

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

NANNIE BLACKBURN, APRIL HOOVER,
ALLISON MOSELEY, JESSICA TUCKER,
JERAHCO WALLS, AMANDA WHITE,
and HOLLIE WORKMAN,

Petitioners,

v.

MARY NOBLE, in her official capacity as
Secretary of the Kentucky Justice and Public
Safety Cabinet; COOKIE CREWS, in her
official capacity as Commissioner of the
Kentucky Department of Corrections; and
VANESSA KENNEDY, in her official
capacity as Warden of the Kentucky
Correctional Institution for Women,

Respondents.

Case No.

Judge _____

**Emergency Petition for Writ of Habeas
Corpus**

IMMEDIATE RELIEF SOUGHT

I. INTRODUCTION

1. Plaintiffs-Petitioners (“Petitioners”) are seven women with serious medical conditions that make them uniquely vulnerable to death or serious illness from COVID-19. They are currently incarcerated at the Kentucky Correctional Institution for Women (“KCIW”) and seek emergency relief during this unprecedented crisis. Such emergency relief may be the only way to prevent their sentences from becoming death sentences.

2. The SARS-nCoV-2 virus has caused the most significant pandemic in generations.¹ The lethality rate of COVID-19, the serious disease caused by the novel coronavirus, is up to 30

¹ John M. Barry, *The Single Most Important Lesson from the 1918 Influenza*, N. Y. TIMES (March 17, 2020), <https://www.nytimes.com/2020/03/17/opinion/coronavirus-1918-spanish-flu.html>. (Opinion piece by author of “The Great Influenza: The Story of the Deadliest Pandemic in History,” noting comparison between current COVID-19 outbreak and the 1918 influenza outbreak, widely considered one of the worst pandemics in history).

times deadlier than the common flu that kills thousands each year.² The World Health Organization estimates that one in five people who contract COVID-19 require hospitalization.³ As of the time of filing, this pandemic has killed at least 115,271 people in the United States.⁴ Kentucky Governor Andy Beshear declared a statewide state of emergency on March 6, 2020,⁵ and President Trump followed by declaring a national state of emergency on March 13, 2020 in response to the virus.⁶ The United States leads the world in confirmed cases of COVID-19, far exceeding the totals in all other countries, and the virus continues to spread rapidly even as states have begun rolling back protective measures and social distancing guidelines.⁷

3. COVID-19 also presents a major danger to the Commonwealth of Kentucky. At the time of filing, 12,445 people in Kentucky had tested positive for COVID-19 and 499 people had died as a result.⁸ In late March, Governor Andy Beshear issued Executive Orders closing schools, non-essential and non-life-sustaining businesses, and restricting travel in- and out-of-state, among many other measures.⁹ Although the state has progressively reopened in the months of May and

² Exhibit 1, Declaration of Joe Goldenson, MD (“Goldenson Decl.”) ¶11.

³ *Q&A on Coronaviruses (COVID-19): What are the symptoms of COVID-19?*, WORLD HEALTH ORG. (Apr. 17, 2020) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

⁴ *Cases in the U.S.*, CTRS. FOR DISEASE CONTROL & PREVENTION (“CDC”), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated June 14, 2020).

⁵ Andy Beshear, Gov. of Ky., Executive Order 2020-215 (Mar. 6, 2020), *available at* https://governor.ky.gov/attachments/20200306_Executive-Order_2020-215.pdf.

⁶ Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, WASH. POST (March 13, 2020, 10:46 AM), <https://www.washingtonpost.com/world/2020/03/13/coronavirus-latest-news/>.

⁷ Adrianna Rodriguez, *Why are states seeing a sudden increase in coronavirus cases? Experts have more than one answer*, USA TODAY (last updated June 11, 2020, 4:04 p.m.), <https://www.usatoday.com/story/news/health/2020/06/11/coronavirus-experts-explain-why-covid-19-cases-spike-these-states/5333309002/>; *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University*, JOHNS HOPKINS UNIVERSITY OF MEDICINE, <https://coronavirus.jhu.edu/map.html> (last visited June 13, 2020).

⁸ TEAM KENTUCKY: THE OFFICIAL TEAM KENTUCKY SOURCE FOR INFORMATION CONCERNING COVID-19, <https://govstatus.egov.com/kycovid19> (last visited June 15, 2020).

⁹ *See generally* KENTUCKY’S RESPONSE TO COVID-19, <https://governor.ky.gov/covid19> (last visited June 15, 2020).

June, the threat from the novel coronavirus remains: there is currently no vaccine or cure available for COVID-19.¹⁰

4. Because there is no vaccine or cure for COVID-19, public health experts and the Centers for Disease Control and Prevention (“CDC”), have recommended actions to slow and prevent transmission, primarily through a practice known as “social distancing.”¹¹ Social distancing requires that people maintain a distance of approximately six feet, at minimum, from others 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.¹² The only assured way to curb the pandemic is through dramatically reducing contact for all.¹³ Public health officials have also provided guidance on aggressive sanitation measures, such as cleaning and disinfecting all surfaces for exacting periods of time with products containing particular alcohol contents, and closing off any areas used by sick individuals.¹⁴

5. While COVID-19 in general poses grave threats to health and well-being, elderly people and people with specific medical conditions—like the ones Petitioners have—have significantly heightened vulnerability to the virus. The list of conditions which put people at higher risk includes diseases of the lungs, heart, kidneys, and liver, as well as diabetes and conditions that

¹⁰ See Goldenson Decl. ¶18; *Coronavirus*, WORLD HEALTH ORGANIZATION, https://www.who.int/health-topics/coronavirus#tab=tab_1 (“At this time, there are no specific vaccines or treatments for COVID-19.”) (last visited June 13, 2020).

¹¹ Goldenson Decl. ¶19.

¹² *How Coronavirus Spreads*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited June 13, 2020).

¹³ See Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to “Flatten the Curve,”* WASH. POST. (March 14, 2020), <https://www.washingtonpost.com/graphics/2020/world/corona-simulator/>; James Glanz and Campbell Robertson, *Lockdown Delays Cost at Least 36,000 Lives, Data Shows*, N.Y. TIMES (last updated May 22, 2020), <https://www.nytimes.com/2020/05/20/us/coronavirus-distancing-deaths.html>; James Gallagher, *Coronavirus: Lockdowns in Europe saved millions of lives*, BBC (June 8, 2020), <https://www.bbc.com/news/health-52968523>.

¹⁴ *Cleaning and Disinfecting Your Facility*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html> (last visited June 13, 2020).

cause a person to become immunocompromised.¹⁵ The CDC strongly recommends that medically vulnerable people maintain six feet of distance between themselves and others and keep away from anyone who is sick.¹⁶ Petitioners all have serious medical conditions falling into these categories that make them exceptionally vulnerable to COVID-19.

6. While all environments present the risk of contagion, the cramped, crowded, and communal nature of prisons and jails have made risk of virus transmission exorbitantly high in correctional facilities. Prison environments are fundamentally incompatible with medically-indicated social distancing and hygiene protocols.¹⁷ As a result, they present a grave threat to incarcerated people and staff by enabling the spread of COVID-19.

7. To complicate matters, prisons are not sealed off from the world outside them. By their nature, people cycle in and out constantly—from correctional and medical staff to those serving short sentences or finishing longer ones. This revolving door allows COVID-19 to spread easily from prisons to the community and from the community to prisons. Failing to prevent and mitigate the spread of COVID-19 in prisons endangers not only those within the institution, but the entire community.¹⁸

8. Because prisons are fundamentally incapable of implementing the CDC's social distancing and cleaning recommendations, incarcerated people are already contracting the virus and dying in large numbers as a result. At the time of filing, at least 43,967 incarcerated people

¹⁵ *Coronavirus Disease 2019 (COVID-19): People Who Are at Higher Risk for Severe Illness*, CDC (last updated May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

¹⁶ *Coronavirus Disease 2019 (COVID-19): What You Can Do*, CDC (last updated May 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>.

¹⁷ Goldenson Decl. ¶¶20-23.

¹⁸ Sandhya Kajeepeta and Seth J. Prins, *Why Coronavirus in Jails Should Concern All of Us*, THE APPEAL (Mar. 24, 2020), <https://theappeal.org/coronavirus-jails-public-health/>.

and 9180 prison staff members had tested positive for the virus across the United States, and at least 560 people who live or work in prisons have died.¹⁹

9. The number of positive COVID-19 tests among prisoners and prison staff increased significantly throughout May.²⁰ “Much of the remarkable recent growth in coronavirus cases has been due to a handful of states—Ohio, Tennessee, Arkansas, Michigan, North Carolina among them—that began aggressively testing nearly everyone at prisons where people had become sick.”²¹ The increase in positive cases combined with the new “spate of testing would suggest that coronavirus had been circulating in prisons in much greater numbers than known, and that in the many states where tests have not been prevalent, far more people may have been carrying it than were initially reported.”²²

10. As of the time of filing this Complaint, there are at least 435 known positive COVID-19 cases among Kentucky prisoners and staff members—a figure that represents over 3.6% of all known positive cases in the entire state of Kentucky,²³ despite the fact that prisoners only account for roughly 0.3% of Kentucky’s population.²⁴

11. COVID-19 was recently detected at KCIW, the facility where Petitioners reside. In the 16 days from May 26 to June 11—and despite Respondents’ professed efforts at containment—a single positive staff member became three positive staff members, which then became at least

¹⁹ *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (last updated June 12, 2020, 7:57 PM), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Compare COVID-19 Response*, COMMONWEALTH OF KY. DEPT. OF CORR. (last updated Jun. 14, 2020), <https://corrections.ky.gov/Facilities/Pages/covid19.aspx> with KENTUCKY’S RESPONSE TO COVID-19, <https://governor.ky.gov/covid19> (last visited June 15, 2020), <https://govstatus.egov.com/kycovid19>.

²⁴ *Compare Kentucky Department of Corrections Statewide Population Report for 06/12/2020*, available at <https://corrections.ky.gov/About/researchandstats/Documents/Daily%20Population/2020/06/06-12-20.pdf> with *QuickFacts Kentucky; United States*, UNITED STATES CENSUS, <https://www.census.gov/quickfacts/fact/table/KY,US> (last visited June 13, 2020).

eleven positive incarcerated people.²⁵ Although the facility entered a lockdown on June 12, 2020,²⁶ the crowded conditions, lack of social distancing, long incubation period, and possibility for asymptomatic spread means the virus could very quickly infect a large proportion of the population at KCIW.

12. The constitutional prohibition on cruel and unusual punishment requires Respondents to provide safe living quarters and reasonably adequate medical care, including protection from dangerous infectious diseases. This constitutional provision requires Respondents to evaluate the safety and adequacy of medical care on an individualized basis—actions taken to protect healthy people from a disease outbreak may be constitutionally insufficient for people with medical vulnerabilities, and the Constitution may require even greater levels of protection for the most vulnerable.

13. With an outbreak now underway at KCIW, Petitioners' serious medical conditions and exceptional vulnerability to COVID-19 puts them in grave, imminent, and potentially mortal danger. In the face of this substantial risk of serious harm, Petitioners' lives may very well depend upon their ability to practice social distancing. Maintaining the recommended isolation and distance from others is impossible at KCIW, however, and no set of conditions or circumstances short of significant population reductions will change this. Respondents are aware of Petitioners' serious medical conditions, of the serious threat posed to Petitioners by COVID-19, and the inadequacy of the measures taken to protect Petitioners from COVID-19 in light of their exceptional vulnerability. Nevertheless, Respondents have taken no specific actions to protect these particular Petitioners from this deadly pandemic.

²⁵ Exhibit 2, Letter from Robyn Bender, Exec. Dir., Off. of Legal Serv's, KY Justice & Public Safety Cabinet, to Corey Shapiro, Legal Director, ACLU of KY (June 12, 2020) [hereinafter, Bender Letter].

²⁶ *Id.*

14. Accordingly, because of the ongoing violations of Petitioners' constitutional rights, and their unique circumstances, Petitioners request this Court issue writs of habeas corpus providing for their release from custody or movement to home confinement for the duration of the COVID-19 pandemic, the only options available to empower these women to protect themselves by practicing social distancing. In the midst of the most severe public health crisis in a century, Respondents have failed to provide Petitioners with the adequate safeguards they desperately need. Without relief, Petitioners fear a painful and unnecessary death, becoming another preventable statistic attributed to the ghastly toll of COVID-19.

II. JURISDICTION AND VENUE

15. Petitioners bring this civil rights action under 28 U.S.C. § 2241, and 28 U.S.C. § 2201, *et seq.*, as well as the Eighth Amendment to the United States Constitution.

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

17. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 2241(d) because Petitioners are in custody in this venue. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioners' claims occurred and continue to occur in this judicial district.

III. PARTIES

18. Petitioner Nannie Blackburn is a 43-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Blackburn is a survivor of cervical cancer. She has high blood pressure, an underactive thyroid, and Hepatitis C. Although she takes daily medication for her high blood pressure and underactive thyroid, she suffers from numerous symptoms as a result of these conditions. She can feel her

blood pressure rising over the course of the day, to the point that her face is red and flushed every evening. Her thyroid condition keeps her always tired and short of breath. She also suffers from bad migraines, and always feels worn down. Ms. Blackburn has a job in the prison as a maintenance worker. She lives in a small two-bed cell and cannot avoid close contact with people in either her cell or common areas.

19. Petitioner April Hoover is a 37-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Hoover suffers from heart disease, high cholesterol, and high blood pressure. She takes medication to control her high cholesterol and high blood pressure, but her heart disease is severe. When Ms. Hoover arrived in prison, she had an extremely high cholesterol count around 500, and at least one doctor has expressed surprise that she has not yet had a major heart surgery. As a result of her heart disease, she has been placed on chronic care at KCIW. As a result, medical staff do blood work and a physical every six months (instead of the usual one year intervals), she is required to get all available immunizations, and she wears a medical alert card under her inmate ID card so that first responders could quickly identify her underlying conditions in the event of a medical emergency. Ms. Hoover lives in a small two-bed cell and cannot avoid close contact with people in either her cell or common areas.

20. Petitioner Allison Moseley is a 26-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Moseley has lived with cystic fibrosis in both her lungs and her digestive system for her entire life. Cystic fibrosis is a chronic illness that causes the secretion of this mucus in the lungs and impacts the

functioning of the pancreas. As a result of this mucus, Ms. Moseley has difficulty breathing—treatments can help make breathing easier, but the difficulty never goes away completely. Prior to the coronavirus pandemic, Ms. Moseley received four breathing treatments with albuterol per day from the medical facilities at KCIW, but since the COVID-19 pandemic began these treatments have stopped. She must rely now only on her inhalers, causing a deterioration in her condition. Ms. Moseley has a “heaviness” in her chest that is worse than it has been in a long time for her. She has so much difficulty breathing that it is hard for her to wear a mask to protect against the spread of COVID-19. Ms. Moseley is supposed to be treated with a “percussion vest” to help break up the mucus in her chest and is supposed to take a pulmonary function test every six months to monitor her functioning, but the prison has not provided her with access to either of these treatments. Ms. Moseley lives in a small two-bed cell and cannot avoid close contact with people in either her cell or in common areas.

21. Petitioner Jessica Tucker is a 40-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Tucker was diagnosed with HIV in December 2012 and has been on regular medications to suppress her viral load and support her immune system since July 2013. She experiences daily symptoms as a result of HIV, often feeling fatigued and tired, as if her body is “working in overdrive.” The disease makes it very difficult to recover even from common illnesses like the cold or flu. On one occasion after her diagnosis, she got so sick that every part of her body hurt, even her eyelids and fingernails. The pain lasted for four days, and Ms. Tucker thought she was going to die. Ms. Tucker lives in the Pine Bluff honor dorm in a small two-person cell. She cannot avoid close contact with people in either her cell or in common areas.

22. Petitioner Jerahco Walls is a 31-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Walls was born with a genetic heart disease called left ventricular noncompaction. This disease was discovered when she was 21 years old and went to the doctor for treatment of a migraine; it was discovered that Ms. Walls had actually suffered a heart attack. Doctors inserted both a pacemaker and a defibrillator in Ms. Walls' heart, which together work to keep her heart functioning. Twice since the insertion of this equipment, Ms. Walls' heart functioning has dropped so low that the defibrillator and pacemaker "shock" her heart to return its rhythm. Even with this equipment, her heart function is usually between 30 and 35 percent what it should be. She is on a number of medications, including potassium pills, water pills, and blood thinners. Until recently, Ms. Walls had weekly blood work but this was recently decreased to monthly, which was likely related to COVID. She gets out of breath easily and often feels extremely tired and fatigued, and she has frequent chest pains. Ms. Walls lives in a small two-person cell in the Minimum Security Unit, and cannot avoid close contact with people in either her cell or in common areas.

23. Petitioner Amanda White is a 38-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. White suffers from stage 4 kidney failure. Her kidney problems began around three years ago, while she was incarcerated at KCIW: her kidneys basically shut down, and she got so sick that she could not move her hands, could not walk, and could barely talk. She spent four months in Norton Hospital before getting discharged into the Kentucky State Reformatory and finally back to KCIW. Approximately three weeks ago, Ms. White began experiencing symptoms again. She felt very

sick and had so much trouble breathing that she could not get from her bed to the door of her cell without feeling out of breath. She was put in a wheelchair, and began experiencing hallucinations at night. Ms. White was taken to the hospital, where she learned that her body had filled up with toxins because her kidney was not functioning properly. Ms. White is also HIV-positive, for which she takes daily medication. Ms. White lives in a small two-bed cell and cannot avoid close contact with people in either her cell or in common areas.

24. Petitioner Hollie Workman is a 46-year-old woman who currently resides in Pewee Valley, Kentucky. At all times relevant to this petition, she was in the custody of the Kentucky Department of Corrections at the Kentucky Correctional Institution for Women. Ms. Workman has been diagnosed with hepatitis C, high blood pressure, COPD, and asthma, and she currently receives treatment for the high blood pressure, COPD, and asthma. The COPD and asthma can make breathing very difficult for Ms. Workman, particularly in hot weather. She often feels drained, frequently gets headaches, and can have so much difficulty breathing that she starts to panic. Even something as simple as walking between buildings at KCIW can cause her to need to sit down, and it takes her “forever” to get her breath back. Ms. White lives in a small two-bed cell and cannot avoid close contact with people in either her cell or in common areas.

25. Defendant Mary Noble is the Secretary of the Kentucky Justice and Public Safety Cabinet. She is sued in her official capacity. Secretary Noble, the Justice and Public Safety Cabinet, and the Commonwealth of Kentucky control and operate the Department of Corrections facilities through Defendant Commissioner Cookie Crews. The Commonwealth of Kentucky currently has immediate custody over all Petitioners.

26. Defendant Cookie Crews is the Commissioner of the Department of Corrections. She is sued in her official capacity. Defendant Crews currently has immediate custody over all Petitioners.

27. Defendant Vanessa Kennedy is the Warden of the Kentucky Correctional Institution for Women in Pewee Valley, Kentucky. She is sued in her official capacity. Defendant Kennedy currently has immediate custody over all Petitioners.

IV. FACTUAL ALLEGATIONS

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

28. The novel coronavirus that causes COVID-19 has led to a global pandemic,²⁷ and the United States has more confirmed cases of COVID-19 than any other country in the world. As of June 15, 2020, there were more than 2,063,812 reported COVID-19 cases and at least 115,271 deaths in the United States.²⁸

29. The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.²⁹ There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection.³⁰ Social distancing—deliberately keeping at least six feet of space between individuals to avoid spreading the illness³¹—plus 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

²⁷ Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

²⁸ *Cases in the U.S.*, *supra* note 4.

²⁹ *How Coronavirus Spreads*, *supra* note 12.

³⁰ Goldenson Decl. ¶18.

³¹ *Coronavirus, Social Distancing and Self-Quarantine*, JOHNS HOPKINS MEDICINE (last updated April 11, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>.

COVID-19.³² Because the coronavirus spreads among people who do not show symptoms, staying away from all people is the best way to prevent contraction.

30. The current estimated incubation period is between 2 and 14 days.³³

31. The COVID-19 fatality rate varies significantly depending on an individual's demographics and health factors. People who suffer from the following have an elevated risk: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.³⁴ 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.³⁵

32. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and can damage tissues in other vital organs including the heart and liver.³⁶ The full long-term effects of the health consequences from COVID-19 are largely unknown.³⁷

³² Goldenson Decl. ¶19.

³³ *Symptoms of Coronavirus*, CDC (last updated May 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

³⁴ *People Who Are at Higher Risk for Severe Illness*, CDC (last updated May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

³⁵ Mary L. Adams et al, *Population-Based Estimates of Chronic Conditions Affecting Risk for Complications from Coronavirus Disease, United States*, CDC (April 23, 2020), https://wwwnc.cdc.gov/eid/article/26/8/20-0679_article.

³⁶ See, e.g., Melissa Healy, *Coronavirus infection may cause lasting damage throughout the body, doctors fear*, L.A. Times (April 10, 2020, 3:03 PM), <https://www.latimes.com/science/story/2020-04-10/coronavirus-infection-can-do-lasting-damage-to-the-heart-liver>.

³⁷ See, e.g., George Citroner, *What We Know About the Long-Term Effects of COVID-19*, HEALTHLINE.COM (Apr. 21, 2020), <https://www.healthline.com/health-news/what-we-know-about-the-long-term-effects-of-covid-19>.

33. In many people, COVID-19 causes fever, cough, and shortness of breath. However, for people over the age of 50 or with underlying medical conditions that increase the risk of serious COVID-19 infection, this shortness of breath can be severe.³⁸ Most people in higher-risk categories who develop serious illness will need advanced support.³⁹ This requires highly specialized equipment like ventilators, and an entire team of care providers.

34. In serious cases, COVID-19 causes acute respiratory disease syndrome (“ARDS”), which is life-threatening. Even those who receive ideal medical care with ARDS have a 30% mortality rate.⁴⁰ These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.⁴¹

35. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 infection than from influenza. According to recent estimates, the fatality rate of people infected with COVID-19 is up to 30 times higher than the seasonal influenza.⁴²

B. The Dangers of COVID-19 are Heightened in Prisons

36. Beyond the unprecedented public health concerns presented by the COVID-19 pandemic, incarcerated persons face a particularly acute threat of illness, permanent injury, and death.⁴³ Substantial epidemiological research “shows that mass incarceration raises contagion rates

³⁸ Goldenson Decl. ¶¶12; 33-34.

³⁹ See, e.g., Keshava Rajagopal, et. al., *Advance Pulmonary and Cardiac Support of COVID-19 Patients*, CIRCULATION: HEART FAILURE (May 2020), available at <https://www.ahajournals.org/doi/epub/10.1161/CIRCHEARTFAILURE.120.007175>.

⁴⁰ Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland (March 25, 2020), available at <https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>.

⁴¹ *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, CDC (last updated June 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

⁴² Goldenson Decl. ¶11.

⁴³ Goldenson Decl. ¶¶20-40.

for infectious disease—both for people in jails, and for the community at large.”⁴⁴ During pandemics, prison facilities become “ticking time bombs” as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”⁴⁵

37. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.⁴⁶ It is extremely difficult for people who are confined in prisons, jails, and detention centers to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission.⁴⁷ Prisons have various characteristics that lead to “heightened risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases,” including, “physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet, shower, and eating environments; and limits on hygiene and personal protective equipment such as masks and gloves in some facilities.”⁴⁸ Additional spread may result because shared spaces and equipment are not adequately cleaned and disinfected; cleaning products such as soap and hand sanitizer are limited; and personal protective equipment is in short supply or unavailable for the prison population.⁴⁹

38. Additional reasons for the increased risk of transmission and infection include the constant cycling of people in and out of the prison, including prison staff, and insufficient access

⁴⁴ Kajeepeta and Prins, *supra* note 18.

⁴⁵ St. Louis Univ., *Prisons Unprepared For Flu Pandemic*, SCIEDAILY (Sept. 15, 2006), available at <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

⁴⁶ Goldenson Decl. ¶25.

⁴⁷ *Id.*; see also *Death toll rising at Federal prison in Oakdale*, KPLC News (April 2, 2020, 9:32 p.m.), <https://www.kplctv.com/2020/04/03/death-toll-rising-federal-prison-oakdale/> (Corrections union president admits: “It’s unfortunate that the inmates are being kept in a close proximity, that’s just the nature and physical layout of our institution. They sleep in cells right next to one another. I mean approximately three to four feet from one another.”).

⁴⁸ Goldenson Decl. ¶23.

⁴⁹ *Id.*

to medical care within the prison itself. Attempts to screen those entering prisons for COVID-19 symptoms are likely ineffective because of the frequent asymptomatic transmission of the virus. Some people may not exhibit symptoms at all or not until late in the incubation period, yet may still be contagious. Thus, while screening for fevers and other symptoms associated with COVID-19 may stop some infected people from entering prisons, these screenings cannot catch many of those actively spreading the virus.

39. The drastic social distancing measures that have been imposed across the country are designed exactly to combat this problem—staying at home limits contact with all other persons, even the asymptomatic. But every day, numerous prison employees, working on multiple different shifts, travel into and out of the prison. Any one of those employees can be asymptotically carrying and transmitting COVID-19, and the prison has no means of stopping this disease vector.

40. 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.⁵⁰ “[I]t is well accepted within the medical community that people incarcerated in prison are physiologically 10 years older than their chronological age,” which further increases the need to protect the vulnerable aging populations earlier than in the general public.⁵¹

41. Once the virus enters a jail or prison, the infection rate has been known to be much higher than in the broader community. In New York City, for example, the COVID-19 infection rate in the city’s jails is seven times higher than the rest of the city, which already sits at one of the

⁵⁰ Letter from Johns Hopkins Faculty, *supra* note 40.

⁵¹ Goldenson Decl. ¶33.

highest rates in the world.⁵² Since the first case of COVID-19 on Rikers Island, New York City's largest jail complex, was confirmed on March 18, 2020, infection rates have grown exponentially. According to New York City's Department of Correction commissioner, by April 14, 2020, 334 incarcerated people and 627 jail staff had tested positive at Rikers.⁵³ As of April 21, 2020, at least 91 incarcerated people for every 1,000 had tested positive for COVID-19, compared to 16 residents per 1,000 citywide.⁵⁴ The dramatic outbreak of COVID-19 in the Cook County Jail is also illustrative—more than 500 detainees had tested positive for COVID-19 as of April 13, 2020.⁵⁵ Nurses at Cook County's Stroger Hospital have warned that the virus is a “growing beast” that threatened not only staff and people behind bars but all of Cook County.⁵⁶ An entire unit at Stroger Hospital was converted into a space for treating COVID-19 cases from the Cook County jail, and the unit rapidly approached maximum capacity.⁵⁷ Although at this time the outbreak seems to be subsiding, COVID-19 killed seven incarcerated people and three sheriff's office employees as of May 16.⁵⁸ Ohio provides perhaps the most stark example of the dangers of COVID-19: more than 80% of incarcerated people tested positive for COVID-19 in two prisons where mass testing

⁵² *Coronavirus Update: Rikers Island Rate of Infection 7 Times Higher than Citywide, Legal Aid Says*, CBS NEW YORK (Mar. 26, 2020), <https://newyork.cbslocal.com/2020/03/26/coronavirus-rikers-island/>.

⁵³ Jennifer Biram, *Exclusive: NYC DOC commissioner addresses COVID-19 concerns on Rikers Island*, PIX (Apr. 14, 2020), <https://www.pix11.com/news/coronavirus/exclusive-nyc-doc-commissioner-addresses-covid-19-concerns-on-rikers-island>.

⁵⁴ Alleen Brown, *Inside Rikers: An Account Of The Virus-Stricken Jail From A Man Who Managed To Get Out*, THE INTERCEPT (Apr. 21, 2020), <https://theintercept.com/2020/04/21/coronavirus-rikers-island-jail-nyc/>.

⁵⁵ Cheryl Corley, *The COVID-19 Struggle in Chicago's Cook County Jail*, NPR (Apr. 13, 2020), <https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-cook-county-jail>.

⁵⁶ Shannon Heffernan, *Nurses Warn COVID-19 Cases At Cook County Jail Aren't Just Staying Behind Bars*, WBEZ (Apr. 11, 2020), <https://www.wbez.org/stories/nurses-warn-covid-19-cases-at-cook-county-jail-arent-just-staying-behind-bars/44cc1e46-693b-44cc-8a5a-347737966185>.

⁵⁷ *Id.*

⁵⁸ *Coronavirus Chicago: Cook County Jail sees 'steady decrease' in COVID-19 cases, officials say*, ABC 7 Eyewitness News (4:48 PM, May 16, 2020), <https://abc7chicago.com/cook-county-jail-coronavirus-illinois-chicago-covid-19/6189171/>.

occurred,⁵⁹ and at least forty-eight incarcerated people and two prison employees had died as a result of COVID-19 as of May 12, 2020.⁶⁰

42. This threat is well known in the state of Kentucky. At the time of filing, 435 incarcerated individuals and prison staff members statewide had tested positive for COVID-19. This constitutes more than 3.6% of the COVID-19 cases state-wide.⁶¹ In Green River Correctional Complex alone, over 40% of incarcerated people had tested positive for COVID-19 as of June 15, 2020.⁶² Tragically, at least two individuals incarcerated at Green River Correctional Complex lost their lives as a result of contracting COVID-19.⁶³

C. COVID-19 is Quickly Spreading at KCIW

43. On May 26, KCIW reported its first COVID-19 case when a contract medical employee tested positive.⁶⁴ After gaining an initial beachhead into facility, the novel coronavirus quickly began to spread. On June 1, a correctional officer tested positive, and on June 3, a food service employee tested positive.⁶⁵ Then, on June 10, “two dozen” incarcerated people at KCIW reported symptoms consistent with COVID-19, at least 11 of whom tested positive on June 11.⁶⁶

44. Respondents’ failure to adequately implement the CDC’s recommended guidance or regularly test the people who live in and work at KCIW likely explains why COVID-19 has so

⁵⁹ Jake Zuckerman, *Nearly 80% of inmates have COVID-19 at two Ohio Prisons*, OHIO CAPITAL JOURNAL (Apr. 23, 2020), <https://ohiocapitaljournal.com/2020/04/23/nearly-80-of-inmates-have-covid-19-at-two-ohio-prisons/>.

⁶⁰ Jake Zuckerman, *Despite staggering case counts and 50 deaths, prisons halt mass COVID-19 testing*, OHIO CAPITAL JOURNAL (May 12, 2020), <https://ohiocapitaljournal.com/2020/05/12/despite-staggering-case-counts-and-50-deaths-prisons-halt-mass-covid-19-testing/>.

⁶¹ *Supra* note 23.

⁶² *COVID-19 Response*, COMMONWEALTH OF KY. DEPT. OF CORR. (last updated Jun. 14, 2020), <https://corrections.ky.gov/Facilities/Pages/covid19.aspx>; KY. DEPT. OF CORR. STATEWIDE POPULATION REPORT FOR 06/12/2020, *available at*

<https://corrections.ky.gov/About/researchandstats/Documents/Daily%20Population/2020/06/06-12-20.pdf>.

⁶³ *Id.*

⁶⁴ Bender Letter.

⁶⁵ *Id.*

⁶⁶ *Id.*

quickly began to spread in the facility. Respondents claim to have taken several prophylactic measures to protect against COVID-19, including:

- Suspending visitation;
- Suspending all outside programming and volunteer activity;
- Suspending transfers between facilities with the exception of operational or medical emergencies;
- Quarantining new inmates received at a facility for 14 days before they are incorporated with the general inmate population;
- Enhancing sanitization efforts using germicide and bleach solution multiple times daily;
- Increasing access to hand sanitizer for staff and soap for inmates, while also educating on the CDC guidance for mitigating the spread of germs;
- Screening staff for COVID-19 symptoms every day upon entry, including temperature scans and questions related to current health symptoms and recent travel (with the same being done for anyone who enters a DOC facility);
- Sanitizing hands and feet of anyone entering a DOC facility;
- Distributing cloth masks to all staff and inmates;
- Implementing social distancing, as much as feasible, including limiting the number of people in the cafeteria or out in exercise areas at one time; and
- Developing quarantine and medical isolation accommodations for symptomatic and exposed individuals across DOC facilities.⁶⁷

45. Of these preventative measures, wearing masks, regularly cleaning and disinfecting high-touch surfaces, washing hands with soap and water or alcohol-based hand sanitizer, and practicing social distancing are the most important steps to protect people from and limit the spread of COVID-19.⁶⁸

46. Respondents have been aware of the crucial importance of taking these steps for months.⁶⁹

⁶⁷ Bender Letter; *see also Key Initiatives*, KY. DEP'T OF CORR. (last accessed June 13, 2020), <https://corrections.ky.gov/Facilities/Documents/COVID-19/Key%20Initiatives.pdf>.

⁶⁸ Goldenson Decl. ¶19; *see also Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others*, CDC (last updated Apr. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁶⁹ *See Key Initiatives*, KY. DEP'T OF CORR. (last accessed June 13, 2020) (“The Kentucky Department of Corrections is working diligently daily to minimize health risks and is committed to following the proposed guidance from the CDC for Correctional and Detention Facilities”), <https://corrections.ky.gov/Facilities/Documents/COVID-19/Key%20Initiatives.pdf>; *COVID-19 Response*, KY. DEP'T OF CORR. (last accessed June 13, 2020) (highlighting that the Justice and Public Safety Cabinet and Department of Corrections are working “in consultation with the Department for Public Health”), <https://corrections.ky.gov/facilities/pages/covid19.aspx>; *Novel Coronavirus (COVID-19)*

47. As the COVID-19 pandemic has spread across the country, and even as the first positive cases were discovered at KCIW, Respondents failed to ensure that everyone who lives in or works at KCIW wore the masks they had been provided. Although incarcerated people at KCIW do have masks, Respondents have only required their use when visiting medical or the library.⁷⁰ As a result, many people do not wear their masks most of the time, even in crowded situations like standing in lines. Even correctional officers often do not wear their masks properly, and frequently go about their business with their masks around their neck rather than covering their nose and mouth.⁷¹

48. Additionally, Respondents have failed to ensure that high-touch surfaces are frequently cleaned and disinfected. The living quarters at KCIW are structured so that many people share a limited number of facilities. In Petitioner Blackburn's dorm, 44 people share two toilets, a kitchen, washer and dryer machines, phones, and JPay machines.⁷² On Petitioner Hoover's floor, 18 people share two toilets and one shower.⁷³ Petitioner Moseley and Petitioner Tucker both live in wings where about 30 people share four toilets, four showers, and four sinks.⁷⁴ Petitioner White lives in a section of KCIW where about 40 people share four toilets, four sinks, three showers, two

Guidance for Correctional Facilities, KY. DEP'T FOR PUBLIC HEALTH (Mar. 10, 2020), <https://chfs.ky.gov/agencies/dph/covid19/correctionalfacilitiesforcovid19.pdf>; Letter from Damon Preston, Public Advocate, Dep't of Public Advocacy and Timothy Arnold, Post Trial Division Director, Dep't of Public Advocacy, to Mary Noble, Secretary, Justice & Public Safety Cabinet, and Leila A. VanHoose, Chair, Ky. Parole Bd. (Mar. 26, 2020), available at <https://dpa.ky.gov/News-and-Public-Information/Documents/DPA%20COVID-19%20Letter%20to%20Justice%20Cabinet%20and%20Parole%20Board%20%28FINAL%29.pdf>; Coalition Letter from Amanda Hall, Smart Justice Field Organizer, ACLU of Ky. et al., to Gov. Andy Beshear (Mar. 30, 2020), https://www.aclu-ky.org/sites/default/files/wysiwyg/covid19_coalition_letter_to_beshear_with_recs_for_jails_and_prisons.pdf; Letter from Amanda Hall, Smart Justice Field Organizer, ACLU of Ky., to Gov. Andy Beshear, et al. (Mar. 30, 2020), https://www.aclu-ky.org/sites/default/files/wysiwyg/aclu-ky_coalition_letter_on_decarceration_and_covid19.pdf.

⁷⁰ Exhibit 3, Declaration of Allison Moseley ("Moseley Decl.") ¶3; Exhibit 4, Declaration of Jessica Tucker ("Tucker Decl.") ¶8.

⁷¹ Exhibit 5, Declaration of April Hoover ("Hoover Decl.") ¶10.

⁷² Exhibit 6, Declaration of Nannie Blackburn ("Blackburn Decl.") ¶5.

⁷³ Hoover Decl. ¶6.

⁷⁴ Moseley Decl. ¶8; Tucker Decl. ¶5.

phones, two JPay machines, and one kiosk. In the unit where Petitioner Workman lives, eighteen people share two toilets and one working shower.⁷⁵ Petitioner Walls' unit only has two working showers, and they are so frequently used that she occasionally cannot even get to the shower after work.⁷⁶ Despite the heavy use of these facilities, they only get cleaned once or twice a day, if at all.⁷⁷ Showers and toilets are never cleaned between uses.⁷⁸

49. Furthermore, Respondents have also failed to provide adequate soap and water or alcohol-based hand sanitizer to allow for frequent hand washing. There is no soap at all in the bathroom Petitioner Blackburn uses, and she must germicide spray meant for cleaning surfaces to clean her hands.⁷⁹ Likewise, Petitioner Tucker does not have ready access to soap or cleaner, and there is no soap or hand sanitizer in the bathrooms.⁸⁰ Correctional officers will sometimes provide her with hand sanitizer if she asks, but even this is not always available.⁸¹ There is hand sanitizer station in the day room, but it is frequently empty and does not use alcohol-based sanitizer even when full.

50. Finally, and perhaps most dangerously, Respondents implemented almost no social distancing measures even as political leaders and public health experts have stressed the importance of social distancing for months. The only places in the prison where some distancing measures have been taken is at medical and the dining hall.⁸² Correctional officers removed every other chair from medical to allow people more room to spread out, and people are supposed to sit every other seat in the chow hall and leave the middle seats empty.⁸³ This distancing only lasts as

⁷⁵ Exhibit 7, Declaration of Hollie Workman ("Workman Decl.") ¶8.

⁷⁶ Exhibit 8, Declaration of Jerahco Walls ("Walls Decl.") ¶6.

⁷⁷ Tucker Decl. ¶5; Exhibit 9, Declaration of Amanda White ("White Decl.") ¶11; Workman Decl. ¶8.

⁷⁸ Workman Decl. ¶8.

⁷⁹ Blackburn Decl. ¶6.

⁸⁰ Tucker Decl. ¶¶6-7.

⁸¹ *Id.*

⁸² Workman Decl. ¶6.

⁸³ *Id.*

long as the chow hall is not full, however; as soon as the dining room begins to fill up, people can take the middle seats as well.⁸⁴ No social distancing has occurred anywhere else in the facility, and people incarcerated at KCIW are in almost constant close contact with each other. The basement in Petitioner Blackburn's unit, for example, is constantly filled with people waiting to wash their clothes or use the phones and JPay machines, and there is no limit to the amount of people who can enter at any given time.⁸⁵ Throughout the day, the people incarcerated at KCIW are almost always within an arms' reach of another person—whether using a common area, standing in line to access services or facilities, or even when at work:

- “In our dorm, we are pretty much never by ourselves. You're always within arms' reach of another person—like when you're talking on the phone, you're within arms' reach of about seven other people who are either using the phones or waiting for their turn.”⁸⁶
- “During the day when I am at work I am probably about four feet, if that, from other people at any given time.”⁸⁷
- “We are often very near each other, waiting to use the phones, or in the bathrooms, or at the tables in our common area. Especially near the phones and JPays, it can feel like we're sitting on top of each other.”⁸⁸
- “In my dorm, outside of my cell, there are always people around. For instance: there are two phones, a JPay machine, and a canteen kiosk in the phone room of our dorm, and there is consistently 10-11 people gathered in that small room waiting for a chance to use the phones, within arm's reach of each other or even shoulder-to-shoulder. After they clear count, we all basically stand on top of each other to get ready to go back to work or wherever else people are headed. People sit very close together at tables to play cards or eat. The kitchen in our dorm is even smaller than the phone room, and regularly has 4-5 people in it at a time.”⁸⁹

⁸⁴ *Id.*; Blackburn Decl. ¶7.

⁸⁵ Blackburn Decl. ¶5.

⁸⁶ Hoover Decl. ¶7.

⁸⁷ Moseley Decl. ¶9.

⁸⁸ White Decl. ¶11.

⁸⁹ Workman Decl. ¶7.

Moreover, the physical layout of KCIW results in a constant churning of the population, with people crossing paths and coming into contact with each other as they move about the facility to access the recreation yard, dining hall, or their work assignments.⁹⁰ The dangers of this complete lack of distancing are compounded by the lax mask requirements—in almost all of these close contact situations, people are not required to wear masks and many do not.⁹¹

51. Even retreating from these crowded common spaces to individual cells provides no improved ability to practice social distancing. Many of the people incarcerated at KCIW live in open dorms containing many people in beds only about four feet apart at most.⁹² Petitioners all live in small two-person cells with the beds placed approximately two to four feet apart.⁹³ It is impossible to be in the cell and keep six feet of distance away from a cellmate, and when both people are in bed, they are close enough to easily reach out and touch arms.⁹⁴

52. From June 10 to June 12—more than two weeks after the first positive case at KCIW was discovered—Respondents finally began taking action to initiate quarantines, partial lockdowns, and testing at KCIW.⁹⁵ The 26 people who showed symptoms of COVID-19 on June 10 were placed into quarantine and tested, and the rest of the facility was locked down by dorm on June 12 to facilitate mass testing of all incarcerated people and staff.⁹⁶ Respondents describe this “controlled containment” strategy as “allowing inmates time outside the cell for individual exercise, phone calls and electronic mail. These outside-the-cell activities will be strictly controlled and done in small groups to allow social distancing.”⁹⁷

⁹⁰ Hoover Decl. ¶8.

⁹¹ Workman Decl. ¶7.

⁹² Hoover Decl. ¶6.

⁹³ Blackburn Decl. ¶5; Hoover Decl. ¶6; Moseley Decl. ¶8; Tucker Decl. ¶5; Walls Decl. ¶6; White Decl. ¶11; Workman Decl. ¶5.

⁹⁴ *Id.*

⁹⁵ Bender Letter.

⁹⁶ *Id.*

⁹⁷ *Id.*

53. Despite these measures, KCIW will likely see the continued and potentially rapid spread of COVID-19 over the coming days and weeks. Asymptomatic spread appears to have already been occurring in the facility for at least two weeks. Despite conducting contact tracing that consistently returned negative test results for people potentially exposed to the virus after staff members were confirmed positive on May 26, June 1, and June 3, the number of positive COVID-19 cases has continued to increase.⁹⁸ In the light of near-complete lack of social distancing practices and frequent interactions of people between dorms prior to the initiation of the “controlled containment” strategy on June 12, the virus has likely already had ample opportunity to spread throughout KCIW.

54. On information and belief, Respondents still have not implemented social distancing procedures within the dorms at KCIW, despite initiating the “controlled containment” strategy to partially lockdown the facility. For example, although the program building has been put on quarantine lockdown, Petitioner White describes continuing to have contact with the 40 people in her wing.⁹⁹ Furthermore, the “controlled containment” strategy does nothing to reduce the close proximity of incarcerated people crowded into dorms and cells where beds are four feet apart or closer.

55. Isolating the initial people who show symptoms of COVID-19 is also unlikely to halt the spread of the virus. Respondents adopted this same strategy when an outbreak occurred at Green River Correctional Complex (“GRCC”). The first incarcerated people to show symptoms at GRCC were moved to the restricted housing unit (segregation or “the hole”) and placed in single person cells typically used for punishment in prison in an attempt to isolate them from the rest of the population. This had two results: first, people became afraid to notify correctional officers of

⁹⁸ *Id.*

⁹⁹ White Decl. ¶10.

their symptoms, because conditions in the hole are so harsh—resulting in an unknown number of COVID-19 cases going unidentified. Second, the restricted housing unit quickly filled up with people who sometimes remained symptomatic for weeks. With nowhere else to isolate people sick with COVID-19, GRCC officials allowed them to stay in their general population dorms, where they continued to spread the virus. Only after mass testing and “cohorting” people together based on their exposure status—a chaotic and messy process which itself likely resulted in new exposures to the virus—did officials at GRCC begin to regain some control over the spread of the virus in that facility, but not before at least two people lost their lives to this virus.¹⁰⁰

56. A widespread outbreak of COVID-19 at KCIW is likely inescapable, regardless of Respondents’ efforts from June 12 onward, due to: the 2 to 14 day incubation period of COVID-19; the near complete lack to date of preventative measures requiring the use of masks, regular cleaning and disinfecting of high-touch surfaces, frequent hand washing with soap or alcohol-based hand sanitizer, and social distancing; the asymptomatic spread that has likely already been occurring for weeks; the adoption of a “controlled containment” strategy that still has not allowed for increased social distancing in crowded dorms and cells; and the delayed implementation of quarantine procedures focused on people showing symptoms of COVID-19.

D. Social Distancing is the Only Way for Petitioners to Protect Themselves from this COVID-19 Outbreak

57. Petitioners all have serious medical conditions that make them especially vulnerable to serious illness or death should they become infected with COVID-19. Petitioners already experience fatigue, exhaustion, difficulty breathing, and difficulty recovering from illnesses, among other serious symptoms as a result of these underlying conditions. COVID-19 could swiftly, irreparably, and fatally overwhelm their bodies.

¹⁰⁰ See, e.g., Bender Letter at 2-3.

58. No conditions or set of conditions exist which can mitigate the risk posed to Petitioners by the growing COVID-19 outbreak at KCIW. Petitioners' exceptional vulnerability to COVID-19 means that the only way they can protect themselves from the virus is to never become exposed to it in the first place—a precaution that can only be accomplished by isolation at home, safely removed from congregate environments.

V. ARGUMENT

A. **Petitioners' Continued Incarceration During the COVID-19 Outbreak at KCIW Constitutes Cruel and Unusual Punishment in Violation of the Eighth Amendment.**

59. Respondents violate Petitioners' Eighth Amendment rights by continuing to incarcerate them in a congregate environment despite their knowledge of the substantial risk of serious harm posed by the COVID-19 outbreak at KCIW to these seven extremely medically vulnerable women. Corrections officials have a constitutional obligation to protect incarcerated people from a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Indeed, under the Eighth Amendment, prison officials “must provide humane conditions of confinement; . . . must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates[.]” *Id.* at 832 (internal quotation marks omitted).

60. This obligation also requires corrections officials to address incarcerated persons' serious medical needs—including needs far less dire than those at stake here. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Plata*, 563 U.S. 493, 531–32 (2011); *Flanory v. Bonn*, 604 F.3d 249, 255 (6th Cir. 2010) (prison officials violated Eighth Amendment for failure to provide incarcerated person with toothpaste for 337 days, creating future health risk); *Talal v. White*, 403 F.3d 423, 427 (6th Cir. 2005) (finding Constitutional concerns with exposing a incarcerated person to environmental tobacco smoke when that exposure “causes [plaintiff] sinus

problems and dizziness”); *Helling v. McKinney*, 509 U.S. 25, 28, 35 (1993) (incarcerated person stated a valid Eighth Amendment claim against prison officials who required him to share cell with a incarcerated person who exposed him to high levels of second-hand smoke); *Palacio v. Hofbauer*, 106 F. App’x 1002, 1005 (6th Cir. 2004) (exposure to smoke violates Eighth Amendment when a incarcerated person has “a medical condition that is exacerbated by” second-hand smoke and the smoke “bothers” other incarcerated persons).

61. The Constitution also requires that measures be put in place for incarcerated persons to *proactively prevent* their exposure to substantial harm. *McKinney*, 509 U.S. at 33-34 (“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.”); *Stefan v. Olson*, 497 F. App’x 568, 577 (6th Cir. 2012) (the proposition that “the Eighth Amendment protects against future harm to inmates is not a novel proposition”); *see also Farmer*, 511 U.S. at 833 (“[H]aving stripped [incarcerated persons] 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.”).

62. To demonstrate a violation of the Eighth Amendment, Petitioners must show both an objectively substantial risk of serious harm and that prison officials subjectively “acted with ‘deliberate indifference’” towards the hazardous condition in question. *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000). The objective component of this test is satisfied when an incarcerated person “provide[s] evidence that they are incarcerated under conditions posing a substantial risk of serious harm.” *Wilson v. Williams*, No. 20-3447, 2020 U.S. App. LEXIS 18087, at *20 (6th Cir. June 9, 2020). The subjective component is satisfied when an official has “(1) subjectively

perceived facts from which to infer substantial risk to the prisoner, (2) did in fact draw the inference, and (3) then disregarded that risk.” *Santiago v. Ringle*, 734 F.3d 585, 591 (6th Cir. 2013) (citations and internal quotation marks omitted). Such indifference may be “infer[red] from circumstantial evidence, including ‘the very fact that the risk was obvious,’ that a prison official knew of a substantial risk.” *Id.* (quoting *Dominguez v. Corn Med. Servs.*, 555 F.3d 543, 550 (6th Cir. 2009)). Here, Petitioners can easily satisfy both the objectively substantial risk and the showing that Respondents acted with “deliberate indifference” to that risk.

63. Petitioners face serious harm or death as a result of the COVID-19 pandemic. A “condition of confinement that is sure or very likely to cause serious illness and needless suffering” to someone detained, which includes “exposure of inmates to a serious, communicable disease” is precisely the type of serious harm that the Constitution protects against. *Helling v. McKinney*, 509 U.S. 25, 33 (1993). As discussed above, COVID-19 is a highly contagious and virus that can cause death, in addition to other serious long-term consequences. These include severe damage to lung tissue, permanent loss of respiratory capacity, and damage to tissues in other vital organs including the heart and liver.¹⁰¹ As examples throughout the world and across the United States have demonstrated, once COVID-19 enters a prison environment, the outcome can become overwhelming. The risk is even more severe for Petitioners, all of whom have serious underlying medical conditions that make them particularly vulnerable to death or serious harm if exposed to COVID-19. As the Sixth Circuit recently recognized in *Wilson v. Williams*, in a case involving COVID-19, “[h]ere, the objective prong is easily satisfied.” 2020 U.S. App. LEXIS 18087, at *20.

64. Because surviving the COVID-19 pandemic has been an omnipresent item of concern in the lives of people around the world for months, it cannot be disputed that Respondents

¹⁰¹ CDC *Interim Clinical Guidance*, *supra* note 41.

are subjectively aware of the risks posed by COVID-19. More specifically, Respondents are aware of the heightened threat COVID-19 poses to the correctional institutions. In addition to the guidance put out directly by the Kentucky Department of Corrections and the Kentucky Department of Public Health, on numerous occasions advocates have written to Respondents to make them aware of these risks.¹⁰² Indeed, Respondents Noble and Crews have already directly witnessed the devastating impact of COVID-19, presiding over an outbreak at GRCC that killed at least two people. Furthermore, Respondents have direct knowledge of Petitioners' severe underlying medical vulnerabilities as their custodians responsible for providing medical care and the importance of Petitioners having the ability to practice social distancing.¹⁰³

65. Despite this awareness, Respondents have consciously disregarded these risks by continuing to incarcerate Petitioners in a congregate environment where self-isolation and social distancing is impossible. An official demonstrates disregard of a risk by "failing to take reasonable measures to abate it." *Farmer*, 511 U.S. at 847; *see also Wilson*, 2020 U.S. App. LEXIS 18087, at *22. Unlike in *Wilson*, where the Court evaluated the reasonableness of the Bureau of Prisons' general response to a COVID-19 outbreak in class action suit, Petitioners here present a different issue: whether Respondents have consciously disregarded the exceptionally severe risks to health and life posed by COVID-19 to these specific Petitioners as a result of their uniquely serious underlying medical conditions. It may be the case that Respondents' actions pass constitutional muster in the aggregate under the Sixth Circuit's analysis in *Wilson*. But on an individual level, Respondents have taken no actions to respond to the uniquely dangerous situation in which

¹⁰² Letters from advocates, *supra* note 69.

¹⁰³ *See* Letter from Corey Shapiro, Legal Dir., ACLU of KY, to Justice Mary Noble, Secretary, KY. JUSTICE & PUBLIC SAFETY CABINET et. al (June 5, 2020), *available at* https://www.aclu-ky.org/sites/default/files/field_documents/20200605-doc_covid-19_demand_letter-final.pdf; *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others*, CDC (last updated Apr. 24, 2020) ("Keeping distance from others is especially important for people who are at higher risk of getting very sick."), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

Petitioners find themselves. Respondents have only made vague pledges to test KCIW’s “most vulnerable inmates” first¹⁰⁴—a step which demonstrates Respondents’ awareness of the significant additional danger COVID-19 poses to people with severe medical vulnerabilities, but which does nothing to actually abate the risk. Knowing that practicing social distancing and isolation away from a congregate environment is necessary for Petitioners to protect themselves from COVID-19, Respondents’ choice to let Petitioners sit in their cells waiting and wondering when they will be infected is the very definition of “failing to take reasonable measures.” In short, Respondents have “turned a blind eye or deaf ear to a known problem that would indicate such a lack of concern for petitioners’ welfare.” *Wilson*, 2020 U.S. App. LEXIS 18087, at *30.

66. Respondents have consciously disregarded the known potentially mortal danger the KCIW COVID-19 outbreak poses to Petitioners as a result of their significant medical vulnerabilities. This behavior constitutes deliberate indifference of a substantial risk of serious harm in violation of the Eighth Amendment’s prohibition on cruel and unusual punishment. Removing Petitioners to a non-congregate environment where they may practice social distancing is the only medically-appropriate manner in which to remedy this ongoing constitutional violation, therefore the Court should exercise its release or enlargement authority under 28 U.S.C. § 2241 to release Petitioners from custody or move them to home confinement.¹⁰⁵

VI. CLAIMS FOR RELIEF

COUNT I: Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 *Eighth Amendment Deliberate Indifference Claim*

67. Petitioners repeat and re-allege paragraphs 1 through 66 as if fully set forth in this Count.

¹⁰⁴ Bender Letter at 4.

¹⁰⁵ See *Wilson*, 2020 U.S. App. 18087, at *14–18 (holding that § 2241 is the proper vehicle for bringing such claims).

68. 28 U.S.C. §2241(c)(3) allows a writ of habeas corpus to issue if a person “is in custody in violation of the Constitution or laws or treaties of the United States.”

69. Under the Eighth Amendment to the United States Constitution, as applicable to States and their political subdivisions through the Fourteenth Amendment, people held in post-conviction carceral custody have a right to be free from cruel and unusual punishment.

70. Deliberate indifference by carceral authorities to a substantial risk of serious harm violates this Eighth Amendment right.

71. Although COVID-19 is a deadly virus that poses risks to everyone living and working in carceral settings—or indeed, to the public at large—the serious medical conditions experienced by Petitioners make them exceptionally vulnerable to serious illness or death if they become infected with COVID-19. This danger far surpasses that experienced by others who lack a medical vulnerability. The COVID-19 pandemic and emerging outbreak at KCIW places Petitioners at a substantial risk of serious harm.

72. Practicing isolation and social distancing in a non-congregate environment is the only precaution that can mitigate the severe risk of serious illness or death posed by COVID-19 to Petitioners.

73. Respondents are aware of Petitioners’ vulnerabilities and the exceptional risks the COVID-19 pandemic and emerging COVID-19 outbreak at KCIW pose to them as a result.

74. Respondents’ continued incarceration of Petitioners in a congregate environment where they are unable to practice isolation and social distancing constitutes deliberate indifference to a substantial risk of serious harm in violation of the Eighth Amendment to the United States Constitution.

75. As a result, Respondents are holding Petitioners in custody in violation of the Eighth Amendment, and relief is proper under 28 U.S.C. 2241(c)(3).

VII. REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court:

- a. Issue a writ of habeas corpus requiring Respondents to release Petitioners within twenty-four (24) hours, either outright or by moving them to home confinement, with such release to include supports to ensure social distancing and other expert-recommended measures to prevent the spread of coronavirus; or in the alternative, an order that Respondents show cause within, at most, three days why such a writ should not issue;
- b. If immediate release is not granted on the basis of this Petition alone, expedite review of the Petition, including oral argument, via telephonic or videoconference if necessary;
- c. Order such other and further relief as this Court deems just, proper, and equitable.

Dated June 15, 2020

Respectfully submitted,

/s/ Heather Gatnarek

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**application for admission forthcoming*