IN THE SUPREME COURT OF THE STATE OF KANSAS

JAMES HADLEY, JOHN EDWARD TETERS, MONICA BURCH, TIFFANY TROTTER, KARENA WILSON, ABRAHAM ORR, DAVID BROOKS, SASHADA MAKTHEPHARAK through his next friend KAYLA NGUYEN*; on their own and on behalf of a class of similarly situated persons*;	Original Action No. ______________
Petitioners,	
v.	**Class Action**
	IMMEDIATE RELIEF SOUGHT
JEFFREY ZMUDA, in his official capacity as the Secretary of Corrections for the State of Kansas, SHANNON MEYER, in her official capacity as the Warden of Lansing Correctional Facility, DONALD LONGFORD, in his official capacity as the Warden of Ellsworth Correctional Facility, and GLORIA GEITHER, in her official capacity as the Warden of Topeka Correctional Facility.	
Respondents.	

<u>VERIFIED CLASS ACTION PETITION FOR WRIT OF HABEAS CORPUS</u>

COME NOW Petitioners James Hadley, John Edward Teters, Monica Burch, Tiffany Trotter, Karena Wilson, David Brooks, and Sashada Makthepharak through his next friend Kayla Nguyen, on their own behalf and on behalf of a class of similarly situated individuals ("Petitioners"), and hereby respectfully submit this petition for writ of habeas corpus to challenge the unconstitutional conditions of their confinement and demand their immediate or expedited release from Respondents Secretary of Corrections Jeffrey Zmuda,

Warden Shannon Meyer, Warden Donald Longford, and Warden Gloria Geither ("Respondents"). Petitioners are housed in crowded facilities with limited access to adequate medical treatment and sanitation supplies. Several petitioners also have preexisting medical conditions that make them uniquely vulnerable to serious complications and death if they contract the COVID-19 virus—which has already infected both staff and individuals housed within Kansas prisons. By exposing Petitioners to this fatal contagious disease, Respondents violate Petitioners' rights under the Eighth Amendment of the United States Constitution and Section 9 of the Kansas Constitution Bill of Rights to be free from cruel and unusual punishment. In addition to subjecting Petitioners to continuing unconstitutional harm, Respondents are unnecessarily risking Petitioners' lives.

The extraordinary circumstances of the current COVID-19 pandemic warrant extraordinary relief— in particular, the release of Petitioners and similarly situated individuals on whose behalf they have sued Respondents. Release is needed not only to prevent irreparable harm to members of the class who are medically-vulnerable, but also to sufficiently reduce the incarcerated population at KDOC facilities to ensure proper social distancing and reduce transmission for all class members and the wider public.

Given the exponential spread of COVID-19, there is no time to spare. Accordingly, Petitioners are contemporaneously filing a motion to expedite this proceeding.

I. JURISDICTION

1. This Court has original jurisdiction over Petitioners' habeas action under K.S.A. § 60-1501(a), Article III, § 3 of the Kansas Constitution, and Rule 9.01(a) of the

Rules of the Supreme Court of Kansas.

2. In accordance with Rule 9.01(a) of the Rules of the Supreme Court of Kansas, Petitioners are filing a Memorandum of Points and Authorities, together with documentary evidence supporting the facts alleged.

3. An original action in this Court petitioning for a writ of habeas corpus is necessary because adequate relief is not available to Petitioners in district court. *See* Sup. Ct. R. 901(b). Petitioners are filing this action on behalf of inmates confined in the Kansas Department of Corrections' ten adult facilities. To require petitioners to file individual petitions in ten separate district courts, which are currently operating at limited capacity (*see* KS Sup. Ct. Administrative Order 2020-PR-032), would waste critical time and judicial resources when the risk of the virus spreading further into Kansas's correctional facilities is substantial and concrete. Multiple filings would create a significantly greater risk that many of those represented by Petitioners would become infected and suffer irreparable injury or death in the meantime. The statewide, immediate relief Petitioners request is not available in the district court, particularly in light of the imminent risks of constitutional and physical harm Petitioners have identified.

II. PARTIES

4. Petitioner James Hadley is a fifty-five year-old man who is currently incarcerated at Lansing Correctional Facility ("LCF") in the custody of Respondents Zmuda and Meyer. Mr. Hadley is serving a sentence for several crimes of which he was

convicted in 2002.[1] He is scheduled to be released on July 14, 2022. Mr. Hadley has not filed any civil actions in the last five years. Mr. Hadley is uniquely at risk for serious complications and even death if he contracts the coronavirus due to his age and history of Hepatitis C, cirrhosis, and exposure to Tuberculosis bacteria. Mr. Hadley's confinement is unconstitutional because Respondents are exposing him to an unreasonable risk of serious harm and death by forcing him to live in a space where social distancing is not possible and forcing him to purchase soap and other life-saving hygiene products.

5. Petitioner John Edward Teters is a fifty-seven year-old man who is currently incarcerated at LCF in the custody of Respondents Zmuda and Meyer. Mr. Teters is currently serving a sentence for a parole violation and other convictions.[2] Mr. Teters has not filed any civil actions in the last five years. Mr. Teters was diagnosed with Hepatitis C and suffered from the disease for seventeen years in KDOC custody before finally receiving treatment in October 2020. Mr. Teters is also battling liver cancer and has been diagnosed with diabetes and high blood pressure. Given his numerous pre-existing conditions, Mr. Teters fears he will die if he contracts the coronavirus. Mr. Teter's confinement is unconstitutional because Respondents are exposing him to an unreasonable risk of serious harm and death by forcing him to live in a space where social distancing is not possible.

[1] K.S.A. 21-3403; K.S.A. 8-1567; K.S.A. 21-5413; K.S.A. 8-1568.

[2] Mr. Teters' underlying convictions were pursuant to what is now identified as K.S.A. 21-5403 and K.S.A. 21-591. The other convictions for which he is serving his current sentence are K.S.A. 21-3413; K.S.A. 21-3701; and K.S.A. 21-5412; K.S.A. 21-5413.

6. Petitioner Monica Burch (né Zachary) is a thirty-one year-old woman who is currently incarcerated at Ellsworth Correctional Facility ("ECF") in the custody of Respondents Zmuda and Longford. She is eligible for release in less than three months. Ms. Burch is serving a sentence for non-violent drug offenses.[3] Ms. Burch has not filed any civil actions in the last five years. She shares an 8 x 7 foot cell with another inmate and is required to be in close proximity with over one hundred other inmates to eat and engage in recreational activities. Ms. Burch has been diagnosed with prediabetes, a condition that increases the risk of heart and blood vessel disease. Ms. Burch's confinement is unconstitutional because Respondents are exposing her to an unreasonable risk of serious physical harm by forcing her to live in a facility where practicing social distancing and other life-saving precautions are impossible. Additionally, Respondents have deprived Ms. Burch of necessary sanitation products by providing inmates with diluted cleaning solutions to clean their cell.

7. Petitioner Tiffany Trotter is a twenty-nine year-old mother of two who is currently incarcerated at Topeka Correctional Facility ("TCF") in the custody of Respondents Zmuda and Geither. Ms. Trotter is serving a sentence for a probation violation.[4] Ms. Trotter has not filed any civil actions in the last five years. Ms. Trotter lives in dormitory-style quarters with 22 other women and must be in close proximity with over 100 other women in order to eat her meals. Her bed is less than four feet from that of several other women in her quadrant. Ms. Trotter has been a smoker for the last fifteen years and

[3] K.S.A. 21-5705.

[4] Ms. Trotter's underlying convictions were pursuant to K.S.A. 21-5706 and K.S.A. 21-5823.

worries she is more vulnerable to severe symptoms if she contracts the coronavirus. Respondents are exposing Ms. Trotter to an unreasonable risk of serious harm by forcing her to live in a space where practicing social distancing is impossible, making the conditions of her confinement unconstitutional.

8. Petitioner Karena Wilson is a twenty-one year-old woman who is currently incarcerated at TCF in the custody of Respondents Zmuda and Geither. Ms. Wilson is serving a sentence for nonviolent drug convictions.[5] She is eligible for release on August 5, 2021. Ms. Wilson has a mandamus action pending in the Fourteenth Judicial District of Kansas but has filed no other civil actions in the last five years. *See* Case No. 2018-CV-000147**.** Ms. Wilson lives in a small cell with 108 other women and must be in close proximity with at least 84 other women to eat, use the dayroom, or go outside for recreation time. Ms. Wilson has significant concerns about her ability to get treatment if she were to contract the coronavirus. She had to wait for over a month to see medical staff for a potentially serious skin condition. Ms. Wilson's confinement at TCF is unconstitutional because Respondents are exposing her to an unreasonable risk of serious harm by forcing her to live in a space where practicing social distancing is impossible and where adequate medical resources are not available.

9. Petitioner Abraham Orr is a forty-four year-old man who is currently incarcerated at LCF in the custody of Respondents Zmuda and Meyer. Mr. Orr is serving a sentence for two convictions he received as a minor.[6] He has a minimum custody

[5] K.S.A. 21-5706; K.S.A. 21-5701; K.S.A. 21-5707; K.S.A. 21-5705.

[6] Mr. Orr's convictions were pursuant to what is now identified as K.S.A. 21-5402; K.S.A. 21-5420.

classification and is eligible for release on October 19, 2021. Mr. Orr has not filed any civil actions in the last five years. Mr. Orr lives in an open floor-plan dormitory with 128 men and his bed is two feet away from his closest roommate. Mr. Orr must eat in the cafeteria with at least 100 other men and is unable to sit more than six inches from the other men at his table. The conditions of Mr. Orr's confinement at LCF are unconstitutional because Respondents are exposing him to an unreasonable risk of serious harm by forcing him to live in a space where practicing social distancing is impossible and other CDC-approved, life-saving measures are impossible.

10. Petitioner David Brooks is a forty-one year-old man who is currently incarcerated at LCF in the custody of Respondent Zmuda and Meyer. Mr. Brooks is serving a sentence for one conviction he received as a minor.[7] He is eligible for release on April 1, 2021. Mr. Brooks has not filed any civil actions in the last five years. Mr. Brooks lives in cellhouse B-2 with close to 100 other men. He only receives two small bars of soap for bathing and handwashing per month which he must aggressively ration to last 30 days. The conditions of Mr. Brooks's confinement at LCF are unconstitutional because Respondents are exposing him to an unreasonable risk of serious harm by forcing him to live in a space where practicing social distancing and basic sanitation is impossible.

11. Petitioner Sashada Makthepharak is a thirty-five year-old man who is currently incarcerated at LCF in the custody of Respondents Zmuda and Meyer. Mr. Makthepharak is serving a sentence for several convictions he received as a minor.[8] He is

[7] Mr. Brooks' convictions was pursuant to what is now identified as K.S.A. 21-5402.
[8] K.S.A. 21-6304; K.S.A. 21-5402; K.S.A. 21-5807.

eligible for release in April 2021. Mr. Makthepharak filed a petition for habeas corpus pursuant to K.S.A. § 60-1507 in the Eighteenth Judicial District of Kansas on March 3, 2019. *See* Case No. 2019-CV-000482-IA. However, he has filed no other civil actions in the last five years. A number of people in Mr. Makthepharak's cellhouse have COVID-19 symptoms but are choosing not to report them because they were told by staff that they would be put in the hole and deprived of access to a shower for the duration of their quarantine. He has received delayed and inadequate treatment for illnesses in KDOC custody in the past and has serious concerns that he will receive substandard care if he were to contract COVID-19 while he is incarcerated. Mr. Makthepharak's confinement is unconstitutional because Respondents are exposing him to an unreasonable risk of serious harm by forcing him to live in a space where practicing social distancing and other life-saving precautions is impossible. He appears in this action through his next friend Kayla Nguyen. Ms. Nguyen is sufficiently familiar with the facts of Mr. Makthepharak's situation and dedicated to fairly and adequately representing his interests in this litigation

12. Respondent Jeffrey Zmuda is named in his official capacity as the Kansas Secretary of Corrections. All Petitioners and Class Members have been or will be sentenced to the custody of Secretary Zmuda. In his official capacity, Secretary Zmuda also has supervisory authority over KDOC staff responsible for not releasing Petitioners.

13. Respondent Shannon Meyer is the Warden of Lansing Correctional Facility and currently has immediate custody over Petitioners Hadley, Brooks, Orr, Makthepharak, and all putative class members confined in LCF.

14. Respondent Gloria Geither is the Warden of Topeka Correctional Facility and currently has immediate custody over Petitioners Trotter and Wilson and all putative class members confined in TCF.

15. Respondent Don Langford is the Warden of Ellsworth Correctional Facility and currently has immediate custody over Petitioner Burch and all putative class members confined in ECF.

III. STATEMENT OF FACTS

16. COVID-19 is a coronavirus that has reached pandemic status. It is a particularly contagious disease and the virus can survive for up to three hours in the air and up to two to three days on plastic and stainless-steel surfaces. **Exhibit A (¶ 34).**

17. Adults over the age of fifty and those with certain medical conditions face a greater risk of serious illness or death from COVID-19. **Exhibit B**.

18. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age— including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy. *Id.*

19. The only known method to reduce the risk of serious illness or death from COVID-19 for those who are particularly vulnerable is to prevent infection in the first place through social distancing and improved hygiene, including washing hands frequently with soap and water. *Id.*

20. Correctional settings further increase the risk of contracting COVID-19 due to the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, presence of many high-contact surfaces, and no possibility of staying at a distance from others. **Exhibit C**.

21. Respondents already have multiple confirmed cases of coronavirus infections at their facilities. **Exhibit D.**

22. Respondents' facilities are at maximum capacity. Petitioners cannot avoid being within six feet of several other residents, including when they sleep, eat, and engage in limited recreational activities. **Exhibits E, F-M.**

23. Respondents restrict resident access to soap and cleaning supplies, requiring Petitioners to purchase soap and diluting the only cleaning solution they have to sanitize their cell and other high-contact surfaces. **Exhibits F-M.**

24. Respondents lack the resources to provide adequate medical care during times when a pandemic is not raging through KDOC facilities. **Exhibits F-M.** Respondents do not have a sufficient number of ventilators and quarantine spaces to care for Petitioners if they fall ill. **Exhibit F-M.**

25. KDOC staff at LCF are also threatening residents with solitary confinement and withholding shower access if they report COVID-19 symptoms, promoting transmission and infection. **Exhibit M.**

26. Petitioners Hadley and Teters have a greater chance of serious illness and death due to their preexisting medical conditions. Petitioners Hadley and Teters are also at risk due to their advanced age. **Exhibits F-G.**

IV. GROUNDS FOR RELIEF

27. Petitioners are entitled to habeas relief from the conditions of their confinement pursuant to K.S.A. § 60-1501 because Respondents' continued refusal to provide them with adequate space, sanitation products, and medical care requires the Court's immediate attention and constitutes a shocking and intolerable violation of their constitutional right to be free of cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Section 9 of the Kansas Constitution Bill of Rights. *Williams v. DesLauriers*, 38 Kan. App. 2d 629, 630, Syl. ¶ 7, 172 P.3d 42, 49 (Kan. App. 2007).

V. CLASS ACTION

28. Petitioners bring this action pursuant to K.S.A. 60-223 *et. seq.* on behalf of themselves and a class of similarly situated individuals.

29. Petitioners seek to represent a class of all current and future inmates confined in any KDOC facility and in the custody of Secretary Zmuda, Warden Meyer, Warden Longford, and/or Warden Geither ("KDOC Class"), including three subclasses: (1) persons who, by reason of age or medical condition, the CDC has identified as particularly vulnerable to injury or death if they were to contract COVID-19 ("Medically-Vulnerable Subclass"); (2) persons who are eligible for release in the next 18 months ("Release-

Eligible Subclass"); and (3) persons who are serving a sentence for a low-level offense ("Low-Level Offender Subclass").

30. The Medically-Vulnerable Subclass is defined as all current and future persons held in KDOC facilities over the age of fifty, as well as all current and future persons held at KDOC of any age who experience: (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy.

31. Petitioners Hadley and Teters seek to represent the Medically-Vulnerable Subclass. Both Petitioner Hadley and Teters are over the age of 50 and suffer from a chronic liver condition that places them at increased risk of injury or death if they were to contract COVID-19. **Exhibits F-G.**

32. The Release-Eligible Subclass is defined as all current and future persons held in KDOC facilities who will be eligible for release with good-time credits within the next 18 months.

33. Petitioners Burch, Wilson, Brooks, Orr, Trotter, and Makthepharak seek to represent the Release-Eligible Subclass. Petitioner Burch is scheduled to be released in the next three months. **Exhibit H.** Petitioners Brooks, Orr, and Makthepharak are eligible for release within the next year. **Exhibits K, L-M.** Petitioners Wilson and Trotter are eligible for release within the next 18 months. **Exhibits I-J.**

34. The Low-Level Offender Subclass is defined as all current and future persons held in KDOC custody who are serving a sentence for an offense that is a severity level of "III" or lower on the drug offense sentencing grid or "IV" or lower on the nondrug offense sentencing grid.

35. Petitioner Burch seeks to represent the Low-Level Offender Subclass. She is serving time for a level "III" drug offense. *See supra* ¶ 6.

36. As described more fully in the accompanying memorandum and points of authority, this action has been brought and may properly be maintained as a class action under state law. *See* K.S.A. 60-223 *et. seq.*

V. RELIEF SOUGHT

37. For the forgoing reasons, and those stated in the Exhibits, Memorandum and Points of Authority, and Motion to Expedite, Petitioner seeks the following relief:

a. An order granting Petitioners' motion to expedite this proceeding and providing for an expedited briefing schedule and oral argument setting;

b. Certification of this petition as a Class Action pursuant to K.S.A. 60-223(c);

c. A writ of habeas corpus requiring Respondents to immediately release Petitioners Hadley, Teters, and members of the Medically-Vulnerable Subclass;

d. An order requiring that Respondents submit a plan to the Court within 7 days, establishing:

    i. Expedited release plans for Petitioners Burch, Orr, Wilson, Trotter, Makthepharak and members of the Release-Eligible Subclass;

    ii. Expedited release plans for all members of the Release-Eligible Subclass who are eligible for community parenting release pursuant to K.S.A. § 22-3730;

    iii. Expedited release plan for Petitioner Burch and members of the Low-Level Offender Subclass;

    iv. Specific mitigation efforts, in line with CDC guidelines, to prevent, to the degree possible, contraction of COVID-19 by all Class Members not immediately released;

    v. A housing and/or public support plan for any released Class or Subclass Members whose testing confirms they have been exposed to or infected with COVID-19 and who do not readily have a place to self-isolate for the CDC-recommended period of time (currently 14 days);

e. An order ensuring that all remaining Class Members are incarcerated in KDOC custody consistent with CDC guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them and providing them with unrestricted access to soap and other sanitation products for the duration of the outbreak; and

f. Any further relief this Court deems appropriate.

Dated: April 9, 2020

Respectfully Submitted,

ACLU FOUNDATION OF KANSAS

/s/ Lauren Bonds______

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Counsel for Petitioners

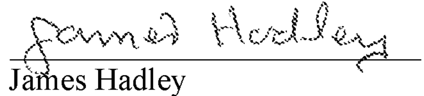
VERIFICATION

We, the undersigned Petitioners, declare as follows:

1. I have personal knowledge of myself, my activities, and my observations, including those set out in the foregoing Petition, and if called on to testify I would competently testify as to the matters stated therein.

2. I verify under penalty of perjury under the laws of the United States of America and the State of Kansas that the factual statements in this concerning myself, my activities, and my observations are true and correct as required under K.S.A. 60-1502.

Executed on: April 9, 2020.


James Hadley

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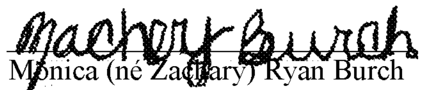
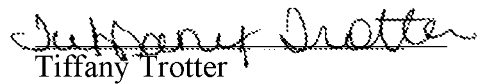

Monica (né Zachary) Ryan Burch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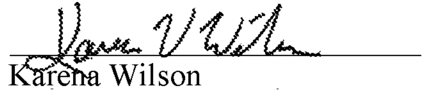
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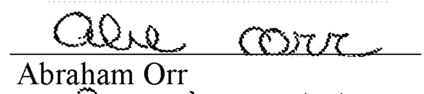
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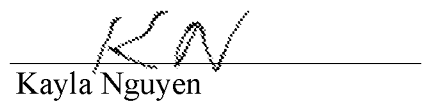
David Brooks


Kayla Nguyen

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on April 9, 2020, for delivery to:

Jeff Cowger
Chief Legal Counsel
Kansas Department of Corrections
714 SW Jackson, Suite 300
Topeka, KS 66603

/s/ Lauren Bonds______
Lauren Bonds

IN THE SUPREME COURT OF THE STATE OF KANSAS

JAMES HADLEY, JOHN EDWARD TETERS, MONICA BURCH, TIFFANY TROTTER, KARENA WILSON, ABRAHAM ORR, DAVID BROOKS, SASHADA MAKTHEPHARAK through his next friend KAYLA NGUYEN*; on their own and on behalf of a class of similarly situated persons*; *Petitioners*, v.	Original Action No. ______________
JEFFREY ZMUDA, in his official capacity as the Secretary of Corrections for the State of Kansas, SHANNON MEYER, in her official capacity as the Warden of Lansing Correctional Facility, DONALD LONGFORD, in his official capacity as the Warden of Ellsworth Correctional Facility, and GLORIA GEITHER, in her official capacity as the Warden of Topeka Correctional Facility, *Respondents.*	**Class Action** **IMMEDIATE RELIEF SOUGHT**

MEMORANDUM OF POINTS AND AUTHORITIES

COME NOW Petitioners James Hadley, John Edward Teters Monica Burch, Tiffany Trotter, Karena Wilson, David Brooks, and Sashada Makthepharak through his next friend Kayla Nguyen, on their own behalf and on behalf of a class of similarly situated individuals ("Petitioners"), and submit the following Memorandum of Points and Authorities in support of their Petition for Writ for Habeas Corpus filed herewith:

INTRODUCTION

We are in the midst of the most significant pandemic in generations. *See* Exhibit A (Bibliography of Scientific and Factual Authorities), ¶ 1. A highly contagious and deadly virus called coronavirus has swept the globe. No one is safe. Nowhere is safe. All age groups have contracted the disease, and the World Health Organization estimates that one in five people who do require hospitalization. *Id.* ¶¶ 2, 3. On March 13, 2020, the President declared a national state of emergency. *Id.* ¶ 4. The virus is spreading exponentially with the single-day coronavirus death in the U.S., hitting 1,700. *Id.* ¶ 5. Coronavirus cases in Kansas are also growing at a stunningly fast rate. As of April 4, 2020, the Kansas Department of Health and Environment ("KDHE") identified 698 cases and seventeen deaths with experts predicting the number of fatalities to peak the week of April 20, 2020. *Id.* ¶¶ 6, 7.

There is no vaccine or cure for COVID-19. The best course of action according to public health experts is to slow and prevent transmission, primarily through a practice known as "social distancing. *Id.* ¶ 8. Social distancing requires all people to stay at least six feet away from all other people to control the spread of the virus. These measures are particularly important because the coronavirus spreads aggressively, and people can spread it even if they do not feel sick or exhibit any symptoms. *Id.* ¶ 9. The only assured way to curb the pandemic is through dramatically reducing contact for all. *Id.* ¶ 10.

At the direction of Governor Laura Kelly, Kansans across the state are currently in self-isolation their homes. Governor Kelly issued a statewide stay-at-home order to ensure Kansans were observing best social distancing practices. Additionally, the KDHE has

issued guidance advising cleaning and sanitation practices, including disinfecting regularly touched services and frequent handwashing for 20 second intervals. *Id.* ¶ 11.

Despite ubiquity of social distancing and sanitation guidance, Kansas prisons have refused to permit these basic disease-prevention safeguards. Specifically, incarcerated Kansans are: (1) required to be within 2-3 feet of other inmates or to congregate en masse for prolonged periods when they sleep, eat, and engage in recreation or exercise; (2) allowed only limited access to sanitation products; and (3) provided substandard medical care from the Kansas Department of Corrections and their medical contractor, Corizon. Moreover, many facilities have punitive protocols in place that will exacerbate the spread of the virus— threatening lockdowns, solitary confinement, banning shower-access, and imposing other punitive measures against any inmate who reports COVID-19 symptoms.

Unfortunately, Kansas has many examples of the fate its incarcerated population will suffer from correctional facilities across the country and abroad. For example, at the peak of the outbreak in Wuhan, China —the province where COVID-19 originated—over half of all reported COVID-19 cases were incarcerated people. On Rikers Island, the rate of infection among incarcerated people is over seven times the rate of infection in New York City generally, and 25 times higher than the rate in Wuhan, China. Ex. A ¶ 12. Prisons are not hermetically sealed. By their nature, the people who go in—from correctional and medical staff, to those serving short sentences—typically come out in very short order. In particular, Kansas's prison population is also highly transient with new admissions accounting for 64% of the prison population. *Id.* ¶ 13. Failing to prevent and mitigate the spread of COVID-19 endangers not only those within the institution, but the entire

community. Hence, immediate and aggressive action is the only mitigation effort that Kansas can undertake to comport with public health guidance and to prevent a catastrophic outbreak at KDOC facilities. Respondents already have multiple confirmed cases of coronavirus infections at Kansas prisons. Exhibit D (KDOC COVID-19 Summary). It is only a matter of time before the pandemic spreads further due to Respondents' inaction.

Absent intervention from this Court to align the operation of KDOC facilities with public health principles—first and foremost, the release of as many incarcerated persons as possible, but also improved sanitation, testing, and treatment protocols for all others—devastating, and in many cases deadly, irreparable harm will befall incarcerated persons, prison staff, and the community. Ex. A ¶ 14. The outbreaks in detention facilities around the country, many with more resources, space, and sophisticated health delivery systems than KDOC facilities (*Id.* ¶ 15), prove the need for immediate and significant population reductions in Kansas' already overcrowded prisons. Case-by-case review is no match for exponential spread of the disease. Courts and executive branch officials elsewhere in the country have accepted this reality and begun broad-based, categorical releases. *Id.* ¶ 16.

Accordingly, Petitioners—classes of persons incarcerated in KDOC facilities—bring this action and request: (1) immediate release of medically vulnerable individuals who are likely to die if they contract COVID-19, coupled with appropriate support and release conditions; (2) immediate release of those who are already within 18 months of release or are serving sentences for minor offenses, swiftly depopulating KDOC's crowded facilities without risk to public safety; and (3) implementation of appropriate social distancing and sanitation measures to protect all other incarcerated individuals from

COVID-19 in compliance with CDC guidance. If this Court does not grant immediate relief on the basis of this Petition, Petitioners request a hearing as soon as possible. Given the exponential spread of COVID-19, there is no time to spare.

STATEMENT OF FACTS

A. COVID-19 Poses a Significant Risk of Illness, Injury, or Death.

The novel coronavirus that causes COVID-19 has led to a global pandemic. *Id.* ¶ 17. The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects. *Id.* ¶ 18. There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection. *Id.* ¶ 8. Social distancing—deliberately keeping at least six feet of space between persons to avoid spreading illness (*Id.* ¶ 19)—and a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, are the only known effective measures for protecting against transmission of COVID-19. *Id.* ¶¶ 8, 20. Because the coronavirus spreads among people who do not show symptoms, staying away from people is the best way to prevent contraction.

Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs, such as the heart and liver. *Id.* ¶¶ 20, 21. People over the age of fifty face a greater risk of serious illness or death from COVID-19. *Id.* ¶ 22. In a February 29, 2020 preliminary report, individuals age 50-59 had an overall mortality rate of 1.3%; 60-69-year-olds had an overall 3.6% mortality rate, and those 70-79 years old had an 8% mortality rate. *Id.* ¶ 23.

People of any age who suffer from certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and asthma, also have an elevated risk. *Id.* ¶ 24; *see also* Exhibit B (Declaration of Dr. Blair Thedinger), ¶ 4. Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer. Ex. A ¶ 25. In many people, COVID-19 causes fever, cough, and shortness of breath. However, for people over the age of fifty or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe. *Id.* ¶¶ 20, 22. Most people in higher risk categories who develop serious illness will need advanced support. This requires highly specialized equipment like ventilators that are in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. *Id.* ¶ 20.

Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation. *Id.* Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage, loss of digits, and loss of respiratory capacity. *Id.*

B. Persons Incarcerated in KDOC Facilities Face Grave and Immediate Danger Due to COVID-19.

Beyond the general public health concerns presented by the COVID-19 pandemic, persons incarcerated in KDOC facilities face a particularly acute threat of illness, permanent injury, and death. Kansas has been in the throes of an over-incarceration crisis for years forcing Kansas inmates into tighter quarters with one another and diluting already limited access to medical care. *Id.* ¶ 26. There are currently 9,988 people incarcerated in KDOC facilities even though the prisons have a maximum capacity of 9,924 people. *Id.* ¶ 27. The overcrowding of Kansas prisons has made incarcerated Kansans extremely vulnerable to a COVID-19 outbreak. Indeed, Lansing Correctional Facility has already seen its first outbreak of COVID-19 cases. Ex. D.

Notwithstanding the pandemic crisis, Petitioners are still required to be within six feet of other inmates when they sleep, eat, and have recreation time. For instance, Petitioners Burch, Orr, Trotter, and Wilson are all confined to cramped cells or dormitories where their beds are positioned within six feet of at least one other inmate, if not several others. Exhibit H (Burch Decl.), ¶ 6; Exhibit I (Trotter Decl.), ¶ 4; Exhibit J (Wilson Decl.), ¶ 4; Exhibit K (Orr Decl.), ¶ 5. Petitioners who are not on lockdown must eat their meals within a few inches of their fellow inmates. Ex. K ¶ 5; Ex. J ¶ 3; Ex. M (Nguyen Decl.), ¶ 5. Even petitioners who are on lockdown due to COVID-19 must congregate with nearly one hundred other people when they go to the yard. Exhibit F (Hadley Decl.), ¶ 4; Ex. H ¶ 4; Ex. I ¶ 3; Ex. J ¶ 3; Exhibit L (Brooks Decl.), ¶ 4. In short, it is impossible to social distance

in KDOC facilities if Respondents continue to house the number of inmates who are currently in custody.

Respondents have also made it impossible to comply with sanitation and hygiene precautions during the pandemic. First, many individuals incarcerated in KDOC facilities have restricted access to soap and must purchase it through the commissary if they have a job where they make more than $12 per month—to the extent soap is available. Ex. F ¶ 5; Indigent inmates who receive free soap are not given enough in their monthly allotment to wash their hands even sparingly, let alone on a regular basis. Ex. L ¶ 5. Additionally, inmates in KDOC facilities cannot adequately clean high-touch surfaces. The cleaning solutions they are provided for their cells and communal areas are diluted with water and likely lack the necessary active ingredient concentration to disinfect high-contact surfaces. Ex. H ¶ 6. Respondents have then not only refused to take the sanitation precautions necessary to prevent a COVID-19 outbreak— they have denied Petitioners the ability to take those precautions as well. Petitioners therefore reasonably fear that they will contract COVID-19 in the immediate future. Ex. F ¶ 6; Exhibit G (Teters Decl.), ¶ 5; Ex. H ¶ 7; Ex. I ¶ 5; Ex. J ¶ 5; Ex. K ¶¶ 4, 6-7; Ex. L ¶ 6; Ex. M ¶¶ 4, 6-7.

Respondents are also categorically unequipped to treat prisoners in the event of a major outbreak. KDOC and its medical contractor, Corizon, have a documented history of providing substandard care to Kansas prisoners. In 2019, at a time when there was not an infectious disease crisis, an independent auditor found that KDOC lacked a sufficient number of nurses and other healthcare workers to meet prisoners' medical needs. Ex. A ¶¶ 26, 28. KDOC inmates must submit multiple complaints of illness or injury just to be seen

by a mid-level practitioner or doctor. *Id.* ¶ 29; Ex. J ¶ 5. Even when inmates are finally permitted to see a doctor, they are often denied treatment that KDOC and Corizon have deemed to be too expensive. Ex. A ¶ 30.

Petitioners have experienced the inadequacy of KDOC medical care first-hand. Petitioners Burch, Wilson, and Brooks have each had recent experiences where they were forced to wait to see a doctor despite reporting symptoms that required urgent attention. Ex. H ¶ 8; Ex. J ¶ 6; Ex. L ¶ 7. Petitioners Hadley and Teters were both denied access to curative, life-saving Hepatitis C treatment for years. Ex. F ¶¶ 2, 7; Ex. G ¶¶ 2, 6. Based on their past experiences, Petitioners know that Respondents lack the equipment, staff capacity, and judgment to adequately treat them if they contract the coronavirus. Ex. F ¶ 7; Ex. G ¶ 6; Ex. H ¶ 8; Ex. J ¶ 6; Ex. L ¶ 7.

Notwithstanding KDOC's adoption of isolation protocols for new admissions and suspected cases (Ex. A ¶ 31), immediate release of medically vulnerable Petitioners remains a necessary public health intervention to save their lives. *Id.* ¶ 32. Release of those Petitioners who are already scheduled for release in the coming months is needed not only to prevent irreparable harm to the medically-vulnerable, but also to reduce the incarcerated population at KDOC facilities sufficiently to ensure proper social distancing and reduce transmission for all class members and the wider public. *Id.* ¶ 32, 33.

CLASS ACTION CLAIMS

Petitioners bring this action pursuant to K.S.A. 60-223 *et. seq.* on behalf of themselves and a class of similarly situated individuals. Petitioners seek to represent a class of all current and future inmates confined in KDOC custody (the "Class"). Additionally,

several Petitioners seek to represent the following three subclasses: (1) individuals who, by reason of age or medical condition, the CDC has identified as particularly vulnerable to injury or death if they were to contract COVID-19 ("Medically-Vulnerable Subclass"); (2) individuals who are eligible for release within the next eighteen months ("Release-Eligible Subclass"); and (3) individuals who are serving a sentence for a low-level offense ("Low-Level Offender Subclass").

The Medically-Vulnerable Subclass is defined as all current and future persons held at KDOC over the age of 50, as well as all current and future persons held in KDOC custody of any age who experience: (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent pregnancy. Members of the Medically-Vulnerable Subclass, by reason of age or medical condition, are particularly vulnerable to injury or death if they were to contract COVID-19. Ex. B ¶¶ 3-4. Petitioners Hadley and Teters seek to represent the Medically-Vulnerable Subclass. Both Petitioner Hadley and Teters are over the age of 50 and suffer from a chronic liver condition that places them at increased risk of injury or death if they were to

contract COVID-19. Ex. F ¶ 6; Ex. G ¶¶ 5,6. Additionally, Mr. Teters has a compromised immune system due to liver cancer. Ex. G ¶¶ 2,5.

The Release-Eligible Subclass is defined as all current and future inmates in custody at KDOC who are eligible for release within the next 18 months. Petitioners Burch, Wilson, Brooks, Orr, Trotter, and Makthepharak seek to represent the Release-Eligible Subclass. Petitioner Burch is scheduled to be released in the next three months. Ex. H ¶¶ 1-2. Petitioners Brooks, Orr, and Makthepharak are eligible for release within the next year. Ex. L ¶ 1; Ex. K ¶ 1; Ex. M ¶ 2. Petitioners Wilson and Trotter are eligible for release within the next 18 months. Ex. I ¶ 1; Ex. J ¶ 1.

The Low-Level Offender Subclass is defined as all current and future persons held at KDOC who are serving a sentence for an offense that is a severity level of "III" or lower on the drug offense sentencing grid or "IV" or lower on the nondrug offense sentencing grid. Petitioner Burch seeks to represent the Low-Level Offender Subclass. She is serving time for a level "III" drug offense.

Petitioners' habeas petition has been brought and may properly be maintained as a class action under state law. *See*, *e.g.*, *Beaver v. Chaffee*, 2 Kan. App. 2d 364, 373 (Kan. App. 1978) (finding conditions of confinement habeas action would be properly maintained as a class action where challenged conditions were common to all inmates). Petitioners' proposed class and subclasses satisfy the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under K.S.A. 60-223(a). Joinder is impracticable because (1) the classes are numerous; (2) the classes include future members, and (3) the class members are incarcerated, rendering their ability to institute

individual lawsuits limited, particularly in light of reduced legal visitation due to the COVID-19 pandemic. Common questions of law and fact exist as to all members of the proposed classes: all have a right to receive adequate COVID-19 prevention, testing, and treatment. Petitioners have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class. Petitioners have no interests adverse to the interests of the proposed class.

Further, Petitioners' proposed class and subclasses satisfy the requirements of K.S.A. 60-223(b). In particular, Respondents have "refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." K.S.A. 60-223(b)(2). In the alternative, the requirements of K.S.A. 60-223(b)(3) are satisfied, because prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the proposed classes.

ARGUMENT

A. Petitioners' Incarceration Amidst the Current Outbreak and Potential Spread of COVID-19 at KDOC Facilities Violates their Right to Constitutional Conditions of Confinement Under the Eighth Amendment of the U.S. Constitution.

Corrections officials have a constitutional obligation to provide for prisoners' reasonable safety and to address their serious medical needs. *See DeShaney v. Winnebago County Dept. of Soc. Services*, 489 U.S. 189, 200 (1989) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—

e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment"); *Youngberg v. Romeo*, 457 U.S. 307, 315–16, 324 (1982) (the state has an "unquestioned duty to provide adequate . . . medical care" for detained persons); *Wilson v. Seiter*, 501 U.S. 294, 300 (1991); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Plata*, 563 U.S. 493, 531-32 (2011); *see also Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (remanding for determination whether correctional officer violated Eighth Amendment by failing to prevent "a substantial risk of serious harm").

This obligation requires corrections officials to protect prisoners from infectious diseases like COVID-19; officials may not wait until someone tests positive for the virus, and an outbreak begins. *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition. . . . It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them"); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) ("[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease"); *see also Farmer*, 511 U.S. at 833 ("[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course."). By then it is too late.

Respondents violate this affirmative obligation by showing "deliberate indifference" to a substantial risk of serious harm. *Wilson*, 501 U.S. at 303. With respect to an impending infectious disease like COVID-19, deliberate indifference is satisfied

when corrections officials "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year," even when "the complaining inmate shows no serious current symptoms." *Helling*, 509 U.S. at 33 (holding that a prisoner "*states a cause of action* . . . by alleging that [corrections officials] have, with deliberate indifference, exposed him to conditions that pose an unreasonable risk of serious damage to future health") (emphasis added); *see also Hope v. Pelzer,* 536 U.S. 730, 738 (2002) (citing *Farmer,* 511 U.S. at 842) (courts "may infer the existence of [deliberate indifference] from the fact that the risk of harm is obvious"); *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001) (holding, "there is no requirement that an inmate suffer serious medical problems before the condition is actionable").

Numerous federal courts have found that prisons violate the Eighth Amendment when they confine inmates in conditions where they are likely to contract an infectious disease. *Hutto v. Finney,* 437 U.S. 678, 682 (1978) (placement of inmates in punitive isolation under conditions where infectious diseases could spread easily constituted Eighth Amendment violation); *Click v. Henderson,* 855 F.2d 536, 539-40 (8th Cir. 1988) (plaintiff would "have a colorable [Eighth Amendment] claim ... if he could show that there is 'a pervasive risk of harm to inmates' of contracting the AIDS virus and if there is 'a failure of prison officials to reasonably respond to that risk'") (quoting *Martin v. White,* 742 F.2d 469, 474 (8th Cir.1984)); *Powell v. Lennon,* 914 F.2d 1459, 1463 (11th Cir.1990) (plaintiff's allegations that "the defendants forced him to remain in a dormitory [whose] atmosphere was filled with friable asbestos" and that "defendants knew of the health danger and yet refused to move the plaintiff to an asbestos-free environment" stated a claim for

"deliberate indifference to the plaintiff's serious medical needs"); *Bolton v. Goord*, 992 F. Supp. 604, 628 (S.D.N.Y. 1998) (acknowledging that prisoner could state claim under § 1983 for confinement in same cell as inmate with serious contagious disease); *Gates v. Collier,* 501 F.2d 1291, 1300–03 (5th Cir.1974) (court affirmed the district court's holding that allowing "[s]ome inmates with serious contagious diseases ... to mingle with the general prison population," alongside maintaining a host of other unsanitary and inhumane conditions, "constitute[d] cruel and unusual punishment") (cited with approval in *Rhodes v. Chapman,* 452 U.S. 337, 352 n.17 (1981)); *Jolly*, 76 F.3d at 477 ("[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease"); *see also Narvaez v. City of New York*, No. 16 Civ. 1980 (GBD), 2017 WL 1535386, at *9 (S.D.N.Y. Apr. 17, 2017) (denying "motion to dismiss Plaintiff's claim that the City of New York violated Plaintiff's rights under the Due Process Clause by repeatedly deciding to continue housing him with inmates with active-TB" during his pretrial detention).

Similarly, requiring inmates to purchase items they need to protect themselves from an infectious disease outbreak constitutes an Eighth Amendment violation. *Reynolds v. Wagner*, 128 F.3d 166, 178 (3d Cir. 1997) ("[A]n inmate might be able to assert a valid Eighth or Fourteenth Amendment claim if he could show that a prison fee program caused other inmates to delay seeking treatment to such an extent as to cause a serious risk of an epidemic, that prison officials knew of this serious risk, but that they exhibited deliberate indifference to it and thus failed to take proper precautions") *see also Cannon v. Mason*, 340 F. App'x 495, 499 n.3 (10th Cir. 2009) (noting that an Eighth Amendment violation

occurs where "prison officials deny an inmate medical treatment due to a lack of funds or condition the provision of needed medical services upon an inmate's ability to pay") (citations omitted); *Hudgins v. DeBruyn*, 922 F. Supp. 144, 150 (S.D. Ind. 1996) (refusing to provide over-the-counter medication for a serious medical condition violates the Eighth Amendment "if the inmate lacks sufficient resources to pay for the medicine").

Here, COVID-19 is "sure or very likely to cause serious illness," and even waiting until "next week" to attempt internal mitigation efforts may be too long given the present KDOC outbreak. *Helling*, 509 U.S. at 33; *see supra*, Statement of Facts. In other words, the harmful "condition of confinement" is confinement itself. As outlined in Dr. Thedinger's declaration and the declaration of Dr. Amon incorporated therein, there are no mitigation efforts that KDOC could undertake that would better prevent the risk of contraction—and possible later spread to the non-prison community—than immediate release. Ex. B ¶ 5 (CDC guidelines and social distancing are "simply not able to be followed in a crowded correctional setting"); Ex. B-1 ¶ 48 ("the public health recommendation is to release high-risk people from detention"); *see also* Ex. A ¶ 32 (noting the concurrence of a series of public health experts). In addition to the immediate release of all Medically-Vulnerable Class Members, KDOC must provide adequate sanitation products cost-free to all Class Members and institute a plan to expeditiously release Release-Eligible and Low-Level Offender Class Members. Respondents are knowingly exposing Petitioners and all Class Members to infection by failing to release inmates and provide sanitation products, establishing their deliberate indifference as a matter of law. *See, e.g.*, *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 644 (5th Cir. 1996) ("even where a State may not want to

subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices."); *see also* Ex. B ¶ 4 (noting the "incredible risks that prisons pose as a virus incubator" for COVID-19).

B. Petitioners' Incarceration Amidst the Current Outbreak and Potential Spread of COVID-19 at KDOC Facilities Violates their Right to Constitutional Conditions of Confinement under Section 9 of the Kansas Constitution Bill of Rights.

The Kansas Constitution, like the United States Constitution, forbids "cruel and unusual punishment." KAN. CONST. B. OF R. § 9. Kansas appellate courts have held that the Kansas Constitution's prohibition against cruel and unusual punishment likewise protects prisoners from deliberate indifference to their medical needs. *Van Dyke v. State*, 31 Kan. App. 2d 668, Syl. ¶¶ 5, 7, 70 P.3d 1217 (Kan. App. June 20, 2003) (noting that Section 9 of the Kansas Constitution Bill of Rights has protections co-extensive to the Eighth Amendment and that federal precedent is binding; specifically noting that "deliberate indifference to an inmate's medical needs by prison officials violates the prohibition against cruel and unusual punishment"); *Macias v. Norwood*, No. 118,331, 2018 Kan. App. Unpub. LEXIS 220, at *8 (Kan. App. Mar. 23, 2018) (noting that Section 9 "include[s] the right of prison inmates to receive adequate medical care and treatment") (as this is an unpublished case, a copy of the case is attached to this brief in compliance with Kansas Supreme Court Rule 7.04); *see also Darnell v. Simmons*, 30 Kan. App. 2d 778, 780, 48 P.3d 1278 (Kan. App. 2002) (noting that habeas corpus is the correct vehicle to challenge inadequate medical care and treatment under both Section 9 and the Eighth

Amendment); *Snoddy v. Pryor*, No. 115,122, 2016 Kan. App. Unpub. LEXIS 816, at *6 (Kan. App. Oct. 7, 2016). (same) (as this is an unpublished case, a copy of the case is attached to this brief in compliance with Kansas Supreme Court Rule 7.04).

Therefore, Respondents' knowing exposure of Petitioners and Class Members to coronavirus infection amounts to cruel and unusual punishment under the Kansas Bill of Rights as well.

C. Exhaustion of Administrative Remedies in the Face of COVID-19 Spread is Futile, If Not Dangerous.

This Court has declared that exhaustion under K.S.A. 75-52,138 is unnecessary where a prisoner's pursuit of administrative remedies prior to suit would be futile. *In re Pierpoint*, 271 Kan. 62, Syl. ¶ 2, 21 P.3d 964 (Kan. 2001) ("Exhaustion of administrative remedies is not required when administrative remedies are inadequate or would serve no purpose"); *see also Chelf v. State*, 46 Kan. App. 2d 522, 537, 263 P.3d 852 (Kan. App. 2011) ("Kansas courts also recognize a judicially created equitable exception to exhaustion when the administrative remedies available are inadequate or compliance with them would serve no purpose"). This Court has also explicitly found exhaustion of administrative remedies to be unnecessary where the type of relief sought is unavailable through the ordinary grievance process. *Pierpoint*, 271 Kan. at 625 (administrative exhaustion unnecessary where it was unlikely to be fruitful); *see id.* (endorsing lack of administrative exhaustion in a prior case where habeas petition claimed "inadequate and overcrowded jail conditions," because "the unique nature of the inmates' complaints did not lend itself to the ordinary disciplinary procedures available at the jail") (citing *Beaver v. Chaffee*, 2 Kan.

App. 2d 364, 370, 579 P.2d 1217 (Kan. App. 1978)). Here, Petitioners request release and other unique remedies that are wholly unavailable through Respondents' disciplinary grievance process— and therefore Petitioners need not exhaust these administrative remedies.

Courts across the country also excuse administrative exhaustion requirements where the grievance process at issue cannot provide timely relief. *See*, *e.g.*, *Fuqua v. Ryan*, 890 F.3d 838, 848 (9th Cir. 2018) (Where plaintiff had only three days' notice beforehand that he would be asked to work on a religious holiday, but available procedures took thirty days, the court held that "relief …was not available to him"); *Blankenship v. Owens*, No. 1:11-cv-429-TCB, 2011 WL 610967, at *6 (N.D. Ga. Feb. 15, 2011) (if plaintiff could show that he would be executed before the grievance is heard, then the remedy could be unavailable to him). Given that COVID-19 has already entered KDOC facilities (Ex. D), it is likely that Petitioners and Class Members would contract COVID-19 prior to completing any grievance process. It is then not only futile, but dangerous to force Petitioners and Class Members to exhaust state administrative remedies when their risk of COVID-19 contraction is increasing by the minute. The risk of irreparable harm to Petitioners and Class Members is simply too high to require exhaustion in this circumstance.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court issue a Writ of Habeas Corpus consistent with the relief sought in the Petition filed herewith. In doing so, we humbly ask this Court to join several of its sister courts in mandating release for those who would otherwise be exposed to this deadly virus. *See*, *e.g.*, N.J. Supreme

Court Consent Order, No. 84230, Sections B-C (N.J. Mar. 22, 2020) (requiring that all inmates serving sentences in local jails "shall be ordered released" within four days, unless the Attorney General or local prosecutors specifically oppose an individual release in writing); Hawaii Supreme Court Order, Office of Public Defender v. Connors et al., No. SCPW-20-0000200, at 4 (Haw. Apr. 2, 2020) (appointing a special master to oversee expedited release to "reduce inmate populations within correctional centers and facilities, while preserving Respondents' ability to object to the release of specific inmates"); Standing Order No. SSC-20-5 (Sup. Ct. Cal., Sacramento Cty., Mar. 17, 2020) (authorizing county sheriff to grant accelerated release to all inmates nearing the end of their felony or misdemeanor sentence); *Elijah Little v. NYS Department of Corrections*, Docket No. 260154/2020 (N.Y. Sup Ct. Mar 25, 2020) (granting writ of habeas corpus ordering release for over a hundred at-risk individuals incarcerated for supervised release violations).

Dated: April 9, 2020

Respectfully Submitted,

ACLU FOUNDATION OF KANSAS

/s/ Lauren Bonds______

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CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on April 9, 2020, for delivery to:

Jeff Cowger
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/s/ Lauren Bonds______
Lauren Bonds

CITED UNPUBLISHED DECISIONS

Macias v. Norwood

Court of Appeals of Kansas

March 23, 2018, Opinion Filed

No. 118,331

Reporter
2018 Kan. App. Unpub. LEXIS 220 *; 414 P.3d 751; 2018 WL 1440116

DANIEL MACIAS, Appellant, v. JOE NORWOOD, KANSAS DEPARTMENT OF CORRECTIONS SECRETARY, Appellee.

Notice: NOT DESIGNATED FOR PUBLICATION.

PLEASE CONSULT THE KANSAS RULES FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Subsequent History: Review denied by Macias v. Norwood, 2018 Kan. LEXIS 441 (Kan., June 25, 2018)

Prior History: **[*1]** Appeal from Leavenworth District Court; GUNNAR A. SUNDBY, judge.

Disposition: Affirmed.

Counsel: Rhonda K. Levinson, of Perry and Trent, L.L.C., of Bonner Springs, for appellant.

Sherri Price, legal counsel, of Lansing Correctional Facility, and Roger W. Slead, of Horn, Aylawd & Bandy, LLC, of Kansas City, Missouri, for appellee.

Judges: Before BRUNS, P.J., PIERRON and POWELL, JJ.

Opinion

MEMORANDUM OPINION

PER CURIAM: Daniel Macias appeals from the district court's K.S.A. 2016 Supp. 60-212(b)(6) dismissal for failure to state a claim of his K.S.A. 2016 Supp. 60-1501 petition. Macias contends that the Lansing Correctional Facility acted with deliberate indifference towards him in providing care and treatment for abdominal pain that he has evidently experienced for a number of years. Specifically, he seeks additional medical testing in addition to that already provided in order to diagnose the cause of his ailments. Based on our review of the record on appeal, we do not find that Macias has alleged in his petition shocking and intolerable conduct or continuing mistreatment of a constitutional stature. Thus, we affirm.

FACTS

Macias is an inmate at the Lansing Correctional Facility. According to the factual statement that he submitted as part of his K.S.A. 60-1501 petition, Macias began having abdominal **[*2]** pain and irregular bowel movements in 2004. Health care providers in the prison clinic saw him on multiple occasions over the course of several years. In an effort to diagnosis a medical reason for his complaints, Macias was sent to the University of Kansas Hospital for a CT scan. On May 28, 2014, medical staff at University of Kansas Hospital medical staff evidently diagnosed Macias with inflammation of the pancreas or pancreatitis.

After he lost a significant amount of weight in early 2015, a doctor in the prison clinic arranged to have Macias taken to Providence Medical Center in Kansas City. The hospital admitted him for three days while medical staff performed a battery of medical tests in an attempt to determine the cause of his abdominal pain and weight loss.

The testing performed at Providence Medical Center included

a CT scan of the abdomen, an esophagogastroduodenoscopy (EGD), a colonoscopy, and a complete blood work-up. The medical testing evidently revealed kidney stones, erosion of the lower third of the esophagus, and a few blood tests above the normal ranges. It appears that Matias was prescribed Dicyclomine, which is normally used to treat irritable bowel syndrome. However, **[*3]** Matias asserts that it did not help his condition. After returning to Lansing, the prison clinic health care providers regularly saw to his treatment.

Subsequently, the prison clinic set up an appointment for Macias with the University of Kansas Hospital in Kansas City. While there, Macias underwent a "capsule test" to attempt to diagnosis the cause of his abdominal pain. In addition, an electronic scan of Macias' abdomen was conducted, as well as other testing. Evidently, the testing did not reveal any evidence of acute or chronic pancreatitis. However, the testing did reveal two small kidney stones, which the medical staff recommended that Macias see a urologist to treat. Furthermore, the medical staff suggested that he undergo a TB and stool fat test. Finally, in a letter dated April 20, 2016, Dr. John Sun, of the University of Kansas Hospital, informed Macias that the CT tests revealed "a normal pancreas without findings of chronic pancreatitis."

On November 4, 2016, Macias filed a health services request form with the prison clinic requesting that the prison send him to an unspecified specialist. He also requested medication for his abdominal pain. After the prison clinic denied **[*4]** his requests, Macias filed a grievance with the Lansing Correctional Facility. On January 3, 2017, the prison clinical staff noted that Macias' case had been considered by the "regional medical staff" and that it had been determined that his condition did not warrant seeing a specialist at that time. As a result, prison officials denied his grievance.

Macias appealed the denial of his grievance to the Kansas Secretary of Corrections. On February 16, 2017, the Kansas Secretary of Corrections—through his designee, Doug Burris—denied the appeal. However, Burris did pass on recommendations to prison medical staff to place Macias on a high fiber diet to help assist with his bowel movements.

On March 23, 2017, Macias filed his K.S.A. 2016 Supp. 60-1501 petition for a writ of habeas corpus. In his petition, Macias alleged that he had a serious medical condition and that the prison medical staff had refused to perform a stool fat test on his bowel movements and refused to perform a second colonoscopy. In support of his motion, Macias stated that he "wishes for the [prison] to take steps to eliminate his colon as the source of [his] problems, order the additional testing as requested by KU, figure out why his triglycerides **[*5]** are so high[,] perform either an ERCP or MRCP and not another CT scan, quit prescribing fiber pills as they are not effective on his condition, investigate the kidney stones and gallbladder to make sure they are not causing this problem, and eliminate the pancreas as the source of problems or treat it." On April 19, 2017, the district court appointed Macias an attorney to represent him through the proceedings.

On May 25, 2017, the State filed a motion to dismiss Macias' petition for failure to state a claim pursuant to K.S.A. 2016 Supp. 60-212(b)(6). In support of its motion, the State argued that Macias failed to demonstrate that the prison was deliberately indifferent to his medical condition. The State further argued that a dispute over Macias' diagnosis and over the direction of his treatment did not rise to the level of a constitutional violation.

The district court held a hearing on August 22, 2017, at which Macias appeared in person and by counsel. After considering the arguments of the parties and reviewing the K.S.A. 60-1501 petition as well as the documentation offered in support of the petition, the district court granted the State's motion to dismiss. The same day, after a brief recess, the district court denied a **[*6]** motion to reconsider filed by Macias.

Finally, in a memorandum decision filed on September 19, 2017, the district court stated:

> "While the Petitioner may be disappointed with the elusive nature of a definitive diagnosis or an effective treatment plan for his medical conditions, neither the disappointment nor the chronic nature of the pain and symptoms suffered . . . are due to deliberate indifference to his serious medical needs by the KDOC and its healthcare provider. In fact, on the face of the Petition and the documents attached by Mr. Macias in support of his asserted claim, it is instead apparent that the KDOC has gone to great lengths to find a diagnosis, provide relief of symptoms utilizing various treatment plans, and continues to monitor and attempt to address the Petitioner's symptoms.
>
> Unfortunately, neither medicine nor the KDOC can guarantee a cure to all symptoms suffered by Mr. Macias."

ANALYSIS

On appeal, Macias contends that the district court erred by dismissing his K.S.A. 2016 Supp. 60-1501 habeas corpus petition. He argues that his petition alleged facts that are sufficient to show the State's deliberate indifference to his medical needs. In response, the State contends that Macias' petition **[*7]** fails to allege "shocking and intolerable conduct" or "continuing mistreatment" in violation of the

Constitution. Rather, the State argues—and the district court determined—that the petition and the attached documents show that the prison clinic has sent Macias to two different hospitals in an attempt to find a medical diagnosis, has attempted to provide Macias relief for his symptoms, and has continued to provide him with care and treatment.

To state a claim for relief under K.S.A. 60-1501, a petition must allege "shocking and intolerable conduct or continuing mistreatment of a constitutional stature." Johnson v. State, 289 Kan. 642, 648, 215 P.3d 575 (2009). "[I]f, on the face of the petition, it can be established that petitioner is not entitled to relief, or if, from undisputed facts, or from incontrovertible facts, such as those recited in a court record, it appears, as a matter of law, no cause for granting a writ exists," then summary dismissal is proper. Johnson, 289 Kan. at 648-49; see K.S.A. 2016 Supp. 60-1503(a). In considering a motion to dismiss for failure to state a claim for relief under K.S.A. 2016 Supp. 60-212(b)(6), a court must accept the plaintiff's description of that which occurred, along with any inferences reasonably drawn therefrom. See Ripley v. Tolbert, 260 Kan. 491, Syl. ¶¶ 1-2, 921 P.2d 1210 (1996). On appeal, we exercise unlimited review of a summary dismissal. Johnson, 289 Kan. at 649.

The Eighth Amendment to the United States Constitution and **[*8]** Section 9 of the Kansas Constitution Bill of Rights both prohibit cruel and unusual punishment. These constitutional guarantees include the right of prison inmates to receive adequate medical care and treatment. Levier v. State, 209 Kan. 442, 445, 448, 497 P.2d 265 (1972). Accordingly, an inmate who has not received adequate medical care can raise the issue in a K.S.A. 60-1501 petition. 209 Kan. at 449; Darnell v. Simmons, 30 Kan. App. 2d 778, 780, 48 P.3d 1278 (2002). However, an inmate's Eighth Amendment right to be free from cruel and unusual punishment is not implicated unless prison officials show a deliberate indifference to an inmate's serious medical need that causes an unnecessary and wanton infliction of pain. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976); Roe v. Elyea, 631 F.3d 843, 856-57 (7th Cir. 2011).

To establish an Eighth Amendment violation in these circumstances, the inmate must show two things. First, the inmate must show that his or her medical need is "'sufficiently serious.'" Farmer v. Brennan, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994); Darnell, 30 Kan. App. 2d at 781. This element requires the inmate to show that a health care provider has diagnosed and prescribed treatment for the medical need or that the need is obvious enough for a layperson to recognize that medical attention is required. Farmer, 511 U.S. at 834; Darnell, 30 Kan. App. 2d at 781. Second, the inmate must show that a prison official was deliberately indifferent to that serious medical need.

In other words, to establish a claim of cruel and unusual punishment, a prison official must know about the serious health problem and deliberately disregard the risk to the **[*9]** inmate's health or safety. Farmer, 511 U.S. at 837; Darnell, 30 Kan. App. 2d at 781. Accordingly, an inmate must show something more than ordinary negligence. However, the inmate is not required to show intentional harm. Farmer, 511 U.S. at 835-36; Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980); Darnell, 30 Kan. App. 2d at 781 (citing Cupples v. State, 18 Kan. App. 2d 864, 869, 861 P.2d 1360 [1993]); see Estelle, 429 U.S. at 105-06. Moreover, a mere difference of opinion between an inmate and the medical staff of a prison regarding a medical diagnosis or treatment is not sufficient to support a claim of cruel and unusual punishment. Darnell, 30 Kan. App. 2d at 782. Rather, deliberate indifference occurs only if a prison official ignores an inmate's medical needs or when a prison official prevents an inmate from seeking care and treatment. Estelle, 429 U.S. at 104; Ramos, 639 F.2d at 575; Darnell, 30 Kan. App. 2d at 781.

Here, we find that Macias has shown a sufficiently serious medical condition. However, we do not find that Macias has alleged facts that could rise to the level of deliberate indifference in responding to his medical condition. The medical records attached to the petition do not suggest that prison officials have ignored Macias' medical problems. Rather, the medical records show that the prison clinic has seen Macias many times over the years, he has been sent to two different hospitals for medical testing, he has been given him the medications ordered by his health care providers, and he continues to be monitored by **[*10]** health care providers at the prison.

Ultimately, we find that the case involves a dispute over medical judgment. Such judgments are appropriately left to health care providers rather than the courts. It is unfortunate that Macias' medical condition has not improved. Nevertheless, we agree with the district court's conclusion that prison officials have "gone to great lengths to find a diagnosis, provide relief of symptoms utilizing various treatment plans, and continues to monitor and attempt to address the Petitioner's symptoms."

In summary, viewing the K.S.A. 60-1501 petition and the attachments thereto in the light most favorable to Macias, we do not find it sufficient to suggest that prison officials deliberately disregarded Macias' health. Accordingly, we find that Macias has not alleged "shocking and intolerable conduct or continuing mistreatment of a constitutional stature." We, therefore, conclude that the district court did not err in dismissing Macias' K.S.A. 60-1501 petition.

Affirmed.

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Snoddy v. Pryor

Court of Appeals of Kansas

October 7, 2016, Opinion Filed

No. 115,122

Reporter
2016 Kan. App. Unpub. LEXIS 816 *; 381 P.3d 518; 2016 WL 5867246

MILTON SNODDY, Appellant, v. REX PRYOR, Warden, Lansing Correctional Facility, Appellee.

Notice: NOT DESIGNATED FOR PUBLICATION.

PLEASE CONSULT THE KANSAS RULES FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE KANSAS REPORTER.

Prior History: **[*1]** Appeal from Leavenworth District Court; GUNNAR A. SUNDBY, judge.

Disposition: Affirmed.

Counsel: Michael G. Highland, of Bonner Springs, for appellant.

Sherri Price, special assistant attorney general, of Lansing Correctional Facility, for appellee.

Judges: Before BRUNS, P.J., POWELL, J., and STUTZMAN, S.J.

Opinion

MEMORANDUM OPINION

Per Curiam: Milton Snoddy, an inmate at the Lansing Correctional Facility (Lansing), appeals the district court's decision denying his K.S.A. 60-1501 petition following an evidentiary hearing. After the hearing, the district court issued a memorandum decision explaining its ruling. Ultimately, it found that Snoddy had failed to sustain his burden of proof. We agree. Specifically, we find that Snoddy has failed to establish that Lansing officials acted with a deliberate indifference to his medical needs. Thus, we affirm.

Facts

On March 4, 2013, Snoddy filed an inmate grievance form alleging that he received inadequate care at the Lansing medical clinic when he was sick with the flu and/or bronchitis. Snoddy alleged that he had been examined by an Advance Practice Registered Nurse (APRN) on February 28, 2013, who determined that he had "a bad case of the Flu." Evidently, the APRN ordered that he receive antibiotics **[*2]** for 5 days. Although he received his first two doses of antibiotics, Snoddy alleges that he was told there were no more antibiotics available when he returned for his third dose and that he should come back the next day. Further, Snoddy alleges that he was told that there was no order for him to receive additional antibiotics when he returned the next day.

Apparently Snoddy's grievance was sent to the Secretary of the Department of Corrections (Secretary) for a response. On March 19, 2013, the designee of the Secretary issued a "Grievance-Response on Appeal," which stated:

> "In February 2013 the inmate was seen and diagnosed with acute bronchitis and medication was ordered. Saline nasal spray was renewed. A double dose of antibiotics were ordered for 5 days. The inmate was given his second dose when he was told that there were no orders for more medication. The inmate refused to start on statin for his cholesterol, no show for blood pressure check. No show for his follow up visit for bronchitis."

The Secretary's designee also noted that the "Department's Physician Contract Monitor Consultant" who reviewed the matter had concerns regarding lack of documentation and

medication orders but **[*3]** found that Snoddy appeared stable and had no long term side effects from not receiving all of the antibiotics ordered. As for action taken, the designee noted: "I have been advised that a recommendation for corrective action will be forwarded to CCS Regional Medical Director."

On May 6, 2013, Snoddy filed a K.S.A. 60-1501 petition. Snoddy did not make any factual allegations on the face of the petition. He did, however, attach a copy of the grievance form, the Secretary's response, and a letter dated April 19, 2013. In the letter, Snoddy had expressed his concerns about how his grievance had been handled and his disagreement with the findings.

Subsequently, the district court issued a writ of habeas corpus and ordered Lansing to respond to the petition. On August 22, 2013, Lansing filed a motion to dismiss Snoddy's petition. A few weeks later, the district court appointed an attorney to represent Snoddy. The attorney filed a response to the motion to dismiss on October 17, 2013.

On December 31, 2013, Snoddy asked the district court for a new attorney. In support of his request, he provided the district court with several letters between him and his attorney discussing strategy on handling the case. **[*4]** On January 14, 2014, the district court granted Snoddy's request to dismiss his attorney and subsequently appointed another attorney to represent Snoddy.

On April 7, 2014, Snoddy's new attorney filed another response to Lansing's motion to dismiss. A few weeks later, a status hearing was held. In a journal entry entered following the hearing, the district court ordered—based on agreement of the parties—that Snoddy should undergo an independent medical examination by a physician at the University of Kansas Medical Center to determine if he suffered any long term effects from not receiving all of the antibiotics that had been ordered.

At an evidentiary hearing held on October 22, 2015, Snoddy indicated that he had received a report from the independent medical exam. However, the report is not in the record. Lansing admitted into evidence a letter from Dr. Paul Corbier, dated October 20, 2015, regarding his review of Snoddy's medical records. The letter stated that Snoddy had a physical exam performed by a "Dr. Louis" from the University of Kansas in November 2014, but no results of the examination were discussed. Dr. Corbier did opine that Snoddy's lab and EKG results from August 2014 **[*5]** were essentially normal.

Although Snoddy testified that the district court had also ordered that an MRI be performed, there is nothing in the record to support his allegation that the district court entered such an order. Snoddy further testified that he needed to have the independent medical examination repeated because he did not get the results in a timely manner. In response, Lansing's attorney argued that the independent medical examination ordered by the district court did not indicate that Snoddy had any medical condition as a result of not receiving all the antibiotics he was supposed to have been given in February 2013. The district judge then took the matter under advisement and stated that he would listen to the recordings from his past hearings in this case before rendering his decision.

On November 17, 2015, the district court entered a memorandum decision granting Lansing's motion to dismiss and denying Snoddy's request for writ of habeas corpus. The district court found that the evidence submitted by Lansing "directly contradicts the assertion that the Secretary has ignored his complaint." In addition, the district court determined that Snoddy had failed to sustain his **[*6]** burden of proof in this case. On December 16, 2015, the district court denied a pro se motion for reconsideration.

ANALYSIS

On appeal, Snoddy contends that the district court erred in failing to find that Lansing was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment to the United States Constitution. The standard of review for an appeal of a decision on a K.S.A. 60-1501 petition is whether the factual findings of the district court are supported by substantial competent evidence and whether those findings are sufficient to support its conclusions of law. Darnell v. Simmons, 30 Kan. App. 2d 778, 780, 48 P.3d 1278 (2002). Substantial evidence refers to legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion. State v. May, 293 Kan. 858, 862, 269 P.3d 1260 (2012). Our review of conclusions of law is unlimited. Rice v. State, 20 Kan. App. 2d 710, 711, 893 P.2d 252, *rev. denied* 257 Kan. 1093 (1995). In a K.S.A. 60-1501 action, the petitioner bears the burden to prove that a constitutional right was violated. Sammons v. Simmons, 267 Kan. 155, 158, 976 P.2d 505 (1999).

In Kansas, an incarcerated person retains the right to adequate medical care and treatment, which is a right derived from the prohibition against the infliction of cruel and unusual punishments in both the Eighth Amendment to the United States Constitution and Section 9 of the Kansas Constitution Bill of Rights. Habeas corpus is the appropriate remedy for a prisoner to use to allege being deprived of adequate medical care and treatment. Darnell, 30 Kan. App. 2d at 780 (citing Levier v. State, 209 Kan. 442, 497 P.2d 265 [1972]).

We examine **[*7]** violations of the Eighth Amendment by measuring whether there has been deliberate indifference to the serious medical needs of a prisoner. Deliberate indifference to the serious medical needs of prisoners occurs if there is unnecessary and wanton infliction of pain. Moreover, when prison officials prevent an inmate from receiving recommended treatment or deny an inmate access to medical personnel capable of evaluating the need for treatment, deliberate indifference to serious medical needs is shown. Darnell, 30 Kan. App. 2d at 780-81.

Deliberate indifference has both objective and subjective components. The objective component is met if the deprived medical need is sufficiently serious, which means it ""has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." [Citations omitted.]'" 30 Kan. App. 2d at 781. The subjective component is met if a prison official knows of an excessive risk to the inmate's health or safety and disregards that risk. 30 Kan. App. 2d at 781. Deliberate indifference has also been described as callous inattention, reckless disregard, gross negligence, and more than ordinary negligence but less than express intent to harm or maliciousness. See **[*8]** 30 Kan. App. 2d at 781 (citing Medcalf v. State of Kan., 626 F. Supp. 1179, 1190 [D. Kan. 1986], and Cupples v. State, 18 Kan. App. 2d 864, 861 P.2d 1360 [1993]).

Although it is undisputed that Snoddy did not receive some of the antibiotics that were ordered in February 2013, Snoddy made no showing at the evidentiary hearing that there was an excessive risk to his health or safety. Moreover, he made no showing that Lansing knowingly acted in disregard of an excessive risk if, in fact, one existed. At most, Snoddy has alleged that he may have regressed for a short period of time as a result of not receiving a full dose of antibiotics. Not only did the district court hold a hearing in this case to allow Snoddy to present whatever evidence he had to support his claim of deliberate indifference to serious medical needs, it also ordered an independent medical examination. For whatever reason, Snoddy did not introduce the results of the independent medical examination at the hearing. Lansing, however, did present the opinion of a physician who stated Snoddy's lab and EKG results were essentially normal.

In summary, we find that the district court's decision is supported by substantial competent evidence. Further, we agree with the district court that Snoddy has failed to sustain his burden to prove that Lansing showed a deliberate indifference **[*9]** to a serious medical need. In fact, Snoddy has not proven an excessive risk to his health, much less that Lansing knew of such a risk and ignored it. Certainly, there has been no showing of callous inattention, reckless disregard, or gross negligence in this case. We, therefore, affirm the district court's decision denying Snoddy's K.S.A. 60-1501 petition.

Affirmed.

End of Document

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Exhibit B

DECLARATION OF DR. BLAIR THEDINGER

Pursuant to K.S.A. § 53-601, I, Dr. Blair Thedinger, declare as follows:

1. My name is Dr. Blair Thedinger, MD. I am a physician licensed to practice medicine in the state of Missouri. I am employed by the KC CARE Clinic, a federally qualified health center in Kansas City, Missouri. I am board certified in Family Medicine and I have been credentialed as an HIV Specialist through the American Academy of HIV Medicine. I have also treated hundreds of patients with Hepatitis C since 2013 at the KC CARE Clinic.
2. I have experiences with working to increase access to treatment for viruses in the correctional settings. I have seen how spread of Hepatitis C within correctional settings has had an impact on the broader community once inmates are released.
3. I have reviewed the detailed declaration of Dr. Joseph Amon— an expert of epidemiology— filed on March 29, 2019 in a court in Pennsylvania. Attached as Exhibit 1. I agree with Dr. Amon's conclusions regarding the incredible risks that prisons pose as a virus incubator, particularly for those who are at special risk of contracting COVID-19.
4. I also agree that people with HIV, Hepatitis C, cancer, underlying cardiac or pulmonary disease, diabetes, people who are on immunosuppressing medications, people who smoke, and people at advanced age (50 and older), are all at increased risk of complications for COVID 19.
5. I have reviewed the CDC guidance and distancing protocols and agree that they are simply not able to be followed in a crowded correctional setting.

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

DR. BLAIR THEDINGER

4/7/2020

DATE

EXHIBIT 1

Declaration of Joseph J. Amon, Ph.D. MSPH

I, Joseph J. Amon, declare as follows:

Background and Expertise

1. I am an infectious disease epidemiologist, Director of Global Health and Clinical Professor in the department of Community Health and Prevention at the Drexel Dornsife School of Public Health. I also hold an appointment as an Associate in the department of epidemiology of the Johns Hopkins University Bloomberg School of Public Health. My Ph.D. is from the Uniformed Services University of the Health Sciences in Bethesda, Maryland and my Master's of Science in Public Health (MSPH) degree in Tropical Medicine is from the Tulane University School of Public Health and Tropical Medicine.

2. Prior to my current position, I have worked for a range of non-governmental organizations and as an epidemiologist in the Epidemic Intelligence Service of the US Centers for Disease Control and Prevention. Between 2010 and 2018, I was a Visiting Lecturer at Princeton University, teaching courses on epidemiology and global health. I currently serve on advisory boards for UNAIDS and the Global Fund against HIV, TB and Malaria and have previously served on advisory committees for the World Health Organization.

3. I have published 60 peer-reviewed journal articles and more than 100 book chapters, letters, commentaries and opinion articles on issues related to public health and health policy.

4. One of my main areas of research focus relates to infectious disease control, clinical care, and obligations of government related to individuals in detention settings, in which I have published a number of reports assessing health issues in prison and detention settings and more than a dozen peer-reviewed articles. In 2015-2016, I was a co-editor of a special issue of the British journal, "The Lancet," on HIV, TB and hepatitis in prisons. I also serve on the editorial boards of two public health journals. My resume is attached as Exhibit A.

Information on COVID-19 and Vulnerable Populations

5. COVID-19 is a coronavirus disease that has reached pandemic status. As of today (3/29), according to the World Health Organization more than 638,146 cases have been diagnosed in 203 countries or territories around the world and more than 30,105 confirmed deaths.[1] In the United States, which has the highest number of reported cases in the world, more than 135,499 people have been diagnosed with the disease and 2,381people have died thus far,[2] though these numbers likely underreport the actual infections and deaths.[3] In Pennsylvania, as of 4:30 pm on March 29, 2020, there were 3,394 confirmed cases and 38 deaths.[4] There has been an exponential increase in cases

[1] See https://www.who.int/emergencies/diseases/novel-coronavirus-2019 accessed March 29, 2020.

[2] See https://coronavirus.jhu.edu/map.html accessed March 29, 2010

[3] See https://www.washingtonpost.com/national/us-deaths-from-coronavirus-top-1000-amid-incomplete-reporting-from-authorities-and-anguish-from-those-left-behind/2020/03/26/2c487ba2-6ad0-11ea-9923-57073adce27c_story.html accessed March 26, 2020.

[4] See https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Situation%20Reports/20200325nCoVSituationReportExt.pdf; accessed March 26, 2019 see also:

and deaths in Pennsylvania over the past two weeks:

Date	Cases (cumulative)	Deaths (cumulative)
12-Mar	28	0
13-Mar	41	0
14-Mar	58	0
15-Mar	63	0
16-Mar	76	0
17-Mar	96	0
18-Mar	133	1
19-Mar	185	1
20-Mar	268	1
21-Mar	371	2
22-Mar	479	3
23-Mar	644	6
24-Mar	851	7
25-Mar	1127	11
26-Mar	1687	16
27-Mar	2218	22
28-Mar	2751	34
29-Mar	3394	38

6. COVID-19 is a serious disease, ranging from no symptoms or mild ones for people at low risk, to respiratory failure and death. There is no vaccine to prevent COVID-19. There is no known cure or anti-viral treatment for COVID-19 at this time. The specific mechanism of mortality of critically ill COVID-19 patients is uncertain but may be related to virus-induced acute lung injury, inflammatory response, multiple organ damage and secondary nosocomial infections.

7. The World Health Organization (WHO) identifies individuals at highest risk to include those over 60 years of age and those with cardiovascular disease, diabetes, chronic respiratory disease, and cancer.[5] The WHO further states that the risk of severe disease increases with age starting from around 40 years.

8. The US CDC identifies "older adults [65 and older] and people of any age who have serious underlying medical conditions" as at higher risk of severe disease and death.[6] The CDC identifies underlying medical conditions to include: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease ("including asthma or chronic obstructive pulmonary disease [chronic bronchitis or emphysema] or other chronic conditions associated with impaired lung function"), neurological and neurologic and

https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx accessed March 29, 2019

[5] See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_4 accessed March 21, 2020

[6] See https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html accessed March 21, 2020

neurodevelopmental conditions, and current or recent pregnancy.[7]

9. Data from US COVID-19 cases published by the CDC on March 19, 2020, found that hospitalization rates and intensive care unit (ICU) admission rates were nearly identical for individuals aged 45-54 and individuals aged 55-64 (between approximately 20-30% for both groups for hospitalization and between 5-11% for both groups for ICU admission).[8] This suggests that individuals >45 years could be considered high risk for severe disease while those ≥54 years could be considered high risk for severe disease and death.

Health profile of plaintiffs

11. I have reviewed the declaration of Brian McHale and Fredrick Leonard.

12. Mr. McHale is 44 years old and detained in the Montgomery County Correctional Facility. He has a number of medical conditions including hemochromatosis and chronic hepatitis C. He reports a 30 year history of smoking. Due to the likely impact of these conditions on his lungs, liver and heart, he should be considered at high risk for severe illness and death from COVID-19. Mr. Leonard is 29 years old and detained at Pike County Correctional Facility. He has a 17 year history of smoking. His declaration states that he has a history of chronic bronchitis, which is a type of chronic obstructive pulmonary disease that is most frequently caused by smoking. Due to this history, he should be considered at high risk for severe illness and death from COVID-19.

Understanding of COVID-19 Transmission

13. According to the U.S. CDC, the disease is transmitted mainly between people who are in close contact with one another (within about 6 feet) via respiratory droplets produced when an infected person coughs or sneezes.[9] It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.[10] People are thought to be most contagious when they are most symptomatic (the sickest), however some amount of asymptomatic transmission is likely.[11] **This suggests that, while hand washing and disinfecting surfaces is advisable, the main strategy for limiting disease transmission is social distancing and that for such distancing to be effective it must occur before individuals display symptoms.**

14. Recognizing the importance of social distancing, public health officials have recommended extraordinary measures to combat the spread of COVID-19. Schools,

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[7] See https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf accessed March 21, 2020

[8] See https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm, accessed March 21, 2020

[9] See https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html accessed March 21, 2020

[10] See https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html accessed March 21, 2020

[11] See https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html accessed March 21, 2020; See also: Bai Y, Yao L, Wei T, et al. Presumed asymptomatic carrier transmission of COVID-19.JAMA. Published online February 21, 2020. doi:10.1001/jama.2020.2565 and Zhang W, Du RH, Li B, et al. Molecular and serological investigation of 2019-nCoV infected patients: implication of multiple shedding routes. Emerg Microbes Infect. 2020;9(1):386-389.

courts, collegiate and professional sports, theater and other congregate settings have been closed as part of risk mitigation strategy. 50 states, 7 territories, and the District of Columbia have taken some type of formal executive action in response to the COVID-19 outbreak.[12] Through one form or another, these jurisdictions have declared, proclaimed, or ordered a state of emergency, public health emergency, or other preparedness and response activity for the outbreak. Earlier this month Pennsylvania Governor, Tom Wolf, declared a state of emergency, which he buttressed on March 19 with an order closing non-essential businesses.[13] On Monday, March 23, 2020, Governor Wolf issued a stay at home order for residents of Allegheny, Bucks, Chester, Delaware, Monroe and Montgomery counties. On Tuesday, March 24, Governor Wolf extended the stay at home order to Erie;[14] the next day, March 25, Governor Wolf further extended the order to Lehigh and Northampton.[15] On Friday, March 27, 2020, Governor Wolf extended the order to include nine additional counties: Berks, Butler, Lackawanna, Lancaster, Luzerne, Pike, Wayne, Westmoreland, and York.[16] Philadelphia has been under a stay at home order since Saturday, March 21, 2020.[17] In total, nineteen counties are under stay at home orders in Pennsylvania.

15. As of March 28, in response to the threat of COVID-19 transmission, fifteen states prohibit gatherings of any size (California; Colorado; Idaho Illinois; Indiana; Montana; Michigan; New Jersey; New Mexico; New York; Ohio; Oregon; Washington; West Virginia; and Wisconsin); one state prohibits gatherings > 5 individuals (Connecticut); twenty-one states and the District of Columbia prohibit gatherings of >10 individuals (Alaska; Hawaii; Iowa; Kansas; Louisiana; Maine; Maryland; Massachusetts; Mississippi; Missouri; Nevada; New Hampshire; North Carolina; Oklahoma; Rhode Island; South Dakota; Tennessee; Texas; Vermont; Virginia; and Wyoming); one state prohibits gatherings of >25 individuals (Alabama) and two states prohibit gatherings of >50 individuals (Delaware; South Carolina). Many states, including California, Illinois, New Jersey, and New York have also issued quarantine orders directing residents to stay at home except under certain narrow exceptions.[18] These orders are expanding, increasing. Whereas at least 158 million people in 16 states, nine counties and three cities were being urged to stay home on March 23, the numbers increased on March 24, 2020 to at least 163 million people in 17 states, 14 counties and eight cities. As of March 27, at least 228 million people in 25 states, 74 counties and 14 cities and one territory are being urged to stay home.[19]

16. These public health measures aim to "flatten the curve" of the rates of infection so that those most vulnerable to serious complications from infection will be least likely to be

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[12] See https://www.astho.org/COVID-19/ accessed March 21, 2020

[13] See https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf

[14] https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-erie-county-to-mitigate-spread-of-covid-19/ Accessed March, 26, 2020.

[15] https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-lehigh-and-northampton-counties-to-mitigate-spread-of-covid-19-counties-now-total-10/ Accessed March 26, 2020.

[16] https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-expand-stay-at-home-order-to-nine-more-counties-to-mitigate-spread-of-covid-19-counties-now-total-19/ accessed March 28, 2020.

[17] See https://www.wtae.com/article/stay-at-home-order-to-begin-tonight-for-several-pa-counties-including-allegheny/31900786 accessed March 23, 2020.

[18] See https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/#socialdistancing accessed March 28, 2020.

[19] See https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html accessed March 28, 2020.

exposed and, if they are the numbers of infected individuals will be low enough that medical facilities will have enough beds, masks, and ventilators for those who need them.

17. In countries where the virus's course of infection began earlier, and where death rates grew steadily, governments have imposed national emergency measures to prevent contagion from human contact. In Italy and Spain, for example, the governments have imposed national lockdowns to keep people from coming into contact with each other.[20]

18. US cities are starting to see the level of COVID-19 cases seen in previous global hotspots. On Thursday, March 26, Governor Cuomo announced that 100 people had died of the coronavirus between Wednesday and Thursday morning.[21] As of Friday, March 27, the cumulative death toll in the state stood at 450.[22] In response, the city's health commissioner again urged all New Yorkers to follow the stay at home order, emphasizing the impact on the city's already strained health system.[23] Pennsylvania is roughly 10 days behind New York City, following a similar trendline of cases and deaths.[24]

Risk of COVID-19 in Jails

19. The conditions in jails pose a heightened public health risk to the spread of COVID-19, even greater than other non-carceral institutions. Spread of COVID-19 within the jails will affect not only those who are being held there, but also the correctional officers who work there and the communities they go back to.

20. County jails are enclosed environments, much like the cruise ships that were the site of the largest concentrated outbreaks of COVID-19. Detention facilities have even greater risk of infectious spread because of conditions of crowding, the proportion of vulnerable people detained, and often scant medical care. People live in close quarters and are also subject to security measures which prohibit successful "social distancing" that is needed to effectively prevent the spread of COVID-19. Toilets, sinks, and showers are shared, without disinfection between use. Food preparation and food service is communal, with little opportunity for surface disinfection. The crowded conditions, in both sleeping areas and social areas, and the shared objects (bathrooms, sinks, etc.) will facilitate transmission.

21. CDC guidance on correctional and detention facilities,[25] posted March 23, 2020,

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[20] See https://www.cnbc.com/2020/03/14/spain-declares-state-of-emergency-due-to-coronavirus.html accessed March 23, 2020

[21] See https://www.nytimes.com/2020/03/26/world/coronavirus-news.html?action=click&pgtype=Article&state=default&module=styln-coronavirus&variant=show®ion=TOP_BANNER&context=storyline_menu?action=click&pgtype=Article&state=default&module=styln-coronavirus&variant=show®ion=TOP_BANNER&context=storyline_menu#link-18cce12f accessed March 26, 2020.

[22] https://nypost.com/2020/03/27/another-84-people-killed-by-coronavirus-in-new-york-city/ accessed March 28, 2020.

[23] See https://nypost.com/2020/03/25/de-blasio-warns-half-of-all-new-yorkers-will-get-covid-19/ accessed March 26, 2020.

[24] See https://www.businessinsider.com/new-york-city-coronavirus-cases-over-time-chart-2020-3 accessed March 26, 2020.

[25] See: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html accessed March 23, 2020

specifically recommends implementing social distancing strategies to increase the physical space between incarcerated/detained persons “ideally 6 feet between all individuals, regardless of the presence of symptoms” including: 1) increased space between individuals in holding cells, as well as in lines and waiting areas such as intake; stagger time in recreation spaces; restrict recreation space usage to a single housing unit per space; stagger meals; rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table); provide meals inside housing units or cells; limit the size of group activities; reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions.

22. The CDC guidance also describes necessary disinfection procedures including to thoroughly clean and disinfect all areas where a confirmed or suspected COVID-19 case spent time.[26]

23. In addition to declaration of Mr. McHale and Mr. Leonard, as identified in paragraph 11, I have also reviewed the declarations of the following individuals: Jeremy Hunsicker, Christopher Aubry, Michael Foundos, Ernest Fuller, a volunteer with the Pennsylvania Prison Society, Malik Neal, a volunteer with the Pennsylvania Prison Society, and Bret Grote, Co-Founder and Legal Director of the Abolitionist Law Center.

24. Conditions as described in the declarations reinforce the high risk of COVID-19 transmission. For example, in Montgomery County Correctional Facility, Mr. McHale reports sharing a cell, including a toilet and sink, with two other individuals and having close contact with 13 other men in his unit. In Lehigh County Community Corrections, Mr. Hunsicker reports being housed in a “pod” with 20 other people, sharing a bathroom and exposure to individuals working in the community and lack of hand sanitizer available. He also reports eating meals with up to 70 people at one time and being in close contact with other detainees during regular medical checks. Also detained in Montgomery County Correctional Facility, Mr. Aubry reports working in the community and sharing a “pod” with approximately 50 other people, sleeping in bunk beds, and sharing a bathroom. He reports no available hand sanitizer. In Delaware County’s George W. Hill Correctional Facility, Mr. Foundos reports close contact with his cell mate and during meals. In Pike County Correctional Facility, Mr. Leonard reports being confined three to an eight by twelve foot cell with a single shared toilet and sink in the cell. He reports having insufficient soap to last a full day. He also reports eating six to a table with little space between each individual.

25. Based upon Mr. Fuller’s declaration regarding Blair County Prison, between 2 and 20 detainees may be housed together in rooms, with the largest being roughly 20 x 30 feet and with bunk beds or beds placed 3 to 4 feet apart. Soap is limited and physicians are rarely present. Based upon Mr. Grote’s declaration, the infrastructure and routine practice of Allegheny County Jail raise significant challenges to maintaining distancing between detainees in the facilities. These physical infrastructure and security challenges, which are typical of most detention centers, include:

    a) Individuals are held for extended periods of time in the intake area, typically with 10 or more people sharing a single toilet and sink. Only cursory medical screening is conducted.

[26] Ibid

b) A significant number of people housed at ACJ are double-celled.

c) Access to soap is a constant problem in ACJ as is, in some pods, access to personal hygiene and cleaning supplies.

d) There are only a few showers per pod, with many people sharing the same shower area, without any sanitation between individual uses.

e) Dining tables are small and fit four people, with one person on each side. A table is only four feet by four feet, at most, so no one can social distance from others during meal times.

f) As is true in detention facilities generally, communal bathroom facilities pose a risk of transmission and it is not usually possible for an incarcerated person to move throughout ACJ without coming into contact with many other people. The use of elevators also poses a problem bringing individuals in close contact. If someone is housed in a special unit or restrictive housing, they must also be closely escorted everywhere in the facility and security incidents can put an incarcerated person into close contact with staff members.

g) Access to medical care is inadequate at ACJ. There are extreme delays in individuals' ability to access care, as well as huge staffing shortages.

Based on Mr. Neal's declarations regarding conditions at Curran-Fromhold Correctional Facility ("CFCF"), Riverside Correctional Facility ("RCF"), and the Detention Center ("DC"), the Philadelphia facilities share the following characteristics that heighten the risk of transmission:

h) The majority of cells contain two people who sleep on bunk beds and share a single toilet and sink that is in close proximity to the bed.
i) Showers are shared between many individuals without being sanitized between use. Other shared surfaces, like phones, are also not sanitized between use.
j) Individuals in custody are responsible for custodial tasks, and people do not have access to sanitization products to clean their cells.
k) In DC, people are brought to meals in large groups in a cafeteria. At the other facilities, Mr. Neale observed common areas on each block with tables that are not even six feet across.
l) Intake at CFCF takes place in a single holding cell that holds upwards of ten people for the eight to twelve hours it takes to process a new intake.
m) Access to medical care is inadequate at all facilities: individuals housed at these facilities reported that the facilities did not respond to the "sick slips" they submitted even before there was a possibility of COVID-19 infection.

26. Based upon the information provided to me, and my prior knowledge of detention facilities, I am concerned that Pennsylvania jail facilities do not have the ability to implement the critically important principle of social distancing, such as maintain six feet of separation at all times including meals and location of beds, nor are they apparently taking extraordinary measures to identify and properly isolate individuals at high risk, those with potential exposure (e.g., from work detail) or those with symptoms consistent with COVID-19. These steps are essential to preventing transmission of COVID-19. Where jails are housing detained individuals in small cells where they are bunked

together and where they are crowded together to eat meals, they will not be able to prevent COVID-19 transmission once introduced into the jail. Upon review of the declarations, jails also do not appear to have sufficient supplies available for detainees for handwashing or disinfecting. Further, through work programs and staff, detainees at each of these facilities are at risk of being exposed to COVID-19.

27. Introduction of new people into detention facilities who have had contact with the community outside the facility—be it correctional officers and other staff, new individuals coming into custody, people on work release, or individuals serving intermediate sentences—creates a link from transmission occurring in the community to those who are detained. The possibility of asymptomatic transmission means that monitoring fever of staff or detainees is inadequate for identifying all who may be infected and preventing transmission. This is also true because not all individuals infected with COVID-19 report fever in early stages of infection.

28. The alternative is to test all staff and detainees entering the facility. However, this would require frequent (daily) tests, implemented at multiple times a day as staff and detainees entered the facility. In addition to the cost and labor required to implement this approach, the United States is currently facing a shortage of COVID-19 tests that make such a solution impracticable: In a survey of U.S. cities (that included Philadelphia, Pittsburgh, Erie, and Easton), 92.1% of cities reported that they do not have an adequate supply of test kits.[27] Shortages are likely to become more severe over the next three to four weeks when there will be a major shortage of chemical reagents for COVID-19 testing and enormous increases in demand.[28] Given the shortage of COVID-19 testing in the United States, it is likely that jails are and will continue to be unable to conduct aggressive, widespread testing to identify all positive cases of COVID-19. The lack of widespread testing in communities and the current presence of COVID-19 in all 50 states means that it is impractical to ask detainees about their travel history– all communities should be assumed to have community transmission which is why statewide and national restrictions on movement and gatherings have been put in place.

Heightened Rates of COVID-19 Infection and Spread Within Detention Facilities

29. As COVID-19 has spread in the United States, it has begun to enter detention facilities and spread among individuals who are held and who work there. As of March 28, in California, at least twelve state prison workers[29] and one individual incarcerated in state prison[30] had tested positive. At least three people in custody tested positive in the Orange County Jail[31] and one at the Santa Clara County Jail.[32] In Santa Clara, at least four county deputies had also contracted the virus.[33] A nurse at the Santa Rita jail tests positive for the

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[27] https://www.usmayors.org/issues/covid-19/equipment-survey/ accessed March 28, 2020.
[28] https://www.nytimes.com/2020/03/27/opinion/coronavirus-trump-testing-shortages.html accessed March 28, 2020.
[29] https://www.sacbee.com/news/politics-government/the-state-worker/article241531806.html accessed March 28, 2020
[30] https://ktla.com/news/local-news/inmate-at-state-prison-in-lancaster-tests-positive-for-covid-19/ accessed March 26, 2020.
[31] https://www.ocregister.com/2020/03/26/2-more-inmates-test-positive-for-coronavirus-at-oc-jail/ accessed March 28, 2020.
[32] https://www.mercurynews.com/2020/03/23/santa-clara-county-jail-inmate-tests-positive-for-covid-19/ accessed March 26, 2020.
[33] https://www.mercurynews.com/2020/03/24/coronavirus-fourth-santa-clara-county-deputy-contracts-covid-19/ accessed March 28, 2020.

virus. It's the first confirmed case at the massive Alameda County complex.[34] In the Cook County Jail in Chicago, 89 inmates and 12 staff members have confirmed cases of the virus[35], up from 38 inmates two days prior.[36] There have been eighteen positive tests in Massachusetts, 11 inmates and 7 employees. The Massachusetts Treatment Center in Bridgewater has returned the most positives with ten inmates and two corrections officers and one medical provider testing positive.[37] The other positives have been one person held at Middlesex County Jail, one employee at the Plymouth County House of Correction, two staff members at MCI-Shirley, and a worker at the Norfolk County Sheriff's Office.[38] New Jersey has had twelve positive tests cases: A corrections officer[39] and an ICE detainee[40] at the Bergen County Jail, two inmates at Hudson County Correctional Facility,[41] one inmate in the Morris County Jail[42] and one officer in Morris County,[43] two correctional officers and an ICE detainee at Essex County Correctional Facility,[44] an inmate at Delaney Hall in Newark,[45] a medical staffer at Elizabeth Detention Center,[46] and an employee at the state department of corrections.[47] On March 29th a 49 year old prisoner who had been detained in a minimum security prison in Oakdale, Louisiana died after being transferred to a hospital and placed on a ventilator.[48]

30. Pennsylvania jails and prisons have had thirteen positive tests so far. Three inmates and nine staff members from the George W. Hill Correctional Facility in Delaware County have tested positive for COVI-19.[49] On March 27, 2020, Philadelphia reported that an individual in prison and the first employee in the city's Department of Corrections had tested positive and five inmates were in quarantine.[50] As of March 29 at noon, one individual in custody and three employees had tested positive within the Pennsylvania

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[34] https://www.mercurynews.com/2020/03/26/alameda-county-jail-reports-first-coronavirus-case-a-nurse/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=0d0f98b15c-EMAIL_CAMPAIGN_2020_03_28_11_14&utm_medium=email&utm_term=0_5e02cdad9d-0d0f98b15c-174553411 accessed March 28, 2020.

[35] https://www.politico.com/news/2020/03/29/federal-prison-first-coronavirus-death-153387 accessed March 29, 2020.

[36] https://www.nbcchicago.com/news/local/cook-county-jail-says-17-inmates-have-tested-positive-for-coronavirus/2244652/ accessed March 26, 2020.

[37] https://www.masslive.com/coronavirus/2020/03/coronavirus-10-inmates-at-massachusetts-treatment-center-have-covid-19-5-department-of-correction-staff-members-also-test-positive.html accessed March 28, 2020.

[38] https://www.wbur.org/commonhealth/2020/03/23/coronavirus-massachusetts-prisoner accessed March 28, 2020.

[39] https://www.fox29.com/news/nj-jail-guard-tests-positive-for-coronavirus accessed March 26, 2020.

[40] https://www.northjersey.com/story/news/new-jersey/2020/03/24/coronavirus-nj-ice-detainee-first-nation-test-positive/2911910001/ accessed March 26, 2020.

[41] https://www.vice.com/en_us/article/epg744/2-confirmed-coronavirus-cases-in-hudson-county-correctional-facility accessed March 26, 2020.

[42] https://morristowngreen.com/2020/03/24/inmate-at-morris-county-jail-tests-positive-for-covid-19/ accessed March 26, 2020.

[43] https://patch.com/new-jersey/montclair/stuck-jail-during-pandemic-coronavirus-hits-nj-prisons accessed March 28, 2020.

[44] https://patch.com/new-jersey/newarknj/more-coronavirus-essex-county-prison-activists-keep-outcry March 26, 2020.

[45] https://patch.com/new-jersey/montclair/stuck-jail-during-pandemic-coronavirus-hits-nj-prisons

[46] https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus & https://mobile.twitter.com/Haleaziz/status/1240785593535041537 accessed March 26, 2020.

[47] https://www.nj.com/coronavirus/2020/03/first-person-in-njs-state-prison-system-tests-positive-for-coronavirus.html accessed March 26, 2020.

[48] See https://www.politico.com/news/2020/03/29/federal-prison-first-coronavirus-death-153387 accessed March 29, 2020

[49] https://www.delcopa.gov/publicrelations/releases/2020/coronavirusupdate_march26.html accessed March 28, 2020.

[50] https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-pa-new-jersey-surge-cases-stay-at-home-20200328.html accessed March 28, 2020

Department of Corrections.[51]

31. The rates of spread in the facilities that have been testing for COVID-19 illustrates the dangers the conditions in these facilities pose to those who are detained there, and to the broader community. At Rikers Island in New York, on Saturday March 21, a jail oversight agency indicated that 21 inmates and 17 employees tested positive.[52] Four days later, on Wednesday, March 26, 75 inmates and 37 employees tested positive.[53] As of Saturday, March 28, 104 staff and 132 individuals in custody had tested positive at Rikers and city jails in New York City.[54] **The Legal Aid Society in New York recently reported that the infection rate for COVID-19 at local jails is more than seven times higher than the rate citywide and 87 times higher than the country at large.[55]**

32. The data above also confirms high rates of infection among correctional officers and other staff. These individuals all face an increased risk of COVID-19 exposure as they are less able to practice the recommended strategy of social distancing in carrying out their official duties. This is consistent with Mr. Leonard's reports that one of the correctional officers at Pike County Correctional Facility tested positive.

Infrastructure in County Jails Will Likely Be Insufficient to Address Needs of COVID-19 Patients

33. If COVID-19 enters into county jails, these facilities will likely be unable to address the infectious spread and the needs of infected individuals due to lack of testing and insufficient physical and medical infrastructure.

34. In cases where there are confirmed or suspected cases of COVID-19 in county jails, the CDC recommends medical isolation, defined by the CDC confining the case "ideally to a single cell with solid walls and a solid door that closes" to prevent contact with others and to reduce the risk of transmission. Individuals in isolation should also be provided their own bathroom space.[56]

35. Individuals in close contact of a confirmed or suspected COVID-19 case - defined by the CDC as having been within approximately 6 feet of the individual for a prolonged period of time or having had direct contact with secretions of a COVID-19 case (e.g., have been coughed on) – should be quarantined for a period of 14 days. The same precautions should be taken for housing someone in quarantine as for someone who is a confirmed or suspected COVID-19 case put in isolation.[57]

36. The CDC guidance recognizes that housing detainees in isolation and quarantine individually, while "preferred", may not be feasible in all county jail settings and discusses the practice of "cohorting" when individual space is limited. The term "cohorting" refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group or quarantining close contacts of a particular case together as a

[51] https://www.cor.pa.gov/Pages/COVID-19-Dashboard.aspx accessed March 29, 2020.

[52] https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/ accessed March 23, 2020.

[53] https://nypost.com/2020/03/25/new-coronavirus-cases-in-nyc-jails-outpacing-rest-of-the-city/ accessed March 26, 2020

[54] https://apnews.com/4e1e4ffaeb6bf9a9fabcc566fe5b110d accessed March 29, 2020.

[55] See: https://newyork.cbslocal.com/2020/03/26/coronavirus-rikers-island/ accessed March 26, 2020

[56] Ibid.

[57] Ibid

group. The guidance states specifically that "Cohorting should only be practiced if there are no other available options" and exhorts correctional officials: "**Do not cohort confirmed cases with suspected cases or case contacts.**" [emphasis in original]. Individuals who are close contacts of different cases should also not be kept together.

37. The CDC guidance also says that correctional facilities should "Ensure that cohorted cases wear face masks at all times."[58] This is critical because not all close contacts may be infected and those not infected must be protected from those who are if individuals are cohorted. However, it's important to note that face masks are in short supply. In a joint letter to President Trump, the American Medical Association, the American Hospital Association, and the American Nurses Association called on the administration to "immediately use the Defense Production Act to increase the domestic production of medical supplies and equipment that hospitals, health, health systems, physicians, nurses and all front line providers so desperately need."[59] In a survey United States cities, 91.5% of the cities reported that they do not have an adequate supply of face masks for their first responders and medical personnel.[60] There are also widespread shortages of personal protective equipment — particularly N-95 masks — sufficient to provide even for health care workers, in our nation's hospitals, let alone medical providers and other individuals coming into contact with the virus in county jails .[61] Many public health leaders are calling for masks to be reserved for health care staff, who face increased risk and are vitally needed to sustain emergency care. Hospitals in the New York City area, unable to access masks locally, are reportedly turning to a private distributor to airlift millions of protective masks out of China.[62] Face masks are effective only when used in combination with frequent hand-cleaning with alcohol-based hand rub or soap and water. Detainees should be instructed in how to properly put on and take off masks, including cleaning their hands every time they touch the mask, covering the mouth and nose with the mask and making sure there are no gaps, avoiding touching the mask while using it; and replacing the mask with a new one if it becomes damp (e.g., from sneezing) and not to re-use single-use masks. There are times when detainees will necessarily not be able to wear masks, if available. For example, during meals. In these instances, detainees should eat individually or with proper distancing from others.

38. Where individual rooms are not available, the CDC guidance describes a hierarchy of next best options for cohorting, which in order from lesser risk to greater risk includes housing individuals under medical isolation: 1) in a large, well-ventilated cell with solid walls and a solid door that closes fully; 2) in a large, well-ventilated cell with solid walls but without a solid door; 3) in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells; 4) in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells.[63]

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[58] Ibid

[59] See: https://www.aha.org/lettercomment/2020-03-21-aha-ama-and-ana-letter-president-use-dpa-medical-supplies-and-equipment accessed March 26, 2020

[60] https://www.usmayors.org/issues/covid-19/equipment-survey/ accessed March 28, 2020.

[61] https://www.nytimes.com/2020/03/27/opinion/coronavirus-trump-testing-shortages.html accessed March 28, 2020.

[62] See: https://lancasteronline.com/news/health/hospital-suppliers-take-to-the-skies-to-combat-dire-shortages/article_0830ffb0-6f89-11ea-89ed-bbd859186614.html accessed March 26, 2020

[63] Ibid

39. When a single COVID-19 case is identified in a county jail, close contact and the inability of jails to implement social distancing policies due to overcrowding and the physical limitations of the facility, as described above, means that there will be many individuals who are exposed and will need to be quarantined.

40. County jails were not built for the needs of this kind of pandemic and if COVID is introduced there will likely be many more individuals identified as "close contacts" who need to be quarantined than there are safe spaces to isolate them. Some individuals identified as "close contacts" will likely be infected while others will not. "Cohorting" of all contacts together without strict attention to masking and proper hygiene and sanitation distancing could mean disease transmission will be facilitated rather than prevented. For example, according to Mr. Neal's declaration, the quarantine spaces at CFCF do not allow six feet of distance between the people housed together, potentially facilitating transmission among individuals in quarantine.

41. Individuals in jails are also more likely to have chronic health problems that put them at a higher risk of complications from COVID-19 infections.[64]

42. Many county jails lack adequate medical care infrastructure to address the treatment of high-risk people in detention. As examples, detention facilities often use practical nurses who practice beyond the scope of their licenses; have part-time physicians who have limited availability to be on-site; and facilities with no formal linkages with local health departments or hospitals. Delaware County, where the George W. Hill Correctional facility is located, for example, does not have a local health department. A COVID-19 outbreak would put severe strain on this already strained system.

43. If corrections officers and medical personnel are significantly affected by COVID-19, large numbers will also be unavailable to work due to self-quarantine or isolation, at the same time that large numbers of detainees who are potentially exposed will need to be put into individual isolation or transferred to advanced medical care, putting tremendous stress on detention facilities.

44. Large numbers of ill detainees and corrections staff will also strain the limited medical infrastructure in the rural counties in which these detention facilities are located. If infection spreads throughout the detention center, overwhelming the center's own limited resources, the burden of caring for these individuals will shift to local medical facilities. The few facilities will likely not be able to provide care to all infected individuals with serious cases. Statewide, Pennsylvania is facing a shortage the technology it needs to care for infected individuals. The state has only 2,000, ventilators, according to the state Health Department, but the state could need three times as many at the apex of the virus' spread, according to a study from the Harvard Global Health Institute.[65] If the virus spreads through county jails, it is likely that many individuals will need to be transferred (while in isolation) to community hospitals, and this system will be even more taxed. The inability for overwhelmed community hospitals to provide necessary care will increase the likelihood that individuals with COVID-19 will not be able to get proper care and die.[66]

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[64] https://www.prisonpolicy.org/health.html accessed March 26, 2020.

[65] https://www.inquirer.com/health/coronavirus/ventilator-coronavirus-hospital-covid-pennsylvania-new-jersey-health-20200324.html accessed March 28, 2020.

[66] See https://www.post-gazette.com/news/health/2020/03/20/Rural-counties-in-Pennsylvania-struggle-on-their- own-as-COVID-19-spreads/stories/202003180034 accessed March 23, 2002. Even in regions with highly developed

Conclusions

45. CDC guidance on correctional and detention facilities,[67] reiterates many of the points previously made in this declaration, including: 1) Incarcerated/detained persons are at "heightened" risk for COVID-19 infection once the virus is introduced; 2) There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including from staff and transfer of incarcerated/detained persons; 3) Options for medical isolation of COVID-19 cases are limited; 4) Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19; 5) The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants; and 6) Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

46. Under these circumstances, the only viable public health strategy available is risk mitigation. Even with the best-laid plans to address the spread of COVID-19 in detention facilities, measures will be insufficient when crowding makes social distancing measures impossible. Facilities cannot follow CDC guidelines where people are double and triple-celled, housed in large rooms where people are forced into close contact, and where people are sharing common facilities like bathrooms that cannot be properly sanitized given the sheer numbers of people using them in a day. Where quarantine is necessary, it will not be possible to isolate individuals from each other where there are so many people in a confined space.

47. To effectively mitigate risk of infection and subsequent spread, the population will need to be reduced. Reducing the overall number of individuals in detention facilities will facilitate social distancing for remaining detainees, and allow individuals who are infected, and their close contacts, to be properly isolated or quarantined in individual rooms, according to the CDC's preferred practices, and properly monitored for health complications that may require transfer to a local hospital. It will also lessen the risk to corrections officers, who if short staffed, will have difficulty maintaining order and proper personal protective measures. Protecting corrections staff in turn protects the communities they come from.

48. The release of individuals who can be considered at high-risk of severe disease if infected with COVID-19 is also a key part of a risk mitigation strategy. In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.

49. To the extent that vulnerable detainees have had exposure to known cases with

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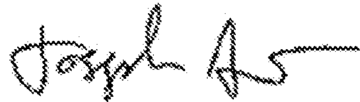
health systems, COVID-19 is straining ability to care, creating cause for alarm for less-equipped health care systems in regions that do not act to mitigate risk of infection. See https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html accessed March 23, 2020

[67] See: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html accessed March 23, 2020

laboratory-confirmed infection with the virus that causes COVID-19, they should be tested immediately in concert with the local health department. Those who test positive should be continuously monitored in individual rooms, released to home quarantine or transferred to local hospitals if medically indicated. Those who test negative should be released to home quarantine for 14 days while awaiting symptoms or a positive test result. Where there is not a suitable location for home quarantine available, these individuals could be released to housing identified by the county or state Department of Health.

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

Executed this 29th day in March 2020 in Princeton, New Jersey.



Joseph J. Amon, PhD MSPH

Exhibit C

March 25, 2020

Hon. Larry Hogan
Governor of Maryland
Annapolis, MD

Dear Governor Hogan:

We are writing as faculty members of the Johns Hopkins Bloomberg School of Public Health, School of Nursing and School of Medicine to express our urgent concern about the spread of COVID-19 in Maryland's prisons, jails, and juvenile detention centers. As you know, COVID-19 is highly contagious, difficult to prevent except through social distancing, and especially dangerous to individuals over age 60 or with a chronic disease. Moreover, recent data suggest that the virus can remain on surfaces for up to 72 hours, thus rendering social distancing less effective in circumstances where the virus is present.

Jails, prisons, detention facilities and other closed settings have long been known to be associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, influenza, MRSA (methicillin resistant staph aureus), and viral hepatitis. Several deaths were reported in the US in immigration detention facilities associated with ARDS (acute respiratory distress syndrome) following influenza A, including a 16 year old immigrant child who died of untreated ARDS in custody in May 2019. ARDS is the life-threatening complication of COVID-19 disease and has a 30% mortality given ideal care. A correctional officer in New York has also died of the disease.

The close quarters of jails and prisons, the inability to employ effective social distancing measures, and the many high-contact surfaces within facilities, make transmission of COVID-19 more likely. Soap and hand sanitizers are not freely available in some facilities. Hand sanitizers like Purell, are banned in many facilities, because they contain alcohol. Further, for incarcerated individuals who are infected or very sick, the ability properly to treat them and save their lives is very limited. Testing kits are in short supply, and prisons and jails have limited options for proper respiratory isolation.

A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of COVID-19 and other infectious diseases. These include physical/mechanical risks such as overcrowding, population density in close confinement, insufficient ventilation, shared toilets, showers, and eating environments and limited availability of hygiene and personal protective equipment such as masks and gloves in some facilities. The high rate of turnover and population mixing of staff and detainees also increases likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff.

These populations are also at additional risk, due to high rates of chronic health conditions; substance use; mental health issues; and, particularly in prisons, aging and chronically ill populations who may be vulnerable to more severe illnesses after COVID-19 infection, and to death. Given that Maryland prisons, jails, and juvenile detention centers incarcerate high

numbers of marginalized populations and African Americans will be disproportionately affected by these risks.

Prison, jail, and detention center staff may bring the virus into the facility and are also at risk of acquisition from infected incarcerated individuals. Once infected, staff may also transmit the virus back into the communities and to their families. As jail, prison, and detention center health care staff themselves get sick with COVID-19, workforce shortages will make it even more difficult to adequately address all the health care needs in facilities.

Every effort should be made to reduce exposure in jails and other detention facilities, and we appreciate the efforts thus far of administrators toward this goal. To ensure that there are no impediments for inmates to come forward when sick, health care must be available to inmates without co-pays. But there should also be efforts to reduce the state prison population as well. It may be extremely difficult, however, to achieve and sustain prevention of transmission in these closed settings and given the design feature of the facilities. Moreover, lockdowns and use of solitary confinement should not be used as a public health measure, both because they have limited effectiveness and because they are a severe infringement of the rights of incarcerated people. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.

Treatment needs of infected incarcerated individuals also need to be met, including expanded arrangements with local hospitals. It is essential that these facilities, which are public institutions, be transparent about their plans for addressing COVID-19. Such transparency will help public health officials and families of incarcerated people know what facilities are doing, and it also can help jurisdictions across the state share information and best practices. Other counties across the country have shared their action plans with the public and Maryland should follow these examples.

We therefore urge you to take the following steps:

1. Require correctional facility administrators to make their plans for prevention and management of COVID-19 in their institutions publicly available, as the San Francisco Sheriff's Department has done. Protocols should be in line with national CDC guidance. Frequently updated recommendations and model protocols are available from the National Commission on Correctional Health Care (https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections)
2. Ensure that intake screening protocols are updated to include COVID-specific questions.
3. Ensure the availability of sufficient soap and hand sanitizer for incarcerated individuals without charge; restrictions on alcohol (in hand sanitizers) should be suspended.
4. Implement other precautions to limit transmission within prisons and jails without relying on widespread use of lockdowns and solitary confinement. Additional precautions jointly issued by the Vera Institute of Justice and Community Oriented

Correctional Health Services are available at https://cochs.org/files/covid-19/covid-19-jails-prison-immigration.pdf

5. Consider pre-trial detention only in genuine cases of security concerns. Persons held for non-payment of fees and fines, or because of insufficient funds to pay bail, or parole or probation violations, should be prioritized for release. No one in these categories should be sent to jail
6. Expedite consideration of all older incarcerated individuals and those with chronic conditions predisposing to severe COVID-19 disease (heart disease, lung disease, diabetes, immune-compromise) for parole or other form of release from prison, with alternative forms of supervision and with supports in the community once released. Clemency power and expanded authority in Maryland law for administrative parole should be employed.
7. Invest in increased resources for discharge planning and re-entry transitions to facilitate prison release of people under these revised policies.
8. Arrange for COVID-19 testing of incarcerated individuals and correctional facility workers who become ill.
9. Cease any collection of fees or co-pays or medical care.
10. Seek a Medicaid 1135 waiver to enable hospitals to provide an appropriate level of care to incarcerated individuals who are sick. See https://cochs.org/files/medicaid/COVID-19-Justicie-Involved-1135-Waiver.pdf

This pandemic is shedding a bright light on the extent of the connection between all members of society: jails, prisons and other detention facilities are not separate, but are fully integrated with our community. As public health experts, we believe these steps are essential to support the health of incarcerated individuals, who are some of the most vulnerable people in our society; the vital personnel who work in prisons and jail; and all people in the state of Maryland. Our compassion for and treatment of these populations impact us all.

Thank you very much.

This letter represents the views of the following signatories, and do not necessarily reflect the views of The Johns Hopkins University

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Department of Mental Health
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Hima Patel, Research Associate
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Michelle Colder Carras, Associate Professor
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Ann Yelmokas McDermott, Associate Scientist
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Cui Yang, Assistant Professor
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Smisha Agarwal, Assistant Professor
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Stephen Tamplin, Associate Scientist
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Johns Hopkins Bloomberg School of Public He

Nancy Kass, Vice-Provost and Professor of Bioethics and Public Health
Johns Hopkins University and Bloomberg School of Public Health

Keith West, Professor
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Alain Koffi, Assistant Scientist
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Ghassan Hamra, Assistant Professor
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Elizabeth Stuart, Professor
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Alex McCourt, Assistant Scientist
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Lilly Engineer, Assistant Professor
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Krystal Lee, Research Associate
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William W Eaton, Professor
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Sheppard G. Kellam, Professor Emeritus
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Avonne Connor, Assistant Professor
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Shruti Mehta, Professor
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Joanne Rosen, Senior Lecturer
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Hossein Zare, Assistant Scientist
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Trang Nguyen, Assistant Scientist
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Noel Mueller, Assistant Professor
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Johns Hopkins School of Nursing

Baldeep Dhaliwal, Research Associate
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Joseph Carrese, Professor
Johns Hopkins School of Medicine

Timothy Shields, Associate Scientist
Department of Epidemiology
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Exhibit D

KDOC COVID-19 Status

by Rebecca Witte — last modified Apr 08, 2020 10:56 AM

The chart below shows the number of confirmed COVID-19 cases as of 5 p.m. each day.

Facility	Staff Confirmed	Residents Confirmed
El Dorado	0	0
Ellsworth	0	0
Hutchinson	0	0
Lansing	11	12
Larned	0	0
Norton	0	0
Topeka	0	0
Winfield	0	0
Wichita Work Release	0	0
KJCC	0	0

Exhibit E

FISCAL YEAR 2019 ANNUAL REPORT

Jeff Zmuda,
Acting Secretary of Corrections

Joel Hrabe,
Deputy Secretary
Facilities Management

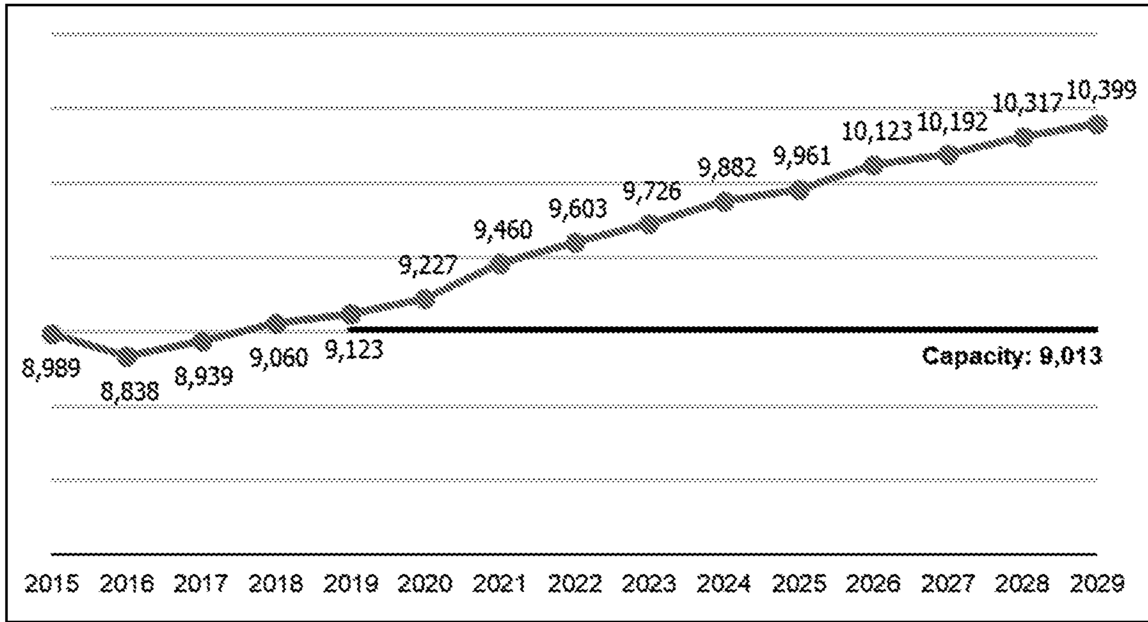
Hope Cooper,
Deputy Secretary
Juvenile & Adult
Community-based Services

"A safer Kansas through effective correctional services"

Kansas Sentencing Commission Projections

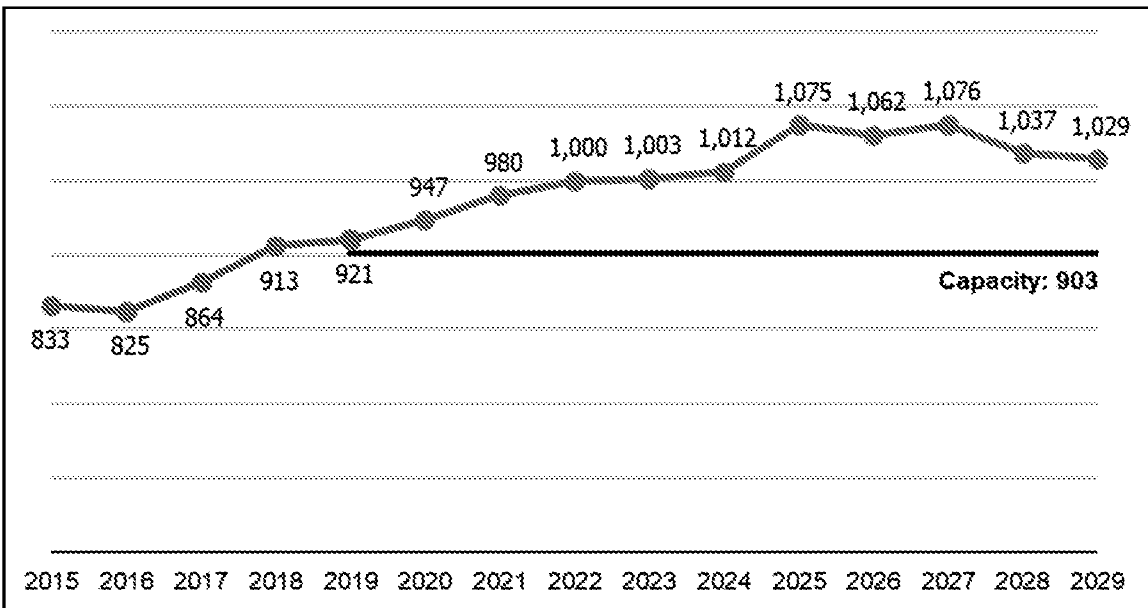
Male Inmate Population
Actual and Projected | FY 2015 to FY 2029

Actual FY 20 Projections



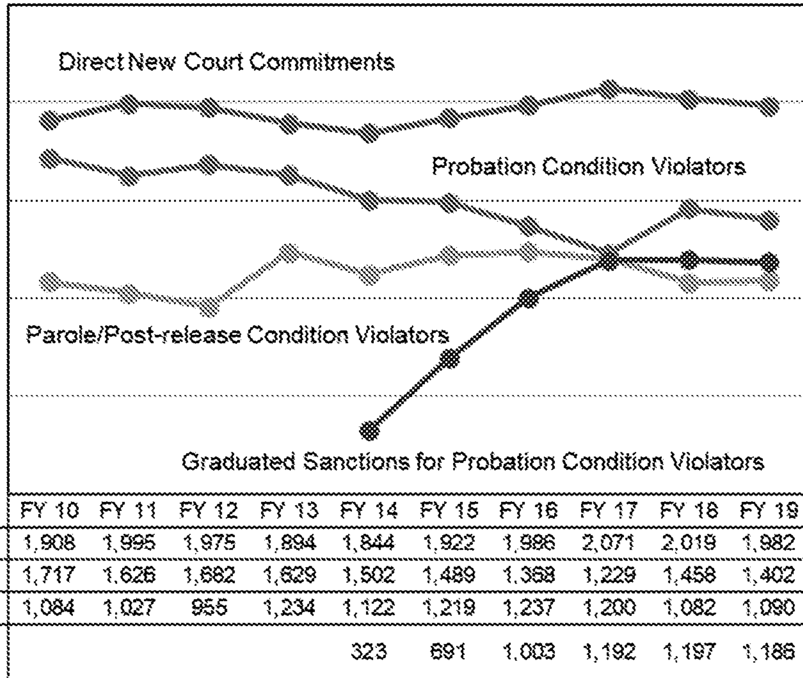
Female Inmate Population
Actual and Projected | FY 2015 to FY 2029

Actual FY 20 Projections



Admissions by Four Major Types (June 30th of each fiscal year)

FY 2010 to FY 2019

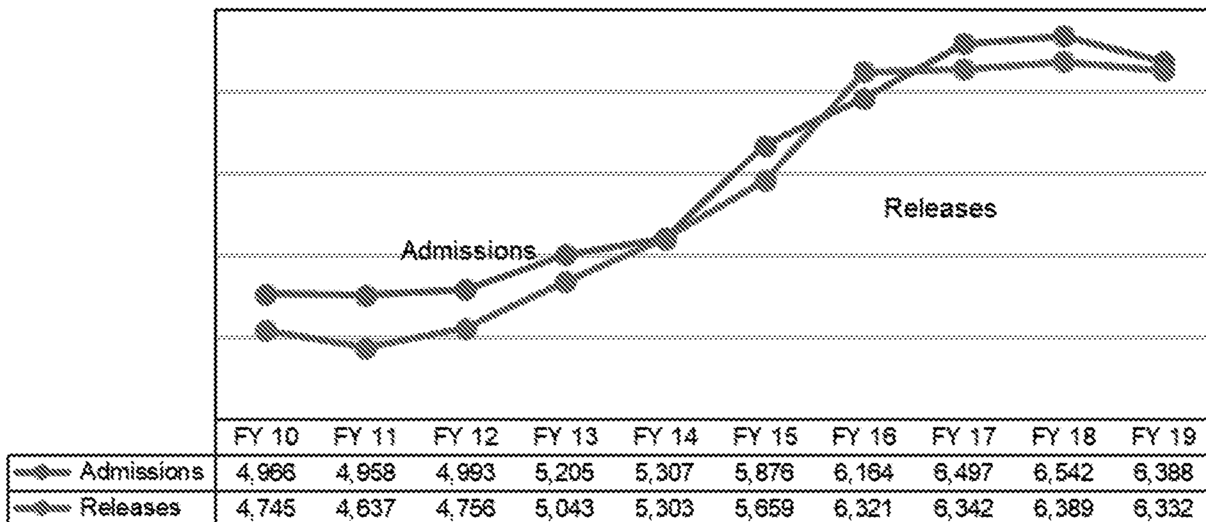


	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
New Court Commitments	1,908	1,995	1,975	1,894	1,844	1,922	1,986	2,071	2,019	1,982
Probation Condition Violators	1,717	1,626	1,682	1,629	1,502	1,489	1,368	1,229	1,458	1,402
Parole/Post-release Condition Violators	1,084	1,027	955	1,234	1,122	1,219	1,237	1,200	1,082	1,090
Graduated Sanctions for Probation Condition Violators*					323	691	1,003	1,192	1,197	1,186

**Data is not available prior to FY 2014 for Graduated Sanctions for Probation Condition Violators as this admission type was created following the enactment of the Justice Reinvestment Initiative in House Bill 2170 in 2013.*

Admissions vs. Releases (June 30th of each fiscal year)

FY 2010 to FY 2019



	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
Admissions	4,966	4,958	4,993	5,205	5,307	5,876	6,164	6,497	6,542	6,388
Releases	4,745	4,637	4,756	5,043	5,303	5,659	6,321	6,342	6,389	6,332

Exhibit F

DECLARATION OF JAMES HADLEY

Pursuant to K.S.A. § 53-601, I, James Hadley declare as follows:

1. My name is James Hadley and I am 55 years old. I am currently incarcerated at Lansing Correctional Facility (KDOC# 0040043). I am scheduled to be released from prison on July 14, 2022 with my good-time credits. I have already served 90% of my expected prison sentence.

2. For a significant portion of my sentence, I suffered from Hepatitis C—which is a life-threatening virus that attacks the liver and leads to other serious health complications. After over a year and a half waiting for treatment, I completed my treatment course on December 24, 2019. But I still do not have confirmation that I am finally Hepatitis C negative. I also have cirrhosis of the liver—which is permanent liver damage that is the result of my chronic Hepatitis C. I have a latent tuberculosis infection that is examined via X-ray at regular intervals, but I have not been treated for it yet.

3. By now, we have all heard the news that correctional officers at Lansing have tested positive for COVID-19. It is only a matter of time before other correctional staff and inmates at Lansing—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

4. I live in the "D" cell house at Lansing, which is a housing unit that contains 150 people. Before COVID-19, yard time was shared with hundreds of other people from different units all at the same time. Now when we go to yard, we go just with our unit—but that stills means 100 to 150 of us are congregating in the same outdoor area. The only other change the prison has made for COVID-19 is that we eat our meals in our cells. But when we are surrounded by our unit-mates and have staff contact at many other points in the day, this provides little comfort. Already, I can

see that several people in my unit are coughing and I know some people have been moved to quarantine.

5. We also have no right to request hand sanitizer or hand soap in our unit. Unless we can afford to pay for soap through commissary, we do not get soap. The only exception is for inmates who do not make more than $12 per month. Because I make over $12 per month, I do not have soap or sanitizer provided to me. This is a serious problem for many of us during the pandemic.

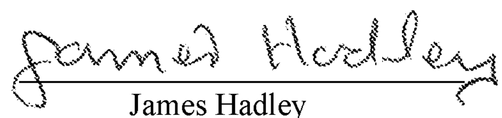
6. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. This is particularly concerning to me because I understand that my previous Hepatitis C and liver cirrhosis put me at serious risk of having an urgent or deadly case of the virus. I also understand that I am at greater risk because I am over 50 years of age.

7. If I do contract COVID-19 while incarcerated and have an urgent case that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life. In our unit, it takes about 18 hours to be seen by a nurse on "sick call" after you fill out a slip requesting to see medical staff.

8. I have already served 90% of my expected sentence and am ready to start the next chapter of my life. In light of this pandemic crisis and my underlying condition, I am asking for the chance to be released before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



James Hadley

Exhibit G

DECLARATION OF JOHN EDWARD TETERS

Pursuant to K.S.A. § 53-601, I, John Edward Teters, declare as follows:

1. My name is John Edward Teters and I am 57 years old. I am currently incarcerated at Lansing Correctional Facility (KDOC# 0036863). I have already served many years beyond my minimum sentence for a crime I committed in 1981. I am very sick, and I am asking for the chance to survive this pandemic.

2. For seventeen years, I suffered from Hepatitis C—which is a life-threatening virus that attacks the liver and leads to other serious health complications. Despite the fact that the Kansas Department of Corrections knew about my Hepatitis C diagnosis for those seventeen years, I did not finally receive my treatment until this past year in October 2019. By that time, I had sustained a significant amount of liver damage and had already contracted liver cancer—which is a battle I have been fighting now for many years. After almost twenty cancer-related surgeries and chemotherapy, I finally had to stop treatment recently because it was killing me. My immunocompromised status has led to other serious health complications in the past couple months, including a serious tooth infection that spread into my face and ear and caused me some of the worst pain I have experienced in my life. I also have high blood pressure and diabetes.

3. By now, we have all heard the news that correctional officers at Lansing have tested positive for COVID-19. It is only a matter of time before other correctional staff and inmates at Lansing—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

4. I live in the "C" segregation unit at Lansing in a single cell. I do not usually go to yard because my cancer makes me very sensitive to temperature changes and makes me tire easily. But I do still use the showers, where 4 of us are required to shower at a time, 3-4 feet apart from one

another. This has not changed during COVID-19. For a few days now, we have been eating meals only in our cells. But I still have to interact with at least 20 staff members a day at a distance of 4 feet or less away from me. Even where I don't see other unit-mates often, these conditions make social distancing impossible.

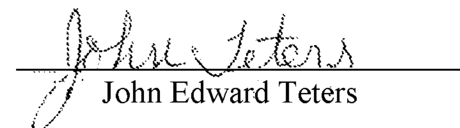
5. Yesterday, several individuals in cells less than 60 feet away from me were pulled out on suspicion of having COVID-19. Given the crowded conditions in the prison and the lack of any staff precaution measures, and the fact that others in my unit may have COVID-19, I strongly believe that in the coming weeks I may become infected with COVID-19. This is particularly concerning to me because I understand that my age, my chronic liver damage, my cancer, and my diabetes all put me at serious risk of having an urgent or deadly case of the virus. If I do contract COVID-19 given all my pre-existing conditions, I fear that it will be a death sentence.

6. The infirmary at Lansing only has room for 30 people at a time. Which is why they rush people through as quickly as possible. If I get an urgent case of COVID-19 that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life—particularly not if there is an outbreak that overwhelms the facility.

7. In light of this pandemic crisis and my underlying conditions, I am asking for the chance to be released before I am exposed to this horrible virus. I also have a place to stay. My aunt has welcomed me to her home in Missouri where she has a refurbished basement set up for me, and I also have a standing offer to receive my continued cancer treatment from the Truman Medical Center in downtown Kansas City.

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

Executed on: April 7, 2020



John Edward Teters

Exhibit H

DECLARATION OF MONICA RYAN BURCH

Pursuant to K.S.A. § 53-601, I, Monica Ryan Burch, declare as follows:

1. My name is Monica (né Zachary) Ryan Burch. I am 31 years old and am from Manhattan, Kansas. I am currently incarcerated at Ellsworth Correctional Facility (KDOC # 0108790). I am scheduled to be released from prison on July 1, 2020.

2. I have worked hard to prepare myself for release during my incarceration, including participating in an intensive substance abuse class that earned me good-time credit toward my sentence. I am now just 84 days from returning home. Upon release, I already have a place to stay with my parents in Manhattan, Kansas, and look forward to spending time with them as I plan for my future.

3. Because of the COVID-19 pandemic, I am afraid that I will get sick—or worse— before I ever have the opportunity to make it home. We have all heard the news that KDOC correctional officers have started to test positive for the virus. It is only a matter of time before correctional staff and inmates at Ellsworth CF—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

4. Very little has changed for us at Ellsworth CF since the pandemic began. We still eat in the cafeteria 100 people at a time, and every day outside in the yard we congregate with up two hundred other people simultaneously. Staff have started population control during yard time in light of COVID-19—but only on the weekends. Even then, an entire unit of approximately 88 people still has to go to yard together. During the week, not even these precautions are followed. Despite the pandemic, showers are also still communal and several of us are required to shower at the same time.

5. Life in our cell blocks has not changed either. Almost every cell block at Ellsworth CF houses about 88 individuals, with a central day room where all members of the unit spend their time. I am one of the lucky ones, because I live in "J" cell house— where we have only 52 people in our unit. But even with that many people, it is difficult to keep meaningful distance from one another in the day room.

6. My cell is 8-foot by 7-foot and I share it with a roommate. When you are locked in a cell this small, it is physically impossible to stay 6 feet away from each other. If my roommate contracts COVID-19 from staff or from someone else in our unit, there will be no way for me to protect myself from the virus. Furthermore, although we are given cleaning supplies to wipe down surfaces in our room, the cleaning supplies we are provided are seriously watered down and make it difficult to disinfect the cell.

7. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. This is particularly concerning to me because I am pre-diabetic and I understand that diabetes is a significant risk factor for a having an urgent or deadly case of the virus. I also take anti-depressants, which I understand can negatively impact my immune system and also put me at greater risk.

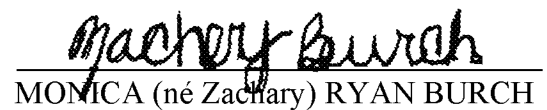
8. If I do contract COVID-19 while incarcerated and have an urgent case that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life. Last month around March 2, 2020, I was experiencing a high fever, was throwing up, and could not stand without incredible amounts of pain. After calling the officers on the floor for assistance, I was told I would need to wait 24 hours for "sick call" to see a nurse. While I waited for an entire day and staff had me proceed as usual, my symptoms got progressively worse. By the time I finally did see a nurse, it turned out that I had a serious flu and that at least 15 other people

from across the facility had contracted the same flu that week. This experience only highlights for me that if COVID-19 comes to Ellsworth, it will spread rapidly and we will not get the immediate attention we need to control the virus.

9. I have already served almost all of my sentence and am ready to start the next chapter of my life. In light of this pandemic crisis, I am asking for the chance to come home before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



MONICA (né Zachary) RYAN BURCH

Exhibit I

DECLARATION OF TIFFANY TROTTER

Pursuant to K.S.A. § 53-601, I, Tiffany Trotter, declare as follows:

1. My name is Tiffany Trotter. I am 29 years old and am from Montgomery County, Kansas. I am currently incarcerated at Topeka Correctional Facility (KDOC# 0123604). I do not yet have my release date scheduled, but I expect to be released with good-time credits in early 2022. I am excited for my future after prison, where I plan to reunite with my two boys who are 7 and 2 years old.

2. But because of the COVID-19 pandemic, I am afraid that I will get sick—or worse— before I ever have the opportunity to make it home to my children. We have all heard the news that KDOC correctional officers have started to test positive for the virus. It is only a matter of time before correctional staff and inmates at Topeka CF—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

3. Very little has changed for us since the pandemic began. In my unit, we have a day room where most members of the unit spend the entire day. When we have our yard time, our unit goes outside with all other units at the same time—and so there are hundreds of us congregating together simultaneously. Prison staff have not changed these crowded conditions as a result of COVID-19.

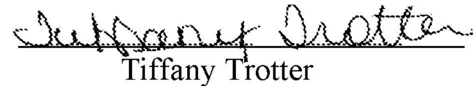
4. I live in a communal quadrant with 22 other people. We have bunk beds and we have 3-4 feet between each bunk bed. When you are living in an area this packed in, it is physically impossible to stay 6 feet away from each other. If one of my quadrant-mates contracts COVID-19 from staff or from someone else in our unit, there will be no way for me to protect myself from the virus.

5. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. This is particularly concerning to me because I was a smoker for 15 years before I was incarcerated starting when I was just 14 years-old. I understand that my history as a smoker is an increased risk factor for a having an urgent or deadly case of the virus. I also take anti-depressants, which I understand can negatively impact my immune system and also put me at greater risk. I have young children waiting for me; I cannot afford to get this virus.

6. I am ready to start the next chapter of my life after prison. In light of this pandemic crisis and in light of my increased risk factors, I am asking for the chance to come home before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



Tiffany Trotter

Exhibit J

DECLARATION OF KARENA WILSON

Pursuant to K.S.A. § 53-601, I, Karena Wilson, declare as follows:

1. My name is Karena Wilson. I am 21 years old and am from Independence, Kansas. I am currently incarcerated at Topeka Correctional Facility (KDOC# 0121570). I am scheduled to be released from prison on August 5, 2021, with good-time credits. I am excited for my future after prison, when I plan to stay in the Topeka area and pursue my dream of working with animals to ultimately become a veterinarian.

2. But because of the COVID-19 pandemic, I am afraid that I will get sick—or worse— before I ever have the opportunity to make it home. We have all heard the news that KDOC correctional officers have started to test positive for the virus. It is only a matter of time before correctional staff and inmates at Topeka CF—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

3. Very little has changed for us since the pandemic began. I live in the "A" dorm at Topeka CF, which is a housing unit that contains 108 people. In our unit, we have a day room where most members of the unit spend the entire day. When we have our yard time, our unit goes outside with all other units at the same time—and so there are hundreds of us congregating together simultaneously. Prison staff have not changed these crowded conditions as a result of COVID-19. The only population control the prison has implemented for COVID-19 is that we are assigned to have only 84 people in the cafeteria at once—as opposed to the over a hundred people that used to be in the cafeteria all at the same time. This is not a meaningful difference, particularly when we are still surrounded by dozens of other inmates in the cafeteria, in the day room, and during yard time.

4. I do not know the exact size of my cell, but it is very small and I have to share it with a roommate. If my roommate and I stand side-by-side with our arms stretched out, we'd be touching both each other and the opposite walls of the cell. When you are locked in a cell this small, it is physically impossible to stay 6 feet away from each other. If my roommate contracts COVID-19 from staff or from someone else in our unit, there will be no way for me to protect myself from the virus.

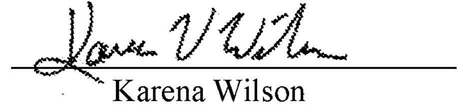
5. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. If I do contract COVID-19 while incarcerated and have an urgent case that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life. I try to avoid going to the medical staff at Topeka CF whenever possible. That is because you are required to see a nurse three times before you get the chance to see a doctor, and ordinarily the nurse will pass out Tylenol or Zyrtec without really attempting to treat your reported symptoms. I also see the nurses get confused regularly in the medical line when distributing medications.

6. This year, I developed a large and concerning fungal infection on my arm that I could not explain and that was painful to touch. Because I have a grandmother who died of skin cancer, my mother and I were extremely scared that I also might have skin cancer. After reporting my concerns to a nurse, it took me a full month to finally see a doctor. That month I waited in fear that I could have a life-threatening condition. This experience only highlights for me that if COVID-19 comes to Topeka CF, it will spread rapidly and we will not get the immediate attention we need to control the virus.

7. I am ready to start the next chapter of my life after prison. In light of this pandemic crisis, I am asking for the chance to come home before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



Karena Wilson

Exhibit K

DECLARATION OF ABRAHAM ORR

Pursuant to K.S.A. § 53-601, I, Abraham Orr, declare as follows:

1. My name is Abraham Orr and I am 44 years old. I am currently incarcerated at Lansing Correctional Facility in a minimum-security unit (KDOC# 0058909). I am scheduled to be released from prison on October 19, 2021, with my good-time credits.

2. I have been in prison since I was just 17 years old and have spent the majority of my life—and the entirety of my adult life—behind bars for a crime I committed as a child. But I have worked hard to prepare myself for release throughout my incarceration. I devoted myself to years of study at The Urban Ministry Institute (TUMI) where I pursued coursework in theology, ultimately graduating and teaching courses with the ultimate goal of becoming a pastor myself. I have also worked in private industry jobs out in the community for 8 years now. This type of clearance is a sign of the trust that the Kansas Department of Corrections has placed in me for a long time. I have made the most of that opportunity. For example from 2012 to 2016, I worked for Seat King, LLC, in Hutchinson, Kansas, where I spent up to 14 hours a day as a welder and received impeccable performance reviews.

3. Now that my release date is just a few short months away, I have begun planning for my future. I am fortunate that my parents have a real estate property for me in the Kansas City area to make my home. I will also own a truck and have the savings I have earned while working out in the community these last few years. My father has already arranged for me to have work as a welder upon my release. These supports will ensure that I am successful when I come home.

4. Because of the COVID-19 pandemic, I am afraid that I will get sick—or worse— before I ever have the opportunity to make it home. We have all heard the news that correctional officers

at Lansing have started to test positive for the virus. It is only a matter of time before other correctional staff and inmates at Lansing—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

5. I leave in the M-4 cell house at Lansing, which is a housing unit that contains 128 individuals in what is essentially an open floor plan. We do not have cells or private spaces. The area where I sleep is a cluster of 7 double-bunked beds where 14 people live. There is no more than 2 feet of space between each of our bunk beds. The space between a top bunk and a bottom bunk is no more than 4 feet. Meanwhile in the cafeteria, we sit with 75-100 people all at once, with no more than 6 inches of space between every person. Prison staff have not changed these crowded conditions as a result of COVID-19.

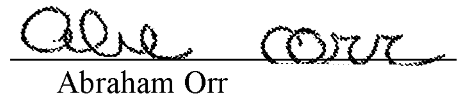
6. It is impossible to keep meaningful social distance under these circumstances. Already, I can see that several people in my unit are coughing, which does not happen usually. In addition to the correctional officers who have COVID-19, I also understand that at least 9 inmates at our facility are suspected of having the virus.

7. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. If I do contract COVID-19 while incarcerated and have an urgent case that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life. Around February 11, 2020, I asked to see a doctor because I was experiencing serious headaches. I had to pay $2 to even report my symptoms to a nurse and get on a list to see a doctor. It is now two months later and I still have not heard anything about when my appointment will be. This experience highlights why I do not trust the prison's medical staff to respond quickly or effectively to the COVID-19 pandemic if it spreads further at Lansing.

8. I have served almost the entirety of my sentence and I am now just months away from starting the next chapter of my life. In light of this pandemic crisis, I am asking for the chance to come home before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



Abraham Orr

Exhibit L

DECLARATION OF DAVID BROOKS

Pursuant to K.S.A. § 53-601, I, David Brooks, declare as follows:

1. My name is David Brooks and I am 41 years old. I am currently incarcerated at Lansing Correctional Facility (KDOC# 0061077). My next earliest possible release date is on April 1, 2021—less than a year from now. But I have already served a decade beyond my minimum sentence for a crime I committed as a 15 year-old child.

2. I have spent the majority of my life—and the entirety of my adult life—behind bars. But I have worked hard to prepare myself for release throughout my incarceration. I have received my GED, completed all available programs necessary to ensure my release, and have picked up a variety of trade certifications along the way in areas such as welding and HVAC. These skills will make me immediately employable upon my release. I have also worked hard to develop two business ideas that I hope to make a reality. I am fortunate that upon my release I will have a house and a car to return to—as well as a supportive step-father. I will also participate actively in Growth Ministries Inc., which is a faith-based re-entry nonprofit in the Kansas City area. These supports will ensure that I am successful when I come home.

3. But because of the COVID-19 pandemic, I am afraid that I will get sick—or worse— before I ever have the opportunity to make it home. We have all heard the news that correctional officers at Lansing have started to test positive for the virus. It is only a matter of time before other correctional staff and inmates at Lansing—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

4. I live in the B-2 cell house at Lansing, which is a housing unit that contains about 60 people. Before COVID-19, yard time was shared with hundreds of other people from different units all at

the same time. Now when we go to yard, we go just with our unit—but that stills means 60 of us are congregating in the same outdoor area. The only other change the prison has made for COVID-19 is that we eat our meals in our cells. But when we are surrounded by our unit-mates and have staff contact at many other points in the day, this provides little comfort.

5. We also have no right to request hand sanitizer or hand soap in our unit. Unless we can afford to pay for soap through commissary, we do not get soap. The only exception is for inmates who do not make more than $12 per month. Although I have enough commissary right now, I anticipate having to rely on the monthly "indigent pack" soon because of financial constraints. But the indigent pack comes with barely enough soap to last more than a week let alone a whole month. This is a serious problem for many of us during the pandemic.

6. Given the crowded conditions in the prison and the lack of any staff precaution measures, I strongly believe that in the coming weeks I may become infected with COVID-19. This is particularly concerning to me because I am pre-diabetic, have a family history of diabetes, and I understand that diabetes is a significant risk factor for a having an urgent or deadly case of the virus.

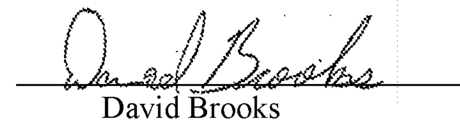
7. If I do contract COVID-19 while incarcerated and have an urgent case that requires a ventilator, I do not have confidence that I will receive the immediate medical care I need to save my life. In my experience, the medical clinic at Lansing is only able to provide care for minor cuts and bruises. This year, I approached medical staff because I was concerned that I was experiencing numbness in my arms and was aware that this might be linked to a heart condition. Despite raising this concern, I have never been examined by a doctor. On one occasion, I was living in a cell with a man who had clearly contracted MRSA, and because he wasn't receiving treatment I had to file a grievance to immediately be removed from his cell. That person almost died of MRSA because

of delays in his treatment. These experience only highlight for me that if COVID-19 continues to spread at Lansing, it will spread rapidly and we will not get the immediate attention we need to control the virus. I also doubt that Lansing has any ventilator equipment available in the event someone does have a serious case of COVID-19. If I needed a ventilator, I think I would die in custody.

8. I have served almost all of my sentence and I am now just months away from starting the next chapter of my life. In light of this pandemic crisis, I am asking for the chance to come home before I am exposed to this horrible virus.

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

Executed on: April 7, 2020



David Brooks

Exhibit M

DECLARATION OF KAYLA NGUYEN

Pursuant to K.S.A. § 53-601, I, Kayla Nguyen, declare as follows:

1. My name is Kayla Nguyen. I am 26 years old and currently reside in Kansas City, Missouri, where my family owns a nail salon and I work for a local real estate agency.

2. My partner, Sashada Makthepharak, is currently incarcerated at Lansing Correctional Facility (KDOC# 0073697). Sashada is 35 years old and is from Wichita, Kansas. He has been in prison since he was just 16 years old. Sashada is finally eligible to be released on parole next year in April 2021.

3. Sashada and I grew up in the same close-knit Asian-American community in Wichita. His sister and I have been close friends for a long time. Despite his incarceration, it was immediately clear to me that Sashada is a man who is full of life, intelligent, and fundamentally kind. In December 2019, after months of daily phone calls and weekly visits to see one another, Sashada and I determined to spend the rest of our lives together as husband and wife.

4. I already consider myself Sashada's wife, but I have never been able to spend a single day with my husband. Now because of COVID-19, I am terrified that I will never get the chance. Last week, we learned that three correctional officers at Lansing CF had already tested positive for the virus. It is only a matter of time before other correctional staff and inmates—who have no choice but to live and spend their days in cramped, unsanitary shared spaces— will contract COVID-19.

5. Even though I cannot visit Sashada during the pandemic, we have spoken on the phone every day of this crisis. I was shocked to learn that despite all social distancing guidance we are receiving in the community, Lansing staff are still requiring 100 inmates to eat in the cafeteria *at the same time*— even after staff members have tested positive for the virus. Staff have also

threatened that any inmates who report COVID-related symptoms will lose their showering privileges for weeks or, worse, will be placed in the Segregated Housing Unit (SHU) designed for disciplinary solitary confinement. Under these circumstances, I am afraid that even those who may be experiencing COVID-19 symptoms are not going to report those symptoms to staff.

6. Sashada fears that several other inmates in his cell house have COVID-19. At least two individuals housed in close proximity to Sashada have a persistent dry cough and are clearly sick. Another person in his unit had symptoms so serious that he was removed from the facility for a few hours, only to be brought directly back into the cell house. Meanwhile, Sashada informed me that the correctional officers who should be managing this crisis are taking their paid leave in large numbers.

7. My husband and I strongly believe that in the coming weeks he will become infected with COVID-19. This brings so much fear to my heart because I'm sure the prison will pay no mind to this illness. Sashada has never received adequate medical care while in prison. A decade ago when he had a severe case of pneumonia, he couldn't get medication or an appointment with a doctor until a month after he got sick. Last week, Sashada feared that he had a dry cough and serious flu-like symptoms consistent with COVID-19. He immediately reported to the nurses' station at Lansing but did not receive any medical attention despite waiting more than an hour. Ultimately, he determined to return to his cell and practice self-isolation to the best he could. If Sashada actually does contract COVID-19 and suffers from any of the more urgent respiratory episodes that require a ventilator, I have no confidence that he will receive the treatment necessary to save his life.

8. My husband is less than a year from his earliest release date and is so close to finally returning home from prison for a crime he committed when he was a child. Sashada has worked

extremely hard during his incarceration to prepare himself for this moment, including obtaining his GED, working various jobs, and earning a series of vocational training certificates. Upon release, Sashada already has a home with me and my family and has a standing offer to work in our family-owned nail salon for as long as he wants.

9. COVID-19 is sweeping through a Kansas prison system that is unable to protect inmates from contracting the virus and unprepared to treat patients with the medical care they will require to survive. In light of this crisis, I am asking that my husband be released as soon as possible. I am proud and grateful for the man my husband has become. He deserves the chance to come home before he is exposed to this horrible virus.

10. I am sufficiently familiar with the facts of Sashada's situation and am dedicated to fairly and adequately representing Sashada's interests in this litigation to secure his release from confinement.

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

Executed on: April 7, 2020

KAYLA NGUYEN