

SCPW-20-0000213

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII OFFICE OF THE
PUBLIC DEFENDER,

Petitioner,

vs.

DAVID Y. IGE, Governor, State of Hawai'i;
NOLAN P. ESPINDA, Director, State of
Hawai'i Department of Public Safety;
EDMUND (FRED) K.B. HYUN,
Chairperson, Hawai'i Paroling Authority;

Respondents,

ORIGINAL PROCEEDING

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**MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER'S PETITION FOR EXTRAORDINARY WRIT
PURSUANT TO HRS §§ 602-4, 602-5(5), AND 602-5(6) AND/OR FOR WRIT OF
MANDAMUS BY *AMICI CURIAE* ACLU OF HAWAII FOUNDATION AND
LAWYERS FOR EQUAL JUSTICE**

MEMORANDUM IN SUPPORT OF MOTION

CERTIFICATE OF SERVICE

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**MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER’S PETITION FOR EXTRAORDINARY WRIT
PURSUANT TO HRS §§ 602-4, 602-5(5), AND 602-5(6)
AND/OR FOR WRIT OF MANDAMUS**

The American Civil Liberties Union of Hawai‘i Foundation (“ACLU of Hawai‘i”) and Lawyers for Equal Justice (“LEJ”) (together, “Nonprofit Amici”), by and through counsel, hereby move this Court for leave to appear as *amici curiae* and to file a brief in support of the State of Hawaii Office of the Public Defender’s petition for extraordinary writ filed on March 26, 2020 in the above-captioned matter.

This Motion is made pursuant to Rules 21, 27(a), and 28(g) of the Hawai‘i Rules of Appellate Procedure, and is based upon the attached memorandum.

DATED: Honolulu, Hawai‘i, April 1, 2020.

Respectfully submitted,

/s/ Mateo Caballero
MATEO CABALLERO

/s/ Thomas A. Helper
Thomas A. Helper

/s/ Jongwook “Wookie” Kim
JONGWOOK “WOOKIE” KIM

LAWYERS FOR EQUAL JUSTICE
Attorney for *Amicus Curiae*

ACLU OF HAWAI‘I FOUNDATION
Attorneys for *Amicus Curiae*

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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF IN SUPPORT OF STATE OF HAWAI‘I OFFICE OF THE PUBLIC
DEFENDER’S PETITION FOR EXTRAORDINARY WRIT PURSUANT TO HRS §§
602-4, 602-5(5), AND 602-5(6) AND/OR FOR WRIT OF MANDAMUS**

The American Civil Liberties Union of Hawai‘i Foundation (“ACLU of Hawai‘i”) and Lawyers for Equal Justice (“LEJ”) (together, “Nonprofit Amici”) respectfully request that the Court grant them leave to file an *amicus curiae* brief in support of the State of Hawaii Office of the Public Defender’s petition for extraordinary writ (“Petition”).

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with over 1.8 million members dedicated to the principles of liberty and equality embodied in the Bill of Rights and the nation’s civil rights laws. *Amicus curiae* the ACLU of Hawai‘i—the state affiliate of the American Civil Liberties Union—has nearly 4,000 members in the State of Hawai‘i and is also dedicated to defending and protecting civil rights and civil liberties. Protecting against violations of constitutional rights is at the core of the ACLU of Hawaii’s mission. And the ACLU of Hawai‘i has a long history of advocating around constitutional rights,

including those possessed by people detained or incarcerated in jails and prisons, as implicated in the present case. As one recent example, in 2017, the ACLU of Hawai‘i submitted to the U.S. Department of Justice a complaint against the State of Hawai‘i concerning “unconstitutional prison conditions and overcrowding” of correctional facilities owned and operated by the State.¹

Lawyers for Equal Justice (“LEJ”) is a non-profit law firm that advocates for low income residents of Hawaii. The central mission of LEJ is to help its clients gain access to the resources, services and fair treatment that they need to realize their opportunities for self-achievement and economic security. LEJ’s cases change systems and policies to make justice, equality and opportunity available to everyone.

Together, Nonprofit Amici and their members have vested organizational interests in the outcome of the Petition—and thus seek to appear as *amici curiae* in this proceeding—because, as will be explained further, the continued detention and incarceration of people in Hawai‘i jails and prisons in light of the ongoing COVID-19 pandemic raises important issues that are of immense concern to *amici* and their members and donors.

The proposed brief will explain why, in light of the escalating COVID-19 pandemic, the Court should exercise its broad supervisory jurisdiction over the judicial system to appoint a special master with full authority to make prompt decisions to reduce the number of people detained or incarcerated in Hawai‘i correctional centers and correctional facilities. The brief will also make five points regarding the Petition and the responses filed so far: (A) time is of the essence, (B) overcrowding amid a pandemic is unconstitutional, (C) the Petition seeks relief that many other state supreme courts have already granted, (D) a special master process ensures rapid

¹ See *Complaint Against the State of Hawai‘i Concerning Unconstitutional Prison Condition and Overcrowding*, ACLU of Hawai‘i Foundation (Jan. 6, 2017), available at <https://acluhawaii.files.wordpress.com/2018/01/1-6-17-doj-complaint-prison-overcrowding2.pdf>.

but individualized review, and (E) imposing more blanket conditions of release would be unlawful and irrational.

For the above reasons, Nonprofit Amici respectfully request that this Court grant the Motion and issue an order allowing the filing of the proposed *amici curiae* brief, which is attached as Exhibit A.

DATED: Honolulu, Hawai'i, April 1, 2020.

Respectfully submitted,

/s/ Mateo Caballero
MATEO CABALLERO

/s/ Thomas A. Helper
Thomas A. Helper

/s/ Jongwook "Wookie" Kim
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LAWYERS FOR EQUAL JUSTICE
Attorney for *Amicus Curiae*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 1, 2020, a true and correct copy of the foregoing document was served via electronic delivery through JEFS/JIMS on the following:

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DATED: Honolulu, Hawai'i, April 1, 2020.

Respectfully submitted,

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ACLU OF HAWAI'I FOUNDATION
Attorney for *Amicus Curiae*