Correctional Officer in Dept. of Youth Rehabilitative Services Dies from COVID-19*, WJLA (Apr. 1, 2020), https://wjla.com/news/local/dc-correctional-officer-in-dept-of-youth-rehabilitative-services-dies-from-covid-19.

[16] According to Mike Ricci, spokesperson for Gov. Larry Hogan, the Department of Public Safety and Correctional Services said "total social distancing is impossible in a prison setting." Marcus Dieterle, *First Three Confirmed Cases of COVID-19 Reported in Maryland Prisons*, BALT. FISHBOWL (Mar. 30, 2020), https://baltimorefishbowl.com/stories/first-three-confirmed-cases-of-COVID-19-reported-in-maryland-prisons/.

[17] Rebecca Radcliffe & Carmela Fonbuena, *Inside the Cruise Ship That Became A Coronavirus Breeding Ground*, GUARDIAN (Mar. 6, 2020), https://www.theguardian.com/global-development/2020/mar/06/inside-the-cruise-ship-that-became-a-coronavirus-breeding-ground-diamond-princess; K. Oanh Ha, *How A Cruise Ship Turns into A Coronavirus Breeding Ground*, FORTUNE (Feb. 10, 2020), https://fortune.com/2020/02/10/cruise-ship-coronavirus-spreads/.

and even suicide.[18] Such risks are particularly acute for system-involved youth with cognitive limitations, mental health diagnoses, and histories of trauma and abuse.[19] The pandemic itself poses a risk of emotional damage to children. DJS has banned all family visits for over two weeks.[20] Youth in juvenile jail, especially those subject to stringent physical distancing, are now deprived of the kind of emotional support, reassurance, and care that experts say are necessary to weather the emotional harms of traumatic events.[21]

This Court has recognized since March 13 that the spread of COVID-19 is a judicial emergency that "poses a threat of imminent and potentially lethal harm."[22] Pursuant to its supervisory powers, this Court suspended trials and authorized the lower courts to take appropriate measures to safeguard health by closing courthouses to the public.[23] This Petition asks the Court to give the same recognition to the serious risk of contagion in juvenile jails by issuing an order to: limit the number of young people

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[18] HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), https://www.aclu.org/sites/default/files/field_document/us1012webwcover.pdf.

[19] *Id.*

[20] SECRETARY SAM ABED, MD. DEP'T OF JUVENILE SERVICES, DJS VISITATION CHANGES IN RESPONSE TO COVID-19 (Mar. 19, 2020), https://djs.maryland.gov/Documents/press/DJS-Parent-Visitation-Memo-Online_3.19.20.pdf.

[21] THE NAT'L CHILD TRAUMATIC STRESS NETWORK, *Trauma and Families: Fact Sheet for Providers* (2011), http://www.ncsby.org/sites/default/files/resources/Trauma%20and%20Families%20Fact%20Sheet%20for%20Providers%20--%20NCTSN.pdf.

[22] C.J. MARY ELLEN BARBERA, MD. CT. OF APPEALS, ADMINISTRATIVE ORDER ON STATEWIDE CLOSING OF THE COURTS TO THE PUBLIC DUE TO THE COVID-19 EMERGENCY (Mar. 13, 2020), https://mdcourts.gov/sites/default/files/admin-orders/20200313statewideclosingofcourts.pdf.

[23] C.J. MARY ELLEN BARBERA, MD. CT. OF APPEALS, ADMINISTRATIVE ORDER EXTENDING THE LENGTH OF STATEWIDE JUDICIARY RESTRICTED OPERATIONS DUE TO THE COVID-19 EMERGENCY (Mar. 25, 2020), https://mdcourts.gov/sites/default/files/admin-orders/20200325extendinglengthofrestrictedoperations.pdf.

entering juvenile or pretrial detention; reduce the number of youth currently confined in jail, by reviewing all cases and directing release in designated situations; and ensuring the safety of youth returned home as described below.

If undertaken *immediately*, these emergency measures will mitigate the spread of COVID-19 into and beyond Maryland's juvenile jails and youth prisons. If this Court acts swiftly, it will save lives and prevent devastating harm to young people in state custody.

PETITIONERS

J.B., a 13-year-old Black male resident of Baltimore City, MD, has been incarcerated at the Charles H. Hickey, Jr. School ("Hickey") for approximately two weeks. J.B. cannot engage in social distancing from other youth or staff and is facing a deprivation in education, programming, and visitation. [J.B. Decl.]

L.H., a 15-year-old Black male resident of Charles County, MD, has been incarcerated at Cheltenham Youth Detention Center ("CYDC") since February 2020. L.H. cannot engage in social distancing from others within his unit at the facility and is facing a deprivation in education and programming. [L.H. Decl.]

L.S., a 17-year-old Latinx female resident of Prince George's County, MD, has been incarcerated at the Thomas J.S. Waxter's Children's Center ("Waxter's") for approximately five weeks. L.S. cannot engage in social distancing from other youth or staff and is facing a deprivation in education, programming, and visitation. [L.S. Declaration]

R.P., 18-year-old Black male resident of Baltimore City, MD., had been incarcerated for five months at the Baltimore City Juvenile Justice Center ("BCJJC").

Since the declaring of a national emergency, BCJJC has not deployed adequate measure to ensure R.P.'s safety. Given the procedures and practices at BCJJC, R.P. is unable to practice social distancing from other youth or staff and is deprived from education, programming, and meaningful contact with family members. [R.P. declaration]

Petitioners are representative of all youth incarcerated by Maryland's Circuit Courts in DJS' seven secure juvenile jails, six congregate youth prisons, and all transfer-eligible juveniles. Upon information and belief, based on population numbers reported by DJS, 258 youth are currently in juvenile jail facilities and 89 are currently in DJS run youth prisons. These youth can be supervised safely in the community without subjecting them to the serious health risks associated with congregate juvenile jail facilities during a global pandemic.

JURISDICTION

The Court has jurisdiction to consider petitions for extraordinary relief in aid of its appellate jurisdiction. *State v. Manck*, 385 Md. 581 (2005); *Phillip Morris Inc. v. Angeletti*, 358 Md. 689, 712-13 (2000). Under extraordinary circumstances, this Court may issue a prerogative writ where the "interests of justice require [the Court] to do so in order to restrain a lower court from acting in excess of its jurisdiction, otherwise grossly exceeding its authority, or failing to act when it ought to act." *Forster v. Hargadon*, 398 Md. 298, 306 (2007) (citing *In re Petition for Writ of Prohibition*, 312 Md. 280, 307 (1988).

In the alternative, pursuant to the supervisory powers granted to the Chief Judge of the Court of Appeals, Chief Judge Barbera has the authority to direct lower courts in their

administration of justice. Md. Const. art. IV, § 18; Md. Rule 16-102; Md. Rule 16-105; Md. Rule 16-308.

STATEMENT OF FACTS

A. The COVID-19 global pandemic demands that extraordinary measures be taken to protect public health.

COVID-19 has reached worldwide pandemic status.[24] According to Johns Hopkins University, by April 2, 2020 1,011,930 people worldwide have been diagnosed with COVID-19, the novel, lethal, and highly contagious coronavirus. Over 50,000 people are already confirmed dead.[25] This past week, the U.S. became the world leader in infections with 226,374 reported cases and 5,316 confirmed deaths.[26] In Maryland alone there more than 2,331 confirmed cases and 36 deaths.[27] These numbers are growing exponentially. The CDC's projections show that, without effective public health intervention, more than 200 million people in the United States could be infected with COVID-19, with as many as 1.7 million deaths in the most severe projections.[28]

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[24] Andrew Griffin, *Coronavirus Declared Pandemic by World Health Organization*, INDEPENDENT ONLINE (Mar. 11, 2020), https://www.independent.co.uk/news/health/coronavirus-news-latest-pandemic-who-outbreak-death-toll-a9395021.html.

[25] *Coronavirus COVID-19 Global Cases by Johns Hopkins CSSE: Totals*, JOHNS HOPKINS CORONAVIRUS RES. CTR., https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6 (last visited Apr. 2, 2020).

[26] *Id.*

[27] *Coronavirus Disease 2019 (COVID-19) Outbreak*, MD. DEP'T OF HEALTH, https://coronavirus.maryland.gov/ (last visited Apr. 2, 2020).

[28] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. TIMES (Mar. 18, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html?auth=login-email&login=email.

The need for medical treatment, hospitalization and possibly intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound kidney damage, lung damage, heart damage, and damage to the nervous system. [Graves Decl.]

While older individuals face greater chances of serious illness or death from COVID-19, it is now known that the younger population is just as susceptible to contracting the virus and face the same dangers as the older population[29] [Graves Decl.], and children constitute a small but tragic percentage of COVID-19 deaths.[30] In a virtual press conference held on March 20, 2020, WHO Director General Tedros Adhanom Ghebreyesus warned that younger people are not spared of contagion, but also worldwide, they make up a "significant proportion" of patients requiring hospitalization, sometimes for weeks and sometimes resulting in their deaths.[31] The largest study of pediatric COVID-19 patients to date shows that approximately 6% of infected children

[29] Stephanie Nebehay, *WHO Message To Youth on Coronavirus: 'You Are Not Invincible'*, REUTERS (Mar. 20, 2020), https://www.reuters.com/article/us-health-coronavirus-who-idUSKBN21733O.

[30] Taryn Luna et al., *L.A. County Reports First Death of A Possible Coronavirus Patient Under 18 as COVID-19 Cases Top 660*, L.A. TIMES (Mar. 24, 2020), https://www.latimes.com/california/story/2020-03-24/california-coronavirus-cases-surge-to-2-200-the-worst-is-yet-to-come; Jennifer Millman, *"It Attacks Everyone:" NYC Loses 1st Child to Virus as State Deaths Eclipse 1,300; NJ Cases Soar*, NBC New York (Mar. 31, 2020); Centers for Disease Control & Prevention, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, Feb. 12-Mar. 16, 2020* (Mar. 26, 2020), cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm.

[31] Nebehay, *supra* note 29.

and 11% of infected infants have had severe or critical cases,[32] and U.S. data show a growing number of pediatric cases requiring intensive care.[33] These cases have included children and infants who suffered from respiratory failure, shock, encephalopathy, heart failure, coagulation dysfunction, acute kidney injury, and life-threatening organ dysfunction.[34] And even when asymptomatic, these younger individuals still pose a very serious risk of transmission to those with whom they come in contact, including older, more vulnerable adults.[35]

The dire public health threat posed by the COVID-19 pandemic has prompted extraordinary responses at every level of government. On March 29, 2020, President Trump extended national social distancing guidelines advising against all gatherings of more than 10 people until at least the end of April.[36] Three quarters of Americans are currently living under a "stay at home" order.[37] Maryland, has taken the extraordinary step of issuing a stay-at-home order, closing all schools in the State[38] and ordering all

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[32] *See* Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China* (2020), AM. ACAD. OF PEDIATRICS, https://bit.ly/39hz1Yz (pre-publication in journal of *Pediatrics*).

[33] VIRTUAL PEDIATRIC SYS., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), https://covid19.myvps.org/.

[34] *See* Dong, *supra* note 32.

[35] *See* Guoqing Qian et al., *A COVID-19 Transmission Within a Family Cluster by Presymptomatic Infectors in China* (2020), CLINICAL INFECTIOUS DISEASES, https://doi.org/10.1093/cid/ciaa316.

[36] PRES. DONALD J. TRUMP, REMARKS BY PRESIDENT TRUMP, VICE PRESIDENT PENCE, AND MEMBERS OF THE CORONAVIRUS TASK FORCE IN PRESS BRIEFING (Mar. 29, 2020), https://bit.ly/2wUkKUe.

[37] Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES (Mar. 31, 2020), https://nyti.ms/2Uxxk56.

[38] Liz Bowie & Lillian Reed, *Maryland School Closures Extended a Month Due to Coronavirus Threat*, BALT. SUN (Mar. 25, 2020, 2020), https://www.baltimoresun.com/coronavirus/bs-md-

non-essential businesses shuttered in 24 counties in an effort to combat the spread of the virus and limit the number of its casualties.[39] Extraordinary steps must also be taken to protect the youth and staff in juvenile justice and adult carceral settings across the state.

B. Congregate juvenile facilities pose dire health risks during the COVID-19 pandemic.

There is no cure or vaccine for this highly contagious virus. [Graves Decl.] The only way to avoid transmission of COVID-19 is for individuals to practice "social distancing" (maintaining a distance of at least six feet from the nearest person) and frequent hand washing, and for those who are ill to be in medical quarantine. [Graves Decl.] For this reason, the CDC deems social distancing a "cornerstone of reducing transmission of respiratory diseases such as COVID-19."[40] To limit the spread of the virus requires physical distancing, quarantining, and vigilant hygiene. [Graves Decl.]

The rapid transmission of COVID-19 in congregate settings is clearly evidenced by the tragic spread of the virus within cruise ships, nursing homes, and correctional facilities worldwide. More than 800 people have tested positive for COVID-19 on cruise ships in Japan and off the coast of California.[41] At a nursing home facility in Washington, two-thirds of the residents and 47 staff members tested positive for COVID-19, with 35

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hogan-closes-schools-20200325-4u3ehs6knrc2fcxdkznltat66u-story.html (last visited March 26, 2020).

[39] GOV. LAWRENCE J. HOGAN, MD. EXEC. ORDER NO. 20-03-40-01 (Mar. 30, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf.

[40] *CDC Guidance*, *supra* note 12.

[41] Victoria Forster, *What Have Scientists Learned About COVID-19 and Coronavirus By Using Cruise Ship Data?*, FORBES (Mar. 22, 2020), https://bit.ly/2UeSgNS.

people dying from the virus.[42] Such outbreaks are tragically continuing as the virus spreads across the country, due to the close proximity of residents, the shared social spaces, the vulnerability to the infection of the residents, and the limited training and low pay of the workers tasked with infection control.[43] On March 28, 2020 Maryland Governor Larry Hogan announced an outbreak of COVID-19 at a nursing home in Carroll County where 66 residents were infected and 11 hospitalized.[44]

Correctional settings pose these same risks – close proximity and communal spaces, vulnerability of many residents, and poor infection control – often with the added challenge of poor access to quality medical care, poor ventilation, and poor hygiene.[45] [R.P. Decl.; Ambrose Decl.] Indeed, in China and Iran, major and devastating COVID-19

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[42] Jack Healy & Serge F. Kovaleski, *The Coronavirus's Rampage Through a Suburban Nursing Home*, N.Y. TIMES (Mar. 21, 2020), https://nyti.ms/2QIcVaS. *See also* Sam Karlin et al., *Louisiana Identifies New Cluster of Coronavirus Cases in Donaldsonville Retirement Home*, ADVOCATE (Mar. 23, 2020), https://bit.ly/39hxQZ9.

[43] *See, e.g.*, Jack Dolan et al., *Coronavirus Outbreaks at Nursing Homes Rise Sharply in L.A. County* , L.A. TIMES (Mar. 30, 2020), https://lat.ms/341d66P; Halley Freger et al., *As Health Officials Feared, Coronavirus Outbreak Invading Nursing Homes*, ABC NEWS (Mar. 30, 2020), https://abcn.ws/33WWahO; Jack Healy et al., *Nursing Homes Becoming Islands of Isolation Amid 'Shocking' Mortality Rate*, N.Y. TIMES (Mar. 10, 2020), https://nyti.ms/2WYINMI. *See also* Joe Pinsker, *America's Nursing Homes Are Bracing for an Outbreak*, ATLANTIC (Mar. 4, 2020), https://bit.ly/2QXgNVW.

[44] Tim Prudente, *Coronavirus Outbreak Infects 66 at Carroll County Nursing Home, Maryland Governor Says*, BALT. SUN (Mar. 28, 2020), https://www.baltimoresun.com/coronavirus/cc-coronavirus-outbreak-carroll-nursing-home-20200329-uugwazs6pfcbfktpq7jqpopbmi-story.html.

[45] *See, e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 CLINICAL INFECTIOUS DISEASES 1047, 1047 (Oct. 2007), https://bit.ly/2QZA494 (in jails "[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise"). *See also* Claudia Lauer & Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, ASSOCIATED PRESS (Mar. 7, 2020), https://bit.ly/2R17fch.

outbreaks occurred in prisons, and experts predict the same will happen here.[46] Recent experience in New York City's Rikers Island complex bears out that prediction. As of March 30, 2020, more than 160 inmates and 130 staff members had tested positive for COVID-19, more than 800 inmates were being held in isolation, and the facility's 88-bed contagious disease unit was filled to capacity.[47]

COVID-19 outbreaks in youth confinement settings threaten not just the health of residents and staff, but the health of the communities around them as well. As correctional staff enter and leave the facility, they will carry the virus with them.[48] [Graves Decl.] Many such facilities are in less populated areas that lack the healthcare resources of more urban areas. An outbreak of COVID-19 in a congregate environment could quickly overwhelm local health care services and force individuals to be transported to more distant hospitals and clinics, utilizing more resources and potentially exposing health care workings in communities where the disease is not yet prevalent.[49]

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[46] Evelyn Cheng & Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC (Feb. 21, 2020), https://cnb.cx/39qJqkE. *See also* Jan Ransom & Alan Feuer, *'A Storm Is Coming': Fears of An Inmate Epidemic as the Virus Spreads in the Jails*, N.Y. TIMES (Mar. 20, 2020), https://nyti.ms/2QZLLg1.

[47] Jan Ransom & Alan Feuer, *'We're Left for Dead': Fear of Virus Catastrophe at Rikers Jail*, N.Y. TIMES (Mar. 31, 2020), https://nyti.ms/2WYT37q.

[48] Josiah Rich et al.**,** *We Must Release Prisoners to Lessen the Spread of Coronavirus*, WASH. POST (Mar. 17, 2020) (The authors – including a professor of medicine and epidemiology – warn that unless States act swiftly to release inmates from jails and prisons the virus threatens not only prisoners and corrections workers but the general public), https://wapo.st/2QZ1A6I.

[49] *See* Brie Williams & Leann Bertsch, *A Public Health Doctor & Head of Corrections Agree: We Must Immediately Release People from Jails & 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/.

C. Youth in confinement face an exceptionally high risk of serious harm.

1. Youth in confinement are at a high risk of contracting and spreading the coronavirus.

Maryland's juvenile jails, residential treatment centers, congregate care facilities, adult jails and other carceral settings risk becoming hotbeds of contagion during this pandemic. Youth and staff in detention, placement, or correctional facilities cannot take the necessary measures to mitigate the risk of exposure, putting them at heightened risk of COVID-19 infection. Youth live, sleep, eat, and spend the full day in close contact with each other as well as with staff members. [Ambrose Decl.; R.P Decl; J.B. Decl; L.S. Decl.;]. *See also infra* Section III. D. Some juvenile jail facilities in Maryland have dormitory-style living with 12 or more young people sleeping and living in one room, often in bunk beds, and are at or near full capacity, making it impossible for youth to maintain distance. Moreover, while the CDC guidance recommends "medical isolation of confirmed or suspected COVID-19 cases,"[50] few facilities have the proper space, capacity, or medical expertise for such quarantines. [Haney Decl.]

Problems with sanitation in youth facilities and adult jails heighten the risks still further. The CDC instructs that individuals should wash their hands for 20 seconds regularly, and after sneezing, coughing, blowing their nose, eating or preparing food, before taking medication, and after touching garbage.[51] Yet youth in justice facilities often lack soap, or even access to a sink, and do not have regular access to hand sanitizer.

[50] *CDC Guidance supra* note 12 (capitalization altered).
[51] *Id.*

[Ambrose Decl.]. *See also infra* Section III.D. The CDC also instructs that staff should clean and disinfect commonly touched surfaces and shared equipment several times a day.[52] In juvenile detention and correctional facilities, youth share toilets, sinks, and showers, without disinfection between each use and staff do not regularly decontaminate surfaces. [J.B. Decl.; R.P Decl.; L.S. Decl]. *See also infra* Section III.D. This lack of access to proper sanitation, combined with shared bathrooms and sinks, and regular close contact with other youth and staff creates an intolerably high risk of infectious spread.

The concern about an outbreak in Maryland's juvenile facilities is not hypothetical – indeed, it is already occurring. In New York City, at least three staff members working at juvenile correctional facilities have contracted the virus and have been hospitalized,[53] and the New York Legal Aid Society, which represents youth in delinquency proceedings, has been receiving daily reports of symptomatic suspected *CO*VID-19 individuals in the city's juvenile detention centers.[54] Outbreaks have also already begun in Maryland's adult correctional facilities, with one prisoner and three employees testing positive as of April 1, 2020.[55]

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[52] *Id.*

[53] Eileen Grench, *Three Juvenile Detention Staff Test Positive for COVID-19, But No Teens Released*, JUV. JUST. (Mar. 20, 2020), https://bit.ly/2UWGGGC.

[54] VERIFIED PET. FOR WRIT OF HABEAS CORPUS ¶ 46, *New York ex rel. Williams v. Brann*, No. __ (N.Y. Mar. 19, 2020), https://bit.ly/2WZFghc.

[55] Justin Fenton & Phillip Jackson, *Maryland Prison System Confirms First Coronavirus Cases*, BALT. SUN (Mar. 30, 2020), https://www.baltimoresun.com/coronavirus/bs-md-prison-coronavirus-20200330-umznsebnxfhbxcf2yrookepewi-story.html; Dan Morse, *Outbreak of Coronavirus Reported at Maryland Psychiatric Hospital*, WASH. POST (Mar. 20, 2020), https://www.washingtonpost.com/local/public-safety/outbreak-of-coronavirus-reported-at-maryland-psychiatric-hospital/2020/03/30/84ea5bea-72c8-11ea-85cb-8670579b863d_story.html.

2. Attempts to limit the spread of COVID-19 in confinement place youth at substantial risk of serious mental and emotional harm.

Placement in a juvenile or criminal justice facility creates serious mental and physical health risks for youth under any circumstances; the added pressures of the COVID-19 pandemic will exacerbate these harms, putting young people at serious risk of lasting physical and emotional problems.

Even under normal circumstances, taking youth from their homes and placing them in confinement causes harm, leaving children with higher rates of both medical and psychiatric problems and shorter lifespans. [Haney Decl.][56] These harms will be exacerbated in the harsher conditions caused by the COVID-19 pandemic. To attempt to implement social distancing, many facilities have already begun to resort to isolation; this is a common response across the country. [Ambrose Decl.; Haney Decl.] Isolation has been repeatedly shown to lead to devastating consequences for youth, including anxiety, depression, self-harm, psychosis, and suicide. [Haney Decl.][57] Isolation can also exacerbate underlying trauma disorders. *Id.* Even young people not placed in isolation will be deprived of education, counseling, and other programming as facilities try to limit personal contact and increase physical distance. [Ambrose Decl.; L.S. Decl.; J.B. Decl.; R.P. Decl.] As staff fall ill or are subject to quarantines, programming will be cut short even more and mandated staffing ratios needed for basic safety will be jeopardized. *Id.*

[56] *See* Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* 29 PEDIATRICS 1 (2017), https://bit.ly/2xyL8mJ.

[57] *See also* Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 ANN. REV. PSYCHOL. 187, 199 (2014), https://bit.ly/2R0My04.

Unlike children outside of these facilities, who are also limited in their opportunities for school and typical social interaction, youth in confinement may be left with no forms of social, educational, or physical activity *at all*, as they are separated from their families and isolated in their cells. School personnel at the Baltimore City Juvenile Justice Center (BCJJC) have spoken out about the unsafe conditions, lack of hygiene, and impossibility of social distancing inside DJS facilities.[58] Youth at various facilities report that they have not had teachers present since the news story broke. [See R.P Decl.]

The harms of isolation and programming deprivation are particularly devastating to teenagers; during adolescence, the brain reaches what is referred to as the "second period of heightened malleability."[59] As a result, youth are uniquely responsive to environmental changes – and uniquely susceptible to harm from adverse experiences.[60] If there is "[a] lack of stimulation or aberrant stimulation" for youth during this period, the results can lead to "lasting effects on physical and mental health in adulthood."[61] Youth especially need positive social interactions to help them "develop a healthy functioning

[58] Eddie Kahim, *Juvenile Services Teachers Concerned About Safety Amid Coronavirus Outbreak*, WMAR (Mar. 23, 2020), https://www.wmar2news.com/news/coronavirus/juvenile-services-
teachers-concerned-about-safety-amid-coronavirus-outbreak.

[59] Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 TRENDS COGNITIVE SCI. 558, 559 (2015).

[60] Nancy Raitano Lee, Ph.D., DREXEL UNIV. DEP'T OF PSYCHOLOGY, *Presentation for the Juvenile Law Center: Neuroplasticity and the Teen Brain: Implications for the Use of Solitary Confinement with Juveniles* (2016).

[61] Fuhrmann, *supra* note 59, at 561.

adult social identity"[62] and build their social skills,[63] so that they can successfully "reintegrate into the broader community upon release" from confinement.[64] [Haney Decl.]

Young people in detention, placement and correctional facilities are at even graver risk of psychological harm than usual. WHO has cautioned that children and teens, in particular, are at risk of harm from the stress of the pandemic, and has instructed parents to support and reassure their children, maintain routines, and facilitate connections with friends and family. [Haney Decl.] Youth in facilities are deprived of these supports; in facilities struggling to ensure social distancing, the problems are intensified still more. Returning as many youth safely to their homes as possible is the only way to avoid this devastating scenario. [Ambrose Decl.]

3. Many youth in confinement have underlying physical and mental health issues that exacerbate the substantial risk of serious harm.

Many of the youth in Maryland's juvenile jails have underlying health issues that render them especially vulnerable to serious harm in the event of an outbreak. Unnamed petitioners include children as young as 11 years old, a child whose severe asthma requires him to see a pulmonologist monthly, and others with pre-existing conditions.

COVID-19 is especially damaging and even deadly to individuals with underlying medical conditions, such as lung diseases (including asthma), heart disease, chronic liver

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[62] Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment*, 30 BUFF. PUB. INTERST L.J. 31, 47 (2012), https://bit.ly/2xzXxqy.

[63] Blakemore, *supra* note 57, at 199.

[64] Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 J.L. & POL'Y 241, 256 (2012), https://bit.ly/2WX7KrH.

or kidney disease (including patients with hepatitis and those requiring dialysis), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, and developmental delay. People with these conditions are at an increased risk of developing serious complications or dying from COVID-19, regardless of age. [Graves Decl.] Youth in correctional facilities are particularly likely to be medically vulnerable, with asthma being among the most commonly diagnosed problems.[65] Youth in detention and correctional facilities are also highly likely to have underlying mental health issues[66] or have experienced past trauma that renders them especially vulnerable to damage from isolation and family separation. [Haney Decl.] A comprehensive study on asthma in Maryland showed Maryland youth to have an increased asthma prevalence compared to the national average.[67] In Baltimore City, for example, children under 18 years of age have an asthma prevalence more than twice the national average. Baltimore's pediatric asthma hospitalization rate is the highest in Maryland and one of the highest in the nation.[68]

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[65] Comm. on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 PEDIATRICS 799 (2001), https://bit.ly/2UxTW5y; Nicole Wetsman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention*, JUV. JUST. INFO. EXCHANGE (July 30, 2018), https://bit.ly/2Jq7Os7.

[66] MATTHEW C. AALSMA ET AL., PREVENTIVE CARE USE AMONG JUSTICE-INVOLVED AND NON-JUSTICE INVOLVED YOUTH 2, AM. ACADEMY OF PEDIATRICS (2017), https://pediatrics.aappublications.org/content/pediatrics/140/5/e20171107.full.pdf.

[67] DATA RESOURCE GUIDE FISCAL YEAR 2019, MARYLAND DEPARTMENT OF JUVENILE SERVICES (December 2019), 108, 144, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019_.pdf (last visited Mar. 29, 2020).

[68] *Asthma*, BALT. CITY HEALTH DEP'T, https://health.baltimorecity.gov/node/454 (last visited Mar. 27, 2020)

Finally, the harms of the pandemic in juvenile facilities will disproportionately impact Black, Latinx, and Native American youth. Black youth are 2.5 times more likely to be incarcerated than white youth in Maryland.[69] Studies have shown that youth are disproportionately affected by racial and ethnic health disparities; Black and Latinx suffer from most major chronic diseases, including asthma, diabetes, obesity, and cardiovascular issues, at higher rates than their white peers.[70] Underlying health issues like these, combined with poor health care access, high poverty rates, and other factors too often experienced by youth of color, all contribute to the substantial risk of serious harm posed by a potential COVID-19 outbreak in a juvenile facility. Indeed, experts point to each of these factors in predicting that Chicago, Detroit, and New Orleans may soon become "hot spots" for the virus.[71]

D. Each of the petitioners is at an intolerable risk of harm from the COVID-19 pandemic due to realities at their respective facilities or their health conditions.

Petitioners are confined in facilities across the state: all have experienced conditions incompatible with safe social distancing and sanitation. They come in close contact with other youth and staff in their rooms or cells, common spaces, and sometimes sleeping spaces. At the same time, they are facing a deprivation of programming,

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[69] ANNIE E. CASEY FOUND., KIDS COUNT DATA CTR., *Relative Rate Index at Key Contact Points in Maryland*, https://datacenter.kidscount.org/data/line/9014-relative-rate-index-at-key-contact-points?loc=22&loct=2#2/any/true/1766,1688,1646,1563,1447,1248,1090,1001/asc/5211,5212,6547/17982 (last visited Apr. 2, 2020).

[70] James H. Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, BIOMED RES. INT'L (2013), https://bit.ly/2UP2Ydb.

[71] Carlie Porterfield, *Why Chicago, Detroit and New Orleans Could Become the Next Coronavirus 'Hot Spots'*, FORBES (Mar. 27, 2020), https://bit.ly/2R0OQfG.

education, rehabilitation, and even contact with their families. All petitioners are exposed to their unit mates and staff in their common area and in shared bathrooms, and all have difficulty in maintaining six feet of space between individuals.

J.B., a 13-year-old Black, male resident of Baltimore City, MD, has been incarcerated at the Charles H. Hickey, Jr. School ("Hickey") for approximately two weeks. J.B. is assigned to a unit that currently houses nine boys and has two-three staff members working the unit at one time. All boys in J.B.'s unit share two dayrooms and a communal bathroom. Additionally, J.B. and the other boys on his unit are exposed to unsanitary conditions and have not been able to continue their education and meaningful contact with their families. Since the COVID-19 pandemic began, J.B. has not been able to reliably socially distance himself from the other boys and staff in his unit. [J.B. Decl.]

L.H., a Black resident of Charles County, MD, has been incarcerated at Cheltenham Youth Detention Center ("CYDC") for over a month. He is assigned to a unit with 6 other youth. L.H. shares a common room and one shower with those youth on his unit. Since the COVID-19 pandemic and related closures began, L.H. has not attended school at CYDC. He has continued to eat in the cafeteria and share the gym with other youth outside his unit without clear guidelines as to sanitation procedures. Although L.H. has not interacted directly with youth from other units at CYDC, he has been unable to socially distance himself from the other youth and the staff in his unit, and has not received instruction or materials other than hand sanitizer for increased caution in response to the pandemic. [L.H. Decl.]

L.S., a Latinx female resident of Prince George's County, MD, has been incarcerated at the Thomas J.S. Waxter's Children's Center ("Waxter's") for approximately five weeks. L.S. is assigned to a unit that currently houses 10 girls. All girls in L.S.'s unit share two dayrooms and a communal bathroom. Additionally, L.S. and the other girls on her unit are exposed to unsanitary conditions, and have not been able to continue their education and meaningful contact with their families. Since the COVID-19 pandemic began, L.S. has not been able to reliably socially distance herself from the other girls and staff in her unit, and has received insufficient instruction from and policy changes by staff at Waxter's to keep L.S. and other girls safe in response to the pandemic. [L.S. Decl.]

R.P., a Black teenager from Baltimore City, MD, has been incarcerated at Baltimore City Juvenile Justice Center ("BCJJC") for approximately five months. R.P. is currently housed in a unit with a total of 12 boys. While R.P. is assigned a single cell, the majority of his day is spent in the shared dayroom and indoor and outdoor recreation with no means of social distancing. His cell is equipped with a toilet and a sink but R.P. is not allowed to have soap in his room. Since the COVID-19 pandemic, R.P. has been given no instructions on social distancing, proper handwashing, and safety procedures. The only changes to policy and procedures have simply deprived R.P. of education, programming, and meaningful contact with family and minimally addressed medical and safety concerns. [R.P. Decl.]

E. Immediately and dramatically reducing the number of youths in confinement is the only way to prevent substantial harm to youth, staff, and the community.

The only viable way to protect youth – and the community – from COVID-19 is to release all youth who can be returned safely to their communities. [Ambrose Decl.] Attempts at protective measures within facilities have not proven successful; just two weeks after New York's Department of Correction implemented an "action plan" for sanitizing and maintaining social separation in jail facilities, infection rates at Rikers Island and other facilities skyrocketed.[72] The shared living space, poor ventilation, limited capacity of staff to engage in regular sanitizing and decontamination, and inadequate access to hygiene supplies for youth all contribute to these devastating outcomes. [Ambrose Decl.] Put simply, carceral and other congregate care settings are fundamentally incompatible with the hygiene and social distancing measures necessary to prevent spread of COVID-19. [Graves Decl.]

For these reasons, courts across the country have begun to limit populations in juvenile facilities. Hearings are underway in Chicago to release confined young people,[73] California's Governor issued an executive order halting the intake of youth into California's juvenile correctional settings and prisons,[74] the Clayton County, Georgia

[72] Ransom & Feuer, *supra* note 47.

[73] Annie Sweeney & Megan Crepeau, *Hearings Start on Releasing Some Youths from Cook County Juvenile Detention Over COVID-19 Fears*, CHI. TRIBUNE (Mar. 24, 2020), https://bit.ly/2yiPC16.

[74] GOV. GAVIN NEWSOM, STATE OF CAL., GOVERNOR NEWSOM ISSUES EXECUTIVE ORDER ON STATE PRISONS AND JUVENILE FACILITIES IN RESPONSE TO THE COVID-19 OUTBREAK (Mar. 24, 2020), https://www.gov.ca.gov/2020/03/24/governor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak/.

juvenile court issued an order limiting detention,[75] and Milwaukee, Wisconsin has held emergency hearings to release youth.[76]

Similarly, in the adult system, courts have begun to recognize the importance of immediately reducing jail and prison populations. The Supreme Courts of New Jersey, [77] Montana,[78] South Carolina,"[79] and Washington[80] have all issued orders to reduce jail populations. In an effort to prevent new admissions to county jails, the chief judge of Maine's trial courts, with the approval of the chief justice of the state's Supreme Court, vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to

[75] Judge Steven Teske (@scteskelaw), Twitter (Mar. 28, 2020, 9:32 AM), https://bit.ly/2w2nQ8m.

[76] Liz Robbins, *Coronavirus Prompts Urgent Calls for Minors in Detention to be Released*, APPEAL (Mar. 30, 2020), https://bit.ly/2xF9Txs.

[77] N.J. SUP. CT., CONSENT ORDER 4, *In re* Request to Commute or Suspend County Jail Sentences, No. 084230 (N.J. Mar. 22, 2020), https://www.njcourts.gov/notices/2020/n200323a.pdf?c=9cs. The order provided a mechanism for prosecutors, within 24 to 48 hours, objections to the release of specific prisoners who "would pose a significant risk to the safety of the inmate or the public," with such objections to be considered by judges or special masters appointed by the Supreme Court.

[78] LETTER FROM MONT. SUP. CT C.J. MIKE MCGRATH TO MONT. CTS. OF LIMITED JURISDICTION JUDGES (Mar. 20, 2020), https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333.

[79] MEM. FROM S.C. SUP. CT. C.J. DONALD W. BEATTY TO MAGISTRATES, MUNICIPAL JUDGES, & SUMMARY CT. STAFF (Mar. 16, 2020), https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2461.

[80] WASH. SUP. CT. AM. ORDER, *In re* Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency, No. 25700-B-607 (Wash. Mar. 20, 2020), http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf.

appear.[81] In Maryland[82] and Colorado,[83] executive officers have urged courts to take similar measures. In other jurisdictions, including Cuyahoga County, Ohio, [84] Los Angeles, California, [85] Alameda and Santa Clara, California,[86] Jefferson County, Colorado,[87] and Larimer, Colorado,[88] local authorities have acted to sharply reduce prison populations. The Maryland State Medical Society and sixteen public health experts from leading institutions across the country issued a letter more than two weeks ago directed at juvenile judges that "strongly recommend[s] that the Maryland DJS and Courts implement community-based alternatives to detention to alleviate potential exposure in detention facilities.[89]

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[81] *See* MAINE SUPER. CT., EMERGENCY ORDER VACATING WARRANTS FOR UNPAID FINES, UNPAID RESTITUTION, UNPAID COURT-APPOINTED COUNSEL FEES, AND OTHER CRIMINAL FEES (Me. Sup. Ct. Mar. 17, 2020), https://bit.ly/2JqgmiH.

[82] LETTER FROM BALT. CITY STATE'S ATT'Y MARILYN J. MOSBY TO GOV. LARRY HOGAN 2 (Mar. 23, 2020) (calling for wide-ranging releases "to reduce the prison population to enable social distancing and self-isolation, and to facilitate adequate health care resources inside these institutions"), https://bit.ly/39wEURH.

[83] GOV. JARED POLIS, GUIDANCE TO COUNTIES MUNICIPALITIES, LAW ENFORCEMENT AGENCIES, AND DETENTION CENTERS 5 (Mar. 24, 2020) (encouraging "the courts and law enforcement, together with prosecutors and defense attorneys, to work to evaluate the detention centers' populations and determine how to reduce the number of individuals in custody"), https://bit.ly/2X9tssP.

[84] Scott Noll & Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic,* ABC NEWS (Mar. 20, 2020), https://bit.ly/2xDntS6.

[85] Shelly Isheiwat, *L.A. County Releases 1,700 Inmates to Lessen Jail Population Due to COVID-19 Crisis*, FOX 11 (Mar. 25, 2020), https://bit.ly/39zz1Df.

[86] Robert Salonga, *Bay Area Courts, Authorities Ramp Up Release of Inmates to Stem COVID-19Rrisks in Jails*, MERCURY NEWS (Mar. 20, 2020), https://bayareane.ws/2yoQyRM.

[87] Elise Schmelzer, *Uneven Response to Coronavirus in Colorado Courts Leads to Confusion, Differing Outcomes for Defendants*, Denver Post (Mar. 21, 2020), https://dpo.st/2Uv15DA.

[88] Carina Julig, *Larimer County Inmate in Community Corrections Program Tests Positive for Coronavirus*, Denver Post (Mar. 22, 2020), https://dpo.st/2WYzKuU.

[89] MD. STATE MEDICAL SOC'Y, COVID-19 RISKS FOR DETAINED POPULATIONS IN MARYLAND FROM A GROUP OF CONCERNED SCIENTISTS, PHYSICIANS, AND PUBLIC HEALTH

Yet, youth across Maryland remain in juvenile detention and placement and adult jails. Maryland frequently places low risk youth. Two thirds of youth who are removed from their homes and committed to DJS are removed for misdemeanors or technical violations of probation [90] It is unconscionable to continue to confine young people who pose little to no risk to the public in dangerous carceral and other settings during this pandemic.

Officials in Maryland have just begun to address the pending crisis, and efforts so far are substantially inadequate to protect youth and staff from the imminent risk of serious harm. There is no statewide guidance requiring that the population of youth in confinement be reduced, or even reviewed. Indeed, county practice varies widely. For example, on March 18, division chiefs from the Office of the Public Defender, the Baltimore City State's Attorney's Office, and the Department of Juvenile Services emailed the Judge-in-Charge Circuit Court for Juvenile Causes for Baltimore City with a plan to advance the hearings of all detained youth to a single day in order to allow for magistrates and judges to consider release options before the pandemic worsened. The Court declined to take any action. In Anne Arundel County, the Office of Public Defender inquired of the juvenile judges and magistrates of plans to address challenges

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EXPERTS (Mar. 17, 2020), https://bit.ly/3buSdUa (last visited March 26, 2020). *See also* Vivienne Heines, *Speaking Out to Improve the Health of Inmates,* 95 AM. J. PUB HEALTH 1685, 1685 (2005) ("[O]ffenders have a fourfold greater prevalence of active tuberculosis, a nine- to tenfold greater prevalence of hepatitis C, and a fivefold greater prevalence of HIV.").

[90] ANNIE E. CASEY FOUND., DOORS TO DJS COMMITMENT: WHAT DRIVES JUVENILE CONFINEMENT IN MARYLAND (2015) (a quantitative analysis conducted at the request of the Maryland Department of Juvenile Services), https://djs.maryland.gov/Documents/publications/AECF%20Assessment%20of%20MD%20Dispositions%20-%20Updated%20March%2016%20-%20Final%20PDF.pdf.

posed by the pandemic, and similarly received no response. No large jurisdiction has issued an affirmative safety plan or briefed stakeholders on how their courts will expeditiously address risks to detained youth, especially as the length of confinement is considerably prolonged in light of this Court's emergency orders.

Even in counties where some reviews are occurring, courts lack substantive guidance on the operative standard for detention and placement during this crisis, leading to many youth unnecessarily remaining in detention and placement. The J.S Waxter Center for Children is at capacity, and across the state, jail and other congregate care facilities confine youth in significant numbers. Without immediate statewide actions, juvenile facilities, as well as adult jails housing youth throughout Maryland, are likely to become "petri dishes" spreading contagion around the state. Indeed, as court dates and trials have been postponed, youth continue to be added to the jail population.

ARGUMENT

A. This Court has the legal authority to order the requested relief.

This Court has jurisdiction to consider petitions for extraordinary relief in aid of its appellate jurisdiction. *State v. Manck*, 385 Md. 581 (2005); *Phillip Morris Inc. v. Angeletti*, 358 Md. 689, 712-13 (2000). Under extraordinary circumstances, this Court may issue a prerogative writ where the "interests of justice require [the Court] to do so in order to restrain a lower court from acting in excess of its jurisdiction, otherwise grossly exceeding its authority, or failing to act when it ought to act." *Forster v. Hargadon*, 398 Md. 298, 306 (2007) (citing *In re Petition for Writ of Prohibition*, 312 Md. 280, 307 (1988)).

In the alternative, pursuant to the supervisory powers granted to the Chief Judge of the Court of Appeals, Chief Judge Barbera has the authority to direct lower courts, in their administration of justice, to take immediate action and grant Petitioners relief. Md. Const. art. IV, § 18; Md. Rule 16-102; Md. Rule 16-105. Under Rule 16-105(a)(6), this exercise of power to supervise Administrative Judges in their implementation of "Continuity of Operations Plan(s)" will ensure that the imminent risks to Petitioners are addressed expeditiously in the midst of the current public health emergency.

Taken together or independently, both the extraordinary prerogative power and Rules 16-102 and 16-105 make this Court's exercise of authority appropriate in this instance. Although the power is rarely used, where the "interests of justice require" intervention against a lower court to "act when it ought to act," this Court may issue a prerogative writ or grant extraordinary relief. *Forster v. Hargadon*, 398 Md. 298, 306 (2007) (citing *In Re Petition for Writ of Prohibition*, 312 Md. 280, 307 (1988)). Unlike previous petitions where this Court has denied attempts to "short-cut" normal appellate procedures, this application for relief arises out of a truly rare event: a global public health emergency that has upended the judiciary's day-to-day functions, implicating petitioners' constitutional and statutory rights, as well as their health and safety. *Id.* No adequate legal remedy is available through the course of normal appellate proceedings to address the imminent risks that Petitioners currently face due to their ongoing confinement.

The Chief Judge of the Court of Appeals is empowered to direct Administrative Judges to fulfill their legal duties pursuant to Rules 16-102, 16-105 and 16-803. This

Court has already recognized through its three emergency orders of March 13, 16, and 25, 2020,[91] that the emergency presented by the virus warrants extraordinary steps to protect the public. Petitioners call upon the Court to further meet the unprecedented health challenge by directing each Circuit Court Administrative Judge to take reasonable and necessary measures to prevent widespread contagion. Petitioners call upon the Court to take this necessary action to protect not just the youth held within juvenile jail facilities, but staff, their families, their respective communities and ultimately the public health of all Maryland residents.

Time is of the essence. The risk to the general public of delaying action cannot be understated, however, Respondents have failed to address the safety of detained youth as a part of their "Continuity of Operations Plans" under Rule 16-803. To date, local jurisdictions throughout the state have relied on a piecemeal strategy without any guidance from this Court. The lack of an immediate, unified, and concerted effort by individual circuit courts to address the grave public health risks to Petitioners is both a "failure to act" and an abdication of their duties under Rules 16-105 and 16-803, requiring this Court's immediate intervention. *Forster v. Hargadon*, 398 Md. 298, 306

[91] C.J. MARY ELLEN BARBERA, MD. CT. OF APPEALS, ADMINISTRATIVE ORDER ON STATEWIDE CLOSING OF THE COURTS TO THE PUBLIC DUE TO THE COVID-19 EMERGENCY (Mar. 13, 2020), https://mdcourts.gov/sites/default/files/admin-orders/20200313statewideclosingofcourts.pdf; C.J. MARY ELLEN BARBERA, MD. CT. OF APPEALS, ADMINISTRATIVE ORDER ON STATEWIDE JUDICIARY RESTRICTED OPERATIONS DUE TO THE COVID-19 EMERGENCY (Mar. 16, 2020), https://mdcourts.gov/sites/default/files/admin-orders/20200316restrictedoperationsduetocovid19.pdf; C.J. MARY ELLEN BARBERA, MD. CT. OF APPEALS, ADMINISTRATIVE ORDER EXTENDING THE LENGTH OF STATEWIDE JUDICIARY RESTRICTED OPERATIONS DUE TO THE COVID-19 EMERGENCY (Mar. 25, 2020), https://mdcourts.gov/sites/default/files/admin-orders/20200325extendinglengthofrestrictedoperations.pdf

(2007) (citing *In Re Petition for Writ of Prohibition*, 312 Md. 280, 307 (1988)). Any future, individualized measures may be too late. There will be outbreaks in juvenile facilities, an inevitable community spread, increased suffering and death. With the courts closed and judicial processes ground to a halt across Maryland, and thousands of lives at risk, the dignity and integrity of the judicial system is likewise at risk.

B. This Court should exercise its authority to expeditiously grant relief and release youth from detention and correctional placements.

This Court's intervention is necessary to protect the health of youth confined in detention and correctional facilities, employees of those facilities, and all Marylanders. The State's affirmative obligation to protect the welfare of individuals in secure state custody empowers this Court to provide remedies that will prevent imminent harm to future health in the face of this global pandemic. This obligation is heightened for juvenile courts who are expressly mandated under the Juvenile Causes Act to "provide for the care, protection, and wholesome mental and physical development of children" who come under their jurisdiction. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02. Children confined under the Juveniles Causes Act must be provided "a safe, humane, and caring environment." MD. CODE ANN., CTS. & JUD. PROC. § 3–8A–02(a)(7). Under the present circumstances, providing a safe environment for the care and protection of children confined in juvenile jails is more urgent than ever. Safety requires immediate and comprehensive action to reduce the population of confined youth to reduce the inevitable transmission of COVID-19.

1. Subjecting youth to a likely outbreak of COVID-19 raises significant constitutional concerns.

Keeping anyone in a correctional setting during this pandemic raises serious constitutional concerns; for youth, the constitutional obligations are heightened. Over the course of the last half-century, the United States Supreme Court has repeatedly reaffirmed that "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). *See also J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) ("'[O]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults." (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). The basic principle that the "distinctive attributes of youth" require heightened Constitutional protections is widely recognized. *See*, *e.g.*, *Miller v. Alabama*, 567 U.S. 460, 471 (2012) ("[C]hildren are constitutionally different from adults for purposes of sentencing."); *J.D.B.*, 564 U.S. at 272 (explaining that children "'are more vulnerable or susceptible to . . . outside pressures' than adults," and adopting a "reasonable child" standard for determining the scope of *Miranda* protections) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (ellipses in original)); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009) (relying upon the unique vulnerability of adolescents, and their heightened expectation of privacy, to hold a suspicionless strip search unconstitutional in the school context); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (recognizing that exposure to obscenity may be harmful to minors even when it would not harm adults).

Especially for children in state custody, these constitutional principles are even more salient in light of the State's statutory obligations. Detained youth, who have been involuntarily removed from the custody of their parents and often have complex histories and needs, are entirely dependent upon the State of Maryland for their care, safety, and well-being. *See, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982) ("When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist."). For those held under the Juvenile Causes Act, the State has explicitly assumed custody to provide "a safe, humane, and caring environment." MD. CODE ANN., CTS. & JUD. PROC. § 3–8A–02(a)(7).

2. Failing to protect youth from the pandemic violates their right to due process.

Youth held pre-trial and those who have been adjudicated have a right to care and treatment under the Fourteenth Amendment. The State has a heightened duty to any pre-trial detainee, child or adult. In *Bell v. Wolfish*, the U.S. Supreme Court held that because they have not been "convicted of any crimes," pre-trial detainees cannot be subjected to conditions that "amount to punishment." 441 U.S. 520, 535, 541 (1979). *See also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015) (clarifying that the Fourteenth Amendment excessive force standard applicable to pre-trial detainees is indeed more protective than the Eighth Amendment standard); *Youngberg*, 457 U.S. at 321–22 (clarifying that involuntarily committed individuals "are entitled to more considerate treatment and conditions of confinement" than individuals post-conviction whose conditions of confinement are "designed to punish.")

Based upon the U.S. Supreme Court's reasoning in *Youngberg* and *Bell*, courts around the country have concluded that the Fourteenth Amendment also provides heightened protections to youth held post-adjudication. Like pre-trial detainees and involuntarily committed patients, youth in state custody due to a delinquency adjudication are not confined for punitive purposes. *See*, *e.g.*, *Vann v. Scott*, 467 F.2d 1235, 1239 (7th Cir. 1972) (applying the Fourteenth Amendment because the purpose of the "delinquent" classification is "to afford the State an adequate opportunity to rehabilitate and safeguard delinquent minors rather than to punish them"). *See also A.J. ex rel. L.B. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431–32 (9th Cir. 1987); *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1084–85 (11th Cir. 1986); *Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 795–96 (D. S.C. 1995).

Under the Fourteenth Amendment, youth must be protected from punishment and known risks of harm. *See*, *e.g.*, *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) ("the Fourteenth Amendment affords pretrial detainees protections 'at least as great as the Eighth Amendment protections available to a convicted prisoner'") (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (the government violates the Eighth Amendment when it crowds prisoners into cells with others who have "infectious maladies" (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Exposing youth to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

The Fourteenth Amendment also guarantees youth the right to treatment and rehabilitation. *See Youngberg*, 457 U.S. at 321–22; *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (youth have a right to "rehabilitative treatment"; because the State has assumed the role of the parent such treatment must be "what proper parental care would provide"). *See also C.P.X. v. Garcia*, No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that juvenile facility's failure to provide appropriate mental health care violates youth's substantive due process rights under the Fourteenth Amendment). Depriving youth of programming, education, and social interactions and keeping them isolated in conditions known to cause long-term psychological harm falls far short of this standard.

3. Failing to protect youth from the pandemic violates the Eighth Amendment.

Even under the Eighth Amendment, which applies to youth held in the adult system, the Constitutional standard must take into account the unique needs and developmental characteristics of youth. *See Miller*, 567 U.S. at 471 (striking down mandatory imposition of life without parole sentences for youth and noting that children are "constitutionally different" from adults under the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (striking down life without parole sentences for youth convicted of nonhomicide offenses because the Eighth Amendment requires consideration of children's unique characteristics); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (striking down the juvenile death penalty as unconstitutional because key defining characteristics distinguish youth from adults).

For anyone – youth or adult – conditions that pose an unreasonable risk of future harm violate the constitutional protections of the Eighth Amendment. *See Helling*, 509 U.S. at 33 ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition."). The Eighth Amendment requires that "inmates be furnished with . . . reasonable safety," and the Supreme Court has explicitly recognized that the risk of contracting "serious contagious diseases" may constitute such an "unsafe, life-threatening condition" that it threatens "reasonable safety." *Id.* at 33–34. *See also Hutto*, 437 U.S. at 682–85 (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke, contaminated water, use of chemical toilets, and paint toxins. *See Helling*, 509 U.S. at 35; *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001); *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995); *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325 (W.D.N.Y. 1999). A potential COVID-19 outbreak poses at least such a substantial risk of serious harm to every incarcerated person in the state.

Maryland courts have determined that DJS has a duty to provide appropriate medical care to youth in their custody. *State v. Kanavy*, 416 Md. 1, 9 (2010). The Court of Special Appeals in Maryland has recognized that, "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain," … proscribed by the Eighth Amendment." *State v. Johnson*, 108 Md. App. 54, 65–67 (1996). This Court's intervention here is particularly warranted here because of the

exigent public health crisis that impacts detained youth across the State, not just in a particular jurisdiction or case. Experts are urging this Court to act, and to act now to mitigate a swelling public health catastrophe.

RELIEF REQUESTED

For the reasons stated above, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter, or, pursuant to Rules 16-102, 16-105 and 16-803, instruct the Administrative Judge of each Circuit Court to take measures that both expeditiously reduce the population in all youth detention and correctional facilities, including youth under jurisdiction of the juvenile and criminal courts.

Petitioners therefore urge this Court to:

1) Reduce the number of youth currently detained in juvenile jails by:
    a) Directing these courts to vacate all existing detention orders and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
        i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19;
        ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.
        iii) All youth under the age of 15;
        iv) All youth detained based solely upon a finding of:
            (1) Failure to appear;
            (2) Failure to pay any outstanding fines or fees;

(3) Technical violations of GPS or Electronic Monitoring;

(4) Technical probation violations;

(5) Direct violation of probation where triggering offense is a misdemeanor;

(6) Facts sustained for a misdemeanor offense;

(7) Facts sustained of a non-violent offense; or

(8) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.

b) Conduct a review of all other youth currently held in jail facilities, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense cannot be a surrogate for such a risk.

2) Reduce the number of new youth entering juvenile detention or adult jail by:

a) Requiring juvenile courts and criminal courts considering pre-trial detention of "transfer-eligible case" (youth charged as adults pursuant to MD. CODE. ANN., CRIM. PROC. §§ 4-202, 2-202.1) to consider on the record the serious health risks posed by detention to the youth, other detained individuals, staff, and the community before ordering a youth detained, and to order a youth detained only if

their release would otherwise pose an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.

b) Prohibit detention and immediately order the release of any youth for:
   i) Failure to appear;
   ii) Failure to pay any outstanding fines or fees;
   iii) Inability to pay cash bail (for transfer-eligible case);
   iv) Technical violations of GPS or Electronic Monitoring;
   v) Technical probation violations;
   vi) Direct violation of probation where triggering offense is a misdemeanor offense;
   vii) Who is charged with a misdemeanor or non-violent felony; or
   viii) Any other reason other than that the youth poses an immediate, specific, articulable and substantiated risk of serious physical harm to another.
c) Suspending all conditions of probation for youth in the juvenile justice system and for youth in the adult system that:

i) Require the youth to violate WHO, CDC, and Maryland physical distancing or isolation requirements, including, but not limited to: in-person drug testing; employment or education requirements; and any in-person check-ins or meetings with probation officers or others; or

ii) Require monetary payments of any sort.

3) Reduce the number of youth currently placed in congregate care settings by:

a) Requiring juvenile courts to immediately conduct a review of all youth currently held in DJS-operated youth prisons, Silver Oak Academy, and out-of-state congregate care delinquent placements, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense alone cannot be a surrogate for such a risk.

b) Directing juvenile courts to order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:

i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and

ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.

c) Ordering the presumptive release, subject to c)iv below, to family or guardian, to a non-congregate care facility, or to medical care, of:

i) Youth under the age of 15;

ii) Youth who are within 3 months of completing their program or disposition;

iii) Youth whose release from a congregate care facility is conditioned upon completion of an educational, treatment, or other program that is suspended or delayed due to the current COVID-19 crisis;

iv) Ordering that any objection to the presumptive release of a particular youth must be lodged within 24 hours of this Court's order. In the event of a State's Attorney-initiated objection, the attorney for the youth must have the opportunity to respond to the objection prior to a judicial ruling.

4) Reduce the number of transfer-eligible Juveniles currently detained in adult jails by:

a) Requiring criminal courts to immediately conduct a review of all youth currently held in charged as adults, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of

physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.

b) Directing these courts to vacate all existing detention orders (including those in lieu of bail) and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:

i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and

ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.

iii) All youth detained based solely upon a finding of:

(1) Failure to appear;

(2) Failure to pay any outstanding fines or fees;

(3) Inability to pay cash bail;

(4) Technical probation violations;

(5) A misdemeanor;

(6) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or

(7) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.

5) Take the following additional steps to effectuate and ensure the safety of all youth:

a) Direct juvenile and criminal courts to ensure that all released youth have a plan in place to meet their basic food, housing, and health needs;

b) Require facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;

c) Require facilities housing youth to provide free and regular access to phones and video visitation with family and to online or other educational, physical or mental health services and opportunities; and

d) Administer and monitor compliance with this order by directing the Administrative Judge of each Circuit Court, or such official(s) designated by each Administrative Judge, to provide compliance reports to Your Honor and petitioners' counsel in this case, in a manner, and at a time interval, directed by this Court.

CONCLUSION

For the foregoing reasons, the Court should exercise its jurisdiction and grant the relief Petitioners request.

Dated: April 3, 2020

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 11,460 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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Deborah St. Jean

CERTIFICATE OF SERVICE

I, Deborah St. Jean, hereby certify that on this the 3rd day of April, 2020, a copy of this Brief of Petitioners was emailed to Michele A. McDonald, Assistant Attorney General, Chief Counsel, Courts and Judicial Affairs Division at mmcdonald@oag.state.md.us and the Office of the Attorney General at civil_service@oag.state.md.us.

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DECLARATION OF ANNE MARIE AMBROSE, PHYLLIS BECKER, SUSAN BURKE, GLADYS CARRION, PATRICK MCCARTHY, DAVID MUHAMMAD, MARC SCHINDLER, AND VINCENT SCHIRALDI

We declare as follows:

1. We are former leaders of youth justice agencies in multiple states across the country. As members of the Steering Committee for Youth Correctional Leaders for Justice (YCLJ), we serve as a resource to the youth corrections field, engaging in an array of technical assistance, guidance, research and policy activities in order to advance reform. Earlier this month, YCLJ issued *Recommendations for Youth Justice Systems During the COVID-19 Emergency* signed on to by 32 current and former youth correctional administrators throughout the country recommending measures youth justice systems could take to avoid the inadvertent spread of the coronavirus into and out from youth correctional facilities.[1]

2. Anne Marie Ambrose is the Managing Director for the Technical Assistance Unit for Systems Improvement at Casey Family Programs. She was previously the Commissioner of Human Services for the City of Philadelphia with responsibility for child welfare and juvenile justice, and Bureau Director for child welfare and juvenile justice for the Commonwealth of Pennsylvania's Department of Public Welfare.

3. Phyllis Becker is the former director of the Missouri Division of Youth Services.

4. Susan Burke is the former director of the Utah Division of Juvenile Justice Services.

5. Gladys Carrión is the co-chair of Youth Correctional Leaders for Justice, former Commissioner of New York State's Office of Children and Family Services and former Commissioner of New York City's Administration for Children's Services.

6. Patrick McCarthy is a Stoneleigh Fellow and Research Scholar with the Columbia University Justice Lab, former director of the

[1] Retrieved on 3/30/20 from https://ycl.org/covid19statement

Delaware Division of Youth Rehabilitative Services and former President and CEO of the Annie E. Casey Foundation.

7. David Muhammad is the Executive Director of the National Institute for Criminal Justice Reform, he is the former Chief Probation Officer of Alameda County (in California) and the former Deputy Commissioner of the New York City Department of Probation.

8. Marc Schindler is Executive Director of the Justice Policy Institute and former interim director of Washington, D.C.'s Department of Youth Rehabilitation Services.

9. Vincent Schiraldi is co-director of the Columbia University Justice Lab, co-chair of Youth Correctional Leaders for Justice, former director of Washington, D.C.'s Department of Youth Rehabilitation Services, and former Commissioner of New York City Probation.

10. COVID-19 is a serious, highly contagious disease that is particularly likely to spread in juvenile detention and correctional settings. According to the most recently available information, COVID-19 cases have been confirmed for over 200 incarcerated individuals and over 100 facility staff members in adult and juvenile correctional settings across the United States.[2] Incarcerated individuals have reported confirmed cases of COVID or COVID-like symptoms in 25 states.[3]

11. Worldwide, catastrophic COVID-19 outbreaks have already occurred. Data released on February 29 showed that almost half (233 out of 565) of new infection cases out of Wuhan, China were inmates in the city's prison system.[4] Iran recently released 54,000 prisoners to address the pandemic.[5] The spread of the disease on

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[2] Ned Parker et al., *Spread of Coronavirus accelerates in U.S. Prisons and Jails* (March 28, 2020), *available at* https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-us-jails-and-prisons-idUSKBN21F0TM.

[3] COVID Behind Bars https//www.google.com/maps/d/u/0/viewer?mid=1cAMo2yrrmxupUZ_IJVBuuZO4UizfVxm8&ll=40.09352283139395%2C-86.87937406451238&z=4.

[4] ZI Yang, *Cracks in the System: COVID-19 in Chinese Prisons,* The Diplomat (March 9, 2020).

[5] BBC News, *Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread* https://www.bbc.com/news/world-middle-east-51723398 (March 3, 2020).

cruise ships, churches, nursing homes and in malls further highlights the dangers of keeping multiple people enclosed in a confined space.

12. Youth in juvenile justice facilities, including detention centers, correctional placements, group homes, and private facilities, live, eat, learn, and spend almost all of their time in close contact with each other. These facilities are, in many respects, designed for exactly the opposite of the physical distancing measures required by this pandemic. A myriad of living arrangements can be found in youth justice facilities, from single cells or rooms to double celling or bunking to large dorm-type sleeping arrangements, with a dozen or more youth sleeping in one large room in close quarters. Facilities generally include shared bathroom and showering facilities, dining facilities, and day rooms. During the day, youth are mostly "locked out" of their cells or rooms, forcing them into congregate environments. Programs and education, necessary for rehabilitation and the safe and secure operation of such facilities, almost always occur in groups and in spaces that rarely allow for distancing. Of course, in facilities in which youth sleep in dormitory settings, they are almost constantly congregated with one another.

13. Youth justice facilities do not have the capacity to ensure the hygiene and sanitizing necessary to protect from the spread of COVID-19. In many cases, youth do not even have regular access to soap and water that would allow them to wash hands when they sneeze, cough, prepare to eat, touch an object, or go from one room to another. Youth typically do not have access to hand sanitizer. Ventilation is often inadequate. And the facilities are not staffed sufficiently to ensure that all surfaces will be regularly cleaned and disinfected.

14. Youth justice facilities typically lack the medical staffing, and often the physical capacity, to hold young people in a safe medical quarantine. Relying on nearby hospitals risks overwhelming local, often rural, health systems; failure to properly treat infected youth risks facility-wide exposure.

15. Youth in the justice system tend to be less healthy than their peers. They have more gaps in Medicaid enrollment and higher rates of

asthma and other medical vulnerabilities[6] that can increase the severity of COVID-19.[7]

16. Failing to release youth and properly address the justice system's role in the spread of and exposure to COVID-19 will disparately impact Black, Latino, and Indigenous youth. Research consistently shows racial disparities in rates of incarceration. For example, in 2017, Black and native youth were incarcerated at 5.8 and 2.5 times the rate of white youth.[8] In 2015, Latino youth were 1.7 times more likely to be incarcerated than white youth.[9] Research has shown that these disparities reflect differential treatment from our justice system rather than differing youth behaviors.[10]

17. Youth correctional facilities are often short-staffed and generally staffed in shifts, with program, educational, health/mental health, and custody staff frequently rotating through these facilities three times a day, seven days a week. Like youth, these staff will have a very difficult time maintaining physical distance from the youth, risking carrying the virus into, or out from, the facility from their home communities.

18. Once they, their families and youth in the facilities begin to fall ill or test positive, staff will likely begin calling in sick, either because

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[6] Matthew C. Aalsma et al., Preventive Care Use Among Justice-Involved and Non–Justice-Involved Youth, Pediatrics (November, 2017).
[7] Centers for Disease Control, *What to Know About Asthma and COVID-19,* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html.
[8] Sickmund, Melissa, T. J. Sladky, W. Kang, and Charles Puzzanchera, Easy Access to the Census of Juveniles in Residential Placement, Bureau of Justice Statistics. Washington, DC: U.S. Department of Justice (2019), *available at* https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Facility_Operation.asp?state=59&topic=State_Facility_Operation&year=2017&percent=rate; Puzzanchaera, Charles, Sladky, A., and Kang, W., "Easy Access to Juvenile Populations: 1990-2018." Office of Juvenile Justice and Delinquency Prevention. Washington, DC: U.S. Department of Justice (2019), available at https://www.ojjdp.gov/ojstatbb/ezapop/asp/profile_selection.asp.
[9] The Sentencing Project, *Still Increase in Disparities in Juvenile Justice,* 2017 *available at* https://www.sentencingproject.org/news/still-increase-racial-disparities-juvenile-justice/.
[10] Pope, Carl E., Rick Lovell, and Heidi M. Hsia. *Disproportionate Minority Confinement: A Review of the Research Literature from 1989 Through 2001.* Juvenile Justice Clearinghouse/National Criminal Justice Reference Service. Rockville, MD: Office of Juvenile Justice and Delinquency Prevention (2002), *available at* https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=198428.

they or their family members are ill, or because they fear contracting the virus in a closed setting. Staff will not only be required to quarantine themselves in the event of exposure, but the exposure or contagion of family members may also impede them from continuing to work. This could also exacerbate staff turnover and make staff recruitment more difficult. This, in turn, can thin already stretched staffing complements and endanger remaining youth and staff.

19. Combined, these staff disruptions will inevitably lead to diminished programming for youth, including education or special education, individual or group counseling and other rehabilitative programs. Reduced programming will likely lead to increased depression and frustration of residents. It may also lead to behavior problems in the facility, resulting in decreased safety for both youth and staff.

20. Facilities attempting to comply with physical distancing recommendations to prevent the spread of COVID-19 will, therefore, likely rely instead on isolation of individual youth. Withdrawing visitation, reducing or eliminating programs, reducing staffing complements and increasing isolation will likely exacerbate facility tension, mental illness and histories of trauma. This, in turn, can dramatically increase the risk of self-harm and is associated with risks lasting into adulthood, including poorer overall general health and increased incidence of suicide.[11]

21. Given the physical and staffing constraints of youth justice facilities, the only appropriate way for states to respond to the COVID-19 pandemic is to close intake to detention and placement facilities for all but the most serious offending youth and release as many youth as safely possible back to their homes. Youth systems should quickly develop and implement individualized transition and aftercare plans for those currently in confinement; and policymakers should augment resources for community programming and access to health care to assure that releases are carried out in a safe manner. Families must be provided the necessary financial resources to meet the basic needs of their child,

[11] Casiano, H, Katz, LY, Globerman, D, Sareen, J. (2013). Suicide and deliberate self-injurious behavior in juvenile correctional facilities: A review. Journal of Canadian Child and Adolescent Psychiatry, 22(2), 118–124.

including adequate housing, food, access to educational supports, and health care.

22. Shifting youth from placement to home is possible, practical, and can be done safely. In New York City and Washington D.C., the vast majority of youth were safely moved out of incarceration and into community programs while ensuring public safety.[12] This is true throughout the country; in the overwhelming majority of states, youth incarceration has declined by double-digits. Nationally, from 1997-2017, there has been a 59 percent decline in youth incarceration during which time youth crime has continued to plummet nationally by 71 percent. Because youth incarceration actually worsens youth behavior, prioritizing community-based solutions whenever possible is not only medically-appropriate, but also better for community safety.[13]

23. For those youth who cannot be safely released back to the community, every effort must be made to ensure that youth and staff inside facilities stay safe and healthy. To that end, facilities must fully comply with all guidance currently being issued by public health officials, including maintaining social distance, increased handwashing, and frequent disinfecting and sanitization of common areas. Additionally, facilities must support youth during this unprecedented time by providing access to technology to facilitate communications with their families and loved ones, as well as distance learning and other activities aimed at supporting rehabilitation. Youth should have regular access to health and mental health care while in custody during this pandemic period to ensure they can get needed medications and support in a timely manner. Finally, under no circumstances should the current pandemic justify the use of punitive measures, such as room confinement or isolation.

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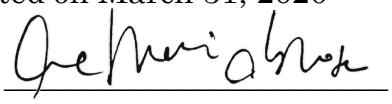
[12] Center for Children's Law and Policy, Implementing New York's Close to Home Initiative: A New Model for Youth Justice (2018) available at http://www.cclp.org/wp-content/uploads/2018/02/Close-to-Home-Implementation-Report-Final.pdf; Liz Ryan and Marc Schinder, Notorious to Notable: the Crucial Role of the Philanthropic Community in Transforming the Juvenile Justice System in Washington, D.C, https://www.yumpu.com/en/document/read/41029454/notorious-to-notable.

[13] Anna Aizer, Joseph J. Doyle, Jr., Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges , *The Quarterly Journal of Economics*, Volume 130, Issue 2, May 2015, Pages 759–803, https://doi.org/10.1093/qje/qjv003.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2020



Anne Marie Ambrose
Phyllis Becker
Susan Burke
Gladys Carrion
Patrick McCarthy
David Muhammad
Marc Schindler
Vincent Schiraldi

DECLARATION OF DR. JULIE DEAUN GRAVES

I, Dr. Julie DeAun Graves, declare as follows:

1. My name is Julie DeAun Graves. I am a physician licensed to practice medicine in the states of Florida, Maryland, New Jersey, Texas, Virginia, Wisconsin, and in the District of Columbia. I am currently working in family medicine and public health private practice as the Associate Director of Clinical Services at Nurx. I have been certified by the American Board of Family Medicine since 1989.

2. I am a public health physician, previously serving as Regional Medical Director for the Texas Department of State Health Services for the Houston region, as Medical Services Coordinator for the Texas Department of Aging and Disability Services, and as a medical consultant to the Texas Medical Board. I managed the H1N1 influenza outbreak for the Texas State Supported Living Centers and oversaw public health efforts for the Houston region (population seven million) for Ebola virus, Zika virus, West Nile virus, highly pathogenic avian influenza, tuberculosis outbreaks, and natural disasters.

3. I obtained my medical degree and completed a surgical internship then family medicine residency at the University of Texas Southwestern Medical School in Dallas, Texas, then completed a fellowship in faculty development at the McLennan County Medical Education and Research Foundation in Waco, Texas. I earned a Master's degree in Public Health and a Doctor of Philosophy in Management, Policy, and Statistics at the University of Texas School of Public Health. I have practiced family medicine and public health since 1989, and in 2018-2019 I was Associate Professor and Vice-Chair for Education at

Georgetown University School of Medicine. At Nurx I care for patients seeking contraception, HIV (human immunodeficiency virus) prevention, sexually transmitted infection diagnosis and treatment, cervical cancer screening, and coronavirus (SARS-CoV-2, the virus that causes COVID-19) testing and treatment. I am a former member of the Public Health Committee of the Texas Medical Association and a former member of the Executive Board and current Governing Councilor of the American Public Health Association.

COVID-19

4. COVID-19 is an illness caused by the SARS-CoV-2 virus, which is a novel coronavirus that was first detected in humans during the outbreak (now a pandemic) we are experiencing now. The Centers for Disease Control and Prevention reports that as of March 31, 2020 at 1:30pm there were 175,067 cases reported in the United States, with cases reported in every state, and 3,415 reported deaths so far. See www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6. On March 18, 2020, there were 7,038 cases reported and 150 deaths.

5. The United States is in the early stages of the pandemic, and because there has been insufficient testing for cases, the reported cases numbers are lower than actual cases, despite the high probability that there are many more infected individuals in the population. The spread of the virus is faster and more dangerous when people are in close quarters. People with health conditions such as diabetes, asthma, emphysema, heart disease, kidney disease, pregnancy, diabetes, cancer, HIV, and autoimmune diseases such as lupus and rheumatoid arthritis are at higher risk for severe illness, complications, and death

from COVID-19. People over age 60 have higher death rates, but severe cases of illness and deaths are reported in people of all ages, including children. The ratio of cases of COVID-19 to deaths from this illness is much higher than for other contagious diseases such as influenza. The SARS-CoV-2 virus damages the lung tissue, which means that even those who recover need prolonged medical care and rehabilitation. They are likely to have permanent disability from loss of lung capacity. The heart itself can be infected, and kidneys and the nervous system can also be impacted and damaged permanently.

6. There is no vaccine and no treatment for COVID-19. We only have prevention as a tool to stop the pandemic. If people remain in congregate settings, most of them plus the staff who work with them will become infected, and many will die or have permanent disability. COVID-19 is transmitted from person to person by breathing in expired air that contains the droplets an infected person has coughed or the virus they have shed, or by touching a surface with the virus on it, unless there is full personal protective equipment: mask, gloves, gown, plus thorough hand washing before putting on the equipment and after removing it. The only way to avoid transmission is for people to distance themselves at least six feet from others (commonly referred to as "social distancing" or "physical distancing"). People should not be in large buildings full of many people, and people must practice frequent and thorough hand washing with adequate soap and water. If we do not implement these two steps – physical distancing and hand washing – the pandemic will only continue to spread and the number of deaths will continue to increase.

7. There is a national shortage of COVID-19 tests. Medical providers cannot test everyone who they believe should be tested, and so are

presuming that people with a certain set of symptoms are positive. This is an appropriate and common situation with new infectious diseases and is a widely recognized strategy in public health disease control. Individuals and communities should not rely solely on the criteria of a positive COVID-19 test to implement precautions or quarantine symptomatic persons. A public health response requiring widespread preventive measure of physical distancing and appropriate hand washing is our only tool to slow the spread of the virus.

8. While children may make up a minority of COVID-19 patients, children have died from COVID-19 and have also experienced serious medical complications that required ventilators and extended hospitalization. Additionally, children with pre-existing medical conditions such as asthma and diabetes are at heighted risk for serious complications, and the Government's brief does not identify any special measures that are being taken to protect these children.

9. There is no question that requiring children to remain detained in congregate care facilities is more dangerous than the travel required to release children to their homes. While there is level of risk in traveling at this time, the risk of exposure in congregate care environments is much higher. All of the risks of exposure during travel – such as persons coming within six feet and transmitting the virus through respiratory droplets – also apply to congregate care environments, because multiple staff members are constantly entering and exiting the facility and there is potential for them to expose children to the virus. These children are at risk every single time a staff member or visitor walks into the facility – because any one of them could be an asymptomatic carrier of COVID-19. Even if juvenile and criminal justice facilities faithfully adhere to screening protocols to minimize

the risk of transmission, there is still the risk that a staff member is an asymptomatic carrier. Children will be significantly safer in a home environment, where they can truly avoid public spaces and practice appropriate social distancing.

10. Many facilities are quarantining youth who exhibit coughing, fever, or difficulty breathing. This response is too late – if a child is not quarantined when there is an initial exposure, then there is much higher likelihood that the virus spreads around the facility, especially when everyone is in such close contact and social distancing is not possible.

CDC COVID-19 Guidance for Correctional and Detention Facilities

11. I have reviewed the CDC "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (CDC Detention Facility Guidance) issued March 23, 2020, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html. The CDC Detention Facility Guidance highlight many ways in which people in detention facilities and congregate environments are at a higher risk of contracting COVID-19.

12. The CDC Detention Facility Guidance acknowledges that "(i)ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced." Further, it states that "(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, and to outside medical visits; and visits from family, legal representatives, and other community members."

13. The CDC Detention Facility Guidance instructs facilities to "implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally six feet between all individuals, regardless of the presence of symptoms," but acknowledges that "not all strategies will be feasible in all facilities." Social distancing does not work when it is only followed part of the time. The CDC's "Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19)" issued on March 7, 2020 states that "(d)ata are insufficient to precisely define the duration of time that constitutes a prolonged exposure. However, until more is known about transmission risks, it is reasonable to consider an exposure greater than a few minutes as a prolonged exposure. Brief interactions are less likely to result in transmission; however, clinical symptoms of the patient and type of interaction (e.g., did the patient cough directly into the face of the HCP) remain important" and "(e)xamples of brief interactions include: briefly entering the patient room without having direct contact with the patient or their secretions/excretions, brief conversation at a triage desk with a patient who was not wearing a facemask." Repeated interactions, even brief, that occur throughout the day in these facilities, are each an independent opportunity for transmission of infection. Because it is not known whether people who have recovered from infection develop immunity to subsequent infections with COVID-19, and because transmission may occur when the infected person has no symptoms, each interaction between a staff member and a detainee

and each interaction between two individual detainees or two individual staff members is an independent opportunity with the same risk of infection. The risks are additive with each interaction.

14. The CDC Detention Facility Guidance states that "The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent hand washing) may be limited and is determined by the supplies provided in the facility and by security considerations." Facilities are instructed to provide no-cost access to liquid soap (or bar soap), running water, and hand drying supplies.

15. Detention facilities are instructed to "(o)ffer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza seasons." Preventing influenza cases in these facilities can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.

16. Even if all of the recommendations made in the CDC Detention Facility Guidance are followed, the conditions of detention are such that children in detention and correctional settings would still be at high risk of contracting COVID-19. Because this virus is transmitted through droplets, through the air, and on surfaces, and because people who do not have symptoms but are infected transmit the virus to others, even one infected person in a facility, either a detainee or a staff member, can infect the majority of people in the facility. This is worsened by the crowded conditions in the facilities.

17. If we are to contain the spread of the COVID-19 virus, we must relocate as many people as possible out of congregate settings. If we prevent people from practicing adequate physical distancing from

others and the other steps outlined above, institutional centers will become clusters in which high percentages of persons are infected with COVID-19. Such clusters not only endanger those who are immediately infected, but the health of those residing in the communities in which congregate facilities are located.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 31, 2020 in North Bay Village, Florida.

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Julie DeAun Graves

DECLARATION OF DR. CRAIG W. HANEY, PHD

I, Craig W. Haney, declare as follows:

1. I am a Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz in Santa Cruz, California, where I engage in research applying social psychological principles to legal settings, including the assessment of the psychological effects of living and working in institutional environments, especially the psychological effects of incarceration. I was a co-founder and co-director of the UC Criminal Justice & Health Consortium – a collaborative effort of researchers, experts and advocates from across the University of California system working to bring evidence-based health and healthcare solutions to criminal justice reform in California and nationwide.

2. I also have served as a consultant to numerous governmental, law enforcement, and legal agencies and organizations on jail- and prison-related issues. Those agencies and organizations include the Palo Alto Police Department, various California Legislative Select Committees, the National Science Foundation, the American Association for the Advancement of Science, the United States Department of Justice, the Department of Health and Human Services (HHS), the Department of Homeland Security, and the White House (under both the Clinton and Obama Administrations). In 2012, I testified as an expert witness before the Judiciary Committee of the United States Senate in a hearing that focused on the use and effects of solitary confinement and was appointed as a member of a National Academy of Sciences committee analyzing the causes and consequences of high rates of incarceration in the United States. My research, writing, and testimony have been cited by state courts, including the California Supreme Court, and by Federal District Courts, Circuit Courts of Appeal, and the United States Supreme Court.[1]

3. COVID-19 is a serious, highly contagious disease and has reached pandemic status. At least 693,224 people around the world have

[1] For example, see *Brown v. Plata,* 563 U.S. 493 (2011).

received confirmed diagnoses of COVID-19 as of March 30, 2020,[2] including 140,904people in the United States.[3] At least 33,106 people have died globally as a result of COVID-19 as of March 30, 2020,[4] including 2,405 in the United States.[5] These numbers are predicted by health officials to increase, perhaps exponentially. For example, the CDC has estimated that as many as 214 million people may eventually be infected in the United States, and that as many as 21 million could require hospitalization.[6]

4. The COVID-19 Pandemic poses such a threat to the public health and safety in the Commonwealth of Pennsylvania that, on March 6, 2020, Governor Tom Wolf declared a statewide State of Emergency, on March 13, he ordered all schools to close,[7] and on March 20, 2020, he ordered all Pennsylvania businesses that are not life-sustaining to close.[8] He has also issued "stay at home" orders in multiple counties to require residents to to stay home or at their place of residence except to facilitate certain authorized necessary activities..[9]

5. COVID-19 is a novel virus. At present there is no vaccine and no cure for COVID-19. No one has immunity. Currently, the most effective way to control the virus is to use preventive strategies, including social distancing, in order to maximize our healthcare capacity to treat a manageable number of patients. Otherwise,

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[2] World Health Organization, *Coronavirus disease (COVID-19) Outbreak*, https://www.who.int/emergencies/diseases/novel-coronavirus-2019

[3] Center for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/c.ases-updates/cases-in-us.html.

[4] *Supra,* fn. 2.

[5] *Supra,* fn. 3.

[6] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths,* N.Y. TIMES (Mar. 18, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html.

[7] https://www.governor.pa.gov/newsroom/governor-wolf-announces-closure-of-pennsylvania-schools/
[8] https://www.pa.gov/guides/responding-to-covid-19/
[9] https://www.nbcphiladelphia.com/news/coronavirus/pennsylvania-extends-coronavirus-school-business-closures-indefinitely/2346050/

healthcare resources will be overwhelmed and the Pandemic will certainly be exacerbated.

6. Social distancing presents serious challenges for everyone in every part of our society, but nowhere more than in penal institutions, where living conditions are unusually sparse, prisoners necessarily live in unescapably close quarters, and have unavoidable contact with one another. Juvenile institutions are no exception to this general institutional rule.

7. Moreover, jails and prisons are already extremely stressful environments for adult prisoners and for children who are confined in secure facilities.[10] Research has shown that these environments are psychologically and medically harmful in their own right, leaving formerly incarcerated persons with higher rates of certain kinds of psychiatric and medical problems.[11] In fact, incarceration

[10] Much of this evidence is summarized in several book-length treatments of the topic. For example, see: Haney, C., *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. Washington, DC: American Psychological Association (2006); Liebling, A., & Maruna, S. (Eds.), *The Effects of Imprisonment*. Cullompton, UK: Willan (2005); and National Research Council (2014). *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press. In addition, there are numerous empirical studies and published reviews of the available literature. For example, see: Haney, C., Prison effects in the age of mass incarceration. *Prison Journal*, *92*, 1-24 (2012); Johns, D., Confronting the disabling effects of imprisonment: Toward prehabilitation. Social Justice, 45(1), 27-55.

[11] E.g., see: Schnittaker, J. (2014). The psychological dimensions and the social consequences of incarceration. *Annals of the American Association of Political and Social Science*, *651*, 122-138; Turney, K., Wildeman, C., & Schnittker, J., As fathers and felons: Explaining the effects of current and recent incarceration on major depression. *Journal of Health and Social Behaviour*, *53(4),* 465-481 (2012). See, also: Listwan, S., Colvin, M., Hanley, D., & Flannery, D., Victimization, social support, and psychological well-being: A study of recently released prisoners. *Criminal Justice and Behavior*, *37(10),* 1140-1159 (2010).

leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).[12]

8. The COVID-19 Pandemic presents penal institutions with an enormous challenge that they are ill-equipped to handle. Juvenile facilities in particular lack the operational capacity to address the needs of youth in custody in a crisis of this magnitude. They do not have the resources needed to provide youth with ready access to cleaning and sanitation supplies, or to ensure that staff sanitize all potentially contaminated surfaces during the day. Most lack the capacity to provide more than minimal emergency mental health or medical care. Yet the demand for such services in this crisis will grow, stretching already scarce treatment resources even further. In addition, juvenile facilities typically provide children in custody with very limited access to telephonic or other forms of remote visiting. However, these ways of connecting to others will become critically important if contact visiting is limited or eliminated. Furthermore, juvenile facilities cannot readily protect youth from contact with staff who regularly enter facilities after having been in the outside world. Staff members are at risk of contracting COVID-19 and then transmitting it to both youth and other staff inside.

9. Penal settings have limited options to implement the social distancing that is now required in response the COVID-19 Pandemic. It is very likely that many of them will resort to the use of solitary confinement. Indeed, I have seen precisely this form of social distancing utilized as a matter of course in numerous correctional institutions throughout the country, where medical quarantines are conducted in prison infirmaries or other housing units by effectively placing prisoners in solitary confinement.

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[12] E.g., see: Binswanger, I., Stern, M., Deyo, R., et al., Release from prison: A high risk of death for former inmates. *New England Journal of Medicine*, *356*, 157-165; Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behavior*, *49(1),* 56-71; and Massolglia, M., & Remster, B., Linkages Between Incarceration and Health. *Public Health Reports*, *134*(Supplement 1), 85-145 (2019); and Patterson, E. (2013). The dose-response of time served in prison on mortality: New York state, 1989-2003. *American Journal of Public Health*, *103(3),* 523-528.

10. Yet the experience of solitary confinement inflicts an additional set of very serious harmful effects that significantly undermine mental and physical health. The scientific literature on the harmfulness of solitary confinement in jails and prisons is now widely accepted and the research findings are consistent and alarming.[13] This research has led a number of professional mental and physical health-related, legal, human rights, and even correctional organizations to call for severe limitations on the degree to which solitary confinement is employed—specifically by significantly limiting when, for how long, and on whom it can be imposed.[14]

11. Although there is some variation in the specific recommendations, virtually all of them call for the drastic reduction or outright elimination of the use of solitary confinement with juveniles.[15] That is, because of the categorically greater vulnerability of children to

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[13] These many studies have been carefully reviewed in a number of publications. For example, see: K. Cloyes, D. Lovell, D. Allen & L. Rhodes, Assessment of psychosocial impairment in a supermaximum security unit sample. *Criminal Justice and Behavior*, *33*, 760-781 (2006); S. Grassian, Psychiatric effects of solitary confinement. *Washington University Journal of Law & Policy*, *22*, 325-383 (2006); C. Haney, Restricting the use of solitary confinement. *Annual Review of Criminology*, *1*, 285-310 (2018); C. Haney & M. Lynch, Regulating prisons of the future: The psychological consequences of solitary and supermax confinement. *New York Review of Law & Social Change*, *23*, 477-570 (1997); and P. Smith, The effects of solitary confinement on prison inmates: A brief history and review of the literature, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441-528). *Volume 34*. Chicago: University of Chicago Press (2006).

[14] For a list of these organizations and their specific recommendations, see: Haney, C. (2018) Restricting the use of solitary confinement. *Annual Review of Criminology*, *1*, 285-310; Haney, C., Ahalt, C., & Williams, B., et al. (2020). Consensus statement of the Santa Cruz summit on solitary confinement. *Northwestern Law Review*, in press.

[15] For example, in December 2015, the U.N. General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules") that, among other things, prohibited the use of solitary confinement for juveniles. See: Commission on Crime Prevention and Criminal Justice. 2015. *United Nations standard minimum rules for the treatment of prisoners.* New York: UN Economic and Social Council.

harsh conditions of confinement and the potentially irreversible mental and physical harm that they are more likely to experience, solitary confinement should rarely if ever be imposed on them. In fact, Pennsylvania regulations preclude staff from placing a child alone in a cell or room except under very limited circumstances and even then with strict time limitations, measured in hours, not days.[16] These severe limitations on the use of solitary confinement with children are critically important to acknowledge and adhere to in the face of the COVID-19 Pandemic and in the context of the social distancing steps that juvenile institutions are likely to engage in.

12. The COVID-19 Pandemic will be a traumatic experience for many, especially for children. In the case of children housed in juvenile institutions, this trauma will affect an already highly traumatized population. In addition to the traumatic effects of incarceration itself for children,[17] and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood "risk factors" or "adverse childhood experiences."[18] Thus, juvenile incarceration represents a form of "retraumatization" for many of them. And even this retraumatization can be made worse, for example by placement in solitary confinement. It is thus hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.

13. Indeed, the United States Center for Disease Control and Prevention (CDC) has acknowledged that the COVID-19 Pandemic poses a threat the mental as well as physical health of the nation,

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[16] 55 PA. Code §§ 3800.202, 3800.206 3800.273.

[17] For example, see: Sue Burrell, Trauma and the Environment of Care in Juvenile Institutions, *National Child Traumatic Stress Network* (2013).

[18] For example, see: Carly Dierkhising, Susan Ko, Briana Woods-Jaeger, et al., Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology*, *4*, (2013)

especially to its children and teens.[19] In order to mitigate the stressors created by the COVID-19 Pandemic, the CDC has recommended that parents and other caregivers undertake the following practices to support their children:[20]

- Take time to talk with your child or teen about the COVID-19 outbreak. Answer questions and share facts about COVID-19 in a way that your child or teen can understand.
- Reassure your child or teen that they are safe. Let them know it is ok if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you.
- Limit your family's exposure to news coverage of the event, including social media. Children may misinterpret what they hear and can be frightened about something they do not understand.
- Try to keep up with regular routines. If schools are closed, create a schedule for learning activities and relaxing or fun activities.
- Be a role model. Take breaks, get plenty of sleep, exercise, and eat well. Connect with your friends and family members.

14. Similarly, the World Health Organization (WHO) also has recognized that the COVID-19 poses an existential threat to the mental health of children.[21] The WHO recommended that care

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[19] Center for Disease Control and Prevention, *Manage Anxiety & Stress*, https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html

[20] *Ibid.*

[21] World Health Organization, *Helping children cope with stress during the 2019-nCoV outbreak,* https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff_2

providers undertake the following practices to support the mental health of children in their care:[22]

- Help children find positive ways to express feelings such as fear and sadness. Every child has their own way to express emotions. Sometimes engaging in a creative activity, such as playing, and drawing can facilitate this process. Children feel relieved if they can express and communicate their feelings in a safe and supportive environment
- Keep children close to their parents and family, if considered safe for the child, and avoid separating children and their caregivers as much as possible. If a child needs to be separated from their primary caregiver, ensure that appropriate alternative care is provided and that a social worker, or equivalent, will regularly follow up on the child. Further, ensure that during periods of separation, regular contact with parents and caregivers is maintained, such as twice-daily scheduled phone or video calls or other age-appropriate communication (e.g., social media depending on the age of the child).
- Maintain familiar routines in daily life as much as possible, or create new routines, especially if children must stay at home. Provide engaging age appropriate activities for children, including activities for their learning. As much as possible, encourage children to continue to play and socialize with others, even if only within the family when advised to restrict social contract.
- During times of stress and crisis, it is common for children to seek more attachment and be more demanding on parents. Discuss COVID-19 with your children using honest and age appropriate way. If your children have concerns, addressing those together may ease their

[22] World Health Organization, *Mental Health and Psychosocial Considerations During COVID-19 Outbreak*, https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf

anxiety. Children will observe adults' behaviors and emotions for cues on how to manage their own emotions during difficult times.

15. The COVID-19 Pandemic is a natural disaster that has already had a significant worldwide impact whose catastrophic effects are beginning to mount in the United States. The Pandemic has traumatic psychological as well as physical consequences. The consequences are especially severe for children who are not only experiencing the Pandemic but also trying to comprehend its magnitude and implications. They are seeking safety in an otherwise suddenly unsafe-feeling world. Not surprisingly, the CDC and WHO both recommend intense and expansive forms of family support, caring, and coping to ameliorate these traumatic effects. Yet this kind of familial support, caring, and coping is simply unavailable in (and in essence precluded by) juvenile institutions.

16. Thus, it should be obvious that few if any of the CDC or WHO recommendations for the appropriate way to address the needs of children in light of the present Pandemic can be effectively implemented in a secure juvenile facility. Of course, their recommendations for optimizing children's meaningful family contacts and ensuring that children are able to follow as normal a routine as possible should apply no less forcefully to children who have been placed in juvenile institutions. In fact, for the aforementioned reasons, in light of the likely past trauma they have suffered and the traumatic nature of their present circumstances, the recommendations apply with even more logic and force.

17. As I have noted, the continued detention/confinement of children during the COVID-19 Pandemic constitutes a grave threat to their physical and mental health. Young people confined to juvenile facilities are vulnerable emotionally; they are separated from their families; they likely face unhealthy and unsanitary physical conditions in such institutions, which will exacerbate any existing medical conditions and heighten the risk of their contracting and transmitting coronavirus; and their incarceration in the midst of this crisis will likely result in their placement in settings that are the equivalent of solitary confinement, placing them at even greater risk. The combination of these factors argues in favor of removing them from secure institutions and returning them to their families

for proper protection and care. Of course, the release of children from secure institutions can and should be done with adequate measures to protect them, their families and the broader community.[23]

18. With these things in mind, it is my professional opinion that returning incarcerated children to their families, where they can receive the kind of familial support that the CDC and WHO recommend, is the best possible course of action to take in response to the COVID-19 Pandemic.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2020 at Santa Cruz, California.

/s/
DR. CRAIG W. HANEY, PH.D., J.D.

[23] *See* Council for State Governments, Justice Center, "Seven Questions About Reentry Amid COVID Confusion."

Declaration of J.B.

I, J.B., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Lauren Dollar, Esq. on April 2, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is J.B. I am a resident of Baltimore City, MD.
2. I am currently incarcerated at the Charles H. Hickey School in Baltimore County, where I have been for approximately 2 weeks.
3. I am 13 years old.
4. I have been found incompetent to stand trial subject to an evaluation by the Department of Mental Health. I also have an active Individual Education Program (IEP).
5. During my time at Hickey, I have gained firsthand knowledge of the facility.
6. Without a significant population reduction at Hickey, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
7. The facility is divided into living areas called units. The unit I am assigned to currently houses 9 boys. I have my own bedroom.
8. The bathroom is on the unit, but not in the bedroom. There is 1 shared bathroom for all the boys on the unit consisting of approximately 5 toilet stalls, 4 sinks, and 3 showers. Because we all share the same bathroom to use the toilet, wash our hands, and shower, it is very difficult to use the bathroom without coming into close contact with each other. Sometimes we are in the bathroom at the same time.

9. The units have hand sanitizer and soap.
10. My unit has two dayrooms. One dayroom has 2 tables and a TV. Each table can sit 4 people. The second dayroom also has 2 tables and a TV, like the first dayroom. Both dayrooms are the same size.
11. Two to three staff are on the unit with us.
12. During the day, we play cards at the tables in the dayrooms. When we play cards together, we are sitting 2-3 feet away from each other.
13. We go to the gym every day for an hour. When we go to the gym, we go with 4-5 kids at a time. At the gym, we play basketball. I do not see them cleaning the basketball before we play. When we leave, they have us sanitize our hands.
14. Meals are eaten in the cafeteria. We go to the cafeteria with 4-5 kids at a time. One staff member comes with us to the cafeteria, and the other staff member stays behind. We sit 2 seats away from each other while we eat.
15. When I first came to Hickey, I went to school during the day. Approximately a week ago, we stopped going to school. No teachers are coming to the facility, and no online learning is being offered at this time. We are being given packets of work to complete. I have an Individualized Education Program ("IEP"), and I am not getting any individualized help with my work. It is difficult for me to understand the work I am being asked to complete.
16. A mental health worker comes to Hickey to our unit every Wednesday. I talk to the mental health worker approximately 20 minutes per week.
17. The unit gets cleaned every day by either the youth or the staff. The cleaning happens once a day in the evening around 7 pm, though sometimes in the morning. Sometimes the youth ask to clean up ourselves when we feel the area needs to be cleaned. When we

clean, we spray everything down, sweep, and mop the floors. We wear gloves to clean. We spray everything down with Clorox.

18. I have not had a family visit since I came to Hickey, as they are not allowed. I can call my family 3 times per week from the unit and once a week from the office. Each call may last 10 minutes.
19. Other than a lack of school and programming, and a suspension of family visits, the facility is operating as normal, and we are interacting with each other as normal. We have been instructed to practice social distancing, but it is impossible to stay six feet away from other people because of the tight quarters.
20. I am worried about people getting sick. I am worried about my family getting sick too.

I, Lauren Dollar, Esq., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me.

/s/ Lauren Dollar
Lauren Dollar, Esq.
Office of the Public Defender
300 North Gay St.
Baltimore, Maryland 21217
(443) 263-8522

Dated: April 2, 2020

Declaration of L.H.

I, L.H., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Michal Gross, my attorney from the Office of the Public Defender. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is L.H. I am a resident of Charles County, MD.
2. I am currently detained at Cheltenham Youth Detention Center, in Cheltenham, Maryland, where I have been since February 2020.
3. I am 15 years old.
4. During my time at Cheltenham Youth Detention Center, I have gained firsthand knowledge of the facility.
5. Without a significant population reduction at Cheltenham Youth Detention Center, and given my below observations about the physical structure of the facility and its practices, it is extremely difficult to practice social distancing, as recommended by the Centers for Disease Control and Prevention.
6. The facility is divided into six units, lettered A through F. I reside in Unit B, where I have been since I arrived in February 2020. There are currently 6 other youth residing in Unit B. Each dorm is split into individual cells where we sleep, but we share a common room with the rest of the unit. To the best of my knowledge, the population and set up of the other units is the same as on Unit B.
7. As far as I know, the cleaning staff cleans the cells every day. No cleaning supplies have been provided to me to clean my own cell.

8. While each cell has its own toilet, there is only one shower on each unit. We each take a shower every night, one at a time. Staff sprays between each shower. The staff wears gloves when they do this.
9. Liquid soap is provided in the shower. There is one soap dispenser. Hand sanitizer has also been provided on the unit. It is always full.
10. We have continued to eat in the cafeteria shared by the entire facility. One unit eats there at a time. Dining hall staff is responsible for cleaning the cafeteria but I'm not sure how and when that is done.
11. In addition to the cafeteria, we are still allowed to use the gym. We go to the gym each morning with just our unit. As far as I know, the gym is cleaned once each day in the morning. I don't know if the gym is cleaned between different units using it.
12. When I first arrived here, we had school. That stopped a few weeks ago.
13. I know that social distancing is recommended to prevent the spread of Corona. We haven't been practicing social distancing.
14. Although we haven't been interacting with other units over the last few weeks, there has been no social distancing on my unit.
15. When we're on the unit, the common area is shared with the other youth on the unit. We usually play cards and watch TV. Only the staff can wipe down the chairs.

I, Michal Gross, hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me on April 2, 2020.

__/s/__ MICHAL GROSS__
Michal Gross

Declaration of L.S.

I, L.S., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Michele Hall, my attorney from the Office of the Public Defender, on April 2, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is L.S. I am a resident of Prince George's County, MD.
2. I am currently incarcerated at Thomas J.S. Waxter's Children's Center in Laurel, MD, where I have been for approximately 5 weeks.
3. I am 17 years old.
4. I suffer from depression and anxiety, and I am on medication for these diagnoses at this time.
5. During my time at Waxter's, I have gained firsthand knowledge of the facility.
6. Without a significant population reduction at Waxter's, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
7. The facility is divided into living areas called units. The unit I am assigned to currently houses 10 girls. I have my own bedroom.
8. There are no bathrooms in the sleeping units. There is 1 shared bathroom for all the girls on the unit consisting of 6 stalls, 10 sinks, and 6 showers. Because we all share the same bathroom to use the toilet, wash our hands, and shower, it is very difficult to use the bathroom without coming into close contact with each other.
9. The units have hand sanitizer and soap.

10. My unit has two dayrooms. One dayroom is very small with three tables that each seat three people, and has a television. The other dayroom is larger, with two tables that each seat three people, a television, and a hairstyling area. Two to three staff are on the unit with us. Even though we have been instructed to stay three feet apart, girls sit wherever they want, and are often hugging each other and hugging staff members. The dayroom arrangement and usage has not changed since the coronavirus pandemic.
11. Meals are eaten in the dining hall with just the girls and staff on my unit. Since the coronavirus pandemic, we seat three girls and one staff member at each table during meals.
12. Before the coronavirus pandemic, people exercised in the gymnasium and went outside. Now, we still exercise in the rec or outside for one hour, and continue to play physical contact sports like basketball.
13. All schooling stopped on or about March 25, 2020. No teachers are coming to the facility, and no online learning is being offered at this time. We are being given packets of work to complete. I have an Individualized Education Program ("IEP") for a specific learning disability, and I am not getting any individualized help with my work. It is difficult for me to understand the work I am being asked to complete.
14. There is one medical unit in the facility that is staffed by two nurses. There are no beds into the medical unit, but there is one examination table. The medical unit can fit one to two girls at a time, otherwise girls have to sit in chairs and wait outside of the door. The doctor comes to the facility on Thursdays and on the weekend. The ability to properly isolate and quarantine sick children at the facility is lacking.

15. Three girls on my unit have experienced cold-like symptoms in the past month. One was given cough drops. None were quarantined or given masks or any other special accommodations. Their daily routines were not altered.
16. A mental health worker comes almost every weekday, and still comes to the facility.
17. The facility, on the whole, is unsanitary. Youth are assigned to clean the different spaces on Saturdays, but the level of cleanliness varies, depending on staff instruction. The amount of time we clean has not increased. The outside employees who use to come into the facility to mop the floors daily stopped coming into the facility on or about March 25, 2020. We are not mopping the floors. I sometimes sweep the floors to maintain cleanliness. We are given gloves, but do not wear any masks or other protective gear while cleaning. I always ask for hand sanitizer to wipe my table before eating because of the unsanitary nature of the facility.
18. Family visits, which are normally scheduled on a specific day approximately twice a week, are suspended. The last time I saw my mother was on or about March 12, 2020. Now that there is no visitation, our phone calls have increased from three per week to four per week.
19. Other than a lack of school and programming, and a suspension of family visits, the facility is operating as normal, and we are interacting with each other as normal. We have been instructed to practice social distancing but it's impossible to stay six feet away from other people because of the tight quarters.
20. Because of my anxiety and depression, I am worried about what will happen if I get sick with coronavirus in the facility, and I worry about what will happen if one of the girls gets sick and the staff does nothing.

I, Michele Hall, Esq., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me.

/s/ Michele Hall
Michele Hall, Esq.
Office of the Public Defender
Courthouse, Suite 272B
Upper Marlboro, MD 20772
(301) 952-3498

Dated: April 2, 2020

Declaration of R.P.

I, R.P., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Sasha Garcon, on April 2, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is R.P. I am a resident of Baltimore City, MD.
2. I am currently incarcerated at Baltimore City Juvenile Justice Center (BCJJC), where I have been for approximately five months.
3. I am 18 years old.
4. During my time at BCJJC, I have gained firsthand knowledge of the facility.
5. Without a significant population reduction at BCJJC, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
6. The facility is divided into living areas called "units." There are 12 boys on my unit including myself. I have my own cell, but time outside the cell is spent with the boys on my unit. I am in my cell for approximately 12 hours per day.
7. On the unit, each cell has a sink and toilet. We are not provided any soap in our cells. There is a shared bathroom in the sleeping unit. There are 3 shower stalls that are used during shower time. Three youth shower at the same time during these times. Because we all share the same bathroom to shower, it is very difficult to use the bathroom without coming into close contact with each other.

8. The units have hand sanitizer and soap and I am able to access it anytime with permission from staff.
9. Each unit shares 1 dayroom. While the area is large, when there is a unit meeting or people are watching television, everyone sits together next to each other at tables. The dayroom arrangement and usage has not changed since the coronavirus pandemic. We spend approximately 6 hours outside of our cell and in the day room each day.
10. On weekdays, meals are eaten either in the dining hall or on the unit. Each table has hour to six people. The seating arrangements in the cafeteria have not changed since the coronavirus pandemic.
11. We are offered time for both indoor recreation and outdoor recreation. My entire unit, all twelve of us, participate in recreation together. No changed have been made to outdoor or indoor recreation since the coronavirus pandemic
12. We have been given no instructions on social distancing and/or proper handwashing techniques.
13. The last day teachers arrived to BCJJC to teach in person was on March 23, 2020. No teachers are coming to the facility, and no online learning is being offered. Students receive "packets" to work on. I earned my GED approximately one month ago, but had continued to participate in school in order to sharpen my skills and to have something productive to do during the day. Since the teachers stopped coming, I am not offered packets to complete. No activities or programming has been put in place to replace the school day. I usually spend that time playing cards with other boys or staff.
14. Mental health services have continued during the pandemic. I participate with individual counseling every day with a counselor. We sit across each other at a desk in an office,

less than 6 feet apart. Every other day, the unit participates in group. During groups, the entire unit sits in the day room at tables, less than 6 feet apart.

15. To my knowledge, no one on my unit has had cold or flu symptoms and no staff on my unit have been out sick.
16. I have not seen any staff with gloves or masks.
17. The facility, on the whole, is unsanitary. Youth are assigned to clean the different spaces once a day, but the level of cleanliness varies, depending on staff instruction. We do not wear any masks, gloves, or other protective gear while cleaning.
18. Family visits are currently suspended. My mother, stepfather, grandmother, and sister visited me weekly prior to the suspension of visits. Telephone calls with family members can occur and have been increased by one call to three days per week. Each call is limited to only 10 minutes.
19. Other than a lack of school and programming and a suspension of family visits, the facility is operating as normal, and we are interacting with each other as normal. We have not been instructed to practice social distancing. Any time I am not in my cell, I am nearly always within six feet from a peer or staff member.

I, Sasha Garcon, Esq., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me.

/s/ Sasha Garcon

Sasha Garcon, Esq.
Maryland Office of the Public Defender
217 East Redwood Street Suite 900
Baltimore, MD 21201
Phone: (410) 209-8689

Dated: April 2, 2020