

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

IN RE STATE AND NATIONAL EMERGENCY)	
AND PROTECTION OF THE LIFE AND)	2020 Misc. # _____
HEALTH OF DETAINEES IN THE COUNTY)	
JAIL AND THOSE WHO INTERACT WITH)	The Hon. Leroy K. Martin, Jr.
)	Presiding Judge of the
)	Criminal Division

**EMERGENCY PETITION FOR IMMEDIATE RELEASE OF PERSONS DETAINED
IN THE COUNTY JAIL WHO DO NOT NEED TO BE CONFINED THERE**

Amy P. Campanelli, Public Defender of Cook County, respectfully moves this Honorable Court on behalf of all those who are being detained in the Cook County Jail and who are clients of the Law Office of the Cook County Public Defender for entry of an order (A) directing the immediate consideration for release and release from custody of (1) all persons who are at elevated risk of contracting COVID-19, either because of age and/or because of underlying health conditions; (2) all pregnant women; (3) all persons who are being confined on misdemeanor charges, felony charges as to which they are probationable or non-violent felony charges, including in particular all non-violent class 3 and class 4 felony charges; (4) all persons who are being confined following a judicial determination that they are bailable, but who remain in Jail because they cannot pay the money bond set in their cases; (5) all persons who are being confined following arrest on a warrant or upon an allegation of parole or probation violation and who are not charged with or suspected of a crime of violence; (6) all persons serving sentences of imprisonment in the Jail; and (7) all persons who are eligible for release only if they satisfy the conditions of electronic monitoring but who remain in the Jail because they have “no place to stay;” (B) directing that no newly arrested person be admitted to the Jail absent a showing by clear and convincing evidence that there are no conditions upon which the person could be released that would reasonably assure the safety of a particular person or persons within the

community; and (C) all other relief necessary to contain and mitigate the spread of COVID-19 within the Cook County Jail. In support, Petitioner states:

COVID-19: NATIONAL AND GLOBAL HEALTH EMERGENCY

1. We are living in the midst of an extreme, unprecedented, world-wide health emergency caused by the rapid spread of the deadly coronavirus, COVID-19. There is no vaccine for this novel virus and there is no cure for COVID-19. On March 9, Illinois Governor J.B. Pritzker issued a proclamation declaring a disaster in the State of Illinois.¹ The World Health Organization has declared COVID-19 to be a global pandemic.² On Friday, March 13, President Trump declared a national emergency.³

2. The number of known COVID-19 infections is increasing daily. As of March 19, 2020, there have been more than 218,000 infections globally⁴; in the United States, there are thousands of known cases of COVID-19⁵; Illinois has over 400 known cases.⁶ These numbers will rise. The disease is extremely serious. Globally, more than 9800 people have died.⁷ There

¹ See <https://www2.illinois.gov/sites/gov/Documents/APPROVED%20-%20Coronavirus%20Disaster%20Proc%20WORD.pdf>.

² "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>.

³ 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/>.

⁴ See Coronavirus Resource Center, John Hopkins Univ. (last accessed on Mar. 20, 2020), <https://coronavirus.jhu.edu/map.html>; see also Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections (Ex. A hereto).

⁵ See *id.*

⁶ See Coronavirus Disease 2019 (COVID-19), Ill. Dept. of Pub. Health (last updated Mar. 17, 2020), <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus>.

⁷ See *supra* note 4.

have been over 205 deaths in the United States.⁸ In Illinois, the death toll has risen to four.⁹ A significant percentage of those who do not die will require hospitalization and intensive treatment, including ventilation.¹⁰ Medical providers and medical facilities are in peril of becoming completely overwhelmed.¹¹

3. COVID-19 is highly transmissible. The Centers for Disease Control and Prevention (“CDC”) advise that the virus passes through coughing and by contact with surfaces.¹² In Illinois, Gov. Pritzker deployed the National Guard to combat the spread of the virus.¹³ Gov. Pritzker also ordered the cancellation of all public gatherings of greater than 50 people.¹⁴ As of March 17, 2020, all restaurants, bars,¹⁵ and K-12 schools have been shut down.¹⁶ The CDC has issued a guidance that gatherings of more than 10 people must not occur.¹⁷ The CDC also urges social distancing—every person should remain at a distance of at least six feet

⁸ *See id.*

⁹ *See id.*

¹⁰ *See id.*

¹¹ *Id.*

¹² *See* “How It Spreads,” Center for Disease Control and Prevention (last accessed 03/19/2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>.

¹³ *See* “Gov. Pritzker activates Illinois National Guard to help with COVID-19 response,” Chi. Sun Times (Mar. 17, 2020) <https://chicago.suntimes.com/coronavirus/2020/3/17/21184440/gov-pritzker-activates-illinois-national-guard-help-covid-19-response>.

¹⁴ *Id.*

¹⁵ “Gov. Pritzker Announces Bars and Restaurants Will Close to Public by End of Monday,” Office of the Governor (Mar. 15, 2020) <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21254>.

¹⁶ “Gov. Pritzker Announces Two-Week Statewide School Closure to Minimize COVID-19 Spread, Additional Economic Measures to Reduce Burden on Illinois Families,” Office of the Governor (Mar. 13, 2020) <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21247>.

¹⁷ Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission, Center for Disease Control and Prevention, 3 (Mar. 12, 2020) available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>.

from every other person.¹⁸ Proper hygiene, including frequent cleaning of all surfaces and frequent, thorough hand washing is also recommended.¹⁹

4. Governors around the country have also taken substantial steps to curb the spread of the virus. The governors of Florida, Texas, and New Jersey have deployed their national guards to help with COVID-19.²⁰ In California, all 40 million residents have been ordered to “shelter in place.”²¹

5. None of the recommended measures for mitigating the spread of COVID-19 are available for persons confined in the Cook County Jail and for those who must interact with them.²² The Jail is a congregate environment in which over 5600 detainees are confined in close proximity to one another and to their keepers. The Jail is not sanitary. Surfaces are infrequently washed, if at all. Many of those detained suffer from underlying health conditions, including, among many others, asthma, diabetes and hypertension, that place them at elevated risk for contracting serious COVID-19.²³ Like a cruise ship or a nursing home, the Cook County Jail is

¹⁸ See *supra* note 12; see also Lisa Maragakis, “Coronavirus, Social Distancing, and Self-Quarantine,” John Hopkins Univ. (last accessed Mar. 19, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>.

¹⁹ See “How to Protect Yourself,” Center for Disease Control & Prevention (last accessed Mar. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

²⁰ See “California Coronavirus Response,” <https://covid19.ca.gov/stay-home-except-for-essential-needs/> (last accessed Mar. 20, 2020).

²¹ See “California coronavirus deaths rise to 17 as millions shelter in place,” (Mar. 18, 2020) <https://www.latimes.com/california/story/2020-03-18/coronavirus-has-8-million-californians-under-shelter-in-place-orders>. A “shelter in place” order directs individuals to remain inside their home as much as possible, and imposes fines on any violators.

²² See Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections (Ex. A).

²³ See “Are You at Higher Risk for Severe Illness?” Center for Disease Control & Prevention (last accessed Mar. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

an environment in which the COVID-19 virus can easily gain a foothold and, when it does, spread rapidly.²⁴

6. Although the Jail is a congregate environment, *it is not and cannot become an isolated environment*. By necessity, members of the free community, including Jail correctional officers, social workers, attorneys, medical personnel and many others, must enter and leave the Jail on a daily basis. If the COVID-19 virus occurs and spreads within the Jail, 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.²⁵

7. If prisoners and detainees incarcerated in the County Jail were to become infected with COVID-19 and, as must be anticipated, the virus were to spread rapidly within the Jail, many prisoners and detainees would require urgent care.²⁶ The capacity of Cermak Health Services to provide such care is limited and could be exceeded, exacerbating the death toll and the risks to all involved.²⁷

²⁴ See Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections; Matt Masterson, “Cook County Sheriff: Cutting Jail Population a ‘High-Priority’ Amid COVID-19 Pandemic,” PBS Chicago (Mar. 18, 2020), <https://news.wttw.com/2020/03/18/cook-county-sheriff-cutting-jail-population-high-priority-amid-covid-19-pandemic>.

²⁵ See Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections (Ex. A).

²⁶ “If you think a cruise ship is a dangerous place to be during a pandemic, consider America’s jails and prisons. The new coronavirus spreads at its quickest in closed environments.” Dr. Amanda Klonsky, “An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues,” *New York Times* (Mar. 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

²⁷ Dr. Tyler Winkelman, a doctor and researcher at the University of Minnesota focused on health care and criminal justice, said about the potential impact of coronavirus on jail health care systems, “If Covid spreads in a large, thousand-person facility, and within five days you have a thousand people with multiple chronic conditions who just got the virus, that has the potential to really overwhelm a health care system.” German Lopez, “A coronavirus outbreak in jails or prisons could turn into a nightmare,” *Vox* (Mar. 17, 2020), <https://www.vox.com/policy-and-politics/2020/3/17/21181515/coronavirus-covid-19-jails-prisons-mass-incarceration>. “One problem is that jails and prisons notoriously do a bad job providing health care to inmates. ... [T]hese facilities often deny or delay even basic medical care, causing preventable complications and deaths. In the context of Covid-19, those kinds of delays could mean more time for a sick inmate to infect others.” *Id.*

8. The world already knows the extreme risks that jails and prisons pose for the spread of COVID-19. Last month, the virus rapidly spread across China’s prisons and jails. As of February 25, there were 555 confirmed infections in five prisons of three provinces — Hubei, Shandong, and Zhejiang. As of February 29, 806 people in Wuhan city prisons were infected by the virus.²⁸ The virus has also spread rapidly in Iran, prompting U.S. Secretary of State Mike Pompeo to call for Iran to release Americans 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.”²⁹ 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.³⁰

9. Bold, forceful action is a necessity here in Cook County, not only for the health and well-being of all those confined in the Jail but also for the safety of the larger community.

10. It is the urgent recommendation of medical experts who specialize in corrections health that, to maximize the opportunity for appropriate distancing, for proper sanitization and personal hygiene and for appropriate care for those who are or may be infected with COVID-19, the population of detention centers, jails and prisons be dramatically reduced from current levels. *See, e.g.,* Declaration of Dr. Marc Stern, filed in *Dawson v. Asher*, Case No. 20-cv-409 (W.D. Wash.), attached as Ex. B (“As a correctional health expert, I recommend release of eligible individuals from detention ...”); Declaration of Medical Professionals Concerned about the Risk

²⁸ The Justice Collaborative, “Explainer: Prisons and Jails are Particularly Vulnerable to Covid-19 Outbreaks,” available at <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

²⁹ Jennifer Hansler and Kylie Atwood, “Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak,” *CNN* (Mar. 10, 2020), at <https://cnn.it/2W4OpV7>.

³⁰ Claudia Lauer and Colleen Long, “US Prisons, Jails on Alert for Spread of Coronavirus”, *The Associated Press* (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections, attached as Ex. A; Dr. Jonathan Giftos, formerly Medical Director for Correctional Health Services at Rikers Island (“It’s my view that the only way to really mitigate the harm of rapid spread of coronavirus in the jail system is through depopulation, releasing as many people as possible with focus on those at highest risk of complication”)³¹; Professor Josiah Rich, Professor Scott Allen, and Dr. Mavis Nimoh (“Authorities should release those who do not pose an immediate danger to public safety, while also reducing arrests and delaying sentencings. . . Those being held in jails simply due to their inability to afford bail, or for minor infractions or violations, can generally be released promptly by the judiciary or even the local sheriff. Those eligible for parole can and should be released.”)³²; Professor Rich has also said, “the number one change people can make to minimize this threat is simply to reduce the number of imprisoned people.”³³; Dr. Homer Venters, former chief medical officer for New York City Correctional Health Services (“Consideration should be underway concerning the number of people entering jails and prisons and how each step can be re-evaluated and monitored.”)³⁴; Jennifer Gonnerman (“From the standpoint of responding to this outbreak, one of the most important questions is:

³¹ “‘Recipe for disaster:’ The spread of coronavirus among detained populations,” *MSNBC* (Mar. 18, 2020), <https://www.msnbc.com/all-in/watch/-recipe-for-disaster-the-spread-of-coronavirus-among-detained-populations-80947781758>.

³² Josiah Rich, Scott Allen and Mavis Nimoh, “We must release prisoners to lessen the spread of coronavirus,” *Washington Post* (Mar. 17, 2020), <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>. Josiah Rich is professor of medicine and epidemiology at Brown University. Scott Allen is professor of medicine emeritus at the University of California at Riverside. Mavis Nimoh is executive director of the Center for Prisoner Health and Human Rights at the Miriam Hospital.

³³ Amanda Holpuch, “Calls mount to free low-risk US inmates to curb coronavirus impact on prisons,” *The Guardian* (Mar. 13, 2020), <https://www.theguardian.com/us-news/2020/mar/13/coronavirus-us-prisons-jails>

³⁴ Dr. Homer Venters, “4 ways to protect our jails and prisons from coronavirus,” *The Hill* (Feb. 29, 2020), <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792>. Dr. Venters has responded to multiple outbreaks within correctional settings, including seasonal influenza, pertussis, legionella and others.

How can we have fewer people in these places—in jails and prisons? ... If fewer people are in these systems—and, in particular, fewer people who have risk factors for serious complications—the more likely we are to succeed.”³⁵; Dr. Oluwadamilola T. Oladeru and Professor Gregg Gonsalves (“Policing patterns should not continue at the status quo. Bringing more people into the correctional setting during this period creates additional risk. In the absence of more comprehensive judicial reform, law enforcement agents can consider limiting further incarceration to egregious crimes rather than populating our jails and prisons with individuals convicted of non-violent crimes.”)³⁶

11. A group of doctors who work in New York City’s jails, hospitals, and shelters recently wrote a letter to the city council urging them to take urgent measures to curtail the spread of the virus, including ordering the courts to consider release for anyone in pretrial detention over the age of 60, administratively rescheduling all criminal court proceedings for people who are not currently incarcerated, and ordering the NYPD to stop making low level arrests for violations and misdemeanors.³⁷

12. In a recent presentation to correctional healthcare workers developed in cooperation with the Centers for Disease Control and Prevention, Dr. Anne Spaulding, a professor of epidemiology and the director of the Emory Center for the Health of Incarcerated

³⁵ Jennifer Gonnerman, “How Prisons and Jails Can Respond to the Coronavirus,” *The New Yorker* (Mar. 14, 2020), <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

³⁶ Dr. Oluwadamilola T. Oladeru, Adam Beckman, Dr. Gregg Gonsalves, “What COVID-19 Means For America’s Incarcerated Population — And How To Ensure It’s Not Left Behind,” *Health Affairs* (Mar. 10, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/>.

³⁷ Brad Lander, “Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus,” *Medium* (Mar. 12, 2020), <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>.

Persons, encouraged jurisdictions to consider alternatives to incarceration or detention, such as at-home electronic monitoring, diversionary courts, and community corrections.³⁸

13. These concerns and recommendations apply with full force to the Cook County Jail. Drs. Michael Puisis, Robert Cohen, Jack Raba, Sergio Rodriguez and Ron Shansky opine that: “steps should be taken to release any inmate [from the Cook County Jail] who is a low risk to the community.” Declaration of Medical Professionals Concerned about the Risk of the Spread of COVID-19 in the Cook County Jail and the Illinois Department of Corrections (Ex. A), at ¶ 20.

14. This court should order the immediate release, on appropriate conditions, of all persons currently confined in the Jail who are at elevated risk for contracting COVID-19; who are detained on misdemeanors or on low-level drug offenses; who are confined in the Jail pursuant to unaffordable money bonds; who are being detained on warrants or parole or probation violation holds and who are not alleged to have committed a crime of violence; or who meet any of the other criteria specified in the final paragraph of this Petition.

**THE COURT SHOULD ACT IN CONFORMITY WITH THE
MEASURES OTHER GOVERNMENT, LAW ENFORCEMENT AND
JUDICIAL BODIES ARE TAKING AROUND THE COUNTRY**

15. Throughout the State of Illinois, the United States and the world, congregate environments are being temporarily closed in the interest of public health. Residents of California have been ordered to “shelter at home.” Businesses throughout the nation have shut down their operations. The Governor of Illinois has taken extraordinary measures. The

³⁸ Dr. Anne Spaulding, Coronavirus COVID-19 and the Correctional Facility for the Correctional Healthcare Worker (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf.

universal goal is to minimize contact, particularly among large groups of people, that fosters the spread of the virus.

16. Because of the concerns summarized in the preceding section, other jurisdictions have already taken emergency action.

17. Corrections and government entities throughout the country have acted on their own initiative to release detainees.

18. 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.”³⁹ Erie County has also released inmates.⁴⁰ The Richland County Jail has released non-violent low-level inmates.⁴¹

19. 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 who are at heightened risk for illness.⁴² The Los Angeles County Sheriff’s Department has released over 600 inmates and has directed officers to cite and release individuals in lieu of arrest.⁴³

³⁹ “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/>.

⁴⁰ 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/>.

⁴¹ “Richland County jail Releasing Some Non-violent, Low-level Offenders Due to COVID-19,” *RichlandSource* (March 18, 2020), https://www.richlandsource.com/news/covid19/richland-county-jail-releasing-some-non-violent-low-level-offenders/article_0df572a8-692d-11ea-99aa-1fdd2d880565.html.

⁴² 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/>.

⁴³ Alene Tchekmedyan, Paige St. John & Matt Hamilton, “L.A. County Releasing Some Inmates from Jail to Combat Coronavirus,” *L.A. Times* (March 16, 2020), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>.

20. In Texas, the Texas Commission on Jail Standards (“TCJS”) advised jails to release non-violent detainees and implement cite-and-release policies to reduce bookings. The McLennan County Jail is releasing “as many misdemeanor inmates out of the jail as possible,” and modifying arrests.⁴⁴ In San Antonio, Bexar County is working to reduce its jail population by maximizing GPS releases.⁴⁵ Travis County is releasing inmates charged with non-violent criminal offenses.⁴⁶

21. In Pennsylvania, the Philadelphia District Attorney’s office has moved to release most people charged with non-violent offenses or misdemeanors. Officials in Philadelphia, as well as Delaware and Montgomery Counties, have been working to release or parole prisoners early.⁴⁷ Lackawanna County Prison is reviewing prisoners for release.⁴⁸ Mercer County is also releasing inmates.⁴⁹

⁴⁴ Rissa Shaw, “Local jail to release some inmates because of COVID-19 threat,” *KWTX* (March 18, 2020, 3:34 PM), <https://www.kwtx.com/content/news/Local-jail-to-release-some-inmates-because-of-COVID-19-threat-568904541.html>.

⁴⁵ Courtney Friedman, “Bexar County Sheriff Announces COVID-19 Prevention Plan for Jail Inmates, Deputies,” *KSAT* (March 14, 2020), <https://www.ksat.com/news/local/2020/03/15/bexar-county-sheriff-announces-covid-19-prevention-plan-for-jail-inmates-deputies/>

⁴⁶ “Travis County Judges Releasing Inmates to Limit Coronavirus Spread, Report Claims,” *KVUE* (March 16, 2020), <https://www.kvue.com/article/news/health/coronavirus/coronavirus-travis-county-inmates-released/269-91ede984-e2dd-4afd-9f94-43d04349ffba>.

⁴⁷ 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>

⁴⁸ Kevin Hayes, “Lackawanna County Reviews Possible Release of Low Level Inmates to Mitigate Spread of COVID-19,” *PA HomePage* (March 18, 2020), <https://www.pahomepage.com/top-news/lackawanna-county-to-release-low-level-inmates-to-mitigate-spread-of-covid-19/>.

⁴⁹ Gerry Ricciutti, “Mercer County Jail Releases Some Lower-Level Offenders Amid COVID-19 Outbreak,” *WKBN* (March 18, 2020), <https://www.wkbn.com/news/local-news/mercy-county-jail-releases-some-lower-level-offenders-amid-covid-19-outbreak/>.

22. In Atlanta, Georgia, Fulton County is releasing inmates early and postponing those serving intermittent “weekend” sentences.⁵⁰

23. In Oregon, the Washington County Jail is releasing inmates and ensuring that all remaining inmates have their own cell.⁵¹

24. 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.⁵²

25. In Tampa, Florida, Hillsborough County is releasing non-violent, pre-trial detainees.⁵³

26. In Washington State, Spokane County has already released low-level inmates.⁵⁴ Kitsap County has also released non-violent inmates and is considering more for release.⁵⁵

27. Jurisdictions around the country have also taken steps to reduce the number of people in custody by suspending arrests. In Washington, D.C., the D.C. Superior Court Chief Judge “issued an emergency order allowing police and prosecutors to exercise discretion to

⁵⁰ Blis Savidge, “Fulton County To Release Inmates Early In Light Of Pandemic,” *GPB News* (March 16, 2020), <https://www.gpbnews.org/post/fulton-county-release-inmates-early-light-pandemic>.

⁵¹ 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

⁵² “Mecklenburg Begins Releasing Jail Inmates to Avoid Cellblock Outbreak of COVID-19,” *WBTV* (March 18, 2020), <https://www.wbtv.com/2020/03/18/mecklenburg-begins-releasing-jail-inmates-avoid-cellblock-outbreak-covid-/>

⁵³ “164 ‘Low Level, Nonviolent’ Offenders Being Released From Hillsborough County Jails,” *ABC Action News* (March 19, 2020), <https://www.abcactionnews.com/news/region-hillsborough/164-low-level-nonviolent-offenders-being-released-from-hillsborough-county-jails>.

⁵⁴ “48 Low-level Inmates Released from Spokane County Jail,” *KHQ* (March 17, 2020), https://www.khq.com/coronavirus/low-level-inmates-released-from-spokane-county-jail/article_5fc7e406-68a3-11ea-b73e-132316bf68fd.html.

⁵⁵ 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/>.

determine whether a person arrested should be held until their first court appearance or given citation release with notice of their future court date.”⁵⁶

28. The Philadelphia Police have been instructed to delay arrests for low-level crimes—a decision supported by the Fraternal Order of the Police.⁵⁷

29. The Fort Worth Police will stop arresting people for misdemeanors.⁵⁸ Collin County Sheriff has directed police departments to cite and release people suspected of non-violent offenses. Dallas County already does not accept Class C misdemeanors.⁵⁹

30. In California, the Long Beach Police are arresting fewer low-level, alleged misdemeanor offenders.⁶⁰

31. In Wisconsin, Milwaukee County will not be booking alleged misdemeanor offenders.⁶¹ Racine County is suspending arrests for non-violent offenses.⁶² In a statement, the

⁵⁶ “DC Superior Court issues Emergency Order Allowing Police/Prosecutorial Discretion re: Detaining Arrestees,” *District of Columbia Courts Newsroom* (March 16, 2020), https://newsroom.dccourts.gov/press-releases/stories-20200316#.Xm_xsekxS3k.twitter.

⁵⁷ *See supra* note 47.

⁵⁸ Nichole Manna, “Fort Worth Police Will Give Citations for Low-level Crimes Amid Coronavirus Outbreak,” *Fort Worth Star-Telegram* (March 17, 2020), <https://www.star-telegram.com/news/coronavirus/article241254951.html>.

⁵⁹ Charles Scudder, “Facing Coronavirus Concerns, Collin County Sheriff Asks Police Not to Bring Petty Criminals to Jail,” *Dallas Morning News* (March 12, 2020), <https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>.

⁶⁰ “Coronavirus is Changing Who Gets Arrested in Long Beach,” *Long Beach Post News* (March 14, 2020), <https://lbpost.com/news/coronavirus-updates?update=42#update-42>.

⁶¹ Bruce Vielmetti, “Federal, State Courts Curtail Most Activities, and the Jail is Booking Fewer Defendants,” *Milwaukee Journal Sentinel* (March 13, 2020), <https://www.jsonline.com/story/news/crime/2020/03/13/coronavirus-milwaukee-county-trials-canceled-jail-bookings-limited/5040956002/>.

⁶² Alyssa Mauk, “Sheriff Suspends Non-Violent Arrests Due to COVID-19,” *Journal Times* (March 14, 2020), https://journaltimes.com/news/local/crime-and-courts/sheriff-suspends-non-violent-arrests-due-to-covid/article_141c020d-b911-5453-a04a-e67b8070d17c.html.

Sheriff's Office said: "This proactive, temporary directive's number one priority is to protect law enforcement and the inmates confined in the Racine County Jail."⁶³

32. In Denver and Aurora, Colorado, the police will no longer send an officer to report low-level incidents.⁶⁴

33. In Youngstown, Ohio, the Mahoning County jail is refusing all non-violent misdemeanor arrests.⁶⁵

34. Jails across Washington State are not booking low level alleged offenders, including for drug and property crimes, in Garfield County, Grays Harbour County, and Kitsap County.⁶⁶

35. Prosecutor and Public Defender offices across the country are seeking the same relief sought here.

36. Thirty-three 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-19.⁶⁷

⁶³ Racine County Sheriff's Office, *Facebook* (March 15, 2020), <https://www.facebook.com/pg/RacineCountySheriffsOffice/posts/>.

⁶⁴ Elise Schmelzer, "Denver, Aurora Police No Longer Sending Officers to Low-Level Crimes to Minimize Spread of Coronavirus," *Denver Post* (March 14, 2020), <https://www.denverpost.com/2020/03/13/denver-aurora-police-coronavirus/>.

⁶⁵ "Local County Jails Making Changes Due to Coronavirus Outbreak," *WKBN*, (Mar 12, 2020), <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>.

⁶⁶ Michael Lang, "Washington Jails Limiting Inmate Bookings Over Coronavirus Concerns," *North Coast News* (March 11, 2020), <https://www.northcoastnews.com/news/washington-jails-limiting-inmate-bookings-over-coronavirus-concerns/>.

⁶⁷ 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?utm_source=The+Marshall+Project+Newsletter&utm_campaign=f1bf35014e-

37. In Kentucky, the Department of Public Advocacy, the state’s Public Defender System, has moved the state to release all pre-trial detainees in county and regional jails.⁶⁸ Twenty-nine pretrial defendants, who were being held on cash bond, have already been released from Boyle, Mercer, and Lincoln counties.⁶⁹

38. In New York⁷⁰ and San Francisco,⁷¹ public defenders filed motions seeking release based on a combination of factors including detainee vulnerability due to underlying medical conditions, and age.

39. Public defenders in at least four jurisdictions, including New Orleans,⁷² Santa Barbara, California,⁷³ Sacramento,⁷⁴ and Colorado⁷⁵ have called for the release of all low-level or non-violent detainees.

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⁶⁸ Henry Culvyhouse, “DPA Requests Release of Pretrial Detainees,” *The Daily Independent* (Mar. 18, 2020), https://www.dailyindependent.com/news/dpa-requests-release-of-pretrial-detainees/article_3b8416c2-695d-11ea-b683-e3d21bdf59cc.html.

⁶⁹ “Defenders Want Dozens of Defendants Released from Jail to Reduce COVID-19 Threat,” *The Advocate-Messenger* (Mar. 16, 2020), <https://www.amnews.com/2020/03/16/defenders-want-dozens-of-defendants-released-from-jail-to-reduce-covid-19-threat/>.

⁷⁰ Jim Mustian, “Inmates Fearful of Virus Argue for Release,” *PBS* (Mar. 18, 2020), <https://www.pbs.org/newshour/health/get-out-of-jail-inmates-fearful-of-virus-argue-for-release>.

⁷¹ Jeffrey Cawood, “San Francisco Public Defender Seeks ‘Immediate Release’ of Some Jail Inmates due to Coronavirus,” *Daily Wire* (Mar. 16, 2020), <https://www.dailywire.com/news/san-francisco-public-defender-seeks-immediate-release-of-some-jail-inmates-due-to-coronavirus>.

⁷² Nicholas Chrastil, “Public Defenders Request the Release of all Non-Violent Offenders in Jail due to Coronavirus,” *The Lens* (Mar. 12, 2020), <https://thelensnola.org/2020/03/12/public-defenders-request-the-release-of-all-non-violent-offenders-in-jail-due-to-coronavirus/>.

⁷³ Delaney Smith, “Santa Barbara Public Defender Calls for Release of Low-Level Offenders,” *Santa Barbara Independent* (Mar. 17, 2020), <https://www.independent.com/2020/03/17/santa-barbara-public-defender-calls-for-release-of-low-level-offenders/>.

⁷⁴ Sam Stanton & Darrell Smith, “Coronavirus Response: Some Low-level, Non-violent Inmates Being Released from Sacramento Jails,” *Sacramento Bee* (Mar. 18, 2020), <https://www.sacbee.com/news/local/crime/article241305216.html>.

⁷⁵ John Herrick, “Colorado Public Defenders Seek to Release People from Jail Before COVID-19 Outbreak,” *Colorado Independent* (Mar. 13, 2020), <https://www.coloradoindependent.com/2020/03/13/colorado-public-defenders-jails-covid-19/>.

**POPULATION REDUCTION IS ESSENTIAL TO PROTECT
THE CONSTITUTIONAL RIGHTS OF JAIL DETAINEES AND PRISONERS**

40. If immediate action is not taken to dramatically reduce the population of the Cook County Jail, then persons detained in the Jail will remain at grave and unacceptable risk of contracting COVID-19—a serious and potentially life-threatening illness. Persons confined in prisons and jails must “be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993 (citing *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S. 189, 200 (1989))).

41. It would be ostrich-like to presume that no harm will befall prisoners and detainees within the Jail because COVID-19 has yet to be detected there. Detection is imminent, as exposure to the virus is occurring throughout Illinois and all of the United States. There are confirmed cases in every state.⁷⁶

42. To expose prisoners to the unmitigated risk of contracting COVID-19—*where there are obvious steps that can be taken to achieve such mitigation*—is constitutionally impermissible. COVID-19 is a dangerous communicable disease. To allow prisoners to suffer unnecessary exposure violates the constitutional imperative that prisoners be afforded “reasonable safety” while they are confined. *Cf. Helling*, 509 U.S. at 33 (the Eighth Amendment may be violated even where a possible infection might not affect all of those exposed).

43. Failure to act in accordance with speed and urgency to drastically lower the population of the Cook County Jail will constitute a wholesale violation of the constitutional rights of those confined there.

⁷⁶ Jamie Ducharme, West Virginia Just Became the Last State to Report a COVID-19 Case. It was Only a Matter of Time (Mar. 17, 2020), <https://time.com/5805097/west-virginia-covid-19-testing/>.

**PUBLIC SAFETY CAN BE PROTECTED
WHILE REDUCING THE JAIL’S POPULATION,
IN ACCORDANCE WITH THE ILLINOIS BAIL STATUTE**

44. Petitioner understands that the safety of our community also requires consideration and protection. If the State can show by clear and convincing evidence that the release of a prisoner would endanger the safety of a particular person or persons within the community, and that there are not measures that could be taken to mitigate that danger, the Jail may remain an appropriate place for such a person to await trial. *See* 725 ILCS 5/110-6.1(c) (in hearing for denial of bail, court must make “a finding that the defendant poses a real and present threat to the physical safety of any person or persons...[which is] supported by clear and convincing evidence presented by the State.”); *People v. Gil*, 2019 IL App (1st) 192419, ¶ 18 (“the procedural and substantive requirements of section 110-6.1 must be...followed” prior to imposition of a no-bond order); *see also generally United States v. Salerno*, 481 U.S. 739 (1987).

45. But just as surely, there are thousands of detainees in the Jail whose release would not endanger the safety of the public or any particular person. This includes hundreds of individuals who have *already* been deemedailable by courts in this Circuit. As the *Chicago Sun-Times* editorial board put it on March 19, 2020: “About 25 percent of the detainees at Cook County Jail are behind bars because they don’t have the money to make bond. In addition to turning loose [low-risk], non-violent offenders charged with lesser crimes, the county should work to reduce this group of 1,500 detainees. A detainee’s exposure to the coronavirus should not be based on his financial circumstances.” “Coronavirus, Cook County Jail and the need to reduce the inmate population . . . fast,” *Chicago Sun-Times* (March 19, 2020), attached as Ex.

C.⁷⁷ In other words, the real and present risks to the safety of the detained population *and to the safety of the community at large* dictate that, to the greatest extent possible, prisoners and detainees who can safely be released, must be released immediately.

46. The release of all detainees within the following categories is presumptively consistent with the needs of public safety. All detainees in these categories should immediately be reviewed and should be released unless it could be shown by clear and convincing evidence that, contrary to the presumption, that prisoner's release would endanger the safety of a particular person or persons within the community:

- a. All persons who are at elevated risk of contracting COVID-19, either because of age and/or because of underlying health conditions;
- b. All pregnant women;
- c. All persons who are being confined on misdemeanor charges, felony charges as to which they are probationable or non-violent felony charges, including in particular all non-violent class 3 and class 4 felony charges;
- d. All persons who are being confined following a judicial determination that they are bailable, but who remain in Jail because they cannot pay the money bond set in their cases;
- e. All persons who are being confined following arrest on a warrant or upon an allegation of parole or probation violation and who are not charged with or suspected of a crime of violence;
- f. All persons serving sentences of imprisonment in the Jail;

⁷⁷ The *Sun-Times* editorial is available here: <https://chicago.suntimes.com/2020/3/19/21186898/cook-county-jail-coronavirus-tom-dart-covid-19-social-distancing>

- g. All persons who are eligible for release only if they satisfy the conditions of electronic monitoring but who remain in the Jail because they have “no place to stay.”

47. Similarly, public safety can be protected while also limiting new admissions to the Jail such that no newly arrested person be admitted to the Jail absent a showing by clear and convincing evidence that there are no conditions upon which the person could be released that would reasonably assure the safety of a particular person or persons within the community.

WHEREFORE, Petitioner respectfully requests that this court enter an order:

1. Establishing a procedure whereby all persons who fall within the following categories are immediately released from the Cook County Jail, unless as to a particular detainee, it can be shown by clear and convincing evidence that the release of the detainee would endanger the safety of a particular person or persons within the community:

- a. All detainees who are at elevated risk of contracting COVID-19, either because of their age or because of underlying health conditions, such as diabetes, asthma or hypertension, among others;
- b. All pregnant women;
- c. All detainees who are being confined on misdemeanor charges, felony charges as to which they are probationable or non-violent felony charges, including in particular all non-violent class 3 and class 4 felony charges;

- d. All detainees who are being confined following a judicial determination that they are bailable, but who remain in Jail because they cannot pay the money bond set in their cases;
 - e. All detainees who are being confined following arrest on a warrant or upon an allegation of parole or probation violation and who are not charged with or suspected of a crime of violence;
 - f. All prisoners serving sentences of imprisonment in the Jail;
 - g. All detainees who are eligible for release only if they satisfy the conditions of electronic monitoring but who remain in the Jail because they have “no place to stay.”
2. Providing that such reviews shall occur with urgent expedition and shall be completed within five days of the entry of the court’s order.
3. Providing that no recently arrested person shall be admitted to the Jail absent a showing by clear and convincing evidence that there are no conditions upon which the person could be released that would reasonably assure the safety of a particular person or persons within the community.
4. Providing for such relief as may be necessary to achieve rapid mitigation of the risk of spread of the COVID-19 virus within the Cook County Jail.

Respectfully submitted,

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CERTIFICATION OF ATTORNEY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned attorney certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

AMY P. CAMPANELLI
Public Defender of Cook County

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing “Emergency Petition for Immediate Release of Persons Detained in the County Jail Who Do Not Need to Be Confined There” was served upon the Cook County Sheriff’s Department, c/o Sheriff Tom Dart, and the Cook County State’s Attorney’s Office, c/o Cook County State’s Attorney Kim Foxx, before the hour of 5:00 p.m. on March 20, 2020.

AMY P. CAMPANELLI
Public Defender of Cook County