

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

J.H., by and through his mother and next friend,
N.H.; I.B., by and through his parents and next
friends, A.B. and I.B., on behalf of themselves
and all others similarly situated,

Plaintiffs-Petitioners,

-against-

JOHN BEL EDWARDS, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF LOUISIANA;
THE LOUISIANA OFFICE OF JUVENILE
JUSTICE; EDWARD DUSTIN BICKHAM, IN
HIS OFFICIAL CAPACITY AS INTERIM
DEPUTY SECRETARY OF THE LOUISIANA
OFFICE OF JUVENILE JUSTICE; JAMES
WOODS, IN HIS OFFICIAL CAPACITY AS
THE DIRECTOR OF THE ACADIANA
CENTER FOR YOUTH; SHANNON
MATTHEWS, IN HER OFFICIAL CAPACITY
AS THE DIRECTOR OF THE BRIDGE CITY
CENTER FOR YOUTH; SHAWN HERBERT,
IN HER OFFICIAL CAPACITY AS THE
DIRECTOR OF THE SWANSON CENTER FOR
YOUTH AT MONROE; and RODNEY WARD,
IN HIS OFFICIAL CAPACITY AS THE
DEPUTY DIRECTOR OF THE SWANSON
CENTER FOR YOUTH AT COLUMBIA,

Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-
EWD

CLASS ACTION

**PLAINTIFFS' EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER SEEKING IMMEDIATE FURLOUGH**

NOW INTO COURT COME Plaintiffs-Petitioners in the above-captioned matter, through undersigned counsel, who move this Honorable Court to issue a Temporary Restraining Order (TRO) in order immediately enjoining Defendants-Respondents from (1) continuing to confine all children who are currently within 180 days of their release dates; (2) continuing to confine children

who are presumptively eligible for release,¹ including all children who are eligible for furlough under OJJ's criteria; (3) failing to test children for COVID-19; (4) using "Behavioral Intervention Rooms"² for any child who tests positive for COVID-19 or displays symptoms of the disease; (5) confining children to their dormitories for lengthy periods of time; (6) using pepper spray on children; and (7) continuing the suspension of structured educational and rehabilitative programming in OJJ facilities. Plaintiffs-Petitioners also ask that this Court order Defendants-Respondents to develop, within 48 hours, an effective COVID-19 response plan governing the state's four children's detention centers that fully conforms to CDC guidelines.

OJJ has failed to implement a remedial plan that complies with CDC guidance, endangering as many as 220 children. Despite a high-risk environment and an extraordinarily high rate of positive tests among children and staff, OJJ has failed to reduce populations through furlough, to test the children confined in its facilities, to facilitate social distancing, to restrict transfer among facilities, to carefully monitor those who have tested positive, or to provide for the basic hygiene of confined children. These failures establish that OJJ has knowingly and wrongfully placed the lives, health, and emotional well-being of the incarcerated children under its charge at substantial risk of serious irreparable harm, including death.

As set forth in Plaintiffs-Petitioners' Memorandum in Support of this motion, the evidence indisputably satisfies the four-factor test for a temporary restraining order (TRO) enjoining Defendants-Respondents' harmful actions. OJJ is placing children at substantial risk by refusing to release children to allow for social distancing, failing to test for COVID-19, placing COVID-

¹ Children who are presumptively eligible for release include (1) all children who have contracted COVID-19; (2) all children who have pre-existing medical conditions that the Centers for Disease Control ("CDC") has determined puts them at significantly higher risk of developing COVID-19 complications; (3) all children currently eligible for furlough in accordance with OJJ's policies; and (4) all children who can be safely returned to their communities.

² Behavioral Intervention Rooms are used to isolate children who pose a threat to staff or other children. YS Policy No. B.2.21 at 2, available at <https://ojj.la.gov/wp-content/uploads/2019/06/B.2.21.pdf>.

positive children in dirty cells without water or hygiene, failing to provide medical evaluations for children with COVID-19, releasing patients back to the dormitory without confirmed negative tests, transferring children between facilities without medical need, allowing staff to move between infected and uninfected populations, failing to provide appropriate personal protective equipment, failing to provide cleaning supplies, pepper spraying children (many of whom may be COVID-positive), preventing children from speaking with their parents, and refusing to release eligible children on furlough even though OJJ is not currently providing any of the educational or rehabilitative services that serve as the core reason for the children's detention and to which children are constitutionally entitled.

The evidence also establishes that Louisiana's detained children will suffer irreparable injury—including serious medical complications, trauma, and even death—unless this Court grants the requested emergency relief, and there is no substantial harm to Defendants-Respondents in ordering the relief requested.

Plaintiffs-Petitioners request that emergency relief be granted without security because they seek to enforce fundamental rights in which there is a substantial public interest.³ Under these circumstances, waiver of the security bond is proper, and Plaintiffs-Petitioners therefore respectfully request that the Court exercise its broad discretion to do so.⁴

³ See *Elliott v. Kieswetter*, 98 F.3d 47, 60 (3rd Cir. 1996) (court may waive bond requirement of Fed. R. Civ. P. 65(c) when balance of equities weighs overwhelmingly in favor of party seeking injunction); see also *Temple Univ. v. White*, 941 F.2d 201, 220 (3rd Cir. 1991) (district court waiver of bond was affirmed where the plaintiff hospital had “pursued a course of litigation clearly in the public interest, *i.e.*, it seeks to preserve its role as a community hospital serving a disproportionate share of low income patients”); *Pharmaceutical Soc. of State of New York, Inc. v. New York State Dept. of Social Services*, 50 F.3d 1168, 1175 (2nd Cir. 1995) (affirming approval of bond waiver).

⁴ See, e.g., *Molton Co v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and “the strong public interest” involved); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

For the reasons in the attached memorandum, the Court should immediately issue an order enjoining Defendants-Respondents from (1) continuing to confine all children who are currently within 180 days of their release dates; (2) continuing to confine children who are presumptively eligible for release, including all children who are eligible for furlough under OJJ's criteria; (3) failing to test children for COVID-19; (4) using "Behavioral Intervention Rooms" for any child who tests positive for COVID-19 or displays symptoms of the disease; (5) confining children to their dormitories for lengthy periods of time; (6) using pepper spray on children; and (7) continuing the suspension of structured educational and rehabilitative programming in OJJ facilities. Plaintiffs-Petitioners also ask that this Court order Defendants-Respondents to develop, within 48 hours, an effective COVID-19 response plan governing the state's four children's detention centers that fully conforms to CDC guidelines.

Respectfully submitted this 15th day of May, 2020.

/s/ Mercedes Montagnes

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**Pro hac vice* pending

***Pro hac vice* to be submitted

CERTIFICATE OF SERVICE

I, Nishi Kumar, an attorney, hereby certify that on May 15, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system.

I further certify that I, or another one of Plaintiffs' attorneys, will promptly electronically serve a copy of the same, along with all other pleadings and papers filed in the action to date to the General Counsel for the Louisiana Office of Juvenile Justice and the General Counsel for the Louisiana Governor as well as the Louisiana Department of Justice Director of Litigation via email.

/s/ Nishi Kumar
Nishi Kumar, La. Bar No. 37415

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR
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It has long been said that a society's worth can be judged by taking stock of its prisons. That is all the truer in this pandemic, where inmates everywhere have been rendered vulnerable and often powerless to protect themselves from harm. May we hope that our country's facilities serve as models rather than cautionary tales.¹

There can be no keener revelation of a society's soul than the way in which it treats its children.²

Never before have these sage insights been more relevant, or conflated with such urgency.

As the coronavirus pandemic continues devastating Louisiana, more than two hundred children confined in the state's secure care facilities face increasingly grave physical and emotional health risks that rise to the level of constitutional rights violations warranting urgent remedy. The Louisiana Office of Juvenile Justice ("OJJ") operates four secure care facilities for children who have been adjudicated delinquent: Acadiana Center for Youth in Bunkie, Bridge City Center for Youth, Swanson Center for Youth Columbia, and Swanson Center for Youth Monroe.³ As of May 15, 97% of the children who have been tested for COVID-19 in these facilities have tested positive—yet OJJ appears to have stopped testing children altogether weeks ago.⁴ OJJ has failed to implement a remedial plan that complies with CDC guidance, endangering as many as 220 children. Despite a high-risk environment and an extraordinarily high rate of positive tests among children and staff, OJJ has failed to reduce populations through furlough, to test children, to facilitate social distancing, to restrict transfers among facilities, or to monitor those who have tested positive. These failures, and many more described *infra*, establish that OJJ has knowingly and wrongfully placed the lives, health, and emotional well-being of the incarcerated children under its charge at substantial risk of serious, irreparable harm, including death.

¹ *Valentine v. Collier*, 590 U. S. ____ (2020), Statement of Sotomayor, J.

² Address by President Nelson Mandela at the launch of the Nelson Mandela Children's Fund (May 8, 1995).

³ Youth in Secure Facilities, LA. OFFICE OF JUVENILE JUSTICE, <https://ojj.la.gov/serving-youth-families/youth-in-secure-care-facilities/> (last visited May 15, 2020).

⁴ See Ex. 1, Rovner Decl. at ¶¶ 7-11.

Unlike adults in prisons, children are not confined for the purpose of punishment; the Louisiana Constitution explicitly provides that children in OJJ custody are confined solely for the purpose of receiving “rehabilitation and individual treatment” and requires the State in its role as “*parens patriae*” to manage “the welfare of the juvenile in State custody.”⁵ Because of OJJ’s improper actions and inactions in response to the COVID-19 crisis, the conditions of the children’s confinement are so seriously deficient in providing for their basic needs as to constitute punishment—rather than rehabilitation or treatment—in violation of their constitutional right to substantive due process under the Fourteenth Amendment. Defendants-Respondents’ actions and inactions also knowingly create a substantial risk of serious harm—increasing every day—in violation of the children’s Eighth Amendment right to be free from cruel and unusual punishment.

Time is of the essence, as the crisis worsens daily. Accordingly, on behalf of themselves and the approximately 220 children currently confined in OJJ’s secure care facilities, Plaintiffs-Petitioners seek a temporary restraining order immediately enjoining Defendants-Respondents from (1) continuing to confine all children who are currently within 180 days of their release dates; (2) continuing to confine children who are presumptively eligible for release,⁶ including all children who are eligible for furlough under OJJ’s criteria as well as those who have contracted the disease and those who are medically vulnerable; (3) failing to test children for COVID-19; (4) using “Behavioral Intervention Rooms”⁷ for any child who tests positive for COVID-19 or displays symptoms of the disease; (5) confining children to their dormitories for lengthy periods of time;

⁵ Pursuant to Louisiana Constitution Article V, § 19, the nature of the juvenile justice system is a non-criminal “focus on rehabilitation and individual treatment rather than retribution, and the state’s role as *parens patriae* in managing the welfare of the juvenile in state custody.” *In re C.B.*, 708 So. 2d 391, 397 (La. 1998).

⁶ Children who are presumptively eligible for release include (1) all children who have contracted COVID-19; (2) all children who have pre-existing medical conditions that the Centers for Disease Control (“CDC”) has determined puts them at significantly higher risk of developing COVID-19 complications; (3) all children currently eligible for furlough in accordance with OJJ’s policies; and (4) all children who can be safely returned to their communities.

⁷ Behavioral Intervention Rooms are used to isolate children who pose a threat to staff or other children. YS Policy No. B.2.21 at 2, available at <https://ojj.la.gov/wp-content/uploads/2019/06/B.2.21.pdf>.

(6) using pepper spray on children; and (7) continuing the suspension of structured educational and rehabilitative programming in OJJ facilities. Plaintiffs-Petitioners also ask that this Court order Defendants-Respondents to develop, within 48 hours, an effective COVID-19 response plan governing the state's four children's detention centers that fully conforms to CDC guidelines.

FACTUAL BACKGROUND

I. COVID-19 Is a Deadly Global Pandemic That Threatens the Lives of Louisiana's Incarcerated Children

A. COVID-19 Is a Deadly Pandemic That Has Caused a National Emergency

COVID-19 is a deadly global pandemic caused by a novel coronavirus that has infected over 4.4 million people and killed more than 300,000 worldwide in just five months.⁸ Louisiana is among the hardest hit states in the country, with more than 33,400 confirmed cases and over 2,300 deaths to date.⁹ Both the number of confirmed cases and the number of deaths continue to rise daily.¹⁰ Recent scientific projections suggest the crisis will only worsen.¹¹

Symptoms vary widely and cases can rapidly deteriorate, with people who appear to have mild cases quickly developing severe symptoms that require life-saving measures.¹² There are no reliable tests that can predict the course of a COVID-19 patient's illness, nor are there any signs or symptoms that can be used to predict clinical deterioration.¹³

⁸ Coronavirus Resource Center, JOHNS HOPKINS UNIV., <https://coronavirus.jhu.edu/map.html> (last visited May 15, 2020).

⁹ COVID-19, LA. DEP'T OF HEALTH, <http://ldh.la.gov/Coronavirus/> (last visited May 15, 2020).

¹⁰ Coronavirus Resource Center, *supra* note 8.

¹¹ Alice Miranda Ollstein and Caitlin Oprysko, *Models shift to predict dramatically more U.S. deaths as states relax social distancing*, POLITICO (May 4, 2020, 3:19 PM), <https://www.politico.com/news/2020/05/04/cdc-daily-deaths-coronavirus-234377>.

¹² Vassallo Decl., Dkt. 1-5 at ¶ 7.

¹³ *Id.*

COVID-19 is highly transmissible. Recent estimates suggest that, in community settings, each infected person transmits the virus to 5.7 other persons on average.¹⁴ Respiratory droplets that can survive in the air for up to three hours and on surfaces such as plastic and stainless steel for 2 to 3 days.¹⁵ COVID-19 transmission is especially concerning because as many as 25% of infected individuals may be symptom-free.¹⁶ Screening for cough or fever is therefore not sufficient to exclude the possibility of COVID-19.¹⁷

Patients infected with COVID-19 who also suffer from co-morbidities, including asthma, hypertension, obesity, diabetes, and human immunodeficiency virus (HIV) infection face an increased risk of serious complications.¹⁸ Children with such pre-existing medical conditions are also at heightened risk for serious complications, and children in the justice system are particularly at risk because of their high rates of unmet medical needs.¹⁹ Asthma is one of the most commonly diagnosed illnesses among incarcerated children.²⁰

B. COVID-19 Poses a High Risk to Children and Youth

It has become increasingly clear that, despite earlier assumptions to the contrary, children and young adults are fully susceptible to COVID-19. Due to the novel nature of COVID-19, the

¹⁴ Steven Sanche et al., CDC, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2*, 26-7 EMERGING INFECTIOUS DISEASES (July 2020), available at https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article.

¹⁵ *New coronavirus stable for hours on surfaces*, NAT'L INST. OF HEALTH, <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited May 15, 2020).

¹⁶ Sam Whitehead and Carrie Feibel, *CDC Director On Models For The Months To Come: 'This Virus Is Going To Be With Us'*, NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us>.

¹⁷ Vassallo Decl., Dkt. 1-5 at ¶ 8.

¹⁸ People Who Are at Higher Risk for Severe Illness, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 15, 2020).

¹⁹ Graves Decl., Dkt. 1-2 at ¶ 7 (“The Survey of Youth in Residential Placement, the most comprehensive examination of the health needs of confined youth, reported that 69% of confined youth have an unmet health care need including injury, vision problems, hearing problems, dental needs, or other illness. High rates of childhood trauma among justice-involved youth also lead to heightened health risks in this population.”).

²⁰ Comm. on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 PEDIATRICS 799 (2001), <https://bit.ly/2UxTW5y>; Nicole Wetsman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention*, JUV. JUST. INFO. EXCHANGE (July 30, 2018), <https://bit.ly/2Jq7Os7>.

full effects of the disease on children are not yet known, but recent reports suggest that children may be vulnerable to life-threatening complications even *after* the infection itself appears to have resolved.²¹ Children can suffer—and have suffered—serious complications, including hospital admission, admission to an intensive care unit, invasive ventilation, and death.²²

Younger people worldwide make up a “significant proportion” of patients requiring hospitalization, sometimes for weeks and sometimes resulting in death.²³ An estimated 6% of infected children and 11% of infected infants have had severe or critical cases,²⁴ and U.S. data show a growing number of pediatric cases requiring intensive care.²⁵ These cases have included children who suffered from respiratory failure, shock, encephalopathy, heart failure, coagulation dysfunction, acute kidney injury, and life-threatening organ dysfunction.²⁶ Recent research suggests that children are also susceptible to serious neurological side effects, which is particularly alarming at the stage when the brain is in its formative period of development.²⁷

Some COVID-positive children have become “seriously ill with symptoms that can involve inflammation in the skin, eyes, blood vessels and heart,” a condition doctors are calling “pediatric multisystem inflammatory syndrome.”²⁸ This inflammatory condition primarily attacks the heart, rather than the lungs.²⁹ The syndrome is similar to a rare childhood illness called Kawasaki disease,

²¹ Pam Belluck, *A New Coronavirus Threat to Children*, N.Y. TIMES, (May 6, 2020), <https://www.nytimes.com/2020/05/06/health/kawasaki-disease-covid-coronavirus-children.html>.

²² *Id.*

²³ Stephanie Nebehay, *WHO Message To Youth on Coronavirus: ‘You Are Not Invincible’*, REUTERS (Mar. 20, 2020), <https://www.reuters.com/article/us-health-coronavirus-who-idUSKBN21733O>.

²⁴ See Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China (2020)*, AM. ACAD. OF PEDIATRICS, <https://bit.ly/39hz1Yz> (pre-publication in journal of Pediatrics).

²⁵ COVID-19 Data: North American Pediatric Intensive Care Units, VIRTUAL PEDIATRIC SYSTEMS (Mar. 31, 2020), <https://covid19.myvps.org/>.

²⁶ See Dong, *supra* note 24.

²⁷ George Citroner, *What We Know About the Long-Term Effects of COVID-19*, HEALTHLINE (Apr. 21, 2020), <https://www.healthline.com/health-news/what-we-know-about-the-long-term-effects-of-covid-19#COVID-19-might-affect-the-brain-stem>.

²⁸ Belluck, *supra* note 21; see also Graves Decl., Dkt. 1-2 at ¶ 6.

²⁹ Ali Watkins, *Child in N.Y. Dies and Rare Syndrome Tied to Virus Is Suspected*, N.Y. TIMES (May 8, 2020), <https://www.nytimes.com/2020/05/08/nyregion/child-dead-new-virus-kawasaki.html>.

as both “involve a surge of inflammation in the body and can have serious effects on the heart.”³⁰ Unlike in most Kawasaki cases, “the new syndrome has sent many of the children into a kind of toxic shock with very low blood pressure and an inability of the blood to effectively circulate oxygen and nutrients to the body’s organs.”³¹ This syndrome associated with COVID-19 can be fatal. Three children in New York have died presumably of the syndrome as of May 10.³²

The inflammatory syndrome is widespread and affects children of all ages. There are over 100 cases in New York State alone,³³ and pediatricians in Europe “have reported dozens of cases of children presenting these kind of symptoms.”³⁴ Louisiana has at least one case.³⁵ Cases have been reported “in children of all ages, from infants to older teenagers.”³⁶ The syndrome may be “a *post-infection* condition” of COVID-19, attacking after the infection itself is resolved.³⁷ It is possible that children could suffer residual heart damage or other lingering effects.³⁸

C. Incarcerated Populations Are Particularly Vulnerable to the Spread of COVID-19

³⁰ Belluck, *supra* note 21.

³¹ *Id.*

³² Mayor de Blasio Briefing, *N.Y.C. Reports 38 Cases of Virus-Related Syndrome in Children*, N.Y. TIMES (May 10, 2020), <https://www.nytimes.com/2020/05/10/nyregion/coronavirus-new-york-update.html>.

³³ Center for Disease Control, *Multisystem Inflammatory Syndrome in Children (MIS-C) Associated with Coronavirus Disease 2019 (COVID-19)* (May 14, 2020).

https://emergency.cdc.gov/han/2020/han00432.asp?deliveryName=USCDC_511-DM28431.

³⁴ Joseph Goldstein, *15 Children are Hospitalized with Mysterious Illness Possibly Tied to COVID-19*, N.Y. TIMES (May 5, 2020), <https://www.nytimes.com/2020/05/05/nyregion/children-Kawasaki-syndrome-coronavirus.html> (“In Italy’s northern town of Bergamo, a hot spot for the outbreak, one hospital had 20 cases in April alone. In four Parisian hospitals, 20 children were hospitalized with inflammatory heart conditions, and in Britain, over a dozen children with such symptoms have required intensive care.”).

³⁵ Belluck, *supra* note 21.

³⁶ *Id.*

³⁷ *Id.* (quoting Dr. Katie Schafer, a general pediatrician) (emphasis added).

³⁸ *Id.* (“Children who have had serious effects on their hearts will need to be monitored by cardiologists in case there is residual heart damage. Others will undoubtedly need to be followed by their pediatricians to keep track of any lingering effects.”).

Crowded correctional facilities are a breeding ground for infectious respiratory illness.³⁹ In fact, prisons account for seven of the top ten coronavirus clusters in the United States.⁴⁰ While Louisiana has encouraged people in most communities to practice social isolation and heightened hygiene measures to protect themselves from COVID-19, it is impossible to adhere to such protective measures in incarcerated communities.⁴¹ Incarcerated individuals live in close and crowded quarters, have limited access to soap, and are unable to take basic steps to clean their own immediate surroundings. Without daily testing, there is no way to ensure that staff are not carriers; a significant percentage of carriers are asymptomatic, or present with lesser-known symptoms that will escape detection by simply screening for temperatures or coughs.⁴²

In an effort to stop the spread of COVID-19, the Supreme Courts of Hawaii,⁴³ New Jersey,⁴⁴ Massachusetts,⁴⁵ Montana,⁴⁶ South Carolina,⁴⁷ and Washington⁴⁸ have all issued orders

³⁹ Timothy Williams, Benjamin Weiser, and William K. Rashbaum, *'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/coronavirus-prisons-jails.html>.

⁴⁰ The most vivid example is the Marion Correctional Institution in Marion, OH, which currently has 2,341 cases among inmates and staff members, the highest outbreak numbers in the country. <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>; see also Timothy Williams and Danielle Ivory, *Chicago's Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁴¹ Vassallo Decl., Dkt. 1-5 at ¶ 10.

⁴² *Id.* at ¶ 8.

⁴³ Yoohyun Jung, *Special Master Appointed To Recommend On COVID-19 Jail Releases*, HONOLULU CIVIL BEAT (Apr. 2, 2020), <https://www.civilbeat.org/2020/04/special-master-appointed-to-decide-on-covid-19-jail-releases/>.

⁴⁴ Consent Order at 4, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. Mar. 22, 2020), <https://bit.ly/3aJOim8>. The order provided a mechanism for prosecutors, within 24 to 48 hours, 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.

⁴⁵ *Committee for Public Counsel Services vs. Chief Justice of the Trial Court*, SJC-12926, slip op. (Mass. Mar. 24, 2020), available at <https://www.mass.gov/files/documents/2020/04/03/12926.pdf>.

⁴⁶ Letter from Mike McGrath, Chief Justice, Mont. Supreme Ct., to Montana Cts. of Limited Jurisdiction Judges (Mar. 20, 2020), <https://bit.ly/3aAv4iX>.

⁴⁷ Memorandum from Donald W. Beatty, Chief Justice of S.C. Supreme Ct., to Magistrates, Municipal Judges, & Summary Ct. Staff (Mar. 16, 2020), <https://bit.ly/3dJ69LY>.

⁴⁸ Am. Order, *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), <https://bit.ly/39DHyoU>.

to reduce adult jail populations. Across the country, officials in more than 60 state and local jurisdictions have acted to sharply reduce prison populations.⁴⁹

On March 23, 2020, the CDC issued Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities (“CDC Guidance”).⁵⁰ The CDC Guidance provides, among other things, that correctional and detention facilities should coordinate closely with their local public health departments, facilitate social distancing wherever possible, and restrict transfer to and from other facilities or jurisdictions unless necessary.⁵¹

According to the United States Office of Juvenile Justice and Delinquency Prevention, during a pandemic, facilities should be ready to adjust intake and discharge procedures, which could include admitting “only juveniles who present the greatest danger to the community or who are at highest risk of escaping from the jurisdiction of the local detention center during the pandemic: or accepting “no admissions during the disease outbreak.”⁵² The American Academy of Pediatrics, the National Governors Association, and the Council of Juvenile Justice Administrators have similarly highlighted the importance of reducing admissions and releasing children from juvenile facilities during this pandemic.⁵³

Like correctional facilities, OJJ’s four secure facilities are congregate settings which act as petri dishes for the spread of disease. Indeed, the available data strongly suggests that COVID-19

⁴⁹ Responses to the COVID-19 pandemic, *Prison Policy Initiative*, <https://www.prisonpolicy.org/virus/virusresponse.html> (last visited May 15, 2020).

⁵⁰ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (“CDC Guidance”).

⁵¹ *Id.*

⁵² U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Emergency Planning for Juvenile Justice Residential Facilities* (2011), p. 32 available at <https://www.ncjrs.gov/pdffiles1/ojjdp/234936.pdf>.

⁵³ National Governors Association, *Memorandum on COVID-19 Responses in the Juvenile Justice System* (Mar. 30, 2020), https://www.nga.org/wp-content/uploads/2020/04/Memorandum_COVID-19-Responses-in-the-Juvenile-Justice-System.pdf; Council of Juvenile Justice Administrators, *COVID-19 Practice, Policy & Emergency Protocols in State Juvenile Facilities* (May 2020).

is rampant in OJJ's facilities. As of May 15, 28 of the children in the four facilities, and 39 staff, have tested positive for COVID-19.⁵⁴ But reports indicate that OJJ has only administered 29 tests to children,⁵⁵ which puts the rate of positive cases at an astounding 97%. Even more damning, these figures have remained static since at least April 21, 2020,⁵⁶ a fact that is starkly at odds with everything known about how easily and quickly COVID-19 spreads and seems to indicate that OJJ in fact stopped administering tests to children sometime around April 21. Meanwhile, OJJ facility staff cases of COVID-19 have continued to grow.⁵⁷ As of May 15, OJJ reports that 41 staff have tested positive.⁵⁸ Recent instances of mass testing have revealed that rates of COVID-19 among people who are incarcerated are extremely high, and many cases are asymptomatic. For example, 155 incarcerated women who displayed *no symptoms* were tested at Elayn Hunt Correctional Center, and an incredible 117—over 75%—tested positive.⁵⁹ The overall rate of infection, including symptomatic and asymptomatic women, was a staggering 98%.⁶⁰ It is highly unlikely that the true incidence of COVID-19 in OJJ's secure facilities has remained plateaued for weeks.

II. OJJ Is Unconstitutionally Exposing Children to Grave Medical and Psychological Harm Through Its Inadequate COVID-19 Response

A. Defendants-Respondents Are Placing Children at Serious Risk of Medical Harm, up to and Including Death

Children currently in OJJ custody face an ever-increasing risk of harm from COVID-19, up to and including death. As described above, children in the justice system are already at a

⁵⁴ See Ex. 2, Coronavirus (COVID-19) Information, LA. OFFICE OF JUVENILE JUSTICE, <https://ojj.la.gov/coronavirus-covid-19-information/> (last visited May 15, 2020) (“OJJ Coronavirus Information”).

⁵⁵ Ex. 1, Rovner Decl. at ¶¶ 9-11; Emily Lane, *Parents press for better handling of pandemic in Louisiana's juvenile prisons*, WDSU NEWS (May 5, 2020), <https://www.wdsu.com/article/parents-press-for-better-handling-of-pandemic-in-louisianas-juvenile-prisons/32382767>.

⁵⁶ *Id.* at ¶ 7.

⁵⁷ *Id.* at ¶ 12.

⁵⁸ OJJ Coronavirus Information, *supra* note 54.

⁵⁹ Janet McConnaughey, *Most women in 1 Louisiana prison dorm have COVID-19*, ASSOCIATED PRESS (May 6, 2020), <https://apnews.com/f31d0a19272193a0f461eb96e5c3d23d>.

⁶⁰ *Id.*

heightened risk because of high rates of pre-existing conditions that make them vulnerable to hospitalization and death from COVID-19 and because of the physical realities of the detention facilities. OJJ is heightening these risks still further by failing to provide adequate medical treatment to children with COVID-19, failing to monitor and mitigate the spread of the disease, and failing to provide basic information to the public and to parents.

OJJ is failing to provide adequate medical treatment to children with confirmed cases of COVID-19 and also failing to ensure that all positive cases are identified. Plaintiff-Petitioner I.B. reported that, after he tested positive for COVID-19, he was put in a dirty room with no air conditioning in an old isolation cell that had not been used in years.⁶¹ He had no access to running water for two or three days, was unable to bathe or brush his teeth during that time, and received no medical attention.⁶² He was then moved back to his dormitory without being retested,⁶³ in direct contravention of CDC guidance.⁶⁴ Many children report that they have not been tested, even when other children and staff at their facilities have tested positive.⁶⁵ Putative Class Member T.S. requested a test because he was feeling very sick but was told that he was not eligible.⁶⁶ Staff move back and forth between children with confirmed cases and healthy children,⁶⁷ and there is no social

⁶¹ A.B. Decl., Dkt. 1-10 at ¶ 8 (“After my son tested positive for COVID-19, they put him in a dirty room at Cypress with no air conditioning. He was in there without water for 2-3 days. There were other children with him who had tested positive for COVID.”); *see also* Holt Decl., Dkt. 1-9 at ¶ 13 (“The Cypress disciplinary wing at the Swanson Center for Youth at Monroe was shut down in 2005 and turned into a short-term crisis intervention unit. They are currently using it for suicide watch as well as reconstituted it as disciplinary lockdown unit.”).

⁶² A.B. Decl., Dkt. 1-10 at ¶¶ 8, 9, 11.

⁶³ *Id.* at ¶ 11.

⁶⁴ CDC guidance states that before a person is moved out of medical isolation, “[t]he individual [must test] negative in at least two consecutive respiratory specimens collected at least 24 hours apart.” CDC Guidance, *supra* note 50, at 17.

⁶⁵ *See* N.H. Decl., Dkt. 1-4, Dkt. 1-4 at ¶ 4; *see also* D.B. Decl., Dkt. 1-12 at ¶ 5; B.B. Decl., Dkt. 1-8 at ¶ 6; W.H. Decl., Dkt. 1-14 at ¶ 5. Testing is “crucial . . . to help treat, isolate or hospitalize people who are infected,” and it is important “in the bigger public health picture on mitigation efforts, helping investigators characterize the prevalence, spread and contagiousness of the disease.” Dr. Eduardo Sanchez, *COVID-19 science: Why testing is so important*, AM. HEART ASS’N (Apr. 2, 2020), <https://www.heart.org/en/news/2020/04/02/covid-19-science-why-testing-is-so-important>.

⁶⁶ L.P. Decl., Dkt. 1-7 at ¶ 8.

⁶⁷ *See* A.B. Decl., Dkt. 1-10 at ¶ 4; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4.

distancing being enforced in the dormitories.⁶⁸ OJJ is either failing to provide children with masks (or other personal protective equipment) or failing to require that they wear them, and they are not giving children cleaning materials.⁶⁹ Children have also been transferred between facilities for non-medical reasons,⁷⁰ in further contravention of CDC guidance.⁷¹

OJJ is exacerbating the harm to the children in its custody even further by refusing to communicate basic information about the children's health to their parents, thus preventing parents from being able to advocate for needed medical treatment. A.B., mother of Plaintiff-Petitioner I.B., was not contacted when her son I.B. tested positive for COVID-19.⁷² When A.B. called repeatedly the day after she found out that her son had a fever, her son's case worker said that she did not know anything and simply hung up the phone.⁷³ The case worker told A.B. that she would call back in seven days, and then the case worker stopped answering A.B.'s calls.⁷⁴ The next day, two days after A.B. learned that her son had a fever, A.B. called the case worker's supervisor and—after three or four failed attempts to reach the supervisor—was finally informed that her son had tested positive.⁷⁵ Similarly, S.W., mother of putative Class Member J.S., tried to get general information about Swanson after her son tested positive there—including how many people were in her son's dorm, how he caught the virus, and whether any of the staff had tested positive—but she was told that none of that information could be given to her.⁷⁶

⁶⁸ See A.B. Decl., Dkt. 1-10 at ¶ 12; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4; D.B. Decl., Dkt. 1-12 at ¶ 10; B.B. Decl., Dkt. 1-8 at ¶ 6; L.P. Decl., Dkt. 1-7 at ¶ 9; W.H. Decl., Dkt. 1-14 at ¶ 9.

⁶⁹ See A.B. Decl., Dkt. 1-10 at ¶ 12; *see also* N.H. Decl., Dkt. 1-4 at ¶ 4; D.B. Decl., Dkt. 1-12 at ¶ 10; B.B. Decl., Dkt. 1-8 at ¶ 6; L.P. Decl., Dkt. 1-7 at ¶ 9; S.W. Decl., Dkt. 1-13 at ¶ 4; W.H. Decl., Dkt. 1-14 at ¶ 9.

⁷⁰ See N.H. Decl., Dkt. 1-4 at ¶ 3; *see also* B.B. Decl., Dkt. 1-8 at ¶ 3; L.P. Decl., Dkt. 1-7 at ¶ 3; S.W. Decl., Dkt. 1-13 at ¶ 3.

⁷¹ CDC Guidance, *supra* note 50, at 14.

⁷² A.B. Decl., Dkt. 1-10 at ¶ 6.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ S.W. Decl., Dkt. 1-13 at ¶¶ 3, 4, 6.

Not only has OJJ directly exposed children to harm, it has failed to create policies aimed at mitigating such damage. The only publicly available document that may represent OJJ's COVID-19 plan is its Influenza Preparedness plan,⁷⁷ which OJJ does not appear to have updated to reflect the CDC's guidance related to COVID-19.⁷⁸ As written, the plan lacks any specific policies necessary to mitigate the spread of COVID-19.⁷⁹ The Influenza Preparedness plan similarly fails to ensure the adequate care of confirmed COVID-19 patients in OJJ's custody.

Indeed, if OJJ has generated any COVID-19 policies at all, they have not been provided to the public or to parents; the facility is even keeping parents in the dark regarding the medical status of their children and any treatments they may be undergoing. OJJ's website provides no information about its testing policies,⁸⁰ including when, where and how often tests are administered or whether tests are administered at all to asymptomatic staff and children. OJJ has issued no formal guidance about any procedures for returning those children who allegedly have recovered to their respective dormitories, nor is there any information on the OJJ website about how OJJ determines whether and when a child has "recovered."⁸¹ Moreover, although OJJ's website provides that "[t]he Office of Juvenile Justice is working closely with its medical provider Wellpath and with guidance from the Louisiana Office of Public Health to determine the most appropriate treatment for children who may fall ill in its facilities during this crisis,"⁸² no specifics about any such care are available, nor do petitioners' experiences reflect that adequate care is being taken to protect them from the risks of COVID-19.

⁷⁷ Office of Juvenile Justice, Influenza Preparedness, Response and Recovery A.1.13, (Dec. 11, 2019), *available at* <https://ojj.la.gov/wp-content/uploads/2020/01/A.1.13.pdf>.

⁷⁸ Holt Decl., Dkt. 1-9 at ¶ 2.

⁷⁹ *Id.*

⁸⁰ See Ex. 2, Coronavirus (COVID-19) Information, LA. OFFICE OF JUVENILE JUSTICE, <https://ojj.la.gov/coronavirus-covid-19-information/> (last visited May 15, 2020) ("OJJ Coronavirus Information").

⁸¹ *Id.*

⁸² *Id.*

Moreover, as discussed *supra*, it appears that OJJ has ceased testing children.⁸³ By failing to administer tests, OJJ is virtually guaranteeing that some number of COVID-positive children will remain unidentified and continue to spread the disease freely throughout the facilities, further jeopardizing the life and health of the children in OJJ's custody.

B. OJJ's Intensified Disciplinary Measures, Lack of Structured Programming, and Limitations on Family Contact Throughout the Pandemic Subject Children to Increasing Physical and Psychological Harm

OJJ also is putting children at risk of both medical and psychological harm by exposing them to pepper spray, placing them in isolation, and depriving them of programming and visitation to which they are constitutionally entitled. These risks increase with each passing day.

Although the use of pepper spray has been prohibited in juvenile facilities for many years, the inhumane practice has been revived, and probation officers are now pepper spraying children—during a pandemic directly attacking the respiratory system, no less. Because of the reduced staffing caused by COVID-19, OJJ has brought in probation officers trained only in adult correctional tactics.⁸⁴ On March 17, OJJ issued a memorandum authorizing those probation officers to carry pepper spray into the facilities.⁸⁵ While this memorandum was rescinded on April 27, the rescinding memorandum explicitly allows the use of “chemical spray” as long as the Regional Director has given permission.⁸⁶ Plaintiff-Petitioner J.H. has been pepper sprayed by probation officers multiple times at both Bridge City and Acadiana and witnessed a boy suffer a seizure after being pepper sprayed.⁸⁷ Putative Class Members T.G., J.B., and T.S. have also been

⁸³ Ex. 1, Rovner Decl. at ¶¶ 15-16.

⁸⁴ Eli Hager, *Solitary, Brawls, No Teachers: Coronavirus Makes Juvenile Jails Look Like Adult Prisons*, THE MARSHALL PROJECT (May 12, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/05/12/solitary-brawls-no-teachers-coronavirus-makes-juvenile-jails-look-like-adult-prisons>; see also Emily Lane, *‘There was no control,’ says Bridge City youth prison guard about riot*, WDSU NEWS (Apr. 24, 2020), <https://www.wdsu.com/article/there-was-no-control-says-bridge-city-youth-prison-guard-on-riot/32259043>.

⁸⁵ See Ex. 3, Memorandum from E. Dustin Bickham to OJJ Staff (Apr. 27, 2020).

⁸⁶ *Id.*

⁸⁷ N.H. Decl., Dkt. 1-4 at ¶¶ 5-7.

pepper sprayed by probation officers.⁸⁸ Pepper spray, even for adults, is potentially hazardous.⁸⁹ It can cause burning in the throat, wheezing, dry cough, shortness of breath, gagging, gasping, and the inability to breathe or speak.⁹⁰ These physiological effects, along with the violence of uniformed adults wielding weapons against children, could be traumatic. And using pepper spray on a child who may have COVID-19—a likely scenario given low testing rates but high positive results—could prove lethal.⁹¹ Pepper spray irritates the wet, mucus-lined parts of the body, including the lungs,⁹² the main organs already under attack by COVID-19. Pepper spraying a child who has COVID-19 could inhibit the child's ability to breathe, potentially killing the child.⁹³ Moreover, some of the possible consequences of pepper spraying, including cough and shortness of breath, mirror the symptoms of COVID-19⁹⁴ and could potentially mask positive cases.

Children are also currently being deprived of the rehabilitative programming that is the core justification for their OJJ placement,⁹⁵ and they are enduring 23-hour-a-day dormitory lockdowns.⁹⁶ Without such rehabilitative programming the confinement of children is rendered impermissible. The educational and rehabilitative services which children in state custody are required constitutionally to receive either have been substantially reduced or completely eliminated.⁹⁷ Coupled with lockdowns, the absence of these programs leaves children with no developmental growth opportunities as well as nothing to occupy their time. During lockdown,

⁸⁸ D.B. Decl., Dkt. 1-12 at ¶ 6; B.B. Decl., Dkt. 1-8 at ¶ 4; L.P. Decl., Dkt. 1-7 at ¶ 7.

⁸⁹ David Railton, *What is pepper spray, and is it dangerous?*, MEDICAL NEWS TODAY (Sep. 25, 2018), <https://www.medicalnewstoday.com/articles/238262>.

⁹⁰ *Id.*

⁹¹ Holt Decl., Dkt. 1-9 at ¶ 12.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Coronavirus Disease 2019 (COVID-19): Symptoms of Coronavirus, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited May 15, 2020).

⁹⁵ *See supra*, note 5.

⁹⁶ *See* L.P. Decl., Dkt. 1-7 at ¶ 9; *see also* W.H. Decl., Dkt. 1-14 at ¶ 7.

⁹⁷ *See* A.B. Decl., Dkt. 1-10 at ¶ 18; *see also* N.H. Decl., Dkt. 1-4 at ¶ 12; W.H. Decl., Dkt. 1-14 at ¶ 15; S.W. Decl., Dkt. 1-13 at ¶ 9; L.P. Decl., Dkt. 1-7 at ¶ 14; B.B. Decl., Dkt. 1-8 at ¶ 10.

children are confined to their dormitories, sometimes even for meals, and given only one hour for recreation each day.⁹⁸ Cutting off education and treatment is particularly devastating to teenagers; during adolescence, the brain reaches what is referred to as the “second period of heightened malleability.”⁹⁹ Such deprivation “may dramatically increase the risk that youth will self-harm and is associated with risks lasting into adulthood, including poorer overall general health and increased incidence of suicide.”¹⁰⁰

OJJ is further harming children by improperly depriving them of regular contact with their families. N.H, mother of Plaintiff-Petitioner J.H., has had trouble communicating with her child since the pandemic began.¹⁰¹ N.H. has not seen her son in three months;¹⁰² during this time, N.H. has had just one video conference with her son.¹⁰³ D.B., mother of putative Class Member T.G., has not been able to visit her son for months and has only spoken with him three times since the pandemic began.¹⁰⁴ B.B., mother of putative Class Member J.B., has also not seen her son in three months.¹⁰⁵ When she went to visit him at Bridge City on February 22, she was not allowed into the facility.¹⁰⁶ B.B. has had only two video calls with her son since then, and he did not receive the letter she sent him.¹⁰⁷ L.P., mother of putative Class Member T.S., has not seen her son since around Christmas.¹⁰⁸ It took two months to schedule a video call with her son.¹⁰⁹ W.H., mother of putative Class Member H.C., has not seen her son since March 16, the day she took him back to

⁹⁸ *Id.*

⁹⁹ Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 TRENDS COGNITIVE SCI. 558, 559 (2015).

¹⁰⁰ Schiraldi, et al. Decl., Dkt. 1-3 at ¶ 21.

¹⁰¹ N.H. Decl., Dkt. 1-4 at ¶ 9.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ D.B. Decl., Dkt. 1-12¶ 11.

¹⁰⁵ B.B. Decl., Dkt. 1-8 at ¶ 5.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at ¶ 7.

¹⁰⁸ L.P. Decl., Dkt. 1-7 at ¶ 11.

¹⁰⁹ *Id.*

Bridge City after his furlough was cut short.¹¹⁰ More than a month passed before W.H. was able to have a video call with her son on April 23.¹¹¹

The terror of being trapped in a hotbed of life-threatening infection during a global pandemic with no autonomy and little family contact has led some children to take desperate measures, including rioting and attempting to escape.¹¹² OJJ has admitted that isolation is being used as a disciplinary measure to punish and discourage riots and escape attempts.¹¹³ Under OJJ's own policies, isolation, or "Behavioral Intervention," is not meant to be used for punishment—only for temporary incapacitation¹¹⁴—and may not be used as a consequence for escape attempts or property destruction.¹¹⁵ At the very least, Behavioral Intervention Rooms should not be used for the isolation of children who are COVID-positive or who display symptoms, as such "treatment" amounts to punishing children for contracting the virus. Riots and escape attempts pose a danger to the children involved, but inhumane disciplinary tactics such as isolation and pepper spray only exacerbate the anxiety and desperation that drive the children to take such risks in the first place.

C. Defendants-Respondents Are Refusing to Release Children on Furlough, Even Though Such Releases Are Crucial to Mitigate the Risks of COVID-19

While justice systems around the country are releasing both children and adults from correctional settings to protect them from the harmful spread of COVID-19, OJJ has apparently halted its furlough programs since the onset of the pandemic. This policy about-face has taken off

¹¹⁰ W.H. Decl., Dkt. 1-14 at ¶¶ 3, 8, 14.

¹¹¹ *Id.* at ¶ 8.

¹¹² Marge Mason and Robin McDowell, *Riots, escapes and pepper spray: Virus hits juvenile centers*, 4WWL (May 3, 2020, 5:03 PM), <https://www.wwtv.com/article/news/health/coronavirus/riots-escapes-and-pepper-spray-virus-hits-juvenile-centers/289-e52aa1ea-5680-47eb-a8c5-4c62af60cd4e>; see also *Northeast Louisiana juvenile lockup sees another mass escape*, WASH. TIMES (May 10, 2020), <https://www.washingtontimes.com/news/2020/may/10/northeast-louisiana-juvenile-lockup-sees-another-m/>.

¹¹³ Hager, *supra* note 84 ("Beth Touchet-Morgan, spokeswoman for the Louisiana Office of Juvenile Justice, said in an email that . . . the use of isolation was in part to stop bad behavior from escalating").

¹¹⁴ Youth Services Policy No. B.2.21, *supra* note 7 ("Staff shall *never* use a BI room for *discipline, punishment, administrative convenience, retaliation, staffing shortages*, or reasons other than a temporary response to behavior that threatens *immediate harm* to the youth or others.") (emphases added).

¹¹⁵ Youth Services Policy B.5.1 at 4, 5, 13, available at <https://ojj.la.gov/wp-content/uploads/2019/03/B.5.1.pdf>.

the table a safe, legal, and necessary means of reducing the population in secure care, eliminating the possibility that the remaining children will have an opportunity to engage in appropriate social distancing and the reduced staff will not be overwhelmed.

OJJ's furlough program provides for authorized temporary release from the grounds of a secure facility.¹¹⁶ Electronic monitoring tracks children who are on furlough.¹¹⁷ "Standard Furlough" is granted to children based on a rating under the Structured Assessment of Violence Risk in Youth ("SAVRY") system,¹¹⁸ meaning that children eligible for furlough have been assessed to be safe to spend time in their homes and communities. OJJ allowed for standard furloughs of eight hours to 14 days, up to 30 days total in a calendar year.¹¹⁹

Rather than relying on the established furlough standard to reduce population and increase health in its facilities, OJJ currently is ratcheting up the children's already dire predicament by refusing to release those who would otherwise be eligible for furlough, including those recently furloughed prior to the pandemic. No children have been released on furlough in the last two months. Putative Class Member H.C. was forced to return from furlough a day early in mid-March,¹²⁰ after the national emergency was declared. H.C.'s previously approved Easter furlough was cancelled, and his mother is unable to make additional furlough requests.¹²¹ J.S. and T.G. also had previously approved furloughs cancelled.¹²² Continuing to maintain these children in facilities

¹¹⁶ Youth Services Policy No. C.4.1 at 2, available at <https://ojj.la.gov/wp-content/uploads/2018/07/C.4.1.pdf>.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* OJJ's current furlough criteria also require that the child be "making progress" on treatment needs, that the parent participate in family reintegration sessions, and that there be no outstanding detainers or pending charges.

¹¹⁹ *Id.* at 6.

¹²⁰ *See, e.g.*, W.H. Decl., Dkt. 1-14 at ¶ 14 ("My son was home on furlough from March 13 to March 16. He was supposed to be home until March 17 and they made him go back earlier.").

¹²¹ *Id.*

¹²² S.W. Decl., Dkt. 1-13 at ¶ 9 (furlough for March 20 cancelled); D.B. Decl., Dkt. 1-12 at ¶ 4 (furloughs in April and May cancelled).

that are hotbeds of contagion, and which are failing to provide rehabilitative services, poses an unconscionable and entirely preventable risk of harm.¹²³

LEGAL STANDARD

In order to obtain a temporary restraining order or preliminary injunction, Plaintiffs-Petitioners must establish: “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.”¹²⁴ The Court may issue a temporary restraining order without awaiting the adverse party’s response if it finds that “immediate and irreparable injury . . . will result to the movant before the adverse party can be heard in opposition.”¹²⁵ As shown below, Plaintiffs-Petitioners satisfy this legal standard at a time when the stakes—the lives of over 220 children—could not be higher. Accordingly, this Court should order the injunctive relief requested in this motion.

ARGUMENT

I. Plaintiffs-Petitioners Have Established a Substantial Likelihood of Success on the Merits of their Fourteenth and Eighth Amendment Claims

Plaintiffs-Petitioners have a substantial likelihood of success on the merits because they “present a *prima facie* case.”¹²⁶ The evidence proves that Defendants-Respondents’ virtually non-existent (and in any event wholly inadequate) COVID-19 response is objectively unreasonable and

¹²³ “There is no question that requiring children to remain detained in congregate care facilities is more dangerous than the travel required to release children to their homes.” Graves Decl., Dkt. 1-2 at ¶ 10.

¹²⁴ *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (citation omitted); *see also Atchafalaya Basinkeeper v. U.S. Army Corps of Eng’rs*, No. 18-cv-23-SDD-EWD, 2018 WL 4701849, at *2 (M.D. La. Jan. 30, 2018) (standard for temporary restraining order same as standard for preliminary injunction).

¹²⁵ Fed. R. Civ. P. 65(b)(1).

¹²⁶ Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, 11A Federal Practice & Procedure § 2948.3 (2d ed. 1995); *see also Janvey v. Alguire*, 647 F.3d 585, 595-96 (5th Cir. 2011) (noting that plaintiffs are “not required to prove [their] entitlement to summary judgment” to show likelihood of success on the merits).

even rises to the level of deliberate indifference, in violation of both the Fourteenth and Eighth Amendments to the United States Constitution.

A. Plaintiffs-Petitioners Satisfy the Fourteenth Amendment’s Test Because Defendants-Respondents’ COVID-19 Response Is Objectively Unreasonable

Plaintiffs-Petitioners are entitled to injunctive relief under the Fourteenth Amendment because the evidence described *supra* demonstrates that OJJ’s conduct deprives children of their right to rehabilitative treatment and their right to be free from punishment through unsafe conditions,¹²⁷ and that this deprivation is objectively unreasonable in that OJJ purposely or knowingly engaged in the actions.¹²⁸

There can be no serious dispute that COVID-19 creates unsafe conditions and that OJJ’s purposeful failures to test, control the spread of the disease, treat infected children, and communicate with parents exacerbate the risk. It is also clear that OJJ purposefully subjected children to pepper spray and isolation and knowingly deprived them of the programming and education that are the core of the rehabilitative programming to which they are entitled, as described *supra*. Defendants-Respondents’ conduct is therefore objectively unreasonable.¹²⁹

¹²⁷ The Supreme Court has clarified that the Eighth Amendment has no place in the analysis of the rights of students in school, but has never explicitly addressed the standard to apply in juvenile justice facilities. *See Ingraham v. Wright*, 430 U.S. 651 (1977). It has, however, recognized that those involuntarily committed for other non-punitive reasons, such as involuntary commitment for mental health treatment, must be treated differently from prisoners and must not be punished with unsafe conditions. *Youngberg v. Romeo*, 457 U.S. 307 (1982). Some Circuits have explicitly established a Fourteenth Amendment right to rehabilitation for youth in the juvenile justice system. *See, e.g., Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974). The Fifth Circuit has not decisively answered the question—and the only case to address the issue arose out of a Texas case without a clear right to rehabilitation, and preceded the U.S. Supreme Court’s decision in *Youngberg* as well as its subsequent holdings in *Roper*, *Graham*, and *Miller* that the law must take into account the unique developmental status of youth. *See Morales v. Turman*, 562 F.2d 993, 999 (5th Cir. 1977) (“even if such a right to treatment does exist,” the court did not need to reach a holding on that matter because the Eighth Amendment analysis sufficed to address the facts at issue.).

¹²⁸ *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (no proof of subjective intent is necessary, only that the actions “purposely or knowingly used against” the individual was unreasonable.) In the context of pretrial detention of adults, the Fifth Circuit has held that the same subjective deliberate indifference standard applies to both the Eighth Amendment and the Fourteenth. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 648-49 (5th Cir. 1996). This case precedes the Supreme Court’s holding to the contrary in *Kingsley*. It also does not apply in the juvenile justice system, where the sole purpose of confinement is rehabilitation.

¹²⁹ “[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004).

B. Plaintiffs-Petitioners Satisfy the Objective and Subjective Elements of the Eighth Amendment’s Deliberate Indifference Test

Plaintiffs-Petitioners are entitled to injunctive relief under the Eighth Amendment because the evidence described *supra* demonstrates that Defendants-Respondents’ actions and inactions likely constitute deliberate indifference to a substantial risk of serious harm.¹³⁰ This inquiry consists of both an objective test and a subjective test. The objective component considers whether the children have been “expos[ed] to a substantial risk of serious harm.”¹³¹ The subjective component is satisfied because OJJ had requisite knowledge of the risk of harm and *either* disregarded the risk *or* “fail[ed] to take reasonable measures to abate it.”¹³²

i. The Objective Element of Deliberate Indifference Is Satisfied Because COVID-19 Poses a Substantial Risk of Serious Harm

For the same reasons that the Fourteenth Amendment’s objective test is satisfied, the objective element of deliberate indifference is also satisfied. OJJ is exacerbating the harms of COVID-19 by refusing to release children to allow for social distancing, failing to provide appropriate personal protective equipment or cleaning supplies, allowing staff to move between infected and uninfected populations, transferring children between facilities without medical need, failing to administer sufficient testing, and releasing patients back to the dormitory without confirmed negative tests. OJJ also is placing children at substantial, increasing risk of serious physical harm by failing to test for COVID-19 (even though symptoms vary and can worsen abruptly), placing COVID-positive children in dirty cells without running water or hygiene, pepper spraying frightened and desperate children (many of whom may be COVID-positive), and failing to provide medical evaluations for children with COVID-19. OJJ is further placing children at

¹³⁰ See *Farmer v. Brennan*, 511 U.S. 825, 828, 114 S. Ct. 1970, 1974 (1994).

¹³¹ *Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018).

¹³² See *Farmer*, 511 U.S.; see also, e.g., *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1250 (M.D. Ala. 2017) (“To establish deliberate indifference, plaintiffs must show that defendants had subjective knowledge of the harm or risk of harm, and disregarded it or failed to act reasonably to alleviate it.”)

substantial, increasing risk of serious long-term mental, developmental, and emotional harm by allowing and supporting inappropriate and excessive disciplinary measures such as pepper spray and isolation cells to be used due to the exigency of the COVID-19 crisis, preventing children from speaking with their parents, and refusing to release eligible children on furlough even though OJJ is not currently providing any of the educational or rehabilitative services that serve as the core reason for the children's detention and to which children are constitutionally entitled.

ii. The Subjective Element of Deliberate Indifference Is Satisfied Because Defendants-Respondents Are Aware of—and Have Effectively Ignored—the Dire Risks of COVID-19 and of the Recommended Means of Mitigating Those Risks

The evidence overwhelmingly demonstrates that Defendants-Respondents are subjectively aware of the substantial risk of COVID-19 and that their actions and inactions represent an unreasonable and insufficient response to the COVID-19 pandemic.

The dire risks of COVID-19, and the recommended means of mitigating those risks, are “obvious.”¹³³ The country has been in a state of national emergency for two months; the seriousness of COVID-19 and its potential consequences are common knowledge. Social distancing, PPE, and hand washing are essentially national mantras. Similarly, there is now a high level of public awareness that patients can be asymptomatic and that mass or universal testing is necessary to fully identify the prevalence of infection. OJJ's actions and inactions are completely at odds with common knowledge regarding the risks of COVID-19.

Moreover, Defendants-Respondents have expressly been put on notice that their response is inadequate and dangerous. On April 3 and May 4, advocates sent letters to Governor Edwards urging him to adopt evidence-based, proactive plans for the prevention and management of

¹³³ “[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004).

COVID-19 in OJJ’s secure care facilities.¹³⁴ The letters included 13 specific recommendations and numerous resources to assist in the development of these plans.¹³⁵ The governor never responded, and none of the recommendations were implemented. Additionally, parents have been contacting Defendants-Respondents frequently with desperate concerns about their children’s well-being.¹³⁶

“[C]orrectional officials have an affirmative obligation to protect inmates from infectious disease.”¹³⁷ The Eighth Amendment “require[s] a remedy” where jailors knowingly expose their charges to a risk of contracting serious infectious diseases, even if “it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.”¹³⁸ The Fifth Circuit has repeatedly recognized that, even in normal times, unreasonably subjecting detained people to infectious disease constitutes deliberate indifference.¹³⁹ The evidence summarized *supra* indisputably shows that—during this unprecedented pandemic—Defendants-Respondents’ COVID-19 response is egregiously unsound and poses increasingly grave and unconstitutional dangers to the children in OJJ custody.

II. Plaintiffs-Petitioners Will Suffer Irreparable Injury Absent Emergency Relief

Louisiana’s detained children unquestionably will suffer irreparable injury—including serious medical complications, trauma, and even death—unless this Court grants emergency relief.

¹³⁴ See Letters to Governor Edwards, Dkt. 1-11.

¹³⁵ *Id.*

¹³⁶ See, e.g., A.B. Decl., Dkt. 1-10 at ¶ 6 (“[I] told [my son’s case worker’s supervisor] that I was worried that my son was in danger. . . . I told him I was worried that the boy who used the phone after my son had gotten the virus from him. . . . I told him they should test everybody in the facility.”).

¹³⁷ *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996).

¹³⁸ *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

¹³⁹ See, e.g., *Gomez v. Warner*, 39 F.3d 320 (5th Cir. 1994) (per curiam) (prisoner alleged deliberate indifference by prison officials where the prison’s razor-swapping program created the mere “risk” of “possible spread” in the transmission of deadly “infectious diseases such as HIV, AIDS, and hepatitis.”); *Johnson v. Epps*, 479 F. App’x 583, 589-92 (5th Cir. 2012) (allegations that inmate was exposed to “serious, communicable diseases” and that prison officials were aware of the risk and did nothing to prevent it were sufficient to state a claim for violation of Eighth Amendment rights); *Gates v. Collier*, 501 F.2d 1291, 1300-03 (5th Cir. 1974) (affirming district court’s holding that allowing “[s]ome inmates with serious contagious diseases . . . to mingle with the general prison population,” alongside maintaining a host of other unsanitary and inhumane conditions, “constitute[d] cruel and unusual punishment”).

As detailed *supra*, the situation is increasingly dire. Children tested positive for COVID-19 at a rate of 97%. Children are being exposed yet not tested. Children are living in an environment in which CDC guidelines are not being followed. Children are cut off from their families. Parents are left in the dark about their children’s medical status and treatment. Children are being pepper sprayed. Children are being put in disciplinary isolation. Children are engaging in desperate self-help behavior that endangers themselves and others—such as rioting and attempting to run away—recognizing that the adults in charge of their safety are failing to protect them. It is likely only a matter of time before OJJ’s utter indifference and ineptitude results in the death of a child, if not multiple children. And even if all the children survive, the trauma of this experience compounds each day that they spend at the mercy of OJJ’s incompetence. The Supreme Court has long recognized that “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. . . . [A] remedy for unsafe conditions need not await a tragic event.”¹⁴⁰ Where children are involved, that logic is even more poignant.

III. The Equities and Public Interest Clearly Favor Plaintiffs-Petitioners

The third and fourth TRO factors, “harm to the opposing party and weighing the public interest ...[,] merge when the Government is the opposing party.”¹⁴¹ Here, those factors weigh heavily in favor of granting the relief Plaintiffs-Petitioners seek.

As an initial matter, the requested injunction would protect Plaintiffs-Petitioners’ constitutional rights, and “[i]t is always in the public interest to prevent the violation of a party’s

¹⁴⁰ *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *see also Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (“It is also important to note that [an] inmate need not show that death or serious illness has [already] occurred.”)

¹⁴¹ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

constitutional rights.”¹⁴² Because “confidence in the humane application of the governing laws of the State must be in the public’s interest,”¹⁴³ public interest considerations weigh strongly in favor of preventing Defendants-Respondents from continuing to expose children to cruel and unusual punishment in the form of willful exposure to a substantial and increasing risk of serious harm.

By contrast, there is no substantial harm to Defendants-Respondents in ordering the relief requested; indeed, it would lessen the burden on Defendants-Respondents and protect their staff. No legitimate interest exists in failing to protect these children and OJJ’s own staff from the dangers posed by COVID-19. Releasing children on expanded furlough would significantly mitigate the burden on Defendants-Respondents. Even if there were some articulable harm to Defendants-Respondents here, it would nevertheless be greatly outweighed by the catastrophic risk posed to the children in their custody.

IV. The Court Should Immediately Enter a Temporary Restraining Order While It Adjudicates This Motion

Nothing could be more urgent: Defendants-Respondents’ virtually non-existent and constitutionally inadequate response to COVID-19 in Louisiana’s secure care facilities for children is increasing, rather than decreasing, the grave risks these incarcerated children face. It is impossible to mitigate these risks without reducing population, and impossible to minimize trauma and other potentially long-term harms without prompt, proactive, adaptive strategies to meet the rehabilitative and therapeutic needs of the children left behind. Even an expedited briefing schedule cannot ensure children’s health in an environment where no uniform measures are currently in place. For this reason, “[a] hearing weeks from now may be no relief at all.”¹⁴⁴

¹⁴² *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012)); accord, e.g., *June Medical Servs., LLC v. Caldwell*, No. 14-cv-525-JWD-RLB, 2014 WL 4296679, at *8 (M.D. La. Aug. 31, 2014).

¹⁴³ *Harris v. Johnson*, 323 F. Supp. 2d 797, 810 (S.D. Tex. 2004).

¹⁴⁴ *Coronel v. Decker*, No. 20-cv-2472 AJN, 2020 WL 1487274, at *7 (S.D.N.Y. Mar. 27, 2020).

Plaintiffs-Petitioners are prepared to proceed to a preliminary injunction hearing as soon as Defendants-Respondents and the Court are able. But in the interim, a temporary restraining order is the only way to ensure that Defendants-Respondents' dangerous actions and inactions do not further threaten the lives of these children prior to a hearing.

V. The Court Should Waive the Security Bond

Plaintiffs-Petitioners request that emergency relief be granted without security because they seek to enforce fundamental rights in which there is a substantial public interest.¹⁴⁵ Under these circumstances, waiver of the security bond is proper, and Plaintiffs-Petitioners therefore respectfully request that the Court exercise its broad discretion to do so.¹⁴⁶

CONCLUSION

For all these reasons, Plaintiffs-Petitioners respectfully request that this Court grant their motion for temporary restraining order.

Respectfully submitted this 15th day of May, 2020.

/s/ Mercedes Montagnes

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¹⁴⁵ See *Elliott v. Kieswetter*, 98 F.3d 47, 60 (3rd Cir. 1996) (court may waive bond requirement of Fed. R. Civ. P. 65(c) when balance of equities weighs overwhelmingly in favor of party seeking injunction); see also *Temple Univ. v. White*, 941 F.2d 201, 220 (3rd Cir. 1991) (district court waiver of bond was affirmed where the plaintiff hospital had "pursued a course of litigation clearly in the public interest, i.e., it seeks to preserve its role as a community hospital serving a disproportionate share of low income patients"); *Pharmaceutical Soc. of State of New York, Inc. v. New York State Dept. of Social Services*, 50 F.3d 1168, 1175 (2nd Cir. 1995) (affirming approval of bond waiver).

¹⁴⁶ See, e.g., *Molton Co v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and "the strong public interest" involved); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

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**Pro hac vice pending*

***Pro hac vice to be submitted*

CERTIFICATE OF SERVICE

I, Nishi Kumar, an attorney, hereby certify that on May 15, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system.

I further certify that I, or another one of Plaintiffs' attorneys, will promptly electronically serve a copy of the same, along with all other pleadings and papers filed in the action to date to the General Counsel for the Louisiana Office of Juvenile Justice and the General Counsel for the Louisiana Governor as well as the Louisiana Department of Justice Director of Litigation via email.

/s/ Nishi Kumar

Nishi Kumar, La. Bar No. 37415

DECLARATION OF JOSHUA ROVNER, MPP

I, Joshua Rovner, declare as follows:

1. I am the Senior Advocacy Associate at The Sentencing Project, where I have been employed since 2014, managing a portfolio of juvenile justice issues, including juveniles sentenced to life without parole, the transfer of juveniles into the adult criminal justice system, and racial and ethnic disparities in juvenile justice. My work has supported reforms in numerous states through research and testimony. I am the author of several papers and fact sheets that have been cited by the National Academies of Science, Engineering and Medicine¹ and the National Institutes of Justice.² I received his undergraduate degree from the University of Rochester in 1997 and a Master of Public Policy from the George Washington University in 2005.
2. Starting in late March of this year, I have tracked the incidence of COVID-19 in juvenile detention, correction, and other residential facilities among incarcerated youth and the staff employed therein. This work has been cited by United States Senators,³ the *Washington Post*,⁴ National Public Radio,⁵ NBC News,⁶ the Associated Press,⁷ and other sources as the definitive source of information on the incidence of COVID-19 in juvenile facilities. To the best of my knowledge, I am the only person possessing this information.
3. Daily, I consume news articles from an array of publications that inform this work. Information about positive tests is also provided by colleagues at allied organizations that is typically confirmed through later reporting. Lastly, several states, including Louisiana

¹ National Academies of Sciences, Engineering, and Medicine. 2019. *The Promise of Adolescence: Realizing Opportunity for All Youth*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25388>.

² McCarthy, Patrick, Vincent Schiraldi, and Miriam Shark. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*. New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016. NCJ 250142.

³ Charles E. Grassley, et al., Letter to Administrator Caren Harp (May 6, 2020), <https://www.grassley.senate.gov/news/news-releases/senators-guidance-needed-shield-juvenile-offenders-coronavirus>.

⁴ David Montgomery & Richard A. Webster, *Coronavirus Spreads Among Kids in Detention in Louisiana*, WASH. POST (Apr. 16, 2020), https://www.washingtonpost.com/national/coronavirus-spreads-among-kids-in-detention-in-louisiana/2020/04/16/579871d4-8003-11ea-a3ee-13e1ae0a3571_story.html.

⁵ Mallory Noe-Payne, *Virginia Juvenile Correctional Facility Overwhelmed by Coronavirus*, NAT'L PUB. RADIO (Apr. 20, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838790229/virginia-juvenile-correctional-facility-overwhelmed-by-coronavirus>.

⁶ Tyler Kingkade, *"I'm Scared for my Child": Coronavirus Hits Louisiana Juvenile Detention Centers*, NBC NEWS (Apr. 13, 2020), <https://www.nbcnews.com/news/us-news/i-m-scared-my-child-coronavirus-hits-louisiana-juvenile-detention-n1182756>.

⁷ Margie Mason & Robin McDowell, *Riots & Fear as Coronavirus Hits US Juvenile Centers*, ABC NEWS, <https://abcnews.go.com/Health/wireStory/riots-fear-coronavirus-hits-us-juvenile-centers-70369487>.

(see paragraph 7, below) provide some information on the incidence of COVID-19 in some of their juvenile facilities.

4. As of May 14, 2020, I am aware of 380 incarcerated youth who have been diagnosed with COVID-19 in the United States.
5. As of May 14, I am aware of 461 staff members working in juvenile facilities who have been diagnosed with COVID-19 in the United States.
6. On March 27, the *Times-Picayunes* reported three incarcerated youth had tested positive for COVID-19, the first Louisiana cases of which I was aware. On March 31, the Associated Press reported that one child, held in a group home in Baton Rouge, had tested positive.⁹
7. In the beginning of April, the Louisiana Office of Juvenile Justice (“OJJ”) launched a webpage on its website titled, “OJJ COVID-19 Information,” revealing some information about the incidence of COVID-19 in four state-run facilities: Acadiana Center for Youth, Bridge City Center for Youth, Swanson Center for Youth in Columbia, and Swanson Center for Youth in Monroe. That webpage is updated on most weekdays and occasionally on weekends. I visit this webpage daily and have been doing so since it launched.
8. At no time did the OJJ webpage described in Paragraph 7 mention the incidence of COVID-19 at group homes. I learned of three more COVID-19 cases among youth while being interviewed by a reporter for the *Washington Post* that was published online on the afternoon of April 16, 2020.¹⁰ In total, I am aware of four Louisiana youth stricken by COVID-19 whose cases were reported by national media, not the OJJ. These four youths are not included in the cases reported on OJJ’s webpage.
9. There are presently 28 youth listed on the OJJ webpage as having tested positive for COVID-19. The last of these cases was revealed on or around April 17, the day after the *Washington Post* article cited above was published. There have been no additional cases added to the OJJ webpage since this time.
10. In an article published by WDSU on May 5, 2020, OJJ said that it has conducted 29 COVID-19 tests and found 28 positive cases.¹¹
11. In sum, OJJ did not conduct any testing of youth between April 17 and May 5. Nor am I aware of any tests since May 5, 2020. The number of positive cases among youth on the OJJ webpage has not increased.

⁸ Matt Sledge, *3 Youths in Louisiana Custody Test Positive for Coronavirus*, THE TIMES-PICAYUNE (Mar. 27, 2020), https://www.nola.com/news/coronavirus/article_16c1aa6e-7044-11ea-b054-8bc33633446b.html.

⁹ Robin McDowell & Margie Mason, *Kids Under Threat: Coronavirus Hitting Juvenile Detention Centers*, ASSOCIATED PRESS (Apr. 1, 2020), <https://apnews.com/ee561204aae1c4c459256ddcd635e7ec>.

¹⁰ See *supra* note 2.

¹¹ Emily Lane, *Parents Press for Better Handling of Pandemic in Louisiana’s Juvenile Prisons*, WDSU News (May 5, 2020), <https://www.wdsu.com/article/parents-press-for-better-handling-of-pandemic-in-louisianas-juvenile-prisons/32382767>.

12. Meanwhile, the staff cases of COVID-19 have continued to grow in these same facilities. Bridge City has 21 staff who have tested positive. After April 17, there were new cases on April 20, three on April 24, two on April 27, and one on April 28. Columbia reported its ninth on May 5; four of the nine were after April 17. Monroe has eight, four of which are after April 17, 2020.
13. Data of varying quality are available for state-run juvenile facilities in California,¹² the District of Columbia,¹³ Florida,¹⁴ Georgia,¹⁵ Indiana,¹⁶ Maryland,¹⁷ New Jersey,¹⁸ New Mexico,¹⁹ Ohio,²⁰ South Carolina,²¹ Tennessee,²² and Virginia,²³ posted online. Maryland and Florida report on known COVID-19 cases in all facilities. The Commonwealth of Massachusetts provides information to juvenile defenders about COVID-19 in juvenile facilities via email; I have received that information indirectly.²⁴ Some locales, such as Los Angeles County²⁵ and the states of Indiana, Maryland, Ohio, and Tennessee report negative tests as well as positive ones.
14. Testing practices in juvenile facilities vary widely across jurisdictions. Los Angeles County, for example, has begun testing all youth on admission to its two detention centers. New Jersey recently announced plans to test all individuals confined in juvenile and adult facilities statewide.

¹² Cal. Dep't Corr. & Rehab., Division of Juvenile Justice, <https://www.cdcr.ca.gov/juvenile-justice/>.

¹³ Gov't D.C., Public Safety Agency COVID-19 Case Data, <https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data>.

¹⁴ Fla. Dep't Juvenile Justice, Press Releases, <http://www.djj.state.fl.us/news/press-releases>.

¹⁵ Ga. Dep't Juvenile Justice, <https://djj.georgia.gov/>.

¹⁶ Ind. Dept' Corr., IDOC Facility COVID-19 Statistics, <https://www.in.gov/idoc/3780.htm>.

¹⁷ Md. Dep't Juvenile Servs., DJS Response to COVID-19, <https://djs.maryland.gov/Pages/COVID-19.aspx>.

¹⁸ N.J. Dep't Law & Pub. Safety, Juvenile Justice Commission: COVID-19 Updates, <https://www.nj.gov/oag/jjc/covid19-facilities.html>.

¹⁹ N.M. Children, Youth & Families Dep't, Juvenile Justice COVID-19 Report (May 8, 2020), <https://cyfd.org/news/news/juvenile-justice-covid-19-report>.

²⁰ Ohio Dep't Youth Servs., COVID-19 Youth Testing (May 13, 2020), <https://coronavirus.ohio.gov/static/DYSCOVVID-19Report.pdf>.

²¹ S.C. Dep't Juvenile Justice, Confirmed COVID-19 Cases Within SCDJJ, https://djj.sc.gov/Confirmed_COVID-19_Cases.

²² Tenn. Dep't Children's Servs, Wilder Youth Development Center, https://www.tn.gov/content/dam/tn/dcs/documents/covid-19/COVID-19_Testing.pdf.

²³ Va. Dep't Juvenile Justice, COVID-19 Resources for Parents & Stakeholders, <http://www.djj.virginia.gov/pages/about-djj/covid.htm>.

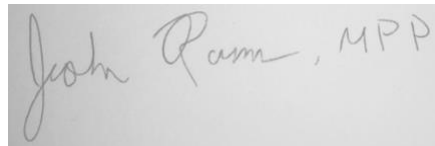
²⁴ Information available on file.

²⁵ L.A. County Probation, COVID-19 Information, <https://probation.lacounty.gov/coronavirus/#1585353402662-50edeac8-16c9>.

15. It is my belief, based on the reported data, that the state of Louisiana, the site of the first outbreaks in juvenile facilities, ceased testing incarcerated youth in its four state-run juvenile correctional facilities on or about April 17 despite being aware of the growth of COVID-19 among the staff at three of the four facilities.
16. Due to the lack of widespread testing, my research on juvenile facilities most likely undercounts the incidence of COVID-19. It is well known that many people who are diagnosed with the coronavirus are asymptomatic. Thus, I have been deeply troubled when, for example, the Pendleton (Ind.) Juvenile Correctional Facility reported three positive tests among three total tests on April 30, 2020; a fourth positive test among four total tests on May 2, 2020; a fifth, sixth, and seventh positive test among seven total tests on May 10, and an eighth, ninth, tenth, and eleventh positive test among eleven total tests as of May 11.²⁶ Adequate testing would surely reveal at least one youth over the course of two weeks who is not COVID-positive.
17. The absence of information on OJJ's COVID-19 webpage, such as the number of incarcerated Louisiana youth who have been tested for the coronavirus, the results of those tests, and the number of youth in medical isolation or other forms of quarantine, leaves vast ambiguity about the incidence of coronavirus in Louisiana's facilities. Louisiana's lack of reported new positive tests may be the result of a lack of adequate testing or the result of more complete testing with generally negative results, as in Los Angeles County.
18. OJJ is aware of cases in the residential group homes, and not reporting these cases to the public unless asked by national media. Without publicly disclosed information about testing practices and results, it is impossible to assess the degree to which COVID-19 may be spreading throughout Louisiana facilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2020 at Silver Spring, Maryland.

A rectangular box containing a handwritten signature in cursive script that reads "Joshua Rovner, MPP".

JOSHUA ROVNER, MPP

²⁶ See *supra* note 15.

[Reporting a PREA Incident](https://ojj.la.gov/reporting-a-prea-incident/)
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[Record Inquiry \(Custodian of Records\)](https://ojj.la.gov/record-inquiry-custodian-of-records/)
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OJJ COVID-19 Information

Updated as of 5/14/2020 – will be updated daily at 11:00am

COVID-19 Youth Positive Results

Secure Care Facility	# of Youth Positive	# of Youth Recovered
Acadiana Center for Youth Bunkie	1	1
Bridge City Center for Youth	10	10
Swanson Center for Youth Columbia	12	12
Swanson Center for Youth Monroe	5	5
Total	28	28

The Office of Juvenile Justice is working closely with its medical provider, Wellpath and guidance from the Louisiana Office of Public Health to determine the most appropriate treatment for each youth who may fall ill in its facilities during this crisis. Quarantine and isolation guidelines have been established to accommodate any exposure that has been determined.

“All OJJ efforts are coordinated to aid in maintaining safety and security for all young people in our care and those that provide them services. At the same time, we are reaching out to families of those affected by this crisis to keep them apprised of the health of their children.” – Deputy Secretary Dustin Bickham

OJJ has been limiting the number of visitors, contractors and deliveries on secure care campuses since the onset of the public health crisis. This also includes limiting transports to essential trips only. Per public health guidelines, anyone entering these facilities is being screened including temperature checks. PPE has been distributed throughout the secure care facilities.

Secure Care Facilities Where Youth Testing Has Occurred

Acadiana Center for Youth

Bridge City Center for Youth

Swanson Center for Youth in Columbia

Swanson Center for Youth in Monroe

COVID-19 Secure Facility Employee Positives

Secure Care Facility	# of Employees Positive	# of Employees Recovered
Acadiana Center for Youth	1	1
Bridge City Center for Youth	21	13
Swanson Center for Youth in Monroe	10	2
Swanson Center for Youth in Columbia	9	0
Total	41	16

Reporting Sexual Abuse or Sexual Harassment

All reports of sexual abuse or sexual harassment will be investigated and addressed. Youth, employees, and third parties can report incidents of sexual abuse or sexual harassment in verbal or written formats. All parties can file a report with the Office of Juvenile Justice by calling the Investigative Services hotline at 1-800-626-1430. Reporters can remain anonymous or provide contact information in the event more information is needed.



Contact Us

7919 Independence Blvd Baton Rouge, LA 70806

(tel: (225) 287-7900) (225) 287-7900



E. DUSTIN BICKHAM, JD, Interim Deputy Secretary

April 27, 2020

TO: OJJ Staff

FROM: E. Dustin Bickham, J.D.
Interim Deputy Secretary

A handwritten signature in black ink, appearing to read "E. Dustin Bickham", is written over the printed name in the "FROM:" field.

RE: Use of Chemical Agent in Secure Facilities
Memorandum dated March 17, 2020 (COVID-19)

Effective today, Probation and Parole staff will not be permitted to bring in chemical spray to any OJJ secure facilities when covering posts. The memorandum dated March 17, 2020, authorizing this practice is hereby rescinded. Probation and Parole staff will continue to be allowed to carry handcuffs on their person and will continue to follow the Threat Pattern Recognition Use of Force continuum as it pertains to the use of physical intervention and mechanical restraints.

In accordance with policy, Probation and Parole staff should continue to secure equipment that is not authorized for facility use in their locked vehicle so that it may be accessible. However, unless given specific directives from the Regional Director for a specific incident, chemical spray will not be permitted inside the secure facilities.

PLEASE POST AT THE FRONT GATE.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

J.H., by and through his mother and next friend,
N.H.; I.B., by and through his parents and next
friends, A.B. and I.B., on behalf of themselves
and all others similarly situated,

Plaintiffs-Petitioners,

-against-

JOHN BEL EDWARDS, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF LOUISIANA;
THE LOUISIANA OFFICE OF JUVENILE
JUSTICE; EDWARD DUSTIN BICKHAM, IN
HIS OFFICIAL CAPACITY AS INTERIM
DEPUTY SECRETARY OF THE LOUISIANA
OFFICE OF JUVENILE JUSTICE; JAMES
WOODS, IN HIS OFFICIAL CAPACITY AS
THE DIRECTOR OF THE ACADIANA
CENTER FOR YOUTH; SHANNON
MATTHEWS, IN HER OFFICIAL CAPACITY
AS THE DIRECTOR OF THE BRIDGE CITY
CENTER FOR YOUTH; SHAWN HERBERT,
IN HER OFFICIAL CAPACITY AS THE
DIRECTOR OF THE SWANSON CENTER FOR
YOUTH AT MONROE; and RODNEY WARD,
IN HIS OFFICIAL CAPACITY AS THE
DEPUTY DIRECTOR OF THE SWANSON
CENTER FOR YOUTH AT COLUMBIA,

Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-
EWD

CLASS ACTION

[PROPOSED] ORDER

Considering the foregoing *Emergency Motion for Temporary Restraining Order Seeking Immediate Furlough*, it is ordered that the motion is GRANTED IN PART and Defendants are temporarily restrained—up until and including the time that this Court issues a decision on the preliminary injunction application, after a hearing—from (1) continuing to confine all children

who are currently within 180 days of their release dates; (2) continuing to confine children who are presumptively eligible for release, including all children who are eligible for furlough under OJJ's criteria; (3) failing to test children for COVID-19; (4) using "Behavioral Intervention Rooms" for any child who tests positive for COVID-19 or displays symptoms of the disease; (5) confining children to their dormitories for lengthy periods of time; (6) using pepper spray on children; and (7) continuing the suspension of structured educational and rehabilitative programming in OJJ facilities. Defendants-Respondents are also ordered to develop, within 48 hours, an effective COVID-19 response plan governing the state's four children's detention centers that fully conforms to CDC guidelines.

The parties are directed to meet and confer within 24 hours of this order on the least burdensome means for Defendants-Respondents to comply with this Order.

A hearing in this matter will take place on _____.

Signed in Baton Rouge, Louisiana, this ____ day of _____, 2020.

Judge John W. deGravelles