

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

_____)	Criminal District Court Judges
IN RE VULNERABLE AND NON-VIOLENT)	White, Flemings-Davilier, Willard,
INMATES LIVING IN THE ORLEANS)	Bonin, Johnson, Pittman, Daniels,
JUSTICE CENTER DURING GLOBAL)	Buras, Herman, Derbigny, Harris,
PANDEMIC EMERGENCY)	and Zibilich, <i>En Banc</i>
_____)	

**BRIEF *AMICUS CURIAE* OF THE RODERICK AND SOLANGE MACARTHUR
JUSTICE CENTER IN SUPPORT OF EMERGENCY HABEAS PETITION TO THE
CRIMINAL DISTRICT COURT *EN BANC* FOR THE RELEASE
OF VULNERABLE AND LOW-RISK INMATES FROM
ORLEANS PARISH SHERIFF CUSTODY**

The Roderick and Solange MacArthur Justice Center (“the MacArthur Justice Center” or “MacArthur”) files this Brief as *amicus curiae* in support of the *Emergency Habeas Petition to the Criminal District Court En Banc for the Release of Vulnerable and Low-Risk Inmates from Orleans Parish Sheriff Custody* (“Emergency Habeas Petition”) filed by Derwyn Bunton, Chief District Defender, Parish of Orleans.

I. INTRODUCTION AND STATEMENT OF INTEREST

The MacArthur Justice Center is a non-profit law firm that was founded in 1985 by J. Roderick MacArthur and his daughter Dr. Solange MacArthur with the mission to advocate for human rights and social justice through litigation, with an emphasis on criminal justice reform. Attorneys from MacArthur are class counsel in Jones v. Gusman, 2:12-cv-00859-LMA-MBN (E.D. La.), representing every detainee in the Orleans Justice Center (“OJC”), and in Caliste v. Cantrell, 2:17-CV-06197-EEF-MBN (E.D. La.), representing all arrestees who are currently before, the Magistrate Judge of Orleans Parish Criminal District Court (or will come before the Magistrate Judge in the future) for proceedings concerning pretrial release and who are unable to pay the financial condition that the Magistrate Judge imposes as a requirement for their immediate release. The MacArthur Justice Center also represents the plaintiffs in the putative class action in Moran v. Landrum-Johnson, et al., 2:19-cv-13553-EEF-MBN (E.D. La.), seeking to represent a class encompassing all individuals with pending state misdemeanor or felony cases who will, after acceptance of their charges by the District Attorney, appear before the Criminal District Court of Orleans for proceedings concerning pretrial release.

The measures sought by the Emergency Habeas Petition would effectuate the requirements of the Louisiana Supreme Court that district courts conduct “[c]riminal initial appearances for

adults and juveniles, arraignments for incarcerated individuals and bond hearings,”¹ “with **increased frequency to alleviate potential overcrowding of jails, which is a public health emergency for citizens and jail personnel.**”² The requested En Banc Order would also heed the call of 18 faculty at the Tulane University School of Public Health and Tropical Medicine and the Tulane University School of Medicine:

We urgently request that the members of the New Orleans Criminal Justice Community work to reduce the population of the jail immediately, before widespread infection takes hold in the jail, and continue to reduce the number of intakes into the Orleans Justice Center over the longer course of the crisis. Once confirmed COVID-19 cases are identified inside the jail it will likely be too late to prevent a large epidemic in the jail population, and anyone working or residing there at that time will be at high risk of suffering from COVID-19.³

Amicus recognizes the Court’s en banc order of March 25, 2020,⁴ in which it ordered the immediate release of persons detained on misdemeanor charges, contempt of court, failures to appear for probation status, or who were remanded for positive drug tests with a bond in effect. But that is not enough. The order does not provide for release of any pretrial detainees charged with nonviolent felony offenses, nor does it establish a means for releasing inmates who are especially susceptible to COVID-19, like the aged or those with underlying health conditions. As District Attorney Cannizzaro told the press: ““We agree that **nonviolent pretrial defendants should not be jailed strictly because of financial hardship**, and that **fewer detainees is a worthwhile goal we must work toward during this public health emergency.**”⁵

II. GLOBAL, NATIONAL, STATE, AND LOCAL AUTHORITIES RECOGNIZE THE HEALTH EMERGENCY POSED BY COVID-19.

A. The coronavirus pandemic poses an immediate threat to residents of the Greater New Orleans area.

The immediate threat posed by the novel coronavirus COVID-19 to the health of residents in Orleans Parish, in Louisiana, and in the United States as a whole has been widely recognized. An open letter signed by the Dean and 17 faculty members of the Tulane University School of Public Health and Tropical Medicine and the Tulane University School of Medicine noted that

¹ https://www.lasc.org/COVID19/Orders/2020-03-16_LASCOrder.pdf at para. 3 (last accessed Mar. 25, 2020).

² *Id.* at para. 5 (last accessed Mar. 25, 2020) (emphasis added).

³ <https://sph.tulane.edu/open-letter-covid19-jail> (“Tulane Open Letter”), attached as Exhibit 1 (last accessed Mar. 25, 2020).

⁴ The Court’s En Banc Order is attached as Exhibit 2.

⁵ Matt Sledge, “Citing coronavirus danger at New Orleans jail, public defenders call for broad inmate release,” NOLA.com (Mar. 25, 2020) (emphasis added), https://www.nola.com/news/coronavirus/article_8b4e3aca-6ee4-11ea-9c7b-23bb584acf95.html (last accessed Mar. 25, 2020).

“[a] worldwide pandemic of respiratory disease caused by a new coronavirus has now been reported in more than 160 countries, including the United States. Currently no vaccine or treatment for the disease exists, and it poses incredibly serious health threats to all communities worldwide.”⁶

As of March 25, 2020, the Centers for Disease Control and Prevention (“CDC”) recorded 54,453 cases of COVID-19 in the United States. The CDC reported 737 deaths from the virus in the U.S. as of that date.⁷ The Louisiana Department of Health has reported 1,795 cases of COVID-19 and 65 deaths from the virus in Louisiana as of May 24, 2020.⁸ This includes 827 cases and 37 deaths in Orleans Parish, and 359 cases and 7 deaths in Jefferson Parish.⁹ Considering those two parishes and St. Bernard and St. Tammany Parishes, there are 1,276 total COVID-19 cases, and 74 deaths, in the Greater New Orleans area as of the Louisiana Department of Health noon report on March 24.¹⁰ Orleans Parish and Jefferson Parish are the only two local jurisdictions outside the New York City and Seattle metropolitan areas in the list of the fifteen areas with the highest per capita rate of infection of COVID-19. The Times-Picayune / The New Orleans Advocate published the below table (as of March 23 at 4 p.m.) illustrating this fact:¹¹

Coronavirus hotbeds

Orleans Parish has one of the highest rates of known COVID-19 cases of any county in the country.

County/Parish	Population	Known cases	Case rate (per 100,000 people)
1. Westchester, N.Y.	967,612	2,894	299.1
2. Nassau, N.Y.	1,358,343	2,442	179.8
3. Richmond, N.Y.	476,179	817	171.6
4. Queens, N.Y.	2,278,906	3,621	158.9
5. New York County*	1,628,701	2,572	157.9
6. Orleans Parish	391,006	567	145.0
7. Rockland, N.Y.	325,695	455	139.7
8. Kings, N.Y.	2,582,830	3,494	135.3
9. Bronx, N.Y.	1,432,132	1,829	127.7
10. Orange, N.Y.	381,951	389	101.8
11. Suffolk, N.Y.	1,481,093	1,458	98.4
12. Bergen, N.J.	936,692	609	65.0
13. Snohomish, Wa.	814,901	480	58.9
14. King, Wa.	2,233,163	1,040	46.6
15. Jefferson Parish	434,051	184	42.4

*New York County consists of Manhattan
 Source: Staff research
 As of March 23 at 4 p.m.
 Staff graphic

⁶ Id.

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last accessed Mar. 25, 2020).

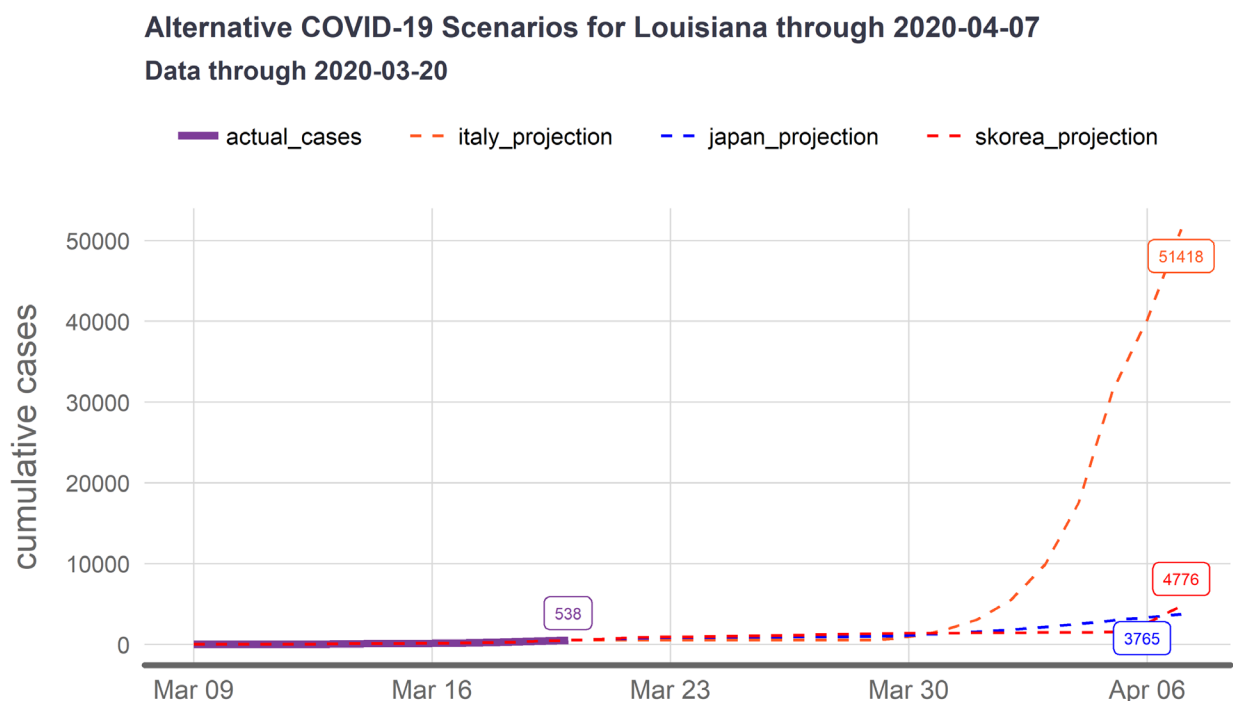
⁸ <http://ldh.la.gov/Coronavirus/> (last accessed Mar. 25, 2020).

⁹ Id.

¹⁰ Id.

¹¹ https://www.nola.com/news/coronavirus/article_c0509efc-6d4f-11ea-ae50-236ff5752610.html (Dan Swenson, Graphics Editor, The Times-Picayune/Advocate) (last accessed Mar. 25, 2020).

In his recent report, COVID-19 Scenarios for Louisiana,¹² Dr. Gary Wagner, Professor of Economics at the University of Louisiana Lafayette, sounds an alarm about the rate of increase of COVID-19 in Louisiana: “the state is still tracking the growth paths of Italy and Spain very closely.”¹³ The projected increase in cases if that projection is accurate is alarming:



Source: Raw data from JHU CSSE. Calculations by Gary A. Wagner, Ph.D.

The death toll in Italy (6,820 as of March 25) and Spain (over 3,400)¹⁴ is staggering. The criminal justice system must do its part to take all actions necessary to safeguard the public, including by mitigating the spread of COVID-19.

B. The Declarations and Orders issued by global, national, state, and local authorities require immediate action to limit the spread of the virus.

Global, national, state and municipal authorities all recognize the extreme and unprecedented health emergency caused by the rapid spread of COVID-19. The World Health Organization has declared COVID-19 to be a global pandemic.¹⁵ President Donald Trump issued

¹² Attached as Exhibit 3.

¹³ *Id.* at 2.

¹⁴ Bill Chappell, “Spain's Coronavirus Death Toll Soars Past China's, Trailing Only Italy,” NPR.org, <https://www.npr.org/sections/coronavirus-live-updates/2020/03/25/821370109/spains-coronavirus-death-toll-soars-past-china-s-trailing-only-italy> (last accessed Mar. 25, 2020).

¹⁵ “WHO has been assessing this outbreak around the clock [and]... are deeply concerned both by the alarming levels of spread and severity, and by the alarming level of inaction.” <https://www.who.int/emergencies/diseases/novel-COVID-19-2019/events-as-they-happen> (last accessed Mar. 25, 2020).

a declaration of national emergency due to the virus on March 13, 2020.¹⁶ Governor John Bel Edwards issued the first of several emergency declarations on March 11, 2020.¹⁷

Public health experts have all urged that at this moment, the only way to slow the spread of the virus is to employ social distancing measures in an effort to avoid overburdening our healthcare infrastructure.¹⁸ In his emergency proclamation on March 16, 2020, Governor Edwards severely restricted commerce in Louisiana, requiring closure of several types of businesses and forbidding on-premises operations in restaurants, cafes, or coffeeshops.¹⁹ On March 22, Governor Edwards' supplemental proclamation barred meetings of more than 10 persons from congregating, and directed all individuals within the state of Louisiana "to stay home unless performing an essential activity."²⁰ Mayor LaToya Cantrell issued a "Mayoral Proclamation to Promulgate Emergency Orders During the COVID-19 State of Emergency" on March 11, 2020, and a second such proclamation on March 16, 2020.²¹

The City of New Orleans Health Department's official guidance for residents with respect to the Mayor's proclamations explains:

The virus that causes Coronavirus 2019 Disease ("COVID-19") is easily transmitted, especially in group settings. It is believed to be spread easily amongst the population by various means of exposure, including person to person transmission and attaching to surfaces for prolonged periods of time. The scientific evidence shows that it is essential to slow virus transmission as much as possible to protect the most vulnerable, and to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable.²²

The Louisiana Supreme Court has likewise issued a series of emergency orders governing Court operations during the state of emergency, recognizing the imperative of social distancing. The most recent of these orders, issued on March 23, 2020, requires district courts to conduct "[t]he essential criminal matters set forth in Section 3 of this Court's March 16, 2020 Order . . .

¹⁶ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed Mar. 25, 2020).

¹⁷ Proclamation Number 25 JBE 2020, <https://gov.louisiana.gov/assets/Proclamations/2020/modified/25-JBE-2020-Public-Health-Emergency-COVID-19.pdf> (last accessed Mar. 25, 2020).

¹⁸ Katie Pearce, "What is social distancing and how can it slow the spread of COVID-19?," *Johns Hopkins University* (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>.

¹⁹ Proclamation Number 30 JBE 2020, <https://gov.louisiana.gov/assets/Proclamations/2020/modified/30-JBE-2020-Public-Health-Emergency-COVID-19.pdf> (last accessed Mar. 25, 2020).

²⁰ Proclamation Number 33 JBE 2020, <https://gov.louisiana.gov/assets/Proclamations/2020/modified/33-JBE-2020-Public-Health-Emergency-COVID.pdf> (last accessed Mar. 25, 2020).

²¹ <https://ready.nola.gov/incident/coronavirus/proclamation-guidance/> (last accessed Mar. 25, 2020).

²² *Id.* (emphasis added). See also "How It Spreads," Center for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last accessed Mar. 25, 2020).

with increased frequency to alleviate potential overcrowding of jails, which is a public health emergency for citizens and jail personnel.”²³ The matters referenced in this order include “[c]riminal initial appearances for adults and juveniles, arraignments for incarcerated individuals and bond hearings.”²⁴

The consensus of public health experts is that these social distancing measures are essential to save lives by slowing the spread of infection to prevent overburdening our healthcare infrastructure.²⁵ These measures are painful and have caused significant economic disruption.²⁶ There is no real choice between economic loss and human lives, as this Court knows. But the economic sacrifice New Orleanians are making to keep themselves and their fellow New Orleanians safe must be acknowledged and honored by taking every possible step to ensure that social distancing is effective.

III. THE CLOSE CONFINEMENT OF DETAINEES IN THE ORLEANS JUSTICE CENTER UNDERMINES THE STATE AND CITY’S EFFORTS TO MITIGATE THE SPREAD OF COVID-19.

The unnecessary detention of hundreds of detainees in the close quarters of a local jail, from which many will return to the New Orleans area within the next year seriously undermines the dramatic social distancing efforts required by the State and City and undergone by the citizenry. None of the recommended measures for mitigating the spread of COVID-19 are fully available for persons confined in the Orleans Justice Center and for those who must interact with them. The Tulane Open Letter explains:

Jails, including the Orleans Justice Center (the New Orleans jail) are places in which people are necessarily kept in close proximity to one another in small cells and open dormitories, with no possibility to practice social distancing or good hand hygiene. Sanitizing chemicals known to be effective against coronavirus, such as bleach solution, can be in short supply. Shower facilities in jails are communal and dining mainly happens in shared spaces as well. Conditions such as these are expected to facilitate rapid transmission of coronavirus. As such, once an epidemic of coronavirus is underway inside a jail, any person placed in such a facility is expected to be at high risk of acquiring the virus and transmitting it to others in the facility.²⁷

²³ https://www.lasc.org/COVID19/orders/2020-03-23_LASC.pdf at para. 5 (emphasis added) (last accessed Mar. 25, 2020).

²⁴ https://www.lasc.org/COVID19/Orders/2020-03-16_LASCOrder.pdf at para. 3 (last accessed Mar. 25, 2020).

²⁵ Katie Pearce, “What is social distancing and how can it slow the spread of COVID-19?,” *Johns Hopkins University* (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>.

²⁶ Tyler Bridges, “100% unemployed, New Orleans’ gig workers have run out of options amid coronavirus economy” (Mar. 24, 2020) https://www.nola.com/news/coronavirus/article_8680d7a0-6e1c-11ea-bb93-9b89964d7102.html (last accessed Mar. 25, 2020); Tyler Bridges, “For Louisiana’s 100k without jobs, unemployment benefit boost seen as life support amid coronavirus” (Mar. 25, 2020), https://www.nola.com/news/article_e444c4be-6ee9-11ea-9f7c-973a11f4cf60.html (last accessed Mar. 25, 2020).

²⁷ Ex. 1, Tulane Open Letter, at 1.

Failing to act quickly to reduce the number of people in jail endangers the community at large, undermining social distancing measures by 1) maintaining a large gathering of people at increased risk of contracting the virus and 2) causing increased strain on an already overburdened health care infrastructure.

First, OJC is a congregate environment in which just under 1,000 detainees are confined in close proximity to one another and to their keepers. Just by virtue of the physical structure jails, “[i]ncarcerated people and staff in jails are both likely to be at higher risk of contracting and transmitting the virus through the population of a facility, even when precautions against infection are taken.”²⁸

However, *OJC is not an isolated environment, and it cannot be kept isolated.* By necessity, members of the free community, including correctional officers, social workers, attorneys, medical personnel and many others, must enter and leave the Jail on a daily basis. As the Tulane Open Letter points out:

The jail population includes guards, administrators, teachers, medical staff, culinary staff and other community members and visitors who are also exposed to the high-risk transmission environment inside the jail and are intimately connected daily with their communities. Incarcerated people may seem to be a population cut off from the general un-incarcerated population, but they are not.²⁹

If the COVID-19 virus spreads within OJC, all of these persons are at heightened risk of contracting the virus and, in turn, spreading the virus to others with whom they come in contact in their homes, neighborhoods, and communities.

Further, many detainees held in OJC on non-violent felony charges, even if convicted, will return to the community sooner rather than later (either before trial or after serving a short sentence), as early as the average 21 days in the study cited in the Tulane Open Letter.³⁰

Second, “[j]ail populations also include individuals with pre-existing medical conditions, including hypertension and diabetes rates at nearly twice the level of the general population. As such they may also experience more severe consequences of coronavirus infection than the general

²⁸ Id. at 2 (emphasis added).

²⁹ Id.

³⁰ Id. (Citing Minton & Sabol)

population.”³¹ A wide spread infection in the jail would place significant and dangerous strain on New Orleans’ already overburdened healthcare resources.³²

The public health experts who delivered the Tulane Open Letter warn that there is no comfort in the fact that the population of detainees in OJC skews younger than the local population:

While the average age of the people who are incarcerated at the Orleans Justice Center is likely to be slightly younger than that of the general population, the bulk of incarcerated people in the facility are estimated to be between the ages of 20 and 44, the age range with nearly the highest number of cases identified so far in Louisiana (Louisiana Office of Public Health). Furthermore, the average age of the staff at the jail is likely higher, placing them at higher risk of severe complications of infection. The potential strain on prison medical staff and others from having to care for the severely ill, likely with limited supplies for both treatment and personal protection, and of transferring incarcerated people who are severely ill to already overburdened community hospitals, also cannot be overemphasized.³³

As the Tulane public health experts make clear, with respect to the dangers of infectious disease, a gathering of people is a gathering of people, whether they are clustered together for a parade or they are living in a jail. Failing to significantly reduce the number of people in the jail will undermine the significant social distancing efforts because it will be impossible for the City of New Orleans to slow its already run away rate of infection as long as a large gathering of 900 people remain in the center of the city.

IV. RELEASE OF NON-VIOLENT FELONY DETAINEES FROM OJC WOULD REDUCE THE JAIL POPULATION, THEREBY MITIGATING THE RISK OF COVID-19 TRANSMISSION WITH MINIMAL RISK TO PUBLIC SAFETY.

The Court’s en banc order of March 25 will result in the release of persons in the following categories: (a) Arrests for Failure to Appear on Probation Status; (b) Misdemeanor Pre-Trials; (c) Contempt of Court; and (d) Defendants remanded for positive drug tests with a bond in effect.³⁴

Of the remaining pretrial detainees held on non-violent felony charges, a significant number can be released with minimal risk to public safety. Certainly, nonviolent felony offenders can be released immediately. The City Council’s Criminal Justice Committee website states that 330 pretrial detainees are being held at OJC with following non-violent charges listed as the “most

³¹ *Id.*, citing Maruschak & Berzofsky, 2015.

³² Jeff Adelson and Sam Karlin, “Coronavirus spread in Louisiana could mean critical shortage of ventilators” (Mar. 25, 2020) https://www.nola.com/news/coronavirus/article_ec603296-6ef3-11ea-9037-fbd8afab021a.html (last accessed Mar. 25, 2020); Ex. 1, Tulane Open Letter at 2.

³³ *Id.* (emphasis added)

³⁴ Exhibit 2.

serious charge at arrest”: Drug Abuse Felony (95), Illegal Weapon (92), Burglary (60), Warrant/Attachment (36), Possession of Stolen Things (22), Larceny (9), Vandalism (7), Motor Vehicle Theft (5), DUI (2), Forgery/Embezzlement (1), Offenses Against the Family (1).³⁵ In addition to reducing the risk of infection for those 330 individuals, their release would reduce the current jail population by one-third, permitting the Sheriff to spread out the remaining detainees and prisoners, increasing the chances of social distancing in OJC.

As District Attorney Cannizzaro told the press, “nonviolent pretrial defendants should not be jailed strictly because of financial hardship . . .”³⁶ The danger to public health caused by detaining these individuals is clear, see § III supra. Each of these detainees was allowed a bond (albeit one that they could not afford), indicating that a judicial officer believed that they could be safely released to the community pending trial. Thus, the state has no legitimate interest in their continued detention, much less an interest that can be justified by clear and convincing evidence.³⁷

The necessity of guarding public health during the pandemic weighs overwhelmingly in favor of release for all but the most dangerous of felony offenders. Nor can a risk of flight, under these circumstances, justify continued detention for most prisoners in OJC. The provisions of the Court’s current en banc order, requiring defendants to return to court within ten days of this disaster’s conclusion, are sufficient to safeguard the state’s interest in defendants’ appearance at future hearings.

V. JUDGES, PROSECUTORS, AND PUBLIC OFFICIALS ACROSS THE COUNTRY AGREE THAT NON-VIOLENT FELONY DETAINEES AND PRISONERS IS NECESSARY IN ORDER TO MITIGATE THE SPREAD OF COVID-19.

Jurisdictions around the country understand how essential dramatic jail population reduction are to slowing the spread the virus. Some examples follow.

The Presiding Judge of the Criminal Division of the Circuit Court in Cook County, Illinois (Chicago) entered an order on March 23, 2020, ordering immediate bond-reduction hearings for

³⁵ New Orleans City Council, Criminal Justice Committee, New Orleans Jail Population Snapshot (March 25, 2020), <https://council.nola.gov/committees/criminal-justice-committee/#jail-dashboard> (last accessed March 25, 2020). These figures do not contain sufficient data to provide a more detailed analysis. They are cited here to give the Court a broad sense of how the relief requested in the Emergency Habeas Petition would succeed in reducing the risk of infection in the jail and in the community.

³⁶ Matt Sledge, “Citing coronavirus danger at New Orleans jail, public defenders call for broad inmate release,” NOLA.com (Mar. 25, 2020), https://www.nola.com/news/coronavirus/article_8b4e3aca-6ee4-11ea-9c7b-23bb584acf95.html (last accessed Mar. 25, 2020).

³⁷ See, e.g., Caliste v. Cantrell, 329 F. Supp. 3d 296 (E.D. La. 2018) (holding that pretrial detention is constitutional only when accompanied by clear and convincing evidence that detention is necessary to mitigate flight risk or danger to the community).

multiple categories of detainees and encompassing felony detainees.³⁸ The New Jersey Supreme Court has ordered, on request from the state public defender, the presumptive release of “any inmate currently serving a county jail sentence (1) as a condition of probation, or (2) as a result of a municipal court conviction,” with opportunity for the District Attorney to contest the release of any specific prisoner on an expedited basis.³⁹

In Cleveland, Ohio, criminal court judges have released dozens of pre-trial detainees and anticipate the eventual release of some 300 detainees from the Cuyahoga County Jail and “almost any kind of inmate was considered.”⁴⁰ Jails in Cincinnati⁴¹ and Erie County⁴² have also released inmates.

In Pennsylvania, the Philadelphia District Attorney’s office has moved to release most people charged with non-violent offenses, including felonies.⁴³ Officials in Philadelphia, as well as Delaware and Montgomery Counties, have been working to release or parole prisoners early.⁴⁴

In Oregon, the Washington County Jail is releasing inmates who are low-level offenders or have existing health risks and ensuring that all remaining inmates have their own cell.⁴⁵ In Charlotte, North Carolina, the Mecklenburg County Jail has begun releasing inmates, and is actively considering more pre-trial detainees on misdemeanor and felony charges for release.⁴⁶ In Tampa, Florida, Hillsborough County is releasing non-violent, pre-trial detainees, including those

³⁸ Expedited Bond Hearing Scheduling Order in In re State and National Emergency and Protection of the Life and Health of Detainees in the County Jail and Those Who Interact With Them, No. 2020-MR-00010, (Cir. Ct. Cook Cty., Ill., March 23, 2020), attached as Exhibit 4.

³⁹ Consent Order, In the Matter of the Request to Commute or Suspend County Jail Sentences, No. 84230 (N.J. Mar. 22, 2020), attached as Exhibit 5.

⁴⁰ “Ohio jail Releases Hundreds of Inmates Due to Coronavirus Concerns,” *Oklahoma’s News4* (Mar 16, 2020, 8:36 AM), <https://kfor.com/health/coronavirus/ohio-jail-releases-hundreds-of-inmates-due-to-coronavirus-concerns/> (last accessed March 25, 2020).

⁴¹ “Order to authorize Hamilton County sheriff to release low-risk, nonviolent jail inmates,” *Cincinnati Enquirer*, available at <https://www.cincinnati.com/story/news/crime/crime-and-courts/2020/03/16/coronavirus-hamilton-county-sheriff-release-low-risk-inmates/5062700002/> (last accessed March 25, 2020).

⁴² Peggy Gallek, “Erie County Reducing Jail Population Due to COVID-19 Concerns,” *Fox8* (Mar 17, 2020, 5:07 PM), <https://fox8.com/news/coronavirus/erie-county-reducing-jail-population-due-to-covid-19-concerns/> (last accessed Mar. 25, 2020).

⁴³ “District Attorney Krasner Calls on Philadelphia Courts to Take Action During Coronavirus Emergency,” Philadelphia District Attorney’s Office press release (March 23, 2020), available at <https://medium.com/philadelphia-justice/district-attorney-krasner-calls-on-philadelphia-courts-to-take-action-during-coronavirus-emergency-16f2a5f3ac71> (last accessed March 25, 2020).

⁴⁴ Samantha Melamed & Mike Newall, “With Courts Closed by Pandemic, Philly Police Stop Low-level Arrests to Manage Jail Crowding,” *Philadelphia Inquirer* (March 18, 2020) <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html> (last accessed Mar. 25, 2020).

⁴⁵ Drew Reeves, “Washington County Jail Releases Some Inmates to Prevent Spread of COVID-19,” *Fox12 Oregon* (March 17, 2020), https://www.kptv.com/news/washington-county-jail-releases-some-inmates-to-prevent-spread-of/article_34cdc2c2-68d3-11ea-bfc0-3725e49b0c0c.html (last accessed Mar. 25, 2020).

⁴⁶ “Mecklenburg Begins Releasing Jail Inmates to Avoid Cellblock Outbreak of COVID-19,” *WBTV* (March 18, 2020), <https://www.charlotteobserver.com/news/coronavirus/article241279836.html> (last accessed Mar. 25, 2020).

accused of third-degree felonies.⁴⁷ In Washington State, Kitsap County has also released non-violent inmates and is considering more for release.⁴⁸

In California, the San Francisco Public Defender's office and district attorney's office have both directed their staffs to agree to the release of pre-trial detainees charged with drug-related felonies and those who are at heightened risk for illness.⁴⁹

Indeed, 33 elected prosecutors from across the nation, in jurisdictions ranging from California to Mississippi, recently signed a public statement calling for urgent measures to “dramatically reduce the number of incarcerated individuals,” to protect incarcerated populations from the threat of COVID-19.⁵⁰

Moreover, the imperative of releasing persons from jails during the pandemic has become a part of the foreign policy of the United States. As a result of the rapid spread of the virus in Iran, United States Secretary of State Mike Pompeo called on that country to release U.S. citizens detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”⁵¹ Recognizing the unique risks to jail populations, courts across Iran granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.⁵²

VI. CONCLUSION

It is essential that the Order requested in the Emergency Habeas Petition be entered immediately so as to avoid the inevitable spread of this virus through the jail. The Criminal District Court bench cannot be the entity that failed to responsible action to facilitate meaningful and significant jail population reduction. It is imperative to immediately reduce the number of people in OJC or risk rapid wide spread infection and overburdening of healthcare resources for the community at large. Every New Orleanian is being asked to sacrifice: physically staying away

⁴⁷ Tony Marrero, “Hillsborough sheriff releases 164 county jail inmates to reduce coronavirus risk,” *Tampa Bay Times* (March 19, 2020), <https://www.tampabay.com/news/hillsborough/2020/03/19/hillsborough-sheriff-releases-164-county-jail-inmates-to-reduce-coronavirus-risk/> (last accessed Mar. 25, 2020).

⁴⁸ Andrew Binion, “Kitsap County Jail Taking Steps to Reduce Chance of COVID-19 Infections,” *Kitsap Sun* (March 18, 2020), <https://www.kitsapsun.com/story/news/2020/03/18/kitsap-county-jail-taking-steps-reduce-chance-covid-19-infections/2869893001/> (last accessed Mar. 25, 2020).

⁴⁹ Darwin Bond Graham, “San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak,” *The Appeal* (March 11, 2020), <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population/> (last accessed Mar. 25, 2020).

⁵⁰ Fair and Just Prosecution, Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody (last updated Mar. 18, 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf> (last accessed Mar. 25, 2020).

⁵¹ Jennifer Hansler and Kylie Atwood, “Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak,” *CNN* (Mar. 10, 2020), <https://cnn.it/2W4OpV7> (last accessed Mar. 25, 2020).

⁵² Claudia Lauer and Colleen Long, “US Prisons, Jails on Alert for Spread of Coronavirus,” *The Associated Press* (Mar. 7, 2020), available at <https://apnews.com/af98b0a38aaabedbc059092db356697> (last accessed Mar. 25, 2020).

from vulnerable family members, losing work and income, avoiding gatherings large and small that are the very core of our culture and identity. The Court can best honor those efforts by doing its part to make sure social distancing is effective. Eliminating unnecessary pre-trial detention is a vital step to protecting all of us, both inside and outside of the jail.

Respectfully submitted,

/s/ James W. Craig

James W. Craig, La. Bar No. 33687
Emily M. Washington, La. Bar No. 34143
Elizabeth Cumming, La. Bar No. 31685
Eric A. Foley, La. Bar No. 34199
Hannah Lommers-Johnson, La. Bar No. 34944

Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
jim.craig@macarthurjustice.org

ATTORNEYS FOR AMICUS CURIAE

CERTIFICATE OF SERVICE

I hereby certify that I have this days served a true and correct copy of the foregoing document on the Hon. Leon A. Cannizzaro, Jr., District Attorney, by electronic mail to emurphy@orleansda.com, the electronic mail address listed in the LSBA Membership Directory, to Donna Andrieu, Assistant District Attorney, by electronic mail to dandrieu@orleansda.com, to Derwyn D. Bunton, Chief District Defender, by electronic mail to dbunton@opdla.org, and to Colin Reingold, Litigation Director & Senior Counsel, Orleans Public Defenders, by electronic mail to creingold@opdla.org.

This the 26th day of March, 2020.

/s/ James W. Craig