I. APPLICATION AND JURISDICTION

PETITIONERS**,** John DOE and Ralf Roe, bring this original action in the nature of a petition for a writ of habeas corpus as allowed for by Revised Code of Washington (hereinafter "RCW") 7.36, or termed as a Personal Restraint Petitioner (hereinafter "PRP") under Title 16 of the Rules of Appellate Procedure (hereinafter "RAP").

Petitioners are pretrial detainees held at the Snohomish County Jail, located in Everett, Washington. Petitioners' request for relief is based on their continued incarceration amidst the global COVID-19 pandemic, nearly identical to the plight of the petitioners in *Shyanne Colvin, et al. v. Jay Inslee, et al.*,[1] Case No. 98317-8 currently before this Court.

Here, however, petitioners are restrained in local jail awaiting trial rather than convicted individuals in the custody of the Department of Corrections. The issues raised by these petitions are novel and continually evolving. Petitioners apply to this High Court due to the need for statewide and unified guidance on this issue of great public concern, and in the interest of judicial efficiency.

This Court possesses original jurisdiction to issue writs of habeas corpus pursuant to Article IV, section 4 of the Washington State

[1] Petitioners would like to acknowledge Columbia Legal Services and amici in *Shyanne Colvin, et al. v. Jay Inslee, et al.,* for their shared knowledge and assistance in this petition.

Constitution. "Personal restraint petitions are modern versions of ancient writs, most prominently, habeas corpus, that allow petitioners to challenge the lawfulness of confinement." *In re Coats*, 173 Wn.2d 123, 127, 267 P.3d 324 (2011). "The purpose of judicial review of restraint, through the PRP process, is to protect against governmental oppression and power exercised without law." *In re Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010).

A PRP shall be granted where the petitioner's restraint is unlawful. RAP 16.4. Petitioners' restraint is unlawful because "the conditions or manner of the restraint are in violation of the Constitution of the United States or the Constitution or law of the State of Washington," RAP 16.4(c)(6) and "other grounds exist to challenge the legality of the restraint" of the Petitioners. RAP 16.4(c)(7).

Petitioners assert that their continued pretrial detention at the Snohomish County Jail constitutes deliberate indifference to the risk of serious medical harm, in violation of the Fourteenth Amendment of the United States Constitution and the right to due process under Article I, section 3 of the Washington State Constitution. The State's refusal to release the Petitioners (and others similarly situated) in light of their heightened risk of severe illness or even death if exposed to COVID-19 serves as an unlawful restraint upon Petitioners sufficient for relief under a writ of habeas corpus, or a PRP.

Washington's Constitution grants this Court the power to order people released from Washington's prisons and jails. "Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody." Wash. Const. art. IV, § 4. This provision explicitly grants this Court the power to order the release upon a petition brought "on behalf of any person held in actual custody." (Emphasis added). RAP 16.6 reflects this authority.[2] Under the unprecedented circumstances presented here, any person with standing to bring a writ or PRP in their own name also has standing to seek relief on behalf of all other similarly situated people. Here, that class of individuals would include other individuals incarcerated at the Snohomish County jail who are medically vulnerable to COVID-19 (that would include both inmates on the jail's medically vulnerable list, and those not included on that list but who meet CDC criteria for complications if infected).

Petitioners thereby respectfully ask this Court to order their immediate release under RAP 16.15(b) pending an ultimate determination of this petition. Petitioners request this Court grant this petition and order their release until the end of the pandemic. In making this claim and request for relief, petitioners allege as follows:

[2] RAP 16.6 states in relevant part: "The [personal restraint] petition may be brought by the person who is under a restraint or in the person's name by that person's guardian, conservator, parent, or attorney."

II. INTRODUCTION

1. Petitioners are two individuals who, by virtue of their age, underlying medical conditions or other unique characteristics, are particularly vulnerable to serious illness or death if infected with COVID-19. Each petitioner is being held pretrial and has yet to be convicted of the charge for which they are being held. This petition seeks their immediate release from the Snohomish County Jail on the grounds that continuing to hold them in this unsafe environment on bail constitutes deliberate indifference to a significant risk of serious medical harm, in violation of the Fourteenth Amendment and the right to due process under Article I, section 3 of the Washington State Constitution.

2. For the first time since the turn of the century, our country (and the entire globe) is under the oppressive thumb of a deadly pandemic. Approximately 2,317,759 individuals worldwide have already become infected by COVID-19.[3] This virus has already taken the lives of 159,510 people globally.[4] These numbers continue to grow

[3] "COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSD)," JOHNS HOPKINS UNIVERSITY & MEDICINE Coronavirus Research Center, https://coronavirus.jhu.edu/map.html (last accessed Apr. 18, 2020).
[4] *Id.*

at an alarming pace. Accordingly, life as we know it has radically shifted.

3. In the State of Washington, Governor Inslee has enacted a Stay Home, Stay Healthy order, directing Washingtonians to not leave their homes except for essential travel and to maintain an appropriate social distance when necessity requires leaving your home.[5] These measures were enacted to "flatten the curve" and prevent further outbreaks. This order has resulted in the enactment of fairly severe restrictions on normal aspects of our daily lives: public schools have closed, courts have significantly cut back operations, leisure businesses have shuttered their doors, and even essential businesses have cut back to only absolutely essential staff.

4. At its core, this order is meant to provide every Washingtonian a meaningful opportunity to restrict their personal exposure to COVID-19 through social distancing and self-isolation. However, there remains one population of individuals who remain unable to avail themselves of this opportunity—inmates in county jails across the state.

[5] *Proclamation by the Governor 20-25: Stay Home, Stay Healthy*, Wash. Off. of the Governor (Mar. 23, 2020); Order No 20-25, available at: https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronovirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf

5. Available research clearly demonstrates that COVID-19 is most likely to cause serious illness and death for older adults and those with certain underlying medical conditions. Every day, vulnerable inmates in correctional facilities and local jails live in constant fear of an outbreak that could result in their deaths. Petitioners here all fall into this category of vulnerable individuals.
6. This Court has already acknowledged the particular vulnerability of this class of individuals in *Shyanne Colvin, et al. v. Jay Inslee, et al.*.[6] While that Order may provide relief to convicted inmates at DOC facilities, pretrial detainees in county jails across the State remain in harm's way.
7. Despite depopulation of the Snohomish County jail, the risk of COVID-19 has not been abated because jail churn remains constant, policies are not uniformly followed, protective gear has been available to staff but prohibited for inmates, and medically vulnerable persons like Petitioners continue to be incarcerated and forced to share medical equipment like inhalers. Consequently, this Court has a duty to protect them by ordering their immediate release.

[6] Order on Motion, *Shyanne Colvin, et al. v. Jay Inslee, et al.* (No. 98317-8), Apr 10, 2020 (attached to this petition as Exhibit A).

III. FACTUAL BACKGROUND

A. The COVID-19 Pandemic

8. The novel coronavirus is a recently discovered viral strain that has reached global pandemic status.[7] The first cases of COVID-19 were diagnosed in December 2019 and originated in Hubei Province, China.[8] By April 17, 2020, over two million people worldwide had confirmed diagnoses,[9] and 150,000 people had died as a result of the virus.[10] The death toll is likely higher due to underreporting, evidenced by China's announcement just today that the death toll in Wuhan is 50 percent higher than previously thought.[11]

9. The United States of America has not been spared from the virus at the center of this outbreak. Indeed, the United States has become the global epicenter and hardest hit country to date during the life of this global pandemic.[12] There are currently 683,786 cases of COVID-19

[7] Ctrs. for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): Situation Summary," https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html (last visited Apr. 18, 2020).
[8] *Id.*
[9] *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY & MEDICINE, *supra* note 3.
[10] *Id.*
[11] Amy Quin, "China Raises Coronavirus Death Toll by 50% in Wuhan," *NY TIMES*, https://www.nytimes.com/2020/04/17/world/asia/china-wuhan-coronavirus-death-toll.html (last accessed Apr. 18, 2020).
[12] Dr. Tedros Adhanom Ghebreyesus, World Health Organization (WHO) Director-General, Opening remarks at media briefing on COVID-19, March 11, 2020, available at: https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last accessed Apr. 18, 2020).

infections in the United States alone, with over 34,000 deaths.[13] Because of a lack of widespread testing, this number is likely significantly higher.[14] There have been 3,262,921 tests for COVID-19 in the United States.[15] That is less than one percent of the current population.[16] Recent data from a study in China that is yet to be peer-reviewed, suggests that of those tests that have come back negative, as many as 27% are false negatives.[17] The clinical anecdotes from Dr. Harlan M. Krumholz, professor of medicine at Yale University and director of the Yale New Haven Hospital Center for Outcomes Research and Evaluation, and his colleagues treating Covid-19 here in the United States, suggest that the false negative rate in the United States is at least this high.[18]

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[13] *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY & MEDICINE, *supra* note 3.

[14] Sarah Kliff & Julie Bosman, "Official Count Understate the U.S Coronavirus Death Toll," *NY TIMES* (Apr. 5, 2020), https://www.nytimes.com/2020/04/05/us/coronavirus-deaths-undercount.html (last accessed Apr. 18, 2020).

[15] *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY & MEDICINE, *supra* note 3.

[16] United States Census Bureau, "U.S. and World Population Clock," https://www.census.gov/popclock/ (last accessed Apr. 18, 2020).

[17] Yang Yang et al., Shenzhen Key Laboratory of Pathogen and Immunity, National Clinical Research Center for Infectious Disease, "Evaluating the accuracy of different respiratory specimens in the laboratory diagnosis and monitoring the viral shedding of 2019-nCoV infections," (Feb. 11, 2020), available at https://www.medrxiv.org/content/10.1101/2020.02.11.20021493v2.full.pdf (last accessed Apr. 18, 2020).

[18] Dr. Harlan M. Krumholz, "If You Have Have Coronavirus Symptoms, Assume You have the Illness, Even If You Test Negative," *NY TIMES* (April 1, 2020), available at https://www.nytimes. com/ 2020/04/01/well/live/coronavirus-symptoms-tests-false-negative.html (last accessed Apr. 18, 2020).

10. The first known cases and outbreak of deaths in the United States occurred in the State of Washington.[19] To date, Snohomish and King counties remain the hardest hit in our region.[20] Although the number increases daily, as of the writing of this petition, Washington State alone has 11,802 number of infections and 624 resulting deaths.[21] Again, this number is likely much larger because of inadequate testing in the United States. To date there have been 124,283 tests in Washington.[22] That is less than two percent of the population.[23] The testing percentage at the Snohomish County jail appears to be much lower.

11. Common symptoms of COVID-19 include fever, cough, and shortness of breath.[24] Other symptoms, including nasal congestion, sneezing, fatigue, or diarrhea may also be present, but are less common.[25] Many individuals who become infected with COVID-19 may have mild or moderate symptoms; some may experience no

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[19] Wash. St. Dep't of Health, "2019 Novel Coronavirus Outbreak (COVID-19)," www.doh.wa.gov/emergencies/coronavirus (last visited Apr. 18, 2020).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] See United States Census Bureau, "QuickFacts: Washington," https://www.census.gov/quickfacts/WA (last accessed Apr. 18, 2020).
[24] Ctrs. for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): Symptoms," https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last accessed Apr 18, 2020).
[25] World Health Org., "Q&A on Coronaviruses (COVID-19)", https://www.who.int/news-room/q-a-detail/q-a-coronaviruses (last accessed Apr. 18, 2020).

symptoms at all.[26] Other patients may experience severe symptoms requiring intensive medical intervention.[27] However, even with hospitalization and intensive treatment, nearly 150,000 individuals have died as a result of this infection.[28] Regardless of the type or severity of symptoms, all infected persons are contagious and can rapidly transmit the virus from person to person without proper public health interventions.[29]

12. All individuals are at risk of transmission of COVID-19, the name of the disease that results from complications after a novel coronavirus infection.[30] There is no available vaccine, and there is no vaccine imminently expected.[31] There is also no known cure for COVID-19.[32] The only way to reduce risks to vulnerable people is to prevent them from becoming infected.

13. Consequently, swift and extreme measures have been taken by local governments domestically and at the national level globally. These measures have been enacted to curb spread of the virus and prevent

[26] "Coronavirus Disease 2019 (COVID-19): Symptoms," CDC, *supra* note 24.
[27] *Id.*
[28] *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY & MEDICINE, *supra* note 3.
[29] Ctrs. for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): How COVID-19 Spreads," www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/how-covid-spreads.html (last visited Apr. 18, 2020).
[30] , "Coronavirus Disease 2019 (COVID-19): Situation Summary," CDC, *supra* note 7.
[31] *Id.*
[32] *Id.*

deadly outbreaks. The Centers for Disease Control (hereinafter "CDC") and other public health agencies have universally prescribed social distancing (maintaining physical space/separation from those who have, or have potentially, been exposed, to COVID-19) and rigorous hygiene — including regular and thorough hand washing with soap and water, the use of alcohol-based hand sanitizer, proper sneeze and cough etiquette, and thorough environmental cleaning with a bleach solution — as the best and only ways to mitigate the spread of this disease.[33]

B. ***COVID-19 poses a grave risk of serious illness or death to individuals over age 50 and to those with underlying medical conditions.***

14. While many people who become infected will recover with minimal medical intervention, people over the age of fifty and those with certain medical conditions face greater chances of serious illness or death from COVID-19.[34] The CDC, World Health Organization (hereinafter "WHO"), and other public health organizations have determined that underlying medical conditions, including lung

[33] Ctrs. for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others," https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/index.html (last accessed Apr. 18, 2020).
[34] Ctrs. for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): People Who Are at Higher Risk for Severe Illness," https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-riskcomplications.html (last accessed Apr. 18, 2020).

disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (e.g., cancer, HIV, autoimmune disease, etc.), and/or pregnancy, place individuals of any age at an exponentially higher risk of serious illness or death from the COVID-19 virus.[35]

15. For these vulnerable populations, the symptoms of COVID-19, particularly shortness of breath, can be severe, and complications can manifest at an alarming pace.[36] Most individuals who have contracted the virus first display symptoms in four to five days.[37]

16. Dr. Frederick Altice is a professor of Medicine (Infectious Diseases), Epidemiology (Microbial Diseases) and Public Health, as well as a clinician and researcher, at Yale University School of Medicine and Public Health. Dr. Altice submitted a declaration in connection with the *Colvin* litigation.[38] According to Dr. Altice, COVID-19 can quickly progress to more life-threatening symptoms

[35] "Q&A on Coronaviruses (COVID-19)," WHO, *supra* note 25.
[36] Ctrs. for Disease Control and Prevention, "Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)," https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html (last accessed Apr. 18, 2020).
[37] *Id.*
[38] Declaration of Frederick L. Altice, M.D., submitted in connection with the *Colvin* litigation (attached as Appendix A).

as the virus spreads to the lungs and other organs. Serious permanent damage to the lungs and organs may also occur.[39]

17. In the most severe cases, COVID-19 can be deadly.[40] The overall case mortality rate in the U.S. from the disease is 4.9%.[41] However, based on the number of deaths and cases reported by the Washington State Department of Health website, the Washington death rate is 5.2%.[42] As a result, the virus is 10 times more deadly than the common flu (Influenza A) and other flu-like viral infections.[43]
18. Dr. Michael Puisis, expert associated with the *Colvin* litigation, is an internist who has worked in correctional medicine for 35 years, including serving as the Chief Operating Officer for the medical program at the Cook County, Illinois Jail from 2009 to 2012.
19. Dr. Ronald Shansky, expert associated with the *Colvin* litigation, is an internist who has worked in correctional medicine for 45 years, including serving as the Medical Director of the Illinois Department of Corrections.

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[39] *Id.* at ¶ 12
[40] *Id.*
[41] JOHNS HOPKINS UNIVERSITY & MEDICINE Coronavirus Research Center, "Mortality Analysis," https://coronavirus.jhu.edu/data/mortality (last accessed Apr. 18, 2020).
[42] Declaration of Dr. Michael Puisis and Dr. Ronald Shansky submitted in connection with the *Colvin* litigation, pg. 4 at ¶ 6 (attached as Appendix B).
[43] Altice Declaration, at ¶10.

20. Drs. Puisis and Shansky make clear that young people are not immune, and younger individuals with cardiovascular disease or hypertension "may have unappreciated risk for severe disease."[44]

21. An individual's cognitive impairment can also place them at greater risk. Persons with mental illness or cognitive impairments are considered by some to be at increased risk of acquiring and transmitting the disease because they may lack an understanding of social distancing or hygiene requirements, and may not be able to communicate symptoms appropriately.[45]

C. Inmates in Washington State jails face an exponentially greater risk of contracting the COVID-19 virus, and drastic proactive steps need to be taken to protect their lives.

22. Congregate environments, (e.g., cruise ships, long-term care facilities, etc.), such as the Life Care Center of Kirkland in Washington State[46] or the Diamond Princess cruise ship which held its passengers in quarantine off the coast of California, have become the epicenters of several outbreaks of COVID-19.[47]

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[44] Declaration of Dr. Michael Puisis & Dr. Ronald Shansky at pg. 9 ¶ 12.
[45] *Id.*
[46] Jon Swaine and Maria Sacchetti, "As Washington Nursing Home Assumed it Faced Influenza Outbreak, Opportunities to Control Coronavirus Exposure Passed," *Washington Post*, (Mar. 16, 2020) 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 (last accessed Apr. 18, 2020).
[47] Ana Sandoiu, "COVID-19 Quarantine of Cruise Ship May Have Led to More Infections," *Medical News Today* (Mar. 3, 2020)

23. Like nursing homes and cruise ships, correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another. Consequently, infectious diseases are more likely to spread rapidly between individuals in this environment.[48] This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.[49]

24. The public health risks inside prisons and jails are even greater than in congregate environments outside a correctional setting. The WHO states that people who are incarcerated and otherwise deprived of their liberty are generally more vulnerable to disease and illness.[50] "The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live in close proximity with one another, which is likely to result in a

https://www.medicalnewstoday.com/articles/quarantine-on-covid-19-cruise-ship-mayhave-led-to-more-infections (last accessed Apr. 18, 2020).

[48] Anne C. Spaulding, "Coronavirus and the Correctional Facility," Emory Center for the Health of Incarcerated Persons, Emory Rollins School of Public Health, 17 (Mar. 9, 2020), available at: https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators _ 3.9.2020.pdf (last accessed Apr 18, 2020).

[49] *Id*.

[50] World Health Org.: Regional Off. for Europe, "Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance," 2 (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/ Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf (last visited Apr. 18, 2020).

heightened risk of person-to-person and droplet transmission of pathogens like COVID-19."[51]

25. The WHO outlines the two primary ways that COVID-19 is spread: (1) person-to-person, by breathing in droplets coughed out or exhaled by a person with the virus; and (2) by touching contaminated surfaces or objects and then touching their eyes, nose, or mouth.[52] Both methods of transmission make people in jails and prisons especially susceptible to this contagion. Overcrowding, inadequate medical care, and the number of vulnerable people in custody make the risks associated with the spread of communicable disease even greater. It is impossible to achieve social distancing standards. Furthermore, residents share toilets, sinks, and showers, and often have limited access to soap, hot water, and other necessary hygiene items. Staff enter from and exit to the community, with inadequate infection screening procedures, especially considering staff may be asymptomatic yet still contagious.

26. Prisons and jails serve as "epidemiological pumps," amplifying conditions for the spread of disease.[53] An even more concerning

[51] *Id*.
[52] *Id*.
[53] John Jacobi, "Prison Health Public Health: Obligations and Opportunities," 31 Am. J. L. and Med. 447 (2005).

threat posed by an infection within a prison community is the potential for the disease, while being allowed to spread out of control, to mutate into new or more treatment-resistant strains.[54]

27. In the Rikers Island correctional facility in New York, the number of infected prisoners went from one to nearly 200 in twelve days.[55] According to the jail's chief physician, this was despite the jail following the Centers for Disease Control and Prevention guidelines.[56] The infection rate in the New York jails was nearly eight times higher than in the city at large.[57] In the Cook County jail, in Chicago, Illinois, two individuals who tested positive were placed in isolation cells.[58] In slightly over two weeks, over 350 prisoners in the jail were infected.[59] This makes it the largest known cluster of COVID-19 infections.[60] This is despite the fact that the "vast majority of the jail's 4,500 inmates have not been tested."[61]

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[54] *Id*.
[55] Miranda Bryant, "Coronavirus spread at Rikers is a 'public health disaster', says jail's top doctor," *The Guardian* (Apr. 1, 2020) https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster (last accessed Apr. 18, 2020).
[56] *Id*.
[57] *Id*.
[58] Timothy Williams and Danielle Ivory, "Chicago's Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars," NY TIMES (Apr. 8, 2020), available at https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html?auth=login-google (last accessed Apr. 18, 2020).
[59] *Id*.
[60] *Id*.
[61] *Id*.

28. The lack of adequate medical infrastructure not only impacts the ability of jails to screen for infectious diseases, such as COVID-19, but also jails' ability to provide the intensive medical treatment necessary for those who develop severe, life-threatening symptoms. Given the history of epidemiologic outbreaks in correctional facilities, such as Tuberculosis, H1N1 and MRSA, it is reasonable to expect COVID-19 will also readily spread in jails, especially when people cannot engage in proper hygiene and adequately distance themselves from infected residents or staff.[62] Without the ability to care for vulnerable individuals who are most at-risk of serious illness from a COVID-19 infection, many of those individuals will likely die from exposure to this virus. This can and must be prevented.

29. Proactive risk mitigation, including eliminating close contact in congregate environments, is the only effective way to prevent the spread of the COVID-19 infection. In fact, a study published in the Journal of Travel Medicine found that the number of COVID-19 cases on the Diamond Princess cruise ship would have been more than eight times lower if the ship had been evacuated in a timely

[62] *See generally*, Claire Fortin, "A Breeding Ground for Communicable Disease: What to do About Public Health Hazards in New York Prisons," 29 Buff. Pub. Interest L. J. 153 (2011); *Malles v. Lehigh County*, 639 F.Supp.2d 566 (2009).

manner, rather than requiring the passengers to quarantine within the close confines of the ship.[63]

30. The COVID-19 virus is highly infectious, and transmission is thought to occur mainly between people who are in close contact with one another.[64] Jails, as congregate settings, are therefore highly susceptible to the spread of COVID-19. The conditions in this unique setting are especially ripe for rapid outbreak of the virus. People in jails are usually required daily to share things like showers, toilets, urinals and sinks with hundreds of other people in jail, which can contribute to the spread of infectious diseases within these institutions.[65] Inmates are also responsible for daily tasks within the jail such as food preparation and distribution and cleaning. These practices all contradict the governor's order to isolate.

31. The transient nature of jails also contributes to the likelihood of outbreak. Newly arrested individuals are introduced into the jail

[63] Sandoiu, *supra* note 47 (citing Rocklöv J., Sjödin H., Wilder-Smith A., "COVID-19 Outbreak on the Diamond Princess Cruise Ship: Estimating the Epidemic Potential and Effectiveness of Public Health Countermeasures," *Journal of Travel Medicine*, (Feb. 28, 2020), available at https://doi.org/10.1093/jtm/taaa030.).
[64] Altice declaration at ¶¶ 10,13
[65] Altice declaration at ¶ 15.

population daily. Jail staff enter and leave the jail on multiple shifts every day.

32. As Dr. Altice explains, prisons have been the settings for previous outbreaks of infectious diseases: "In addition to HIV, viral hepatitis, and tuberculosis, we have experienced endemic outbreaks of strains of staphylococcus aureus bacteria that are resistant to methicillin (MRSA), which occurs in crowded congregate settings."[66] And prisons have not always proven successful at treating these diseases once they make their way into the institutions. For instance, tuberculosis outbreaks in prison have had devastating and sometimes deadly impacts on prisoners due to the prisons' inability to diagnose and treat people with the disease.[67] This is troubling given that tuberculosis is a much less infectious disease than COVID-19.[68]

33. Social distancing is imperative in mitigating the spread of COVID-19. To achieve this result in jails and prison, reduction of the population is necessary, not only to protect inmates from spread of the virus, but also to reduce burdens on community health systems

[66] *Id.* at ¶ 14.
[67] *Id.* at ¶ 17.
[68] *Id.;* Puisis-Shansky Declaration at ¶ 9.

that will not be prepared to handle an influx of inmates from prisons and jails should an outbreak occur.[69]

34. Other methods to treat the spread of COVID-19 may prove ineffective. For instance, isolation in the cruise ship setting has already proven futile, which, in fact, is the strategy currently cited by the Snohomish County jail as the reason why inmates are adequately protected. And, "[r]estricting people in prison to their living units will not contain the virus because many prisoners live in dormitory-style housing and they share many common public spaces, showers, meals, and restrooms."[70]

35. Dr. Greifinger is a physician who has worked in health care in the corrections environment for 30 years, including managing both Rikers Island and the New York state prison system at various points. Dr. Greifinger also submitted a declaration in connection with the *Colvin* litigation. Therein, he explains that "prisons and jails are populated with people who disproportionately have serious underlying medical conditions such as chronic heart and lung disease and other conditions that render them immunocompromised –the very conditions that put people at a markedly increased risk of

[69] Altice declaration at ¶¶ 18, 20.
[70] *Id.* at ¶ 25.

becoming severely ill or dying from COVID –19."[71] Because of this disproportionately vulnerable population, "not only is the virus more likely to spread within prisons and jails, but the outcomes are more likely to be particularly severe and even deadly."[72]

36. Dr. Greifinger describes the current risk to people in correctional custody as "very serious, especially for those who are most vulnerable. [These individuals] may experience severe respiratory illness as well as damage to other major organs. Treatment for serious cases of COVID-19 requires significant advanced support."[73] Dr. Greifinger continues on to state that it is his opinion that "prisons in Washington are not prepared to prevent the spread of COVID-19, treat those who are most medically vulnerable, and contain any outbreak."[74]

37. Dr. Greifinger explains that immediate downsizing of the prison population, particularly in a way that prioritizes release of those most vulnerable to COVID-19 (e.g., elderly and/or people with underlying health conditions) "reduces the likelihood that this group of individuals will contract the virus. Individuals in this category are

[71] Declaration of Dr. Robert Greifinger submitted in connection with the *Colvin* litigation at ¶ 15 (attached as Appendix C).
[72] *Id.*
[73] *Id.* at ¶ 16.
[74] *Id.* at ¶ 17.

at the highest risk of developing severe complications from COVID-19."[75] He concludes that "if not released, those who are most medically vulnerable to severe effects of COVID-19 will have a poor prognosis if infected while in prison. Moreover, care for those who become sick with COVID-19 will overburden the limited health care resources of the prison."[76]

38. Dr. Greifinger warned that simply isolating inmates in their cells will not be effective, as the definitional characteristics of the institutions require delivery of food, cleaning supplies, documents and other items which inherently risk infection.[77] In other words, despite a jail's best efforts and ideal conditions, the very nature of jail itself makes it so that the threat cannot be eliminated to an acceptable degree.

39. Cassie Sauer, the President and Chief Executive Officer of the Washington State Hospital Association (hereinafter "WSHA"), submitted a declaration in connection with the *Colvin* litigation. Ms. Sauer explains why hospitals are already under strain by the growing number of COVID-19 cases in WA.[78] Ms. Sauer notes that many

[75] *Id.* at ¶ 21.
[76] *Id.* at ¶ 23.
[77] *Id.* at ¶ 19.
[78] Declaration of Cassie Sauer submitted in connection with the *Colvin* litigation at ¶¶ 2; 8 (attached as Appendix D).

hospital and health care workers are already staying home due to age, health condition, possible virus exposure, or as caregivers.[79] At the same time that hospitals are seeing a decrease in their workforce, like any other employer, hospitals are experiencing a shortage of supplies to handle the surge in patients.[80] Hospital staff have already resorted to making their own protective equipment using materials purchased off the shelf," such as fabric masks and plastic face shields.[81]

40. Given their experience with COVID-19 thus far, WSHA and its member hospitals are concerned about the potential influx of patients that may come from the prisons and jails located around the state.[82] "If an infectious disease takes hold in a congregate living facility, it is likely to spread very quickly."[83] "[T]he question is not if, but when COVID-19 begins to spread in Washington's prisons and jails."[84]

41. Drs. Puisis and Shanksy note that "jails and prisons promote spread of respiratory illness because large groups of strangers are forced

[79] *Id.* at ¶ 9.
[80] *Id.* at ¶ 11.
[81] *Id.*
[82] *Id.* at ¶ 13.
[83] *Id.* at ¶ 15.
[84] *Id.* at ¶¶ 14-15.

suddenly in to crowded housing arrangements." [85] These circumstances are exacerbated by the movement in and out of custodial and other staff who can carry the virus into the jail and back into the community.[86] "One couldn't devise a system more contrary to current health recommendations...than a prison...."[87]

42. Jails are not set up to treat people who require hospital care. Severe diseases, like COVID-19, are treated with supportive care, such as respiratory isolation and mechanical ventilation.[88] Due to the prevalence of COVID-19 in Washington, the state is already unlikely to be able to meet the community needs for these services.[89]

43. Jails lack these services. Thus, inmates who fall severely ill due to COVID-19 will need to be transported to the community, further straining available resources, particularly if an outbreak occurs in a jail with limited medical resources, such as the Snohomish County Jail. Inmate transfer would likewise overwhelm security staff and complicate arrangements at local hospitals.[90]

[85] Puisis-Shansky Declaration at pg. 6 ¶ 10.
[86] *Id*.
[87] *Id*.
[88] *Id.* at pg. 10, ¶ 13.
[89] *Id*.
[90] *Id.*

44. To reduce the risk of outbreak and spread of COVID-19 and to reduce burdens on community health infrastructure, Drs. Puisis and Shansky have developed several recommendations. The first of these recommendations is to take steps to immediate release people in prison who are a low risk to the community.[91] They recommend that inmates over 65, inmates with immune disorders, significant cardiac (including hypertension) or pulmonary conditions, or inmates with cognitive disorders be prioritized for release.[92]

45. However, their recommendations do not stop at decreasing the population, or even at screening inmates upon entry. Drs. Puisis and Shansky warn that screening alone is insufficient because it will not identify asymptomatic inmates. They recommend testing *all* inmates upon entry, and quarantining them for 14 days with daily screenings.[93] They also recommend doing daily symptom and temperature screenings for any individual over 65 or with any immune disorder, serious cardiac or pulmonary disease, or with any cognitive disorder or mental illness.[94]

[91] *Id.* at. pg. 11, ¶ 1.
[92] *Id.*
[93] *Id.* at pg 12, ¶ 2.
[94] *Id.* at pg 12, ¶ 5.

D. Conditions at the Snohomish County jail do not conform to public health mandates, and as a result, petitioners and other medically vulnerable inmates remain at risk.

46. Since the beginning of March, Snohomish County Public Defender Association (hereinafter "SCPDA") attorneys (as well as private defense counsel) have filed numerous bail review motions in attempts to seek release for in-custody clients, particularly those most vulnerable. This effort has resulted in a drastic reduction in the jail population. Chief Kane reports that the jail has capacity for 1200 beds. As of the day of writing, there are only 304 individuals currently in custody at the jail.[95]

47. Unfortunately, depopulation will not effectively abate the risk of COVID-19 when jail churn remains constant, when policies and procedures fail to be followed, when simple and effective public health recommendations are ignored and sometimes even punished, and when those who are most medically vulnerable continue to be incarcerated and subjected to these risks on a daily basis.

[95] Email from Chief Kane, Apr. 16, 2020 (attached as Exhibit B). Notably, to protect sensitive information (contact information and identities of other medically vulnerable inmates), all emails and other documents attached as exhibits to this petition have been redacted accordingly.

i. Jail churn remains constant.

48. Despite the low number of beds that are filled on any given night, the jail continues to receive and release a high number of individuals from the community whose exposure to the virus and infection status is largely unknown.

49. For example, during the two-week period of April 2 through April 16, 2020, 344 **new inmates** were booked into the Snohomish County Jail.[96] Of those 344, only 39 remain in custody as of the time of writing.[97] The remaining 305 individuals were released back out into the community at some point within that two-week period. The population of the jail is not static -- it changes by the hour. Every person who is booked into jail, even for a few hours, risks spreading the virus to every person they are near. Similarly, an inmate may become infected during a brief stay at the jail and then expose the virus to the local community when released. This is of particular concern for unsheltered inmates who may live in encampments or other congregate environments.

[96] "Snohomish County Corrections Jail Inmate Inquiry," available at http://jailregister.snopac911.us/SCSO?Name=&SubjectNumber=&BookingNumber=&BookingFromDate=04%2F02%2F2020&BookingToDate=04%2F16%2F2020&Facility= (accessed Apr. 16, 2020).
[97] *Id*.

50. The jail has implemented screening procedures for new inmates,[98] which includes screening for fever, symptoms, and known exposure to the virus. Unfortunately, this is not an effective strategy, given that many carriers and transmitters of the virus are asymptomatic, as described in the declarations submitted by Drs. Puisis and Shanksy,[99] and therefore will not be identified through screening.

51. New inmates do not present the only risk of new infection. Employees, contractors, attorneys, volunteers, first responders, and law enforcement come through the jail on a daily basis. The jail did not implement even the cursory screening procedures described above for this group until March 26, 2020.[100]

52. Declarations from attorneys in our local community establish that these screening procedures for community members entering the jail are woefully inadequate. SCPDA Staff Attorney Christine Olson went to the Snohomish County Jail on April 13, 2020, and was screened before entering, pursuant to the new procedure.[101] She first observed a male attorney being screened. She noted that the thermometer took an abnormal amount of time to obtain this man's

[98] Email from Chief Kane, March 26, 2020 (attached as Exhibit C).
[99] Puisis-Shansky Declaration at pg 7, ¶ 11.
[100] Email from Chief Kane, March 26, 2020 (attached as Exhibit C).
[101] *See* Declaration of Christine Olson, attached hereto as Exhibit D and incorporated by reference.

temperature and by the time it did produce a number, it was only 95.6 degrees.[102] Instead of being concerned by an apparent inaccurate reading, the jail nurses responded by laughing. During Ms. Olson's screening, social distancing was not implemented by the nurse taking her temperature, who was only 3 feet away.[103] Ms. Olson notes that the thermometer was taking an abnormal amount of time to present a temperature reading (much like the man screened before her) and that both nurses again laughed.[104] The thermometer ultimately provided the same exact reading of 95.6 as the man before her. Despite the apparent technical problem, the jail nurses approved her immediate entrance into the facility.[105]

53. These screening deficiencies are not an isolated incident. Similar stories are echoed by Staff Attorney Paul Wagner, who enters the jail every day for video court.[106] His declaration similarly reveals failures in temperature readings by screening nurses, who allowed him and another SCPDA attorney admission to the jail despite apparent inaccurate readings on multiple occasions.[107]

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[102] *Id.* at ¶ 9.
[103] *Id.* at ¶ 8.
[104] *Id.*
[105] *Id.* at ¶ 10.
[106] *See* Declaration of Paul Wagner, attached hereto as Exhibit E and incorporated by reference.
[107] *Id*. at ¶¶ 8, 14-15

54. Public health experts recommend that jails take far more restrictive measures than those currently taken by the jail. Dr. Hajat, Assistant Professor of Epidemiology in the School of Public Health at the University of Washington, reviewed information about the Snohomish County jail's screening practices and policies to produce a memorandum outlining why they were insufficient and echoing the recommendations made by many other public health experts: that the jail ought to quarantine all new entrants and test *every* person for COVID-19 upon entry, only allowing them entrance if they are confirmed to be negative, and then testing them regularly after that.[108]

55. The threat described above cannot be abated unless new bookings cease, which does not appear to be a realistic request. Early on, the jail implemented a "mandatory booking only" policy. However, this mandatory booking policy covers a huge swath of offenses and appears to only *not* include certain misdemeanors that are not domestic violence or DUI related.[109] All felonies, even simple drug

[108] Puisis-Shansky Declaration at pg. 5-6, ¶ 9; Declaration of Dr. Anjum Hajat, Assistant Professor of Epidemiology in the School of Public Health at the University of Washington, attached hereto as Exhibit F and incorporated by reference.

[109] Jamie Kane, Bureau Chief, Memorandum: Booking Restrictions – Coronavirus (COVID-19), March 5, 2020 (attached as Exhibit G).

possession and non-violent property crimes, are considered mandatory bookings.

56. SCPDA Director Kathleen Kyle's proposal to refuse booking people on "failure to pay legal financial obligation" warrants was not implemented by the jail.[110] At the time the proposal was made, attorney Rachel Forde (who had been conducting the in-custody felony jail calendar) estimated that there was one new inmate per day who was booked on a "failure to pay" warrant.[111] These warrants are frequently issued for defendants who have unpaid legal financial obligations dating back as far as ten years ago.

57. Due to the failure to implement this proposal, the jail received a COVID-19 positive inmate on April 7th.[112] After being booked on his "failure to pay legal financial obligation" warrant and held, he was released after spending about 24 hours in the jail and no doubt causing needless exposure.

[110] Email of Kathleen Kyle, Director, Snohomish County Public Defender Association (March 18, 2020) (attached as Exhibit H).
[111] Declaration of Rachel Forde, attached hereto as Exhibit I and incorporated by reference.
[112] *Id.*

ii. Policies are not uniformly followed, and certain public health recommendations are *prohibited.*

58. Since March 30, 2020, the sharp decrease in jail population has allowed for every inmate to be housed in single cells.[113] In regular email updates to criminal justice stakeholders, the jail has asserted that "we can officially use social distancing with 100% of our inmate population."[114]

59. Unfortunately, while the guarantee of 100% social distancing may apply to the distance between cells for inmates while they're in them, social distancing is not consistently enforced when inmates are outside of their cells. Startlingly, this is true both in general population and medically vulnerable modules.

60. Numerous attorney declarations attached to this petition provide examples of seeing inmates together in the module clearly much closer than 6 feet apart. Just on April 17, 2020, SCPDA Staff Attorney Dave Roberson entered a module and saw five inmates sitting around a table sitting close together, and with no masks.[115] Perhaps more disturbingly, Mr. Roberson also saw jail staff with

[113] Email from Chief Kane, March 30, 2020 (attached as Exhibit J).
[114] *Id*.
[115] Declaration of David Roberson, attached hereto as Exhibit AA and incorporated by reference.

their face masks draped around their neck instead of actually covering their mouths.[116]

61. SCPDA Staff Attorney Robert O'Neal states in his declaration that his client, "is allowed his own cell, but still has to circulate among other inmates in the common areas of the jail."[117] Mr. O'Neal's client reports not just that social distancing is difficult in the general population modules, but impossible.[118] Furthermore, each time Mr. O'Neal's client has been transported somewhere, he is placed in holding cells where inmates are in very close proximity to one another without any forms of personal protective gear.[119] Due to medical issues, Mr. O'Neal's client has been transported to a local hospital more than once while in custody at the Snohomish County Jail and was escorted by correctional staff through the hospital without PPE. Notably, Mr. O'Neal's client has since missed at least two hospital visits because he would rather forego medical treatment than risk infection because of the jail's indifference to his well-being during transport.[120]

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[116] *Id.* at ¶ 3.
[117] Declaration of Robert O'Neal, attached hereto as Exhibit K and incorporated by reference, at ¶ 6.
[118] *Id.*
[119] *Id*. at ¶ 7.
[120] *Id*. at ¶¶ 7-8.

62. The same is true in the medically vulnerable inmate module at the Snohomish County Jail. In his declaration to the Court,[121] Petitioner DOE confirms that, within the medically vulnerable, social distancing is not being implemented or enforced and inmates are not being provided appropriate PPE. "We are let out of our cells for rec time in batches of two to three people at a time. We are not provided masks or any other protective equipment during this rec time. Social distancing is not being uniformly or strictly enforced within the medically vulnerable inmate unit during rec time." [122] This is consistent with Counsel Ritchie's personal observations during video visits with Petitioner DOE.[123]

63. Since April 3, 2020, the CDC has recommended people wear masks to prevent the spread of the virus, "especially in areas of significant community-based transmission."[124] Despite this, inmates at the jail are left without any protective equipment like cloth masks or

[121] Declaration of Petitioner John DOE, attached as Exhibit L and incorporated by reference.
[122] *Id*. at ¶ 17.
[123] *See* Declaration of Stephen Ritchie, attached as Exhibit M and incorporated by reference.
[124] Ctrs. for Disease Control and Prevention, "Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission," https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html (last accessed Apr. 18, 2020).

gloves.[125] The only exception appears to be inmate workers, though reports are inconsistent about whether all inmate workers wear protective gear while cleaning and serving meals.

64. Kevin Curtis was an inmate worker and primarily worked in the kitchen until he was released on April 2.[126] He was primarily responsible for delivering meals, including to those in the medical housing unit. He was not provided with a mask to wear until April 1, despite requesting one previously. He also believes that he was asked to provide meals to the COVID-19 positive individual, and was not provided a mask at that time.[127]

65. Mr. Curtis also reported to Staff Attorney Sarah Johnson that on one occasion during the week of March 30, after he had finished his cleaning duties, he was provided a special cleaner and protective gear that he had not previously been asked to wear and told to clean certain areas again. Given the extra precautions, he believes he was asked to clean an area that may have had COVID-19 exposure. What

[125] *See* Declaration of Petitioner DOE, wherein Mr. DOE confirms that as of April 16, 2020, the inmates inside the medically vulnerable unit are still not getting masks or other protective equipment. This observation is shared by the many attorney declarations submitted in connection with this petition that describe conditions within other modules within the Snohomish County Jail.
[126] Declaration of Sarah Johnson, attached as Exhibit N and incorporated by reference.
[127] *Id.*

makes this concerning is he is also responsible for food delivery throughout the jail.[128]

66. Other inmates have expressed concerns over the lack of protection for inmates handling food. Counsel Ritchie had a client who had been a "trustee," responsible for kitchen and food delivery duties until his release on approximately April 8, 2020. This client, who wishes to remain anonymous, reported that even trustees preparing and delivering food to all inmates at the jail are not wearing masks and only sometimes wearing gloves.[129] This trustee inmate further reported that while trustees are working in the kitchen area, they are working in close quarters and no social distancing is being encouraged or enforced.[130] This information was confirmed by a non-trustee client that Counsel Ritchie also represents, who reported that the trustees delivering the food are not wearing PPE, except for sometimes gloves and hairnets with holes as makeshift face masks.[131] This information was current as of April 8, 2020.

67. It is clear that a lack of inmate PPE at the Snohomish County Jail is a prevalent problem. One inmate was so concerned about the lack of

[128] Id. at ¶¶ 8-12.
[129] Declaration of Stephen Ritchie at ¶ 14.
[130] *Id.*
[131] *Id.* at ¶ 15.

protective gear that he tried to create his own cloth mask by tearing off a piece of his cotton undershirt and putting it around his face. A C.O. told him that it was contraband and that he was not allowed to wear it, and then took it away.[132]

68. The same inmate reported that when a nurse brought in a box of gloves and masks to hand out to the inmates, a supervisor came into the module and took back the box, indicating that there were not enough for all inmates so none would be distributed. This prompted an outcry from the inmates in the module, who began shouting "GRIEVANCE!" The C.O. warned them to stop otherwise they would be taken to solitary confinement.[133] It is worth noting that many attorneys from SCPDA had trouble obtaining consent for declarations from inmates at the Snohomish County Jail out of fear of retaliation for speaking out.[134]

69. Another incident reported by this inmate was that jail staff have access to alcohol-based hand sanitizer and keep it inside the modules, but if inmates try to use it, they are threatened with placement in solitary confinement.[135] Notably, a trustee client has

[132] Declaration of Rachel Ryon, attached as Exhibit O and incorporated by reference, at ¶ 7(g)
[133] *Id.*
[134] *See, e.g.,* Declaration of Stephen Ritchie at ¶ 21.
[135] *See, e.g.,* Declaration of Stephen Ritchie, Declaration of Rachel Ryon.

informed counsel Ritchie that even trustees preparing and delivering food in the kitchen do not have access to hand sanitizer.[136]

70. Though many inmates are desperate for any type of protective equipment, the staff is being provided with extensive PPE. In the past several weeks, even before the CDC announcement, SCPDA attorneys observed that C.O.s were wearing heavy-duty respirator masks. Jail staff are now required to wear eye protection, respirators, and gloves when they are within six feet of all inmates.[137] Even so, one inmate reports report that the C.O.s do not uniformly wear their masks. This information was confirmed by personal observations of SCPDA Staff Attorney Dave Roberson on April 17, 2020.[138] The inmate approximated 20 times that he has seen a C.O. take their mask off and choose not to wear it while in the inmate module.[139]

71. There are more simple examples of inadequate policies at the jail. As indicated in Dr. Hajat's recommendation memo,[140] all high-touch surfaces in congregate areas of the jail should be cleaned with a bleach cleaner. Staff Attorney Laura Martin was also able to

[136] Declaration of Stephen Ritchie at ¶ 16.
[137] Email from Chief Kane, Apr. 14 ,2020 (attached as Exhibit P).
[138] *See* Declaration of Dave Roberson, Exhibit AA, at ¶ 3.
[139] Declaration of Rachel Ryon at ¶ 7(d).
[140] Declaration of Dr. Hajat.

confirm through a client that the solution being used to clean his module is non-bleach.[141]

72. During video visits, Ms. Martin has personally observed inmates within the module sitting together at tables, playing cards and otherwise being in close proximity to each other. None were wearing any PPE whatsoever.[142] Ms. Martin further reports that, as of her last check in with client in the module, there were 33 inmates in that module and, although they sleep in individual cells, there are approximately 20 inmates out in the module during any period of rec time. Accordingly, Ms. Martin's client reports that it is not possible to follow any social distancing guidelines within this general population module, even with the jail having greatly reduced the number of inmates.[143] Consistent with other reports of kitchen workers, Ms. Martin's client also reported that the kitchen workers are sharing bathrooms and sinks, which are also used by jail staff. Ms. Martin's client has not seen a single inmate either in his module or in the kitchen using any form of PPE.[144]

[141] Declaration of Laura Martin, attached as Exhibit Q and incorporated by reference, at ¶ 18.
[142] *Id.* at ¶¶ 7-9.
[143] *Id.* at ¶¶ 13-15.
[144] *Id.* at ¶¶ 16-17.

73. Despite the need for specialty cleaning products, SCPDA attorney C. Erika Bleyl reports that her clients deny having regular access to them.[145] They report that some C.O.s allow them to use a spray cleaners, but others only have the option of cleaning their cell with a bar of soap and shampoo, which they have to purchase themselves.[146]

74. Other SCPDA attorneys report that jail staff are not performing even basic checks of inmates displaying potential symptoms of coronavirus infection, nor providing them proper protection. SCPDA Attorney Alexandra Manno reports the following, "On March 31, 2020, I went to court for a hearing on my motion to release one of my clients held at the Snohomish County Jail. This client has chronic high blood pressure and I confirmed with jail medical that they give him medication for this heart condition."[147] This client appeared in person for a court hearing in Superior Court without a mask or gloves.[148] Ms. Manno asked him how he was feeling, to which he replied, "Look at me!" and pointed to the sweat

[145] Declaration of C. Erika Bleyl, attached as Exhibit Z and incorporated by reference, at ¶ 4.
[146] *Id.*
[147] Declaration of Alexandra Manno, attached as Exhibit R and incorporated by reference, at ¶ 10.
[148] *Id.*

that she could see dripping down his face. Ms. Manno asked when his temperature was last checked, and he reported that the only time his temperature had ever been taken at the jail was when he was initially booked on January 27, 2020.[149]

75. Perhaps the most alarming report coming from inmates is that the jail is **requiring them to share inhalers**, which is happening both in the general population and medically vulnerable modules. Petitioner DOE reports that in the medically vulnerable unit, several inmates are being made to share the same inhaler.[150] The only apparent precautionary measure taken to avoid contamination between inmates with this shared inhaler are cardboard spacers that each inmate is assigned.[151] These carboard spacers attach directly to the mouthpiece of the inhaler. The inhaler and each cardboard spacer is stored in the same drawer within the module at the jail and there appears to be no sanitation protocol or system in place to keep distance between the mouthpieces to avoid cross-contamination in case any of the inmates has coronavirus infection.[152] Furthermore, Petitioner DOE has managed to obtain information about the

[149] *Id.*
[150] Declaration of Petitioner DOE at ¶ 12.
[151] *Id.* at ¶ 13-14.
[152] *Id.*

specific brand of spacer (1303 Lite Aire made by Thayer Corporation) and alleges that it is not meant for repeated use nor designed to make sharing an inhaler safe.[153] Notably, Petitioner DOE is so concerned about this risk that he has sometimes foregone use of the inhaler, despite needing it, to reduce his exposure to potential coronavirus infection.

76. Similar reports of shared inhalers are coming from completely independent areas of the jail. Mr. O'Neal confirms that his client, in a general population module, needs an inhaler but is not comfortable using it because it is shared between inmates.[154] Mr. O'Neal checked in with this same client on April 16, 2020, and his client's voice was raspy and he was developing a cough.[155]

iii. <u>High risk inmates continue to be incarcerated in conditions that do not comply with public health recommendations.</u>

77. Unfortunately, despite the reduced jail population, numerous medically vulnerable are still among those incarcerated. As of April 15, 2020, fourteen individuals in the jail appeared on the jail's "vulnerable inmate list."[156] The jail has produced criteria to be used to determine whether an inmate is medically vulnerable to COVID-

[153] *Id.*
[154] Declaration of Robert O'Neal at ¶ 5.
[155] *Id.* at ¶ 9.
[156] Email from Chief Kane, Apr. 15, 2020, attached as Exhibit S.

19. In order to be placed on the jail's "vulnerable inmate list," an inmate must either be: (1) 65 years old or older; or (2) have a serious underlying medical condition like heart disease, diabetes, or lung disease.[157]

78. This restrictive list does not cover everyone who has a medical condition that places them at greater risk of contracting or becoming severely ill by COVID-19. For example, Petitioner Ralf Roe is not on the "vulnerable inmate list" despite his history of high blood pressure/hypertension, febrile seizures, and consistent reports over the past month of COVID-19-related symptoms.[158]

79. Placement on the "vulnerable inmate list" means that the inmate will be housed in one of the less populated modules. As of April 14, the male module had eleven inmates assigned which has capacity for 99, while the female module had one assigned with a capacity of sixteen.[159]

80. Chief Kane reported that because of the large space within these modules, "[t]he 'vulnerable' population modules for males and females, are probably one of the safest places to be in our County

[157] Snohomish County Sheriff Office, Vulnerable Inmate Criteria, attached as Exhibit T.
[158] *See infra* Section IV: PARTIES
[159] Email from Chief Kane, Apr. 14, 2020, attached as Exhibit P.

right now, to include our community."[160] Inmates housed within the vulnerable inmate module, such as Petitioner John DOE, vehemently disagree. By failing to provide these medically vulnerable inmates with PPE, failing to enforce social distancing protocols at all times, and by requiring them to risk infection in order to use an inhaler, the jail has made this module anything but safe.[161]

81. The declarations submitted by SCPDA Staff Attorneys and their clients are rife with examples of public health recommendations not being followed within the Snohomish County jail. The jail seems to fail to recognize the difference between having safe policies and actually enforcing them to keep inmates safe.

iv. COVID-19 has already breached the walls of the Snohomish County jail.

82. COVID-19 has already reached the Snohomish County jail. Two inmates were confirmed to be COVID-19 positive while in jail. Though both individuals have already been released back out into the community, we cannot know how many others within the jail may have the virus because only a select number of inmates have been tested.

[160] *Id.*
[161] *See generally,* Declaration of Petitioner DOE.

83. Despite the jail's promise of transparency, SCPDA attorneys and inmates alike have been surprised on several occasions to learn of new information relating to COVID-19 cases and potential exposures that contradict the jail's statements about its containment.

84. On April 1, 2020, Chief Kane informed the SCPDA office that a 22-year old male incarcerated at the jail had tested positive for COVID-19.[162] Chief Kane stated the individual was booked on March 25, 2020, and was immediately screened at the jail's outdoor triage tent where he reported mild symptoms. Chief Kane relayed, "the RN immediately started COVID-19 quarantine (isolation) protocols prior to the subject being brought inside the booking area of the Snohomish County Jail, or coming into unprotected contact with Snohomish County Sheriff's Office Correction staff (i.e. inmate directed to wear surgical mask, staff to don personal protective equipment (PPE) when in direct presence of inmate, and inmate placed in isolation cell)."[163]

85. Chief Kane's account was not accurate. In truth, the COVID-19-positive inmate was not placed in isolation, and was actually present in jail courtroom A at 11:00AM on March 26, 2020, for the Everett

[162] Email from Chief Kane, Apr. 1, 2020, attached as Exhibit U.
[163] *Id.*

Municipal Court video calendar.[164] There were multiple attorneys, multiple other inmates and multiple corrections officers present at the calendar, which is held in a small courtroom in the jail.

86. The infected inmate was given a mask to wear but had no other protective gear (i.e., no gloves or gown).[165] He was seated in the same room as four to five other inmates and three attorneys (presumably in addition to jail staff, who are always present at such calendars). The attorneys present were wearing gloves but had no other PPE (no masks, for example). Moreover, the other inmates in the jail calendar courtroom had no PPE whatsoever. The jail did not notify anyone in the jail calendar video courtroom that day that a person in the room had reported symptoms, was awaiting test results, and was presently housed in isolation.[166]

87. Notably, Petitioner DOE was taken to that same video courtroom the following day for a court appearance.[167]

88. The fact that the COVID-19 positive inmate had actually been brought to court with other individuals was not immediately

[164] Declaration of Emily Wright, Everett Law Group, attached as Exhibit V and incorporated by reference.
[165] *Id.*
[166] *Id.*
[167] Declaration of Petitioner DOE, at ¶ 4.

disclosed by the jail. SCPDA attorneys investigated the issue and procured the declaration of Ms. Emily Wright.

89. When Superior Court Judge Cindy Larsen learned from SCPDA attorneys that this had happened, she asked Chief Kane for an explanation.[168] Chief Kane provided additional information and corrected his initial public statement.[169]

90. Chief Kane appeared to downplay the seriousness of the oversight by indicating that he believed there were no "close contact" exposures.[170] However, the individual who tested positive for COVID-19 can be heard on the recording of the hearing, seated at the table with counsel while the inmate wore no gloves and the attorney had no mask.[171]

91. SCPDA attorneys were surprised again when the jail did not immediately disclose that at least two correctional officers at the jail had tested positive for COVID-19. Instead, SCPDA attorneys learned this when Director Kathleen Kyle reached out to the jail seeking more information after rumors of COVID-19 positive tests

[168] Email, Honorable Judge Cindy Larsen, attached as Exhibit W.
[169] *Id.*
[170] *Id.*
[171] The audio recording of the Everett Municipal Court 11am jail calendar is available at: https://media.avcapture all.com/session.html?sessionid=9286ae2a-5679-4503-a5e4-0fd8fcd60118&prefilter=766,4584

among jail staff started circulating in the local criminal law community. Chief Kane confirmed this was true.[172] It is unknown to counsel when the jail knew this information, since this information was not shared until requested.

92. Last week, we are all saddened to learn that Corrections Deputy Gary Ellis passed away on Thursday, April 9. Deputy Ellis had been with the Snohomish County Sherriff's Office for nearly two decades and worked for years as a Corrections Officer at the Snohomish County jail. SCPDA attorneys and staff were told that Deputy Ellis had left the jail earlier in the week not feeling well and passed away in his home only a few days later.

93. Jared Gannon is a SCPDA staff employee responsible for making daily trips to the jail. On Monday, April 13, 2020, he spoke with two jail employees and gave his condolences to them for the passing of Deputy Ellis.[173] Mr. Gannon asked if either of the jail employees knew the cause of death. One of the employees responded by informing Mr. Gannon that it had been pneumonia and the other responded that "his lungs got him."[174] Although neither employee

[172] Email, Chief Kane, Apr. 14, 2020, attached as Exhibit P.
[173] Declaration of Jared Gannon, attached as Exhibit X and incorporated by reference, at ¶ 7.
[174] *Id.* at ¶ 9.

affirmatively told Mr. Gannon that the death was COVID related, because pneumonia was referenced, he was obviously concerned. Out of this concern, Mr. Gannon asked whether Deputy Ellis had been tested for COVID-19, but neither knew that information.[175]

IV. PARTIES

94. Petitioners are particularly vulnerable to serious illness or death if exposed to COVID-19, and such vulnerability is exacerbated due to their current incarceration.

95. **Petitioner John DOE** is a pretrial detainee at the Snohomish County Jail on Everett Municipal Court Cause Number XZ0114642. He is being held awaiting trial on the misdemeanor charge of "physical control while under the influence," with bail initially being set in the amount of $100,000.

96. Mr. DOE has requested release several times based on his medical vulnerabilities and has been denied. At his last bail review hearing, the Court reduced bail to $75,000.[176]

97. Mr. DOE is a 60-year-old male presently housed in a unit with other medically vulnerable inmates at the Snohomish County Jail. He has

[175] *Id.* at ¶ 11.

[176] Petitioner DOE's municipal court public defender has provided a declaration which further details the efforts undertaken to secure Mr. DOE's release, as well as other information about what Mr. DOE reported to him about jail conditions, and is attached hereto as Exhibit BB and hereby incorporated by this reference.

already potentially been exposed to the novel coronavirus at the jail, as he had a hearing in the same video courtroom at the jail where an inmate with a known confirmed case of the virus was the day prior and was not being kept in isolation as originally claimed by the Snohomish County Jail.

98. Mr. DOE has congenital heart disease, which has resulted in 2 heart attacks in the past 5 years. One occurred in 2015 and he was treated at Harrison Hospital in Bremerton, WA. His other heart attack occurred in 2019 and he was treated at Swedish Hospital.[177] In addition to this heart disease, Mr. DOE informs counsel that he currently has 2 blockages in his heart arteries that require surgery. This surgery has been delayed because of his instant incarceration.

99. In addition to a heart disease, Mr. DOE has a regular doctor at Downtown Everett Community Health Center on Broadway. This doctor treats Mr. DOE for COPD (a respiratory disorder), hepatitis C and high blood pressure.

[177] Notably, counsel obtained releases of information from Petitioner DOE to substantiate all medical claims made in this Petition. Unfortunately, the providers that have treated Mr. DOE for these various conditions have not provided the requested documentation as of the date of submission of the instant petition. Since time is of the essence, counsel opted not to wait for this documentation before submitting this urgent matter to the Court. Upon receipt of this documentation, counsel can file a supplemental exhibit, upon request. Despite the lack of documentation, however, Mr. DOE has sworn under penalty of perjury as to these conditions in his declaration.

100. Mr. DOE asserts that while he has been incarcerated at the Snohomish County Jail, he has made demands on jail staff for nitroglycerin pills (which he is supposed to take when he senses symptoms related to his heart condition are flaring up). Instead of receiving medication, Mr. DOE has been met with resistance by jail staff and even reports on some occasions being reprimanded or written up for demanding his medication.

101. Additionally, Mr. DOE has daily shortness of breath and requires the assistance of an inhaler. He informs counsel that he is made to share this inhaler with at least 3 other medically vulnerable inmates in the unit at any given time. Given the revolving door at the jail, Mr. DOE estimates that, over the course of his incarceration, at least seven to eight individuals have shared this inhaler.

102. The inmates sharing this inhaler are provided cardboard spacers that attach to the plastic mouthpiece of the inhaler. Mr. DOE informs counsel that this inhaler is kept in a drawer within the unit at the jail where he is housed and he can physically see when jail staff retrieve the inhaler for others to use. He asserts confidence when he claims this is the only and same inhaler others in his unit are using.

103. The only hold currently keeping Mr. DOE confined in the Snohomish County Jail is a non-violent misdemeanor physical control case, where bail was initially set at $100,000 despite the fact that it is a first-in-seven and second lifetime DUI-related offense.

104. The municipal court judges have heard the evidence about his medical history, about the conditions at the Snohomish County jail and about Mr. DOE's unique vulnerabilities but, like the jail, have been indifferent to Mr. DOE's medical safety and well-being. At the last bail review hearing, Mr. DOE's bail was slightly reduced to $75,000. For an indigent defendant who qualifies for the services of public defense attorneys, this amount might as well be a no bail hold.

105. The Snohomish County jail claims that they have 100 percent of inmates in single occupancy cells and social distancing is implemented at all times. Although counsel has direct observations from video visits with other clients to indicate the contrary, Mr. DOE reports that when he does have periods of isolation, it causes his stress and anxiety to spike and worries that if a novel coronavirus infection doesn't get him, a flare up of his heart condition from the stress of isolation will. He lives in daily fear that his instant incarceration will ultimately end as a death sentence.

106. **Petitioner Ralf Roe** is also a pretrial detainee at the Snohomish County Jail. He is 32 years old and suffers from high blood pressure, depression/anxiety, pancreatitis, and a history of febrile seizures.[178]

107. Mr. Roe is held on $30,500 bail across three cases, all felony allegations of Violation of a No Contact Order. He has been in custody since October on these pending charges. Mr. Roe's trial date is currently set to May 1, 2020, which is within the time period covered by the emergency orders suspending jury trials.

108. Mr. Roe has a history of high blood pressure within the range considered as "hypertension." Jail medical records from the past four years show consistently high blood pressure readings, some as high as 150/102, which is between "High Blood Pressure (Hypertension) Stage 2" and "Hypertensive Crisis."[179]

109. In addition to high blood pressure, Mr. Roe also has chronic pancreatitis, depression, anxiety, and has a history of febrile seizures.[180]

[178] Declaration of Counsel Rachel Ryon Regarding Ralf Roe, attached as Exhibit Y and incorporated by reference, at ¶¶ 6, 10.
[179] *Id.* at ¶ 7-9.
[180] *Id.* at ¶ 10.

110. While there is no direct data on the confluence of a diagnosed chronic pancreatic condition and COVID-19, an early study in China awaiting peer review contains troubling data: Out of 52 COVID-19 positive patients tracked in the study, seventeen of them experienced resulting pancreatic injury.[181] This suggests that COVID-19 may be especially damaging to those with existing pancreatic conditions, such as Mr. Roe.

111. In addition to these medical conditions, Mr. Roe was recently determined to have a neurodevelopmental intellectual disability causing severely impaired executive functioning.[182] As a result, Mr. Roe understands what others tell him and expresses his thoughts at a nine-year-old level.[183]

112. Mr. Roe has expressed to counsel troubling symptoms, such as: feeling woozy, shaky, exhausted, light-headed with a headache, his heart racing, a decreased appetite, and out of breath.[184]

113. Approximately one month ago, Mr. Roe reported to counsel that he had been having some of these symptoms. Counsel has tried

[181] Wang F, Wang H, Fan J, Zhang Y, Wang H, Zhao Q, "Pancreatic injury patterns in patients with COVID-19 pneumonia," *Gastroenterology* 2020, available at https://www.gastrojournal.org/article/S0016-5085(20)30409-1/pdf.
[182] Declaration of Counsel Rachel Ryon Regarding Ralf Roe, at ¶12.
[183] *Id.* at ¶ 13.
[184] *Id.* at ¶ 15.

to encourage him report these symptoms to the jail, but he has seemed reluctant to do so. It is counsel's impression that this reluctance stems from his frustration over his communication difficulties. It is counsel's impression, based on nine months of working with Mr. Roe, that he has difficulty conveying precise information, remembering when events occurred, and being able to relay back information. In counsel's opinion, it can be difficult to gain an accurate understanding from Mr. Roe of his diagnoses, medications, and sometimes even his experiences.[185]

114. Counsel reached out to jail's medical department on March 20th to ask them to check his blood pressure, to see if he needs to change his blood pressure medication, and ultimately to test him for COVID-19.[186] Counsel was told that he would be checked by an RN. A week later Counsel Ryon reached out continuing to express concern and asking for an update and did not receive a response. Finally, on April 10th, SCPDA Social worker Eric Johnsen was able to speak to jail staff about these medical concerns. He was told that Mr. Roe's blood pressure had stabilized and that he would not be tested for COVID19, noting that his housing placement in G3

[185] *Id.* at ¶ 14.
[186] *Id.* at ¶ 16.

(general population) indicated that no one considered him vulnerable.[187]

115. Counsel requested medical records which were not provided until today, April 17. Those records indicate that in fact, on March 20th Mr. Roe had been placed on **PRIORITY 1** blood pressure checks because of his high blood pressure and abnormally high heart. Despite repeated contacts to jail medical over concerns about Mr. Roe's condition, including on April 10th, the last time his blood pressure was tested was on April 5th. He remains absent from the jail's vulnerable inmates list.[188]

[187] *Id.* at ¶ 16-21.
[188] *Id.*

V. MEMORANDUM OF LAW

A. Petitioners Are Entitled to Challenge Their Unlawful Restraint Through a Writ of Habeas Corpus and under Title 16 of the Rules of Appellate Procedure.

1. The Writ of Habeas Corpus Protects Petitioners' Right to Challenge a Restraint of Liberty.

The right to challenge an unlawful detention by writ of habeas corpus in the Supreme Court is authorized by the Washington Constitution, Article IV, § 4, and by statute, RCW 7.36. All courts of record have original jurisdiction to hear writs of habeas corpus. *In re Olson*, 12 Wn. App. 682, 685, 531 P.2d 508, 511 (1975). The Supreme Court's original jurisdiction is nonexclusive and discretionary, and the Court may choose to grant writs of habeas corpus in cases involving interests of the state at large or the public interest, or where there is no other adequate remedy. *Ex parte Miller*, 129 Wash. 538, 540, 225 P. 429, 429, (modified sub nom. *In re Miller*, 131 Wash. 702, 231 P. 28 (1924)).

"Every person restrained of his liberty under any pretense whatsoever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal." RCW 7.36.010*; see also* RCW 7.36.120; *In re Becker*, 96 Wn. App. 902, 903-05, 982 P.2d 639 (1999). The habeas writ guarantees, among other things, the right to challenge a restraint imposed in violation of the accused's state and

federal constitutional rights. *In re Runyan*, 121 Wn.2d 432, 441-43, 853 P.2d 424 (1993) (legislature expanded the relief available in 1947); *Smith v. Whatcom County District Court*, 147 Wn.2d 98, 113, 52 P.3d 485 (2002) (citing RCW 7.36.140).

The writ of habeas corpus is an original proceeding, not a review of a lower court's ruling. The writ petition does not seek review, but rather sets forth allegations detailing the unlawfulness of the detention. RCW 7.36.030. "'Whatever its other functions, the great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention.'" *Toliver v. Olsen,* 109 Wn.2d 607, 610, 746 P.2d 809 (1987) (quoting *Walker v. Wainwright*, 390 U.S. 335, 336, 88 S.Ct. 962, 19 L. Ed. 2d 1215, (1968)). The writ of habeas corpus not only provides "a speedy device to test the constitutionality of detention, but also provides, "where necessary, 'an evidentiary hearing to resolve significant factual or legal issues.'" *In re Honore v. Bd. of Prison Terms & Parole*, 77 Wn.2d 660, 663-64, 466 P.2d 485 (1970); *see also Little v. Rhay*, 8 Wn. App. 725, 728, 509 P.2d 92 (1973).

2. Rule 16.4 Authorizes This Court to Release Petitioners and Others Who Are Unlawfully Restrained.

A personal restraint petition shall be granted where the petitioner's restraint is unlawful. RAP 16.4. Petitioners' restraint is unlawful because,

as set forth below, "the conditions or manner of the restraint are in violation of the Constitution of the United States or the Constitution or law of the State of Washington," RAP 16.4(c)(6) and "other grounds exist to challenge the legality of the restraint" of the Petitioners. RAP 16.4(c)(7).

The Petitioners here are inmates at the Snohomish County Jail and are unquestionably restrained. The petition herein alleges a deliberate indifference to their medical care and well-being at the Snohomish County jail and, if true, would constitute a restraint that is unlawful. *See* RAP 16.4(c)(6) (stating that the restraint is unlawful if the conditions of restraint violate the United States Constitution or the Constitution or laws of the State of Washington); *see also Farmer v. Brennan,* 511 U.S. 825, 828, 114 S. Ct. 1970, 128 L.Ed.2d 811 (1994) (wherein the United States Supreme Court found that a prison official's deliberate indifference to a substantial risk of serious harm to an inmate violates the Eighth Amendment).

Petitioners here are particularly vulnerable pretrial detainees at the Snohomish County jail who are reasonably concerned that the courts and other state actors are not doing enough to protect them. For this lack of protection, they are seeking rapid relief under the State and Federal constitutions. Petitioners here allege an unlawful restraint as part of a personal restraint petition. Accordingly, no showing of prejudice is required. All petitioners must establish is that they are under an unlawful

restraint as defined by RAP 16.4. *See In re Pers. Restraint of Stuhr*, 186 Wn.2d 49, 52, 375 P.3d 1031 (2016) (citing *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010)). Pursuant to RAP 16.4, the Court is to grant relief to a personal restraint petitioner if that petitioner is under restraint and said restraint is unlawful.

i. This Court has the authority to grant broader relief to all similarly situated individuals.

Washington's Constitution explicitly grants this Court the power to order release upon a petition brought "on behalf of any person held in actual custody."[189] (Emphasis added). RAP 16.6 reflects this authority.[190] Under the unprecedented circumstances presented here, any person with standing to bring a writ or PRP in their own name also has standing to seek relief on behalf of all other similarly situated people. Here, that class of individuals would include other individuals incarcerated at the Snohomish County jail who are medically vulnerable to COVID-19.

[189] "Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody." Wash Const. art. IV, § 4.

[190] RAP 16.6 states in relevant part: "The [personal restraint] petition may be brought by the person who is under a restraint or in the person's name by that person's guardian, conservator, parent, or attorney." This Court can "waive or alter the provisions of any of [the Rules of Appellate Procedure] in order to serve the ends of justice," to the extent that this or any other applicable PRP rule may limit the relief the Petitioners seek here. RAP 1.2; *see also State v. McClendon*, 131 Wn.2d 853, 858, 935 P.2d 1334 (1997) ("This Court's authority to make rules carries with it the inherent power to waive rules when justice requires it."); *O'Connor v. Matzdorff*, 76 Wn.2d 589, 597, 458 P.2d 154(1969) ("we have the inherent power to waive the requirements of our rules").

Furthermore, this Court has recognized:

> On occasion, this court has taken a less rigid and more liberal approach to standing when necessary to ensure that an issue of substantial public importance does not escape review. An issue is of substantial public importance when it immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally.[191]

Under the unprecedented circumstances presented here, any person with standing to bring a writ action or PRP in their own name, also has standing to seek relief on behalf of all other similarly situated people, because the release of any people from the jail will prevent the spread and circulation of the virus and therefore benefit every person within the community.

B. Petitioners Are Subject to Conditions That Represent Deliberate Indifference to Serious Medical Harm, and Which Constitute Impermissible Punishment.

1. The State's Failure to Provide Reasonable Safety to those Vulnerable to COVID-19 Violates Petitioners' Due Process Rights.

When the government incarcerates individuals, the United States Constitution requires that it assume some responsibility for their wellbeing and safety. *DeShaney v. Winnebago Cty. Dep't. of Soc. Servs*., 489 U.S. 189, 199-200, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989). The government

[191] *Washington State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 718, 445 P.3d 533 (2019) (internal citations and quotations omitted).

must provide food, shelter, clothing, and medical care to both criminal and civil detainees. *Youngberg v. Romeo*, 457 U.S. 307, 324, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982). "(I)t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (*quoting Spicer v. Williamson*, 191 N.C. 487, 490, 132 S.E. 291 (1926)). The fact of imprisonment does not extinguish one's right to personal security or to safe conditions. *Youngberg*, 457 U.S. at 315 (noting that this right which is guaranteed to those convicted of crimes must also be guaranteed for those who are held for purposes other than punishment, such as those involuntarily committed to mental institutions).

By virtue of their pre-trial detention, petitioners' claims are governed by the Fourteenth Amendments' due process jurisprudence rather than the Eighth Amendment. Because petitioners have not yet been convicted of a crime, they have more expansive rights than those who have; therefore, petitioners are entitled to more protections than even the Eighth Amendment guarantees. *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1415 (9th Cir. 1986) (citing *Estelle*, 429 U.S. at 106). Medical claims brought by prisoners are judged under a deliberate indifference standard under the Eighth Amendment. An official violates the Eighth Amendment when they "know of and disregard an excessive risk to inmate health or

safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1068 (9th Cir. 2016) (citing *Farmer v. Brennan*, 511 U.S. at 837). Notably, the Eighth Amendment's deliberate indifference standard provides a floor, not a ceiling, to the due process analysis required in this case. *See Maddox*, 792 F.2d at 1415;[192] *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983)[193] (*citing Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)).[194]

The Ninth Circuit recently extended an "objective indifference" standard to medical care claims brought by pre-trial detainees under the Fourteenth Amendment. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1120 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794, 202 L. Ed. 2d 571 (2019). In *Gordon*, the court interpreted the Supreme Court's recent holding in *Kinglsey,* which announced an objective

[192] In *Maddox*, the Court declined to determine what the precise standard is for pre-trial detainees, but approved jury instructions that enumerated a deliberate indifference standard *along with* a statement that due process would be violated if officers failed to take reasonable steps to secure medical care.

[193] In *City of Revere*, the Court noted that a person's due process right to medical care after being shot by police officer is at least as great as the Eighth Amendment protections available to a convicted prisoner.

[194] In *Hubbard v. Taylor*, the Third Circuit relied on *Bell*'s prohibition against punishing pretrial detainees and clarified that the eighth amendment and fourteenth amendment inquiries are not synonymous, and that the eighth amendment provides only the barest protections that pretrial detainees are entitled to for medical and nonmedical conditions issues. 399 F.3d 150, 166 (3d Cir. 2005).

standard for analyzing Fourteenth Amendment claim brought by a pre-trial detainee alleging excessive use of force by jail officers. *Gordon v. Cty. of Orange*, 888 F.3d 1118 (*citing Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015)). Shortly after *Kingsley*, the Ninth Circuit, *en banc*, extended this objective indifference standard to "failure to protect" claims brought by pretrial inmates under the Fourteenth Amendment. *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). This objective standard lies above 'negligence' but below subjective intent – akin to "reckless disregard." *Gordon v. Cty. of Orange*, 888 F.3d at 1125.

The United States Supreme Court recognized the right to seek relief for dangerous exposures to communicable diseases in *Helling v. McKinney*, 509 U.S. 25, 33, 113 S. Ct. 2475, 2480, 125 L. Ed. 2d 22 (1993) (determining whether inmate's claim that he had been involuntarily exposed to levels of second-hand smoke which posed an unreasonable risk of harm to his future health constituted a valid Eighth Amendment claim). The *Helling* court reiterated that the Eighth Amendment requires the government to provide "reasonable safety" which includes protection against **future** harm, noting that prison officials cannot be indifferent to inmates' exposure to a "serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms." *Helling*, 509

U.S. at 33. Prison officials' actions could constitute deliberate indifference to an inmate's current health problem when they "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." *Id.* If an inmate is subject to unsafe, life-threatening condition, the Eighth Amendment provides a remedy – the occurrence of a tragic event is *not* a prerequisite to bringing such a claim. *Id.* Again, the Eighth Amendment standards are a floor for acceptable standards and there can be even less tolerance of these risks when it comes to pretrial detention.

Courts have determined that prison conditions violate inmates' Eighth Amendment rights in far less extreme and perilous circumstances than those currently facing petitioners. *See, e.g., Johnson v. Epps*, 479 Fed App'x 583, 591 (5th Cir. 2012) (finding prisoner had pled colorable Eighth Amendment conditions claim where inmates required to use unsanitary hair-cutting and shaving materials and could spread communicable diseases); *Flanory v. Bonn*, 604 F.3d 249, 255–56 (6th Cir. 2010) (Eighth Amendment conditions claim established by long-term denial of toothpaste); *Board v. Farnham*, 394. F.3d 469, 481 (7th Cir. 2005); *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998); *Brown v. Mitchell*, 327 F. Supp. 2d 615, 631 (E. D. Va. 2004) (allowing Eighth Amendment claim to proceed to trial because "a reasonably jury could… conclude that the overcrowded, poorly ventilated,

and dilapidated conditions at the jail… deprived [plaintiff] of the need to be free from conditions likely to result in the spread of infectious disease.").

Washington law similarly guarantees the right to be free from unconstitutional conditions of confinement. "Washington courts have long recognized a jailer's special relationship with inmates, particularly the duty to ensure health, welfare, and safety." *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635, 244 P.3d 924 (2010) (plurality).[195] A jail, and by extension its staff, also have a duty "to protect an inmate from injury by third parties and jail employees." *Id.* at 645 (Madsen, C.J., concurring/dissenting). The special relationship between a jailer and inmates creates an *affirmative* obligation on the jailer that does not dissipate even when the inmate attempts to harm themselves or acts recklessly in regard to their health and wellbeing. *Id*. at 644.

The protections required under article 1, section 3 of the Washington Constitution must either be coextensive with or provide more protection than the Fourteenth Amendment. *See generally State v. Gunwall*, 106

[195] In *Kusah v. McCorkle*, 100 Wash. 318, 325, 170 P. 1023 (1918), over a hundred years ago, our Supreme Court acknowledged that a sheriff running a county jail "owes the direct duty to a prisoner in his custody to keep him in health and free from harm, and for any breach of such duty resulting in injury he is liable to the prisoner or, if he be dead, to those entitled to recover for his wrongful death." The source of this duty arises from the very lack of freedom of the prisoner: The duty owed "is a positive duty arising out of the special relationship that results when a custodian has complete control over a prisoner deprived of liberty." *Gregoire v. City of Oak Harbor*, 170 Wn.2d at 635 (plurality) (*quoting Shea v. City of Spokane*, 17 Wn. App. 236, 242, 562 P.2d 264 (1977), *aff'd*, 90 Wn.2d 43, 578 P.2d 42 (1978).

Wn.2d 54, 59, 720 P.2d 808, 811 (1986) (states are authorized to interpret their own constitutions that guarantee more individual liberties than the federal constitution, but not less). Federal due process protections provided in the pre-trial context are based off of Eighth Amendment protections; thus, in determining the due process guarantees under article I, section 3, this Court should note that Washington's constitutional prohibitions against cruel punishment, Article 1, section 14, provides even broader protections Washington's own constitutional prohibition against cruel punishment, Article I, § 14, provides even broader protections than the Eighth Amendment. *See State v. Gregory*, 192 Wn.2d 1, 14-17, 427 P.3d 621 (2018). Accordingly, it would, in fact, be unconstitutional for this Court to provide a remedy less than what the Eighth Amendment already guarantees.

In the 1970s and early 1980s, the failure of Washington to provide a safe and healthy environment in our prisons, particularly in the area of health and medical care, led first to prison unrest and then to extended litigation with federal court intervention. *See Hoptowit v. Ray*, 682 F.2d 1237, 1252-54 (9th Cir. 1982) (upholding finding that Washington State Penitentiary's medical care was so deficient it violated the Eighth Amendment). In the wake of this history, in 1989, the Legislature mandated that three people "in the custody of the department of correction receive such basic medical services as may be mandated by the federal Constitution

and the Constitution of the state of Washington." RCW 72.10.005. This duty to provide medical services is tied to the duty to prevent prison overcrowding. *See Hoptowit*, 682 F.2d at 1249 (overcrowding "may dilute other constitutionally required services such that they fall below the minimum Eighth Amendment standards, and it may reach a level at which the shelter of the inmates is unfit for human habitation.").

Where conditions of confinement violate the Eighth Amendment or other constitutional rights by posing an unreasonable risk to health and safety, courts have ordered the release of individuals as a remedy. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493, 511, 131 S. Ct. 1910, 1928, 179 L. Ed. 2d 969 (2011) (a prison that cannot provide adequate medical care is incompatible with protections of human dignity, concluding that mandated reduction of California prison population was warranted as a remedy); *see also Duran v. Elrod*, 713 F.2d 292, 297-98 (7th Cir. 1983) (court has authority to release low-bond pretrial detainees to make sure jail was not overcrowded in compliance with a consent decree); *Inmates of the Allegheny Cty. Jail v. Wecht*, 565 F. Supp. 1278, 1293-94 (W.D. Pa. 1983) (discussing cases where courts have ordered reductions in population in jails and prisons and ordering a reduction in jail population).

The United States Supreme Court has recognized that the risk of contracting a communicable disease constitutes an "unsafe, life-threatening

condition" that threatens "reasonable safety." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). The risks of COVID-19 are now well known and have been known for at least the past two months. The World Health Organization declared COVID-19 a pandemic on March 11, and Washington's Governor began issuing emergency orders shortly thereafter as an attempt to stop its spread. Media outlets have widely publicized information from public health experts and medical professionals about symptoms, risks, categories of vulnerable people (including those incarcerated in jails and prisons), and have outlined the drastic and necessary measures that everyone needs to be taking to protect themselves and the people around them. Life as we know it changed almost overnight.

Snohomish County was no exception. Early on, criminal justice stakeholders worked together to try to mitigate the risks of the virus to its citizens. The Snohomish County Superior Court issued an Emergency Order cancelling nearly all non-emergency out of custody court hearings and suspending speedy trial rights. Public defenders and private defense attorneys worked tirelessly to get their clients released in order to decrease the jail's population – largely with success. It would be disingenuous to deny the progress that has been made, which appears to exceed other Washington jurisdictions where jail populations have not decreased as

dramatically.[196] Despite these gains, there are shortcoming and gaps that continue to present a serious risk of harm to petitioners and other medically vulnerable individuals. This cannot be ignored.

Public health recommendations are still not being followed at the Snohomish County jail. The experts agree: Screening individuals for fevers and symptoms is not sufficient. Depopulating the jail will not be enough. Because asymptomatic individuals may carry and transmit the virus, every single person coming into the jail needs to have a confirmed "negative" test for COVID-19 before entering the jail, and they need to continue to be tested regularly. Individuals need to be strictly isolated for fourteen days upon entry into the jail unless and until they receive a "negative" result. Social distancing needs to be strictly enforced.

Stringent hygiene and cleaning measures need to be followed, and proper protective equipment needs to be given to everyone, *not just jail staff.* The fact that staff are given significant amounts of protective equipment while working at the jail is proof that the jail appreciates the high risk of infection at the jail. The fact that they are not giving the inmates the same level of protective equipment concretely establishes that they are

[196] For example, the King County Jail's adult inmate population has only decreased from 1,899 to 1,279 in the past month (https://www.kingcounty.gov/depts/jails/covid-updates.aspx) and Spokane County's jail population which has only decreased by one third (https://www.spokesman.com/stories/2020/mar/27/spokane-county-jail-population-plunges-during-pand/).

knowingly turning a blind eye to this risk of infection when it comes to inmates. Protecting staff to a higher degree than inmates is the definition of reckless or deliberate indifference.

The jail must allow inmates to avail themselves of the same protections guaranteed to staff. Inmates should not be threatened with sanctions for creating their own makeshift masks when the jail is not providing adequate PPE. The jail should not be threatening sanctions on inmates who call for a grievance when the jail is not protecting them. It cannot be overstated that each inmate is at the mercy of those around them - whom they have not chosen to be with – to protect themselves and each other. Those of us who are not incarcerated are able to choose those with whom we come into contact and can make informed choices about the circumstances of those contacts. Incarcerated people do not. If the jail does not have the resources or ability to guarantee that all public health recommendations are followed, every single inmate and staff member's life is at risk. These recommendations are well known, and many of them cannot be or are not being followed.

Chief Kane has boldly asserted,"[we] can say with confidence, that no inmate, employee, or professional visitor has contracted COVID-19 in

our facility."[197] Given what we know about asymptomatic transmission, the lengthy incubation period, the unfettered jail churn and a lack of testing available at the jail, such a promise is simply not possible to make.[198] This attitude represents a fundamental misunderstanding of the science, and therefore an unwillingness to protect inmates under his care from existing known risks.. This represents indifference not only to the inmates the jail has a duty to protect, but to all who come into contact with them (court staff, attorneys, jail staff, and the community which will receive them after their release from jail).

The State is aware of a substantial risk of serious harm to petitioners and similarly situated individuals due to the COVID-19 outbreak. It has failed to take effective action to mitigate the risk of serious harm. The steps the jail *has* taken to try to manage the risk of COVID-19 transmission will not be sufficient because as pleaded above, the definitional elements of a jail are incongruous with the necessary public health mandates. Continuing to incarcerate people who are especially vulnerable to a deadly pandemic in

[197] Email from Chief Kane, Apr. 14, 2020, attached as Exhibit P.

[198] *See generally, "*Silent Carriers: Of 259 inmate COVID-19 cases, 98% in NC prison showing no symptoms" (available at: https://www.wral.com/covid-19-outbreak-at-north-carolina-prison-grows-to-150/19060704/) (confirming that widespread testing is needed to indicate how deeply this virus has penetrated society and further confirming that many coronavirus carriers are asymptomatic and likely walking around unaware of their infection, thus making it impossible for Kane to assert that he is confident that no one at the jail has contracted the virus in their facility or that no one currently has it without widespread testing capabilities)

a facility where the only known steps to prevent transmission are virtually impossible, constitutes deliberate indifference to serious medical harm in violation of the United States and Washington state constitutions. The State has failed to protect the life, health, and safety of petitioners during the state of emergency due to the COVID-19 outbreak. This failure to provide reasonable safety violates Article I, section 3 of the Washington State Constitution and the Fourteenth Amendment to the U.S. Constitution.

2. ***Petitioners' Incarceration During the Global Pandemic Constitutes Impermissible Punishment under the Due Process Clause.***

An individual may not be "punished" prior to an adjudication of guilt in accordance with due process of law. *Bell v. Wolfish*, 441 U.S. 520, 535–36, 99 S. Ct. 1861, 1872, 60 L. Ed. 2d 447 (1979) (*citing Ingraham v. Wright*, 430 U.S. 651, 671-672 n. 40, 674, 97 S. Ct. 1401, 1412-1413 n. 40, 1414, 51 L. Ed. 2d 711 (1977)). The Due Process clause prohibits imposing restrictions and conditions during pretrial detention that amount to "punishment" in the constitutional sense. *State v. Hartzog*, 96 Wash. 2d 383, 393, 635 P.2d 694 (1981) (*citing Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S. Ct. 554, 567-68, 9 L. Ed. 2d 644 (1963)). Thus, the restrictions **and conditions** placed upon a pretrial detainee must be reasonably related to a legitimate government interest, otherwise they are considered impermissible "punishment." *Bell v. Wolfish*, 441 U.S. at 539.

If a restriction or condition is arbitrary, or unrelated to the government's interest, it may be inferred that the action is unconstitutional "punishment." *Id.*

Because petitioners have not yet been convicted of the crimes for which they are held, they may not be punished. This means that the conditions of their confinement must further a government interest. Undoubtedly, the state has an interest in managing the jail facility, maintaining security and order, and preventing the introduction of drugs or weapons. *See Bell v. Wolfish,* 441 U.S. at 540. But it is unclear how any of the problematic conditions described above – failing to enforce social distancing, requiring inmates to share inhalers, denying the use of necessary medical gear, failing to conduct adequate testing, further any of those interests.

The government has made clear that its preeminent interest is the containment and combat of the deadly COVID-19 virus. This is evidenced by the emergency proclamations, orders, and significant restrictions on life, association, and travel that have been imposed on its citizens. The conditions imposed on petitioners as described above, not only fail to advance that government interest, but thwart it – not only for the community at large, but as to petitioners individually. These conditions place petitioners at greater risk of contracting the virus and becoming seriously ill, which may have life or death consequences. Because of that, this Court can infer

that the conditions and restrictions placed on petitioners are "punishments" in violation of the due process clause.

C. Petitioners' Detention Violates their Constitutional Right to Liberty When the Detention Itself Contributes to an Ongoing Public Health Crisis.

While the Snohomish County jail is responsible for the conditions of petitioners' incarceration, it cannot be ignored that Petitioners are incarcerated not because of the jail, but because of a detention order issued by a judicial officer. In addition to the conditions-related claims, Petitioners also allege that they are illegally detained because the order setting bail in each of their cases is unconstitutional.

A defendant's liberty interest is a fundamental right that may not be abridged absent strong procedural safeguards. *See* US Const. Amend V, XIV; *United States v. Salerno*, 481 U.S. 739, 750, 107 S. Ct. 2095, 95 L.Ed.2d 697 (1987). The restriction of fundamental rights triggers a strict scrutiny test—they can only be abridged if it furthers a compelling state interests and is narrowly drawn to serve those interests. *Westerman v. Cary*, 125 Wash. 2d 277, 292, 892 P.2d 1067, 1076 (1994); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

The government's interest in defendants' pretrial detention is based in its interest in bringing accused persons to trial and protecting the public from them if they demonstrate such a threat. *Weiss v. Thompson*, 120 Wn.

App. 402, 412, 85 P.3d 944, 949 (2004) (citing *Salerno*, 481 U.S. at 749–50. To determine whether petitioners' substantive due process rights have been violated by a pretrial detention order, one must balance their liberty interest against the State's asserted reasons for restraining individual liberty. *Id; Youngberg v. Romeo*, 457 U.S. 307, 321, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982) (quoting *Poe v. Ullman*, 367 U.S. 497, 542, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961) (Harlan J. dissenting)).

Any order resulting in pretrial detention must satisfy heightened scrutiny – the government must establish that detention is the least restrictive means of achieving a compelling interest. Here, petitioners are held in custody on bail for which they are too poor to pay.[199] Their right to

[199] The Eighth Amendment to the U.S. Constitution begins with the guarantee that "[e]xcessive bail shall not be required." Article 1, section 14 of the Washington State Constitution begins with the same promise, stating in full that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted." Article 1, section 20 of the Washington State Constitution creates a right to bail except in capital cases. As the United States Supreme Court has explained, the right to pre-trial release is tantamount to the presumption of innocence: "Unless this right to bail before trial is preserved, the presumption of innocence . . . would lose its meaning." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Unattainable money bail is pretrial detention. "Intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether." *State v. Brown*, 338 P.3d 1276, 1292 (N.M. 2014); see also *Brangan v. Commonwealth*, 80 N.E.3d 949, 963 (Mass. 2017) (unattainable money bail is "the functional equivalent of an order for pretrial detention"); *ODonnell v. Harris Cty*., 892 F.3d 147, 158 (5th Cir. 2018) ("magistrates may not impose a secured bail solely for the purpose of detaining the accused. And, when the accused is indigent, setting a secured bail will, in most cases, have the same effect as a detention order"); *United States v. Leathers*, 412 F.2d 169, 171 (D.C. Cir. 1969) (setting an unreachable bond "serve[s] as a thinly veiled cloak for preventive detention").

Further, the Equal Protection Clause prohibits the government from jailing a person solely because of poverty. See US Const. Amend V, XIV; *Bearden v. Georgia*, 461 U.S. 600, 665 (1983). The unattainable money bond violates equal protection because a similarly situated person could purchase his freedom while the defendant remains incarcerated solely due to inability to pay. See *State v. Brown*, 338 P.3d 1276, 1285, 1292

pretrial liberty is balanced against the government's interests. But during an extraordinary time of global pandemic, when court hearings are cancelled and speedy trial rights are suspended, the government's interest in detaining petitioners pretrial is substantially diminished. The government's interest in detaining an individual in order to bring them to a future trial is non-existent when defendants' right to a jury trial is suspended for what appears to be an indefinite period of time. Likewise, the government does not have an unfettered interest in detaining a defendant for community safety when a defendant has not been convicted of a crime.

Further, we know that jails and prisons create a hotbed for disease contagion to be spread to the community. The government's interest in pretrial detention is diminished even more when incarceration itself creates the very risk to public health. Likewise, petitioners' interest in pretrial liberty is amplified where liberty itself may be lifesaving.

Where poor persons continue to be detained in the face of a public health crisis, the ongoing detention only causes to further the poor's risk of exposure and spread of the disease, thereby exasperating the due process and equal protection consequence of this pretrial incarceration. Therefore,

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(N.M. 2014) ("Those who can afford the price are released; those who cannot remain in jail…The requirement that virtually every defendant must post bail causes discrimination against defendants who are poor.") (quoting Wayne H. Thomas, Jr., Bail Reform in America 11, 19 (1976)).

the imposition of the monetary bond in this circumstance violates the Due Process Clauses of the state and federal constitutions.

This right to liberty is already embedded in CrR 3.2, which guarantees a presumption of release to Petitioners. Therefore, the relief requested here is not extraordinary – it merely restores the presumption that is already contemplated by the rule.

D. Petitioners Request that this Court Order Their Release Until the End of the COVID-19 Pandemic and Their Safety Can be Guaranteed.

If proven, the claims by Petitioners here would unquestionably demand immediate release. However, Petitioners are medically vulnerable pretrial inmates currently housed in a concrete COVID-19 incubator (the Snohomish County Jail). With each day that goes by, they risk infection of COVID-19 and potentially death. Time is of the essence. Luckily, the Rules of Appellate Procedure contemplate such a scenario and provide an intermediate remedy.

Pursuant to RAP 16.15(b), this Court may release a petitioner on bail or personal recognizance before deciding the petition, if release prevents further unlawful confinement and it is unjust to delay the petitioner's release until the petition is determined. If medically vulnerable pretrial detainees during a highly deadly and infectious global pandemic doesn't meet criteria for utilization of this remedy, it is hard to imagine what does.

Accordingly, petitioners ask this Honorable Court to invoke its authority under RAP 16.15(b) to immediately release them on their personal recognizance while the claims contained herein are fully litigated. Given the emergency nature of this request, it is further respectfully requested that this Court decide this motion on an expedited basis, pursuant to its authority under RAP 17.4(b). Ultimately, petitioners request that this Court grant this petition on its merits and order the continued release of petitioners until the COVID-19 pandemic is abated and their safety can be assured at the jail.

VI. DEMAND FOR JUDGMENT

Violation of U.S. Const., 14th Am. & Wash. Const. Article 1, § 3 – Failure to Provide Reasonable Safety

The State has a responsibility to provide for the health, welfare and safety of people in their custody. The State is aware of the substantial risk of serious harm to Petitioners due to the COVID-19 pandemic. The State has failed to take action effective to mitigate the risk of serious harm to petitioners and other medically vulnerable inmates.

Violation of U.S. Const., 14th Am. & Wash. Const. Article 1, § 3 – Impermissible Punishment

Petitioners are pre-trial detainees who may not be "punished" through their incarceration. The restrictions and conditions of confinement are

considered punishment unless they are reasonably related to a legitimate government interest. Petitioners' incarceration here undermines the State's interest in containing and combatting the COVID-19 pandemic in the local community. Therefore, Petitioners' incarceration constitutes impermissible punishment.

Violation of the U.S. Const. 8th Am., 14th Am. & Wash. Const. Art. 1 § 3, § 14 – Unlawful Orders of Detention

Petitioners' pretrial liberty may be restricted only if the restriction is narrowly tailored to serve a compelling state interest. The government's interest in Petitioners' pretrial detention is diminished when, as here, detention itself contributes to an ongoing public health crisis. The state's interest in ensuring appearance in court is further diminished by the current orders in place suspending speedy trial and most other court hearings. Therefore, the imposition of bail on Petitioners during this pandemic is unconstitutional.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court grant this petition under the Due Process Clauses of the United States and Washington State Constitutions, and:

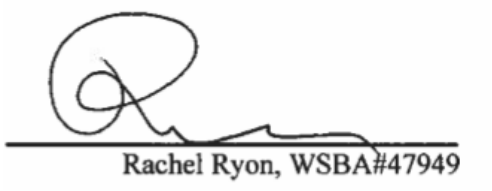
(1) Order petitioners' immediate release pending a determination on the merits;

(2) Grant an expedited briefing schedule given the time-sensitive and urgent nature of the issue;

(3) Ultimately order petitioners' release until the end of the COVID-19 pandemic when their safety can be guaranteed; and

(4) Extend the above relief to all similarly situated inmates at the Snohomish County jail.

Respectfully submitted this 20th day of April, 2020



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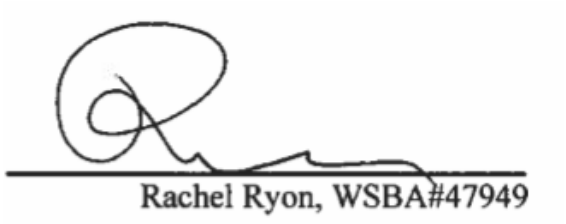
Stephen Ritchie, WSBA No. 50400

VIII. OATH OF ATTORNEY

We declare under penalty of perjury under the laws of the State of Washington that we are the attorneys for the Petitioners, that we have read the petition, know its contents, and believe the petition is true.

Signed this 20 day of April, 2020 in Everett, Washington



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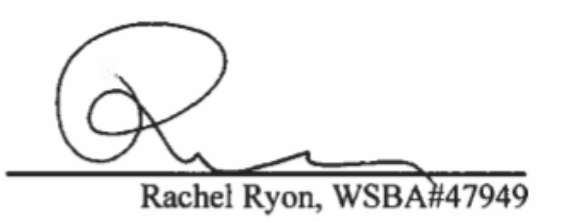
Stephen Ritchie, WSBA No. 50400

DECLARATION OF SERVICE

We declare under penalty of perjury under the laws of the State of Washington, that on April 20, 2020, the forgoing document was electronically filed with the Washington State Appellate Court Portal, which will effect service of such filing on all attorneys of record.

Signed in Everett, Washington, this 20 day of April, 2020.



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