

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE MUNICIPAL COURT OF THE CITY OF TACOMA
IN AND FOR THE COUNTY OF PIERCE

CITY OF TACOMA,

Plaintiff,

v.

Defendants.

Cause No.

NOTE FOR MOTION

CLERK'S ACTION REQUIRED

TO THE CLERK OF THE MUNICIPAL COURT: Please note the above cause numbers for a motion for release ____ a.m. on the ____ th day of April 2020 in courtroom ____ before the Presiding Judge of the Tacoma Municipal Court. Defense counsel certifies service of this note and motion via email to MunicipalCourt@cityoftacoma.org.

Formatted: Font color: Red
Formatted: Font color: Red

TO THE CITY ATTORNEY: Defendant hereby gives notice that a motion for release is scheduled for 9:30 a.m. on the 8th day of April 2020 in courtroom 135 before the Presiding Judge. Defense counsel certifies service of this note and motion via email to tacomapros@cityoftacoma.org.

SUBMITTED this 2nd day of April 2020 in Tacoma, Washington by:

s/
[attorney]
WSBA No[number]
Department of Assigned Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE MUNICIPAL COURT OF THE CITY OF TACOMA
IN AND FOR THE COUNTY OF PIERCE

CITY OF TACOMA,

Plaintiff,

v.

Defendants.

Cause No.

MOTION TO RELEASE INDIVIDUALS
WITH TACOMA MUNICIPAL COURT
PROBATION HOLDS

I. RELIEF REQUESTED

COMES NOW the Defendant(s), [name(s)], by and through the DEPARTMENT OF ASSIGNED COUNSEL and moves this court to release all individuals with Tacoma Municipal Court post-conviction holds with a scheduled release date within 30 days. The Department urges the court to preempt the spread of the COVID-19 disaster in the Pierce County and Nisqually jails.

This Court should not hold persons in-custody except as strictly necessary due to the high risk of spreading the novel coronavirus, COVID-19, throughout the jail and to society. This motion is supported by the following statement of facts, authority, and argument, as well as any argument presented at the hearing. The Defense requests waiver of the balance of jail, closure of the files, and immediate release for individuals with probation holds.

II. STATEMENT OF FACTS

A. BACKGROUND

1 COVID-19 is a global pandemic that endangers the United States and Tacoma.¹
2 COVID-19 is 10–34 times more deadly and 3–5 times more times infectious than the flu.²
3 Common symptoms of COVID-19 include fever, cough, and shortness of breath,³ but many
4 may have mild or moderate symptoms or no symptoms at all.⁴ Other patients may experience
5 severe symptoms requiring intensive medical intervention; particularly, individuals age 60
6 and over or those with underlying medical conditions.⁵ However, even with hospitalization
7 and intensive treatment, thousands of individuals have died as a result of this infection.
8 Regardless of the type or severity of symptoms, all infected persons are contagious and can
9 rapidly transmit the virus from person to person without proper public health interventions.⁶
10

11 As of April 1, the United States leads the world—including China—with 186,101
12 confirmed COVID-19 cases, and 3,603 deaths.⁷ As of April 1, White House modelling
13 predicts the death of up to 240,000 Americans and the infections of millions without
14
15
16
17

18 ¹ *Coronavirus 2019 (COVID-19): Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION
19 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated March 26, 2020).

20 ² *Compare* Tedros Adhanom, World Health Organization (WHO) Director General, Opening remarks at the media
21 briefing on COVID-19 (March 3, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020>, with Denise Grady, *How Does the Coronavirus Compare With the Flu?*, THE NEW YORK TIMES (March 27, 2020), <https://www.nytimes.com/article/coronavirus-vs-flu.html>.

22 ³ *Coronavirus Disease 2019 (COVID-19): Symptoms*, CENTERS FOR DISEASE CONTROL AND PREVENTION
23 <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last reviewed March 20, 2020).

24 ⁴ *Id.*

25 ⁵ *Id.*; *Coronavirus Disease 2019 (COVID-19) People Who Are At Higher Risk*, CENTERS FOR DISEASE CONTROL
26 AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>
27 (last reviewed March 31, 2020).

⁶ *Coronavirus Disease 2019 (COVID-19): How It Spreads*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last reviewed March 4, 2020).

⁷ Nicole Chavez et al., *US has more known cases of coronavirus than any other country*, CNN (March 27, 2020),
<https://www.cnn.com/2020/03/26/health/coronavirus-thousand-deaths-thursday/index.html>, *Coronavirus Disease 2019 (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>, last visited 4/2/2020

1 extraordinary, decisive action.⁸ Nationally, by March 29, there were more than 139,000 cases
2 of coronavirus and at least 2,425 deaths.⁹

3 COVID-19 has infected Washington State correctional facilities as well. On March
4 28, the Department of Corrections announced that an inmate at the Monroe Correctional
5 Facility tested positive for COVID-19.¹⁰ The press release failed to account for how the virus
6 was introduced into the prison population.¹¹ Current reports show that five DOC facilities
7 and one Community Custody office have now had at least one infection.¹² One hundred
8 sixty-five inmates are currently in isolation and 897 are in quarantine.¹³

9 //

10 //

11 //
12 Snohomish County Jail also discovered its first positive COVID-19 case, an
13 individual booked March 25.¹⁴ The jail is still trying to determine if the virus spread to others
14 in the facility.¹⁵

15 Per emails sent by the Pierce County Executive Department, a Sherriff's Department
16 employee and Remann Hall deputy prosecuting attorney,¹⁶ a General Services employee,¹⁷
17 and a Pierce County Prosecutor's Office employee at Remann Hall tested positive.¹⁸

18
19
20 ⁸ *Coronavirus Live Updates: Grim Models Project High U.S. Toll in Months-Long Crisis*, THE NEW YORK TIMES,
<https://www.nytimes.com/2020/03/31/world/coronavirus-news.html> (last updated March 31, 2020 at 11:45am PST)

21 ⁹ Madeline Holcombe & Dakin Andone, *US coronavirus cases top 139,000 as Trump extends social distancing*
guidelines until April 30, CNN (March 29, 2020), <https://www.cnn.com/2020/03/29/health/us-coronavirus-wrap-sunday/index.html>.

22 ¹⁰ Press release, Washington State Department of Corrections (DOC), *Incarcerated Patient at Snohomish County*
Medical Center Tests Positive for COVID-19 (March 28, 2020),
23 <https://www.doc.wa.gov/news/2020/03282020p.htm>.

24 ¹¹ *Id.*

25 ¹² *COVID-19 Information*, DOC, <https://www.doc.wa.gov/news/covid-19.htm> (last updated April 2, 2020).

26 ¹³ *Id.*

27 ¹⁴ *Man Booked into Snohomish County Jail Tests Positive for COVID-19*, KIRO-7 NEWS (April 1, 2020)
<https://www.kiro7.com/news/local/man-booked-into-snohomish-county-jail-tests-positive-covid-19/3W6HWDQMZXG5TBG22ND5OOIZBE/>.

¹⁵ *Id.*

1 As of March 26, five staff and several patients at Western State Hospital also tested
2 positive.¹⁹ Four days later, the Western State count rose to 12 workers and four patients
3 infected with one patient already dead.²⁰

4 Sheriffs, prosecuting attorneys, Department of Corrections inmates and staff, and
5 Western State staff and patients are all inextricably linked to local justice system. Continuing
6 detention only reinforces the routes of infection and ensures future spread.

7 //

8 //

9
10 The Tacoma-Pierce County Health Department confirmed 72 new cases in the last 48
11 hours—a three-fold increase in the rate of infection from March 25.²¹ As of April 1, 2020,
12 Pierce County confirmed 423 active COVID-19 cases and seven deaths.²²

13 Local and state governments are taking extraordinary measures to contain the spread
14 of the virus to limit the threat of harm to individuals and reduce the impact on community
15 medical systems.

16
17 On March 11, Washington Governor Jay Inslee announced new community strategies
18 and social distancing plans, including bans on events with more than 250 people in Pierce,
19

20 ¹⁶ Email from Our Family, Pierce County Executive Department, Two County employees with COVID-19 (March
21 16, 2020) (Attachment 2).

22 ¹⁷ Email from Our Family, Pierce County Executive Department, County employee tests positive for COVID-19
(March 23, 2020) (Attachment 3).

23 ¹⁸ Email from Our Family, Pierce County Executive Department, County employee tests positive for COVID-19
(March 24, 2020) (Attachment 4).

24 ¹⁹ *More than a dozen coronavirus cases, 1 death at Western St. Hospital*, KOMO NEWS (March 30, 2020),
25 <https://komonews.com/news/coronavirus/more-than-a-dozen-coronavirus-cases-1-death-at-western-st-hospital>.

26 ²⁰ *Id.*

27 ²¹ *Human Coronavirus*, TACOMA-PIERCE COUNTY HEALTH DEPARTMENT, <https://www.tpchd.org/healthy-people/human-coronavirus> (last updated March 30, 2020); *Unified Situation Summary #20 for the COVID-19 activation, as of 1530 on April 1, 2020*, TACOMA-PIERCE COUNTY HEALTH DEPARTMENT (Attachment 1); *Unified Situation Summary #12 for the COVID-19 activation, as of 1530 on March 24, 2020*, TACOMA-PIERCE COUNTY HEALTH DEPARTMENT.

²² *Unified Situation Summary #20 for the COVID-19 activation, as of 1530 on April 1, 2020*, *supra* note 21.

1 King and Snohomish Counties.²³ As he stated in his new release, “[t]his is an unprecedented
2 public health situation and we can’t wait until we’re in the middle of it to slow it down . . .
3 We’ve got to get ahead of the curve. One main defense is to reduce the interaction of people
4 in our lives.”²⁴ On the fifteenth, Washington Governor Inslee announced the immediate two-
5 week closure of all restaurants, bars, and entertainment and recreational facilities, as well as
6 additional limits on large gathers above 50 people. Effective midnight of the sixteenth, food
7 service may still be offered to-go or delivery.²⁵
8

9 //

10 //

11 On March 18, the Supreme Court entered Order 25700-B-606 providing statewide
12 authority to all courts based on the finding that many facilities in the State are ill-equipped to
13 effectively comply with social distancing and other public health requirements.

14 This situation is only getting worse day-by-day. To quote Governor Inslee: “If we are
15 living a normal life, we are not doing our jobs as Washingtonians. We cannot do that
16 anymore. We need to make changes, regardless of size. All of us need to do more. We must
17 limit the number of people we come in contact with. This is the new normal.”²⁶
18

19 This situation is one that is unprecedented in the last century. As the spread of
20 COVID-19 continues to worsen, this court has an opportunity to lead the State by taking the
21 action necessary to protect the community that it serves.
22

23 ²³ Proc. by the Governor 20-07, (March 11, 2020), <https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20%28tmp%29.pdf>.

24 ²⁴ *Inslee issues emergency proclamation that limits large events to minimize public health risk during COVID-19* (March 11, 2020), <https://www.governor.wa.gov/news-media/inslee-issues-emergency-proclamation-limits-large-events-minimize-public-health-risk>.

25 ²⁵ *Inslee announces statewide shutdown of restaurants, bars and expanded social gathering limits*, MEDIUM (March 16, 2020), <https://medium.com/wagovernor/inslee-announces-statewide-shutdown-of-restaurants-bars-and-expanded-social-gathering-limits-bb19095b2251>.

26 ²⁶ *Id.*
27

1 **III. ARGUMENT**

2 **A. INDIGENT INDIVIDUALS KEPT IN CUSTODY ARE ESPECIALLY**
3 **VULNERABLE AND PASS THE RISK OF INFECTION TO THE GREATER**
4 **COMMUNITY**

5 The spread of COVID-19 to the Pierce County Jail is a near certainty. It is essential
6 that the court act before it is too late. Counsel is not aware of any testing of anyone in the
7 Pierce County Jail. Without adequate efforts, it is impossible to say how many may already
8 be infected.

9 According to a report on prevention and control of COVID-19 in jails by the World
10 Health Organization, jails, by design, are at high risk for transmission of communicable
11 disease such as COVID-19.²⁷ Some of the most basic disease prevention measures are
12 difficult or impossible behind bars including frequent hand washing or sanitizing, sanitizing
13 communal spaces, and social distancing.²⁸ The patients and staff at Western State Hospital
14 live and work near one another, yet maintain greater social distance than personnel and
15 inmates in a jail where bunks and common spaces are crowded, but the disease spread
16 quickly nonetheless.²⁹

17 Moreover, separating sick from healthy people is a challenge in jail settings.³⁰
18 Medical staff is stretched thin and the jail constantly churns inmates in and out – along with
19 correctional, medical, and other staff coming and going multiple times in a day.³¹
20
21
22

23 ²⁷ *Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance*,
24 WORLD HEALTH ORGANIZATION: REGIONAL OFFICE FOR EUROPE (Mar. 15, 2020),
[http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=)
25 [in-prisons.pdf?ua=](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=).

26 ²⁸ *Id.*

27 ²⁹ *Supra* note 19.

³⁰ *Supra* note 27.

³¹ *Id.*

1 Inmates remain at continual risk. They lack any control over their conditions: they
2 cannot control their access to sanitation materials, ability to distance, or who they associate
3 with. There have been at least four cases of confirmed COVID-19 in Tacoma’s Nativity
4 house, and there is no way to know how many are infected throughout the local homeless and
5 marginalized population.³² This same population continues to be booked into the jail and the
6 population is exposed even if those infected are promptly released. It is only a matter of time
7 before COVID-19 is confirmed in Pierce County Jail.
8

9 Waiting until Pierce County Jail has a confirmed case undermines preventative
10 measures and will likely require a costly triage: Mass quarantine and releases in droves
11 without proper care or stability plans. COVID-19 has a long incubation period and many of
12 those infected have mild or no symptoms—yet are still contagious.³³ Even those who have
13 recovered may still be contagious, with some in China testing positive even after an initial
14 negative results post-recovery.³⁴ One study from *Science* indicates that the prevalence of
15 undocumented cases is fueling the pandemic and estimates that 79% of new infections are
16 caused by undocumented cases making containment extremely difficult.³⁵ Symptoms are not
17 a reliable indicator of transmissibility. Waiting to act until identifying an infected person in
18 the jail will be too late and an unknown number of staff and inmates will already be exposed.
19
20

21 _____
22 ³² Matt Driscoll, *Three more COVID-19 cases at Tacoma homeless shelter; vulnerable moved to downtown hotel*,
THE NEWS TRIBUNE (March 25, 2020), <https://www.thenewstribune.com/news/coronavirus/article241499986.html>.
23 ³³ Jillian Mock, *Asymptomatic Carriers Are Fueling the COVID-19 Pandemic. Here’s Why You Don’t Have to Feel*
Sick to Spread the Disease, DISCOVER (March 26, 2020), [https://www.discovermagazine.com/health/asymptomatic-](https://www.discovermagazine.com/health/asymptomatic-carriers-are-fueling-the-covid-19-pandemic-heres-why-you-dont)
24 [carriers-are-fueling-the-covid-19-pandemic-heres-why-you-dont](https://www.discovermagazine.com/health/asymptomatic-carriers-are-fueling-the-covid-19-pandemic-heres-why-you-dont).
25 ³⁴ Emily Feng & Amy Cheng, *Mystery In Wuhan: Recovered Coronavirus Patients Test Negative ... Then Positive*,
NPR (March 27, 2020), [https://www.npr.org/sections/goatsandsoda/2020/03/27/822407626/mystery-in-wuhan-](https://www.npr.org/sections/goatsandsoda/2020/03/27/822407626/mystery-in-wuhan-recovered-coronavirus-patients-test-negative-then-positive)
26 [recovered-coronavirus-patients-test-negative-then-positive](https://www.npr.org/sections/goatsandsoda/2020/03/27/822407626/mystery-in-wuhan-recovered-coronavirus-patients-test-negative-then-positive).
27 ³⁵ Ruiyun Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus*
(SARS-CoV2), SCIENCE (March 16, 2020),
<https://science.sciencemag.org/content/early/2020/03/24/science.abb3221>.

1 Then, containment will be impossible. Jail population reduction is the only plausible
2 safeguard.

3 It is equally important to bear in mind that indigent individuals seeking release are not
4 the only persons implicated or endangered by COVID-19. Jail overcrowding also endangers
5 other in-custody individuals, the deputies, and other personnel who must enter to provide
6 essential services. The risks do not end with those directly linked with the jail. Each person
7 entering and exiting the jail endangers their families. As explained by Robert Greifinger, a
8 physician who spent 25 years working on health care issues inside the nation's prisons and
9 jails: "since jail and prison staff and prisoners tend to be younger, one thinks initially that it's
10 not going to be a big problem . . . But remember that staffs work shifts, they come in and out
11 of the facility, and they may be bringing that infection home to people who have
12 compromised immune systems."³⁶ The jail is an incubator which increases the risk even to
13 those with a tertiary connection.³⁷

14
15 It must be the Court that acts to curb COVID-19. Reducing inmate population is what
16 the court can do to "flatten the curve."³⁸ Flattening the curve means reducing the rate of
17 transmission to prevent overtaxing hospitals and treatment supplies. If infection sweeps
18 through the jail, hundreds of inmates will overwhelm the already-oftaxed local medical
19 centers. COVID-19 spreads at an exponential rate: a single case can multiply to an
20
21
22
23

24 ³⁶ Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus 'Incubators'*, NPR (March 13, 2020),
25 <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>.

³⁷ See also Letter from Sarah Fortune, MD, Director, TB Research Program at the Ragon Institute of MGH, MIT,
26 and Harvard, Re: The Threat of COVID-19 in Jails and Prisons (undated) (Attachment 5).

³⁸ Siobhan Roberts, *Flattening the Coronavirus Curve*, THE NEW YORK TIMES (March 27, 2020),
27 <https://www.nytimes.com/article/flatten-curve-coronavirus.html>.

1 overwhelming number of infections within days.³⁹ Population reduction reduces the spread
2 within the justice system and keeps treatment more manageable if the jail is compromised.

3 It is incumbent upon the Municipal Court to release its inmates before the jail
4 becomes non-functional and unable to house even the highest-level offenders. Due to the
5 seriousness of the pandemic and its ability to spread silently, reducing the jail population is
6 the only way the court can effectively contain the virus. The death of vulnerable inmates or
7 tertiary persons cannot be undone.

8
9 **B. EMERGING DATA DEMONSTRATES THAT THE COURT MUST TAKE**
10 **PREVENTIVE ACTION BEFORE IT IS TOO LATE**

11 Congregate environments (jails, cruise ships, long-term care facilities, etc.), have
12 become the epicenters of several outbreaks of COVID-19. This is highlighted by the Life
13 Care Center of Kirkland in Washington State which led to the deaths of 29 and the infection
14 of at least 76 additional individuals⁴⁰ or the Diamond Princess cruise ship which held its
15 passengers in quarantine off the coast of California, leading to seven deaths and 700 positive
16 tests.⁴¹

17 Proactive risk mitigation, including eliminating close contact in communal
18 environments, is the only effective way to prevent the spread of the COVID-19 infection. In
19 fact, a study published in the Journal of Travel Medicine found that the number of COVID-
20

21
22 ³⁹ Ethan Siegel et al., *Why 'Exponential Growth' Is So Scary For The COVID-19 Coronavirus*, FORBES (March 17,
2020), <https://www.forbes.com/sites/startswithabang/2020/03/17/why-exponential-growth-is-so-scary-for-the-covid-19-coronavirus/#28742e954e9b>.

23 ⁴⁰ Jon Swaine and Maria Sacchetti, *As Washington Nursing Home Assumed it Faced Influenza Outbreak,*
24 *Opportunities to Control Coronavirus Exposure Passed*, WASHINGTON POST (Mar. 16, 2020),
25 https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136_story.html.

26 ⁴¹ John P.A. Ioannidis, *A Fiasco in the Making?*, STAT NEWS (Mar. 17, 2020),
27 <https://www.statnews.com/2020/03/17/a-fiasco-in-the-making-as-the-coronavirus-pandemic-takes-hold-we-are-making-decisions-without-reliable-data/>.

1 19 cases on the Diamond Princess cruise ship would have been *more than eight times lower*
2 if the ship had been evacuated in a timely manner, rather than requiring the passengers to
3 quarantine within the close confines of the ship.⁴²

4 The dangerous conditions created by jail are already proven. Cook County Jail in
5 Illinois announced two cases on March 23.⁴³ As of April 1, that number ballooned to 141
6 confirmed cases amongst detainees, with at least 25 staff also testing positive despite belated
7 efforts to release inmates.⁴⁴

8 Rikers Island Jail in New York suffered the same fate. In just 12 days, Rikers Island
9 went from having a single infection to over 200 cases.⁴⁵ The most current reports indicate
10 that at least 167 inmates and 114 jail staff are now infected.⁴⁶ Ross MacDonald, the jail's
11 chief physician, stated that—despite taking CDC suggested precautions—the spread is unlikely
12 to stop and that 20% of inmates would likely need hospitalization and 5% would need
13 respirators.⁴⁷ Jared Trujillo, the president of the Association of Legal Aid Attorneys stated
14 that Rikers has become the center of the epidemic by spreading infection into the courts and
15 at least 12 associated attorneys.⁴⁸ He also stated that detainees are now forced to go without
16
17
18
19
20

21 ⁴² Rocklöv J., Sjödin H., Wilder-Smith A., *COVID-19 Outbreak on the Diamond Princess Cruise Ship: Estimating*
22 *the Epidemic Potential and Effectiveness of Public Health Countermeasures*, JOURNAL OF TRAVEL MEDICINE (Feb.
23 28, 2020), <https://doi.org/10.1093/jtm/taaa030> (emphasis added).

24 ⁴³ *141 Detainees at Cook County Jail Confirmed Positive for COVID-19*, NBC 5 CHICAGO (April 1, 2020),
25 [https://www.nbcchicago.com/news/local/141-detainees-at-cook-county-jail-confirmed-positive-for-covid-](https://www.nbcchicago.com/news/local/141-detainees-at-cook-county-jail-confirmed-positive-for-covid-19/2248379/)
26 [19/2248379/](https://www.nbcchicago.com/news/local/141-detainees-at-cook-county-jail-confirmed-positive-for-covid-19/2248379/).

27 ⁴⁴ *Id.*

⁴⁵ *Coronavirus spread at Rikers is a 'public health disaster', says jail's top doctor*, THE GUARDIAN (April 1, 2020),
<https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

⁴⁶ *At least 167 NYC inmates, 114 jail staffers now have COVID-19*, QUEENS DAILY NEWS (March 30, 2020),
<https://queenseagle.com/all/2020/3/30/at-least-167-nyc-inmates-114-jail-staffers-now-have-covid-19>.

⁴⁷ *Coronavirus spread at Rikers is a 'public health disaster', says jail's top doctor*, THE GUARDIAN (April 1, 2020),
<https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

⁴⁸ *Id.*

1 soap and sanitizer and are stuck in communal spaces calling the conditions “ultimately a
2 death sentence.”⁴⁹

3 These examples clearly demonstrate the fallacy of waiting for a positive test result to
4 beginning releasing inmates. If release efforts are stalled until there is a confirmed case,
5 infections will be too numerous to contain. Cook and Rikers prove the necessity of release as
6 a proactive measure.

7
8 **C. JURISDICTIONS AROUND THE COUNTRY ARE TAKING DRASTIC STEPS
TO PREVENT THE SPREAD OF COVID-19**

9 To stem the coming tide of infections many jurisdictions are releasing low level
10 offenders.⁵⁰ Many public figures, such as Senator and former presidential candidate Kamala
11 Harris, are calling for mass release.⁵¹ At least one class action lawsuit has already been filed
12 against the Federal Bureau of Prisons for failure to take adequate steps to test and treat
13 COVID-19⁵² and another against the Washington State Department of Corrections.⁵³ The
14 American Civil Liberties Union has taken similar action against the Immigrations and
15 Customs Enforcement (ICE) for its failure to safeguard detainees at Tacoma’s Northwest
16 Detention Center citing a deprivation of Due Process.⁵⁴ After an initial denial, the Ninth
17 Circuit Court of Appeals ordered the release of two inmates with heart and blood pressure
18
19
20
21

22 ⁴⁹ *Id.*

⁵⁰ *US jails begin releasing prisoners to stem COVID-19 infections*, BBC (March 19, 2020),
23 <https://www.bbc.com/news/world-us-canada-51947802>.

⁵¹ Walter Pavlo, *Can US Prisons React Fast Enough To COVID-19?*, FORBES (March 21, 2020),
24 <https://www.forbes.com/sites/walterpavlo/2020/03/21/us-prisons-can-they-react-fast-enough-to-covid-19/#4d7e81c81033>.

⁵² *Id.*

⁵³ Austin Jenkins, *Petition seeks early release of some Washington prison inmates to reduce risk of coronavirus*,
25 KUOW (March 24, 2020), <https://www.kuow.org/stories/petition-seeks-early-release-of-some-washington-prison-inmates-to-reduce-risk-of-coronavirus>.

⁵⁴ *Dawson v. Asher*, ACLU (March 17, 2020), <https://www.aclu.org/cases/dawson-v-asher>, last visited 3/30/2020.
26
27

1 issues.⁵⁵ ICE also had positive tests of COVID-19 in staff and detainees in New Jersey.⁵⁶
2 Infectious disease experts retained by the Department of Homeland Security wrote to
3 Congress warning that immigration detention facilities are “tinderboxes” for the virus.⁵⁷ In
4 Italy, failures to reduce prison overcrowding have led to mandates from the European Union
5 and deadly rioting from prisoners.⁵⁸

6 One state enacting the necessary changes to combat the spread of COVID-19 is
7 California. On March 31, California Governor Gavin Newsom announced the need to take
8 “extraordinary and unprecedented protective measures.”⁵⁹ In fact, California went beyond the
9 relief requested in this motion and plans to release inmates set to be released within the next
10 60 days.⁶⁰ Despite these steps, many believe that this policy is still not enough to protect
11 individuals held in custody.⁶¹

12
13 The Public Defender’s Office in Washington D.C. is asking for even greater
14 protections for indigent individuals in custody.⁶² The Office has filed a motion to establish a
15 presumption of release for all indigent individuals charged with a misdemeanor.⁶³ If
16
17
18
19

20 ⁵⁵ *2 virus-vulnerable detainees released from immigration jail in Tacoma*, ASSOCIATED PRESS (March 26, 2020),
21 available at <https://q13fox.com/2020/03/26/2-virus-vulnerable-detainees-released-from-immigration-jail-in-tacoma/>.

22 ⁵⁶ *Id.*

23 ⁵⁷ *Id.*

24 ⁵⁸ Fatima Burhan, *Wider Steps Needed to Protect Prisoners’ Health in Italy*, HUMAN RIGHTS WATCH (March 20,
25 2020), <https://www.hrw.org/news/2020/03/20/wider-steps-needed-protect-prisoners-health-italy#>.

26 ⁵⁹ Paige St. John, *California to Release 3,500 Inmates Early as Coronavirus Spreads Inside Prisons*, LOS ANGELES
27 TIMES (March 31, 2020) [https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-](https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons)
inmates-prisons.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Mitch Ryals, *D.C. Public Defenders’ Sweeping Motion Asks for Release of All Misdemeanants in DC Jail*,
WASHINGTON CITY PAPER (March 27, 2020), [https://www.washingtoncitypaper.com/news/article/21124994/dc-](https://www.washingtoncitypaper.com/news/article/21124994/dc-public-defenders-sweeping-motion-asks-for-release-of-all-misdemeanants-in-dc-jail)
public-defenders-sweeping-motion-asks-for-release-of-all-misdemeanants-in-dc-jail.

⁶³ *Id.*

1 successful, this would remove 94 individuals from a high-risk environment during a global
2 pandemic.⁶⁴

3 New Jersey, a state hit especially hard by COVID-19, is another jurisdiction that
4 recognized the need to release individuals with low-level charges. In an agreed order between
5 the Office of the Attorney General, County Prosecutors Association of New Jersey, and
6 Office of the Public Defender, the New Jersey Supreme Court ordered the release of
7 individuals serving a sentence as a condition of probation or as a result of a municipal court
8 conviction.⁶⁵ With the passing of this motion, 1,000 individuals are expected to be released in
9 order to fight this world-wide medical emergency.⁶⁶

11 In this difficult time, it is the duty of the Court to protect the community that it serves.
12 The best method to protect the citizens of Tacoma, Pierce County, and Washington State is to
13 follow the lead of these jurisdictions and release individuals with a release date within 30
14 days.

15 //

17 //

18 IV. CONCLUSION

19 For these reasons and the authorities cited, the Department of Assigned Counsel requests
20 this Court to release all indigent individuals with a release date within 30 days.

21 Respectfully submitted this 2nd day of April 2020.

22 s/

23 _____
24 ⁶⁴ *Id.*

25 ⁶⁵ *In the Matter of the Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (New Jersey Sup.
26 Ct., March 22, 2020), available at [https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf)
27 [_Consent_Order_Filed_Stamped_Copy-1.pdf](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf).

⁶⁶ Ryals *supra* note 62.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

[Attorney]
WSBA No. [number]
Department of Assigned Counsel

Formatted: Font color: Red

Formatted: Font color: Red