IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TROY WRAGG, MICHAEL SCRONIC, LEONARD BOGDAN, and ELIEZER SOTO-CONCEPCION, individually and on behalf of all others similarly situated,

Petitioners,

v.

DAVID E. ORTIZ, in his capacity as Warden of the Federal Correctional Institution, Fort Dix, and MICHAEL CARVAJAL, in his capacity as Director of the Bureau of Prisons,

Respondents.

Case No. _____ cv _____

COMPLAINT—CLASS ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. On April 11, Warden David Ortiz warned prisoners at the Federal Correctional Institution at Fort Dix, "social distancing is not possible in this environment." Just days earlier, the Federal Bureau of Prisons had reported that the first prisoner at Fort Dix had tested positive for COVID-19. Today, it reports 40.

2. Around the world, life has changed nearly overnight, as people and governments battle to slow the spread of COVID-19. In New Jersey, the second-hardest hit state in the United States, residents hear news from hospitals and nursing homes and understand the terrible toll the virus inflicts upon any population where it spreads unchecked: rampant illness and death, especially for people who are medically vulnerable because of their age or underlying health conditions. They understand that halting the spread of COVID-19 requires rigorous hand-washing,

personal protective equipment, and "social distancing" – the maintenance of a measurable distance between people that the virus cannot bridge.

3. At Fort Dix, almost 3,000 prisoners hear the same news and understand the same requirements. Yet they are unable to protect themselves the way others outside the prison can. Most of them live in 12-person rooms in buildings that house 200 to 300 people, spending their days crowded into the same TV rooms, phone booths, bathrooms, and mealtime pickup lines. Approximately 230 of them live in Fort Dix's minimum-security satellite camp in large dorms with rows of bunks less than three feet apart. With nowhere else to go, many spend their days under their covers, quite literally hiding from the virus. Even then, most are still within arm's reach of other people in the bunk above or below them, and the beds to the left and the right. The impossibility of social distancing is not just a warden's warning, it is simply a fact.

4. Respondents have compounded the risk to people incarcerated in Fort Dix by, until recently, refusing to test, medically isolate, or quarantine the overwhelming majority of Fort Dix prisoners, and by contravening the guidance of Attorney General William Barr to immediately transfer medically "at-risk" prisoners to home confinement. Respondents' failure to take appropriate and necessary action while a COVID-19 infection spreads through the prison is the kind of indifference proscribed by the Eighth Amendment.

5. Without significant changes, Fort Dix is speeding towards a catastrophe. As Dr. Joe Goldenson, a physician with decades of experience in correctional health, cautions: "It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as Fort Dix." [1] The only way of stopping the exponential spread of COVID-19 at Fort Dix, and the

[1] Ex. 1, Declaration of Joe Goldenson ("Goldenson Decl.") ¶ 32.

serious illness and death of prisoners and BOP staff, is by significantly reducing the population density and rigorously adopting the Centers for Disease Control Guidance regarding testing, medical isolation, quarantine, and social distancing for those who remain, to ensure constitutionally-compliant custody.[2]

6. For the 3,000 prisoners at Fort Dix, and especially for those who are medically vulnerable, every day brings increasing panic and increasing risk of serious illness or death. This petition may be their last chance before a COVID-19 catastrophe overwhelms the prison. Accordingly, Petitioners Troy Wragg, Michael Scronic, Leonard Bogdan, and Eliezer Soto-Concepcion, on behalf of themselves and a class of all medically vulnerable persons incarcerated at Fort Dix now and in the future, bring this action for declaratory and injunctive relief, for enlargement of custody, and ultimately, if they cannot be held in constitutional custody, for release.

PARTIES

7. Petitioner Troy Wragg, BOP Register Number 67165-019, is 38 years old and classified by the BOP as a "chronic care inmate." He has a chronic autoimmune neuromuscular disease and a history of severe epilepsy, hypertension, and severe heart disease, including a history of heart attack. He sleeps on the bottom bunk of a 430-square-foot 12-man room, in which 6 bunk beds, 12 lockers, and a small table are crammed. He shares TV rooms, computers, phones, bathrooms, and mealtimes with 250 to 300 other men in his building in the west compound of Fort Dix's main facility. In the past two weeks, he has watched staff remove a man from the TV room who complained of chest pain and shortness of breath, seen medics rushing in and out of the building in which sick people are housed, and witnessed sick men pounding on windows in that

[2] *See id.* at ¶ 39.

building. Petitioner Wragg has no prior convictions and is serving a sentence for financial crimes. He is medically vulnerable to COVID-19 and has one or more disabilities recognized by the Rehabilitation Act. If his custody were enlarged to include home confinement or if he were released, he would live with his wife in Maryland, where he could safely socially distance and has a team of doctors familiar with his chronic medical conditions.[3]

8. Petitioner Michael Scronic, BOP Register Number 79605-054, is 48 years old and has a history of abnormal heart symptoms, severe childhood asthma, and skin cancer. He is housed at the "Camp"—Fort Dix's minimum-security satellite facility—in a dorm-style room with, until recently, approximately 140 people. Over the last month and a half, he has watched people cough, vomit, collapse, sweat feverishly, and complain of other COVID-19-related symptoms. A number of people he has lived with have now tested positive for COVID-19. Petitioner Scronic is serving an eight-year sentence for financial crimes, his first offense. He is medically vulnerable to COVID-19 and has one or more disabilities recognized by the Rehabilitation Act. If his custody were enlarged to include home confinement or if he were released, he would live with his sister and her two children in New York where he could safely socially distance and where he has an existing team of doctors.[4]

9. Petitioner Leonard Bogdan, BOP Register Number 07918-088, is 68 years old and is classified by the BOP as a "chronic care inmate." He has a heart condition, hypertension, high cholesterol, skin cancer, a potentially cancerous thyroid nodule that causes rapid heartbeat, and severe scoliosis that has displaced his kidneys and presses on his lungs causing chronic shortness

[3] *See generally*, Ex. 4, Declaration of Troy Wragg ("Wragg Decl.").
[4] *See generally*, Ex. 5, Declaration of Michael Scronic ("Scronic Decl.").

of breath. He is housed in an honor unit in the Fort Dix main facility's west compound. He comes into contact with hundreds of other people in his building each day, including through shared TV rooms, phones, computers, bathrooms, and mealtimes in which 230 people go to and from the dining hall to pick up food together. At least three people in his building have exhibited some symptoms of COVID-19 over the past month and a half. Petitioner Bogdan has already served a substantial share of his sentence for financial crimes. He has no prior offenses. He is medically vulnerable to COVID-19 and has one or more disabilities recognized by the Rehabilitation Act. If his custody were enlarged to include home confinement or if he were released, he would live with his wife in West Virginia, where he could safely socially distance.[5]

10. Petitioner Eliezer Soto-Concepcion, BOP Register Number 72850-067, is 38 years old and has high blood pressure, a history of heart attacks, and a nervous system condition that makes his hands shake. He lives in the Camp. For weeks, people around him have been exhibiting symptoms of COVID-19, and recently many of his friends tested positive. Petitioner Soto-Concepcion is serving a 12-year sentence for conspiracy to distribute and possession with intent to distribute controlled substances and has no prior convictions. He is medically vulnerable to COVID-19 and has one or more disabilities recognized by the Rehabilitation Act. If his custody were enlarged to include home confinement or if he were released, he would live with his grandmother in Puerto Rico, where he could safely socially distance.[6]

11. Respondent David E. Ortiz is the Warden at Fort Dix. As Warden, Respondent Ortiz is responsible for and oversees all day-to-day activity at Fort Dix. He is in charge of all

[5] *See generally*, Ex. 6, Declaration of Leonard Bogdan ("Bogdan Decl.").
[6] *See generally*, Ex. 7, Declaration of Eliezer Soto-Concepcion ("Soto-Concepcion Decl.").

aspects of the operations and functions of Fort Dix. His responsibilities include ensuring the safety of all in the institution and ensuring that the institution operates in an orderly fashion. Respondent Ortiz is aware of and has adopted and enforced policies that leave Petitioners and all those similarly situated exposed to infection, severe illness, and death due to COVID-19. Respondent Ortiz has also declined to release people who qualify under BOP and Department of Justice guidance despite having the authority to do so. Respondent Ortiz is the immediate and physical custodian responsible for the detention of the Petitioners. He is sued in his official capacity only.

12. Respondent Michael Carvajal is the Director of the Federal Bureau of Prisons. As Director, Respondent Carvajal is responsible for all BOP policies implemented at Fort Dix, including those pertaining to resource distribution and factors that BOP facility leadership should consider in determining an incarcerated individual's eligibility for early release. His responsibilities include ensuring the safety of all in the BOP system and ensuring that institutions operate in an orderly fashion. Respondent Carvajal is aware of and has adopted and enforced policies that leave Petitioners and all those similarly situated exposed to infection, severe illness, and death due to COVID-19. He is sued in his official capacity only.

JURISDICTION AND VENUE

13. The Petitioners bring this action pursuant to 28 U.S.C. § 2241 for release from custody that violates the Eighth Amendments to the U.S. Constitution, and pursuant to 28 U.S.C. § 1331 for relief from conditions of confinement that are in violation of the Eighth Amendment and the Rehabilitation Act, 29 U.S.C. § 794.

14. The Court has subject-matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (habeas corpus). In addition, the Court has

jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

15. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to these claims occurred and continues to occur in this district.

16. This Court has personal jurisdiction over Respondents because at all times relevant to this action Respondent Ortiz has been employed at Fort Dix in Burlington County, New Jersey, and all the actions and omissions at issue occurred at Fort Dix. Respondent Carvajal has set policies and issued guidance that Respondent Ortiz has applied at Fort Dix in Burlington County, New Jersey.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Petitioner Wragg made three applications for Compassionate Release and/or Home Confinement to Respondent Ortiz. On April 24, he received a letter from Respondent Ortiz denying them.

18. Petitioner Bogdan applied for Compassionate Release from Respondent Ortiz and was denied. He appealed the denial administratively to the BOP Regional Office and received an ultimate denial from Washington, D.C. He has not sought judicial review of the denial. On April 20, 2020, Petitioner Bogdan was also informed in writing by his case manager that he was denied release on Home Confinement.

19. Petitioner Scronic applied for Compassionate Release from Respondent Ortiz on April 6 and/or April 9. Petitioner Soto-Concepcion applied for Compassionate Release from Respondent Ortiz in mid-April. Neither has received a response.

20. All Named Petitioners have exhausted the administrative remedies available to them. To the extent they are deemed not to have exhausted, Petitioners are all excused from 28 U.S.C. § 2241's exhaustion requirement. The exhaustion requirement does not apply when the petitioner is likely to suffer an irreparable injury without immediate judicial relief or where the administrative remedy would be futile. Here, both exceptions are met. *See Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 239 n.2 (3d Cir. 2005) (noting that a petitioner's failure to exhaust will be excused where exhaustion would be futile); *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (noting that "[e]xhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury"); *United States v. Colvin*, No. 3:19-CR-179, 2020 WL 1613943, at *2 (D. Conn. Apr. 2, 2020) (finding that petitioner seeking compassionate release relating to COVID-19 exhausted administrative remedies where exhaustion would be futile, the administrative process would be incapable of granting adequate relief, and pursuing agency review would subject petitioner to undue prejudice).

21. Here, exhaustion is excused because no matter how quickly Petitioners pursue additional administrative process beyond what they already have, the harm they suffer while waiting for exhaustion is irreparable. The densely populated conditions and facility design at Fort Dix expose Petitioners, each of whom has medical conditions that make him more susceptible to severe illness and death from COVID-19, to heightened risk of exposure to the disease, in violation of their constitutional rights. Such constitutional injury is irreparable. As a practical matter, Petitioners cannot meaningfully engage in any administrative-remedy process quickly enough to protect them from the risk of contracting COVID-19 from the people in the facility who have already contracted the virus and the catastrophic health consequences such infection would cause.

Petitioners thus will remain exposed to irreparable injury if they do not receive immediate judicial relief.

22. Independently, exhaustion is futile because Respondents cannot or will not provide the relief requested in this petition. The only administrative process even ostensibly available to Petitioners here is the BOP's Administrative Remedy Program (ARP). However, ARP is a lengthy process that does not provide the requested relief of enlargement of custody or, ultimately, release. It would have been futile for Petitioners to engage in ARP in advance of this case.

23. In sum, the extraordinary circumstances of an existing COVID-19 outbreak already at Fort Dix—especially the risk it poses to medically vulnerable individuals housed there such as Petitioners—render further exhaustion a total barrier to any effective relief. For each of these independent reasons, to whatever extent Petitioners are deemed not to have exhausted by virtue of their compassionate release and/or home confinement applications, Petitioners are excused from the requirement of exhausting administrative remedies.

FACTUAL ALLEGATIONS

I. The COVID-19 Crisis

24. The novel coronavirus that causes COVID-19 has led to a global pandemic. As of May 4, 2020, worldwide there are over 3 million reported COVID-19 cases and 238,730 confirmed deaths.[7] In the United States, the case count stands at 1,122,486 and the death count at 65,735.[8]

[7] World Health Org., *Coronavirus disease (COVID-19) Pandemic*, https://www.who.int/emergencies/diseases/novel-coronavirus-2019 (last accessed May 4, 2020).
[8] Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last accessed May 4, 2020).

25. New Jersey has been at the epicenter of the pandemic, ranking second in the United States in the number of people reported to have tested positive with the coronavirus, and in the number of people who have died. Its case count as of May 4 is 126,744, including 3,043 in Burlington County. The death count in New Jersey is 7,871, including 149 in Burlington County.[9]

26. In addition to the 3,043 confirmed cases of COVID-19 reported in Burlington County, neighboring New Jersey counties (Atlantic, Camden, Mercer, Monmouth, and Ocean City) reporting another 22,713 confirmed cases, combined.[10] Approximately 20.3 percent of the 126,744 confirmed COVID-19 cases in New Jersey are in Burlington and its neighboring counties.[11] Moreover, Burlington's two neighboring Pennsylvania counties (Philadelphia County and Bucks County) report 13,179 and 3,286 confirmed cases, respectively.[12]

27. The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.[13] Infected people can spread the virus to others even if they are asymptomatic, such that simply avoiding people who are coughing or visibly feverish is insufficient.

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[9] New Jersey COVID-19 Dashboard, https://covid19.nj.gov/#live-updates (last accessed May 4, 2020).
[10] *Id.*
[11] *Id.*
[12] Pa. Dep't of Health, *COVID-19 Cases in Pennsylvania*, https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx (last accessed May 4, 2020).
[13] *See* Goldenson Decl. ¶ 13; *see also* Ex. 2, Declaration of Nina Fefferman ("Fefferman Decl.") ¶ 4 (noting that COVID-19 infection spreads exponentially because the virus transmits very easily).

28. According to the CDC, people who suffer from certain underlying medical conditions, many of which qualify as disabilities under the Rehabilitation Act, face elevated risk.[14] Such conditions include chronic lung disease, moderate to severe asthma, serious heart conditions, hypertension, high blood pressure, chronic kidney disease, liver disease, diabetes, compromised immune systems (such as from cancer treatment, HIV, autoimmune disease, or use of immunosuppressing medication for other conditions), and severe obesity.[15] One analysis found mortality rates of 13.2% for patients with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.[16]

29. In many people, COVID-19 causes fever, cough, and shortness of breath. But for people over the age of fifty or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe. Most people in higher-risk categories who develop serious illness will need advanced support. This level of supportive care requires highly specialized equipment that is in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive-care physicians.[17]

30. In patients who do not die, COVID-19 can severely damage lung tissue, requiring an extensive period of rehabilitation, and in some cases, can cause a permanent loss of respiratory capacity. COVID-19 may also target the heart muscle, causing a medical condition called

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[14] CDC, *Groups at Higher Risk for Severe Illness*, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html (last accessed Apr. 29, 2020).
[15] *Id*.
[16] World Health Org., *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12 (Feb. 28, 2020), https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf; *see also* Fefferman Decl. ¶ 7.
[17] *See* Fefferman Decl. ¶ 9 (noting that 30% of patients who develop severe symptoms require intensive care to survive).

myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work.[18]

31. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days.[19]

32. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.[20]

33. The estimated fatality rate associated with COVID-19 has been estimated to range from 0.1 to 3.5 percent, meaning COVID-19 may be as much as 35 times more fatal than seasonal influenza.[21] Although many people who contract COVID-19 will exhibit relatively mild

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[18] Cynthia Weiss, How does COVID-19 affect the heart?, Mayo Clinic News Network (Apr. 3, 2020), https://newsnetwork.mayoclinic.org/discussion/how-does-covid-19-affect-the-heart/.
[19] Lenny Bernstein et al., *Coronavirus destroys lungs. But doctors are finding its damage in kidneys, hearts and elsewhere*, Wash. Post (Apr. 15, 2020), https://www.washingtonpost.com/health/coronavirus-destroys-lungs-but-doctors-are-finding-its-damage-in-kidneys-hearts-and-elsewhere/2020/04/14/7ff71ee0-7db1-11ea-a3ee-13e1ae0a3571_story.html; Aria Bendix, A Day-By-Day Breakdown of Coronavirus Symptoms Shows How the Disease COVID-19 Goes from Bad to Worse, Business Insider (Mar. 31, 2020), https://www.businessinsider.com/coronavirus-covid19-day-by-day-symptoms-patients-2020-2.
[20] *See* Fefferman Decl. ¶ 23.
[21] Goldenson Decl. ¶ 8.

symptoms, the virus will manifest in some 20 percent of cases as a "more severe disease requiring medical intervention and support."[22]

34. There is no vaccine against COVID-19 and there is no known medication to prevent or treat infection from COVID-19. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including frequently and thoroughly washing hands with soap and water and cleaning and disinfecting high-touch surfaces, are the only known effective measures for protecting people from COVID-19.[23] This is especially significant because the virus can spread through people who appear asymptomatic.[24]

35. State and local officials have been taking aggressive action in New Jersey. On March 9, in response to then-emerging coronavirus outbreak, Governor Murphy signed Executive Order No. 103 declaring a State of Emergency and a Public Health Emergency in New Jersey,[25] doing so even before the President had declared a national emergency.[26] A week later, on March 16, Governor Murphy issued Executive Order No. 104, which limited gatherings to a maximum of 50 people; closed schools, casinos, movie theaters, gyms, and dine-in restaurants; and imposed a curfew between 8:00 PM and 5:00 AM on all but "essential" businesses (*e.g.*, grocery stores, pharmacies, gas stations, and health care facilities).[27]

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[22] *Id*.
[23] *Id.* at ¶ 16; Fefferman Decl. ¶¶ 10–11, 25.
[24] Goldenson Decl. ¶ 28.
[25] N.J. Exec. Order No. 103 (Mar. 9, 2020), *available at* https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf.
[26] *See* Charlie Savage, *Trump Declared an Emergency Over Coronavirus. Here's What It Can Do.*, N.Y. Times (Mar. 13, 2020), https://www.nytimes.com/2020/03/13/us/politics/coronavirus-national-emergency-html.
[27] N.J. Exec. Order No. 104 (Mar. 16, 2020), *available at* https://nj.gov/infobank/eo/056murphy/pdf/EO-104.pdf.

36. On March 21, 2020, Governor Murphy issued Executive Order No. 107 requiring all New Jersey residents to "remain home or at their place of residence" unless it is for one of the enumerated exempted purposes, such as grocery shopping or seeking medical attention. [28]

37. Local officials have also taken measures aimed at slowing the virus's spread. For example, on March 25, Newark Mayor Ras Baraka issued a "shelter-in-place" order similar in scope to Governor Murphy's E.O. 107.[29]

II. Incarcerated People and Staff Are Particularly Vulnerable.

38. People in congregate environments such as correctional facilities, where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships[30] and nursing homes.[31] People who are confined in prisons, jails, and detention centers find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best laid plans. These settings are particularly vulnerable to what the CDC calls "community

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[28] N.J. Exec. Order No. 107 (Mar. 21, 2020), *available at* https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf.

[29] *See* Eric Kiefer, *Entire City Of Newark Told To Shelter In Place: Coronavirus*, Patch (Mar. 26, 2020), https://patch.com/new-jersey/newarknj/entire-city-newark-told-shelter-place-coronavirus.

[30] *E.g.*, Jason Hanna & Melissa Alonso, *Coral Princess Docks in Miami With 2 Dead and Several Ill of Coronavirus, After Ports Shunned it For Days*, CNN (Apr. 4, 2020), https://www.cnn.com/2020/04/04/us/coral-princess-cruise-ship-docks-miami-coronavirus/index.html.

[31] *E.g.*, Stacey Burling, *Assume Coronavirus is Already There, Says a Philly Nursing Home Doctor Who Learned the Hard Way*, Phila. Inquirer (Apr. 3, 2020), *available at* https://www.inquirer.com/health/coronavirus/coronavirus-renaissance-nursing-home-philadelphia-20200403.html; *see also* Suzy Khimm & Laura Strickler, *Nursing Homes Overwhelmed By Coronavirus*, NBC News (Apr. 1, 2020), https://www.nbcnews.com/news/us-news/nursing-homes-overwhelmed-coronavirus-it-impossible-us-stop-spread-n1174171.

spread," where the virus spreads easily and sustainably within a community even where the source of the infection is unknown.[32]

39. Correctional facilities increase the risk of rapid spread of an infectious disease, like COVID-19, because of the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, and no possibility of staying at a distance from others.[33]

40. The CDC has issued guidance urging prison administrators to take action to prevent overcrowding of correctional and detention facilities during a community outbreak.[34] The CDC guidance emphasizes that social distancing is "a cornerstone of reducing transmission of respiratory disease such as COVID-19."[35] It calls not only for social distancing, but also measures for isolating and quarantining detainees and staff who have (or are suspected of having) COVID-19 from those who do not have (or presumably do not have) the virus.

41. Many correctional facilities find implementation of these preventive strategies challenging without a significant reduction in prison populations.

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[32] *See* Fefferman Decl. ¶ 19 ("[D]espite best efforts to increase personal hygiene and social distancing practices, and to reduce inmate movements and suspend access to members of the public (contractors, visitors, and legal professionals), prisons are inherently incapable of reducing the risks of transmission to those seen in the broader community.").

[33] *See generally* I.A. Binswanger et al., *Prevalence of Chronic Medical Conditions Among Jail and Prison Inmates in the USA Compared With the General Population*, 63 J. Epidemiology & Community Health 912 (2009) (concluding that people incarcerated in U.S. jails and prisons had a higher burden of most chronic medical conditions than the general population, even when adjusting for sociodemographic differences and alcohol consumption).

[34] U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (CDC Guidance) (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[35] *Id.*

42. As a general matter, correctional facilities frequently lack sufficient medical supplies for the population, and, in times of crisis, medical staff may cease coming to the facilities. Hot water, soap, and paper towels are often in limited supply. Incarcerated people themselves, rather than professional cleaners, are often responsible for cleaning the facilities and often are not given appropriate supplies. This means there are more people who are susceptible to infection all congregated together in a location where fighting the spread of an infection is nearly impossible.[36]

43. The difficulty correctional facilities have complying with CDC guidance is demonstrated by a few examples. A recent COVID-19 outbreak in an Arkansas state prison quickly spread to 43 out of 46 prisoners in a single housing unit.[37] In New Jersey, the New Jersey Department of Corrections (NJDOC) reported 29 prisoner deaths in New Jersey correctional facilities (as of April 27) and that of the 184 people incarcerated in NJDOC facilities who have been tested, almost 80 percent have tested positive.[38] The Essex County Correctional Facility, the first correctional facility in the state to screen its population, found that of the first 91 incarcerated people it tested, over half tested positive for the virus or for antibodies.[39] Other nearby correctional

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[36] *See* Goldenson Decl. ¶ 36; Fefferman Decl. ¶ 22.

[37] *43 Arkansas state inmates test positive for COVID-19*, ABC 20/49 (Apr. 13, 2020), https://www.4029tv.com/article/43-arkansas-state-inmates-test-positive-for-covid-19/32131327; *see generally In Four U.S. State Prisons, Nearly 3,300 Inmates Test Positive for Coronavirus—96%Without Symptoms*, N.Y. Times (April 25, 2020), https://www.nytimes.com/reuters/2020/04/25/us/25reuters-health-coronavirus-prisons-testing-insight.html?searchResultPosition=8.

[38] NJDOC, *COVID-19 Updates* (last updated Apr. 27, 2020), https://www.state.nj.us/corrections/pages/COVID19Updates.shtml; *see also* Alice Speri, *In New Jersey Prisons, 29 Coronavirus Deaths and Only 184 Tests*, The Intercept (Apr. 28, 2020), https://theintercept.com/2020/04/28/coronavirus-new-jersey-prisons/.

[39] Blake Nelson, *Sick N.J. Corrections Officer Had to Get Coronavirus Test on His Own. Why Aren't Prisons Testing More?*, NJ.com (Apr. 20, 2020), https://www.nj.com/coronavirus/2020/04/sick-nj-prison-guard-had-to-get-coronavirus-test-on-his-own-why-arent-prisons-testing-more.html; Joe Atmonavage, *N.J. County Jail Will Be First to*

centers have found similarly high rates of transmission upon commencing testing.[40] This week, the BOP revealed that, of the 2,700 prisoners nationwide it had tested, nearly 2,000—over 70 percent—were positive.[41]

44. For these reasons, correctional public health experts have recommended the release from custody of people most vulnerable to COVID-19. Exercising authority to enlarge custody or release detainees protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and it also allows for greater risk mitigation for all people held or working in a prison, jail, or detention center. Release of the most vulnerable people from custody also reduces the burden on the region's health-care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time. As leading pandemic-preparedness expert Professor Nina Fefferman observed, "Epidemiologically, the only way to meaningfully reduce the risks posed to the entire population—inmates, staff, and public—is to drastically reduce the prison population."[42]

45. Courts have responded to this public call to reduce the incarcerated populations. For example, on March 22, in response to the "dangers posed by the Coronavirus," the New Jersey Supreme Court ordered the presumptive release of all people currently serving a county jail sentence, an order that resulted in the release of hundreds of people. *In the Matter of the Request*

Screen All Inmates for Coronavirus Using New Test Method, NJ.com (Apr. 16, 2020), https://www.nj.com/coronavirus/2020/04/nj-county-jail-will-be-first-to-screen-all-inmates-for-coronavirus-using-new-testing-method.html.

[40] Laura Benshoff, *Coronavirus Update: Montco Finds Widespread, Silent Spread in Prisons*, WHYY (Apr. 27, 2020), https://whyy.org/articles/coronavirus-update-air-force-navy-release-map-for-tuesdays-flyover-to-thank-frontline-workers/.

[41] Michael Balsamo, *Over 70% of tested inmates in federal prisons have COVID-19*, AP (Apr. 29, 2020), https://apnews.com/fb43e3ebc447355a4f71e3563dbdca4f.

[42] Fefferman Decl. ¶ 25; *see generally id.* ¶¶ 17–26.

to Commute or Suspend County Jail Sentences, Consent Order, No. 084230 (N.J. Mar. 22, 2020).[43] High courts in other states have issued similar orders aimed at reducing state prison populations.[44]

46. Officials in New Jersey have echoed the calls to release vulnerable people. Recognizing the possibility of such perilous outcomes, the "challenges associated with maintaining traditional social distancing in correctional settings," and the "heightened risk of death and serious injury" for "these particularly vulnerable individuals," Governor Murphy issued Executive Order No. 124 on April 10 to begin the process of "temporarily" releasing certain individuals in state prisons serving sentences for nonviolent crimes.[45]

47. Absent such measures, transmission in prisons and jails will not only endanger the incarcerated, but also burden local hospitals and endanger the broader community. Correctional facilities lack adequate medical facilities to treat serious COVID-19 cases, so an outbreak in a

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[43] The order provided a mechanism for prosecutors, within 24-to-48 hour, to object to the release of specific prisoners who "would pose a significant risk to the safety of the inmate or the public," with such objections to be considered by judges or special masters appointed by the Supreme Court, with provisional representation by the Office of the Public Defender for prisoners for whom objections were filed.

[44] *See, e.g.*, *In re: The Petition of the Pennsylvania Prison Society et al.*, No. 70 MM 2020 (Pa. Apr. 3, 2020), *available at* https://law.justia.com/cases/pennsylvania/supreme-court/2020/70-mm-2020.html (Pennsylvania Supreme Court ordered the chief judge of all counties to "immediately" engage in a review of the "current capabilities of their county correctional institutions . . . to address the spread of COVID-19," "to ensure that the county correctional institutions in their districts address the threat of COVID-19," as necessary "to identify individuals of incarcerated persons for potential release" and "to undertake efforts to limit the introduction of new inmates into the county prison system."); *Comm. for Pub. Counsel Servs. v. Chief Justice of the Trial Court*, No. SJC-12926 (Mass. Apr. 3, 2020), *available at* https://www.mass.gov/files/documents/2020/04/03/12926.pdf (Massachusetts Supreme Court ruled that pre-trial detainees not charged with certain violent offenses, as well as incarcerated individuals held on technical probation and parole violations, is entitled to a rebuttable presumption of release).

[45] N.J. Exec. Order No. 124 (Apr. 10, 2020), *available at* http://d31hzlhk6di2h5.cloudfront.net/20200410/c0/64/ce/2c/0ef068b5d2c6459546c33a46/EO-124.pdf.

prison could overwhelm local hospitals. And as correctional staff enter and leave the facility, they will carry the virus with them. Like the incarcerated people in the facilities where they work, correctional officers face an increased risk of COVID-19 exposure because they are less able to engage in social distancing and because of the shortage of personal protective equipment, also known as PPE. Indeed, as of May 3, the BOP had reported 498 confirmed past and present infections among its prison staff nationwide.[46]

48. On an accelerating basis since mid-March of this year, courts in this Circuit and across the country have ordered the release of prisoners and detainees in response to the COVID-19 crisis.[47]

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[46] *See* Fed. Bureau of Prisons, *COVID- 19*, https://www.bop.gov/coronavirus/ (last accessed May 4, 2020).

[47] *See, e.g.*, *Arriaga Reyes. v. Decker*, No. 2:20-cv-03600 (D.N.J. Apr. 12, 2020) (ordering five petitions for immediate release of ICE detainees from New Jersey facilities); *Basank v. Decker*, No. 1:20-cv-02518 (S.D.N.Y. Mar. 26, 2020) (ordering release of ten individuals detained by ICE housed in New Jersey county jails because of preexisting medical conditions); *United States v. Xue*, No. 18-CR-122, ECF 42 (E.D. Pa. Apr. 10, 2020) (ordering pretrial release in light of compelling reason of COVID-19, subject to requirements); *United States v. Giordano*, No. 14-CR-206, ECF 72 (E.D. Pa. Apr. 10, 2020) (granting release of petitioner with medical conditions rendering him particularly vulnerable to the effects of COVID-19 and that petitioner's fear of infection while incarcerated far outweighs any likelihood of fleeing); *United States v. Rodriguez*, No. 03-CR-271, ECF 135 (E.D. Pa. Apr. 1, 2020) (granting motion for compassionate release where the presence of COVID-19, the inmate's health conditions, the proximity to his release date, and his demonstration of rehabilitation created extraordinary and compelling reasons justifying release); *United States v. Colvin*, No. 3:19-CR-179, 2020 U.S. Dist. LEXIS 57962 (D. Conn. 2020) (waiving exhaustion requirement and granting motion or compassionate release for vulnerable inmate at FDC Philadelphia where "the risks faced by the Defendant will be minimized by her immediate release to home, where she will quarantine herself"); *Coronel v. Decker*, No. 20 Civ. 2472, ECF 26 (S.D.N.Y. Mar. 27, 2020) (granting release of four detainees with medical conditions that render them particularly vulnerable to severe illness or death if infected by COVID-19); *People of State of N.Y. ex rel. Stoughton v. Brann*, No. 451078/2020, 2020 NY Slip Op 20081 (N.Y. Sup. Ct. Apr. 6, 2020) ("[C]ommunicable diseases could not ask for a better breeding ground than a crowded prison. . . . Certainly no American prison is equipped to deal with a health crisis of the severity of this one.").

III. The Efforts of the Bureau of Prisons Are Inadequate.

49. The BOP has failed to respond effectively to the COVID-19 pandemic. The BOP failed to anticipate and prepare for the magnitude of the threat that COVID-19 poses to its own staff and the people it detains; it then failed to respond in any meaningful way to initial signs of uncontrolled outbreaks at several of its facilities across the country, including Fort Dix; and it has continued to fail to implement even the baseline measures that would assure the safety of its own staff, of Petitioners and their fellow class members and others incarcerated by the BOP, and of the communities into which staff and others travel on a daily basis. BOP's primary and ongoing failure has been its unwillingness to implement social distancing, despite clear public health guidance that it is necessary to prevent COVID-19 infection.

50. The BOP's preparations were inadequate from the start. Initial guidance from the BOP was not issued until March 9, and it addressed only the possibility of telework for some employees at an agency where the vast majority of workers must physically appear at facilities to do their jobs, and it mentioned restrictions only for people who had traveled to already-impacted countries.[48]

51. Moreover, the BOP did not make any changes to protocols that call for prisoners to purchase their own cleaning supplies from commissary—preventing many indigent and poor prisoners from being able to buy those supplies—and for them to maintain responsibility for cleaning and sanitizing their spaces (whether they have supplies or not).[49]

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[48] *See* BOP Memorandum (Mar. 9, 2020), https://cdn.govexec.com/media/gbc/docs/pdfs_edit/031020cb.pdf.

[49] *See, e.g., Inmate Information Handbook, Federal Bureau of Prisons FCI Elkton, Ohio* at 9, Bureau of Prisons (2012), https://www.bop.gov/locations/institutions/elk/ELK_aohandbook.pdf.

52. In fact, as late as March 26—weeks after many cities and states had closed restaurants and non-essential businesses, restricted travel, and ordered people to shelter in place—the BOP Director announced that the BOP had merely taken an inventory of soap, rather than taken steps to distribute it at no cost or even at a reduced cost.[50]

53. Because of the BOP's failure to take the threat seriously or to take meaningful steps to prepare, stakeholders from every part of the system highlighted preparations that it had not undertaken, possible dangers faced by employees, and open questions that required urgent attention and answers.[51]

54. Similarly, before the BOP began losing control of COVID-19 in its facilities, press accounts had already highlighted the impending storm.[52]

55. Among other failures that contributed to spread at BOP facilities, officers reported that even as of late March, they were given only gloves—not masks, face shields, or other PPE—when interacting with prisoners sick enough to require transport to the hospital.[53] Those same

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[50] That day the BOP Director issued a statement that "all cleaning, sanitation, and medical supplies have been inventoried. Ample supplies are on hand and ready to be distributed or moved to any facility as deemed necessary." Fed. Bureau of Prisons, *Statement from BOP Director* (Mar. 26, 2020), *available at* https://www.bop.gov/resources/news/20200326_statement_from_director.jsp.

[51] *See* Letter from U.S. Senators Warren, Booker et al., (Mar. 9, 2020), *available at* https://www.warren.senate.gov/imo/media/doc/2020-03-09%20Senator%20Warren%20Letter%20to%20BOP%20re%20Coronavirus.pdf; *see also* AFGE Testimony to House Oversight Committee (Mar. 11, 2020), *available at* https://www.afge.org/globalassets/documents/congressional-testimony/2020/afge-sfr-house-committee-on-oversight-and-reform-coronavirus-preparedness-and-response.pdf.

[52] *See, e.g.*, Michael Balsamo & Michael R. Sisak, *Federal Prisons Struggle to Combat Growing COVID-19 Fears*, AP (Mar. 27, 2020), https://apnews.com/724ee94ac5ba37b4df33c417f2bf78a2.

[53] Joseph Neff & Keri Blakinger, *Federal Prisons Agency "Put Staff in Harm's Way" of Coronavirus: Orders at Oakdale in Louisiana Help Explain COVID-19 Spread*, The Marshall

officers were ordered back to the job in defiance of CDC guidance that called for self-isolation by correctional staff who had been exposed.[54]

56. Unicor, an entity that runs prisoner work programs for the BOP, continued operating throughout the pandemic and did not began distributing masks to prisoner workers and correctional officers until about April 2, 2020.[55]

57. Across facilities, the BOP has been "scrambling" to address staffing and resource needs. Despite this, the BOP has continued to limit the number of contractors who can supply PPE, does not have enough tests, and has been sued by its own staff for requiring them to work in hazardous working conditions.[56]

58. When the BOP loses control at a facility, dozens of prisoners must go to local hospitals, straining the local healthcare infrastructure, as well.

59. The consequences of BOP's failures have been dramatic. Nationwide, in the first ten days after the BOP announced positive cases in its facilities, the average percentage increase in infections in BOP facilities was 2,500 percent.

60. Federal facilities all over the country—including in the Mid-Atlantic region—have been overrun with the virus. Facilities with uncontrolled outbreaks include:

Project (Apr. 3, 2020), https://www.themarshallproject.org/2020/04/03/federal-prisons-agency-put-staff-in-harm-s-way-of-coronavirus.

[54] *Id.*

[55] Cary Aspinwall, Keri Blakinger, & Joseph Neff, *Federal Prison Factories Kept Running as Coronavirus Spread*, The Marshall Project (Apr. 10, 2020), https://www.themarshallproject.org/2020/04/10/federal-prison-factories-kept-running-as-coronavirus-spread.

[56] Luke Barr, *Federal Prisons Facing Shortages of Resources Amid Coronavirus Outbreak*, ABC News (Apr. 1, 2020), https://abcnews.go.com/Health/federal-prisons-facing-shortages-resources-amid-coronavirus-outbreak/story?id=69920966.

- FCI Danbury, in Connecticut (43 combined current positive tests as of April 28 and 1 prisoner death);
- FCI Butner, in North Carolina (221 combined current positives as of April 28 and 5 prisoner deaths);
- USP Lompoc, in California (85 combined current positives as of April 28 and 1 prisoner death);
- FMC Fort Worth, in Texas (242 combined current positives as of April 28 and 3 prisoner deaths);
- FCI Terminal Island, in California (453 combined current positives as of April 28 and 2 prisoner deaths);
- FCI Elkton, in Ohio (93 combined current positives as of April 28 and 7 prisoner deaths); and
- FCI Forrest City, in Arkansas (44 combined current positives as of April 28).[57]

61. Even those figures are almost certainly an undercount. The BOP has repeatedly understated the scope of the problem and refused to take steps to assess the situation transparently. For example, as of April 6, the BOP had reported eight prisoners and one staff had tested positive at FCI Elkton.[58] Press accounts, however, reported that medical staffing had fallen to fifty percent of capacity, and that three prisoners had already died as of April 6.[59] The full scope of the problem

[57] *See* Fed. Bureau of Prisons, *COVID- 19*, https://www.bop.gov/coronavirus/ (accessed Apr. 29, 2020).
[58] *Id.*
[59] *Ohio Gov. Mike DeWine Authorized Ohio National Guard to Assist Elkton Prison*, WKYC (Apr. 6, 2020), https://www.wkyc.com/article/news/health/coronavirus/ohio-gov-mike-dewine-authorizes-ohio-national-guard-to-assist-elkton-prison/95-d620f3c6-c560-486f-9eac-ebce7c09d4e7.

did not become clear until a federal judge ordered the facility to increase testing, after the BOP admitted that it only had 55 tests on hand for a facility of more than 2,400 prisoners.[60]

62. Conditions had already deteriorated so thoroughly that Ohio Governor Mike DeWine called in the state's National Guard to FCI Elkton, a federal prison.[61] At the press conference announcing that decision, Governor DeWine called on the BOP to stop sending new prisoners to Elkton.[62] And the accuracy of the BOP's reporting of COVID-19 cases in Elkton is in doubt.[63]

63. Ultimately, the U.S. District Court for the Northern District of Ohio ordered enlargement of custody for medically vulnerable prisoners at FCI Elkton pending resolution of a class habeas petition on the merits, because of the outbreak already raging at the facility.[64]

64. Such conditions at numerous facilities across the country have led BOP employees including corrections officers to file a complaint with the Occupational Safety and Health

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[60] *Judge grills federal prisons lawyer on lack of coronavirus tests at Ohio facility in wake of Trump's claim that 'anybody' can get tested*, Cleveland.com (Apr. 18, 2020), https://www.cleveland.com/court-justice/2020/04/judge-grills-federal-prisons-lawyer-on-lack-of-coronavirus-tests-at-ohio-facility-in-wake-of-trumps-claim-that-anybody-can-get-tested.html.

[61] *Ohio Gov. Mike DeWine Authorized Ohio National Guard to Assist Elkton Prison*, WKYC (Apr. 6, 2020), https://www.wkyc.com/article/news/health/coronavirus/ohio-gov-mike-dewine-authorizes-ohio-national-guard-to-assist-elkton-prison/95-d620f3c6-c560-486f-9eac-ebce7c09d4e7.

[62] Cory Shaffer, *Ohio National Guard Will Assist With Response at Elkton Federal Prison*, Cleveland.com (Apr. 6, 2020), https://www.cleveland.com/coronavirus/2020/04/ohio-national-guard-will-assist-with-coronavirus-response-at-elkton-federal-prison.html; *see also* Brandon Brown, *Sen. Portman Urges Prisoners Not to be Transferred to FCI Elkton*, WFMJ (Apr. 6, 2020), https://www.wfmj.com/story/41979544/sen-portman-urges-prisoners-not-be-transferred-to-fci-elkton.

[63] *Elkton Union President Reports Different COVID-19 Stats Than Federal Bureau of Prisons*, WKVB (Apr. 9, 2020), https://www.wkbn.com/news/coronavirus/elkton-union-president-reports-different-covid-19-stats-than-federal-bureau-of-prisons/.

[64] *Wilson v. Williams*, No. 4:20-CV-00794, 2020 WL 1940882, at *10 (N.D. Ohio Apr. 22, 2020).

Administration (OSHA) alleging unsafe conditions at numerous federal prisons nationwide, including Fort Dix. Among other things, the officers' OSHA complaint points to the BOP having "directed staff through the Bureau of Prisons who have come in contact with, or been in close proximity to, prisoners who show or have shown symptoms of COVID-19, to report to work and not be self-quarantined for 14 days per the CDC guidelines." It also complains of the BOP having failed to undertake any workplace or administrative controls to address transmission, to require social distancing or other measures in the CDC guidance, or to provide sufficient PPE.[65]

65. In apparent response, the BOP released a short document titled "Correcting Myths and Misinformation about BOP and COVID-19."[66] In attempting to rebut the assertion that staff who had been in contact with prisoners who showed symptoms of COVID-19 still had to come to work, the BOP simply confirmed that such employees *were* required to come to work, with masks.[67]

66. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on March 27, makes funding available for federal prisons to purchase PPE and test kits for COVID-19 and authorizes the Department of Justice to lengthen the maximum amount of time

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[65] *See* Notice of Alleged Safety or Health Hazards (March 31, 2020), *available at* https://www.afge.org/globalassets/documents/generalreports/coronavirus/4/osha-7-form-national-complaint.pdf.

[66] *See* Fed. Bureau of Prisons, *Correcting Myths and Misinformation About BOP And COVID-19* (Apr. 11, 2020), https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformation_bop_covid19.pdf.

[67] *Id.* at 3 ("In keeping with CDC 'Guidance for Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19,' the BOP performs pre-screening of all employees reporting to work and requires exposed workers to wear a mask for 14 days after last exposure. They are also expected to perform regular self-monitoring for symptoms, practice social distancing and to disinfect and clean their work spaces. Anyone who develops signs or symptoms of illness are sent home.").

that a prisoner can be placed in home confinement during the pandemic.[68] Acting under that authority, Attorney General Barr made a finding that emergency conditions are materially affecting the functioning of the BOP, and on April 3 he directed Respondent Carvajal to review prisoners with COVID-19 risk factors to determine their eligibility for home confinement, stating that the BOP's efforts to prevent COVID-19 from entering BOP facilities and infecting prisoners have "not been perfectly successful at all institutions."[69]

67. Attorney General Barr also released guidance in the form of a series of letters suggesting that some BOP prisoners should be released.[70] Those letters merely encourage the BOP to exercise discretion that it has declined to use, and they do not actually direct the release of categories of prisoners, much less on a scale that would allow for safe social distancing in the facilities or with the speed that the health crisis requires. Of the relatively small number of people released, the BOP has not reported the number who subsequently died.

68. On April 22, the BOP issued a memo purporting to interpret Attorney General Barr's guidance, substantially limiting the number and types of people who might qualify for home confinement under the Attorney General's memos.[71] Even though the April 3 Barr memo directed the BOP to "immediately maximize appropriate transfers to home confinement," including

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[68] CARES Act, Pub. L. No. 116-136, § 12003(b), 134 Stat. 281 (2020).
[69] Memorandum from Attorney General Barr to Director Carvajal (Apr. 3, 2020), *available at* https://www.justice.gov/file/1266661/download.
[70] *See* Mar. 26, 2020 and Apr. 3, 2020 Memoranda For Director of Bureau Prisons from Attorney General Barr, *available at* https://www.justice.gov/coronavirus.
[71] Memorandum from Correctional Programs Division Acting Assistant Director Andre Matevousian & Reentry Services Division Assistant Director Hugh J. Hurwitz to Chief Executive Officers (Apr. 22, 2020), *available at* https://famm.org/wp-content/uploads/bop-memo-4.23.2020.pdf.

prioritizing those at "outbreak prisons," the BOP's own guidance excludes the vast majority of prisoners in its custody by adding a number of barriers to consideration for release.

69. The BOP's April 22 guidance gives wardens virtually unchecked discretion to deny a request for release and imposes unnecessary and impractical barriers on prisoners seeking release. For example, pursuant to the BOP's guidance: (i) prisoners must have had no disciplinary infractions of any kind for 12 months; (ii) prisoners must provide verification that they would have a lower risk of contracting COVID-19 outside the prison than inside of it, and, (iii) prisoners with any on-going medical care must show their medical needs can be met outside the prison, and that they have a 90-day supply of prescribed medications.

70. The appalling conditions of BOP facilities across the country, and the BOP's failures to address the constitutional rights of prisoners in its care, have forced federal courts to address BOP failures in a large number of individual cases seeking compassionate release;[72] bail

[72] *E.g.*, *United States v. Rodriguez*, No. 03-cr-271, ECF 135 (E.D. Pa. Apr. 1, 2020) (granting release after finding risk factors for COVID-19 constitute extraordinary and compelling reason and noting that prisons are "tinderboxes for infectious disease"); *United States v. Foster*, No. 14-cr-324-02, ECF 191 (M.D. Pa. Apr. 3, 2020) (noting the "unprecedented" circumstances facing "our prison system" and finding that COVID-19 is an extraordinary and compelling basis for release; indeed, "[n]o rationale is more compelling or extraordinary"); *United States v. Smith*, No. 12-cr-133, ECF 197 (S.D.N.Y. Apr. 13, 2020) (granting release; finding exhaustion waivable and waived); *United States v. Zukerman*, No. 16-cr-194, ECF 116 (S.D.N.Y. Apr. 3, 2020) (waiving exhaustion and granting immediate compassionate release in light of COVID-19 to defendant convicted in multi-million dollar fraud scheme); *United States v. Sawicz*, No. 08-cr-287, ECF 66 (E.D.N.Y. Apr. 10, 2020) (releasing child-pornography offender); *United States v. Clagett*, No. 97-cr-265, ECF 238 (W.D. Wash. Apr. 9, 2020); *United States v. Oreste*, No. 14-cr-20349, ECF No. 200 (S.D. Fla. Apr. 6, 2020); *United States v. Hakim*, No. 05-cr-40025, ECF 158 (D.S.D. Apr. 6, 2020); *United States v. Hernandez*, No. 18-cr-20474, ECF 41 (S.D. Fla. Apr. 2, 2020).

pending appeal, trial, or sentencing;[73] delayed self-surrender;[74] writs of habeas corpus;[75] class-wide relief for groups of prisoners;[76] and furloughs.[77]

71. As noted, the Northern District of Ohio ordered FCI Elkton to release potentially hundreds of medically vulnerable prisoners who face a greater threat from COVID-19. It did this because Elkton had "altogether failed" to follow CDC guidance for correctional settings, and that the measures were "necessary to stop the spread of the virus and save lives."[78]

72. Rather than proactively address any of the conditions that place people in BOP custody at risk of illness or death, the BOP has focused instead on spending money on purchasing

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[73] *E.g.*, *United States v. Chavol*, No. 20-50075 (9th Cir. Apr. 2, 2020) (stipulation in a FRAP(9) appeal to release on conditions); *United States v. Nkanga*, No. 18-cr-713, ECF 120 (S.D.N.Y. Apr. 7, 2020); *United States v. Hector*, No. 2:18-cr-3-2, ECF 748 (W.D. Va. Mar. 27, 2020).
[74] *United States v. Roeder*, No. 20-1682, ___ F. App'x ___ (3d Cir. Apr. 1, 2020) (reversing district court's denial of defendant's motion to delay execution of his sentence because of the COVID-19 pandemic); *United States v. Garlock*, No. 18-CR-418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (observing that "[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided"); *United States v. Matthaei*, No. 19-CV-243, 2020 WL 1443227, at *1 (D. Idaho Mar. 16, 2020) (extending self-surrender date by 90 days in light of pandemic).
[75] *E.g.*, *Xochihua-James v. Barr*, No. 18-71460, ___ F. App'x ___ (9th Cir. Mar. 23, 2020) (*sua sponte* releasing detainee from immigration detention "in light of the rapidly escalating public health crisis"); *Fraihat v. Wolf*, No. 5:20-CV-590, ECF 18 (C.D. Cal. Mar. 30, 2020).
[76] *E.g.*, *In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22, 2020) (releasing large class of defendants serving time in county jail "in light of the Public Health Emergency" caused by COVID-19).
[77] *E.g.*, *United States v. Stahl*, No. 18-cr-694, ECF 53 (S.D.N.Y. Apr. 10, 2020); *United States v. Underwood*, No. 18-cr-201, ECF 179 (D. Md. Mar. 31, 2020) (noting that although there has not yet been a positive COVID-19 test in elderly petitioner's facility, "there is significant potential for it to enter the prison in the near future").
[78] *Wilson*, 2020 WL 1940882, at *8.

hydroxychloroquine, an unproven remedy that medical authorities do not believe will work to treat COVID-19.[79]

73. For all of these reasons, the threat posed to people incarcerated by the BOP remains ongoing and acute. As of May 3, at least 2,441 prisoners have tested positive, along with 498 BOP staff.[80] Even that data understates the true scope of the spread, because COVID-19 testing remains widely unavailable in federal prisons.[81] At least one BOP facility responded to an outbreak by announcing that it would simply stop testing any prisoners.[82]

74. Notably, the BOP's own data shows that among closed cases, the fatality rates for prisoners in its care may dwarf rates among any other populations. Of cases the BOP has marked as closed as of May 3, 515 prisoners have recovered while 38 have died.[83]

75. Even in the midst of the virus's rapid spread across the country, the BOP persists in transferring detainees between prisons. In their recently filed OSHA complaint, BOP employees

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[79] Lachlan Markay, *The Bureau of Prisons Just Bought a Ton of Hydroxychloroquine, Trump's COVID-19 Miracle Drug*, The Daily Beast (Apr. 7, 2020), https://www.thedailybeast.com/the-bureau-of-prisons-just-bought-a-ton-of-hydroxychloroquine-trumps-covid-19-miracle-drug.
[80] This figure combines reported numbers for current positives and recovered cases. Fed. Bureau of Prisons, *COVID-19*, https://www.bop.gov/coronavirus/ (last accessed May 4, 2020).
[81] Michael Balsamo, *Over 70% of tested inmates in federal prisons have COVID-19*, AP (Apr. 29, 2020), https://apnews.com/fb43e3ebc447355a4f71e3563dbdca4f. (noting that only 2,700 federal prisoners out of a total federal prisoner population of over 170,000 have been tested; Samantha Michaels, *Why Are We Transferring Potentially Sick Inmates Across the Country Without Testing Them First?*, Mother Jones (Apr. 2, 2020), https://www.motherjones.com/crime-justice/2020/04/why-are-we-transferring-people-from-covid-stricken-prisons-without-testing-them-first/; Luke Barr, *Federal Prisons Facing Shortages of Resources Amid Coronavirus Outbreak*, ABC News (Apr. 1, 2020), https://abcnews.go.com/Health/federal-prisons-facing-shortages-resources-amid-coronavirus-outbreak/story?id=69920966.
[82] Greg LaRose, *Oakdale Federal Prison Stops Testing Inmates with COVID-19 Symptoms*, WDSU News (March 31, 2020), https://www.wdsu.com/article/oakdale-federal-prison-stops-testing-inmates-with-covid-19-symptoms/31989498#.
[83] Fed. Bureau of Prisons, *COVID-19*, https://www.bop.gov/coronavirus/ (last accessed May 4, 2020).

report that BOP "continuously mov[es] inmates by bus and/or airlift to various prison sites across the nation. They have authorized movement of infected inmates, inmates suspected of being infected, inmates who have been in close contact or proximity to infected inmates, to areas of the country that do not have any rate of infections, or to facilities that otherwise have not shown signs of any introduction of the virus, thus introducing the virus into an uninfected area."[84]

IV. The Design of Fort Dix Makes Social Distancing Impossible.

76. The conditions at Fort Dix pose a grave public health risk for the spread of COVID-19. This risk is substantially greater than the risk faced by the public—or even at many other federal prisons, given Fort Dix's design.

77. Fort Dix is a low security facility with an adjacent minimum-security Camp. The main facility currently holds more than 2,700 people, and the Camp has, until recently, held approximately 230.[85] Perversely, the design of Fort Dix means the fact that those confined at Fort Dix are designated by the BOP as the least dangerous prisoners face heightened risk from COVID-19.[86]

78. Except for disciplinary and medical isolation, Fort Dix has *no* separate one-person housing cells.[87]

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[84] OSHA Complaint (Mar. 31, 2020), *available at* https://www.afge.org/globalassets/documents/generalreports/coronavirus/4/osha-7-form-national-complaint.pdf.
[85] Fed. Bureau of Prisons, *FCI Fort Dix*, https://www.bop.gov/locations/institutions/ftd/ (last accessed May 4, 2020).
[86] BOP Program Statement P5100.08 (Sept. 12, 2006), *available at* https://www.bop.gov/policy/progstat/5100_008.pdf; Fed. Bureau of Prisons, "About Our Facilities," https://www.bop.gov/about/facilities/federal_prisons.jsp (last visited Apr. 29, 2020).
[87] PREA Audit: Auditor's Summary Report (May 31, 2014), https://www.bop.gov/locations/institutions/ftd/FTD_prea2.pdf.

79. Instead, people confined at Fort Dix are housed close together in group quarters. Those at the Camp are divided into two communal dorms, referred to as A-wing (or A-unit) and B-wing (or B-unit). Each wing has typically housed approximately 150 people in a grid of bunk beds two to three feet apart.[88] People in the bunks are so close that they can reach out and touch the people in the bunks on both sides.[89] At least in some areas, the bunks appear to be arranged three-deep: people sleep not only with bunks to their left and right, but also at their head and feet.[90] Social distancing, as a matter of dorm design, is simply impossible.[91]

80. The main facility is divided into East and West Compounds, with approximately five buildings on each side that can house more than 300 people each. The buildings are three stories high and consist mostly of 12-person rooms, with a smaller number of two-person rooms. The 12-person rooms can be as small as 430 square feet. Within that space are squeezed six two-person bunk beds, 12 lockers, and a card table. Prisoners maintain free movement within the building, sharing common TV rooms, computers, telephones, and bathrooms.[92] Even for the few prisoners in two-person rooms, prisoners come into contact with hundreds of people in their building each day.

81. The bathrooms at Fort Dix are communal. In both the main facility and the Camp, each person shares a limited number of sinks, showers, and toilets with dozens of other prisoners

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[88] Scronic Decl. ¶ 4.
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *See* Bogdan Decl. ¶ 7.

within just feet of them. In the Camp, for example, a single bathroom with shared sinks and toilets is used by some 150 people.[93]

82. The fundamental structure of the low- and minimum-security Fort Dix facility makes it a COVID-19 deathtrap. It is not possible for people to engage in social distancing or self-quarantine precautions as recommended by the CDC. As correctional- health expert Dr. Goldenson explains, Fort Dix's communal set-up makes the social distancing essential to preventing the spread of infection "impossible."[94]

V. Fort Dix Is Failing to Take Proper Precautions, Placing People at an Unconstitutional Risk of Contracting COVID-19.

83. Fort Dix's actions to protect prisoners from COVID-19 have been slow and inadequate. Although the BOP purported to impose a nationwide quarantine on April 1, Fort Dix failed to impose effective quarantine measures. The prison did not distribute masks to prisoners until early April, and not all prisoners received masks at that time. Correctional officers, who live all over the greater Philadelphia and central New Jersey area, continued to move in and out of Fort Dix each day without sufficient medical screening or protective equipment. They to move between the Camp and main facility compounds to this day, potentially spreading the virus between the various areas of the prison. And prisoners continued to move between wings of the Camp and within single buildings in the main facility. Indeed, as late as on May 1, a 67-year-old prisoner from another building was added to Petitioner Wragg's room. He was not tested for COVID-19 before he was moved to a building in which he would come into daily contact with hundreds of people.

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[93] *See* Scronic Decl. ¶ 6.
[94] Goldenson Decl. ¶ 36.

84. Fort Dix's failure to contain movement by prisoners and staff throughout otherwise separate areas of the facility ensured that, once infection arrived, it would not be confined to particular areas, but would spread to other areas, as in fact happened.

85. The conflicting announcements about masks by Respondent Ortiz and his staff are also telling. The BOP reported the first confirmed case at Fort Dix, a staff member, on its website on March 30. That same day, Respondent Ortiz sent a notice prohibiting prisoners from: "enter[ing] the kitchen on either the East or West compounds for meals with their faces concealed with makeshift masks due to COVID-19 concerns." For a week following this, staff told prisoners they could not wear masks not issued by the prison and ordered them to remove such masks.

86. On April 7, the BOP reported Fort Dix's first prisoner positive on its website. On April 9, it reported its second. That same day, a memorandum from the facility medical staff announced: "a second [C]amp offender has been determined to be positive for COVID-19 and a third Camper has been isolated for evaluation of symptoms and is awaiting COVID-19 test results. . . . [I]t is strongly recommended that you d[on] your surgical mask upon issue."[95]

87. By April 11, the BOP was reporting four prisoner positives and Respondent Ortiz reversed course, issuing a notice to prisoners that read: "In order to maintain the health of staff and inmates, the following is expected from all inmates: wear your surgical masks! Since social distancing is not possible in this environment, masks will help keep you and others from spreading viruses." [96]

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[95] Scronic Decl. ¶ 10.
[96] *Id.* at ¶ 11.

88. By April 16, the BOP was reporting six prisoner positives and Respondent Ortiz's notice directed prisoners it was mandatory to use "face coverings provided by staff." [97] Of course, by then, it was too late—hundreds of prisoners and staff had surely already been exposed.

89. On April 8, Fort Dix converted the B-wing of the Camp into a makeshift quarantine for 63 people who believed they were being considered for potential release on home confinement pursuant to the CARES Act. Those 63 people were drawn from both A and B-wings. The remaining 160 or so prisoners in the Camp were packed into A-wing, with no efforts to test them nor any attempt to limit mingling groups of people who had previously not been exposed.[98]

90. After the April 8 conversion, A-wing and B-wing went at different times to get their food from the Camp cafeteria and use the common rooms, but prisoners did not observe the facilities being thoroughly cleaned between uses.[99]

91. Upon information and belief, during mid to late April, dozens of people exhibited symptoms of COVID-19 in both A-wing and B-wing, including coughing, feverish sweating, vomiting, and loss of consciousness. Many were removed from the Camp and brought to Building 5851 in the West compound. Prisoners who had previously been considered for release were not advised and did not know if this restarted the clock for their quarantine before release.

92. Upon information and belief, Fort Dix has still not changed the set-up within its main facility buildings. It continues to house the overwhelming majority of prisoners in 12-person rooms where prisoners cannot social distance. Fort Dix made no effort to stagger or isolate bathroom use, ensuring that people from one 12-person room would encounter others from the

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[97] *Id.* at ¶ 13.
[98] *Id.* at ¶ 16.
[99] *Id.* at ¶ 20.

same building.[100] Worse, it took no action to limit access to, or impose shift-based use of, common television rooms, computers, and phones in each building.[101] As a result, large groups of prisoners congregate regularly in those rooms to this day.

93. In the main facility, although communal eating in the dining hall has ceased, prisoners go to and from the dining hall to pick up their food with all 200 to 300 people in their building.[102] They crowd into the building's entryway and adjoining hallway waiting to leave because they are only allowed five minutes to exit the building.[103] Three times per day, hundreds of people congregate and move to and from meal pickup in this way.[104] Back at their buildings, they can still eat in each other's rooms or in the TV rooms, because there are no social distancing requirements.[105]

94. Upon information and belief, at various hours throughout the day in the Camp, Fort Dix makes prisoners line up shoulder-to-shoulder for counts, despite its obvious danger for spreading the infection. Staff now regularly take prisoners' temperatures using an electronic thermometer that works by holding it close to someone's forehead. In some cases, it may touch prisoners' foreheads, but staff do not sanitize the device between uses. In the main facility, prisoners go to their room doors and have their temperatures taken approximately once every two days. They are not asked whether they are experiencing other symptoms of COVID-19 or whether they have recently been exposed to someone with the virus.

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[100] *Id.* at ¶ 8.
[101] *Id.*
[102] *Id.* at ¶ 9.
[103] *Id.*
[104] *Id.*
[105] *Id.*

95. Fort Dix has also failed to provide prisoners with adequate cleaning supplies. For weeks, Fort Dix maintained its practice of requiring prisoners to buy soap through commissary to wash their hands.[106] Upon information and belief, Fort Dix did not reduce prices for soap, much less make it free. The prison exacerbated this problem by limiting commissary for people in the main facility and terminating it entirely for people at the Camp. Fort Dix took weeks to install soap dispensers in some bathrooms. Even where there were soap dispensers, many remained empty as of the end of March; in at least one building, notices were posted urging prisoners to donate their own meager soap supply to fill the dispensers.[107] At present, many of the dispensers are empty because any soap provided by the prison runs out immediately.[108]

96. The scant soap that is provided to those in the main facility—two small bottles a month, barely bigger than what a person can carry on a plane—is what most prisoners must rely on to shower, wash their hands throughout the day, and try to disinfect surfaces in their shared living space if they cannot buy soap at the commissary.[109]

97. Beyond the limited provision of masks, prisoners have been given no other personal protective equipment or cleaning supplies. They have not been provided gloves or detergents or other sanitizing agents, and some rely on toilet paper and water to wipe down surfaces they touch.[110]

98. Upon information and belief, Fort Dix has also refused to exercise authority it has to release people at high risk from infection, which would protect both those individuals and others

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[106] Wragg Decl. ¶ 11; Scronic Decl. ¶ 6.
[107] Wragg Decl. ¶ 11.
[108] *Id.*
[109] *Id.*
[110] *Id.* at ¶ 17.

who remained in a less-crowded facility. Prison staff have told several prisoners that they will not release anyone unless forced to, presumably by a Court. Some prisoners have been told their requests for home confinement are denied on bases not stated in the Attorney General memos, including that prisoners have not served 50 percent of their sentence.[111]

99. Upon information and belief, today—over seven weeks after the WHO declared a global pandemic, a month after Fort Dix's first confirmed positive case, and 26 days after the Attorney General directed the BOP to immediately begin releasing people to home confinement from prisons with outbreaks—the number of prisoners that Fort Dix has used its power to release into home confinement remains zero.

VI. The COVID-19 Spread Continues Unabated at Fort Dix.

100. As a result of Fort Dix's failures, COVID-19 has begun to spread through the facility like wildfire. On April 6, a 75-year old man was removed from the Camp after he had been sick and bedridden for four days. Prisoners believed he was later hospitalized.[112] Over the next two weeks, some 15 people were removed from the Camp with symptoms.[113]

101. In mid-April, an older man was removed from B-wing with COVID-19 symptoms. He had been placed in B-wing because Fort Dix was considering him for release on home confinement.[114]

102. On April 20, a man in A-wing collapsed as a nurse walked by performing temperature checks. He spit up blood and green phlegm into his mask. As the man lay on the floor,

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[111] Scronic Decl. ¶ 28; Bogdan Decl. ¶ 12.
[112] Scronic Decl. ¶ 15.
[113] *Id.* at ¶ 16.
[114] *Id.*

an officer sprayed the man's body and his pillow and bed with disinfectant while prisoners watched. Eventually, he was taken out in a wheelchair to the Camp's medical office. He left the Camp with an IV in his arm.[115]

103. On April 21, at around 8:30 PM, a prisoner in A-wing who had been working in the Camp kitchen and had been visibly sick for almost a week told officers he needed medical attention. He was told to wait until after count. Count finished at 9:30 PM. He was not removed from the dorm until 11:00 PM.[116]

104. On April 22, the 62 remaining people in B-wing who had been told they were being considered for release were tested for COVID-19. [117] On April 24, prisoners learned from staff that 21 of them had tested positive. Many had underlying medical conditions that made them especially vulnerable.[118]

105. Later on April 24, those in B-wing were moved to the main facility. The prisoners who tested positive were sent to what is known as the laundry building, Building 5851. The prisoners who tested negative were housed in a Unicor warehouse.[119] On April 25, the group in A-wing was separated. Half went to B-wing and half remained in A-wing. They were not tested for COVID-19.[120]

106. On April 25, medics were seen going in and out of Building 5851 with at least 20 people on stretchers. On April 29, healthy prisoners went to pick up clean linen at Building 5851.

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[115] *Id.* at ¶ 18.
[116] *Id.* at ¶ 19.
[117] *Id.* at ¶ 22.
[118] *See id.*
[119] *Id.* at ¶ 23.
[120] *Id.* at ¶ 25.

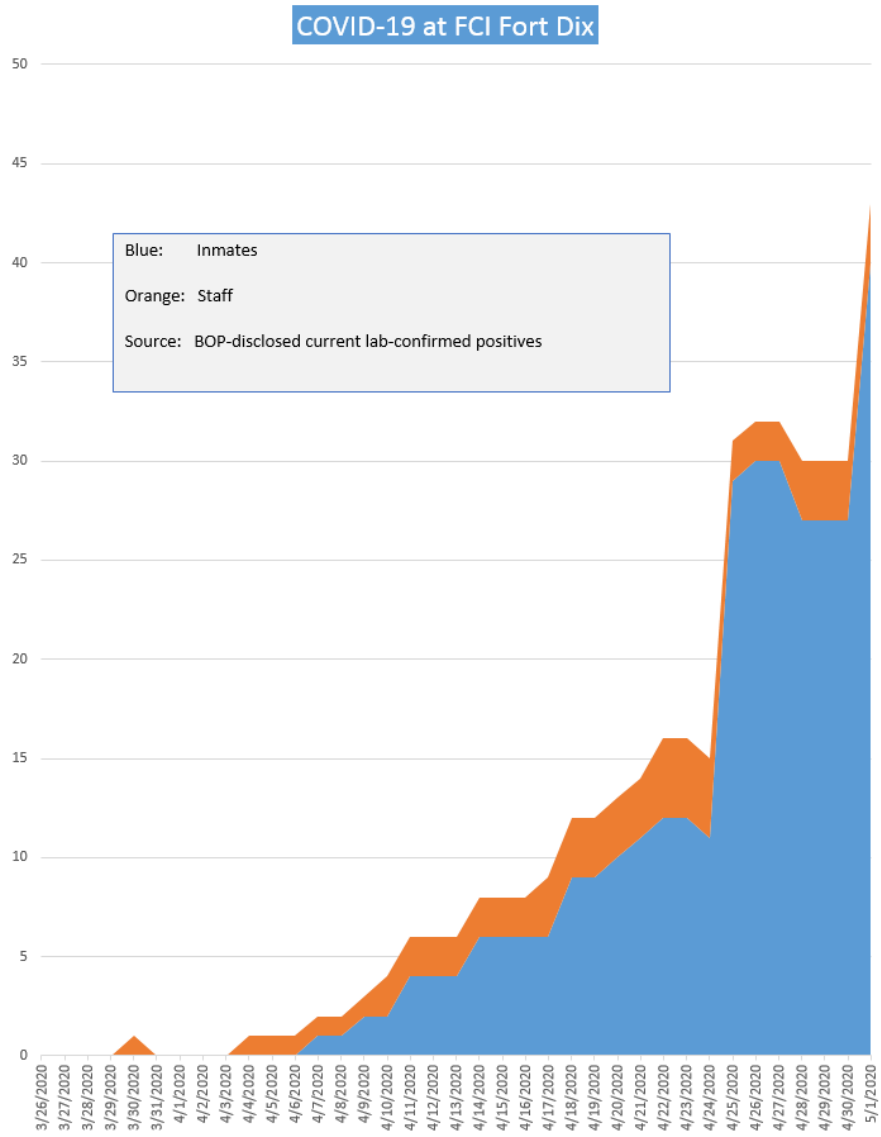
Sick prisoners gathered at the upper floor windows. Some yelled and pounded at the windows, trying to get their attention.[121]

107. Upon information and belief, on April 30, prisoners in B-wing were tested and told to pack up their belongings because anyone who tested positive would be moved the following day. On May 1, 19 people were told they were positive and removed from the Camp. Until then, nine of the 19 had been working as kitchen workers.

108. Although on May 1 BOP reported 40 positive prisoner cases at Fort Dix,[122] upon information and belief the true number of positives results is at least 55, and the true number of people infected but not yet tested is substantially higher.

109. BOP reported no current positive prisoners or staff as recently as April 3.[123] On April 11, BOP still reported only six positives; just three weeks later, it reported 40. By its own account, even the BOP's under-reported numbers show the rate of infection spread at Fort Dix has been exponential:

[121] Wragg Decl. ¶ 20.
[122] Fed. Bureau of Prisons, *COVID-19*, https://www.bop.gov/coronavirus/ (last accessed May 4, 2020).
[123] The BOP announced its first staff positive at Fort Dix on March 30 but that figure was removed the following day.



110. But even these alarming reported numbers likely dramatically understate the scale of the crisis. The BOP reports only *current* positives at each prison, omitting anyone it has transferred or whom it considers recovered, no matter how long they were in the prison spreading infection. The BOP's public data regularly lags days behind what the prison has told people in custody. Most importantly, the BOP reports only lab-confirmed positive tests: not prisoners with symptoms, and not even prisoners who have been diagnosed by a physician with COVID-19 but have not been tested. Yet only a small minority of prisoners at Fort Dix have been tested, even

those with symptoms. The BOP has not revealed the number of people in custody it has tested at Fort Dix, but from numerous prisoner reports it is almost certainly fewer than 10%. This is consistent with testing data BOP has been forced to divulge about its other prisons.[124] Fort Dix has not been testing people in its custody on a regular basis or in substantial quantities, ensuring that it does know the full scope of the problem.

111. People who contract COVID-19 can deteriorate rapidly, even before a test result can be received. Incarcerated individuals who do contract COVID-19 are at higher risk for developing acute symptoms than if they were in the community, because Fort Dix lacks the medical resources to care for symptomatic individuals.

112. Upon information and belief, Fort Dix is housing all prisoners who have tested positive on the upper two floors of Building 5851. Upon information and belief, a nurse and a doctor make two rounds per day, and there is no constant medical supervision. There are no ventilators or respirators, dialysis machines, or other hospital machinery or infrastructure. Prisoners are provided Tylenol.

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[124] *See, e.g.*, Eric Heisig, Ohio Sen. Rob Portman Decries 'Unacceptable' Lack of Coronavirus Testing at Elkton Federal Prison, Cleveland.com (Apr. 28, 2020), https://www.cleveland.com/open/2020/04/ohio-sen-rob-portman-decries-unacceptable-lack-of-coronavirus-testing-at-elkton-federal-prison.html; Jane Wester, *Just 2 Coronavirus Tests Performed in 12 Days at New York City's Federal Lockups, Report Shows*, New York Law Journal (Apr. 21, 2020), https://www.law.com/newyorklawjournal/2020/04/21/just-2-coronavirus-tests-performed-in-12-days-at-new-york-citys-federal-lockups-report-shows/; Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates For Coronavirus Due to 'Sustained Transmission'*, The Lens (Mar. 31, 2020), https://thelensnola.org/2020/03/31/louisiana-federal-prison-no-longer-testing-symptomatic-inmates-for-coronavirus-due-to-sustained-transmission/;Michael Balsamo, *Over 70% of tested inmates in federal prisons have COVID-19*, AP (Apr. 29, 2020) (only 2,700 prisoners tested by BOP nationwide), https://apnews.com/fb43e3ebc447355a4f71e3563dbdca4f.

113. With the reported number of COVID-19 positives escalating rapidly, it is just a matter of time before the infection claims its first fatality at Fort Dix. As correctional health expert Dr. Goldenson warns about Fort Dix: "The infection rate will increase substantially before it starts to diminish without major interventions. The number at risk for death is substantial."[125]

VII. Petitioners Are Particularly Vulnerable.

114. Petitioner Troy Wragg is classified as a BOP "chronic care inmate." In November 2014, he was diagnosed with epilepsy and suffers from grand grand-mal seizures that can be so violent and debilitating that he has broken bones during them.[126] Between April 8 and 23, he had 12 seizures at Fort Dix. [127] He had a thirteenth in the early morning of April 26 and awoke to find his bunkmate holding his head to prevent concussion.[128] Certain symptoms of COVID-19, especially fever, as well as a weakened body from illness, risk triggering more seizures. Petitioner Wragg is also vulnerable to COVID-19 because of hypertension and a heart condition, for which he takes three daily medications.[129] He had a heart attack in 2012.[130] Finally, he is vulnerable as a person with Myasthenia Gravis, a chronic autoimmune neuromuscular disease.[131]

115. Petitioner Michael Scronic has a history of skin cancer, childhood asthma and steroidal medication use, and abnormal heart symptoms.[132] He had a tumor removed from his chest in 1991 and was instructed to return to a pathologist periodically, and in 2018, had Mohs

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[125] Goldenson Decl. ¶ 36.
[126] Wragg Decl. ¶ 3.
[127] *Id.* at ¶ 4.
[128] *Id.*
[129] *Id.* at ¶ 6.
[130] *Id.*
[131] *Id.* at ¶ 7.
[132] Scronic Decl. ¶ 2.

Micrographic surgery to remove another tumor on his chest. Pathologists reported a skin cancer diagnosis.[133] According to his family, throughout childhood, he had recurring serious asthma attacks, had to have the house sterilized, slept with a vaporizing tent over his bed, and for years used steroidal inhalers.[134] Finally, his medical records from his last physical before his incarceration show a heart murmur, heart palpitations, elevated blood pressure, and shortness of breath. All these conditions make Petitioner Scronic vulnerable to COVID-19.[135]

116. Petitioner Leonard Bogdan, at 68 years old, is vulnerable to COVID-19 from his age alone. Additionally, he has serious medical conditions that classify him as a BOP "chronic care inmate."[136] Since his incarceration at Fort Dix, he developed a nodule on his thyroid, diagnosed as potentially cancerous, which causes a rapid heart rate for which he takes twice daily medications.[137] He has a heart diseases called "bifascicular bundle branch block," which impacts the valves of his heart, as well as hypertension, high cholesterol, and "actinic keratosis" skin cancer.[138] Finally, he has extensive physical disability due to a severe case of scoliosis, which causes contortion of his ribcage and impacts his organs. As a result, he has chronic shortness of breath and displacement of the kidneys.[139] For a combination of these conditions, at least four times per year he receives treatment at various regional hospitals, including St. Francis Medical

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[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] Bogdan Decl. ¶ 2.
[137] *Id.*
[138] *Id.*
[139] *Id.*

Center, Robert Wood Johnson University Hospital, and Deborah Lung and Heart Center, and other specialty offices.[140] These conditions make him even more vulnerable to COVID-19.

117. Petitioner Eliezer Soto-Concepcion takes daily medications for a heart condition and high blood pressure.[141] He also has a nervous system condition that causes his hands to shake and has been told he has clogged arteries.[142] Over the last 13 years, he has been hospitalized three times following heart attacks.[143] As a result of these conditions, he is especially vulnerable to COVID-19.

LEGAL GROUNDS FOR PETITION

I. Section 2241 is an Appropriate Vehicle to Address Unconstitutional Conditions of Confinement Affecting the Fact or Duration of Custody.

118. Section 2241(c)(3) authorizes courts to grant habeas corpus relief when a person is "in custody in violation of the . . . laws or treaties of the United States." The Third Circuit has long allowed § 2241 to challenges regarding "'conditions' of [] confinement." *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241 (3d Cir. 2005) (granting habeas petition alleging that the BOP must consider in good faith whether the petitioner could complete the last six months of his sentence in a Community Corrections Center rather a Federal Correctional Institution). Courts have allowed challenges solely on the basis of detention conditions that pose a threat to petitioners' medical well-being. *See e.g.*, *Roba v. United States*, 604 F.2d 215, 218–19 (2d Cir. 1979) (approving the use of Section 2241 to challenge a prisoner's transfer where that transfer created a risk of fatal

[140] *Id.* at ¶ 3.
[141] Soto-Concepcion Decl. ¶ 2.
[142] *Id.*
[143] *Id.*

heart failure). Given the plain language of § 2241, courts are authorized to grant relief to convicted prisoners.

119. In this case, the unconstitutional threat to Petitioners' health and life posed by being held in Respondents' custody is ongoing, not simply imminent. Every hour that Petitioners are held in Fort Dix, they are at a significantly elevated risk of contracting coronavirus, and because of their medical conditions, their risk of dying from coronavirus is significant.

II. Respondent's Failure to Take Steps to Mitigate Transmission of COVID-19 Constitutes Deliberate Indifference to the Serious Medical Needs of Plaintiffs.

120. Respondents are violating Petitioners' Eighth Amendment rights by continuing to incarcerate them in conditions where it is impossible to prevent transmission of an infectious disease and to protect themselves against serious illness that may prove deadly because of Petitioners' vulnerable conditions.

121. All individuals held at Fort Dix have been convicted and assigned by the BOP to serve time at Fort Dix. Therefore, the treatment of all individuals incarcerated at Fort Dix, including the treatment of Petitioners, is governed by the Eighth Amendment. As such, they are entitled to be protected from conditions of confinement that create a serious risk to health or safety, including through release from custody when necessary. *Brown v. Plata*, 563 U.S. 493, 531–32 (2011) (upholding lower court's order releasing people from state prison even though release was based on prospect of future harm caused by prison overcrowding); *see also Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (correctional official violates Eighth Amendment by consciously failing to prevent "a substantial risk of serious harm"). The threat of exposure to a deadly infectious disease such as COVID-19 constitutes a serious risk to health, particularly for the Petitioners because of their unique vulnerability to COVID-19. *Helling v. McKinney*, 509 U.S. 25, 34 (1993)

(noting with approval Eighth Amendment claims based on exposure to serious contagious diseases).

122. Under Fort Dix's current conditions, Respondents have not and cannot protect Petitioners and the class from this risk of serious harm. In these circumstances, enlargement of custody and, if necessary, release, is required to protect Petitioners and other prisoners with high-risk health conditions from unconstitutional custody.

123. Government officials act with deliberate indifference 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," even when "the complaining inmate shows no serious current symptoms." *Helling*, 509 U.S. at 33. This Court need not "await a tragic event" to find that Respondents are maintaining unconstitutional conditions of confinement. *Id.* This is so not only because a tragedy is ongoing, but because even petitioners and class members who have not yet tested positive have a constitutional right to be free from conditions of confinement "pose an unreasonable risk of serious damage to [Petitioners'] future health." *Id.* at 35.

124. The reach of the Eighth Amendment includes "exposure of inmates to a serious, communicable disease." *Helling*, 509 U.S. at 33; *see also Karolis v. N.J. Dep't of Corr.*, 935 F. Supp. 523, 527 (D.N.J. 1996) ("[P]rison officials have an affirmative duty to protect inmates from infectious disease.") (citations omitted). The Third Circuit Court of Appeals has allowed prisoners to maintain a cause of action for mental anguish suffered as a result of exposure to tuberculosis, even when the risk had subsided. *Plummer v. United States*, 580 F.2d 72, 76 (3d Cir. 1978).

125. In this case, as established by the facts above, Petitioners face a significant risk of exposure to COVID-19, with the attendant risk of death that follows given their vulnerable conditions. Respondents are well aware of this risk, having been alerted to it by the CDC, the

Attorney General, BOP guidance, widespread news reporting, and the ongoing outbreak at various BOP facilities including Fort Dix itself. Indeed, the Second Circuit Court of Appeals, unprompted, acknowledged over a month ago the "grave and enduring" risk posed by COVID-19 in the correctional context. *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, No. 19-1778, __ F.3d __, 2020 WL 1320886, at *12 (2d Cir. Mar. 20, 2020); *see also Jovel v. Decker*, No. 20 Civ. 308, 2020 WL 1467397, at *1 (S.D.N.Y. Mar. 26, 2020) (finding "extraordinary circumstances" of COVID-19 pandemic justified release of immigration detainee from federal detention).

126. Finally, as established above, Respondents have not taken steps sufficient to protect Petitioners from the grave risks that are present every moment they are incarcerated at Fort Dix. Respondent Ortiz has recklessly failed to follow or implement CDC guidance or directives from Attorney General Barr or the BOP. Respondents are not capable of managing the risk to Petitioners in the facility's current environment. Respondents are holding Petitioners in violation of their Eighth Amendment rights by detaining them in the face of significant threats to their health and safety without taking sufficient steps to prevent or address that harm.

III. The Number of People Currently in the Facility Ensures that Respondents Cannot Implement Recommended Measures Required to Protect Petitioners' Health, and Violates the Eighth Amendment.

127. Respondents are violating Petitioners' Eighth Amendment rights by continuing to incarcerate them in conditions where it is impossible to prevent transmission of an infectious disease and to protect themselves against serious illness that may prove deadly because of Petitioners' vulnerable conditions.

128. As alleged above, the BOP has thus far failed to implement effective social distancing across its facilities, including particularly at Fort Dix, with disastrous effects. Part of this failure reflects the nature of correctional confinement; however, a large part here owes to the

particular circumstances of Fort Dix's design, capacity, and deliberate choices about policies by Respondents.

129. While a facility like Fort Dix might not be overcrowded under normal circumstances, emergency situations like this one have rendered an otherwise constitutionally-acceptably-populated facility overcrowded relative to its maximum safe capacity. The current Fort Dix population of approximately 3,000 prisoners might not present a constitutional problem in ordinary circumstances, but that population in the context of the ongoing pandemic ensures that effective social distancing is impossible, and it stymies Respondents' ability to follow and implement the CDC Interim Guidance and other viral-transmission prevention measures.

130. Courts have long found that facilities' populations may exacerbate existing harms entirely unrelated to the fact of crowding itself, including cases where populations may inhibit a facility's ability to mitigate incarcerated individuals' risk of contracting dangerous diseases. The Supreme Court itself has recognized that correctional defendants can violate the Eighth Amendment when they crowd prisoners into shared spaces with others who have "infectious maladies." *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Hutto v. Finney*, 437 U.S. 678, 682–85 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

131. Subsequent decisions have recognized that such crowding can happen across facilities. *See Lareau v. Manson*, 651 F.2d 96 (2d Cir. 1981) (medical services strained by overcrowding could amount to a constitutional violation).

132. Such decisions make particular sense in light of substantial corroborating evidence that transmission becomes more likely in light of, among other factors, relative crowding of people together. *See, e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious

Diseases 1047, 1047 (Oct. 2007) ("The probability of transmission of potentially pathogenic organisms is increased [in jails and prisons] by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise."), *available at* https://bit.ly/2QZA494.

133. In this case, Petitioners face an elevated risk of serious illness both because of particular failures on the part of Respondents as alleged above, and because of the number of people in the facility. The current population of Fort Dix, both of incarcerated individuals and the staff who come through on a daily basis and work in the same confined space, ensures that any effective measures that would mitigate Petitioners' exposure to and risk of serious illness from COVID-19 are impossible to implement.

CLASS ACTION ALLEGATIONS

134. Petitioners bring this representative habeas action pursuant to 28 U.S.C. § 2241 and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all persons similarly situated.

135. Petitioners seek to represent a class consisting of all current and future people in post-conviction custody at Fort Dix who are over the age of 50 or who experience medical conditions that make them uniquely vulnerable to COVID-19, including (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease, or other chronic conditions associated with impaired heart function; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) neurological and neurologic and neurodevelopment conditions, including disorders of the brain, spinal cord, peripheral nerve, and

muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; (l) a current or recent (last two weeks) pregnancy; or (m) severe obesity. (the "Class").[144]

136. Petitioners also seek to represent a subclass consisting of all current and future people in post-conviction custody at Fort Dix who have qualifying disabilities within the meaning of the Rehabilitation Act ("the Subclass").

137. The members of the Class are too numerous to be joined in one action, and their joinder is impracticable.

138. Several common questions of law and fact apply to all Class members. These common questions of fact and law include but are not limited to: (1) whether the conditions of confinement described in this Petition amount to constitutional violations; (2) what measures Respondents have taken and is taking in response to the COVID-19 crisis; (3) whether Respondents have implemented and are implementing an adequate emergency plan during the COVID-19 crisis; (4) whether Respondents' practices during the COVID-19 crisis have exposed and are exposing prisoners at Fort Dix to a substantial risk of serious harm; (5) whether the Respondents have known of and disregarded a substantial risk of serious harm to the safety and

[144] Goldenson Decl. at 8 n.20.

health of the Class; and (6) what relief should be awarded to redress the harms suffered by members of the Class as a result of the conditions.

139. As to the Subclass in particular, there is also common questions as to whether (7) Respondents have adequately accommodated the disabilities that make Subclass members more likely to contract COVID-19 and suffer greater harm if they do; and (8) what relief should be awarded to redress the harms suffered by members of the Subclass as a result of Rehabilitation Act violations.

140. Absent class certification, individuals incarcerated at Fort Dix during the COVID-19 pandemic would face a series of barriers in accessing the relief sought. Fort Dix has suspended visitation and individuals incarcerated there have limited access to communication with the outside world, impeding their ability to obtain legal representation and pursue litigation. Because the Class and Subclass are all sentenced prisoners, they do not have defense attorneys already working with them on their criminal proceedings. And a large portion of the Class and Subclass has limited educational backgrounds and financial means.

141. Respondents' practices and the claims alleged in this Petition are common to all members of the Class and members of the Subclass.

142. The claims of Petitioners are typical of those of the Class and the Subclass. Petitioners, like all other at Fort Dix, are currently being held in unconstitutional custody at Fort Dix. Petitioners, like other members of the Subclass, have qualifying disabilities that entitle them to accommodations that they are not receiving in violation of the Rehabilitation Act.

143. The legal theories on which Petitioners rely are the same or similar to those on which all Class and Subclass members would rely, and the harms suffered by them are typical of those suffered by all the other Class and Subclass members.

144. Petitioners will fairly and adequately protect the interests of the Class and the Subclass. The interests of the Class and Subclass representatives are consistent with those of the Class and Subclass members. In addition, counsel for Petitioners are experienced in class action and civil rights litigation and in criminal law.

145. Counsel for Petitioners know of no conflicts of interest among Class or Subclass members or between the attorneys and Class or Subclass members that would affect this litigation.

FIRST CAUSE OF ACTION
(Eighth Amendment)

Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution
28 U.S.C. § 2241
Class versus All Defendants

146. Petitioners incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

147. Petitioners bring this claim on their own behalf and on behalf of the Class.

148. The Eighth Amendment guarantees sentenced prisoners custody free of "a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." *Helling*, 509 U.S. at 33; *see also* U.S. Const. Amend VIII. The government's failure to protect the prisoners in its custody from a widespread outbreak of a serious contagious disease that causes potentially permanent damage or death constitutes deliberate indifference in violation of the Eighth Amendment to the United States Constitution.

149. Petitioners and the Class are uniquely vulnerable to serious complications or death from contracting COVID-19 because of their age and/or because they suffer from medical conditions that render them uniquely vulnerable.

150. Because of the conditions at Fort Dix, Petitioners cannot take steps to protect themselves—such as social distancing, hand-washing hygiene, or self-quarantining—and the government has not provided adequate protections. As COVID-19 rapidly spreads inside Fort Dix, the already deplorable conditions at the prison will continue to deteriorate, and incarcerated individuals there will continue to contract COVID-19 at staggering rates.

151. Respondent's failure to adequately protect Petitioners from these unconstitutional conditions, or release them from the conditions altogether, constitutes deliberate indifference to a substantial risk of serious harm to Petitioners, and all members of the Class, thereby establishing a violation of the Eighth Amendment to the United States Constitution.

152. Respondents were aware or should have been aware of these conditions, which were and are open and obvious throughout the entire prison.

153. Respondents knew of and disregarded an excessive risk to health and safety.

154. Respondents failed to act with reasonable care to mitigate these risks, subjecting Petitioners to a grave and serious risk of harm of serious illness, permanent injury, or death.

155. Because Respondents failed to act to remedy Petitioners' and the Class's degrading and inhumane conditions of confinement in violation of their Eighth Amendment rights, Petitioners seek relief under this Writ of Habeas Corpus Petition and Class Action Complaint.

156. Because of the unlawful conduct of Respondents, Petitioners and the Class are threatened with imminent physical injury, pain and suffering, emotional distress, humiliation, and death.

SECOND CAUSE OF ACTION
(Rehabilitation Act)

Unconstitutional Conditions of Confinement in Violation of Rehabilitation Act
28 U.S.C. § 1331
Subclass versus All Defendants

157. The Rehabilitation Act requires entities that receive federal funding, such as the BOP and Fort Dix, not to discriminate against Americans with qualifying disabilities.

158. Section 504 of the Rehabilitation Act ("RA"), 29 U.S.C. § 794, requires entities such as Fort Dix to reasonably accommodate people with disabilities in all programs and services for which people with disabilities are otherwise qualified.

159. Petitioners, and other members of the Subclass, qualify as individuals with disabilities under the meaning of the RA.

160. Access to safe conditions of confinement and adequate preventative and responsive medical treatment are programs or services that Fort Dix must provide—but is not presently providing—to people in its custody to comply with the RA.

161. Respondents intentionally discriminate against people with disabilities by denying them reasonable accommodations, including but not limited to those set out in the CDC guidance, that are necessary to protect them from COVID-19.

162. In a facility with reduced population that might allow adequate social distancing, reasonable accommodations for people with qualifying disabilities include but are not limited to: separate living spaces rather than high-capacity shared rooms and dorms with people in close proximity; free distribution of adequate cleaning supplies, including soap; free distribution of adequate personal protective equipment, including masks and gloves; staggered access to bathrooms, meals, and other shared resources; assignments of correctional staff that mitigates the

possibility staff will transmit COVID-19, even asymptomatically, from one building to another; and adequate access to tests and information about risk.

163. Failing to provide these reasonable accommodations violates the Rehabilitation Act, which entitles Petitioners and members of the disability subclass to injunctive and declaratory relief.

RELIEF REQUESTED

WHEREFORE, Petitioners, the Class, and the Subclass respectfully request that the Court enter a class-wide judgment:

A. Declaring Fort Dix's custody of Petitioners and the Class violates the Eighth Amendment right against cruel and unusual punishment, and the Rehabilitation Act with respect to Petitioners and the Subclass;

B. Ordering temporary enlargement of custody (or bail pending habeas corpus) with appropriate precautionary public health and safety measures for all Class Members—including the Petitioners, the Class, and the Subclass, during the pendency of this petition for a writ of habeas corpus;

C. Ordering respondents to comply with the Constitution for any members of the Class who do not receive temporary enlargement and remain at Fort Dix during the pendency of the petition, and with the Rehabilitation Act for any members of the Subclass who remain;

D. If temporary enlargement does not bring the conditions at Fort Dix into compliance with the Eighth Amendment and the Rehabilitation Act, issuing writs of habeas corpus;

E. Certifying this petition as a class action, for the reasons stated herein;

F. Awarding Plaintiffs' attorneys' fees and costs, as provided by statute and law; and

G. Ordering such other and further relief as this Court deems just, proper and equitable.

Respectfully submitted,

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**Petition for permission to file pro hac vice forthcoming*

Dated: May 4, 2020

Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, including the management of HIV, tuberculosis, Hepatitis C, and other infectious diseases in the facility and the planning and coordination of the jail's response to H1N1, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and am past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert and monitor at Cook County Jail in Chicago; Los Angeles County Jail; at other jails in Washington state, Texas, and Florida; and at prisons in Illinois, Ohio, and Wisconsin.

5. My curriculum vitae is attached as exhibit A.

The nature of COVID-19

6. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the World Health Organization ("WHO"). Cases first began appearing between December 1 and December 31, 2019, in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

7. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus that caused the 2002–2003 SARS epidemic.

8. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.1 to 3.5%, which is up to 35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.

9. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardiovascular disease, respiratory disease, diabetes, and immune compromise.

10. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS), which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.

11. COVID-19 is widespread. Since it first appeared in China in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents; heavily affected countries include Italy, Spain, Iran, South Korea, and the U.S. The U.S. is now the world's most affected country. As of April 29, 2020, there have been 3,142,942 confirmed human cases globally and 218,564 known deaths.[1] It is not contained, and cases are growing exponentially.

12. In the United States alone, the Centers for Disease Control and Prevention ("CDC") reports 981,246 cases and 55,258 deaths as of April 28.[2] The New Jersey Department of Health reports 113,856 cases and 6,442 dead as of April 28.[3] All these numbers are likely underestimates because of limited availability of testing.

13. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no pre-existing or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.

14. The U.S. CDC estimates that the reproduction rate of the virus, the R0, is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is

[1] https://coronavirus.jhu.edu/map.html (last accessed April 29, 2020)
[2] https://www.cdc.gov/covid-data-tracker/index.html ((last accessed April 29, 2020)
[3] https://covid19.nj.gov/#live-updates ((last accessed April 29, 2020)

likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20–30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2–14 days, which is why isolation is generally limited to 14 days.

15. CDC has recently added to the list of possible signs and symptoms of COVID-19 to include fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, or new loss of taste or smell.[4] This means the questionnaires currently used to screen staff and prisoners need to be updated and the numbers of suspect cases will increase.

16. There is currently no vaccine for COVID-19, and no cure. The only known ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough handwashing, frequent decontamination of surfaces, and maintaining six feet of physical distance between individuals ("social distancing").

The risks of COVID-19 in detention facilities

17. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Fort Dix, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.

18. The severe epidemic of tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.

19. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces are virtually impossible.

20. For example, several deaths were reported in the U.S. in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.

21. Current recommendations for social distancing, frequent hand washing, and frequent cleansing of surfaces to prevent infection and the spread of the virus are extremely difficult, if not impossible, to implement in the correctional setting. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical

[4] Centers for Disease Control and Prevention, Symptoms of Coronavirus, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet, shower, and eating environments; and limits on hygiene and personal protective equipment such as masks and gloves in some facilities. Shared spaces and equipment (such as telephones) are commonly not adequately disinfected, especially during the current pandemic when more frequent cleaning and disinfecting are required. Limits on soap (copays are common) and hand sanitizer, since they can contain alcohol, are also risks for spread. The nationwide shortage of personal protective equipment (PPE), as well as ancillary products (such as cleaning supplies and thermometer probes) further impacts the ability of correctional facilities to implement necessary precautions.[5]

22. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in jails, prisons, and detention centers than in the community.

23. Close, poorly ventilated living quarters and often overcrowded conditions in these facilities foster the rapid transmission of infectious diseases, particularly those transmitted by airborne droplets through sneezing, speaking, or coughing. In these congregate settings, large numbers of people are closely confined and forced to share living spaces, bathrooms, eating areas, and other enclosed spaces. Groups of persons are often moved from space to space, for example, from a dormitory to a cafeteria. Persons congregate and come in close contact while standing in lines for medication, commissary, fresh laundry, telephones, or court appearances. These group movements, which may cluster large numbers of people together in small spaces, increase the risk of transmission. It is common for detainees in a given housing unit to routinely be subjected to such group movements multiple times each day. They are physically unable to practice social distancing, which the CDC has identified as the "cornerstone of reducing transmission of respiratory diseases such as COVID-19."[6]

24. This forced congregation spreads infection from one area of a prison to other areas, too. In addition, detention facilities often rely on detainees to perform work that supports the operation of the facility, such as food service, laundry, and cleaning. To perform these work assignments, they typically travel from their housing units to other parts of the facility. Officers and other detention facility staff routinely have direct physical contact with detainees, especially when handcuffing or removing handcuffs from detainees who are entering or exiting the facility Staff members also move around within the facility, which creates opportunities for transmission both among staff in different parts of the

[5] *Study of COVID-19 in Correctional Facilities*, Harvard University and National Commission on Correctional Health Care, April 9, 2020

[6] https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html

facility and transmission to and from detainees in different parts of the facility. This regular circulation makes the spread of infection throughout a prison all but inevitable.

25. While jails, prisons, and detention centers are often thought of as closed environments, this is not the case. Custody, medical, and other support staff and contractors enter and leave the facility throughout the day. New detainees arrive on a frequent basis. Since there is no effective way to screen for newly infected or asymptomatic individuals, they can unknowingly transmit COVID-19 to those housed in the facility. Detainees and inmates are often transferred between housing units, to other facilities, and to and from court. This further increases the likelihood of transmission of COVID-19.

26. It has long been known that jails, prisons, and detention centers can be hotbeds of disease transmission. Due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities. For example, the tuberculosis epidemic that broke out in New York City in the early 1990s began in jails and was spread to the community by jail employees who became infected and then returned home to their families and communities.

27. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.

28. Testing kits are widely unavailable, and it can take anywhere from a day to a week or more to obtain test results. Someone who is tested shortly after he or she was infected may test negative. Non-test-based screens like taking people's temperatures or asking them for subjective reports of symptoms—cannot adequately screen for new, asymptomatic or pre-symptomatic infections. COVID-19 has a typical incubation period of 2 to 14 days, commonly five days, and transmission often occurs before presentation of symptoms. According to the CDC, up to 25 percent of people infected with COVID-19 will remain asymptomatic.[7] Similarly, infected individuals may experience only mild symptoms. These newly infected, asymptomatic, and mildly symptomatic individuals can, and do, transmit the virus, contributing to its rapid spread. As a result, such inadequate screening presents a critical problem. The possibility of asymptomatic transmission means that monitoring staff and incarcerated people for symptoms and fever is inadequate to identify all who may be infected and to prevent transmission.

29. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly

[7] Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. Times (Mar. 31, 2020), https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html

enough. Further, no mitigation effort can change the inherent nature of detention facilities, which force people to live in close proximity to one another. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible. Indeed, that is the only public health solution available at this time to reduce the spread of COVID-19 and potentially save lives.

30. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are highly likely. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention facilities, and the community as a whole. Indeed, according to the WHO, "enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages."[8]

31. For these reasons, the pandemic has prompted prisoner releases around the world. France has freed 5,000 inmates[9], and, in the United States, California officials are planning to release up to thousands of prisoners.[10] In Britain, the Ministry of Justice is planning to grant thousands of prisoners early release within weeks in an effort to contain the spread of the virus in cells and facilities where it said social distancing rules are impossible to maintain.[11] Many cities and counties across the US, including San Francisco, Los Angeles, Chicago, Cleveland and New York, are also releasing prisoners to reduce the risk of COVID-19.[12]

32. It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Fort Dix. At Rikers Island jail in New York, between April 1 and April 15, 2020, the number of COVID-19 positive incarcerated individuals and staff members grew by 104 and 114 people, respectively, upping the jail's total numbers of confirmed cases to 288 among the incarcerated population, 488 among

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[8] World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

[9] *Coronavirus: Low-risk prisoners set for early release*, BBC News (Apr. 4, 2020), https://www.bbc.com/news/uk-52165919.

[10] Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, L.A. Times (Mar. 31, 2020), https://www.latimes.com/california/story/2020-03-31/coronaviruscalifornia-release-3500-inmates-prisons.

[11] *Britain plans to free many inmates early as it reports a on-day death toll*, New York Times, 4/3/20.

[12] Timothy Williams et al., *'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/us/coronavirusprisons-jails.html.

correction staff, and 78 among health care workers.[13,14] The first known case of COVID-19 at Rikers was confirmed on March 18,[15] illustrating just how quickly this disease can and will overwhelm detention facilities. Two Ohio prisons, Marion Correctional Institution and Pickaway Correctional Institution, have emerged as the largest-known sources of U.S. coronavirus infections, according to data compiled by The New York Times. To date 3,808 cases have been connected to the two prisons.[16] Over 80% of the approximately 2,500 prisoners in Marion tested positive.[17] In addition, 169 staff have tested positive for COVID-19.[18] Eight of the ten largest-known infections sources in the U.S. are jails or prisons.

33. At Ohio's Marion Correctional, close to 95% of those who tested positive were asymptomatic and would otherwise not have been tested.[19] This underscores the risk of the spread of COVID-19 by asymptomatic individuals.

34. According to the Bureau of Prisons, 27 detainees and 3 staff members at FCI Fort Dix currently have tested positive for COVID-19. Dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2–14 days, many infected individual are asymptomatic, and since the infection spreads rapidly to additional people. While no detainees are reported to have died from COVID-19 in FCI Fort Dix yet, the death toll is likely to mount rapidly given the way the disease has progressed elsewhere.

35. It is my understanding that FCI Fort Dix has two open bay / dormitory housing units; at least seven housing units with 2-, 10-, and 12-man dormitory-style rooms; and a segregation unit. It also my understanding that FCI Fort Dix has roughly 2,900 detainees in the facility on any given day; that staff enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.

36. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within FCI Fort Dix.

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[13] Julia Craven, *Coronavirus Cases Are Spreading Rapidly on Rikers Island*, Slate (Apr. 2, 2020), https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html.

[14] Jan Ranson, *Jailed on a Minor Parole Violation, He Caught the Virus and Died*, N.Y. Times (Apr. 10, 2020)

[15] *As Testing Expands, Confirmed Cases of Coronavirus in N.Y.C. Near 2,000* (Mar. 18, 2020), N.Y. Times, https://www.nytimes.com/2020/03/18/nyregion/coronavirus-new-york-update.html.

[16] *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage&action=click&module=Spotlight&pgtype=Homepage#states (last accessed April 29, 2020).

[17] Ohio Department of Rehabilitation & Correction, COVID-19 Inmate Testing Updated 4/28/2020, https://coronavirus.ohio.gov/static/DRCCOVID-19Information.pdf.

[18] *Id.*

[19] https://www.nytimes.com/reuters/2020/04/25/us/25reuters-health-coronavirus-prisons-testing-insight.html?searchResultPosition=8

Adequate social distancing would be impossible to achieve. What's more, the infection in FCI Fort Dix would not stay limited to the facility, but would worsen infection rates in the broader community. The infection rate will increase substantially before it starts to diminish without major interventions. The number at risk for death is substantial. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place, is insufficient.

Conclusions

37. For the reasons above, it is my professional opinion that persons currently detained at FCI Fort Dix are at significantly greater risk of contracting COVID-19 than if they were permitted to shelter in place in their home communities. If infected, many are at increased risk of suffering severe complications and outcomes.

38. It is my professional opinion that conditions in FCI Fort Dix threaten the health and safety of every individual within the prison—detained persons and staff alike—and in their surrounding communities.

39. It is my professional opinion that a necessary component of bringing FCI Fort Dix into compliance with the recommendations of the CDC to minimize the risk of COVID-19 transmission within the facility and to the larger community is to substantially reduce the population. Doing so will allow the facility to significantly reduce the risk of infection for both incarcerated people and correctional officers, which in turn protects the communities where corrections staff live.

40. It is my professional opinion that those who are medically vulnerable[20] need to be moved out of FCI Fort Dix to the absolute maximum extent possible. In addition, the overall population needs to be significantly lowered to reduce the density in the jails

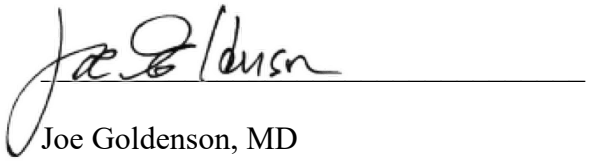
[20] Persons held at Fort Dix over the age of 50, as well as all current and future persons held at Fort Dix of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease, or other chronic conditions associated with impaired heart function; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) neurological and neurologic and neurodevelopment conditions [including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; (l) a current or recent (last two weeks) pregnancy; and/or severe obesity.

to allow for adequate social distancing, minimize the strain on the jail's medical care system, ensure adequate space is available for necessary quarantining.

41. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in FCI Fort Dix, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April, 2020, in Alameda County, California.



Joe Goldenson, MD

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CURRICULUM VITAE

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EDUCATION

Post Graduate Training

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1979-1980	Robert Wood Johnson Fellowship in Family Practice
1976-1979	University of California, San Francisco Residency in Family Practice

Medical School

1973-1975	Mt. Sinai School of Medicine, New York M.D. Degree
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Undergraduate Education

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PROFESSIONAL EXPERIENCE

Practice Experience

1993-2015	Director/Medical Director Jail Health Services San Francisco Department of Public Health
1991-1993	Medical Director Jail Health Services San Francisco Department of Public Health
1990-1991	Chief of Medical Services, Hall of Justice Jail Health Services San Francisco Department of Public Health
1987-1990	Staff Physician Jail Health Services San Francisco Department of Public Health
1980-1987	Sabbatical
1975-1976	Staff Physician United Farm Workers Health Center, Salinas, CA

Consulting

3/20-Preset	Federal Court appointed Medical Monitor, *Chavez, et al., v. County*

	of Santa Clara, Case No. 15-cv-05277-RMI, Consent Decree, United States District Court, Northern District of California, Eureka Division, re: Medical care in Santa Clara County Jail
6/16-8/19	Consultant to Los Angeles Department of Health Services re: provision of health care services in the LA County Jail
4/02-Present	Federal Court Medical Expert, *Plata v. Newsome*, Class Action Lawsuit re: prisoner medical care in California State Prison System
6/14-9/14	Medical expert for the Illinois Department of Corrections and the ACLU of Illinois
6/10-12/13	Federal Court appointed Medical Monitor, U.S.A. v. Cook County, et al., United States District Court for the Northern District of Illinois, No. 10 C 2946, re: medical care in the Cook County Jail
6/08-6/12	Member, *Plata v. Schwarzenegger* Advisory Board to the Honorable Thelton E. Henderson, U.S. District Court Judge
5/08-9/09	Medical Expert for ACLU re Maricopa County Jail, Phoenix, AZ
1/08	Member of the National Commission on Correctional Health Care's Technical Assistance Review Team for the Miami Dade Department of Corrections
9/07-1/10	Federal Court appointed Medical Expert, *Herrera v. Pierce County, et al.,* re: medical care at the Pierce County Jail, Tacoma, WA
8/06-8/12	State Court Appointed Medical Expert, *Farrell v. Allen*, Superior Court of California Consent Decree re medical care in the California Department of Juvenile Justice
6/05	Member of Technical Assistance Review Team for the Dallas County Jail
11/02-4/03	Medical Expert for ACLU re Jefferson County Jail, Port Townsend, Washington
4/02-8/06	Federal Court Medical Expert, *Austin, et. al vs Wilkinson, et al*, Class Action Law Suit re: Prisoner medical care at the Ohio State Penitentiary Supermax Facility
1/02-3/02	Consultant to the Francis J. Curry, National Tuberculosis Center re: *Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)*,
8/01-4/02	Medical Expert for ACLU re Wisconsin Supermax Correctional Facility, Boscobel, WI
7/01-4/02	Medical Expert for Ohio Attorney General's Office re Ohio State Prison, Youngstown, OH
1/96-1/14	Member and Surveyor, California Medical Association Corrections and Detentions Health Care Committee
5/95-6/08	Medical Expert for the Office of the Special Master, *Madrid vs Alameida*, Federal Class Action Law Suit re: Prisoner medical care at the Pelican Bay State Prison Supermax Facility
3/98-12/98	Member, Los Angeles County Department of Public Health Jail Health Services Task Force
2/98	Medical Expert, Department of Justice Investigation of Clark County Detention Center, Las Vegas, Nevada
6/94	Surveyor, National Commission on Correctional Health Care,

INS Detention Center, El Centro, CA

Work Related Committees

1/14 to present	Member, Editorial Advisory Board, *Correctional Health Care Report*
10/11 to 5/19	Member, Board of Directors of the National Commission on Correctional Health Care
5/07-10/12	Liaison to the CDC Advisory Council for the Elimination of Tuberculosis (ACET) from the National Commission on Correctional Health Care
12/04-3/06	Member of the CDC Advisory Council for the Elimination of Tuberculosis (ACET) Ad Hoc Working Group on the *Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC* (MMWR 2006; 55(No. RR-9))
6/03-8/03	Member of the Advisory Panel for the Francis J. Curry National Tuberculosis Center and National Commission on Correctional Health Care, 2003: *Corrections Tuberculosis Training and Education Resource Guide*
3/02-1/03	Member of the Advisory Committee to Develop the *Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)*, Francis J. Curry, National Tuberculosis Center
6/01-1/15	Director's Cabinet San Francisco Department of Public Health
3/01	Consultant to Centers for Disease Control on the Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings (MMWR 2003; 52(No. RR-1))
9/97-6/02	Member, Executive Committee of Medical Practice Group, San Francisco Department of Public Health
3/97-3/02	American Correctional Health Services Association Liaison with American Public Health Association
3/96-6/12	Chairperson, Bay Area Corrections Committee (on tuberculosis)
2/00-12/00	Medical Providers' Subcommittee of the Office-based Opiate Treatment Program, San Francisco Department of public Health
12/98-12/00	Associate Chairperson, Corrections Sub-Committee, California Tuberculosis Elimination Advisory Committee
7/94-7/96	Advisory Committee for the Control And Elimination of Tuberculosis, San Francisco Department of Public Health
6/93-6/95	Managed Care Clinical Implementation Committee, San Francisco Department of Public Health
2/92-2/96	Tuberculosis Control Task Force, San Francisco Department of Public Health
3/90-7/97	San Francisco General Hospital Blood Borne Pathogen Committee
1/93-7/93	Medical Staff Bylaws Committee, San Francisco Department of Public Health

ACADEMIC APPOINTMENT

1980-2015	Assistant Clinical Professor

University of California, San Francisco

PROFESSIONAL AFFILIATIONS

Society of Correctional Physicians, Member of President's Council, Past-Treasurer and Secretary
American Correctional Health Services Association, Past-President of California Chapter
American Public Health Association, Jails and Prison's Subcommittee
Academy of Correctional Health Professionals

PROFESSIONAL PRESENTATIONS

Caring for the Inmate Health Population: A Public Health Imperative, Correctional Health Care Leadership Institutes, July 2015

Correctional Medicine and Community Health, Society of Correctional Physicians Annual Meeting, October, 2014

Identifying Pulmonary TB in Jails: A Roundtable Discussion, National Commission on Correctional Health Care Annual Conference, October 31, 2006

A Community Health Approach to Correctional Health Care, Society of Correctional Physicians, October 29, 2006

Prisoners the Unwanted and Underserved Population, *Why Public Health Should Be in Jail*, San Francisco General Hospital Medical Center, Medical Grand Rounds, 10/12/04

TB in Jail: A Contact Investigation Course, Legal and Administrative Responsibilities, Francis J. Curry National Tuberculosis Center, 10/7/04

Public Health and Correctional Medicine, American Public Health Association Annual Conference, 11/19/2003

Hepatitis in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 1/17/02

Correctional Medicine, San Francisco General Hospital Medical Center, Medical Grand Rounds, 12/16/02

SuperMax Prisons, American Public Health Association Annual Conference, 11/8/01

Chronic Care Programs in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 9/19/02

Tuberculosis in Corrections - Continuity of Care, California Tuberculosis Controllers Association Spring Conference, 5/12/98

HIV Care Incarcerated in Incarcerated Populations, UCSF Clinical Care of the AIDS Patient Conference, 12/5/97

Tuberculosis in Correctional Facilities, Pennsylvania AIDS Education and Training Center, 3/25/93

Tuberculosis Control in Jails, AIDS and Prison Conference, 10/15/93

The Interface of Public Health and Correctional Health Care, American Public Health Association Annual Meeting, 10/26/93

HIV Education for Correctional Health Care Workers, American Public Health Association Annual Meeting, 10/26/93

PUBLICATIONS

Structure and Administration of a Jail Medical Program. Correctional Health Care:

Practice, Administration, and Law. Kingston, NJ: Civic Research Institute. 2017.

Structure and Administration of a Jail Medical Program – Part II. Correctional Health Care Report. Volume 16, No. 2, January-February 2015.

Structure and Administration of a Jail Medical Program – Part I. Correctional Health Care Report. Volume 16, No. 1, November-December 2014.

Pain Behind Bars: The Epidemiology of Pain in Older Jail Inmates in a County Jail. Journal of Palliative Medicine. 09/2014; DOI: 10.1089/jpm.2014.0160

Older jail inmates and community acute care use. Am J Public Health. 2014 Sep; 104(9):1728-33.

Correctional Health Care Must be Recognized as an Integral Part of the Public Health Sector, Sexually Transmitted Diseases, February Supplement 2009, Vol. 36, No. 2, p.S3–S4

Use of sentinel surveillance and geographic information systems to monitor trends in HIV prevalence, incidence, and related risk behavior among women undergoing syphilis screening in a jail setting. Journal of Urban Health 10/2008; 86(1):79-92.

Discharge Planning and Continuity of Health Care: Findings From the San Francisco County Jail, American Journal of Public Health, 98:2182–2184, 2008

Public Health Behind Bars, Deputy Editor, Springer, 2007

Diabetes Care in the San Francisco County Jail, American Journal of Public Health, 96:1571-73, 2006

Clinical Practice in Correctional Medicine, 2nd Edition, Associate Editor, Mosby, 2006.

Tuberculosis in the Correctional Facility, Mark Lobato, MD and Joe Goldenson, MD, *Clinical Practice in Correctional Medicine, 2nd Edition,* Mosby, 2006.

Incidence of TB in inmates with latent TB infection: 5-year follow-up. American Journal of Preventive Medicine. 11/2005; 29(4):295-301.

Cancer Screening Among Jail Inmates: Frequency, Knowledge, and Willingness Am J Public Health. 2005 October; 95(10): 1781–1787

Improving tuberculosis therapy completion after jail: translation of research to practice. Health Education Research. 05/2005; 20(2):163-74.

Incidence of TB in Inmates with Latent TB Infection, 5-Year Follow-up, American Journal of Preventive Medicine, 29(4), 2005

Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings, Morbidity and Mortality Reports, (External Consultant to Centers for Disease Control),Vol. 52/No. RR-1 January 24, 2003

Randomized Controlled Trial of Interventions to Improve Follow-up for Latent Tuberculosis Infection After Release from Jail, Archives of Internal Medicine, 162:1044-1050, 2002

Jail Inmates and HIV care: provision of antiretroviral therapy and Pneumocystis carinii pneumonia prophylaxis, International Journal of STD & AIDS; 12: 380-385, 2001

Tuberculosis Prevalence in an urban jail: 1994 and 1998, International Journal of Tuberculosis Lung Disease, 5(5):400-404, 2001

Screening for Tuberculosis in Jail and Clinic Follow-up after Release, American Journal of Public Health, 88(2):223-226, 1998

A Clinical Trial of a Financial Incentive to Go to the Tuberculosis Clinic for Isoniazid after Release from Jail, International Journal of Tuberculosis Lung Disease, 2(6):506-512,1998

AWARDS

Armond Start Award of Excellence, Society of Correctional Physicians, 2014
Award of Honor, San Francisco Board of Supervisors, 2014
Award of Honor, San Francisco Health Commission, 2014
Certificate of Appreciation, San Francisco Public Defender's Office, 2014
Certificate for Excellence in Teaching, California Department of Health Services, 2002
Employee Recognition Award, San Francisco Health Commission, July 2000
Public Managerial Excellence Award, Certificate of Merit, San Francisco, 1997

LICENSURE AND CERTIFICATION

Medical Board of California, Certificate #A32488
Fellow, Society of Correctional Physicians
Board Certified in Family Practice, 1979-1986 (Currently Board Eligible)

Declaration of Nina H. Fefferman, Ph.D.

1. I am a full professor at the National Institute for Mathematical and Biological Synthesis at the University of Tennessee, Knoxville. I am jointly appointed in both the Department of Mathematics and the Department of Ecology and Evolutionary Biology. I am also an Associate Director of the University of Tennessee One Health Initiative and the Director of the UT Mathematical Modeling Consulting Center. As a professor and academic administrator of research efforts, I have 16 years of experience in building, analyzing, and applying mathematical models of infectious diseases to help design public health policy and advise policy makers. My curriculum vitae is attached as Exhibit A.

2. For 9 years, I worked as a researcher for the United States Department of Homeland Security as part of the Command, Control, and Interoperability Center for Advanced Data Analytics, where my research focused on biosecurity, pandemic preparedness, and complex adaptive systems. I have served as a subject matter expert for the Los Alamos National Labs, the US Environmental Protection Agency, the Department of Defense, and the Centers for Disease Control and Prevention, all in the area of biodefense using mathematical models of outbreaks of infectious diseases. My work has been funded by grants from the National Institutes of Health, the National Science Foundation, the Department of Defense, the US Department of Agriculture, the US Fish and Wildlife Service, and the US Department of Homeland Security. In each of these roles, I have designed, implemented, and analyzed mathematical models and helped translate the insights derived from those models to shape policy to keep populations safe.

3. In 2006-2007, I served as a consultant to the New Jersey Department of Corrections, helping understand, anticipate, and plan mitigation for vulnerabilities of the NJ prison system to infectious disease outbreaks.

4. I have received federal funding for my work on pandemic preparedness and response plans for H1N1 2009, Ebola in 2014, Zika virus in 2016, and now for COVID-19. In each of the previous efforts, the results of my work have translated directly into policies implemented by municipal, state, federal, and international agencies (as appropriate).

The nature of COVID-19

5. The entire world is currently facing an ongoing pandemic of the SARS-nCoV-2 virus. The virus transmits very easily, with each infected person (estimated to the best of our current understanding) going on to infect between 2.4-3.8 other people over the average 10-14 days of infectiousness. This leads to exponential growth in the outbreak, meaning that there is rapid spread among individuals within a single population and simultaneous expansion to new populations.

6. The virus can be transmitted in the absence of symptoms, either before an individual develops signs and symptoms of illness, or even in the case that an individual never progresses to exhibit illness themselves. Clinical testing is the only way to identify who may be infectious. Currently, the United States does not have sufficient access to testing to adequately identify even a majority of current cases, much less the percentage of current active infections that would need to be identified and isolated to contain the spread of disease.

7. COVID-19 causes serious illness, with overall case fatality rates in the United States so far estimated at 5.8%. An estimated 20% of those who become infected and develop

symptoms require significant medical intervention. While certain medical conditions (including, but not limited to hypertension, asthma, COPD, diabetes, and AIDS) increase the probability of death from infection, otherwise perfectly healthy people are also vulnerable to death from COVID-19. Increasing age is a predictor of increased severity of illness and risk of death. Current data show that those between 55 and 64 years of age experience case fatality rates of between 1% and 3%, increasing with age until those between 65 and 84 years of age show case fatality rates between 3% and 11%, and those 85 years old or older show case fatality rates between 10% and 27%.

8. COVID-19 is now the leading cause of death in the United States.

9. Of the 20% of patients who develop severe symptoms in need of medical intervention, 30% are expected to require intensive care in order to survive. Given the infectiousness of the virus, this means that even if a relatively small percentage of a population is currently infected, the capacity of the medical support systems that serve them will be exhausted. When medical resources are exhausted, the mortality rates will increase even further above these already staggeringly high levels, including progression to death for more of the cases not currently considered necessarily fatal.

10. Although clinical trials to try to identify effective medicines and therapeutics to treat current infections, and research and trials in vaccine development to prevent future infections, are currently underway across the globe, as yet, no meaningful medical interventions have been shown to be effective against the virus. Our current best lines of defense are epidemiological rather than medical; interrupting the transmission of the disease rather than helping infected individuals to survive.

11. Individual practices such as the use of personal protective equipment, maintaining physical distance from others (also called "social distancing") and frequent washing (of hands, body, and environmental surroundings) with soaps and disinfectants are the only actions individuals can take that have been shown to be effective at self-protection from catching the virus.

The exponential rate of COVID-19 infection in FCI Fort Dix

12. FCI Fort Dix is already experiencing a serious outbreak of COVID-19, with an infection rate that far exceeds the state of New Jersey as a whole.

13. According to the BOP, there are 30 current, lab-result-confirmed cases of COVID-19 at FCI Fort Dix. This number was reported on April 28, 2020, and is undoubtedly much higher today, given the rate of spread and the failure to test patients who may be asymptomatic yet continuing to spread the virus.

14. With a population of 2,947, FCI Fort Dix therefore has a reported COVID-19 infection prevalence of 1,018 per 100,000. This is drastically higher than the surrounding community.

15. By comparison, the state of New Jersey as a whole reports a COVID-19 infection prevalence of 73 per 100,000.

16. As a result, at a minimum, the reported infection prevalence at Fort Dix is approximately 14 times that for New Jersey as a whole.

The implications of COVID-19 in detention facilities and proposed policies for mitigation

17. Based on my substantive expertise, long history of research, and as practice as a modeler of infectious outbreaks, I respectfully but strongly disagree with the stated premises and conclusions of the Bureau of Prisons recommendations (as most recently updated in BOP'S Home Confinement memorandum, April 22, 2020). These recommendations, by design, fail to reduce the population at FCI Fort Dix sufficiently to prevent the exponential spread of COVID-19, both within the facility and in the surrounding community. My disagreement is based on the following reasoning and logic, arrived at via my expertise in the field.

18. The goal of any action taken must be the increased safety and survival of the population served. In the case of a prison, the population under consideration consists of three separate groups, each at risk: the inmates themselves, the staff who serve at the prison facility in all capacities, and the general public into whose company the staff return after their work days and to into whose company the inmates within the prison would be returned in released from detention. Determination of inmate eligibility for release must serve to balance risks appropriately to best protect all of these groups. At the moment, some of the listed criteria for eligibility for release severely limit the potential population of inmates who may be considered. These limitations so drastically increase the epidemiological risk to inmates, staff, and public that they do not serve the greater goal of increasing the overall safety and survival of the total population.

19. This rationale is based on the understanding that, despite best efforts to increase personal hygiene and social distancing practices, and to reduce inmate movements and suspend access to members of the public (contractors, visitors, and legal professionals), prisons are inherently incapable of reducing the risks of transmission to those seen in the broader community. The needs for oversight over inmate populations by staff, physical limitations on space, housing,

and infrastructure required to maintain the incarcerated population, and even the common practices of employing inmates as laborers throughout the prison facilities in ways that require intermixing among cohorts all contribute to risks that individuals in the broader community do not face while practicing "stay-at-home" protocols.

20. Proposed efforts to screen inmates and staff are insufficient due to lack of clinical testing availability across the nation, meaning that only those who are currently showing symptoms are likely to be able to be tested, leaving room for significant transmission of infection prior to/in the absence of the development of any symptoms of illness.

21. There is already likely to be circulating infection that continues to go undetected due to the current CDC recommendations to test only those who show symptoms of infection. Current estimates, though based on incomplete data, suggest that as many as 40% of cases may be asymptomatic and these cases may still be capable of transmitting infection to others.

22. Incarceration is itself a source of physiological compromise — research has shown that incarcerated individuals have health outcomes that more closely resemble those described for patients 10-15 years older than their physiological age. This means that, even at the same level of effective social distancing and personal hygiene, a prison population becomes a greater reservoir for infection than would the same number of people behaving in the same way in the broader community.

23. While those at greatest risk of death from COVID-19 are medically vulnerable, severe health outcomes (including death) are regularly described in even young and otherwise healthy individuals. Actions that increase the spread of COVID-19 expose anyone infected to non-trivial risks. Staff who interact regularly with inmates must themselves be considered at risk

due to constant interaction with the population they oversee. As they return to the broader community at the end of their workday, those risks return with them.

24. Increasing the spread of COVID-19 also depletes valuable medical resources. Each new case not only incrementally increases the risk of death for COVID-19 patients, but also increases the risk of all-cause mortality in the community as the medical professionals/resources are insufficient to meet the baseline medical needs of the community (i.e. emergency rooms overwhelmed with COVID-19 patients will have increased numbers of deaths from heart attacks due to delays in access to medical attention). By keeping people in prisons and increasing the inmates' own likelihood of requiring medical attention (relative to the same numbers of cases requiring medical attention that would be needed for a population of the same size in the general population), we increase the burden to the medical staff and resources overall. This is true not only for medical facilities inside a prison as the number of seriously ill inmates are likely to exceed the capacity for attention within prison facilities, but also because each additional case caused in staff or staff-vectored community infection will also contribute to the broad burden on medical resources.

25. Epidemiologically, the only way to meaningfully reduce the risks posed to the entire population—inmates, staff, and public—is to drastically reduce the prison population. Due to exponential growth in outbreaks, each preventable infection that we fail to prevent directly impacts (on average) 3 people, who then also each impact 3 people, and so on. Every infection we can prevent saves lives directly and indirectly.

26. For all of the reasons herein, in my expert opinion, the current efforts are epidemiologically insufficient to protect inmates, prison staff, or the general public surrounding the prison. It is my opinion that the current efforts are not sufficiently justified by the rationale of

Protecting the Public (as described in Attorney General's memorandum dated April 3rd, 2020). It is my opinion that the public interest is best served by relaxing the criteria for consideration for release until the point where epidemiological models of within-prison transmission, for populations whose health demographics incorporate the physiological compromise and physical restrictions inherent in incarceration, approach the same levels of risk of infection and transmission that would be seen in the same population were it to be released.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April, 2020, in Knox County, TN.

Nina H. Fefferman, Ph.D.

References

1. Wang J, Ng, CY, Brook R. Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing. March 3, 2020. *JAMA.* Published online March 3, 2020. doi:10.1001/jama.2020.3151.
2. Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020. MMWR Morb Mortal Wkly Rep 2020;69:343-346. DOI: http://dx.doi.org/10.15585/mmwr.mm6912e2

3. US Attorney General, and United States of America. "The First Step Act of 2018: Risk and Needs Assessment System." (2019).
4. Lofgren E, Lum K, Horowitz A, Madubuowu B, and Fefferman N. The Epidemiological Implications of Incarceration Dynamics in Jails for Community, Corrections Officer, and Incarcerated Population Risks from COVID-19. Published online: 4/14/20. medRxiv 2020.04.08.20058842; doi: https://doi.org/10.1101/2020.04.08.20058842
5. Nishiura H, Kobayashi T, Suzuki A, Jung S-Mok, Hayashi K,Kinoshita R, Yang Y, Yuan B, Akhmetzhanov AR, Linton NM, Miyama T, Estimation of the asymptomatic ratio of novel coronavirus infections (COVID-19), *International Journal of Infectious Diseases* (2020), doi:https://doi.org/10.1016/j.ijid.2020.03.020
6. McClelland DC, Alexander C, Marks E. The need for power, stress, immune function, and illness among male prisoners. *Journal of Abnormal Psychology.* 1982;91(1):61.
7. Kouyoumdjian FG, Andreev EM, Borschmann R, Kinner SA, McConnon A. Do people who experience incarceration age more quickly? Exploratory analyses using retrospective cohort data on mortality from Ontario, Canada. *PloS one.* 2017;12(4).
8. State of New Jersey, COVID-19 Information Hub, https://covid19.nj.gov/#live-updates (last accessed April 29, 2020).
9. Johns Hopkins Univ. of Medicine, Coronavirus Resource Center, https://coronavirus.jhu.edu/data/mortality (last accessed Apr. 29, 2020).
10. N.Y. Times, New Jersey Coronavirus Map and Case Count, https://www.nytimes.com/interactive/2020/us/new-jersey-coronavirus-cases.html (last accessed April 29, 2020).

Nina H. Fefferman

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Departments: Ecology and Evolutionary Biology & Mathematics
Address: 447 Hesler Biology Building
University of Tennessee
Knoxville, TN 37996

Education

2005	PhD in Mathematical Biology from the Department of Biology, Tufts University. Advisor: J. Michael Reed
2001	MS in Mathematics from the Department of Mathematics, Rutgers University. Advisor: J. Beck
1999	AB in Mathematics from Princeton University

Positions

2020-	Associate Director, UT One Health Initiative, University of Tennessee, Knoxville
2018-	Director, Mathematical Modeling Consulting Center, University of Tennessee, Knoxville
2018 -	Professor, Depts. of Mathematics & Ecology and Evolutionary Biology, University of Tennessee, Knoxville
2016 - 2018	Associate Professor, Depts. of Mathematics & Ecology and Evolutionary Biology, University of Tennessee, Knoxville
2015 - 2016	Program Director, Graduate Program in Ecology and Evolution, Rutgers University
2012 - 2016	Associate Professor, Dept. of Ecology, Evolution, and Natural Resources, Rutgers University
2011 - 2016	Assistant/Associate Professor, School of Public Health, University of Medicine and Dentistry of New Jersey
2008 - 2012	Assistant Professor, Dept. of Ecology, Evolution, and Natural Resources, Rutgers University
2007 - 2016	Research Assistant/Associate Professor, The Center for Discrete Mathematics and Theoretical Computer Science, Rutgers University
2005 - present	Co-Director, Tufts University Initiative for the Forecasting and Modeling of Infectious Disease (InForMID), Tufts University School of Medicine
2005 - 2007	Visiting Research Associate, Center for Discrete Math and Theoretical Computer Science (DIMACS), Rutgers University
2005	Short Term Visitor, School of Natural Sciences, Institute for Advanced Study

Honors/Awards

2019	Invited Participant of the 11th.Triennial Invitational Choice Symposium
2019	Invited Performer/Participant, Stand Up Science – a public performance featuring stand-up comics and scientists discussing their work
2017	Invited Research Team Leader: AWM Women in Mathematical Biology Workshop
2016	Invited Speaker at the National Academy of Sciences Sackler Colloquium
2015	Coauthored an article chosen for the cover of *Phil Trans Roy Soc B* (issue 370.1665)
2012	Invited to Health Foo 2012

2011 Shared the Virginia Governor's Technology Award in the category of 'Cross-Boundary Collaboration in Modeling & Simulation' for our study 'Strategic Default in the Context of a Social Network: An Epidemiological Approach'.
2010 Speaker at TEDx Midatlantic
2009 Rutgers University Packard Fellow Nominee
2007 Coauthored an article chosen for the cover of *The Lancet Infectious Diseases* (vol. 7)
- Invited to give 22 Keynote, Plenary, or Public Lectures (see Invited Talks for details), over three continents

Media Coverage (interviews and coverage):

Television/Online Video Broadcasts:

WBIR News, 2019
NJTV News, 2015
Discovery Channel "How Stuff Works" (Season 2: "Games Unboxed"), 2011
BBC World News Aug 21, 2007
CBS News Aug 22, 2007
Canada Television (CTV) Aug 21, 2007
AT&T Tech Channel Sept, 2007

Radio Broadcasts:

NPR Marketplace, Mar 2020
NPR WUOT Knoxville, Mar 2017
PRI Studio 360, Sept 2016
New Tech City, WNYC, Oct 2014
PRI Studio 360, Sept 2014
PRI Studio 360, Jan 2013
BBC UK News, Aug 2007
National Public Radio Podcast "Science Friday", Sept 2007
AM900 CHML, Sept 2007
National Public Radio "All Things Considered", Oct 2005

Print/Online Media (2005-present)**:**

ABC News, ABS CBN News, ARS Technical, Canadian Press (via CBC), Cell, The Daily Mail (UK), The Daily Telegraph (Australia), The Economist, Forbes, Fox News, G1.com.br (Brazil), O Globo (Brazil), Gazet Van Antwerpen (Belgium), KevinMD, Knox News, NU.nl (Netherlands), Medical News Today, La Jornada (Mexico), New Scientist, PC Gamer, Reuters, TIME, The Washington Post, Science News, Slate.com, the South African Star, Tech News World, Wired, Yahoo! Entertainment *and many more*…

Research Support

Active

2020-2021	$198,932	NSF RAPID – DEB Coupled Social and Epidemiological Networks and COVID-19	PI
2020-2022	$359,849	DoD Minerva DECUR - The Topology of Interdependent Multi-Domain Behavioral Systems	PI
2017-2022	$138,964	NSF IOS - Melding Mathematical and Theoretical Models of Stress	UT-PI
2017-2021	$2,498,876	NSF EEID – Co-evolutionary Epidemiology of Avian	UT-PI

		Malaria	
Completed			
2018-2020	$196,628	SESYNC/NIMBioS Modeling Risk Perception, Vector-borne Diseases, and Environmental Integrity	PI
2016-2019	$99,938	NSF EAGER – CISE – Distributed Anomaly Detection	PI
2018-2019	$2,000	Haines Morris Grant – Internal UTK Competition	Co-PI
2016-2018	$50,000	US - Israel Binational Science Foundation (BSF)	Co-PI
2016-2018	$190,000	NSF RAPID – DEB – Modeling Zika Virus Control	PI
2015-2018	$292,804	USFWS – White-Nose Syndrome Open Grant	Co-PI
2015-2017	$21,003	NSF RAPID – Information & Intelligent Systems – Virtual Worlds and Experiential Learning	PI
2016-2017	$75,000	US START Center – Leadership in Social Networks	PI
2017	$30,000	Syngenta – Workshop Grant – Math of Agribusiness	Co-I
2016-2017	$100,000	National Academies Keck Futures Initiative	Co-PI
2015-2017	$130,000	NSF EAGER – DEB – Machine Learning for Co-Evolutionary Systems	Co-PI
2012-2016	$1,228,053	Dept. of Homeland Security – CyberSecurity	PI
2014-2016	$100,000	Dept. of Homeland Security – Next Generation Communications and Interoperability	Project PI
2009-2016	$275,000	Dept. of Homeland Security – BioSecurity	Project PI
2011-2014	$3,853,332	NSF EASM – Ocean Sciences – SocioEconomic Systems and Climate Change	Co-PI
2011-2012	$22,500	UCDPER – Emergency Preparedness	Co-PI
2010-2012	$384,000	Dept. of Homeland Security – Virtual Worlds and Experiential Education	Project PI
2010-2011	$99,944	Dept. of Homeland Security – Self-Organizing Surveillance Systems	Project PI
2010	$22,500	Dept. of Homeland Security – BioSecurity	Co-PI
2009-2012	$299,886	NSF – DEB – ULTRA-Ex	Co-PI
2009-2011	$89,318	UCDPER – Emergency Preparedness	PI
2009-2010	$10,000	USDA CSREES Multi-State Research Fund – Vector-borne Disease Control	Co-I
2008	$99,990	NIH NAID SBIR – Epidemiological Surveillance	PI
2008	$5,000	Rutgers Climate and Environmental Change Initiative	PI
2008	$75,000	Rutgers Academic Excellence Fellowship, Climate and Health Research Initiative	Co-I
2007	$22,500	Dept. of Homeland Security – BioSecurity	PI
2007	$22,500	Dept. of Homeland Security – BioSecurity	PI
2006	$5,000	Tufts Summer Scholars Award – Epidemiology	PI
2003-2004	$42,000	NIH R01 Supplement - Epidemiology	Co-PI
2003-2004	$1,500	Tufts Institute of the Environment	Co-I
2003	$500	MASI Student Travel Award	PI
2003	$1,500	TIES Student Travel Award	PI

Consultancies

2020	American Civil Liberties Union (ACLU)
2020	The State of Vermont, Department of Education
2018	Ogilvy

2017-present	Humane Society International
2009-present	US Centers for Disease Control
2011-2012	Research Institute for Housing America Trust Fund
2006-2007	New Jersey, Department of Corrections
2004-2009	NIH U19 (Center PI: Gorski) T-cell Mediated Immunity
2004	National Defense University
2004	DARPA

Participation in Research Centers

Center	**Position**	**Description of Role**
NIMBioS *(National Institute for Mathematical and Biological Synthesis)*	Leadership Team	Active participant in working group, organizer of multiple tutorials, mentor for summer research experience for undergraduates, and founding director of the Mathematical Modeling Consulting Center
InForMID *(Tufts University Initiative for the Forecasting and Modeling of Infectious Diseases)*	Center Co-Director	Researcher and Administrative lead in the area of mathematical modeling of infectious disease epidemiology
CCICADA *(US Dept of Homeland Security Command, Control, and Interoperability Center for Advanced Data Analysis)*	Project PI	Principle Investigator into data analysis relating to social behavior in virtual/technologically enable environments, bio-security, and bio-inspired algorithms in cyber-security
DIMACS *(The Center for Discrete Mathematics and Theoretical Computer Science)*	Member	Active participant in working groups, collaborations, and conferences (including acting as organizer for multiple workshops/conferences/tutorials) in all areas of mathematical macrobiology
START *(US Dept of Homeland Security Center for the Study of Terrorism and Responses to Terrorism)*	Project PI	Principle Investigator working on understanding social behavior and algorithms driving the emergence of extremism and leadership in

Publications (peer reviewed):

***** *= a student or post-doctoral researcher advised by Fefferman during the research effort reported*

Journal Articles:

Published or In Press

68. Lemanski*, N., S. Schwab, D. Fonseca, and N.H. **Fefferman**. (In press) Coordination Among Neighbors Improves the Efficacy of the Zika Control Despite Economic Costs. *PLoS Neglected Tropical Diseases.*
67. Wilson, S., S. Sindi, H. Brooks, M. Hohn, C. Price, A. Radunskaya, N. Williams, and N.H. **Fefferman**. 2020. How Emergent Social Patterns in Allogrooming Combat Parasitic Infections. *Frontiers in Ecology and Evolution*. 8:54.
66. DeNegre*, A., Myers*, K., and N.H. **Fefferman**. 2020. Impact of Strain Competition on Bacterial Resistance in Immunocompromised Populations. *Antibiotics*. 9(3):114
65. Myers*, K., A. Redere*, and N.H. **Fefferman**. 2020. How Resource Limitations and Household Economics May Compromise Efforts to Safeguard Children During Outbreaks. *BMC Public Health.* 20(1):1-14.
64. Suarez*, G., O. Udiani*, B. Allan, C. Price, S. Ryan, E. Lofgren, A. Coman, C. Stone*, L. Gallos*, and N.H. **Fefferman**. 2020. A Generic Arboviral Model Framework for Exploring Trade-offs Between Vector Control and Environmental Concern. *Journal of Theoretical Biology*. 490 (2020) 110161.
63. DeNegre*, A., Myers*, K., and N.H. **Fefferman**. 2020. Impact of Chemoprophylaxis Policy for AIDS-immunocompromised Patients on Emergence of Bacterial Resistance. *PLoS One*. 15(1): e0225861.
62. Gallos*, L., S. Havlin, G. Stanley, and N.H. **Fefferman**. 2019. Propinquity drives the emergence of network structure and density. *Proceedings of the National Academy of Sciences*. 116(41):20360-20365.
61. Stone*, C., S. Schwab*, D. Fonseca, and N.H. **Fefferman**. 2019. Contrasting the Value of Targeted vs. Area-Wide Mosquito Control Scenarios to Limit Arbovirus Transmission for Different Tropical Urban Population Centers. *PLoS Neglected Tropical Diseases.* 13.7: e0007479.
60. Myers*, K, A. DeNegre*, L.K. Gallos*, N. Lemanski*, A. Mayberry, A. Redere*, S. Schwab*, O. Stringham, & N.H. **Fefferman**. 2019. Dynamic Ad Hoc Social Networks in Improvised Intelligence / Counter-Intelligence Exercises: A Department of Homeland Security Red-Team Blue-Team Live-Action Roleplay. *Journal of Homeland Security and Emergency Management.* https://doi.org/10.1515/jhsem-2018-0027.
59. Suarez*, G.P., L.K. Gallos, and N.H. **Fefferman**. 2019. A Case Study in Tailoring a Bio-Inspired Cyber-Security Algorithm: designing anomaly detection for multilayer networks. *Journal of Cyber Security and Mobility*. 8(1):113-132.
58. DeNegre*, A., K. Myers*, M. Ndeffo, and N.H. Fefferman. 2019. Emergence of Antibiotic Resistance in Immunocompromised Host Populations. *PLoS One* 14 (2), e0212969.
57. Schwab*, S., C. Stone*, D. Fonseca, and N.H. **Fefferman**. 2019. (Meta)population Dynamics Determine Effective Spatial Distributions of Mosquito-Borne Disease Control. *Ecological Applications* 29(3): e01856.
56. Kebir*, A., N.H. **Fefferman**, and S.B. Miled. 2018. A general structured model of a hermaphrodite population. *Journal of Theoretical Biology*. 449:53-59.
55. Lemanski*, N.J. and N.H. **Fefferman**. 2018. Expanding the evolutionary theory of aging: honeybees as a test case for an optimal decision making model of senescence. *American Naturalist*. 191(6):756-766.
54. Schwab*, S., C. Stone*, D. Fonseca, and N.H. **Fefferman**. 2018. The importance of being urgent: the impact of surveillance target and scale on mosquito-borne disease control. *Epidemics*. 23:55-63.

53. Beckage, B., L. Gross, S. Metcalf, E. Carr, K. Lacasse, J. Winter, P. Howe, N. **Fefferman**, A. Zia, and T. Franck. 2018. Integrating human behavior and risk perception into a climate model. *Nature Climate Change.* 8:79–84.

52. Maslo, B., O. Stringham, A. Bevan, A. Brumbaugh, C. Sanders, M. Hall, and N.H. **Fefferman**. 2017. High Survival of Some Infected Bat Populations Veils a Persistent Extinction Risk from White-nose Syndrome. *Ecosphere*. 8(12):e02001.10.1002/ecs2.2001.

51. Stone*, C.M., S.R. Schwab*, D.M. Fonseca, N.H. **Fefferman**. 2017. Human movement, cooperation, and the effectiveness of coordinated vector control strategies. *Journal of the Royal Society Interface.* 14(133):20170336.

50. Lemanski*, N.J. and N.H. **Fefferman**. 2017. Coordination Between the Sexes Constrains the Optimization of Reproductive Timing in Honey Bee Colonies *Nature Scientific Reports.* 7:2740.

49. Egizi, A., N.H. **Fefferman**, and R. Jordan. 2017. Relative Risk of Infection with Ehrlichiosis Agents and Lyme Disease in an Area Where Both Vectors are Sympatric. *Emerging Infectious Diseases.* 23(6):939-945.

48. Greenbaum*, G. and N.H. **Fefferman**. 2017. Application of network methods for understanding evolutionary dynamics in discrete habitat. *Molecular Ecology*. DOI: 10.1111/mec.14059

47. Maslo, B., R. Valentin, K Leu, K Kerwin, A Bevan, G.C. Hamilton, N.H. **Fefferman**, and D.M. Fonseca. 2017. ChiroSurveillance: The Use of Native Bats to Detect Invasive Agricultural Pests. *PLoS One.* 12(3), e0173321.

46. Robinson*, O.J., O.P. Jensen, M.M. Provost, S. Huang, N.H. **Fefferman**, A. Kebir and J.L. Lockwood. 2017. Evaluating the vulnerability of sex-changing fish to harvest: A game-theoretic approach. *ICES Journal of Marine Science.* 74(3):652-659.

45. Gallos*, L., M. Korczynski*, and N.H. **Fefferman.** 2017. Anomaly Detection Through Information Sharing Under Different Topologies. *EURASIP Journal on Information Security.* 2017:5. DOI:10.1186/s13635-017-0056-5.

44. Maslo, B., S. Gignoux-Wolfsohn, and N.H. **Fefferman**. 2017. Success of Wildlife Disease Treatment Depends on Host Immune Response. *Frontiers in Ecology and Evolution*. 5(28).

43. Lofgren*, E., A. Egizi, and N.H. **Fefferman**. 2016. Patients as Patches: Ecology and Epidemiology in Healthcare Environments. *Infection Control and Hospital Epidemiology.* 37(12):1507-1512.

42. Korczynski*, M., A. Hamieh*, J. H. Huh, H. Holm, S. R. Rajagopalan, and N. H. **Fefferman**. 2016. Hive Oversight for Network Intrusion Early Warning Using DIAMoND: A Bee-Inspired Method for Fully Distributed Cyber Defense. *IEEE Communications Magazine* 54(6):60-67.

41. Gallos*, L. and N.H. **Fefferman.** 2015. Simple and efficient self-healing strategy for damaged complex networks. *Physical Reviews E*. 92(5):052806.

40. Kebir*, A., N.H. **Fefferman**, S. Ben Miled. 2015. Understanding hermaphrodite species through game theory. *Journal of Mathematical Biology*. 71(6-7):1505-1524.

39. Gallos*, L., and N.H. **Fefferman**. 2015. The Effect of Disease-Induced Mortality on Structural Network Properties. *PLoS One.* DOI: 10.1371/journal.pone.0136704

37. Burkhalter*, J.C., N.H. **Fefferman**, and J.L. Lockwood. 2015. The impact of personality on the success of prospecting behavior in changing landscapes. *Current Zoology*. 61:557-568.

36. Robinson*, O., J. Lockwood, O. Stringham*, and N.H. **Fefferman**. 2015. A Novel Tool for Making Policy Recommendations Based on PVA:Helping Theory Become Practice. *Conservation Letters*. 8(3):190-198.

35. **Fefferman**, N.H. and E.N. Naumova. 2015. Dangers of vaccine refusal near the herd immunity threshold: a modelling study. *Lancet Infectious Diseases*. S1473-3099(15)70130-1

34. Maslo, B. and N.H. **Fefferman.** 2015. A Case Study of Bats and White-Nose Syndrome Demonstrating How to Model Population Viability with Evolutionary Effects. *Conservation Biology*. 29(4):1176-1185. DOI: 10.1111/cobi.12485.

33. Parham, P E. J. Waldock, G.K. Christophides, D. Hemming, F. Agusto, K. J. Evans, N.H. **Fefferman**, H. Gaff, A. Gumel, S. LaDeau, S. Lenhart, R.E. Mickens, E. Naumova, R. Ostfeld, P. Ready, M. Thomas, J. Velasco-Hernandez, E. Michael. 2015. Climate, Environmental, and Socioeconomic Change – Weighing up the Balance in Vector-Borne Disease Transmission. *Philosophical Transactions of the Royal Society B.* 370.1665 (2015): 20130551.

32. Egizi, A., N.H. **Fefferman**, and D. M. Fonseca. 2015. Evidence that implicit assumptions of "no evolution" of disease vectors in changing environments can be violated on a rapid timescale. *Philosophical Transactions of the Royal Society B.* 370.1665 (2015): 20140136.

31. Greening*, B., N. Pinter-Wollman, and N.H. **Fefferman**. 2015. Higher-Order Analysis of Information Sharing and Knowledge Capacity in Animal Social Groups *Current Zoology*. 61(1): 114–127.

30. Gallos*, L. and N.H. **Fefferman.** 2014. Revealing effective classifiers through network comparison. *Europhysics Letters*. 108(3): 38001.

29. Lofgren*, E.T., R.W. Moehring, D.J. Anderson, D.J. Weber, and N.H. **Fefferman**. 2014. A Mathematical Model to Evaluate the Routine Use of Fecal Microbiota Transplantation to Prevent Incident and Recurrent *Clostridium difficile* Infection. *Infection Control and Hospital Epidemiology*. 35(1):18-27.

28. Greening*, B. and N.H. **Fefferman**. 2014. Evolutionary Significance of the Role of Family Units in a Broader Social System. *Nature Scientific Reports*. 4: 3608

27. Seiler, M.J., Collins, A.J., and N.H. **Fefferman**. 2013. Strategic Mortgage Default in the Context of a Social Network: An Epidemiological Approach. *Journal of Real Estate Research* 35(4).

26. Robinson*, O.J., N.H. **Fefferman**, and J.L. Lockwood. 2013. How to effectively manage invasive predators to protect their native prey. *Biological Conservation* 165: 146-153.

25. **Fefferman,** N.H., and L.M. Romero. 2013. Can physiological stress alter population persistence? A model with conservation implications. *Conservation Physiology*. 1(1): cot012. doi: 10.1093/conphys/cot012

24. Moorthy, M., D. Castronovo, A. Abraham, S. Bhattacharyya, S. Gradus, J. Gorski, Y.N. Naumov, N.H. **Fefferman**, and E.N. Naumova. 2012. Deviations in influenza seasonality: odd coincidence or obscure consequence? *Clinical Microbiology and Infection*. 18(10):955-962.

23. Hock*, K. and N.H. **Fefferman**. 2012. Social organization patterns can lower disease risk without associated disease avoidance or immunity. *Ecological Complexity*. 12:34–42.

22. Hock*, K. and N.H. **Fefferman**. 2011. Violating Social Norms when Choosing Friends: How Rule-Breakers Affect Social Networks. *PLoS One.* 2011; 6(10): e26652

21. Hock*, K. and N.H. **Fefferman**. 2011. Extending the role of social networks to study social organization and interaction structure of animal groups. *Annales Zoologici Fennici*. 48(6):365-370.

20. Kafai, Y.B. and N.H. **Fefferman**. 2010. Virtual Epidemics as Learning Laboratories in Virtual Worlds. *Journal of Virtual Worlds Research.* 3(2):2-15.

19. Hock*, K., K.L. Ng, and N.H. **Fefferman**. 2010. Systems approach to studying animal sociality: individual position versus group organization in dynamic social network models. *PLoS One.* 5(12): e15789.

18. **Fefferman,** N.H. and E.N. Naumova. 2010. Innovation in Observation: A Vision for Early Outbreak Detection. *Emerging Health Threats.* 3:e6. doi: 10.3134/ehtj.10.006

17. Lofgren*, E.T., J.B. Wenger, N.H. **Fefferman**, D. Bina, S Gradus, S. Bhattacharyya, Y.N. Naumov, J. Gorski, E.N. Naumova. 2010. Disproportional Effects in Populations of Concern for Pandemic Influenza: Insights from Seasonal Epidemics in Wisconsin, 1967-2004. *Influenza and Other Respiratory Diseases.* 4:205-212.

16. Phan, L., N.H. **Fefferman,** D. Hui, and D. Brugge. 2010. Impact of Street Crime on Boston Chinatown. *Local Environment*. 15(5):481-491.

15. Reed, J.M., N.H. **Fefferman**, and R.C. Averil-Murray. 2009. Vital Rate Sensitivity Analysis and Management Implications for Desert Tortoise. *Biological Conservation*. 14(12): 2813-3222.

14. Wilson-Rich, N., Spivak, M., **Fefferman**, N.H., Starks, P.T. 2009. Genetic, Individual, and Group Facilitation of Disease Resistance in Insect Societies. *Annual Reviews of Entomol*ogy. 54:405-23.

13. **Fefferman**. N.H. 2008. Biological Experimentation *in silico*. *Annales Zoologici Fennici*, 45: 367-368.

12. Lofgren*, E., M. Senese*, J. Rogers* and N.H. **Fefferman**. 2008. Pandemic Preparedness Strategies for School Systems: Is Closure Really the Only Way? *Annales Zoologici Fennici*, 45: 449-458.

11. **Fefferman**, N.H. and K.L. Ng*. 2007. How Disease Models on Static Graphs Fail to Approximate Epidemics in Shifting Social Networks. *Physical Review E*. 76:031919. (*This article was selected for reprinting by the Virtual Journal of Biological Physics Research 2007)*

10. Lofgren*, E. and N.H. **Fefferman**. 2007. The Untapped Potential of Virtual Game Worlds to Shed Light on Real World Epidemics. *The Lancet Infectious Diseases.* 7:625–629. *(article content was the cover of the journal)*

9. Lofgren*, E., N.H. **Fefferman**, Y.N. Naumov, J. Gorski and E.N. Naumova. 2007. Influenza Seasonality: Underlying Causes and Modeling Theories. *Journal of Virology*, 81(11):5429-5436.

8. Lofgren*, E., N.H. **Fefferman**, M. Doshi and E.N. Naumova. 2007. Assessing Seasonal Variation in Multisource Surveillance Data: Annual Harmonic Regression. *Lecture Notes in Computer Science.* BioSurveillance 2007. eds D. Zeng et al. 4506:114-123.

7. **Fefferman**, N.H. and K.L Ng*. 2007. The role of individual choice in the evolution of social complexity. *Annales Zoologici Fennici*, 44:58-69.

6. **Fefferman**, N.H., J.F.A. Traniello, R.B. Rosengaus and D.V. Calleri. 2007. Disease Prevention and Resistance in Social Insects: Modeling the Survival Consequences of Immunity, Hygienic Behavior and Colony Organization. *Behavioral Ecology and Sociobiology*, 61:565-577.

5. Starks, P.T.B. and N.H. **Fefferman**. 2006. Polistes Nest Founding Behavior: a Model for the Selective Maintenance of Alternative Behavioral Phenotypes. *Annales Zoologici Fennici*, 43:456-467.

4. **Fefferman**, N.H., and E.N. Naumova. 2006. Combinatorial Decomposition of an Outbreak Signature. *Mathematical Biosciences*, 202(2):269-287.

3. **Fefferman**, N.H. and J.M. Reed. 2006. A Vital Rate Sensitivity Analysis that is Valid for Non-Stable Age Distributions and for Short-Term Planning. *The Journal of Wildlife Management*, 70(3):649-656.

2. **Fefferman**, N.H., and P.T.B. Starks. 2006. A Modeling Approach to Swarming in Honey Bees. *Insectes Sociaux*, 53(1):37-45.

1. **Fefferman**, N.H., E.A. O′Neil, and E.N. Naumova. 2005. Confidentiality vs Confidence: The aggravation of aggregation as a remedy in public health. *Journal of Public Health Policy*, 26(4):430-449.

Under Review:

9. Chastain*, E. and N.H. **Fefferman**. The Evolution of Personality. (Under Review after Revision)
8. Feinberg, F., A. Patania, B. McShane, B. Falk, D. Larremore, E. Feit, J. Helveston, M. Small, M. Braun, N. **Fefferman**, and E. Bruch. A Framework for Studying Choices in Networks. (Under Review)
7. Beckage, B., K. Lacasse, J.M. Winter, N.H. **Fefferman**, F.M. Hoffman, L.J. Gross, S.S. Metcalf, T. Franck, E. Carr, A. Zia, and A. Kinzig. The Earth has humans, so why don't our climate models? (Under Review)
6. Udiani*, O., K. Lacasse, A. Zia, L. Gallos*, P. Zhong*, B. Beckage, E. Carr, T. Franck, L. Gross, F. Hoffman, P. Howe, A. Kinzig, S. Metcalf, J. Winter, and N.H. **Fefferman**. Recruitment and Mobilization for Social Movements: implications from network modeling. (Under Review)
5. Udiani*, O., and N.H. **Fefferman**. Could the Need for Rest Provide a Pathway for the Evolution of Division of Labor in Social Species? (Under Review)
4. Gignoux-Wolfsohn, S.A., Pinsky, M.L., Kerwin, K., Herzog, C., Hall, M., Bennett, A.B., **Fefferman**, N.H. and Maslo, B., Genomic signatures of evolutionary rescue in bats surviving white-nose syndrome. (Under Review)
3. Myers*, K., N.H. **Fefferman**, and J.M. Reed. Do Not Reject a Population Viability Analysis by Case Study: Observing an Unlikely Event Does Not Invalidate a Qualitative Model (Under Review)
2. Udiani*, O. and N.H. **Fefferman**. Has disease risk shaped the evolution of social complexity in insect societies? (Under Review)
1. Siewe*, N., B. Greening*, and N.H. **Fefferman**. The Potential Role of Asymptomatic Infection in Outbreaks of Emerging Pathogens (Under Review)

Book Chapters:

Published or In Press

10. **Fefferman**, N.H. When to Turn to Nature-Inspired Solutions for Cyber Systems. 2019. *in* Nature-Inspired Security and Resilience. eds. Eltoweissy, Elalfy, Fulp, and Mazurczyk. pp 29-50. The Institution of Engineering and Technology, London, UK.
9. Price, C.R. and N.H. **Fefferman**. 2019. A Preliminary Exploration of the Professional Support Networks the EDGE Program Creates. *in* A Celebration of the EDGE Program's Impact on the Mathematics Community and Beyond (pp. 317-325). Springer, Cham.
8. Brooks. H.Z., M.E. Hohn, C. Price, A.E. Radunskaya, S.S. Sindi, N.D. Williams, S.N. Wilson, N.H. **Fefferman**. 2018. Mathematical Analysis of the Impact of Social Structure on Ectoparasite Load in Allogrooming Populations. *in* Understanding Complex Biological Systems with Mathematics eds. A. Radunskaya, R. Segal, B. Shtylla. Association for Women in Mathematics Series, vol 14. pp 47-61. Springer
7. Williams, N.D., H.Z. Brooks, M.E. Hohn, C. R. Price, A.E. Radunskaya, S.S. Sindi, S.N. Wilson, and N. H. **Fefferman**. 2018. How Disease Risks Can Impact the Evolution of Social Behaviors and Emergent Population Organization. *in* Understanding Complex Biological Systems with

Mathematics eds. A. Radunskaya, R. Segal, B. Shtylla. Association for Women in Mathematics Series, vol 14. pp 31-46. Springer

6. Korczynski*, M., A. Hamieh*, J.H. Huh, H. Holm, S. R. Rajagopalan, and N.H. **Fefferman**. 2017. DIAMoND: Distributed Intrusion/Anomaly Monitoring for Nonparametric Detection (invited extended version). *in* Security, Privacy and Reliability in Computer Communications and Networks. eds. K. Sha, A Striegel, and M Song. River Publishers Series in Communications. River Publishers.
5. **Fefferman**, N.H. and L.M. Fefferman. 2011. Mathematical Macrobiology: An Unexploited Opportunity in High School Education. *in* Biomath in the Schools. eds. M.B. Cozzens, and F.S. Roberts. DIMACS Series in Discrete Mathematics and Theoretical Computer Science. Vol 76. American Mathematical Society.
4. Jagai, J., N.H. **Fefferman** and E.N. Naumova. 2011. Waterborne Disease Surveillance. *in* Encyclopedia of Environmental Health. eds. J. Nriagu, S. Kcew, T. Kawamoto, J. Patz, and D. Rennie. Elsevier Science. 1st edition
3. Ji, S., W.A. Chaovalitwongse, N.H. **Fefferman**, W. Yoo, and J.E. Perez-Ortin. 2009. Mechanism-based Clustering of Genome-wide RNA Levels: Roles of Transcription and Transcript-Degradation Rates. *in* Clustering Challenges in Biological Networks. eds. S. Butenko, P.M. Pardalos, and W.A. Chaovalitwongse. World Scientific Publishing Company.
2. **Fefferman**, N.H. and J.F.A. Traniello. 2008. Social Insects as Models in Epidemiology: Establishing the Foundation for an Interdisciplinary Approach to Disease and Sociality. *in* Organization of Insect Societies: From Genome to Sociocomplexity eds J. Gadau and J. Fewell. Harvard University Press
1. MacLeod, N., N. Ortiz, N.H. **Fefferman**, W. Clyde, C. Schulter, and J. MacLean. 2000. Phenotypic Response of Foraminifera to episodes of global environmental change. *in* Biotic Response to Global Change. eds S.J. Culver and P. Rawson. Cambridge University Press

Edited Volumes:

1. **Fefferman**, N.H. (Ed.) (2008) *Annales Zoologici Fennici* 45(5)

Peer Reviewed Contributed Conference Papers:

8. Suarez*, G.P., L.K. Gallos, and N.H. **Fefferman**. 2018. A Case Study in Tailoring a Bio-Inspired Cyber-Security Algorithm: designing anomaly detection for multilayer networks. *2018 IEEE Security and Privacy Workshops (SPW)*. IEEE, 2018.
7. Fields, D. A., Kafai, Y. B., Giang, M. T., **Fefferman**, N., & Wong, J. 2017. Plagues and people: Mass community participation in a virtual epidemic within a tween online world. *Proceedings of the 12th International Conference on the Foundations of Digital Games.* DOI: 10.1145/3102071.3102108
6. Kafai, Y. B., Fields, D. A., Giang, M. T., **Fefferman**, N., Sun, J., Kunka, D., & Wong, J. 2017. Designing for massive engagement in a tween community: Participation, prevention, and philanthropy in a virtual epidemic. In *Interaction Design & Children Conference*. New York: ACM, 365-370. ISBN: 978-1-4503-4921-5
5. Fields, D. A., Kafai, Y. B., Giang, M. T., **Fefferman**, N., & Wong, J. 2017. The Dragon Swooping Cough: Mass community participation in a virtual epidemic within a tween online world. *In* B. Smith, M. Borge, E. Mercier & K. Y. Lim (*Eds.*) *Proceedings of the 12th International Conference on Computer Supported Collaborative Learning,* Volume 2 (pp. 865-866). Philadelphia, PA: International Society of the Learning Sciences.

4. Fields, D. A., Kafai, Y. B., Sun, J., **Fefferman**, N., Ellis, E., DeVane, B., Giang, M. T., & Wong, J. 2016. The great dragon swooping cough: Stories about learning designs in promoting participation and engagement with a virtual epidemic. *In* Barany, A., Slater, S., & C. Steinkuehler *(Eds.), Proceedings of the Games + Learning + Society (GLS) 12.0 Conference* (pp. 419-424). Pittsburgh, PA: ETC Press.

3. Verma, S., A. Hamieh*, J. H. Huh, H. Holm, S. R. Rajagopalan, M. Korczynski*, and N. H. **Fefferman**. 2016. Stopping Amplified DNS DDoS Attacks Through Query Rate Sharing Between DNS Resolvers, to appear in the International Conference on Availability, Reliability and Security (ARES). (Note: this is the proceeding of a conference, not a journal, but is equivalent to journal publication for the field of computer science, however in keeping with the conventions of Biology, Fefferman is last author as PI on the sponsoring grant that funded the research.)

2. Korczynski*, M., A. Hamieh*, J.H. Huh, H. Holm, S. R. Rajagopalan, and N.H. **Fefferman**. 2015. DIAMoND: Distributed Intrusion/Anomaly Monitoring for Nonparametric Detection. *CCCN 2015: 24th International Conference on Computer Communications and Networks, IEEE, 2015*. (Note: this is the proceeding of a conference, not a journal, but is equivalent to journal publication for the field of computer science, however in keeping with the conventions of Biology, Fefferman is last author as PI on the sponsoring grant that funded the research.)

1. **Fefferman**, N.H., J. Jagai, and E.N. Naumova. 2004. Two - Stage Wavelet Analysis Assessment of Dependencies in Time Series of Disease Incidence. *Proceedings of the 2004 Conference of the International Environmetrics Society*

Research Mentoring

(**bold = current)**

Undergraduate Researchers:

Shyretha Brown, Danika Chari, Kaige Chen, Ian Clark, Liz Davis, Anne Eaton, Taylor Eisenstein, Brandon Grandison, Derek Hansen, David Haycraft, John Huffman, Ana Kilgore, John Kim, Edward Lee, Somair Malik, Andrew McConvey, Jeffrey Mandell, Zain Paracha, Luke Postle, Lauren Prince, Asya Pritsker, Cathy Reis, Jeremiah Rogers, Bolanle Salaam, Nicole Scholtz, Margaret Senese, Joshua Smith, Andrew Sohn, Kim Stanek, Johanna Tam, Colleen Thiersch, Elena Tsvetkova, Barton Willage, Immanuel Williams, Nakeya Williams, Barry Walker, Hannah Yin, Yi Ming Yu, Yongqing Yuan, Stefanie Yuen, James Xue, Bobby Zandstra

Graduate Researchers:

*(Committee Member, or Advisor for work on funded research projects – not primary dissertation advisor; * = special case)*

Kevin Aagard, Emma Bell, **Carissa Bleker**, Curtis Burkhalter, Jordan Bush, Huilan Chang, Erick Chastain, Fnu Eric Ngang Che, **Brittany Coppinger**, Ashley Crump, Kathyrn Fair, Alison Golinski, **Stephen Grady,** Gili Greenbaum, Candice JeanLouis, **Hwayoung Jung,** Ariel Kruger, Di Li, Eric Lofgren*, Nicholas Lorusso, Adam Marszalek, Benjamin Mcclendon, Anthony Ogbuka, Paul Raff, Orin Robinson, **Margaurete Romero,** Rajat Roy, Liliana Salvador, **Shelby Scott,** Tinevimbo Shiri, Brittany Stephenson**,** Alex Thorn, Rafael Valentine, Alex Villiard, Orion Weldon

(primary research advisor to)

Jessica Beck, **Kelly Buch**, Ashley DeNegre, **Jeff DeSalu**, Brad Greening, Natalie Lemanski, **Agnesa Redere**, Samantha Schwab, Oliver Stringham, Karen Wylie

Post-Doctoral Researchers:

Dr. Erick Chastain, Dr. Lazaros Gallos, Dr. Manuel Garcia-Quisimondo, Dr. Ali Hamieh, Dr. Karlo Hock, Dr. Cindy Hui, **Dr. Jing Jiao**, Dr. Amira Kebir, Dr. Maciej Korczynski, Dr. Natalie Lemanski, Dr. Kellen Myers, Dr. Kah Loon Ng, Dr. Chris Stone, Dr. Nourridine Siewe (co-advised by Prof. S. Lenhart), Dr. Gonzalo Suarez, **Dr. Oyita Udiani**, Dr. Peng Zhong

Courses Developed and Taught (all courses developed from scratch)

- Advanced Mathematical Ecology II (MAT/EEB 682 – University of Tennessee, Knoxville) Spring 2017 and 2019
- Evolution, Disease, and Medicine (ENR110 – Rutgers University / EEB 310 – UT, Knoxville) Fall each year 2009 – 2014, Spring 2018 and 2020
- Conversational Bio-Mathematical Modeling (ENR 428 – Rutgers University/ EEB 475 – UT, Knoxville) Spring 2011 – 2014, 2020
- Problems in Ecology: Academic Pedagogy (ENR 601 – Rutgers University) Fall 2015
- *(Co-Developed and Taught)* Ethics & Professional Development in Ecology and Evolution (ENR 602 01 – Rutgers University) Spring 2013-2016 (exception – sabbatical Fall 2014-Spring 2015)
- Introduction to Modeling Ecology, Evolution, and Epidemiology (ENR 604 – Rutgers University) Spring each year 2010 – 2016 (exception – sabbatical Fall 2014-Spring 2015)
- Introduction to Epidemiological Modeling (ENR 603 – Rutgers University) Fall each year 2009 – 2012
- Elements of Data Analysis and Epidemiology (CMPH 343 – Tufts University School of Medicine) Spring 2006

Professional Memberships

Association for Women in Mathematics (AWM)
Association for Women in Science (AWIS)
Complex Systems Society (CSS)
Institute of Electrical and Electronics Engineers (IEEE)
International Union for the Study of Social Insects (IUSSI)
Society for Industrial and Applied Mathematics (SIAM)
Society for Mathematical Biology (SMB)

Invited Presentations

*upcoming

2020

Public Interview: "Nina Fefferman," You Made it Weird podcast

Public Lecture: "The Role of Applied Math in Real-time Pandemic Response: How Basic Disease Models Work," NIMBioS Webinar Series, Knoxville, TN

Public Interview: "Math + Virus + Us," Here We Are podcast and YouTube video.

2019

Public Lecture: "Vaccine Acceptance and Epidemic Risks," Infinite Futures Event Series, Museum of Science and Industry, Chicago, IL.

"When to Turn to Biology for Inspiration in Systems Design," DIMACS 30th Anniversary Conference, New Brunswick, NJ.

"Patients as patches: Ecological challenges from the epidemiology of healthcare environments," ESA 2019, Louisville, KY.

"Math and Disease," Possibilities in Postsecondary Education and Science (PIPES), UTK, Knoxville, TN.

Keynote Address: "Evolving Efficient Solutions: How simple natural systems solve the most complicated problems," MBI Capstone Conference 2019, Columbus, OH (virtual)

Plenary Talk: "How AIDS prevalence impacts the emergence of antibiotic resistance in bacterial infections," SIAM BAMM 2019, Richmond, VA.

Public Lecture: "Math and Disease," Stand Up Science, Farragut, TN.

"Biosurveillance and Homeland Security," Princeton University, NJ.

"Understanding Social Communication Systems with Homology Theory," Complex Systems Seminar, University of Michigan, Ann Arbor, MI.

"Going Against the Grain," Women Empowered in STEM (WeSTEM) 2019, Champaign, IL.

"You're Worth It: Job Negotiations," Women Empowered in STEM (WeSTEM) 2019, Champaign, IL.

2018

"Math: A Critical, Treacherous Bridge Between Scientific Disciplines," American Geophyiscal Union (AGU 2018), Washington DC.

"The Evolution of Social Complexity as Multi-Scale Feedback Control on Networks," Systems Theory Lunch Colloquium, Harvard Medical School, Boston, MA.

"Saving Bats from Fungal Diseases with Linear Algebra," Claremont Center for Mathematical Sciences Colloquium, Claremont, CA.

Plenary Talk: "Evolving Efficient Solutions: How simple natural systems solve the most complicated problems," NIMBioS Undergraduate Research Conference 2018, Knoxville, TN.

Plenary Talk: "Linking Local Decisions with Global Outcomes in Networks: Case Studies in Behavior and Population Health" SIAM Life Sciences 2018, Minneapolis, MN.

"The mathematical biology of networks: from disease outbreaks to cyber-attacks," TN Governor's School, University of Tennessee, Knoxville, TN.

"Trans-disciplinary adventures in the mathematical biology of networks: from disease outbreaks to cyber attacks," DIMACS REU, Rutgers University, Piscataway, NJ.

Public Webinar: "Social and Biological Networks: The Evolution of Social Systems," US National Academies of Sciences, Engineering, and Medicine: Math Frontiers Webinar Series

2017

"Self-Diagnosing Networks," Data Institute San Francisco Conference (DSCO17), San Francisco, CA.

Keynote: "Evolving Efficient Solutions: How simple natural systems solve the most complicated problems," Workshop on Bio-Inspired Security, Trust Assurance, and Resilience (BioSTAR 2017), San Jose, CA.

"Wildlife Disease Management Outcomes May Depend on the Mechanism of Host Immune Response," Distinguished Lecture Series in Immunology and Infectious Diseases, Center for Emerging & Re-emerging Infectious Diseases, School of Medicine, University of Washington, Pullman, WA.

2016

"Evolving Healthy Populations," International Symposium on Biomathematics and Ecology Education and Research 2016, Charlseton, SC.

"Individuals, Societies, and Climate: Modeling motivations to change," Oak Ridge National Laboratory Workshop on Human Activity at Scale in Earth System Models, Oak Ridge, TN.

"Network Models in Epidemiology," US-Canadian Institutes Epidemiology Summer School: Mathematical Modeling of Infectious Disease Spread, MBI, Columbus, OH.

"The Invasion Ecology of Diseases in a Human Environment," Arthur M. Sackler Colloquia of the National Academy of Sciences, Coupled Human and Environmental Systems, Washington DC.

"Global Feedback Control on Centrality in Self-Organizing Systems", Mathematical Biosciences Institute Workshop on the Control and Observability of Network Dynamics, MBI, Columbus, OH.

"Zika Control: More Complicated than Hoped?" Next Einstein Forum, Dakar, Senegal.

2015

"Linear Algebraic Tools in Conservation Ecology," Simon A. Levin Mathematical, Computational and Modeling Sciences Center Seminar, Tempe, AZ.

"Applications of Homology Theory to Animal Communication Systems," Mathematics and Statistics Colloquium, Arizona State Univ., Tempe, AZ.

"Trade-offs Between Collaboration and Infection Risk: Can 'social distancing' improve colony function?" Conference on Complex Systems 2015, Tempe, AZ.

"The Benefits of Ongoing Dynamics in Self-Organizing Social Systems," Conference on Collective Dynamics and Evolving Networks, Bath, UK.

Plenary Talk: Exploiting the Complexity of Identity to Infiltrate Clandestine Groups – Lessons from a LARP, CyDentity Conference, CCICADA, New Brunswick, NJ.

"Incorporating Evolutionary Rescue into Population Viability Models," Mathematics of Planet Earth: Workshop on Management of Natural Resources, Washington D.C.

"Distributed Detection Algorithms for Real-Time Maritime CyberSecurity," Joint CCICADA & AMU Conference on Maritime CyberSecurity, New Brunswick, NJ.

"The Definition of Communication: One way biology and math people accidentally talk past each other and what we might be able to do to fix it," Annual Meeting, Society for Integrative and Comparative Biology, West Palm Beach, FL.

2014

"BioInspired Anomaly Detection: Social Insects and Network Security," Dept. of Homeland Security Science and Technology HSARPA CyberSecurity Division Research and Development Showcase and Technical Workshop, Washington D.C.

"n-TANGLE: a new method for comparing networks across scales" Workshop on Advances in Discrete Networks, Dept. of Mathematics, Univ. of Pittsburgh, Pittsburgh, PA.

Keynote Address: "Virtual Worlds Helping Public Health Preparedness," New Jersey Health Care Quality Institute Annual Meeting, Trenton, NJ.

"A Mathematician's Role in Fighting Ebola," Saint Ann's School, Brooklyn, NY.

"Provable Boundaries on Disease Outbreaks in Self-Organizing Social Networks," The Duke University Mathematical Biology Colloquium, Durham, NC.

Keynote Address: "Designing your own role: Women in STEM," Tufts University Graduate Student Luncheon for Women in Science, Medford, MA.

"Division of Labor as an Adaptation to Combat Disease Risks?" The Seventh International Symposium on Biomathematics and Ecology: Education and Research (BEER), Claremont, CA.

"How dynamic networks affect disease transmission," The BioCircuits Institute, UCSD, San Diego, CA.

"The Evolution of Social Complexity," Plant Biology Dept. Seminar, Univ. of Vermont, Burlington, VT.

"Provable Boundaries on Disease Outbreaks in Self-Organizing Social Networks," Math Dept. Seminar, Univ. of Tennessee at Knoxville, TN.

"Mathematics, Optimization, and the Evolution and Behavior of Social Insects," Math Dept. Junior Colloquium, Univ. of Tennessee at Knoxville, TN.

"The Life of a Mathematical Researcher," Saint Ann's School, Brooklyn, NY.

"Mathematics, Optimization, and the Evolution and Behavior of Social Insects," Social Insect Research Group Seminar, School of Life Sciences, Arizona State Univ., AZ.

"N-tangle: A Network Comparison Method," Workshop on Animal Social Networks, NIMBioS, TN

2013

"Evolutionary pressures, Infectious Diseases, and Self-Organizing Social Systems," Evolutionary Studies Seminar, Co-Sponsored by the Collective Dynamics of Complex Systems Research Group, the Undergraduate Math Club, Upsilon Pi Epsilon, and Pi Mu Epsilon, SUNY Binghamton, NY.

"BioInspired Anomaly Detection," DHS CyberSecurity PI Meeting, Arlington, VA.

"Mathematics, Evolutionary Biology, Epidemiology, and National Security", Saint Ann's School, Brooklyn, NY.

"Evolution of Reproductive Timing and Social Organization in Honey Bees," Scientific Learning Forum at FMC, Ewing, NJ.

"Crowd Sourcing WoW: A Case Study in Improving Pandemic Preparedness," Annual George M. Sideris Biology Conference, LIU, Brooklyn, NY.

2012

Public Lecture: "Math, Complexity, and Social Groups: Using math to understand the nature of society," Campus Life Enrichment Committee (CLEC) Lecture, Georgia Southern Univ., GA.

"How and Why Static Approximations Can Fail to Give Adequate Insight into Processes on Dynamic Networks," Math Dept. Colloquium, Georgia Southern Univ., GA.

"Theoretical Worlds: An Exploration of Models and Model Systems," Tufts Univ, Dept. of Civil and Environmental Engineering Seminar Series, Medford, MA.

"Help, my avatar is sick!" Panel Talk, SXSW, Austin, TX.

"WISE – Women, Ignore Silly Expectations!" 2012 WISE Conference, Texas A&M, TX.

2011

"The Evolution of Social Complexity," CUNY Initiative for the Theoretical Sciences Workshop on A Unified Theory of Evolution, CUNY, NY.

"Balancing Workforce Productivity Against Disease Risks for Environmental and Infectious Epidemics," Math Dept. Seminar, Univ. of Ghana, Legon, Ghana.

"Selective Pressures from Disease on Social Behavior in Hosts," DIMACS/MBI US - African BioMathematics Initiative: Workshop on Genetics and Disease Control, Elmina, Ghana.

Plenary Address: "The Future of Technology and Knowledge," Next-Generation Communications Interoperability Workshop, Chicago, IL.

"Virtual Worlds and Real Epidemics - Insights from WoW's Corrupted Blood Plague," E-Virtuoses International Conference on Serious Games, Valenciennes, France.

Plenary Address: "Disease Robustness and Evolutionary Selective Pressures on Social Organization in Eusocial Insects," Mathematical Biosciences Institute Workshop on Insect Self-Organization and Swarming, Ohio State Univ., OH.

"Hakkar's Corrupted Blood Plague: How an Outbreak in WoW is Helping Epidemiologists Create Better Disease Models," Game Developer's Conference 2011, San Francisco, CA

"Exploring the Role of Behavior in Infectious Disease Dynamics: Mathematical Insights from World of Warcraft and other Virtual Worlds," DIMACS/CCICADA Student Workshop on Where the Mathematical and Computational Sciences Meet Society, Rutgers University, NJ

"Multi-Dimensional Data and the Influence of Human Behavior in Biosurveillance for Infectious Disease Outbreaks," Global Biosurveillance Conference: Enabling Science and Technology – 2nd Meeting in the Biological Threat Non-Proliferation Conference Series, Santa Fe, NM

2010

"Distributed Algorithms for Collective Visualization of Data," Visualanalytics Workshop 2010, Imperial College London, UK

"The Importance of Behavioral Dynamics on Disease Burden," Southern African Wildlife College, South Africa

"The Impact of Stress on Populations," DIMACS Advanced Study Institute on Conservation Biology, Limpopo, South Africa

"Social Behavior in Virtual Worlds," Panel Discussant – InPlay 2010, Toronto, Canada

"Self-Organizing Networks, Social Complexity, and Disease Dynamics," Rensselaer Polytechnic Institute, NY

"Playing with Plague: Exploring Disease Dynamics from Within," 2010 AAAS Annual Meeting, San Diego, CA

"Epidemiological Pressures on the Evolution of Social Complexity," Mathematical Methods in Systems Biology, Tel Aviv, Israel

2009

"Information Theoretic Tool for Biosurveillance," CCICADA Kickoff Meeting, Rutgers Univ., NJ

"Perspectives, Challenges, and Creativity in Understanding Behavioral Epidemiology," Workshop on Behavioral Epidemiology, Rutgers Univ., NJ

"Evolutionary Implications of Epidemics on Social Behavior," Evolutionary Genetics and Genomics at Rutgers, Rutgers Univ., NJ

Panel participant and Speaker on Popular Culture and Science, Sheffield Documentary Film Festival '09, Sheffield, United Kingdom

Keynote Address: "Epidemiological Insights from Virtual Worlds," Life Science Dialogue Heidelberg, - Inaugural Conference, Germany

"Social Stability and Success: A new concept in self-organizing systems and preferential attachment," Office of Naval Research Workshop on Complex Systems, Institute for Pure and Applied Mathematics, Los Angeles, CA

"The Impact of Household Capital Models on Targeted Epidemiological Control Strategies for Diseases with Age-Based Etiologies," Makerere Univ., Kampala, Uganda

Keynote Address: "Hakkar's Corrupted Blood Plague: How an Outbreak in World of Warcraft is Helping Epidemiologists Create Better Disease Models," Games for Health – Virtual Worlds, Boston, MA

"Network Representations and the Evolution of Social Complexity," Frontiers in Applied and Computational Mathematics, New Jersey Institute of Technology, NJ

"Mathematical Optimization, Evolutionary Sociobiology, and Eusocial Insects," Conference on The Power of Analysis, Princeton Univ., NJ

"Mathematical Insights into Behavioral Epidemiology," Univ. of Texas Health Science Center, Houston, TX

"Basics of Mathematical Modeling," Mosquito Modeling Made Easy Day, Center for Vector Biology, Rutgers Univ., NJ

"Mathematical and Computational Methods in Epidemiology and BioSurveillance," Jackson State University, MS

"Mathematics, Optimization, and the Evolution and Behavior of Social Insects," UNC, Chapel Hill, Applied Math, NC

"Network models in Epidemiology and Sociobiology: Introduction, Overview, and Recent Advances," Mathematical Sciences, RPI, NY

2008

"Social Behavior and the Dynamics of Corrupted Blood," Rice University/Games for Health, Houston, TX

"Possible Selective Mechanisms for the Evolution of Disease-defensive Social Organizations," Ecology and Evolution Seminar, Boston Univ., MA

"Behavioral Epidemiology in Virtual Worlds: Exploiting the virtual experience," Advanced Technology Applications for Combat Casualty Care 08; Telemedicine and Advanced Technologies Research Center Medical Simulation & Training Technology

"Recent Advances in the What, How and When of Network Models in Infectious Disease Epidemiology," SIAM 2008, CA

"World of Warcraft Corrupted Blood Disease: Epidemiological Observations and Findings," Games for Health, Baltimore, MD

"Computational Ecology: The Evolution of Sociality," Frontiers in Applied and Computational Mathematics, New Jersey Institute of Technology, NJ

Plenary Talk: "Self-organizing social behavior and disease-defensive organizational strategies in social species," Complexity 2008, Univ. Illinois Urbana, IL

"From the Individual to the Population: Modeling the many levels of evolutionary fitness in social species," Dept. of Ecology and Evolution and Natural Resources, Rutgers Univ., NJ

"Individual Decisions, Group Efficiency," ExxonMobil, Clinton, N.J.

2007

Public Lecture: "Virtual Games, Real Epidemics: Can We Learn Real-Life Lessons in BioDefense from Online Games?" Biosecurity, Biotechnology and Global Health Seminar Series, Program on Science and Global Security, Princeton Univ., NJ

"Disease on Networks: Can Static Representations Capture the Full Complexity of a Dynamic Process?" NDSSL Seminar Series, Virginia Bioinformatics Institute, Virginia Tech, VA

Public Lecture: "Real People, Virtual Worlds: Watching a Plague Unfold," Institute for Mathematical Sciences, National Univ. of Singapore

"The Continued Mystery of Regular, Old, Annual Flu," Workshop on Mathematical models for the Study of the Infection Dynamics of Emergent and Re-emergent Diseases in Humans, Institute for Mathematical Sciences, National Univ. of Singapore

"Epidemics and the Evolution of Social Complexity," Program in Ecology and Evolution Seminar Series, Rutgers Univ., NJ

"Playing Games at School: Parents, Public Schools, and Children's Health," DIMACS Workshop on Game Theory in Epidemiology and Ecology, Rutgers Univ., NJ

"Analyzing Entropy in Biosurveillance," U.S. Dept. of Homeland Security research briefing, Washington D.C.

"Fantastic Problems in Mathematical Ecology," DIMACS Bio-Math Connection Field Testers Workshop, Rutgers Univ., NJ

"Does Securing Infrastructure Against Workforce-Depletion Depend on Whether the Risk is Environmental or Infectious?" DIMACS Workshop on Mathematical Modeling of Infectious Diseases in Africa, Univ. of Stellenbosch, South Africa

"Social interaction and disease dynamics," Workshop on Analysis of Time Series Data in Epidemiology, Tufts Univ. School of Medicine, Boston, MA

"The Behaviors of Individuals and Populations," Working Group on Spatio-Temporal and Network Modeling of Diseases, ICMS, Edinburgh, Scotland

"The Evolution of Complexity in Already Social Groups," Dept. of Ecology and Evolutionary Biology, Princeton Univ., NJ

"Disease as a Selective Pressure and the Evolution of Social Complexity," Applied Biomathematics, Stony Brook, NY

"Vital Rate Sensitivity Analysis: A new method for population viability analysis - Two examples of its use," Applied Biomathematics, Stony Brook, NY

"Disease as a Selective Pressure and the Evolution of Social Complexity," Morin Lab, Dept. of Ecology, Evolution and Natural Resources, Rutgers Univ., NJ

2006

"The Role of Individual Choice in the Evolution of Social Complexity and its Implications Towards the Emergence of Zoonotic Infections," DIMACS Computational and Mathematical Epidemiology Seminar, Rutgers Univ., NJ

"Preparing Societal Infrastructure Against Disease-Related Workforce Depletion," DIMACS Workshop on Facing the Challenge of Infectious Diseases in Africa, University of the Witswatersrand, South Africa

"Fantastic Problems in Mathematical Ecology," DIMACS Bio-Math Connect Institute for High School Teachers, Denver, CO

"Societal Bio-defense - How Can we Accomplish Safety, Stability and Efficiency?" SIAM Annual Meeting, Boston, MA

"When females should stop supporting lazy males: mathematics and honey bees?" DIMACS REU Seminar Series, Rutgers Univ., NJ

"Selected Problems in Epidemiology." DIMACS Tutorial on Data Mining and Epidemiology, NJ

"How Would Termites Prepare for Pandemic Bird Flu and What Should We Learn From Them?" Joint Dept. of Entomology and Center for Infectious Disease Dynamics Seminar, Penn State Univ., PA

"Different Scales of BioDefense - Can societies be both safe and efficient?" DIMACS Computational and Mathematical Epidemiology Seminar, Rutgers Univ., NJ

2005

"Termites in the Nation′s Service," DIMACS Computational and Mathematical Epidemiology Seminar, Rutgers Univ., NJ

"Applications of Self-Organizing Systems to Epidemiology." DIMACS Mixer Series, Rutgers Univ., NJ

"Disease Signatures: A New Combinatorial Method for Epidemiology," DIMACS Computational and Mathematical Epidemiology Seminar, Rutgers Univ., NJ

"Fantastic Problems in Mathematical Ecology," DIMACS Bio-Math Connect Institute for High School Teachers, Rutgers Univ., NJ

"How Complex Systems Can Simplify a Complex Problem: What Epidemiologists Can Learn From Insects," Institute for Advanced Study, Center for Systems Biology Seminar Series, NJ

2004

"Incorporating Behavior and Social Structure into Pathogen Defense Strategies. Conference on Innate Immunity for Biodefense," National Defense University's Center for Technology and National Security Policy (CTNSP) & the Department of Defense, Washington D.C.

Keynote Address: "Social Insects, Immunocompetence and Epidemiology: A Model System for Systems Modelers," Vanderbilt Medical School, Dept. of Microbiology and Immunology Annual Retreat, TN

"Disease and Immunocompetence in Group-Living Animals: Implications for Human Epidemiology," DARPA/DSO Workshop on Endogenous Defense, VA

Contributed Presentations

2008. "An Interdisciplinary Framework for Defining and Distinguishing Security Desiderata for Personally Sensitive Information," DIMACS/DyDAn Workshop on Internet Privacy: Facilitating Seamless Data Movement with Appropriate Controls

2006. "A Vital Rate Sensitivity Analysis (VRSA) for Non-stable Age Distributions and Short-term Planning," North American Ornithological Conference

2004. "A Mathematical Analysis of Reproductive Fission," North American Section of the International Union for the Study of Social Insects (with published abstract)

2004. "Two-stage Wavelet Analysis Assessment of Dependencies in Time Series of Disease Incidence," The 2004 Conference of the International Environmetrics Society (with published abstract)

2004. "Mathematical Modeling of Behavior and Ecology in Social Insects: Social mechanisms of pathogen control in termite colonies," Departmental Research Seminar, Tufts Univ.

2003. "Modeling Waterborne Infectious Outbreaks: When, where and how bad will they be?" The 2003 Conference of the International Environmetrics Society (with published abstract)

2003. "Modeling Disease Resistance through Social Interactions in Termites," The 2nd Conference on the Mathematics and Algorithms of Social Insects (with published abstract)

Service (external to Home Institution)

Ongoing	Referee of papers for *American Naturalist, Annales Zoologici Fennici, Behavioral Ecology and Sociobiology, Biological Conservation, BMC Evolutionary Biology, Bulletin for Mathematical Biology, Canadian Biosystems Engineering, Conservation Letters, IMA Journal of Applied Mathematics, Journal of Biological Dynamics, Journal of Infectious Diseases, Journal of Insect Science, Journal of Nonlinear Dynamics, Mathematical Biosciences, Journal of Medical Internet Research, Journal of the Royal Society Interface, Malaria Journal, Nature, Nature Scientific Reports, Parasites and Vecotrs, PeerJ, Phyiscal Reviews X, PLoS Computational Biology, PLoSOne, PloS Medicine, PNAS, Vaccine, Vector-Borne and Zoonotic Diseases*
2020	Deputy Editor *PLOS Computational Biology*
2019-2021	Director of Development, Enhancing Diversity in Graduate Education (EDGE) Foundation
2019	Guest Editor *PLOS Computational Biology*
2019	Co-Organizer SIAM Network Science Annual Meeting (NS 19)
2018	NSF ad hoc proposal reviewer
2018	Burroughs Wellcome Fund grant proposal reviewer
2018	Co-Organizer IEEE Symposium on Security and Privacy, entitled: 3rd Workshop on Bio-inspired Security, Trust, Assurance and Resilience (BioSTAR 2018)

2017-cont.	Member of the Leadership Team of the National Institute for Mathematical and Biological Synthesis
2017	Co-Organizer NIMBioS Workshop on Applying Optimization Techniques to Agricultural Problems
2017	ARO grant proposal reviewer
2016	Co-Organizer MBI (the Mathematical Biosciences Institute at Ohio State) Workshop on Generalized Network Structures and Dynamics
2016	Co-Organizer MBI (the Mathematical Biosciences Institute at Ohio State) Emphasis Semester on Dynamics of Biologically Inspired Networks
2014	ARO grant proposal reviewer
2013- 2016	Member of Scientific Advisory Board for MBI (the Mathematical Biosciences Institute at Ohio State)
2013	NIH grant proposal reviewer
2013-2016	Co-Organizer NIMBioS Working Group on Climate Change and Vector-borne Diseases
2013-2019	Invited Participant Joint NIMBioS-SESYNC Working Group on Human Risk Perception and Climate Change
2012	Invited Grant Proposal Reviewer for the United States – Israel Binational Science Foundation
2012	US Environmental Protection Agency FIFRA Scientific Advisory Panel (SAP) on Pollinator Risk Assessment Framework
2011	Invited Participant - External Expert Review Panel for Bioscience Research and Development at Los Alamos National Laboratory
2011	Program Committee Member, The Third International UKVAC Workshop on Visual Analytics (VAW 2011)
2011	NSF grant proposal reviewer
2011	Co-Organizer DIMACS/MBI US - African BioMathematics Initiative: Advanced Study Institute and Workshop on Genetics and Disease Control
2010	Organizer of the DIMACS Mini-Workshop on ‘Emergent Properties of Dynamic Biological Networks’
2010	Lecturer at DIMACS/MBI US - African BioMathematics Initiative: Workshop and Advanced Study Institute on Conservation Biology
2010	Organizer of the DIMACS Mini-Workshop on ‘Game-theoretic Approaches to Medical Prognosis’
2010	NSF grant reviewer/panel participant
2010	Invited International Reviewer for Centre of Excellence Grants for the Australian Research Council
2010	Co-Organizer of the DIMACS Workshop on Modeling and Mitigation of the Impacts of Extreme Weather Events to Human Health Risks
2009	Co-Organizer DIMACS Workshop on Economic Epidemiology, Makerere Univ., Kampala, Uganda
2009	NSF grant reviewer/panel participant
2009	Co-Organizer/ Program Co-Chair Workshop on Economic Epidemiology, Makerere Univ., Kampala, Uganda
2009	Co-Organizer Mosquito Modeling Made Easy Day at the N.J. Center for Vector Biology
2008-2010	Member Chief Editorial Committee for the DIMACS Book Series
2008-2010	Member Editorial Board of DIMACS Educational Modules Series
2008	Invited organizer SIAM mini-symposium on Network Models of Infectious Disease
2008	Ran the Reconnect Program on Biosurveillance at DIMACS – a week long short course for teaching faculty at liberal arts institutions on an advanced topic to expand their

	own and their students research opportunities
2007	Mentor to two teams of researchers for Department of Homeland Security funded Research Experience for those at Minority Serving Institutions
2006-2016	Advisory/Editorial Board Member for the journal *Annales Zoologici Fennici*
2004	Subject Matter Expert on Innate Immunity and Biodefense, National Defense University
2004	Research Consultant, DARPA (via Strategic Analysis, INC.)
2003	Developed algorithm for Managing Endangered Species Habitat in Hawaii - MESHH software package (Reed, J.M., N.H. Fefferman, C.S. Elphick, and M. Silbernagle. 2004)
2000-2002	Technical Editor (Cryptography) to MacMillan Press
1999	Invited Reviewer of AES submission to the National Institute of Standards and Technology, later published as The Twofish Encryption Algorithm, Schneier, et al, 1999, John Wiley & Sons Inc.

Service (internal to Home Institution)

2020	Advisor to the COVID-19 Re-Imagining Fall Task Force
2019-cont.	Head of Graduate Admissions, Program in Ecology and Evolutionary Biology
2019	Research Mentor for the NIMBioS Summer Research Experiences (SRE) for Undergraduates
2019	Co-Organizer Tutorial on Networks at NIMBioS
2018	Serve on departmental Promotion and Tenure Committee for Prof. O'Meara
2018-cont.	Serve on Faculty Mentoring Committee for Prof. Kivlin
2017-cont.	Served as Departmental Coordinator for University Future Faculty Program
2017	Research Mentor for the NIMBioS Summer Research Experiences (SRE) for Undergraduates
2017	Lecturer for Joint 2017 MBI-NIMBioS-CAMBAM Summer Graduate Program
2016-2017	University of Tennessee, Knoxville Department of Ecology and Evolutionary Biology Search Committee Member and Diversity Advocate (Ecosystem Ecology Search)
2016-2017	University of Tennessee, Knoxville Department of Mathematics Search Committee Member (Mathematical Biology Search)
2016-cont.	University of Tennessee, Knoxville Program in Ecology and Evolutionary Biology Graduate Affairs Committee Member
2015-2016	Rutgers University Biological Sciences Area Committee Member
2014	Rutgers University EENR Department Wildlife Biology Faculty Search Committee Member
2010	Co-Mentor to a team of researchers for Department of Homeland Security funded Research Experience for those at Minority Serving Institutions
2009-2010	Organizer of the EENR seminar series
2009	Organizer of the DIMACS Workshop on Behavioral Epidemiology
2009-2010	Member E&E Executive Committee
2008-2012	Member of EENR Curriculum Committee
2008-2010	Member Chief Editorial Committee for the DIMACS Book Series
2008-2010	Member Editorial Board of DIMACS Educational Modules Series
2007-2009	Member of the Rutgers University Advisory Board to the Office for the Promotion of Women in Science, Engineering and Mathematics
2006-2015	Research Advisor for Rutgers Univ. DIMACS REU
2005-2007	Co-organizer DIMACS seminar series Mathematical and Computational Epidemiology

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DECLARATION OF PROFESSOR JUDITH RESNIK REGARDING ENLARGEMENT AND THE USE OF PROVISIONAL REMEDIES FOR DETAINED INDIVIDUALS

I have been asked to make this declaration to explain my understanding of the remedies, both provisional and permanent, that federal judges can provide to people who are incarcerated and facing the threat of COVID-19. Because I have practiced in the federal courts for decades and represented prisoners in federal court, I have had personal experience with the use of enlargement in habeas corpus cases. Given that this provisional remedy is not regularly discussed in reported decisions or in academic analyses, I believe that my experiences and knowledge can be useful to the Court. This opinion is mine and is not that of the institutions with which I am affiliated. I declare that the following is a true and accurate account of my own work as a lawyer, of the pertinent legal principles as I understand them, and of how these precepts can apply in this unprecedented context.

My Background

1. I have worked on occasion as a lawyer, including in the clinical programs at Yale Law School and at U.S.C. I have appeared before the United States Supreme Court and in federal district and appellate courts. I have also been appointed by federal judges to assist in issues arising in large-scale litigation. Below, I provide a few aspects of my work particularly relevant to this declaration. I attach my resume as Exhibit A to this Declaration.

2. From 1977 until 1980, I was a supervising attorney at Yale Law School's clinical program, which then provided legal services to federal prisoners housed at F.C.I. Danbury.

3. I am now the Arthur Liman Professor of Law at Yale Law School where I teach courses, including on federal and state

courts; procedure; large-scale litigation; federalism; and incarceration.

4. I have taught law for decades. Much of my focus has been on the role and function of courts, and the relationship of governments to their populations. I regularly teach the class entitled Federal and State Courts in the Federal System. Readings for students include materials on habeas corpus and on civil rights litigation.

5. In 2018, I was awarded an Andrew Carnegie Fellowship to work on a book, tentatively entitled *Impermissible Punishments*, which explores the impact of the 1960s civil rights revolution on the kinds of punishments that governments can impose on people convicted of crimes. Central to this book is the role that access to courts played for people held in detention.

6. I am the Founding Director of the Arthur Liman Center for Public Interest Law. The Liman Center teaches classes yearly, convenes colloquia, does research projects, supports graduates of Yale Law School to work for one year in public interest organizations, and is an umbrella for undergraduate fellowships at eight institutions of higher education.

7. I write about the federal courts; adjudication and alternatives such as arbitration; habeas corpus and incarceration; class actions and multi-district litigation; the judicial role and courts' remedies; gender and equality; and about transnational aspects of these issues. In recent years, I have spent a good deal of time doing research related to prisons. I have helped to develop a series of reports that provide information nation-wide on the use of solitary confinement.

8. In February of 2019, I testified before the U.S. Commission on Civil Rights at its hearing on women in prison and co-authored a statement related to the isolation of many facilities for women, their needs for education and work training, and the discipline to which they are subjected. *See* Statement submitted for the record, *Women in Prison: Seeking Justice Behind Bars*, before the U.S. Commission on Civil Rights, March 22, 2019. The report, published a few months ago, references this testimony. See U.S. Commission on Civil Rights, *Women in Prison: Seeking Justice Behind Bars* (February 2020), available at https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf.

Remedies Available in the Federal Courts:
Habeas Corpus, Civil Rights Litigation, and Enlargement

9. In light of my knowledge of the federal law of habeas corpus, state and federal court relations, procedure, and remedies, I have been asked by counsel for the petitioners/plaintiffs to address the range of responses available to judges presiding in cases that raise claims related to COVID-19.

10. As I understand from public materials on the health risks of this disease, COVID-19 poses a deadly threat to the well-being and lives of people who contract this disease. To reduce the risk and spread of this disease, our governments have instructed us to stay distant from others and to take measures that are extraordinary departures from our daily lives and routines.

11. Applying these urgent medical directives to prisons poses challenges in every jurisdiction. Governing legal principles about prisoners' access to courts were not framed to address COVID-19's reality: that being inside prisons that are densely populated can put large numbers of people (prisoners and staff) at risk of immediate serious illness and potential death.

12. These unprecedented risks from and harms of COVID-19 in prison raise a new legal question: whether COVID-19 has turned sentences which, when imposed, were (or may have been) constitutional into unconstitutional sentences during the pendency of this crisis.

13. When sentencing people to a term of years of incarceration, judges had no authority to impose putting a person at grave risk of serious illness and death as part of the punishment for the offense. Now, such grave risks and harms can arise from the fact of incarceration.

14. A recent Supreme Court case, *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), provides an analogous situation - a constitutional-when-sentenced but unconstitutional-now sentence. The Court determined that, in light of new understandings of the limits of brain development in juveniles, sentences of life without parole (LWOP) imposed on individuals who had committed crimes when under the age of eighteen were lawful when issued but became unconstitutional. As a consequence, parole boards or courts had to reconsider whether LWOP remained appropriate. COVID-19 raises a parallel question, as it requires courts to address whether sentences lawful at imposition can (at least temporarily) no longer

be served in prisons because otherwise, the sentence would become an unconstitutional form of punishment. In normal times, using *Montgomery v. Louisiana* as a guide, federal judges reviewing state-court convictions could remit eligible individuals to state courts and parole boards. But in these abnormal times, the speed at which decisions are made is critical. Therefore, as I discuss below, provisional remedies (enabling enlargement and release for some individuals and de-densifying for others) are necessary.

15. The classic and longstanding remedy for relief from unconstitutional detention, conviction, and sentences is habeas corpus. The Constitution enshrined the remedy of habeas corpus, which has a substantial common law history and is codified in federal statutes. *See generally* Paul D. Halliday, *Habeas Corpus* (Harvard U. Press, 2012); Amanda L. Tyler, *Habeas Corpus in Wartime* (Oxford U. Press, 2017); Randy Hertz and James Liebman, *Federal Habeas Corpus Practice and Procedure* (2 volumes, 2019); Hart & Wechsler, *The Federal Courts and the Federal System*, Chapter X1, 1193-1164 (Richard H. Fallon, Jr, John F. Manning, Daniel J. Meltzer & David Shapiro, 7th ed., 2015). These citations are the tip of a vast and substantial literature that aims to understand the history and law of habeas corpus.

The Legal Thicket

16. As is familiar, in federal courts, federal petitioners file under 28 U.S.C. §2255 (post-conviction motions) and under §2241 (the general habeas statute), both of which are civil actions.

17. For example, when I worked at Yale Law School in its clinical program in the late 1970s, we filed lawsuits for federal prisoners predicated on 28 U.S.C. §2241 as well as (in appropriate situations) on 28 U.S.C. §1331 (general question jurisdiction) and 28 U.S.C. §1361 (mandamus), and in several instances, we filed cases as class actions. In the mid-1970s, the Supreme Court provided rules and forms for §2254 and §2255 filings. The Federal Rules of Civil Procedure supplement those rules.

18. Congress has recognized that federal judges are authorized under the habeas statutes to "summarily hear and determine the facts, and dispose of the matter as law and justice require." *See* 28 U.S.C. §2243. In addition to this statutory authority, federal judicial power is predicated on the constitutional protection of the writ and on the common law.

19. Congress has channeled and circumscribed some of federal judicial authority through the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and, relatedly, under the Prison Litigation Reform Act (PLRA) of 1996. Moreover, the Supreme Court has issued many decisions interpreting the prior habeas statutes, the 1996 revisions in AEDPA, and the intersection of habeas and civil rights claims brought under 42 U.S.C. §1983. The result is a dense arena of law and doctrine that can be daunting for litigants and jurists alike.

20. Some Supreme Court decisions, written to address claims by state prisoners, have delineated litigation focused on the fact or duration of confinement, for which release is the remedy and habeas is the preferred route, from challenges to conditions of confinement, for which the Court has required use of 42 U.S.C. §1983. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475 (1978); *Heck v. Humphrey*, 512 U.S. 477 (1994). Yet that distinction is hard to apply, and many opinions have identified that the overlap, as exemplified by *Mohammad v. Close*, 540 U.S. 744 (2004), *Wilkinson v. Dotson*, 544 U.S. 74 (2005), and by other Supreme Court and lower court decisions.

21. COVID-19 poses a new and painful context in which to undertake that analysis. Some reported decisions addressing the constitutional right of prisoners that officials not be "deliberately indifferent to serious medical needs" consider those Eighth Amendment claims to be appropriate for §1983 because they relate to conditions. But this deadly disease turns ordinary conditions into potentially lethal threats of illness for which the remedy to consider is release of at least some prisoners because density puts people at medical risk.

22. Because COVID-19 can end people's lives unexpectedly and abruptly, COVID-19 claims turn the condition of being incarcerated into a practice that affects the fact or duration of confinement. In my view, COVID-19 claims, therefore, collapse the utility and purpose of drawing distinctions between what once could more coherently be distinguished.

23. Courts need also to consider how COVID-19 fits (or not) with provisions of AEDPA and the parameters of the PLRA. Again, new problems have emerged. For example, in some contexts for state and federal prisoners, a question of exhaustion of remedies arises. Often one issue is the ability of the executive branch to respond quickly. In the COVID context, day by day, the risk of illness increases for prisoners and staff, which endanger health care resources. Exhaustion would be "futile" if other branches of

government are not prompt in response and if people become sick, risks skyrocket, and deaths occur.

24. "Futility" thus needs to be analyzed in terms not only of the capacity of institutions but in terms of the likelihood that the people seeking relief will be well enough to have the capacity to do so, and that the remedy provided will be effective given the alleged harm.

25. Other legal issues include when class actions are appropriate and the criteria of Rule 23 are met; the merits of arguments about unconstitutional sentences and conditions; and the range of remedies.

The Availability of Provisional Remedies

26. The reason to flag some of the many issues that litigation of both habeas petitions and civil rights cases entail is to underscore the importance of considering provisional remedies when cases are pending. In general, time is required for lawyers to brief and for judges to interpret and apply the law. But waiting days in a world of COVID infections can result in the loss of life.

27. While courts have not faced COVID before, they have faced urgent situations, which is why provisional legal remedies exist. Courts have two ways to preserve the *status quo* – which here means protecting to the extent possible the health of prisoners, staff, and providers of medical services. One route is the use of temporary restraining orders and preliminary injunctions. These remedies require no explanation because they are familiar procedures. *See* Fed. R. Civ. Pro. 65.

28. Another option is an aspect of federal judicial power that is less well known. District courts have authority when habeas petitions are pending to "enlarge" the custody of petitioners. "Enlargement" is a term that, as far as I am aware, is used only in the context of habeas. (More familiar terms for individuals permitted to leave detention are "release" and "bail," and some decision that "enlarge" petitioners use those words rather than enlargement).

29. The distinction is that enlargement is not release. The person remains *in custody* - even as the place of custody is changed and thus "enlarged" from a particular prison to a hospital, half-way house, a person's home, or other setting. Enlargement is a

provisional remedy that modifies custody by expanding the site in which it takes place. In some ways, enlargement resembles a prison furlough.

30. Enlargement has special relevance when the PLRA has application. As I understand the PLRA's rules on the "release" of prisoners, enlargement would not apply, as enlargement is not a release order. And, of course, interpreting the many directives of the PLRA in light of COVID entails more elaboration that my comments here.

31. The need to work through that statute and case law is another reason why the availability of provisional remedies is so important. Enlargement provides an opportunity for increasing the safety of prisoners, staff, and their communities while judges consider a myriad of complex legal questions.

32. I first encountered the provisional remedy of enlargement in the 1970s, when I represented a prisoner – Robert Drayton – who was confined at F.C.I. Danbury and who filed a habeas petition alleging that the U.S. Parole Commission had unconstitutionally rescinded his parole.

33. The Honorable T.F. Gilroy Daly, a federal judge sitting in the District of Connecticut, granted Mr. Drayton's request for enlargement while the decision on the merits was pending. Mr. Drayton returned to his home in Philadelphia and came back to Connecticut for the merits hearing. Judge Daly thereafter ruled in his favor; that decision was upheld in part and reversed in part. *See Drayton v. U.S. Parole Commission*, 445 F. Supp. 305 (D. Conn. 1978), *affirmed in part*, *Drayton v. McCall*, 584 F.2d 1208 (2d Cir. 1978).

34. Judge Daly did not write a decision explaining the enlargement. Given that I knew that the use of enlargement was not always recorded in published decisions and that enlargement had special relevance here, I decided I should learn more about other courts' discussion of this provisional remedy.

35. The provisional district court remedy of enlargement is not mentioned directly in in federal rules governing the lower federal courts. In contrast, at the appellate level, Federal Rule of Appellate Procedure (FRAP) 23 provides in part that:

> While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of

> either court, may order that the prisoner be: (1) detained in the custody from which release is sought; (2) detained in other appropriate custody; or (3) released on personal recognizance, with or without surety. While a decision ordering the release of a prisoner is under review, the prisoner must – unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise – be released on personal recognizance, with or without surety.

As that excerpt reflects, the Rule uses language familiar in the context of bail and provides that appellate courts may also determine that a petitioner be detained in "other appropriate custody."

36. Federal courts at all level are authorized by Congress to decide habeas cases "as law and justice requires." 28 U.S.C. §2243. The case law also references that, at the district court level, the authority to release a habeas petitioner pending a ruling on the merits stems from courts' inherent powers. *See, e.g.*, *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). And, as I noted, in these reported decisions, the terms "bail" or "release" are sometimes used instead of or in addition to "enlargement."

37. In the last weeks, the saliency of enlargement has prompted me to review more of the law surrounding it. To gather materials and opinions on enlargement, I asked two law students, Kelsey Stimson of Yale Law School and Ally Daniels of Stanford Law School, to help me research what judges have said about enlargement and what others have written. Below I detail some of the governing case law. The Hertz & Liebman *Treatise on Habeas* also has a section (§14.2) devoted to this issue.

38. Some of the decisions involve requests for release when habeas petitions were pending from state prisoners, and others from federal prisoners, or from people in immigration detention. Further, several appellate cases address the issue of whether a district court order on enlargement was appealable as of right or subject to mandamus.

39. My central point is that, amidst these various debates about appealability and the test for enlargement/release, most circuits have recognized that district courts have the authority to order release. *See e.g., Woodcock v. Donnelly*, 470 F.2d 93, 43 (1st Cir. 1972); *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992); *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974); *Dotson v. Clark*, 900

F.2d 77, 79 (6th Cir. 1990); *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986); *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981): *Baker v. Sard*, 420 F.2d 1342, 1342-44 (D.C. Cir. 1969).

40. The Fourth and Eleventh Circuits appear, albeit less directly, to recognize enlargement authority. *See Gomez v. United States*, 899 F.2d 1124, 1125 (11th Cir. 1990); *United States v. Perkins*, 53 F. App'x 667, 669 (4th Cir. 2002). A Ninth Circuit opinion from 1989 likewise appears to recognize the power of district courts to grant release pending a habeas decision where there are "special circumstances or a high probability of success." *See Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989). Thereafter, another decision, *In re Roe*, described the Circuit as not having ruled on the issue in terms of state prisoners. *See* 257 F.3d 1077 (9th Cir. 2001).[1]

41. A discrete question is the standard for enlarging petitioners. To obtain an order for release pending the merits of habeas decision, the petitioner must demonstrate "extraordinary circumstances" and that the underlying claim raises "substantial claims." *See e.g. Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). Courts have also discussed that release is appropriate when "necessary to make the habeas remedy effective." *Mapp*, 241 F.3d at 226*; see also Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992). As that Third Circuit decision explained, release was "available 'only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.'"

42. Some judges have interpreted the "substantial questions" prong to require the underlying claim to have a "high probability of success." *See Hall v. San Francisco Superior Court*, No. C 09-5299 PJH, 2010 WL 890044, *1 (N.D. Cal. Mar. 8, 2010); *In re Souels*, 688 F. App'x 134, 135 (3d Cir. 2017). That test resembles standards for preliminary injunctive relief and for stays, which

[1] Subsequent lower court cases debated whether district courts do possess such authority. *See, e.g.*, *Hall v. San Francisco Sup. Ct.*, 2010 WL 890044, at *2 (N.D. Cal. Mar. 8, 2010) ("Based on the overwhelming authority [of other circuit courts] in support, the court concludes for purposes of the instant motion that it has the authority to release Hall pending a decision on the merits."); *United States v. Carreira*, 2016 U.S. Dist. LEXIS 31210, at *4, (D. Haw. Mar. 10, 2016) ("[T]his Court declines to address the merits of Petitioner's bail requests in the absence of definitive guidance from the Ninth Circuit regarding the scope of this Court's bail authority.").

include an assessment of the likelihood of success on the merits and of whether the balance of hardships tips in favor of altering the status quo. (And, of course, more can be said about the nuances of these bodies of law as well.)

43. A few cases focus on the health of a petitioner as central to the conclusion that "extraordinary circumstances" exist. For example, in *Johnston v. Marsh*, the petitioner, Alfred Ackerman, brought a habeas claim alleging that he was convicted in Pennsylvania through a trial that lacked "due process." 227 F.2d 528 (3d Cir. 1955). Ackerman asked for release pending a decision on the merits of his habeas petition; he argued that he had advanced diabetes and was "rapidly progressing towards total blindness." *Id.* at 529. The district court authorized Ackerman to be released to a private hospital. The prison warden (Frank Johnston) went to the Third Circuit invoking sought writs of prohibition and mandamus to order the district court (Judge Marsh) to change his ruling. Rejecting the petitions, the Third Circuit affirmed that district courts possessed the authority to order relocation while the habeas petition was pending. *Johnson v. Marsh* has been cited in more recent cases to illustrate that findings of extraordinary circumstances may "be limited to situations involving poor health or the impending completion of the prisoner's sentence." *Landano*, 970 F.2d at 1239.

44. The court in *In re Souels* addressed what showing of health problems constituted extraordinary circumstances. *See* 688 F. App'x at 135-36. Sean Souels, who was serving a 46-month federal prison sentence, petitioned for a writ of mandamus directing the court to rule on his writ of habeas corpus and sought release pending the decision. *Id.* at 134. The court denied Souels bail because "he [did] not describe his medical conditions in any detail or explain how he cannot manage his health issues while he is in prison." *Id.*

45. Health is not the only extraordinary circumstance that has been the basis for enlargement. For example, in *United States v. Josiah*, William Josiah brought a writ of habeas corpus after the Supreme Court invalidated the residual clause of the Armed Career Criminal Act (ACCA) and altered the method for determining whether prior convictions qualify as violent felonies under the ACCA. 2016 WL 1328101, at *2 (D. Haw. Apr. 5, 2016). Josiah, who was serving a federal prison sentence argued that his prior convictions did not qualify as violent felonies and that he should not be subject to the fifteen-year mandatory minimum. The district court concluded that because the issue of retroactivity was pending before the Supreme Court and Josiah would have served his full

sentence if the Court held its prior ruling retroactive, release pending the higher court's ruling was appropriate. *Id.* at *4-6.

46. In circumstances similar to *Josiah*, a district judge sitting in the Central District of Illinois issued three orders granting release, termed bail, to petitioners pending resolution of their habeas claims. See *Zollicoffer v. United States*, No. 15-03337, 2017 WL 79636 (C.D. Ill. Jan. 9, 2017); *United States v. Jordan*, No. 04-20008, 2016 WL 6634852 (C.D. Ill. Nov. 9, 2016); *Swanson v. United States*, No. 15-03262, 2016 WL 5422048 (C.D. Ill. Sept. 28, 2016).

47. Another case involved enlargement in the context of the military. *See Gengler v. U.S. through its Dep't of Def. & Navy*, 2006 WL 3210020, at *6 (E.D. Cal. Nov. 3, 2006). As that court explained, a "district court has the inherent power to enlarge a petitioner on bond pending hearing and decision on his petition for writ of habeas corpus." *Id.* at *5. The judge also noted that a "greater showing must be made by a petitioner seeking bail in a criminal conviction habeas 'than would be required in a case where applicant had sought to attack by writ of habeas corpus an incarceration not resulting from a judicial determination of guilt.'" The court used the test of "exceptional circumstances and, at a minimum, substantial questions as to the merits." *Id.* at 13. The court found exceptional circumstances" based on the fact that the petitioner had been admitted to business school, had been granted permission by his commanding officer to attend, and would be forced to drop out if his custody were not enlarged. The court also ruled that "substantial questions as to the merits" existed because of alleged government's errors in drafting the petitioner's service agreement. *Id.* at *6.

48. As of this writing, I have located a few reported cases responding to COVID-based requests for enlargement while a habeas corpus proceeding is pending. (Given the pace of litigation, I assume that more may have been decided.)

49. On April 7, the Honorable Jesse Furman, sitting in the Southern District of New York, granted on consent a motion styled "for bail" (the term used in the Second Circuit *Mapp* decision). Judge Furman ordered immediate release under specified conditions, pending the adjudication of the Section 2255 Motion. *See United States v. Nkanga,* No. 18-CR-00730 (S.D.N.Y., Apr. 7, 2020).

50. A second case involves a class action filed by Craig Wilson and others. *See Wilson v. Williams*, No. 4:20-cv-00794-JG, 2020 WL 1940882, at *1 (N.D. Ohio Apr. 22, 2020). Seeking to

represent a class of all current and future prisoners of the Elkton Federal Correctional Institution (FCI) and a subclass of the medically vulnerable population, they sought relief because their continued incarceration subjected all FCI prisoners to substantial risk of harm in violation of the Eighth Amendment.

51. On April 22, 2020, the federal district court granted in part the request by the *Wilson* class for emergency relief, which included enlargement of a subclass of prisoners challenging the manner in which the sentence was served and hence cognizable as a habeas petition. *See Wilson v. Williams*, No. 4:20-cv-00794-JG, 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020), application for stay and appeal pending. That case also cited to *Money et al. v. Jeffreys*, No. 1-20 CV 02094 (N.D. Ill. April 4, 2020), a class action seeking relief on behalf of state prisoners. I had also submitted a declaration similar to this one in that action, and I discussed enlargement as well as the interaction between civil rights litigation and habeas corpus. The Honorable Robert M. Dow, Jr. invoked my discussion, and the court determined not to grant the emergency relief sought by the plaintiff class.

52. Another case has less relevance as it was brought by an unrepresented litigant, Richard Peterson, who had originally sought habeas corpus relief on a claim about education credits and then filed an emergency request for release from a California state prison due to COVID-19. No. 2:19-CV-01480, 2020 WL 1640008, at *1 (E.D. Cal. Apr. 2, 2020). The district court noted that a class action raising COVID claims was pending in another federal court in California and that, while the court had the authority to release a person while a habeas petition was pending, Mr. Peterson had not provided evidence sufficient to meet the test to do so.

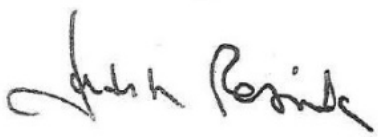
Conclusion

53. In sum, COVID-19 is an unprecedented event that, in my view, raises the legal question of whether, in light of the government mandates for social distancing, sentences (that had been lawful when they were imposed) cannot lawfully be served when the setting puts an individual in a position of untenable risk. Thus, habeas corpus – which addresses the constitutionality of sentences and offers the possibility of release and enlargement – properly provides a jurisdictional basis and remedies for this situation.

54. I need also to note that, in recent years, the Supreme Court has raised questions in many contexts about the remedial powers of federal judges. Whether the topic is nationwide injunctions or commercial contracts, debates have occurred within the Court about the authority of federal judges.

55. Those cases do not address the extraordinary and painful moment in which we are all living. Ordinary life has been up-ended in an effort to keep as many people as possible alive and not debilitated by serious illness. Moreover, Supreme Court opinions have not focused on the relevance of remedial debates to the situation were confinement can put entire staffs and detained populations at mortal risk. Therefore, judges have the obligation and the authority to interpret statutes and the Constitution to preserve the lives of people living in and working in prisons. It is my hope that this account of earlier uses of enlargement in this District and the dense account of case law and doctrine will be of service to this Court and to the parties in understanding the meaning and import of American law.

Dated: April 29, 2020



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Employment

Arthur Liman Professor of Law, Yale Law School, 1997-present
Founding Director, Arthur Liman Center for Public Interest Law
Honorary Visiting Professor, University College London
Faculty of Law, 2009-2021
Visiting Professor, Dauphine Université Paris, March 2016
Visiting Professor, Université Panthéon-Assas Paris II, May 2015
Convening Professor, Constituting Federalism, a seminar for the Institute for Constitutional History in conjunction with the New York Historical Society, February 2014
Scholar in Residence, Columbia Law School, Spring 2011; 2012
Distinguished Visiting Professor, University of Toronto School of Law, 2005
Parsons Visitor, Sydney University School of Law, 2004

Visiting Professor, New York University School of Law, 1996-1997
Visiting Professor, Harvard Law School, Fall 1989
Visiting Professor, Yale Law School, Spring 1989
Visiting Professor, University of Chicago Law School, Fall 1988

Orrin B. Evans Professor of Law, University of Southern California, 1989-1997;
Professor of Law: 1985-1989; Associate Professor: 1982-1985;
Assistant Professor: 1980-1982
Member, Faculty, The Salzburg Seminar on U.S. Legal Institutions, July 1988

Acting Director, Daniel and Florence Guggenheim Program in Criminal Justice, Yale Law School, 1979-1980

Lecturer in Law and Supervising Attorney, Yale Law School, 1977-1979

Instructor, New York University School of Law, 1976-1977

Law Clerk, Honorable Charles E. Stewart, United States District Court, Southern District of New York, 1975-1976

Selected Professional Activities

Chair of Fellows Selection Committee and Founding Director, Arthur Liman Center for Public Interest Law, Yale Law School, 1997-present

Chair, Yale Law School Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women's Rights, 2012-present
Member, Board of Managerial Trustees, International Association of Women Judges, 2001-present
Chair, Order of the Coif Book Award Committee, 2018-2020
Fellow, Whitney Humanities Center, 2020-2021
Chair, American Association of Law Schools, Section on Law and Humanities, 2020
Chair, American Association of Law Schools, Section on its Sections, 2019-2022
Advisor, American Law Institute, Project on Sexual and Gender-Based Misconduct on Campus, 2015-present
Member, Task Force on Federal Judicial Selection, Project on Government Oversight of The Constitution Project, 2019
Steering Committee, Women Faculty Forum, Yale University, 2001-present
Co-chair, 2001-2003, 2006-2008
Co-Chair, Judicial-Academic Network, National Association of Women Judges, 2009-2019, 1998-2001
Academic Fellow, Pound Civil Justice Institute, 2016-present
Fellow, Davenport College, Yale University, 2002-present
Former Chair, Section on Civil Procedure, American Association of Law Schools; 2018, 2003, 1991
Member, Executive Committee, Section on Federal Courts, American Association of Law Schools, 1999-2004, 2014-present; chair, 2002
Member, Executive Committee, Section on Law and the Humanities, American Association of Law Schools, 2015-present
Member, Academic & Scientific Council, The Gender Equality Project, Switzerland, 2009-present
Advisor, European Law Institute and International Institute for the Unification of Private Law Project, From Transnational Principles to Rules of European Civil Procedure, 2015-2016
Member, Executive Session, State Courts in the Twenty-First Century, The Kennedy School, Harvard University, 2008-2011
Member, Advisory Group, Principles of the Law of Aggregate Litigation, American Law Institute, 2004-2009
Member, Standing Committee on Federal Judicial Improvements, American Bar Association, 2006-2010 (prior three-year term in the late 1990s);
Chair, Academic Advisory Committee to the Standing Committee on Federal Judicial Improvements, American Bar Association, 2010-2014
Member, Editorial Board, Yale Journal of Law and Feminism
Member, Editorial Advisory Board, Yale Journal of Law and the Humanities
Member, Advisory Board, Journal of Law and Ethics of Human Rights
Member, Advisory Board, Litigation and Procedure, and Negotiation and Dispute Resolution eJournals (Social Science Research Network, online)
Member, Advisory Board, Women's Studies Quarterly

Other Activities

Co-chair of the Board, Fansler Foundation, 2003-2014
Member, National Board of Academic Advisors for the William H. Rehnquist Center on the Constitutional Structures of Government, 2007-2009
Member, Advisory Board of the Science for Judges Project, Brooklyn Law School, 2003-2007
Board Member, Lawyers' Committee for Civil Rights, 2004-2007
Liaison, American Association of Law Schools to the American Bar Association Commission on Women, 2000-2005
Member, Advisory Board of the Center for Judicial Process, Albany Law School, 2000-2004
Member, Editorial Board, Law and Social Inquiry, 1998-2004
Member, Committee on Diversity in Legal Education of the Section of Legal Education and Admissions to the Bar of the American Bar Association, 1996-2002
Consultant, RAND, Institute for Civil Justice, 1980-2002
Member, Editorial Board, The Justice System Journal
Member, Board of Governors, Society of American Law Teachers, 1980-1997
Co-Chair, University of Southern California Feminist Council, 1990-1996
Member, Ninth Circuit Gender Bias Task Force, 1990-1994
Co-Chair, Robert M. Cover Memorial Public Interest Retreat, Society of American Law Teachers, 1988-1992
Member of and a general reporter for the International Association of Procedural Law, 1991 Conference
Member, Planning Committee, ABA-AALS Conference on Women in Legal Education, 1990
Member, Advisory Panel to a Subcommittee of the Federal Courts Study Committee, 1989-1990
Member, Steering Committee for the Center for Feminist Research, University of Southern California, 1990-1994
Member, American Bar Association, Litigation Section, Federal Initiatives Task Force, 1991-1993
Chair, Section on Women in Legal Education, American Association of Law Schools, 1989
Member, Twentieth Century Fund Task Force on Judicial Responsibility, 1988-1989
Member, Board of ACLU of Southern California, 1985
Chair, Bryn Mawr College Centennial Campaign for Southern California, 1983-1985

Courses taught at Yale Law School, 1997-2020

Federal and State Courts in the Federal System
Procedure
Equality, Sovereignty and Citizenship (with Prof. Reva Siegel)
Gender: Globally and Locally (with Prof. Vicki Jackson)
Liman Workshops (topics and co-teachers vary yearly)
Rationing Law: Subsidizing Access to Justice in Democracies
Poverty and the Courts: Fines, Fees, Bail, and Collective Redress

Who Pays? Fines, Fees, Bail, and the Cost of Courts
Imprisoned
Human Rights, Incarceration, and Criminal Justice Reform
Moving Criminal Justice: Practices of Reform
Incarceration
Borders
Rationing Law: Constitutional Entitlements to Courts in an Era of Fiscal Austerity
Abolition: Slavery, Supermax, and Social Movements
Accessing Justice and Rights – From Streets to Prisons
Community, Confinement, Labor, and Rights
Equality, Punishment, and Incarceration
Imprisoned
Detention
Federalism and Social Movements: Public Interest Lawyering in Cities and States
Citizenship
Constitutional Law as Public Interest Law

Publications

Books and Monographs

Fragile Futures and Resiliency: Litigating Climate Change, Judging Under Stress (co-editor Clare Ryan, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women's Rights, 2019)

Ability to Pay (co-editors Anna VanCleave, Alexandra Harrington, Jeff Selbin, Lisa Foster, Joanna Weiss, Faith Barksdale, Alexandra Eynon, Stephanie Garlock, and Daniel Phillips, Arthur Liman Center for Public Interest Law Colloquium, 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3387647

Working to Limit Restrictive Housing: Efforts in Four Jurisdictions to Make Changes (editor, Arthur Liman Center for Public Interest Law and Association of State Correctional Administrators, 2018).

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Comments submitted on Proposed Changes to Code of Conduct for U.S. Judges and Judicial Conduct and Disability Rules (with Abbe R. Gluck), submitted to the

Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability, November 13, 2018

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Statement submitted for the record, Women in Detention: The Need for National Reform, Charles Colson Task Force on Federal Corrections Public Hearing, Washington, D.C., March 11, 2015

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Statement submitted for the record, Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences, Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, U.S. Senate, June 19, 2012

Courtroom Use: Access to Justice, Effective Judicial Administration and Courtroom Security, Hearing before the Subcommittee on Courts and Competition Policy of the United States Committee on the Judiciary, U.S. House of Representatives, September 24, 2010

Statement submitted for the record, Recommendations on Courthouse Construction, Courtroom Sharing and Enforcing Congressionally Authorized Limits on Size and Cost, Hearing before the Subcommittee on Economic Development, Public Buildings and Emergency Management Committee on Transportation and Infrastructure, U.S. House of Representatives, May 21, 2010

Statement submitted for the record, Sunshine in Litigation Act: Does Court Secrecy Undermine Public Health and Safety, Hearing before the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the Committee on the Judiciary, 110th Cong. 181, December 11, 2007

Hearings on the Judicial Nomination of John G. Roberts, Jr., to be Chief Justice of the United States, held by the Committee on the Judiciary of the United States Senate, Washington, D.C., September 15, 2005

Hearings on the Judicial Selection before the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, held by the House of Commons, Ottawa, Canada, April 20, 2004

Hearings on the Proposed Amendments to Federal Rule of Civil Procedure 23, held by the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, January 2002

Hearings on the Senate's Role in the Nomination and Confirmation Process: Whose Burden?, held by the Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, 107th Cong. , September 4, 2001, also published in 50 *Drake Law Review* 539 (2001-02)

Hearings on the Proposed Amendment to Federal Rule of Civil Procedure 23, held by the Committee on the Rules of Practice and Procedure, Advisory Committee to the Standing Committee on the Rules of Practice and Procedure of the United States Judicial Conference, November 1996

Hearings on the Proposed Long Range Plan of the Judicial Conference of the United States, held by the Committee on Long Range Planning, December 16, 1994

Hearings on the Proposed Changes in the Federal Rules of Civil Procedure, held by the Standing Committee on Rules of Practice and Procedure of the United States Judicial Conference, November 1991

Hearings on the Tentative Report of the Federal Courts Study Committee, held by members of the Committee, San Diego, California, January 29, 1990

Hearings on the Proposed Amendments to Rule 63 of the Federal Rules of Civil Procedure, held by the Advisory Committee to the Standing Committee on the Rules of Practice and Procedure of the United States Judicial Conference, January 1990

Hearings on the Confirmation of Robert H. Bork to be an Associate Justice of the United States Supreme Court, held by the Committee on the Judiciary, United States Senate, September 25, 1987

Hearings on Proposed Amendments to Rule 52(a) of the Federal Rules of Civil Procedure, held by the Subcommittee on Criminal Justice of the Judiciary Committee of the U.S. House of Representatives, June 26, 1985

Hearings on Proposed Amendments to Rule 68 of the Federal Rules of Civil Procedure, held by the Advisory Committee to the Standing Committee on the Rules of Practice and Procedure of the United States Judicial Conference, 1985

Hearings on Proposals to Amend the Rules Governing Section 2254 Cases in the United States District Courts, and Rules Governing Section 2255 Proceedings in the United States District Courts, held by the Advisory Committee to the Standing Committee on the Rules of Practice and Procedure of the United States Judicial Conference, 1984

Female Offender: 1979-80, Part 1: Hearings before the Subcommittee on Courts, Civil Liberties, and Administration of Justice of the House Committee. on Judiciary, 96th Cong. 59, October 11, 1979

Drug Abuse Treatment: Part 2: Hearings before the Select Committee on Narcotics Abuse and Control, House of Representatives, 96th Cong., July 25, 1978

Honors and Awards

Andrew Carnegie Fellowship, 2018-2020

Honorary Doctorate of Laws, University College London, 2018

Visiting Scholar, Max Planck Institute for Procedural Law, Luxembourg, February 2018

Establishment of the Resnik-Curtis Fellowship in Public Interest Law on the 20th anniversary of the Liman Program at Yale, 2017

Visiting Scholar, Phi Beta Kappa, 2014-2016

Recipient, Arabella Babb Mansfield Award, National Association of Women Lawyers, July 2013

Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms (with Dennis E. Curtis)
Selected as one of the "Best legal reads of 2011" by The Guardian
Recipient, SCRIBES Award from the American Society of Legal Writers, 2012
Recipient, PROSE Award, Excellence in Social Sciences, 2012
PROSE Award, Excellence in Law & Legal Studies, 2012

Selected as an Outstanding Academic Title of the Year by Choice Magazine, January 2012
Recipient, The Order of the Coif Biennial Book Award, January 2014

New York University Alumna of the Month Award, June 2012, http://www.law.nyu.edu/alumni/almo/pastalmos/2011-12almos/judithresnikjune

Elizabeth Hurlock Beckman Award, Awarded to Outstanding Faculty in Higher Education in the Fields of Psychology or Law, Columbia University, March 2011

Migrations and Mobilities: Citizenship, Borders, and Gender, Selected as an Outstanding Academic Title of the Year by Choice Magazine, January 2011

Outstanding Scholar of the Year Award 2008, from the Fellows of the American Bar Foundation

Oral History, 2007, Women Trailblazers in the Law Project, American Bar Association Commission on Women in the Profession, deposited in the Library of Congress, 2009

Convocation Speaker, Bryn Mawr College Commencement, May 2006

Member, American Philosophical Society, elected Spring 2002

Fellow, American Academy of Arts and Sciences, elected Spring 2001

Recipient, Margaret Brent Women Lawyers of Achievement Award, American Bar Association Commission on Women in the Profession, August 1998

Recipient, NYU School of Law, Legal Teaching Award, Spring 1995

Recipient, USC Associates Award for Creativity in Research, Spring 1994

Recipient, Florence K. Murray Award, National Association of Women Judges, Fall 1993

Recipient, "Big Splash Award" from the Program of Women and Men in Society (SWMS), University of Southern California, 1992

Member, Phi Kappa Phi, elected by the USC Chapter, 1991

University Scholar, University of Southern California, 1982-1983

Recipient, Student Bar Association Outstanding Faculty Award, University of Southern California Law Center, 1982-1983

Arthur Garfield Hays Fellow, 1974-1975, New York University

Education

Bryn Mawr College, B.A., cum laude, 1972
New York University School of Law, J.D., cum laude, 1975

Bar Memberships

Connecticut
United States District Courts: District of Connecticut, Southern District of New York, Eastern District of New York
United States Court of Appeals for the First, Second, Third, Fourth, Ninth and Eleventh Circuits
United States Supreme Court

Selected Litigation

United States Supreme Court

Of counsel on Brief of Amici Curiae, Law Professors in Support of Petitioners (No. 18-622), on Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, Whole Woman's Health, et. al. v. Texas Catholic Conference of Bishops (2018) (on the question of standing)

Of counsel on Brief of Amici Curiae, Former Judges, Former Prosecutors, Former Government Officials, Law Professors, and Social Scientists in Support of Respondents (No. 17-312), United States of America v. Sanchez-Gomez 138 S.Ct. 1532 (2018) (on the use of shackles for defendants in federal court)

Of counsel on Brief of Amici Curiae, Professors of Federal Courts Jurisprudence, Constitutional Law, and Immigration Law in Support of Respondents (Nos. 16-1436 and 16-1540), Donald J. Trump, et al. v. International Refugee Assistance Project, et al, Donald J. Trump, et al. v. State of Hawaii, et al. (2017), 138 S.Ct. 2392 (2018) (on travel bans)

Of counsel on Brief of Amici Curiae, Constitutional Law, Federal Courts, Citizenship, and Remedies Scholars in Support of Respondent Luis Ramon Morales-Santana (No. 15-1191), Lynch v. Morales-Santana, 136 S.Ct. 2545 (2016) (on citizenship and gender)

Oral Argument and brief presented on behalf of the Respondent Norman Carpenter in Mohawk Industries, Inc. v. Carpenter (No. 08-678, 2009 WL 3169419) (argued October 5), 558 U.S. 100 (2009) (on appealability)

Of counsel on Brief of Law Professors as Amici Curiae, in Support of Respondent Jacob Denedo (No. 08-267, 2009 WL 418793), United States v. Denedo, 556 U.S. 904 (2009) (on jurisdiction)

Of counsel on Brief of Amici Curiae Professors of Constitutional Law and of Federal Jurisdiction, in Support of Petitioner Keith Haywood (No. 07-10374), Haywood v. Drown, 556 U.S. 729 (2009) (on state law and Section 1983)

Of counsel on Brief of Amici Curiae Professors of Constitutional Law and of the Federal Courts, in Support of the Habeas Petitioners Omar and Munaf (Nos. 07-394, 06-1666), Munaf v. Geren, 553 U.S. 674 (2008) (on the scope of habeas corpus)

Of counsel on Brief of Professors of Constitutional Law and of the Federal Jurisdiction as Amici Curiae, in Support of Petitioners Boumediene et al. (Nos. 06-394, 06-1196), Boumediene v. Bush, 553 U.S. 723 (2008) (on the scope of habeas corpus)

Brief of Amici Curiae Norman Dorsen, Frank Michelman, Burt Neuborne, Judith Resnik, and David Shapiro, in Support of Petitioner Salim Ahmed Hamdan (No. 05-184), Hamdan v. Rumsfeld, 548 U.S. 557 (2006) (on due process)

Brief of Amici Curiae of Law Professors in Support of Petitioner Paula Jones (No. 95-1853, 1996 WL48092), Clinton v. Jones, 520 U.S. 681 (1997) (on immunity)

Oral Argument presented on behalf of the Rotary Club of Duarte:
Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987) (on California public accommodations law and associational rights under the First Amendment)

United States Courts of Appeals

Brief of Amici Curiae, Scholars of the Law of Prisons, the Constitution, and the Federal Courts in Support of the Appellants (No. 16-4234), Delores Henry, et al., v. Melody Hulett, et al. (7th Cir, rehearing en banc pending, 2020) (on constitutional rights in prison)

Brief of Amici Curiae of Constitutional Law and Procedure Scholars Judith Resnik and Brian Soucek in Support of Petitioner (No. 16-73801), submitted for the hearing en banc, C.J.L.G. v. Jefferson B. Sessions III (9th Cir., , 880 F.3d 1122 (2019) (on due process, right to counsel, and immigrant children)

Of counsel on Brief of Amici Curiae, Professors of Federal Courts Jurisprudence, Constitutional Law, and Immigration Law in Support of Plaintiffs-Appellees, (No. 17-17168), Ninth Circuit, State of Hawaii, et al., v. Donald Trump (2017) (on travel bans)

Of counsel on Brief of Amici Curiae, Professors of Federal Courts Jurisprudence, Constitutional Law, and Immigration Law in Support of Plaintiffs-Appellees, (No.

17-2231 (L), 17-2232, 17-2233, 17-2240 (Consolidated)), Fourth Circuit, International Refugee Assistance Project, et al., Iranian Alliances Across Borders, et al., Eblal Zakzok, et al., v. Donald Trump (2017) (on travel bans)

Of counsel on Brief of Amici Curiae, Constitutional Law Professors in Support of Appellees and Affirmance (No. 17-1351), International Refugee Assistance Project et al. v. Donald J. Trump, et. al. (4th Cir. 2017) (on travel bans)

Appellate Counsel

In re San Juan Dupont Plaza Hotel Fire Litigation, 111 F.3d 220 (1st Cir. 1997) (on awards of fees and costs in a mass tort multi-district litigation)

In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation, 56 F.3d 295 (1st Cir.1995)

In re Nineteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation, 982 F.2d 603 (1st Cir. 1992)

United States District Court

Declaration Regarding Provisional Remedies for Detained Individuals, Money v. Jeffries (N.D. Ill., Eastern Division, No. 20 cv 2-14, filed April 8, 2020

Of Counsel on Motion for Leave to File Declaration of Correctional Expert Rick Raemisch as Amicus Curiae, Savino et al. v. Hodgson et al. (D. Mass., No. 1:20-cv-10617-WGY, granted March 31, 2020) (to provide the court and parties with expert information)

Of Counsel on Unopposed Motion for Leave to File Amicus Curiae Statement of Correctional Expert Rick Raemisch, Coleman v. Newson (E.D. Cal, No. 2:90-CV-00520-KJM-DB 2020), Plata v. Newsom (No. C01-1351 JST, N.D. Cal., granted April 2, 2020) (to provide the court and parties with expert information)

Court-appointed trustee in re: MDL-926 Global Breast Implant Settlement, 173 F.Supp.2d 1381 (Judicial Panel on Multidistrict Litigation, N.D. Alabama, N.D. Texas, 1994) (overseeing the court-created "common benefit fund")

Expert appointed by the district court to assist the Special Master in McLendon v. Continental Group, Inc., 802 F.Supp. 1216 (D.N.J. 1992) (assisting the court in relationship to a settlement in an ERISA class action)

Exhibits, Co-Curator

The Remarkable Run of a Political Icon: Justice as a Sign of the Law. Rare Book Exhibition Gallery, Lillian Goldman Law Library, Yale Law School, September–December 2011 (with Dennis E. Curtis, Allison Tait & Michael Widener); http://library.law.yale.edu/justice-sign-law-exhibit

Courts: Representing and Contesting Ideologies of the Public Sphere. Yale Art Gallery, Study Galleries, January – May 2011 (with Dennis E. Curtis)

Selected Media

Interview, Women, Judging, Equality, and Constitutional Law, RAI Storia (Italian television) – *La Corte Costituzionale e le Donne, Pt. 6*, January 2020, https://vimeo.com/377835690

Interview, WNPR – Connecticut Public Radio's *Where We Live*, presented by John Dankosky, August 5, 2013; http://wnpr.org/post/connecticuts-criminal-justice-system

Interview, BBC Radio 4's *Law in Action,* presented by Joshua Rozenberg, March 12, 2013; http://www.bbc.co.uk/programmes/b01r5ln5

Cameo in *Fair Game,* directed by Doug Liman, Fall 2010, and panel moderator, discussion of the film with Valerie Plame, Joseph Wilson, Emily Bazelon and Doug Liman, Paris Theatre, New York City, October 5, 2010

DECLARATION OF TROY WRAGG

I, Troy Wragg, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at the Federal Correctional Institution at Fort Dix. My Federal Bureau of Prisons Register Number is 67165-019. I was convicted of conspiracy and wire and securities fraud. I have served approximately 17.5 months of my 264-month sentence. My current release date is August 7, 2037. I have no prior offenses of any kind.

2. I am 38 years old. I am classified as a BOP "chronic care inmate" for several serious medical conditions, which are documented in my BOP medical record. My health conditions make me medically vulnerable to COVID-19, and I am terrified that I will not survive if I contract the virus.

3. I have severe epilepsy and suffer from grand-mal seizures that can be so violent and debilitating that I have broken bones during seizures. While in BOP custody in January 2019, I broke my wrist during a seizure and was in a cast for seven weeks. As a result of these seizures, my entire body is incredibly tight and extremely weak. I am prescribed Keppra to treat my epilepsy and, before my incarceration in November 2018, had been on it consistently for four years since my epilepsy diagnosis in November 2014.

4. I need Keppra to survive, but over the past three months, the BOP has not provided me with consistent medication. I have been forced to ration my supply to make it last longer. As a result, my epilepsy has not been controlled and I have suffered frequent seizures. When I have seizures at night, the sound of my bed shaking wakes one of my bunkmates. He jumps down and holds my head to prevent a concussion, and monitors me throughout the episode to make sure I don't die. Between April 8 and April 23, I suffered 12 seizures. I had another

seizure in the early morning hours of April 26, and I recovered to find my bunkmate holding my head again.

5. Contracting COVID-19 would make my conditions worse. From research I did for my compassionate release requests, I learned that symptoms of the virus, especially fever, as well as the physical and emotional stress of being sick, can trigger more seizures. Given the inadequacy of the prison's response to my epilepsy, I am scared that if I do get sick, I won't receive proper care. Beginning April 14, I've made repeated requests (in writing and verbally) to be seen by the medical department. I have submitted two official sick call requests and two electronic cop-out requests, and a corrections officer and a counselor have each made calls on my behalf. As of today, I am still not scheduled to be seen by medical.

6. I also have hypertension and heart disease. I was diagnosed with hypertension in 2011 and had a heart attack in 2012. I take three different medications daily for heart disease and hypertension. Due to my recent seizures and anxiety about COVID-19, my blood pressure has been highly elevated even with medication.

7. Finally, I also have Myasthenia Gravis, a chronic autoimmune neuromuscular disease.

8. I have been in BOP custody since November 2018 and have been at Fort Dix since September 2019. I have completed six programs and have taught four classes as an ACE instructor while at FDC Philadelphia and Fort Dix. Before the COVID-19 outbreak, I was teaching a Business Management and a Business Marketing class to fellow inmates. I am extremely passionate about teaching and helping other inmates further their education. I also completed the Non-Residential Drug Abuse Program ("NRDAP") with a 100%.

9. I am currently housed on the west compound in Building 5812. There are a total of about 250 to 300 men across three floors. The vast majority of rooms at Fort Dix (in both west and east compounds) are 12-man rooms, with approximately 10 two-man rooms per building. We are currently confined to our buildings because of the lockdown, but we are allowed to mingle freely with the 250 to 300 men inside.

10. I sleep on a bottom bunk in a 12-man room on the first floor. Nine of the twelve beds are filled right now. I believe our approximately 430-square-foot room is the smallest in the building. There are six double bunkbeds in that space, approximately five feet apart, as well as twelve lockers and a small table. It is physically impossible for nine of us to get six feet apart in this space, as I know we are supposed to be doing now. I frequently run into my bunkmates by accident because the space is so cramped.

11. On the first floor, there is one bathroom shared by about 50 men (although there may be a handicap bathroom for inmates in wheelchairs which I have not seen). Our main bathroom has approximately five toilets, six urinals, twelve sinks, and four working showers. The bathroom is filthy, with urine all over the floor, and usually cleaned only once per week, twice at most. Because the pipes are leaking, water actively drips on our shoulders when we use the restroom and the floor is corroded. There are only four soap dispensers, which sometimes contain watered-down soap, but they run out daily and are often empty. We are given two four-ounce travel size bottles of all-in-one shampoo/conditioner/shave gel once a month, which is all we get by way of cleaning product. Otherwise, we have to buy soap off commissary. Some people buy bar soap, which costs between $1 and $2 each. I usually buy body wash, but it is currently out of stock. People told me there were signs posted in early April instructing us to give

any unused shampoo to an orderly to fill the bathroom soap dispensers. Instead, I give my all-in-ones to my bunkmate who uses it to mop the floor of our room each day.

12. Men from the top two floors spend much of their time on our floor because we have four TV rooms, as well as all of the building's computers and telephones. The TV rooms on the first floor are the most active. The main TV room is closest to my room. It has a total of twelve computers, and the building's eight phones line the wall of a narrow adjoining room. At any given time now, there are usually about 30 to 40 people in a TV room, but I have seen a lot more, probably closer to 100 when we watch the news, especially during coverage of the COVID-19 pandemic. Men from other floors use our bathroom as well. I believe our bathroom is the most used bathroom in the building.

13. When we walk to meals at the dining hall, it is impossible to stay six feet apart. The whole building is ushered together to the dining hall at the same time. Staff announce meal time on the loudspeaker, and all 250 to 300 of us are herded to the dining hall to pick up our food and bring it back to our building to eat in our rooms. We only have five minutes to get to the dining hall and five minutes to get back. It is impossible to social distance.

14. I have been following the updates from the BOP about the COVID-19 outbreak at the camp. I have heard that Building 5851, which is the laundry facility, is also being used to house inmates who have tested positive. It is at the far end of the west compound.

15. I believe prison staff move around the compound and go between the camp and main facility. I have also heard that corrections officers from the camp are now working in my building. Sometimes the corrections officers and other staff do not wear masks.

16. We began receiving one mask per week in mid-April, but have not received any gloves. When the elastic band on my mask snapped last week, I was told I could not get a new one. Staff only recently began mandating that inmates wear masks for meal pick-up at the dining hall.

17. We have virtually no cleaning supplies. We are provided no chemicals or cleaning agents, hand sanitizers, or spray bottles. We are not provided any towels to wipe surfaces down and have to use the four small rolls of toilet paper, which shred easily, given out once a month. Some people use toilet paper they buy off commissary, but many commissary items are often out of stock.

18. Staff have started doing temperature checks, but they are inconsistent and occur only about every two or three days. During the check, staff come to our room, and we line up at the door.

19. On April 17, I was using one of the computers in the main TV room on my floor. I heard another inmate, who was sitting right behind me, say that he was not feeling well. He complained that his chest hurt and he was short of breath. About four or five minutes later, a medical staff person and a corrections officer came in and asked him questions. The sick inmate left with them, and I have not seen him since. Many people in my building are worried about exposure to the virus. We have been talking about news of an inmate in Building 5811 who fainted during temperature checks and was dragged out of his room on April 23.

20. On April 25, we all filed out to the dining hall as usual to pick up lunch. I saw medics going in and out of Building 5851 with at least 20 stretchers in a matter of 30 seconds. Although I was still far away, it was terrifying to see men who appeared extremely sick and

nonresponsive. A corrections officer yelled at my bunkmate and me: "Keep it moving, get to chow and get back, that's all you should be worried about."

21. Since then, a lot of people have been talking about this incident. I experience the feeling here to be one of tension, helplessness, and hopelessness. People have opened up to me. They feel like the end is here, like we are going to die. We all laugh and joke about things from time to time, but it is simply to mask the sheer torture that we are feeling internally.

22. This morning, at 8:30am, the first floor of our building was released for monthly commissary, supply pickup, and linen exchange. I walked up to the first floor of Building 5851. Staff opened the door and I dropped my dirty linens into a bin. An inmate worker handed me clean linens in return. When I looked up, I saw more than ten inmates at the second and third floor windows. Some were in a window together, some alone. Some but not all were wearing masks. Two were pounding at the windows trying to get our attention, yelling for us. I've been talking with my bunkmates and we are in shock. What I saw there has changed me.

23. I have applied to Warden Ortiz three times requesting Compassionate Release and Home Confinement. I wrote the first letter on March 23. The warden denied my requests on April 24, saying he understood my fear about COVID-19 but they were taking precautions. I also wrote requests to the Attorney General and my case manager.

24. If I were released, I would return to a safe and stable home environment with my wife in Perryville, Maryland. At home, I have a cardiologist, neurologists, and a psychiatrist who are very familiar with my chronic medical conditions and much better equipped to take care of me if I do contract COVID-19.

25. Fort Dix's handling of the infection here, especially given my medical vulnerabilities, has left me panicked, afraid, and at times depressed. I have trouble sleeping and

often have nightmares when I do sleep. I believe that my chance of contracting COVID-19 is very high, especially now that there are people in the west compound who have it. I often cry when I call my wife now. We worry that contracting COVID-19 would be a death sentence for me.

/s/ Troy Wragg (by consent)

I, Tess Borden, certify that I reviewed the information contained in this declaration with Troy Wragg by telephone on April 28, 2020 and that, at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

/s/ Tess Borden

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DECLARATION OF MICHAEL SCRONIC

I, Michael Scronic, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated in the low security satellite camp at the Federal Correctional Institution at Fort Dix. My Federal Bureau of Prisons Register Number is 79605-054. I was convicted of securities fraud and have served 17 months of my 96-month sentence. My current release date is September 18, 2025. This is my first offense.

2. I am 48 years old. I have a history of skin cancer, childhood asthma, and abnormal heart symptoms. In 1991, I had a tumor removed from my chest and was told to return to a pathologist regularly. In April 2018, I had Mohs Micrographic surgery to remove another tumor on my chest, which left a wound about the size of a silver dollar. Pathologists reported a skin cancer diagnosis. In November of that year, one month before I entered BOP custody, I was seen for follow up at the Memorial Sloan Kettering Cancer Center in New York City. As a young child, I had recurring serious asthma attacks. My mother has told me stories about me being a bubble boy. From what my family has told me, my breathing condition meant they had to have the house sterilized and install a vaporizing tent over my bed. For years as a small child, I am told I used steroidal medications. I understand these medications are immunosuppressing and that prolonged use can make a person immunocompromised. My medical records from my last physical in 2018 document that I had a cardiac murmur, heart palpitations, elevated blood pressure, and shortness of breath.

3. I have been at the Fort Dix Camp since I entered BOP custody. I have taught three classes to other inmates here through BOP programs: Pre-Calculus, Calculus, and Machine Logic. I have also participated in other programs, including Non-Residential Drug and Alcohol

Treatment, Parenting, Horticulture, Turf Science, Hydrophonics, Drug Education, Psychology, Yoga Wellness, Guitar, Civil War History, Anatomy and Blueprints.

4. Until April 25, I was housed in the A-wing of the Camp. A-wing is a backward-C shaped room tightly lined with two-person bunk beds. Although population size changes, until March of this year, there were approximately 140 of us housed in A-wing.

5. I was in the middle section of the C-shape. Where I was, the beds were in rows three bunks deep. My bunk was the middle of three. To my right and to my left there was a bunk, not more than two feet from me. If we all reached out we could touch each other. There was an adjoining bunk at my head. For me, no one had been in that bed for about six months, but for most people, it means they sleep with their heads within one foot of another person's head. At my feet, three feet away, was yet another bunk. This three-foot space was the only corridor through which people would walk. It was physically impossible to get more than six feet away from each other.

6. The bathrooms in A-wing were filthy. The ceiling leaked, there was urine on the floor, and the floors and the showers had mold growing on them. We used to have to buy soap off commissary but, after commissary was terminated on April 6, liquid soap was provided in the bathrooms. Accessible from both A-wing and B-wing are communal common areas including TV rooms, computers, telephones, and the cafeteria.

7. We have been given no gloves. The rules on wearing masks have gone from masks being forbidden to masks being mandatory.

8. On March 30, we received a Notice to Inmate Population regarding Kitchen Attire that read: "Inmates will not be permitted to enter the kitchen on either the East or West compounds for meals with their faces concealed with makeshift masks due to COVID-19

concerns. Unless deemed necessary by Health Services staff, facial masks of any kind will not be tolerated outside of working areas."

9. Soon after, we had a town hall to discuss COVID-19 within the BOP. A senior staff person told us that no masks could be worn at any time because the officers need to identify us for their own safety.

10. On April 9, we received a Memorandum for Inmate Population from the nurse, with subject "Notice to Camp Offenders - 2nd Positive COVID-19 Case." It read:

> Please be advised, a 2nd camp offender has been determined to be positive for COVID-19 and a third Camper has been isolated for evaluation of symptoms and is awaiting COVID-19 test results. Both offenders have been removed from Camp quarantine and placed in isolation, where they are receiving treatment.
>
> Consequently, the Camp quarantine will continue through April 21, 2020 given the new COVID-19 confirmed case and the 3rd potential case. Your continued cooperation is essential to protecting your health and the health of the institution.
>
> Please continue to observe infection prevention and control measures including sanitizing high touched surfaces, frequent hand washing, avoid touching your eyes, nose and mouth and people presenting with an ill appearance. Also be sure to cover your cough using a tissue and report any symptoms of fever, cough or shortness of breath. Finally, it is strongly recommended that you dawn your surgical mask upon issue. Be reassured, that all offenders removed from Camp for evaluation or for treatment of COVID-19 will not be returned until they are determined to be free of COVID-19.
>
> COVID-19 is a respiratory illness spread from person to person through the respiratory droplets of an infected person. There is no vaccine or antiviral medication to treat this disease, prevention is key.

11. On April 11, we received a Notice to the Inmate Population. It read:

> Date: April 11, 2020
> From D. Ortiz, Warden
> Subject: Protecting Yourself and others
>
> In order to maintain the health of staff and inmates, the following is expected from all inmates: wear your surgical face masks! Since social distancing is not possible in this environment, masks will help keep you and others from spreading viruses.

> In order to maintain the health of staff and inmates, the following is expected from ALL inmates:
>
> wash hands with soap and water for at least 20 seconds
> avoid touching your eyes, nose and mouth with unwashed hands
> clean and disinfect all surfaces with the approved chemical
> cover your cough/sneeze with tissue, immediately throw tissue in the trash and wash your hands
> wear your surgical face masks! Since Social Distancing is not possible in this environment, masks will help keep you and others from spreading viruses.
> report symptoms (coughing, sneezing, fever, fatigue, etc. to Health services and/or any staff)
>
> We all must do our part in protecting ourselves and others from spreading COVID-19!

12. On April 13, we received a Memorandum to the Inmate Population from the nurse, subject line "COVID-19 Update." It read:

> Please be advised, there are 6 inmates who have tested positive for COVID-19. All the offenders who tested positive were from Camp. They have been placed in isolation, where they are receiving treatment.
>
> Please continue to observe infection prevention and control measures including sanitizing high touched surfaces, frequent handwashing, avoid touching your eyes, nose and mouth. Also, be sure to cover your cough using a tissue and immediately dispose of the used tissue. Report any symptoms of fever, cough or shortness of breath.
>
> Finally, it is strongly recommended that you wear your mask. Be reassured, that all offenders removed from the Camp for evaluation or for treatment of COVID-19 will not be returned until they are determined to be free of COVID-19.
>
> COVID-19 is a respiratory illness spread from person to person through the respiratory droplets of an infected person. There is no vaccine or antiviral medication to treat this disease, prevention is key.

13. On April 16, we received another Notice to the Inmate Population from Warden Ortiz, with subject line "Mandatory use of face coverings." It read: "It is mandatory that all inmates will wear face coverings provided by staff. Inmates in non-compliance may be subject to disciplinary action."

14. There is not real effort to keep the prison sanitized that I have observed. We have been told to sanitize our work and living areas but we do not have the necessary supplies to do so. We have not been provided any sanitizers, detergents, or paper towels.

15. On April 6, a 75-year-old inmate was removed from A-wing. I have heard he was later released and is now hospitalized. This inmate was a food server and had been visibly sick for days before being removed from population.

16. On April 8, they mixed up A-wing and B-wing populations. Sixty-three men from the camp were designated to B-wing because they were being considered for release and had to be quarantined. The remaining 162 or so of us were designated to A-wing, in more crowded conditions than previously. Over the next week or two, 14 people from A-wing and one older man from B-wing were removed because they had COVID-19 symptoms. Of those, I heard at least 11 tested positive.

17. This month, four inmates have lost consciousness at different times in the camp; I have observed two of those incidents. I have seen people showing what I know to be common symptoms of COVID-19 including coughing, sweating, feverishness, and vomiting.

18. On April 20, an inmate collapsed as a nurse and senior staff member walked through the camp during temperature check. People screamed for help, and I went over and witnessed the following: The senior staff member sprayed the fallen inmate with disinfectant, his whole body and then his head. An inmate yelled, “What are you doing? He needs help!” The senior staff member responded, “I’m disinfecting him first.” The nurse took off the inmate’s mask, and it had blood and green vomit in it. The senior staff member sprayed the inmate’s bed and pillow afterward. Eventually, I yelled, “Get him out of here. He needs help now!” The nurse

asked the officers for a stretcher. They came back with a wheelchair and he was eventually rolled to the camp's medical office. I heard he left medical 20 minutes later with an IV In his arm.

19. On April 21, an inmate kitchen worker who had been visibly sick for almost a week told officers he needed medical attention around 8:30 pm. They responded, "we'll wait until count is finished." Count finished at 9:30 pm. There is no nurse on site at the camp, so he sat across from the nurse's office waiting. Because he is a good friend of mine, I checked on him during this time. At one point, he told the officer he needed his asthma inhaler. The officer asked if he could get it from his locker, and he said he was too weak to stand up. So I walked the officer to his locker to get his inhaler, which he then took. Around 10:20 pm, he saw a nurse for about 15 minutes. By 11 pm, he was removed from the unit. I haven't seen or heard about him since.

20. From April 8 to April 24, we were physically separated from inmates in B-wing, but the wings were allowed to use the same common areas, including TVs, phones, computers, and cafeteria, just at different times. I worried that there was insufficient cleaning in between.

21. We also continued to communicate through a glass door between the wings. Many of my friends were now among those in A-wing, and I learned that a lot of people there had symptoms including coughing, fever, and sweating.

22. On April 22, the 62 men remaining in B-wing were tested for COVID-19. On April 24, they received their results. I heard – from inmates and the nurse – that 21 of them were positive. Many were my friends.

23. Later that day, everyone in B-wing was moved to the main facility. I heard the positives were sent to the same building other positives had gone, and that the negatives were sent to the Unicor Warehouse. We were informed that inmates in A-wing, my unit, with last

names beginning M through Z would be moved to the now empty B-wing. That night, I watched two officers clean that empty wing and carry out bags of trash.

24. We moved on the morning of April 24. We were left to choose whatever bunks we wanted, and we all tried to choose ones spaced apart. We were not allowed to bring our mattresses or our lockers with us, despite the fact we were afraid the prison didn't have the manpower or the time to thoroughly disinfect the area they were moving us to. I was scared to sleep on the mattress of someone who just tested positive for COVID-19. One of the men tried to drag his mattress over. I heard an officer say, "Give me your ID. You're going to get written up."

25. We were not tested for COVID-19 at the time of the move. We received no information about what was happening to us.

26. Since then, I have not been tested and do not know of anyone still in the camp who has been tested. People are afraid to notify the prison about symptoms because those who have symptoms are sent to isolation, and we know nothing about the isolation unit or the treatment they get there.

27. In mid-to late April, multiple inmates were giving incident reports for minor behavior who, as far as I had observed, had not been subjected to discipline previously. For instance, four inmates were lying in their beds and did not hear call for count. They received a disciplinary report as a result. I believe that any inmate with an incident report in the last 12 months will not be considered for home confinement release, according to BOP policy.

28. On April 6 and April 9, I wrote to my BOP case manager requesting Compassionate Release. I also wrote to the Warden with this request, and my sister separately wrote to him about it. I have not yet received a response. Currently, I believe that I am not in any plans to be released by Fort Dix. I have not been on any "lists" as of yet. Until recently, I had

observed that other inmates' compassionate release requests were being responded to with blank forms, with only the person's name on top. Yesterday and today, inmates started getting denials for the following reasons: not 50% time served, incident reports, and a violent offense in their history, even decades old. I have yet to hear anything on mine.

29. If I were released from Fort Dix, I would live with my sister and her two children in Brooklyn and pursue teaching. Before my incarceration, I had received an offer to be a teaching fellow in high school math. I had deferred that offer at the time and hope to explore it further.

/s/ Michael Scronic (by consent)

I, Tess Borden, certify that I reviewed the information contained in this declaration with Michael Scronic by telephone and, as to ¶¶ 8-13 and ¶ 18, by correspondence, on April 28, 2020, and that, at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

/s/ Tess Borden

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DECLARATION OF LEONARD BOGDAN

I, Leonard Bogdan, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at the Federal Correctional Institution at Fort Dix. My Federal Bureau of Prisons Register Number is 07918-088. I was convicted of conspiracy to commit fraud, mail fraud, and money laundering and have served over 13 years of my 360-month sentence. Given good time credits, my current release date is August 17, 2032, meaning I have in practice already served over half my sentence. I have no prior offenses of any kind.

2. I am 68 years old. I have numerous serious medical conditions documented in my BOP medical record and am classified as a BOP "chronic care inmate." Since being incarcerated at Fort Dix, I developed a nodule on my thyroid which causes a rapid heart beat and was diagnosed by the Fort Dix doctor as a "potentially cancerous nodule, thyroid." He prescribed medications that are beta-blockers, which I take twice a day to slow my heart. Without them, my resting heart rate is 120 beats per minute. I also have a type of heart disease related to the valves of my heart, which was diagnosed by the Fort Dix doctor as "bundle branch block, bifascicular." I have hypertension, high cholesterol, and skin cancer on the top of my head which was diagnosed by the Fort Dix doctor as "actinic keratosis." I have extensive physical disability due to a severe case of scoliosis, which impacts my internal organs. Because of the twisting of my spine, my ribcage has been contorted to press on my lungs and cause me chronic shortness of breath, which is also noted in my BOP medical file. The scoliosis has caused some displacement of my kidneys as well, which was observed by an outside doctor who visited me at Fort Dix and is noted in my medical file.

3. For a combination of these conditions, I have been transported at least four times per year to various regional hospitals, including St. Francis Medical Center, Robert Wood Johnson University Hospital, and Deborah Lung and Heart Center, and other specialty offices. These conditions make me medically vulnerable and afraid for my life of getting infected with COVID-19.

4. I have been at Fort Dix since 2013 and have logged over 9,000 programming hours since my incarceration starting in 2007. At Fort Dix, I work as the clerk for the officer in charge of programming in the education department. Since I arrived in 2013, I have served as a tutor for GED students, primarily in math and English, as well as helping proctor and provide materials for the adult continuing education classes and the TPC (Transition from Prison to Community) program.

5. I am currently housed in Building 5841 on the west side of the prison, in what is considered the Honor Unit, also known as the Admissions and Orientation dorm. When new people come to Fort Dix, they come to this unit. I am the clerk who helps the team and counselor process new inmates.

6. My building, like all others in the prison to my knowledge, is divided into three floors. The capacity of the building is 374, which I believe is typical of buildings on both the west and east sides of the prison. The vast majority of rooms in these buildings are 12-man rooms, although we have two-man rooms as well. We have 230 people housed here, and so are not at full capacity, but I believe other buildings are fuller.

7. I am lucky to be in a two-man room, but I still have contact with shared space and surfaces with hundreds of other people in my building each day. All 230 of us have free movement within the building to congregate in the common areas and each other's rooms. There

are four TV rooms for the building: two large and two small. The computers that people use to email family are also in the large TV rooms. Everyone wants to watch TV to find out information about the virus, so at any given time, you have over 30 men watching TV in each small room and over 50 in each large room, not to mention the people waiting around to use the computers. There are two telephone rooms of approximately 13 by 13 feet for the whole building, which each have three phones on the wall two feet apart from each other. There is always a line of people waiting for the phones. With the TV rooms and phone rooms, I have observed no attempt by prison staff to enable social distancing or to stagger use. I use the computers and/or phones on a daily basis, sometimes multiple times each day. I try to clean them myself between uses but am not sure it is sufficient to kill the virus.

8. On my floor, I share bathroom facilities with 87 other men, and nothing prevents other people from other floors from using them if they are on our floor. There are four bathrooms with a combined total of approximately 10 urinals, 14 stalls, and 8 showers for the floor. The urinals, stalls, and showers are all right next to each other, so you are within a foot or two of another man using the facilities. I have not observed any attempts by prison staff to stagger use of the showers or otherwise assign people to certain bathrooms, to limit contact with others.

9. Since March 17 when the limited movement and lockdown at Fort Dix began, we have stopped eating our meals in the cafeteria. Instead, all 230 of us go to the cafeteria three times a day to pick up food and bring it back to the building. There is an announcement right before we have to leave, and everyone crowds into the single exit and adjoining hallway, because we have only five minutes to vacate the building. We are hurried along by prison staff and then are often waiting for some time in line all together to pick up the food. All 230 of us then congregate back at the building to wait for the doors to open. Most people then eat their food in

the TV room or in the twelve-man rooms. Three times a day, I am therefore in a mix of 230 men moving in a group to pick up food. We are not able to practice social distancing. We are not able to keep six feet apart during this time.

10. No one in this building has told me they have been tested for the virus. We are not receiving any information about testing or the rate of infection spread, which makes me feel anxious and uncertain. Over the past month and a half, three people in my building have had symptoms such as coughing, headaches and body aches, and have been removed from the building for a couple days and then returned to the unit. One of them told me, however, that he was diagnosed with bronchitis. He was not tested for COVID-19.

11. I know they are housing people who are sick with the virus in the building next to mine, Building 5851, which is the laundry facility. They have brought sick people from the camp into that building, which means bringing people inside the West Compound where we can be exposed to them. Corrections officers also go between buildings and between the main facility and the camp. About three weeks ago, all the officers I see started wearing masks.

12. I applied to the Fort Dix Warden David Ortiz for Compassionate Release over a year ago. It was denied because I had not served 50 percent of my sentence. I appealed it administratively to the BOP regional office and got a final denial from Washington, D.C. this past February. On March 30 when I saw Attorney General William Barr's memo, I applied to the warden for Home Confinement due to COVID-19. I was never told I would be considered for Home Confinement or how they were considering people. On April 20, I received a paper from my case manager saying I was denied Home Confinement because I had not served 50 percent of my sentence. I did not know that was the standard for Home Confinement. However, because I

have to serve 85 percent of my 30-year sentence, I am already over halfway done. I have already served over 13 years and my current release date is August 2032.

13. Of the 230 people I live with, I do not know anyone who has been sent to Home Confinement since the Attorney General memo. Three weeks ago, ten people here were called to the case manager who told them they were under consideration for release. They have not left the building yet or been placed in isolation pending release.

14. If I were released, I would return home to my wife in West Virginia. We are financially secure. I will be 69 years old in July and would retire.

/s/ Leonard Bogdan (by consent)

I, Tess Borden, certify that I reviewed the information contained in this declaration with Leonard Bogdan by telephone on April 26, 2020 and that, at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

/s/ Tess Borden

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DECLARATION OF ELIEZER SOTO-CONCEPCION

I, Eliezer Soto-Concepcion, am over the age of 18 and fully competent to make the following declaration:

1. I am incarcerated at the Federal Correctional Institution at Fort Dix in the low security Camp. My Federal Bureau of Prisons Register Number is 72850-067. I was convicted of conspiracy to distribute and possession with intent to distribute heroin and cocaine and sentenced to 144 months. Prior to my sentencing in November 2017, I was incarcerated for two years in jail when I could not make bail, so I have served approximately 53 months. Given good time credits, my current release date is September 5, 2025. I have no prior convictions.

2. I am 38 years old. I have serious medical conditions including heart problems and high blood pressure for which I take medication for both every day. I have had three heart attacks and was hospitalized for all three: when I was 25 years old in Puerto Rico, when I was in my early 30s in Pennsylvania, and again soon after that in Manhattan. They told me I had clogged arteries. As a result, I also have a nervous system problem that makes my hands shake.

3. I have been at Fort Dix since December 2017. I have participated in a lot of BOP programming, including classes in ESL, carpentry, horticulture, Spanish parenting, and classes to get a license to operate a forklift. I also go to church at the prison.

4. Until last Friday, April 24, I was housed in the Camp's A side with over 100 other men. On Friday, I found out lots of people on the other side of the Camp in the B side tested positive for the virus. I heard there were 21. Because they were sick, everyone there was moved out. On Saturday, I was moved into the B side along with about 70 other men from the A side, so now we are about 70 and 70 on each side.

5. Many of my friends have now tested positive for the virus, and over the past weeks I have seen many people exhibiting symptoms around me, including frequent coughing and vomiting. I am afraid I will get the virus because I have been so close to them, and that it will be very bad because of my medical conditions.

6. In mid-April, I sent requests for Compassionate Release to Fort Dix Warden David Ortiz and my case manager. I have not received a response from either of them.

7. If I were released, I would go to Puerto Rico to live with my grandmother for a while and work as an auto mechanic. I have two sons, ages 19 and 17, who live with their mother in Pennsylvania. Someday, I hope to be able to join my children there.

/s/ Eliezer Soto-Concepcion (by consent)

I, Tess Borden, certify that I reviewed the information contained in this declaration with Eliezer Soto-Concepcion by telephone on April 26, 2020. Because he has limited English language proficiency, I sent him a copy of this letter translated to Spanish by Cindy Guaman. He certified in writing on April 28, 2020 that the information contained in this declaration was true and accurate to the best of his knowledge.

/s/ Tess Borden

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CERTIFICATE OF TRANSLATION

I, Cindy Guaman, swear under penalty of perjury and pursuant to 28 U.S.C. § 1746 that I speak English and Spanish, that I translated this document into Spanish to the best of my ability, and that the response from Eliezer Soto-Concepcion, provided to me by Tess Borden, is translated as follows: "The information contained in this statement is true and accurate to the best of my knowledge."

April 28, 2020
Date

Signature

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

TROY WRAGG, MICHAEL SCRONIC, LEONARD BOGDAN, and ELIEZER SOTO-CONCEPCION

(b) County of Residence of First Listed Plaintiff Burlington (FCI Fort Dix)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

(see attachment)

DEFENDANTS

(see attachment)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ☒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 485 Telephone Consumer Protection Act
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. § 2241

Brief description of cause:
Habeas corpus class action on behalf of medically vulnerable prisoners, alleging violations of 8th Am & Rehab Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❒ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
05/04/2020

SIGNATURE OF ATTORNEY OF RECORD
/s/ Tess Borden

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Defendants/Respondents

David E. Ortiz, in his capacity as Warden of the Federal Correctional Institution, Fort Dix
Michael Carvajal, in his capacity as Director of the Bureau of Prisons

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*Petition for permission to file *pro hac vice* forthcoming