



- 1 3. On February 20, 2020, Governor Jay Inslee declared a state of emergency related to  
2 COVID-19. [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf)  
3 [05%20Coronavirus%20%28final%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf)
- 4 4. On March 11, 2020, Gov. Inslee issued a Proclamation prohibiting public gatherings of  
5 250 people or more. [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
6 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)
- 7 5. According to the Governor’s Proclamation “COVID-19 is a respiratory disease that  
8 spreads easily from person to person and may result in serious illness or death, has been  
9 confirmed in 9 counties of Washington State resulting in 24 deaths, with significant  
10 community spread in King, Pierce, and Snohomish counties”  
11 [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
12 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)
- 13 6. The Proclamation further states that “To reduce spread of COVID-19, the United States  
14 Centers for Disease Control and Prevention and the Washington State Department of  
15 Health (DOH) recommend implementation of community mitigation strategies to  
16 increase containment of the virus, including cancellation of large gatherings and social  
17 distancing in smaller gatherings and implementation of limitations on large gatherings  
18 and use of social distancing prevent initial exposure and secondary transmission to our  
19 most vulnerable populations, and are especially important for people who are over 60  
20 years old and those with chronic health conditions due to the higher risk of severe illness  
21 and death from COVID-19.”  
22 [https://www.governor.wa.gov/sites/default/files/proclamations/20-](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)  
23 [07%20Coronavirus%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf)

- 1 7. On March 11, 2020, under an order from King County Health Officer Dr. Jeff Duchin,  
2 Public Health prohibits large gatherings of more than 250 people. In addition, the local  
3 order prohibits events of less than 250 people, unless measures are taken by event  
4 organizers to minimize risk. See [https://publichealthinsider.com/2020/03/11/new-limits-](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)  
5 [on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)
- 6 8. According to the King County Department of Public Health, “These actions are the most  
7 available and effective tools to help slow the spread of the virus in our community – and,  
8 importantly, to reduce the number of potential deaths caused by COVID-19. By slowing  
9 the spread, we have a chance to protect those family, friends and neighbors who are at  
10 risk for severe illness.” See [https://publichealthinsider.com/2020/03/11/new-limits-on-](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)  
11 [large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/](https://publichealthinsider.com/2020/03/11/new-limits-on-large-gatherings-other-emergency-strategies-to-slow-the-spread-of-covid-19/)
- 12 9. At present, there are approximately 2,000 individuals in the Department of Adult and  
13 Juvenile Detention (DAJD) custody (about 35 in juvenile detention and the remainder at  
14 the King County Correctional Facility in Seattle and the Regional Justice Center in Kent).  
15 [https://www.kingcounty.gov/~media/courts/detention/documents/2020-02 -](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
16 [\\_KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (p. 3)
- 17 10. At present, approximately 203 people are incarcerated related to misdemeanor charges or  
18 convictions. [https://www.kingcounty.gov/~media/courts/detention/documents/2020-](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
19 [02 - KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (pg. 12)
- 20 11. At present approximately 1,352 people are incarcerated related to felony charges or  
21 convictions. [https://www.kingcounty.gov/~media/courts/detention/documents/2020-](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en)  
22 [02 - KC\\_DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (pg. 10)

1 12. As with any “congregate setting,” infectious diseases thrive in correctional facilities.

2 And, compared to prisons that have more stable populations, the challenges of containing  
3 the virus is greater for jails, where people are incarcerated directly from the community.

4 13. Dr. Marc F. Stern, MD, at the University of Washington School of Public Health, has  
5 made a number of suggestions to jails managing the impact of COVID-19. One  
6 recommendation is “downsizing”:

7 **Bucket 2: Dealing with the effects of COVID-19 among staff**

8 1. Downsizing

Talk with prosecutors and judges ahead of time to develop a plan if you need to downsize.

9 a. Are there people you can release on their own recognizance? Do you have a priority list (who  
do you release if you need to downsize by 5%? 10%? etc.)?

b. Are there alternatives to arrest for certain crimes, or, in dire situations, are there crimes for  
which your patrol division will not arrest?

10 See [https://assets.documentcloud.org/documents/6796536/Suggestions-for-Jails-3-5-  
11 20.pdf](https://assets.documentcloud.org/documents/6796536/Suggestions-for-Jails-3-5-20.pdf)

12 **III. Argument**

13 The Fourteenth Amendment demands that jailers protect pretrial detainees in their  
14 custody. *See Castro v. County of Los Angeles*, 833 F.3d 1060, 1060 (9th Cir. 2016). A detention  
15 will violate an individuals’ Fourteenth Amendment rights where the government “made an  
16 intentional decision with respect to the conditions” of confinement that put the pretrial detainee  
17 “at substantial risk of suffering serious harm,” there was a failure to “take reasonable available  
18 measures to abate [the] risk” and failing to implement those measures caused the pretrial  
19 detainee harm. *Id.* at 1071 (citing *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 192 L.Ed.2d 416, 83  
20 USLW 4515 (2015)). Continued incarceration in the King County Correctional Facility subjects  
21 CLIENT to an unreasonable risk of exposure to COVID-19 that is directly at odds with medical  
22 advice and the Governor’s directive to engage in “social distancing.” The decision to continue  
23 CLIENT’s incarceration put CLIENT at substantial risk of contracting COVID-19, which has a  
24 high morality rate. Further, releasing CLIENT would abate that risk, and by reducing the

1 population of the jail reduce the risk of a COVID-19 outbreak at the facility. Failing to protect  
2 CLIENT from heightened risk of infection and exposure to COVID-19 is a violation of  
3 CLIENT's Fourteenth Amendment rights. To avoid this constitutional violation CLIENT must  
4 be released on appropriate non-monetary conditions of release under CrR 3.2.

5 Pretrial detention also implicates procedural due process concerns. *United States v.*  
6 *Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 2101, 95 L. Ed. 2d 697 (1987). In order to  
7 determine whether pretrial detention meets procedural due process requirements, the Court must  
8 weigh an individual's interest against the government's interest. *Id.* In the pretrial detention  
9 context, an individual's interest is a fundamental right to freedom from physical constraint and  
10 any government action in this context must "be narrowly tailored to serve a compelling state  
11 interest." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 779-780 (9th Cir. 2014).

12 In the context of the COVID-19 outbreak, an individual's interest in being outside of the  
13 jail, in control of their own social distance rises dramatically. An individual may get seriously ill  
14 or even die due to an outbreak in the jail because they would have no control over where they are  
15 housed or who they contact. In addition, the government interest in holding people in that  
16 environment is significantly lessened. As Dr. Marc D. Stern has indicated, reducing the jail  
17 population is an important step toward stemming the spread of this virus and protecting people.  
18 As a result, the government interest in holding people and the individual interest in freedom both  
19 dictate pretrial release.

20 Such release is essential because incarcerated individuals (especially those who are  
21 pregnant, over age 60, have chronic health conditions, or have a weakened immune system) are  
22 extremely vulnerable to COVID-19 and immediate action must be taken to mitigate that  
23  
24

1 vulnerability. Key to slowing down the spread of the virus is social distancing, which can  
2 prevent initial exposure and secondary transmission to our most vulnerable populations.

3 Our legal system bears a unique responsibility to protect incarcerated persons who,  
4 because of their loss of liberty, lack the ability to protect themselves. Immediate action to release  
5 CLIENT by imposing appropriate, non-monetary conditions of release is necessary to try and  
6 protect the health of CLIENT and other individuals at the jail.

7 [CLIENT will return to their community where they will be supported by XXXX. ]

8 **IV. Conclusion**

9 Given the grave risks for individuals and staff in the King County Jail, CLIENT should  
10 be released to the community pursuant to CrR 3.2 and the Fourteenth Amendment with  
11 appropriate, non-monetary conditions of release to better protect their safety as well as the safety  
12 of individuals who will remain at the jail. CLIENT's release will help reduce the jail population,  
13 hopefully allowing for recommended distance between individuals during this public health  
14 crisis.

15  
16 DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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19 \_\_\_\_\_  
20 ATTORNEY NAME, WSBA #  
21 Attorney for CLIENT  
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