March 24, 2020

Maura S. Doyle, Clerk
Supreme Judicial Court for The County of Suffolk
John Adams Court House, 1st Floor
One Pemberton Square - Suite 1300
Boston, MA 02108-1707

Re: *Committee for Public Counsel Services and Massachusetts Association of Criminal Defense Lawyers v. Chief Justice of the Trial Court*, No. SJ-2020-

Dear Clerk Doyle,

As a group of experts in epidemiology, infectious diseases, public health, and healthcare for incarcerated people,[1] we write to urge this Court to act in the best interests of public health and safety and grant Petitioners' request to safely release as many people as possible from confinement. On Saturday, March 21, 2020, the Massachusetts Department of Correction confirmed the first case of COVID-19 in the state prison system: a man held at the Massachusetts Treatment Center (MTC), a medium-security prison at the Bridgewater Correctional Complex.[2] He and his cellmate have both been separately quarantined since

[1] The signatories to this letter are: Dr. Mary T. Bassett, MD, MPH; Prof. Leo Beletsky, JD, MPH; Prof. Charles Branas, PhD; Prof. Lauren Brinkley-Rubinstein, PhD; David Cloud, JD, MPH; Dr. Warren J. Ferguson, MD; Prof. Robert E. Fullilove, EdD; Dr. Mindy Thompson Fullilove, MD; Dr. Sandro Galea, MD, MPH, DrPH; Prof. Gregg Gonsalves, PhD; Dr. Monik C. Jiménez, ScD; Dr. Josiah "Jody" Rich, MD, MPH; Dr. Lisa Simon, DMD; and Dr. Bram Wispelwey, MD, MS, MPH.

[2] Jackson Cote, *Coronavirus and prisons: Inmate serving life sentence tests positive for COVID-19 at Massachusetts Treatment Center in Bridgewater*, Mass

Thursday, March 19, 2020. This first man to be diagnosed is serving a life sentence. As must be obvious, he did not contract COVID-19 from international travel or by intentionally flouting social distancing. The virus was introduced into the prison. On Sunday evening, the Associated Press reported that three people incarcerated at the MTC now have confirmed cases of COVID-19 and are quarantined, in addition to one correctional officer.[3] By Monday night, DOC announced that six people incarcerated at MTC now have confirmed cases.[4] The virus is spreading, and many others are at risk.

The continued detention of thousands of people whose release would reduce the risk of community spread during this pandemic poses a grave threat to the lives and health of countless people. The greater the density of people in a confined

---

Live News (Mar. 21, 2020), https://www.masslive.com/coronavirus/2020/03/coronavirus-and-prisons-inmate-serving-life-sentence-tests-positive-for-covid-19-at-massachusetts-treatment-center-in-bridgewater.html; *Inmate at Bridgewater prison tests positive for coronavirus, officials say*, WCVB (Mar. 21, 2020), https://www.wcvb.com/article/inmate-at-bridgewater-prison-massachusetts-treatment-center-tests-positive-for-coronavirus-officials-say/31846456#.

[3] *3 inmates, 1 officer at Mass. prison test positive for coronavirus*, WHDH (Mar. 22, 2020), https://whdh.com/news/3-inmates-1-officer-at-mass-prison-test-positive-for-coronavirus.

[4] *Five more coronavirus cases at Massachusetts prison days after inmate tests positive*, WHDH (Mar. 23, 2020), https://www.wcvb.com/article/coronavirus-cases-up-to-6-at-bridgewater-massachusetts-prison-days-after-inmate-tests-positive/31906056.

space, the greater the likelihood that the virus will spread. Uncontrolled spread in correctional settings directly threatens the lives and health of people behind bars; that alone should prompt urgent action. But such a situation could also have dire implications for the health and safety of the general public. First, an outbreak within facilities housing large numbers of at-risk individuals cannot be fully managed internally, inevitably sapping the resources and capacity of nearby healthcare facilities and staff. Second, the vast majority of detained individuals will shortly return to the community anyway,[5] where without coordinated efforts they may struggle to find housing and other resources that could support social distancing. Finally, the daily churn of correctional staff and contractors in these facilities puts these employees, their families, and the community at elevated risk. The safest response is to release as many people as practicable to self-isolate, especially those who are vulnerable due to health or age, and reduce the flow of new people into correctional settings. This would protect those who are released, the general public, and those who remain incarcerated or who must staff the facilities.

[5] In Massachusetts, 88% of people sentenced to incarceration are detained in a house of correction, where the median sentence is 5 months. Mass. Sentencing Comm'n, Survey of Sentencing Practices FY 2013 iii (2014), https://www.mass.gov/files/documents/2016/08/oo/fy2013-survey-sentencing-practices.pdf#page=7.

Close contact and conditions of incarceration are unsafe in light of the global COVID-19 pandemic.[6] These conditions pose a substantial risk of serious illness and death to people behind bars. As Dr. Ross McDonald, Chief Medical Officer at Rikers Island in New York City, recently explained, "We cannot socially distance dozens of elderly [people] living in a dorm, sharing a bathroom."[7] Every day that people remain incarcerated in unhygienic prison environments in which social distancing is functionally impossible, they are placed at greater risk. One case of COVID-19 can infect hundreds of others.[8] The surest way to contain the spread of an infectious disease in a jail or prison is to reduce its population.[9]

---

[6] *See* World Health Org., *Director-General Opening Remarks* (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[7] Andrew Naughtie, *Coronavirus: US Doctors Demand Immediate Release of Prisoners and Detainees to Avert Disaster*, Independent (Mar. 9, 2020), https://www.independent.co.uk/news/world/americas/coronavirus-us-prison-release-doctors-medical-workers-symptoms-a9410501.html. The original tweet by Dr. McDonald is available here: Ross McDonald (@RossMcDonaldMD), Twitter (Mar. 18, 2020, 9:51 PM), https://twitter.com/RossMacDonaldMD/status/1240455801397018624?s=20.

[8] *See, e.g.*, *The Korean Clusters*, Reuters (updated Mar. 20, 2020), https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html (one South Korean patient likely responsible for transmitting virus to over 1,000 people).

[9] *See* Letter From A Group of Concerned Scientists, Physicians, and Public Health Experts RE: COVID-19 Risks for Detained Populations in Maryland (Mar. 19, 2020), https://c026acbc-bc5d-4cef-8584-

### A. The exponentially growing COVID-19 pandemic puts millions of Americans at risk, including in Massachusetts.

On March 11, 2020, the World Health Organization declared a global pandemic based on the coronavirus, or COVID-19.[10] COVID-19 is an infectious disease caused by severe acute respiratory syndrome coronavirus 2.[11] Those who become seriously ill suffer bilateral interstitial pneumonia, which causes partial or total collapse of the lung alveoli, making it difficult or impossible to breathe.[12] COVID-19 "is deadlier than the flu"—perhaps "10 times deadlier."[13] The number

0a0bde77d83b.filesusr.com/ugd/868471_809ae4cc069e4177a2331fd5b80e7989.pdf (recommending immediately implementing community-based alternatives to detention and incarcerating as few people as possible).

[10] Bill Chappell, *Coronavirus: COVID-19 is Now Officially a Pandemic, WHO Says*, NPR (Mar. 11, 2020), https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says.

[11] *See generally Coronavirus (COVID-19)*, Ctrs. for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/index.html (last visited Mar. 21, 2020).

[12] *See id.*

[13] Charles Ornstein, *This Coronavirus Is Unlike Anything in Our Lifetime, and We Have To Stop Comparing It to the Flu*, ProPublica (Mar. 14, 2020), https://www.propublica.org/article/this-coronavirus-is-unlike-anything-in-our-lifetime-and-we-have-to-stop-comparing-it-to-the-flu.

of infected people is growing exponentially,[14] with potential for "a hundred million cases in the United States by May."[15] The pandemic is uncontained.

COVID-19 takes up to fourteen days to incubate, so many people are contagious before they have symptoms. Patients showing symptoms today may have inadvertently spread the disease for the past two weeks.[16] The cluster of Massachusetts cases "was started by people who were not yet showing symptoms, and more than half a dozen studies have shown that people without symptoms are causing substantial amounts of infection."[17] The first case in a Massachusetts prison was confirmed by testing on Friday, March 20. The Massachusetts DOC did not prohibit general visits until March 12.[18] The virus likely has been spreading

[14] *See* Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and How To 'Flatten the Curve'*, Wash. Post (Mar. 14, 2020), https://www.washingtonpost.com/graphics/2020/world/corona-simulator.

[15] *Id.*

[16] Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Symptoms* (last updated Mar. 14, 2020), https://tinyurl.com/utnov9c.

[17] Elizabeth Cohen, *Infected People Without Symptoms Might Be Driving the Spread of Coronavirus More Than We Realized*, CNN (Mar. 14, 2020), https://www.cnn.com/2020/03/14/health/coronavirus-asymptomatic-spread/index.html.

[18] *Updated: DOC Temporarily Suspends Family and Friend Visits at Facilities Statewide*, Mass.gov (Mar. 12, 2020), https://www.mass.gov/news/updated-doc-temporarily-suspends-family-and-friend-visits-at-facilities-statewide.

across the walls—from members of the community and staff and introduced into prisons—long before the first case was detected.

There are currently thousands of people under quarantine in Massachusetts,[19] while rapid spread continues among the general public. Thousands or tens of thousands of people are carrying a highly contagious, potentially fatal disease. Our only chance of avoiding catastrophe is through "widespread, uncomfortable, and comprehensive social distancing."[20] Officials first urged us to gather in groups no larger than 50,[21] then 25,[22] now 10.[23] With fewer than 100,000 ICU beds

[19] *See Massachusetts Residents Subject to COVID-19 Quarantine,* Mass.gov, https://www.mass.gov/info-details/covid-19-cases-quarantine-and-monitoring#massachusetts-residents-subject-to-covid-19-quarantine-.

[20] Asaf Bitton, *Social Distancing: This Is Not a Snow Day*, Medium: Ariadne Labs (Mar. 13, 2020), https://tinyurl.com/vp7hrkv.

[21] CDC, *Interim Guidance for Coronavirus Disease 2019 (COVID-19),* https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html (last visited Mar. 15, 2020).

[22] *See Gov. Baker bans gatherings of over 25 people, orders school closure, restaurants take-out only*, WCVB (Mar. 16, 2020), https://www.wcvb.com/article/gov-charlie-baker-massachusetts-covid-19-coronavirus-update-march-15-2020/31647097#.

[23] Martin Finucane et al., *Mass. issues stay-at-home advisory, closes non-essential businesses to slow coronavirus*, Bos. Globe (Mar. 23, 2020), https://www.bostonglobe.com/2020/03/23/metro/coronavirus-latest-updates.

nationwide,[24] failure to slow the rate of transmission will overwhelm doctors and hospitals: "[W]e won't have anywhere for sick patients to go."[25]

### B. Massachusetts disproportionately incarcerates people who are particularly vulnerable to life-threatening cases of COVID-19.

#### *1. Unequal distribution of the social determinants of health produces discriminatory incarceration and exposes incarcerated people to great risk of developing serious cases.*

Disadvantaged groups including poor people, LGBTQI people, disabled people, and people of color[26]—who disproportionately live at the margins—are

[24] *See* Bitton, *supra* note 20.

[25] Ornstein, *supra* note 13.

[26] Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time*, Prison Policy Initiative (May 10, 2016), https://www.prisonpolicy.org/reports/incomejails.html; Nat'l Ctr. For Transgender Equality, LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights 5 (2018), https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf; Elliot Oberholtzer, *Police, courts, jails, and prisons all fail disabled people*, Prison Policy Initiative (Aug. 23, 2017), https://www.prisonpolicy.org/blog/2017/08/23/disability; Wanda Bertram, *New research ends the "Is it race or class?" debate about mass incarceration*, Prison Policy Initiative (Mar. 19, 2018), https://www.prisonpolicy.org/blog/2018/03/19/race-class-debate; *see also* Wendy Sawyer, *How Race Impacts Who Is Detained Pretrial*, Prison Policy Initiative (Oct. 9, 2019), https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/. A summary of 23 studies on racial disparities in pretrial detention is available here: https://www.prisonpolicy.org/reports/pretrial_racial_disparities_sources.html.

disproportionately incarcerated.[27] This disparate incarceration is both a product and a driver of health inequity. Residential segregation, healthcare quality and access, and discriminatory incarceration all represent pathways to "adverse health effects of structural racism . . . ."[28] Racial disparities in incarceration in Massachusetts are among the highest in the nation, for people sentenced to incarceration[29] or held

[27] *See generally* Alexi Jones & Wendy Sawyer, *Arrest, Release, Repeat: How police and jails are misused to respond to social problems*, Prison Policy Initiative (Aug. 2019), https://www.prisonpolicy.org/reports/repeatarrests.html ("[P]eople who are jailed have much higher rates of social, economic, and health problems that cannot and should not be addressed through incarceration.").

[28] Zinzi D. Bailey et al., *Structural racism and health inequities in the USA: evidence and interventions*, 389 Lancet 1453, 1456 (2017), http://med.stanford.edu/content/dam/sm/epidemiology-dept/documents/EpiSeminars/Bailey_Structural-Racism-and-Health-Inequities.pdf.

[29] Mass. Sentencing Comm'n, *supra* note 5, at iii (88% of those sentenced to incarceration held in county houses of correction); *see also* Council of State Governments Just. Ctr., Research Addendum - Working Group Meeting 3 Interim Report 10 (July 12, 2016) (on file with author) [hereinafter CSG Research Addendum].

pretrial,[30] across county jails[31] and state prisons.[32] In a state that is 71.4% non-Hispanic white,[33] the majority of people in DOC facilities are people of color. According to a 2016 analysis by The Sentencing Project, Black people in Massachusetts are incarcerated at roughly eight times the rate of white people; Hispanic people are incarcerated at roughly six times the rate of white people.[34]

---

[30] Mass. Trial Court, Dep't of Research & Planning, Pre-Trial Release Decisions Pre and Post *Brangan v. Commonwealth* 12–13 (May 7, 2019, revised Dec. 12, 2019), https://www.mass.gov/doc/pretrial-release-decisions/download (6.5% of white defendants held subject to bail after *Brangan,* but 8.1% of Black defendants held subject to bail—a higher percentage than white defendants held subject to bail pre-*Brangan*); Alexander Jones & Benjamin Forman, MassINC, Exploring the Potential for Pretrial Innovation in Massachusetts 3–6 (2015), https://massinc.org/wp-content/uploads/2015/09/bail.brief_.3.pdf#page=3 (gaping racial disparities in pretrial jail populations in all counties and higher median bail amounts assessed for people of color).

[31] CSG Research Addendum, *supra* note 29, at 26–27 (Black people over-represented compared to the general population by 3:1, Hispanic people by 2:1).

[32] Mass. Dep't of Corr., January 2020 MA DOC Institutional Fact Cards 1 (2020), https://www.mass.gov/doc/institutional-fact-cards-january-2020/download (42% white, 28% African American, and 26% Hispanic).

[33] *Quick Facts: Massachusetts*, Census.gov (July 1, 2019), https://www.census.gov/quickfacts/fact/table/MA/RHI825218#RHI825218.

[34] Mass. Sentencing Comm'n, Selected Race Statistics 2–3, 5–8 (2016), https://www.mass.gov/files/documents/2016/09/tu/selected-race-statistics.pdf; *see also Massachusetts Profile*, Prison Policy Initiative, https://www.prisonpolicy.org/profiles/MA.html (finding based on 2010 data that the imprisonment rate for black people in Massachusetts is seven times higher than that of white people).

People from disadvantaged groups, especially people of color, lack equal access to health insurance and healthcare,[35] and therefore enter prisons and jails at increased risk of health complications due to substandard preventive care. Incarceration itself also has dramatic effects on psychological and physical health, subjecting people to higher rates of infectious disease and medical neglect; exacerbating or instilling mental health conditions; and hastening death.[36] "[C]arceral systems imperil the health of individuals, families, neighborhoods, and the population by compromising social determinants of health."[37] Incarcerated

[35] *See, e.g.*, Heeju Sohn, *Racial and ethnic disparities in health insurance coverage: Dynamics of gaining and losing coverage over the life-course*, 36 Population Res. & Pol'y Rev. 181 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5370590.

[36] Ram Sundaresh et al., *Exposure to the U.S. Criminal Legal System and Well-Being: A 2018 Cross-Sectional Study*, 110 Am. J. Pub. Health S116 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6987921 ("Incarceration has been substantively linked to negative mental health outcomes during imprisonment, and having a history of incarceration has been linked to a worsening of chronic medical conditions, substance use disorders, mental health disorders, and even preventable deaths following release." (citations omitted)); Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 Annu. Rev. Sociol. 291 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6124689 (literature review); Michael Massoglia, *Incarceration as exposure: the prison, infectious disease, and other stress-related illnesses*, 49 J. Health Soc. Behav. 56 (2008), https://journals.sagepub.com/doi/pdf/10.1177/002214650804900105.

[37] David H. Cloud et al., *Documenting and Addressing The Health Impacts of Carceral Systems*, 110 Am. J. Pub. Health S5 (2020), https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305475 (authors include three members of *amici* expert group).

people have compromised immune systems both because of factors prior to incarceration and because of their incarceration.

### *2. The Commonwealth incarcerates people vulnerable to COVID-19: those exposed to air pollution or smoking, people with chronic illnesses who are immuno-comprised, and elderly people.*

Researchers hypothesize "[t]he coronavirus could amplify the existing strain on the lungs from smoking and air pollution."[38] Though smoking is prohibited in the Commonwealth's correctional facilities, research shows that the majority of incarcerated people smoke or have a history of smoking.[39] Based on a study of 200 people with chronic health conditions conducted at the non-smoking Hampden County Correctional Center, 83% of study participants entered incarceration as cigarette smokers, and 96% of those interviewed resumed smoking within six

[38] Chris Mooney, *The coronavirus is deadly enough. But some experts suspect bad air makes it worse*., Wash. Post (Mar. 15, 2020), https://www.washingtonpost.com/climate-environment/2020/03/15/smoking-air-pollution-coronavirus.

[39] Pamela Valera et al., *The smoking behaviors of incarcerated smokers*, 6 Health Psychol. Open 1, 1 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6328956/pdf/10.1177_2055102918819930.pdf ("Between 50 and 83 percent of incarcerated individuals are cigarette smokers, versus 15 percent of cigarette smokers in the US adult population."); *see also Study Confirms High Percentage of Smokers Among Incarcerated Male Population*, Columbia Mailman Sch. of Pub. Health (July 29, 2016), https://www.mailman.columbia.edu/public-health-now/news/study-confirms-high-percentage-smokers-among-incarcerated-male-population.

months after release.[40] People of color, who are disparately incarcerated, experience air pollution at higher rates than white people[41] and additional environmental toxicity that may compound health complications.[42]

"[P]risoners are likely to show the symptoms of age earlier than in the general population, and are more likely to have chronic medical conditions, because of unhealthy prison conditions."[43] Roughly 1500 people, or almost 20% of those in DOC custody, have a diagnosed Opioid Use Disorder.[44] People over age

---

[40] Thomas Lincoln et al., *Resumption of smoking after release from a tobacco-free correctional facility*, 15 J. Corr. Health Care 190 (2009), https://journals.sagepub.com/doi/pdf/10.1177/1078345809333388.

[41] Christopher W. Tessum et al., *Inequity in consumption of goods and services adds to racial–ethnic disparities in air pollution exposure*, 116 Proc. Nat'l Acad. Sci. 6001 (2019), https://www.pnas.org/content/116/13/6001.

[42] Peter Reuell, *Unpacking the power of poverty*, Harvard Gazette (May 17, 2019), https://news.harvard.edu/gazette/story/2019/05/harvard-study-shows-exactly-how-poverty-impacts-childrens-success ("'The least-exposed majority-black neighborhoods still had levels of harshness and toxicity greater than the most-exposed majority-white neighborhoods . . . .'"); *see also* Robert Manduca & Robert J. Sampson, *Punishing and toxic neighborhood environments independently predict the intergenerational social mobility of black and white children*, 116 Proc. Nat'l Acad. Sci. 7772 (2019), https://www.pnas.org/content/116/16/7772.

[43] Shira Schoenberg, *Massachusetts SJC to consider rules of medical parole for ill prisoners*, Mass Live News (Oct. 3, 2019), https://www.masslive.com/news/2019/10/massachusetts-sjc-to-consider-rules-of-medical-parole-for-ill-prisoners.html.

[44] *Massachusetts DOC Awarded $1.2M in Federal Funds to Tackle Opioid Addiction*, Mass. Dep't of Corr. (Nov. 5, 2019),

60 are also particularly vulnerable to severe or life-threatening cases of COVID-19.[45] As of January 1, 2019, 11% of the DOC's incarcerated population was age 60 or over, reflecting a "five year shift [that] shows an aging [] population . . . ."[46] The DOC detained a total of 983 people aged 60 and over on January 1, 2019: 887 criminally sentenced people, 7 held pretrial, and 89 civilly committed.[47] All told, Massachusetts incarcerates many people who are particularly vulnerable to severe cases of COVID-19 and whose release would make them—and all of us—much safer by reducing the likelihood of cases that will require outside hospitalization,

https://www.mass.gov/news/massachusetts-doc-awarded-12m-in-federal-funds-to-tackle-opioid-addiction.

[45] *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020,* Ctrs. for Disease Control and Prevention (Mar. 18, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm.

[46] Mass. Dep't of Corr., Prison Population Trends 2018 at ii (2019), https://www.mass.gov/doc/prison-population-trends-2018/download.

[47] Visit the DOC's data dashboard on "Inmate and Prison Research Statistics." Using the "Age Group" drop-down menu within the bottom toolbar, filter to "60 and Over." The dashboard is available here: https://public.tableau.com/profile/madoc#!/vizhome/MADOCJan1Snapshot/Jan1Snapshot.

burdening already strained hospitals[48] and risking COVID-19 transmission for anyone involved in medical transports.[49]

### C. Incarcerated people are even more vulnerable to COVID-19 due to immutable conditions of confinement, well-documented unhygienic environments, and inadequate medical care.

#### *1. Confinement itself creates risk of rapidly spreading contagions.*

Compared to the general public, those who are incarcerated are even more vulnerable to catching COVID-19 and to becoming seriously ill or dying from it.[50] Infection control in jails and prisons is nearly impossible.[51] The CDC has found

---

[48] *See* Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus "Incubators,"* NPR (Mar. 13, 2020), https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators.

[49] *See*, *e.g.*, Jennifer Gonnerman, *A Rikers Island Doctor Speaks Out to Save Her Elderly Patients from the Coronavirus*, New Yorker (Mar. 20, 2020), https://www.newyorker.com/news/news-desk/a-rikers-island-doctor-speaks-out-to-save-her-elderly-patients-from-the-coronavirus ("Whenever you transport a guy in custody to the hospital, he goes with not just E.M.S. but with officers at his side who are theoretically supposed to be cuffing him to transport him. It puts those officers at risk. We contribute to an overburdened health-care crisis at our affiliated hospital. And we see patients die in custody.).

[50] *See generally* David Cloud, Vera Inst. of Justice, On Life Support: Public Health in the Age of Mass Incarceration 5–12 (2014), https://www.vera.org/downloads/Publications/on-life-support-public-health-in-the-age-of-mass-incarceration/legacy_downloads/on-life-support-public-health-mass-incarceration-report.pdf (report authored by member of *amici* expert group).

[51] *See*, *e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 1047 (2007), https://doi.org/10.1086/521910; John E. Dannenburg, *Prisons as Incubators and Spreaders of Disease and Illness*, Prison

that "[a] growing body of evidence indicates that COVID-19 transmission is facilitated in confined settings," with "high transmissibility of COVID-19 in enclosed spaces."[52] A report by the World Health Organization of painstaking case and contact tracing in China found that 1-5% of contacts of known cases subsequently developed their own confirmed cases of COVID-19.[53] That figure appears to be true on a per-"close contact" basis, so the risk level may be multiplied by the number of infected close contacts; someone who is in close contact with five infected people per day, or one infected person five times in a day, may have a 5-25% risk of contracting COVID-19. This underscores the particular danger of rapid spread in a corrections environment, where unknowingly infected people repeatedly encounter a limited pool of others in close confines.

***2. Overcrowding compounds the general risks from confinement.***

Overcrowding in the Commonwealth's prisons and jails also exacerbates risk. More than a dozen prisons and jails in the Commonwealth exceed 100%

---

Legal News (Aug. 15, 2007), https://www.prisonlegalnews.org/news/2007/aug/15/prisons-as-incubators-and-spreaders-of-disease-and-illness.

[52] Kenji Mizumoto & Gerardo Chowell, *Estimating risk for death from 2019 novel coronavirus disease, China, January–February 2020,* 26 Emerging Infectious Diseases (2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0233_article.

[53] World Health Org., Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19) at 8 (Feb. 2020), https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf.

capacity.[54] When correctional facilities are beyond capacity, people are squeezed into even closer confinement: they sleep closer together, eat closer together, wash closer together, congregate closer together. If COVID-19 is introduced to these overcrowded facilities, substantial spread will be nearly impossible to stave off.

### *3. Harsh, unhygienic environments further heighten risks.*

Jails and prisons are effectively oversized petri dishes for COVID-19. The virus spreads mainly between people who are less than six feet from one another, through respiratory droplets produced and propelled when an infected person coughs or sneezes.[55] It likely stays airborne for up to three hours.[56] For three days, it remains alive—and contagious—on plastic, metal, and other hard surfaces.[57] As a result, CDC recommends that people wash their hands frequently and thoroughly,

---

[54] Mass. Dep't of Corr., Quarterly Report on the Status of Prison Capacity, Third Quarter 2019 (Oct. 2019), https://www.mass.gov/doc/prison-capacity-third-quarter-2019/download; *see also* Mass. Dep't of Corr., *Weekly Count Sheet* (Mar. 16, 2020), https://www.mass.gov/doc/weekly-inmate-count-3162020/download.

[55] Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) and You* (Mar. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

[56] *See* John Bowden, *Tests Indicate Coronavirus Can Survive in the Air*, The Hill (Mar. 11, 2020), https://thehill.com/policy/healthcare/487110-tests-indicate-coronavirus-can-survive-in-the-air.

[57] *See* Allison Aubrey, *The New Coronavirus Can Live on Surfaces for 2–3 Days—Here's How To Clean Them*, NPR (Mar. 14, 2020), https://www.npr.org/sections/health-shots/2020/03/14/811609026/the-new-coronavirus-can-live-on-surfaces-for-2-3-days-heres-how-to-clean-them.

avoid touching their own and others' faces, use alcohol-based hand sanitizers when soap and water are unavailable, regularly disinfect frequently touched items, and honor social distancing.[58]

These elementary, essential steps are virtually impossible for those who are incarcerated. People in the Commonwealth's jails and prisons face versions of the following conditions—with no ability to choose otherwise or take precautions:

- They live in open-air dorms or very small cells, in close quarters, and surrounded almost exclusively by hard surfaces;
- They are regularly in communal spaces, such as eating areas, bathrooms, and cells or holding areas;
- They live in spaces with open toilets, which aerosolize bodily fluids, within a few feet of their beds;
- They are nearly always in "close contact" with others;
- They are frequently in actual physical contact with others, such as correctional officers, kitchen staff, and medical staff;
- They are regularly subject to intimate physical contact, including searches of mouths and body cavities; and
- They lack regular, uninhibited access to soap, water, tissues, and paper towels.

Take as an example this description of a man serving a life sentence at North Central Correctional Institute in Gardner, MA, as reported on March 21, 2020:

[58] *See*, *e.g.*, Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): How To Protect Yourself* (last updated Mar. 14, 2020), https://tinyurl.com/tcn892b.

> [H]e can get one bar of hotel-size soap every other week, and has to buy any additional bars in the canteen for 89 cents. Like all prisoners in state and county correctional facilities, he is not allowed to have hand sanitizer with 60-percent or more alcohol, and receives one roll of toilet paper a week and no paper towels . . . . [He] works a cleaning job in the institution, and has not seen sanitizing taking place. He reported that as of last week, there were still 200 people in large groups going to the chow hall, with many prisoners together in the gym, and certainly most still housed in two-person cells except for new admits, who—even more problematically—live in a dorm-like setting.[59]

These general conditions of confinement make any prison or jail a dangerous place for the spread of infectious disease.[60] But for facilities in Massachusetts, longstanding public health defects exacerbate these risks.

#### *4. Correctional facilities in Massachusetts fail to resolve documented environmental health violations.*

Correctional facilities in Massachusetts are subject to biannual inspection by the Department of Public Health, during which environmental health inspectors document violations in each facility, including repeat (i.e. unresolved) violations. According to the most recent inspections from late 2019 and early 2020, only one

---

[59] Jean Trounstine, *Massachusetts COVID-19 Decarceration Bill Could Protect Us All*, Dig Boston (Mar. 21, 2020), https://digboston.com/massachusetts-covid-19-decarceration-bill-could-protect-us-all.

[60] *See generally* Christine Mitchell, Amber Akemi Piatt & Juan Gudino, Human Impact Partners, Liberating Our Health: Ending the Harms of Pretrial Incarceration and Money Bail 17–19 (2020), https://humanimpact.org/wp-content/uploads/2020/02/HIP_HealthNotBailNationalReport_2020.02_reduced.pdf (collecting research on the toxicity of jail environments and the rapid spread of disease).

of the Commonwealth's 35 correctional facilities had zero repeat environmental health violations at its most recent inspection; 25 of them (71%) had 50 or more repeat violations; 11 (31%) had more than 190 repeat violations each.[61] The DOC and county sheriffs routinely fail to meet standards that adequately promote and protect the health and safety of their populations under non-emergency conditions. In a global pandemic, where heightened hygiene and physical distancing are required, corrections officials must receive every possible assistance to protect their populations—including substantial decarceration of vulnerable populations.

***5. Inadequate medical care in correctional facilities threatens lives.***

Incarcerated people lack access to timely, quality medical care.[62] On January 9, 2020, the Massachusetts Office of the State Auditor released a two-year audit of DOC medical care, finding failure to comply with authoritative guidance for sick call requests, doctors' appointments, health insurance coverage, and medications during reentry preparation under normal operations.[63] The State Auditor wrote:

---

[61] The 2019 inspection reports are available here: https://www.mass.gov/lists/2019-correctional-facility-inspection-reports. The 2020 inspection reports are available here: https://www.mass.gov/lists/2020-correctional-facility-inspection-reports. The addendum enclosed herewith provides full citations for each facility report.

[62] *See generally* Steve Coll, *The Jail Health-Care Crisis*, New Yorker (Feb. 25, 2019), https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis.

[63] Commonwealth of Mass., Office of the State Auditor, *Official Audit Report of Massachusetts Department of Correction For the Period July 1, 2016 through*

> Sick Call Request Forms (SCRFs) were not processed or triaged within 24 hours (72 on weekends) and/or were not completely filled out by nurses and/or physicians, and inmates were not always seen by a qualified healthcare professional (QHP) within seven days after they submitted SCRFs. Without timely treatment for physical and mental health issues, an inmate's condition could worsen.[64]

About one-third of people whose records were audited (19 out of 60) were not seen within a week. At a time of pandemic, these existing deficiencies are only likely to worsen as more people become infected and need urgent, intensive care. The State Auditor reported that "DOC officials could not provide us with a reason for these issues at the time of our audit. However, we did note that controls over the administration of these activities appeared to be deficient."[65] Operating from a baseline of impairment, the DOC will be stretched thinner during this emergency.

Similar limitations plague county jails. An in-depth investigation published by WBUR this week found that those who "suffered from dire medical conditions in Massachusetts county jails [] were often ignored or mistrusted, with fatal consequences. The sheriffs and for-profit companies increasingly responsible for [incarcerated people's] health care face little oversight, and often have withheld the

---

*June 30, 2018* (Jan. 9, 2020), https://www.mass.gov/doc/audit-of-the-department-of-correction/download.

[64] *Id.* at 11.

[65] *Id.* at 12.

circumstances of these deaths from the public — even from [incarcerated people's] families."[66]

Finally, COVID-19 makes isolation, segregation, and lockdowns all but futile. COVID-19 can survive in the air, so separation will not contain it. Surfaces inside cells, in bathrooms, on phones, and in transport will still be touched. Contact with intake officers, kitchen staff, and medical personnel is inevitable. Meanwhile, solitary confinement causes severe, long-term brain damage, and resorting to solitary confinement (or an analogue—restrictive housing, 22- or 23-hour-a-day lockdowns) would replace one acute health threat with another.[67]

**C. Failing to act now risks a crisis beyond measure.**

The storm is no longer coming[68]—it is here. But this Court can be the port in the storm, promoting public health through decarceration. Releasing incarcerated people and reducing the flow of new people into correctional settings would

---

[66] Christine Willmsen & Beth Healy, *When Inmates Die Of Poor Medical Care, Jails Often Keep It Secret*, WBUR (Mar. 23, 2020), https://www.wbur.org/investigations/2020/03/23/county-jail-deaths-sheriffs-watch.

[67] *See, e.g.*, Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Sci. Am. (Nov. 9, 2018), https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement.

[68] *See* Jan Ransom & Alan Feuer, *'A Storm Is Coming': Fears of an Inmate Epidemic as the Virus Spreads in the Jails*, N.Y. Times (Mar. 21, 2020), https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html.

advance the fundamental goal of public safety: protecting people from harm and saving lives. This Court must act quickly to avert avoidable tragedy. The people Petitioners seek to release are not a risk to the safety of the public. Their release would promote public health and safety; keeping them detained would threaten it.

The Commonwealth's correctional facilities cannot meet their obligations to protect those imprisoned from contracting and transmitting COVID-19; indeed, the DOC has already failed in at least one facility. Though they quarantined the infected man and his cellmate, they did not alert the public to this risk until two days later and new cases have already emerged. The spread of COVID-19 in the Commonwealth's jails and prisons will have profound consequences for the public at large. We urge this Court to order the release of as many people as possible, as expeditiously as possible, and with sufficient reentry supports.

Sincerely,

*Amici Curiae* Public Health Experts

**Dr. Mary T. Bassett, MD, MPH**
*Former Commissioner*, New York City Department of Health and Mental Hygiene
*Director*, François-Xavier Bagnoud (FXB) Center for Health and Human Rights
*FXB Professor of the Practice of Health and Human Rights*, Department of Social and Behavioral Science, Harvard T.H. Chan School of Public Health

**Prof. Leo Beletsky, JD, MPH**
*Professor of Law and Health Sciences*, Northeastern University School of Law & Bouvé College of Health Sciences
*Director*, Health in Justice Action Lab
*Associate Adjunct Professor*, UC San Diego School of Medicine

**Prof. Charles Branas, PhD**
*Gelman Endowed Professor*, Columbia University Mailman School of Public Health
*Chair, Department of Epidemiology*, Columbia University Mailman School of Public Health

**Prof. Lauren Brinkley-Rubinstein**, **PhD**
*Assistant Professor of Social Medicine*, UNC–Chapel Hill School of Medicine
*Faculty Member*, UNC Center for Health Equity Research

**David Cloud, JD, MPH**
*Research and Program Manager*, University of California San Francisco Division of Geriatrics
*PhD candidate*, Rollins School of Public Health at Emory University

**Dr. Warren J. Ferguson, MD**
*Professor of Family Medicine and Community Health*, University of Massachusetts Medical School

**Prof. Robert E. Fullilove, EdD**
*Professor of Sociomedical Sciences*, Columbia University Medical Center
*Associate Dean*, Community and Minority Affairs, Columbia University Mailman School of Public Health

**Dr. Mindy Thompson Fullilove, MD**
*Professor of Urban Policy and Health*, The New School

**Dr. Sandro Galea, MD, MPH, DrPH**
*Dean*, Boston University School of Public Health
*Robert A. Knox Professor*, Boston University School of Public Health

**Prof. Gregg Gonsalves, PhD**
*Assistant Professor of Epidemiology*, Yale School of Medicine
*Associate Adjunct Professor of Law*, Yale Law School
*Co-Director*, Global Health Justice Partnership and Collaboration for Research Integrity and Transparency

**Dr. Monik C. Jiménez, ScD**
*Assistant Professor of Medicine*, Harvard Medical School
*Assistant Professor of Epidemiology*, Harvard T.H. Chan School of Public Health

**Dr. Josiah "Jody" Rich, MD, MPH**
*Professor of Medicine and Epidemiology,* Brown University
*Director,* Center for Prisoner Health and Human Rights
*Attending Physician,* The Miriam Hospital

**Dr. Lisa Simon, DMD**
*Fellow in Oral Health and Medicine Integration,* Harvard School of Dental Medicine
*Correctional Dentist* in Massachusetts

**Dr. Bram Wispelwey, MD, MS, MPH**
*Chief Strategist & Co-Founder,* Health for Palestine
*Associate Physician*, Brigham & Women's Hospital
*Instructor in Medicine,* Harvard Medical School
*2020 Fellow,* Atlantic Fellows for Health Equity

*By their attorney*

/s/ *Katharine Naples-Mitchell*
Katharine Naples-Mitchell, BBO #704239
Charles Hamilton Houston Institute for Race & Justice at Harvard Law School
Areeda Hall, Room 521
1545 Massachusetts Ave.
Cambridge, MA 02138
(617) 495-5121
knaplesmitchell@law.harvard.edu

*Counsel for Amici Curiae*

March 24, 2020

## CERTIFICATE OF SERVICE

On March 24, 2020, I served a copy of this brief on all parties by email.

/s/ *Katharine Naples-Mitchell*
Katharine Naples-Mitchell
BBO #704239
Charles Hamilton Houston Institute for Race & Justice at Harvard Law School
Areeda Hall, Room 521
1545 Massachusetts Ave.
Cambridge, MA 02138
(617) 495-5121
knaplesmitchell@law.harvard.edu

*Counsel for Amici Curiae*