UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons,* *Petitioners,* v. MAINE DEPARTMENT OF CORRECTIONS, *et al.*, *Respondents.*	Case No. 20-cv-00175-JAW **REPLY IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

The opposition filed by Respondents, Maine Department of Corrections (DOC) and Commissioner Randall Liberty, is most notable for what it does not say. Respondents do not contest that physical distancing is essential for preventing the spread of COVID-19. *See* Decl. of Dr. Nirav Shah ¶¶ 18-20, 31, *Cavalry Chapel of Bangor v. Mills*, Docket No. 20-cv-156-NT, ECF No. 20 (May 8, 2020). Respondents also do not dispute that absent a vaccine or effective treatment for COVID-19, prevention through physical distancing is necessary to protect medically vulnerable individuals from the risk of permanent harm or death. Goldenson Decl. ¶¶ 43-44; Parrish Decl. ¶ 35. Nor do Respondents dispute that it is impossible to abide by the U.S. Centers for Disease Control and Prevention's (CDC) physical distancing guidelines in DOC facilities. *See, e.g.*, Thornell Decl. at ¶¶ 33, 48. Finally, Respondents do not dispute that, despite having the authority to grant medical furlough, they have categorically refused to use that authority to enable medically vulnerable prisoners to physically distance during the pandemic. *See* Resp. at 7, ECF No. 19; Sideris Decl. Att. B at 5, ECF No. 1-8.

In short, "by failing to make meaningful use of [release] authority, [DOC] has failed to implement what appears to be the sole measure capable of adequately protecting vulnerable

inmates . . . in favor of measures that, even if they were fully and painstakingly implemented, would still leave vulnerable inmates subject to a grave risk to their health." *See Martinez-Brooks v. Easter*, No. 3:20-cv-00569, 2020 WL 2405350, at *23 (D. Conn. May 12, 2020). And unsurprisingly, many of DOC's claimed precautions—including the use of face shields and other protective equipment by medical staff; the widespread wearing of masks by prisoners and staff; the provision of alcohol-based hand sanitizer; and improved hygiene measures—are unavailable in practice. *See generally* Gross Decl. ¶¶ 13-16, Sukeforth Decl. ¶¶ 5-10; Supp. Ragsdale Decl. ¶¶ 2-5; Supp. Denbow Decl. ¶¶ 2-4; Gray Decl. ¶¶ 9-18. This leaves medically vulnerable prisoners in crowded and unhygienic settings where the spread of COVID-19 is all but assured. Emergency relief is required.

"The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom," especially during unprecedented emergencies like the COVID-19 pandemic. *See Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). "And the habeas court must have the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy[.]" *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). The remedy Petitioners seek is narrowly tailored to address the irreparable harm they will suffer absent injunctive relief, including:

> **(1)** an order prohibiting DOC from continuing to deny "access to medical furlough during the pandemic," *see* Petition at 49,
>
> **(2)** an order requiring testing in all DOC facilities, including testing of asymptomatic individuals, to detect an outbreak before it is too late, *see* Supplemental Parrish Decl. ¶¶ 3, 15, and
>
> **(3)** an order ensuring Petitioners have access to information within Respondents' control—including access to prisoners and the names of Class and Subclass Members, *see* Mot. 1-2; Bond Decl. ¶ 3-7.

I. Putative Class Members Face Irreparable Harm Absent Immediate Relief

Respondents do not dispute that serious illness or death from COVID-19 would constitute

irreparable harm, but quibble that such an outcome is only "possible" as opposed to "likely" for medically vulnerable Class Members. *See* Resp. at 17-19. This Court has recognized that even a relatively low risk of death may qualify as "irreparable," given that "practitioners consider even a very low absolute risk of death to be medically unacceptable." *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146, 162 & n.23 (D. Me.), *aff'd*, 922 F.3d 41 (1st Cir. 2019). Respondents make much of the fact that there are no confirmed positive cases in the Mountain View Correctional Facility, where the named Petitioners are housed, but that is unsurprising given that only two prisoners there have been tested to date. *See* Daily COVID-19 Dashboard, Me. Dep't of Corrections (May 28, 2020), https://bit.ly/2Af3CKu.

II. Petitioners Are Likely To Succeed on the Merits Under the Eighth Amendment

On the merits, this case is on all fours with other examples in which courts have ordered emergency injunctive relief to require release from prison in "meaningful numbers" during the COVID-19 pandemic. *See, e.g.*, *Martinez-Brooks v. Easter*, No. 3:20-CV-00569 (MPS), 2020 WL 2405350, at *22 (D. Conn. May 12, 2020); *see also Wilson v. Williams*, No. 4:20-CV-00794, 2020 WL 1940882, at *10-11 (N.D. Ohio Apr. 22, 2020); *Cameron v. Bouchard*, No. CV 20-10949, 2020 WL 2569868, at *29 (E.D. Mich. May 21, 2020). Respondents insist that they are not deliberately indifferent under the Eighth Amendment because they have undertaken numerous precautionary measures short of release. *See* Resp. at 11-14. Yet many of these precautions are unavailable in practice, *supra* p. 2, and, in any event, providing only "some treatment" is no defense when the "serious need for greater or more immediate medical attention" was obvious and nonetheless refused by the prison. *Perry v. Roy*, 782 F.3d 73, 77, 81 (1st Cir. 2015).

In this case, DOC's "knowledge of the need for medical care" (namely, physical distancing) is accompanied by the "intentional refusal to provide that care," and, as such, "the deliberate indifference standard has been met." *Leavitt v. Corr. Med. Servs., Inc.*, 645 F.3d 484, 499 (1st Cir. 2011) (citation omitted). DOC acknowledges that physical distancing is often impossible in its facilities, including inside "an inmate's individual cell / living area," Thornell Decl. at ¶¶ 22, 33, 42-43, 48, which could include from 50 to 120 other inmates, *see, e.g.*, Ragsdale Decl. ¶ 13 (50 people); Gray Decl. ¶ 10 (80 people), Gross Decl. ¶ 15 (120 people), Dale Decl. ¶ 6 (90 people). DOC also knows that almost half of its population has at least one of the medical vulnerabilities that place them at serious risk of permanent illness or death from COVID-19. *See* Thornell Decl. ¶¶ 11, 62. Finally, Respondents have been on notice for months that meaningful release through medical furlough and home confinement is the only way to enable physical distancing and to thin the prison population to enable physical distancing for those who remain inside. *See* Thornell Decl. at ¶¶ 62, 69 (describing early meetings with the ACLU of Maine on this topic). Yet as in *Wilson*, *Martinez-Brooks*, and *Cameron*, *supra* p.3, DOC has refused to meaningfully exercise its release authority and instead has pursued an approach that is incomplete in inception and flawed in execution. *See supra* p. 2.

Respondents next argue that they have provided meaningful release, claiming that in contrast to another prison's "slow and inflexible" release of 21 out of nearly 1,000 inmates (2.1%), DOC has released 95 out of nearly 2,000 prisoners (4.7%).[1] Resp. at 13 (citing *Martinez-Brooks*, 2020 WL 2405350). Constitutional rules do not rest on such fine distinctions. As in *Martinez-Brooks*, physical distancing remains impossible in DOC facilities.

[1] As of May 28, there were only 66 prisoners on home confinement, forming 3.5% of the total population. *See* DOC Daily Dashboard (May 28, 2020), https://bit.ly/2Af3CKu. DOC has never identified how many (if any) of these individuals are medically vulnerable to COVID-19.

Finally, Respondents blame their slow and inflexible release on the statutory limitations of home confinement. *See* Resp. at 13-14 (stating "MDOC can only place inmates in SCCP if they meet the statutory eligibility requirements"). This excuse holds no water. DOC also has authority to grant furlough "when medical treatment . . . is necessary and cannot be done within MDOC," Resp. at 7, yet DOC has categorically refused to use this authority during the pandemic. *See* Sideris Decl. Att. B ; Denbow Decl. ¶ 13. In their response, Respondents double down on their refusal to provide medical furlough to a prisoner with hypertension "simply because of the risk of COVID-19." Resp. at 7; Thornell Decl. at ¶ 70. Yet when faced with a disease with no effective curative treatment that kills nearly 1 in 10 (8.4 %) people with hypertension, Parrish Decl. ¶¶ 7-9, that is exactly what DOC must do.[2]

III. Petitioners Are Likely to Succeed on the Merits under the Americans with Disabilities Act

Petitioners in the Disabilities Subclass are also likely to succeed in showing that DOC has refused reasonable accommodation—namely, physical distancing—for federally protected disabilities. *See* Mot. at 16-20. In the two sentences Respondents devote to Petitioners' reasonable accommodation argument, they criticize Petitioners for demanding release "regardless of eligibility" for home confinement or medical furlough. Resp. at 14-15. This is a red herring. Members of the Disabilities Subclass are eligible for lifesaving medical care (physical distancing) available through medical furlough, absent a specific reason that such an accommodation would not be safe for a specific individual. *See* 34-A M.R.S. § 3035(2)(C)

[2] Respondents' claim that medical furlough is "unmonitored" is confusing, Resp. at 19, because prisoners on medical furlough remain subject to DOC custody and supervision. *Cf. Martinez-Brooks v. Easter*, 2020 WL 2405350, at *14 (describing that federal prisoners on home confinement remain under BOP custody). Notably, mandating the general availability of medical furlough would not prevent DOC from weighing specific safety concerns for a particular person.

(granting broad authority for medical furlough). Similarly, the named Petitioners and many members of the proposed class meet the essential statutory criteria for home confinement. *See* 34-A M.R.S. § 3036-A. Furthermore, the ADA prohibits public entities like DOC from adopting policies that "have the effect" of discriminating against qualified individuals with disabilities. 28 C.F.R. § 35.130(b)(3)(I). Accordingly, to the extent DOC has adopted policies narrowing eligibility for medical furlough or home confinement or refusing accommodations to ensure those programs are available for prisoners with disabilities, such policies violate the ADA. *See id.*; *Nunes v. Mass. Dep't of Corr.*, 766 F.3d 136, 145 (1st Cir. 2014).

Finally, Respondents maintain that they considered medically vulnerable prisoners for home confinement, thus foreclosing any claim of disability discrimination. Resp. at 13. But this turns the ADA on its head. By funneling all release claims through the home confinement process (which often requires a job in the community at which physical distancing would be impossible), *see, e.g.*, Denbow Decl. at ¶ 13, and denying access to medical furlough, DOC discriminates against members of the Disabilities Subclass. Such disparate treatment is exactly the type of discrimination against prisoners with disabilities that the ADA is designed to prevent.

IV. The Remaining Equitable Factors Support Granting the Requested Relief

The equities strongly support the narrowly tailored relief requested by Petitioners. *See* Mot. at 20. Respondents claim that it would be against the public interest to grant prisoners "indiscriminat[e] releas[e]" into the community, without any monitoring by DOC. Resp. at 19. But this grossly mischaracterizes Petitioners request to protect medically vulnerable prisoners using tools within existing DOC authority—and with prisoners remaining subject to DOC oversight and control—akin to the approaches in *Wilson*, *Martinez-Brooks*, and *Cameron*, *supra* p. 3. Such relief, alongside the testing and information-sharing protections requested by Petitioners, is necessary to protect their constitutional rights, and also to lessen the spread of

COVID-19 among prisoners, staff, and the broader community. *See* Mot. at 20. As the United Nations recently urged, release of medically vulnerable prisoners in the United States is necessary "to prevent large outbreaks of COVID-19," and "failure to take timely action may have far-reaching consequences." Ex. A (available at https://bit.ly/2XHpXIr).

V. There Are No Procedural Barriers to Granting Relief

Respondents have not rebutted Petitioners' showing that it would be futile to exhaust state court procedures in seeking emergency relief for members of the proposed class. *See* Mot. at 10-11. Respondents claim that Mr. Denbow's case in state court illustrates the availability of state court procedures. Resp. at 17. Quite the opposite. Despite the best efforts of court personnel, Mr. Denbow received no response to his emergency state court filings for five weeks. *See* Docket, ECF No. 13-2 (May 20, 2020). To this day, Mr. Denbow has received no ruling on an emergency motion for bail and emergency motion for hearing on bail. *See id.*; Appendix at 19-24, 33-37, ECF No. 1-2 (May 15, 2020). During this difficult time, the state courts lack the resources "to timely respond to a massive volume of emergency habeas petitions"—from the approximately 900 members of the proposed class —"in the urgent manner that those petitions require." *McPherson v. Lamont*, No. 3:20CV534. 2020 WL 2198279, at *7 (D. Conn. May 6, 2020). Nor is there any class mechanism in state court to streamline proceedings. In such cases, the state remedy would be futile and Petitioners are likely to suffer irreparable injury without immediate judicial relief.

CONCLUSION

Pursuant to the Court's broad equitable powers and authority in habeas cases to provide relief "as law and justice require," 28 U.S.C. § 2243, Petitioners respectfully request that the Court grant a temporary restraining order to protect them during further development of the case.

Dated May 29, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that she has electronically filed this date the foregoing REPLY IN SUPPORT OF TEMPORARY RESTRAINING ORDER with the Clerk of the Court using the CM/ECF system. This filing is available for viewing and downloading from the ECF system.

Dated: May 29, 2020

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US Government urged to do more to prevent major outbreaks of COVID-19 in detention centres – UN experts

GENEVA (29 May 2020) – UN human rights experts* today urged the United States Government to reduce the population in places of detention to prevent large outbreaks of COVID-19 and ease the mounting pressure on staff and the penitentiary system as a whole.

"We call on the United States Government to act now. Failure to take timely action may have far-reaching consequences," they said.

"People in detention throughout the US are particularly vulnerable to COVID-19 and for many, their pre-existing medical conditions increase the risk of death," the experts noted. "In these closed, and often overcrowded places, basic protective measures, such as physical distancing and hygiene rules, cannot be observed.

"Those at greatest risk should immediately be identified, taking into account situations of vulnerability, and release measures should be implemented," the experts said. "Despite some steps at the federal and state levels to reduce the population of people in custody, the Government's response has been insufficient.

"Minorities, including African-Americans, are disproportionately represented, both among the prison population and among those succumbing to COVID-19. Thus, any failure to effectively mitigate the resulting risk is also an issue of racial discrimination and racial justice of paramount importance," the independent experts warned.

They called on the authorities to factor in that people belonging to minority groups, lesbian, gay, bisexual, trans- and gender-diverse people, and people with disabilities are all more likely to experience COVID-19 related complications, due to underlying health conditions or inadequate access to appropriate routine medical care, which increases the risks in case of infection. The risks and needs of older persons (the fastest growing demographic group in prison) and pregnant women should also be given due consideration.

According to international standards, States should ensure that people in detention have access to the same standard of health care as is available in the community, and that this applies to everyone regardless of citizenship, nationality or migration status.

"The authorities must urgently use readily available alternatives to detention for migrants held in overcrowded and unsanitary administrative centres to counter the risk of a COVID-19 outbreak," the experts added, urging the US Government to suspend immigration raids, deportations, expulsions or other forms of forced returns.

They reminded the authorities that the pandemic and the declaration of health emergency at federal,

state or city level does not mean that human rights can be suspended. "The right to life, the right to health, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as well as the procedural guarantees protecting the liberty and dignity of the person, can never be derogated from."

NOTE TO EDITORS: Relevant approaches and recommendations in relation to COVID-19 exposure-related risks in prisons have been formulated by the UN Inter-Agency Standing Committee; the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the UN High Commissioner for Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers; the UNODC; and the OHCHR, WHO, UNODC and UNAIDS

ENDS

**** The experts:*** *Ms. Agnès Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Mr. Ahmed Reid (Chair), Ms. Dominique Day, Mr. Michal Balcerzak, Mr. Ricardo A. Sunga III, and Mr. Sabelo Gumedze, Working Group of experts on people of African descent; Mr. Dainius Pūras, Special Rapporteur on the right to physical and mental health; Mr. Fernand de Varennes, Special Rapporteur on minority issues; Ms. E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Mr. Víctor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Ms. Claudia Mahler, Independent Expert on the enjoyment of all human rights by older persons; Mr. Diego García-Sayán, Special Rapporteur on the Independence of Judges and Lawyers; Mr. Felipe González Morales, Special Rapporteur on the human rights of migrants; Ms. Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities.*

The Special Rapporteurs, Independent Experts and Working Groups are part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.

UN Human Rights, country page – United States of America

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons,* *Petitioners,* v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity,* MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-00175-JAW

SUPPLEMENTAL DECLARATION OF ROY GIBSON PARRISH, MD

I, Roy Gibson Parrish, declare as follows:

1. This declaration is to supplement my previous declaration dated May 14, 2020.
2. The United States has had more than 1.6 million cases and 100,000 deaths from COVID-19,[1] and Maine had 2,189 cases and 84 deaths as of May 28, 2020.[2]
3. I understand that there have been four positive tests of prisoners in the Maine Correctional Center (MCC) in Windham, one of the Maine Department of Corrections (MDOC) facilities. Three of the prisoners testing positive were asymptomatic. Given these positive cases in the MCC in spite of the efforts that MDOC has made to limit

[1] COVID-19 Dashboard by the Center for Systems Science and Engineering, Johns Hopkins University, https://coronavirus.jhu.edu/map.html; CDC Coronavirus Disease (COVID-19) Cases in the U.S.: https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html, last updated May 28, 2020.

[2] Maine Division of Disease Surveillance, Novel Coronavirus 2019 (COVID-19): https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml#situation, last updated May 28, 2020.

transmission to prisoners in all MDOC facilities, I recommend testing of all prisoners and staff in all other MDOC facilities at this time, to determine whether there are asymptomatic cases of COVID-19 in other MDOC facilities. As discussed below, physical distancing remains the cornerstone of effective prevention even with adequate testing.

4. Some background information on testing is helpful to understand these tests results at MCC. As a general matter, a test for a certain disease can vary in its specificity and sensitivity. Specificity and sensitivity are measures of the test's ability to accurately determine whether an individual has or does not have the disease. For example, a given test can generate both false positive and false negative results as diagramed below.

		Disease +	Disease –	Total
Test	+	True Positive	False Positive	Total Positive Tests
	–	False Negative	True Negative	Total Negative Tests
Total		Total with Disease	Total with No Disease	All Persons Tested

5. The sensitivity of a test is the proportion of people with the disease who test positive and thus explains the ability of a test to correctly identify people who have the disease.

		Disease +	Disease −
Test	+	TP	FP
	−	FN	TN
Total		TP+FN	
		$\frac{TP}{TP+FN}$	

Sensitivity = Proportion of people with disease who test positive

6. The specificity of a test is the proportion of people with no disease who test negative and thus explains the ability of a test to correctly identify those without the disease.

		Disease +	Disease −
Test	+	TP	FP
	−	FN	TN
Total			TN+FP
			$\frac{TN}{TN+FP}$

Specificity = Proportion of people with NO disease who test negative

7. For example, a test with 95% sensitivity would return a positive result for 95% of individuals who actually have the disease, but will return a false negative result for 5% of individuals with the disease. Correspondingly, a test with 95% specificity will correctly return a negative test for 95% of individuals who do not have the disease, but will return a false positive result for 5% of individuals that do not have the disease.

8. The likelihood of a "false negative" also varies depending on the timing of the specimen collection for the test and the adequacy of the specimen to be tested. For example, a nasal swab specimen may return a false negative result if the person obtaining the sample fails to correctly gather the specimen, or if the specimen is collected too early in the course of the infection.

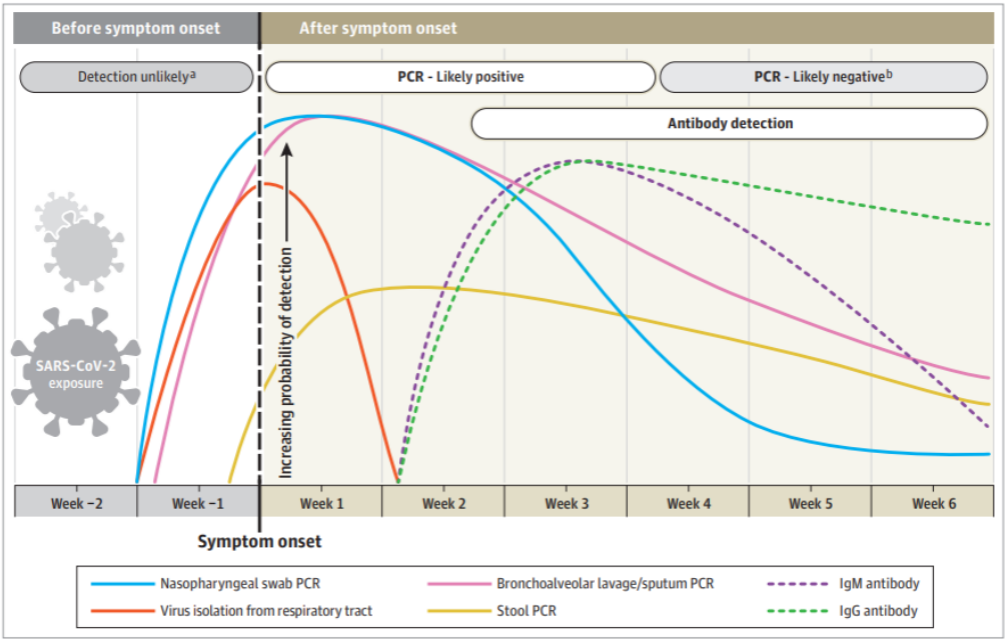
9. An understanding of testing for the novel coronavirus (SARS-CoV-2) is "still evolving."[3] At this time, the most common type of test for diagnosis of COVID-19 is reverse transcriptase-polymerase chain reaction (RT-PCR) testing, which is performed using nasopharyngeal swabs or other specimens from the upper respiratory tract. The swab is intended to capture detectible levels of viral RNA. Different RT-PCR tests target different viral RNA, and have different sensitivities.

10. The following chart depicts our current understanding of the time period during which a person who has been exposed to COVID-19 and ultimately develops symptoms related to the virus. Not all people experience symptoms from COVID-19, and that this chart does

[3] Nandini Sethuraman, MD, et al., *Interpreting Diagnostic Tests for SARS-CoV-2*, JAMA, (May 6, 2020), available at doi:10.1001/jama.2020.8259.

not address the timeframe of positive tests for "the large population of asymptomatic individuals who go undiagnosed without active surveillance."[4]

Figure. Estimated Variation Over Time in Diagnostic Tests for Detection of SARS-CoV-2 Infection Relative to Symptom Onset



Estimated time intervals and rates of viral detection are based on data from several published reports. Because of variability in values among studies, estimated time intervals should be considered approximations and the probability of detection of SARS-CoV-2 infection is presented qualitatively. SARS-CoV-2 indicates severe acute respiratory syndrome coronavirus 2; PCR, polymerase chain reaction.

[a] Detection only occurs if patients are followed up proactively from the time of exposure.

[b] More likely to register a negative than a positive result by PCR of a nasopharyngeal swab.

11. For most people who experience symptoms from COVID-19, "viral RNA in the nasopharyngeal swab . . . becomes detectable as early as day 1 of symptoms and peaks within the first week of onset."[5]

12. As with other tests, tests for COVID-19 are not always perfect at detecting people who have the virus. On the one hand, RT-PCR tests are very accurate when it comes to people who test positive; there are virtually no false positives, and they achieve about 99.99+ percent specificity, meaning that a positive test is almost certain to reflect a positive case

[4] Nandini Sethuraman, MD, et al., *Interpreting Diagnostic Tests for SARS-CoV-2*, JAMA, (May 6, 2020), available at doi:10.1001/jama.2020.8259.
[5] *Id.*

of COVID-19.[6] On the other hand, the sensitivity of these tests (i.e., the likelihood of identifying all infected patients) has been a challenge, principally due to "sampling error or the biology of the disease."[7]

13. The sensitivities of the COVID-19 tests vary depending on several factors, including the viral RNA being tested and the type of specimen being gathered. "In a study of 205 patients with confirmed COVID-19 infection, RT-PCR positivity was highest in bronchoalveolar lavage specimens (93%), followed by sputum (72%), nasal swab (63%), and pharyngeal swab (32%)."[8] "False-negative results mainly occurred due to

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[6] *Id.* One article explained that "Specificity of most of the RT-PCR tests is 100% . . . [even though] [o]ccasional false positive results may occur due to technical errors and reagent contamination." *Id.*

[7] University of Washington, UW Medicine, Frequently Asked Questions About COVID-19 Testing. (emphasis added), https://testguide.labmed.uw.edu/public/guideline/covid_faq:

"**How sensitive is the SARS-CoV-2 RT-PCR test?**

The UW laboratory developed test (LDT) using the CDC kit has been shown to be at least as sensitive as any other test that to which it has been compared. Side-by-side comparison with the Washington State Public Health Lab showed 100% concordance in validation. ***The test is highly sensitive in an analytic sense; if viral RNA is present in the sample, it is very likely to be detected. However, either because of sampling error or the biology of the disease (e.g. virus present in lower but not upper respiratory tract), there have been known cases of patients with negative RT-PCR results who later were RT-PCR positive. The frequency of this (i.e. the clinical sensitivity) has not yet been determined.***

In published literature, one case series of 51 patients showed a sensitivity of RT-PCR of 71% from the first throat swab or sputum. 23% of those initial negatives were positive on the 2nd RT-PCR, 4% on the 3rd, and 2% on the 4th RT-PCR test (Fang et al. 2020). Another study conducting serial RT-PCR testing showed the mean time from an initial negative RT-PCR to subsequent positive RT-PCR was 5.1 days (± 1.5 days) (Ai et al. 2020).

References

- Fang Y, et al. Sensitivity of Chest CT for COVID-19: Comparison to RT-PCR. *Radiology* 2020:200432. 32073353
- Ai T, et al. Correlation of Chest CT and RT-PCR Testing in Coronavirus Disease 2019 (COVID-19) in China: A Report of 1014 Cases. *Radiology* 2020:200642. 32101510"

[8] *Id.* (citing Wenling Wang, PhD, *Detection of SARS-CoV-2 in Different Types of Clinical Specimens*, JAMA (March 11, 2020), available at https://jamanetwork.com/journals/jama/fullarticle/2762997?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jama.2020.8259#full-text-tab).

inappropriate timing of sample collection in relation to illness onset and deficiency in sampling technique, especially of nasopharyngeal swabs."[9] I do not know the type of test used for the Maine Department of Corrections (MDOC) testing.

14. The risk of false negatives means that some MDOC prisoners or staff who tested negative may nonetheless be infected with the coronavirus, and, in closed congregate settings, could infect other people with whom they have close contact. This is just one of the many reasons why physical distancing remains the cornerstone of effective prevention, even when there is adequate testing in one MDOC facility.

15. I have been provided with the declaration from Deputy Commissioner Ryan Thornell, PhD. In his declaration, Deputy Commissioner Thornell stated that "[t]he Maine CDC does not recommend testing at other MDOC facilities until there is reason to believe inmates or staff in those facilities have been exposed or are suspected of having COVID-19." Thornell Decl., ECF No. 20 at ¶ 58 (citing May 23, 2020 Maine Health Alert Network Public Health Advisory, ECF No. 20-5, Ex. E). In fact, the document cited by Deputy Commissioner Thornell simply states that "for mass testing at this time, Maine CDC's Health and Environmental Testing Laboratory (HETL) will only test samples collected pursuant to this policy," which advises universal testing after a single positive case. *See* Maine Health Alert Network Public Health Advisory, ECF No. 20-5 at 1. The advisory expressly notes that "facilities may opt to pursue universal testing before a single case is confirmed." *Id.* Mindful of the risk of asymptomatic transmission in a closed congregate setting like DOC, it is my opinion, as stated above in paragraph #3, that testing of <u>all</u> prisoners and staff in <u>all</u> MDOC facilities (other than the Maine

[9] *Id.*

Correctional Center where testing is ongoing) should be conducted at this time, given the recently identified presence of one symptomatic and three asymptomatic prisoners in one of the MDOC facilities.

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

Executed this 29th of May, 2020

/s/ R. Gibson Parrish, M.D.

R. Gibson Parrish, M.D.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons*, *Petitioners*, v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents.*	Case No. 20-cv-00175-JAW

DECLARATION OF BRANDON GROSS

I, Brandon Gross, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated in the Maine Department of Corrections (DOC), at the Bolduc Correctional Facility, which we sometimes call "the Farm." My DOC number is 63136. I am 29 years old and am diagnosed with asthma, which I understand places me at higher risk for severe illness or death from COVID-19.
2. I am incarcerated for unlawful possession of cocaine, with a two-year sentence. My earliest release date is January 14, 2021.
3. I am scared that I could get sick or die in prison before my release date.

Medical Conditions and History

4. I have asthma and have had it since I was a kid. I have an albuterol rescue inhaler and often experience shortness of breath and other symptoms of asthma. The heat and wearing the mask have only made my symptoms worse. When my asthma flares up even more, I need nebulizer treatments. I believe that medical has me listed as having shortness of breath, which I have, as well as asthma.
5. When I get a cold or allergies, my asthma flares up and I sometimes get so stuffed up that I can't breathe. I get chest pains and shortness of breath and everything feels tight and hard to breath.
6. I am also diagnosed with ADHD, bipolar disorder, and Meniere's disease, which includes vertigo, tinnitus, and hearing loss in my left year. For these diagnoses, I am prescribed with Wellbutrin (for ADHD symptoms), Geodon (for bipolar), Meclizine (for nausea and dizziness), and a few other medications for fibromyalgia and fluid in my ear.

Home Confinement

7. I am classified by DOC as "community" status. I had just been approved for work release when everything got shut down.

8. I have applied for home confinement to go live in a sober house. The best place for me to go would be to live with my mom and dad, who have room in their house for me to physically distance there. But people don't seem to get approved for home confinement unless they're going to work or a treatment house, so I put the sober house in my application.

9. Every time I ask my caseworker or other DOC staff about my application, they say I'm bothering them. My caseworker said "the more you ask, the more we're not going to give it to you." The Director also said I would not get home confinement if I kept "bothering his staff." So I stopped asking.

10. The prison has said I am eligible for home confinement, but my application is still waiting to be approved.

11. I know that a lot of people here have been denied home confinement. Of all the people who have applied for home confinement at Bolduc (which is a minimum and community level facility), most people have been denied. Maybe one or two people got home confinement and they only had about 20 days left on their sentences.

12. I have been told that the home confinement application process usually takes four to six weeks before it is possible to get approved.

Conditions in the Prison

13. There was a staff member at Bolduc who tested positive for COVID-19, several weeks ago. This staff member was around multiple inmates before he developed symptoms. But the prison never tested any prisoners. They quarantined one person for a few days (not fourteen days) at the Maine State Prison. They brought him back to Bolduc after just a few days without being tested. Aside from that, nobody was quarantined. All they did was come to take our temperatures, and then left.

14. I wrote a grievance about how there is no social distancing in here and how DOC did not take any precautions after the positive test, and that I am at risk because of my asthma. DOC denied the grievance for a procedural reason (because they said it addressed more than one topic). The Commissioner approved the denial.

15. It is impossible to social distance in Bolduc. There are about 120 people in my dorm and 120 people in the dorm across the way. Within the dorms, we share toilets, sinks, showers, and common areas.

16. The cells are not very big and they're shared between four to six people. It is impossible to stay six feet apart in the cells.

17. There are four "walks" in each dorm. There are two phones on each walk, which are not six feet apart and are not cleaned between uses. There are shared bathrooms (with toilets, sinks, and showers) on each walk, with each one shared among about forty people. But with 120 people in the dorm, there is no restriction on people using a bathroom from a different walk. Toilets, sinks, and showers are not cleaned between each use.

18. The only place for us to wash our hands is in the shared bathrooms. There is no alcohol-based hand sanitizer available to prisoners.

19. The only time you can social distance is outside, but we are only allowed to go outside during some parts of the day.

20. I have no idea whether other prisoners or staff could have the virus, and, for most people, I do not think that DOC knows either. Nobody in my dorm has been tested. As for prison staff, DOC does not provide us with information about testing (except for the one positive test several weeks ago). Some guards periodically stay home and I do not know whether that is because they have symptoms of the disease. One of the officers on the night shift coughs all night and never wears a mask.

21. I have read that COVID-19 can live on surfaces for days and I am afraid that the virus could be living on surfaces throughout the dorm (including in the common areas and shared bathrooms). The dorm is supposed to be cleaned by prisoners twice a day, but there is no supervision to make sure they're actually doing it, or are doing a thorough job. There is no bleach or bleach-based materials to clean. Instead, DOC provides a "neutral" pink cleaner. There has not been any change in the cleaning materials since we learned about COVID-19.

22. All prison staff and prisoners now have access to masks, but most staff do not wear masks most of the time. The masks that are provided to prisoners look like they are made of the same material as our boxer shorts. Even when I go into my caseworker's office, he does not put on a mask.

23. Even though I try to stay away from other people as much as possible, there are many times each day when I cannot avoid close contact with other people.

    a. When I wake up in my cell, I am surrounded by three other people in double bunk beds. None of us wear masks when we sleep.

    b. We go to the meal hall three times a day. They call each walk (about 40 people) separately, but sometimes they call us back to back. It's a small dining area and we can't physically distance. We can sit about four feet (tops) away from others. They have tape marked out by six feet but nobody follows it because there is not enough room. We cannot wear masks when we eat.

    c. When traveling in the facility to go to the meal hall or to get medical care, we travel crowded together, all bunched up.

    d. Medical care, including medication, is provided in the administration building. I go to get medication three times a day. Sometimes the nurses do not wear gloves while passing out medication. There is tape marking out six feet to wait in the medication line, but nobody can follow it because there is not enough space. We stand one or two feet apart. We wear our masks in line, but cannot wear our masks when we are taking our medication.

    e. I also work on grounds crew with about fifteen other prisoners from both dorms, plus an officer. We all travel together in a truck and we can't socially distance. I have to keep working otherwise I will lose my good time credit for an earlier release.

f. I started taking classes at the library, which is a small space where people come in and out and it is impossible to stay six feet apart. Anyone from any dorm could come into the library while I am there.

24. I am afraid that even if other prisoners get sick, they will try to hide it (and infect the rest of us) because they're afraid of getting quarantined or getting sent up to the Maine State Prison. If someone gets sick or they think they're sick, DOC will quarantine your entire cell. Your cell mates don't want to get quarantined, so they pressure people not to report symptoms. I have heard people, including my cell mates, say they will not report symptoms because they do not want to get quarantined.

25. DOC tries to keep us limited to our dorm for the most part, but we mix dorms during work on the grounds crew. Plus I am worried that the staff could quickly spread the disease between the dorms. Officers congregate together (often without masks) and then travel to and from the different dorms. Not to mention that the staff travel to and from the community every day. Most days, rovers and caseworkers go dorm to dorm. Some caseworkers never wear masks even though they travel throughout the entire facility.

26. If someone gets COVID-19 here, it's going to go through like wildfire. And it's going to be the staff who bring it in.

27. I have provided authority to use my electronic signature for this declaration.

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

Dated May 29, 2020

/s/ Brandon Gross

Brandon Gross

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons,* *Petitioners,* v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-175-JAW

DECLARATION OF DALE SUKEFORTH

I, Dale Sukeforth, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated in the Maine Department of Corrections (DOC), Maine Correctional Center. My DOC number is 9110. I am 50 years old and am diagnosed with numerous medical conditions, including diabetes and advanced cirrhosis of the liver, which I understand place me at higher risk for severe illness or death from COVID-19.
2. I am incarcerated for theft by unauthorized taking or transfer, with a 19-month sentence. My earliest release date is March 15, 2021, less than a year away. Even once I am released, I will remain supervised by the DOC during one year of probation.
3. I am scared that I could get sick or die in prison before my release date. I understand that there have been four positive tests in the Maine Correctional Center and I am worried I could be next.

Medical Conditions and History

4. I am 50 years old and am diagnosed with diabetes and advanced cirrhosis of the liver due to Hepatitis C. I also have post-traumatic stress disorder, am missing my spleen, and have undergone operations on my lungs in the past. I am prescribed medication for many of these conditions, including insulin for diabetes, Hepatitis-C medication for liver cirrhosis, as well as blood pressure medication and medication for my PTSD.

Conditions in the Prison

5. It is impossible to socially distance at the Maine Correctional Center, even with the new precautions after the positive COVID-19 tests in this facility. I am afraid that the dozens of people who I have close contact with each day could be carrying or spreading the virus.

6. I live in A-Pod, which has almost 90 inmates, with four "walks," divided into south side and north side, and bottom tier and top tier. There are three shower stalls in the entire dorm, which are not cleaned between uses.

7. I have read that COVID-19 can live on surfaces and I am afraid that the virus could be living on surfaces throughout the pod (including in the shared shower area). The dorm is supposed to be cleaned by prisoners once a day. We do not have any bleach or bleach-based materials to clean. Instead, DOC provides a pink cleaner that is supposed to sit on surfaces for ten minutes to be effective. The first time I saw anyone using this procedure (or clean the floors at all) was yesterday, after I spoke with an attorney on a recorded line about hygiene concerns. There has not been any change in the cleaning materials since we learned about COVID-19.

8. We have access to soap to clean our hands, but the hand sanitizer on the wall dispensers says that it has no alcohol in it.

    a. The officers have their own hand sanitizer that they carry. Prisoners are not allowed to use the officers' hand sanitizer. Once a day we get a squeeze of hand sanitizer during the medication line.

9. Even though I try to stay away from other people as much as possible, there are many times each day when I cannot avoid close contact with other people.

    a. I wake up in a small cell that I share with one other person. It is impossible to physically distance when moving around in the cell.

    b. Later in the morning, I line up for the medication line with the rest of the people south side bottom tier, about 20 people. Nobody can stay six feet apart in line. If prisoners wear masks at all, the masks often hang off one side of their face. There are three pieces of tape six feet apart, in the area closest to the nurse who hands out the medication. People behind those three pieces of tape stand bunched together, shoulder to shoulder. The nurse at the medication line does not wear a face shield and sometimes only has a cloth mask.

    c. I need insulin four times a day. Each time, I have to walk through the pod and expose myself to close contact with people from other "walks" who are bunched together in the common areas. I walk with a guard to the medical office. Other people from different pods, including the pod where there has been a positive case, stand in line to wait for the nurse to provide insulin shots. The nurse who gives me insulin does not wear a face shield and has had contact with the positive cases of COVID-19 in the facility.

    d. We get our meals in the pods. We walk to the middle of the pod to get our trays, along with the approximately 20 other people in our walk. Then we go and eat in our cells.

    e. The phones in the common area are only about three feet apart. It is impossible to physically distance when using the phones. The phones are often not cleaned between uses, and when they are cleaned, they are not cleaned properly. As of today, an officer gave me a piece of plastic to put between my mouth and the phone.

10. DOC tries to keep us limited to our pods, but I am still worried that the staff could quickly spread the disease between the pods. Officers from many different pods congregate together (often without masks) and then travel all around the facility. Not to mention that the staff travel to and from the community every day.

11. I was tested for COVID-19 last week and was tested again on May 27, 2020.

12. I have provided authority to use my electronic signature.

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

Dated May 28, 2020

/s/ Dale Sukeforth

Dale Sukeforth

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons*, *Petitioners*, v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-00175-JAW

SUPPLEMENTAL DECLARATION OF SEAN RAGSDALE

I, Sean Ragsdale, am over the age of 18 and fully competent to make the following declaration:

1. This declaration is to supplement my previous declaration dated May 15, 2020. The facts and conditions described in my previous declaration remain true, except that the nurse who provides my insulin wears gloves more frequently than before.

2. I understand that the Department of Corrections has claimed that all prisoners have access to 70% alcohol based hand sanitizer. Although I recently learned that there is a tub of alcohol based hand sanitizer in the pod, this container is kept behind closed doors in the officer's area, and nobody has ever told me I am allowed to use it. If I was allowed to use this hand sanitizer, I would have expected notice of it to be on the wall with instructions, like everything else.

3. Instead, the hand sanitizer for prisoners is provided in dispensers on the wall. These dispensers clearly state that the hand sanitizer is "alcohol free."

4. I understand that the Department of Corrections has claimed that medical staff have been wearing face shields, masks, and gloves when distributing medication. I have never seen a medical provider wearing a face shield at any point since the pandemic began and I go to medical numerous times each day. As discussed in my first declaration, nurses sometimes do not even wear gloves when distributing medication.

5. It has been more than 45 days since anyone has cleaned our sheets, pillowcases, or blankets.

6. I have savings and family support that would enable me to get housing where I could physically distance, if only the Department of Corrections would allow it. For example, my sister has helped me research options, including a stay at the Riverview Motel in Bangor, Maine, which I could afford. But it would make little sense for me to pay for a

room there without knowing whether DOC will allow me to physically distance in the community.

7. Of the people I know who have gotten out on home confinement during the pandemic, almost all of them were going to work for LaBree's bakery, which provided housing and employment. I do not know anyone who is older or who has medical conditions who has gotten home confinement for the purpose of physically distancing in the community.
8. I have provided my attorney with authority to use my electronic signature.
9. I declare under penalty of perjury that the foregoing is true and correct.

Date: May 29, 2020

/s/ Sean Ragsdale
Sean Ragsdale

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons*, *Petitioners*, v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-00175-JAW

SUPPLEMENTAL DECLARATION OF JOSEPH DENBOW

I, Joseph Denbow, am over the age of 18 and fully competent to make the following declaration:

1. This declaration is to supplement my prior declaration dated May 9, 2020.
2. In the May 9 declaration, I explained that the hand sanitizer provided by the Maine Department of Corrections does not contain alcohol, and, therefore, it is my understanding that it is not effective against COVID-19. I was referring to the hand sanitizer that is available in dispensers in the common area of the pod, which is accessible by prisoners. According to the label on the dispenser, this hand sanitizer contains "no alcohol." Recently, a corrections officer ushered me over to his office and offered to let me use hand sanitizer that was stored inside. Based on the smell, I could tell right away that the hand sanitizer had alcohol in it. Prisoners are not allowed in the officers' room unless an officer invites them inside. This is the first I have learned about alcohol-based hand sanitizer in the officer area. Nobody had ever told me in the past that there was any hand sanitizer available other than what is provided in dispensers on the wall. Even now, I am unsure how to request permission to use the hand sanitizer in the officers' area. There are no notices about it posted on the wall, with the other hygiene information about COVID-19. I have talked with other prisoners and none of them were aware about the alcohol-based hand sanitizer.
3. I understand that the Maine Department of Corrections has represented that all work programs in the community have been shut down in light of the risks of COVID-19. Recently, however, Mountain View has had prisoner work crews doing lawn work off of prison grounds in certain situations. I know this because I am usually part of the work crew and the officer who leads it asked me to help out with yard work in a cemetery (off prison grounds). Someone else on the yard crew told me that they are going out on Friday to mow lawns off prison grounds.

4. I have never seen any staff member—whether medical staff or DOC staff—wearing a face shield or a medical gown. Staff often do not even wear masks or gloves.
5. A few days ago, I was talking to a DOC officer who told me that "right now I bet if they tested everyone, there would be a positive test here already."
6. Ever since learning about the positive tests in the Windham facility, I have been more scared than ever. I have been a physical and emotional wreck from fear of getting sick and maybe dying from COVID-19. I am scared of never seeing my kids or fiancée again.
7. I have provided my attorney with authority to use my electronic signature.
8. I declare under penalty of perjury that the foregoing is true and correct.

Dated May 29, 2020

/s/ Joseph Denbow

Joseph Denbow

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons*, *Petitioners*, v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-175-JAW

DECLARATION OF ARTHUR GRAY

I, Arthur Gray, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated in the Maine Department of Corrections (DOC), Maine State Prison. My DOC number is 75620. I am 29 years old and am diagnosed with asthma that I understand places me at higher risk for severe illness or death from COVID-19.
2. I am incarcerated for unlawful furnishing of scheduled drugs, with a four year sentence with all but twelve months suspended and two years of probation. My earliest release date is August 5, 2020. Even once I am released, I will remain supervised by the DOC during two years of probation.
3. My release plan is to go live with my mother, who is medically vulnerable herself. I am scared that I could get sick or die in prison before my release date, or that I could be released after getting infected with COVID-19 and expose my mother to the virus.

Medical Conditions and History

4. I am 29 years old and suffer from asthma. Although my asthma is currently well-managed, it usually flares up when I get a virus. Years ago, I needed hospital care when I got sick and was unable to breathe. I am afraid that, if I catch COVID-19, I will be unable to breathe and could get very sick or even die.
5. I also have chronic bronchitis, which means that once or twice a year I get a flare up of symptoms like severe cough and shortness of breath and loss of voice from coughing so much.
6. I have opioid use disorder. I am now in recovery and am on the medication assisted treatment ("MAT") program in prison.

Home Confinement

7. My mother has reached out multiple times to ask for me to be released on home confinement to physically distance at home. The Classification Director Benjamin Beal told her that there was no chance that I would get released because I am classified as "close."

8. Since being in prison, I have gotten only one disciplinary write-up for tattooing.

Conditions in the Prison

9. It is impossible to socially distance at Maine State Prison. I am afraid that the more-than-eighty people who I have close contact with each day could be carrying or spreading the virus.

10. I share a dorm, common area, phones, commissary, and showers, with approximately eighty other inmates. There are seven shower stalls in the entire dorm, shared among all eighty people.

11. I have no idea whether other prisoners or staff could have the virus, and, for most people, I do not think that DOC knows either. Nobody in my dorm has been tested, as far as I know. As to prison staff, DOC does not provide us with information about testing. Some guards have stayed home lately, and I do not know whether the officers are staying home because they have symptoms of the disease. I saw news reports that an officer at Bolduc Facility tested positive, but I do not know whether any of the officers at Maine State Prison have tested positive.

12. I have read that COVID-19 can live on surfaces for days and I am afraid that the virus could be living on surfaces throughout the dorm (including in the shared shower areas). The dorm is cleaned once a day and the door handles on our cells are sprayed three times a day. The shower area is only required to be cleaned once a week. We do not have any bleach or bleach-based materials to clean. Instead, DOC provides a "neutral" cleaner that is safe to drink. There has not been any change in the cleaning materials since we learned about COVID-19.

13. We have access to soap to clean our hands, but there is no hand sanitizer in the dorm. There is hand sanitizer at the meal hall. We have asked whether that hand sanitizer has alcohol in it, but nobody will give us a direct answer.

14. All prison staff and prisoners now have access to masks, but officers do not wear masks all the time, including when they are supposed to. Prisoners do not have to wear their masks in the pod, which has 80 people in it, and nobody does. The masks that are provided to prisoners look like they are made of the same material as our boxer shorts.

15. Even though I try to stay away from other people as much as possible, there are many times each day when I cannot avoid close contact with other people.

    a. When traveling in the facility to go to the meal hall or to get medical care, we travel crowded together, all bunched up.

    b. Three times a day, I go with my entire dorm (eighty people) to the meal hall, where we have to stand in line for our trays, crowded together elbow to elbow. We are all bunched up and cannot physically distance. Then we have to bring our

trays back to the dorm, where there are not enough tables so people sit closer than six feet while they are eating meals. Nobody wears masks while we are eating. When I arrive at the meal hall, I often see another dorm leaving out the other door. I never see anyone cleaning the meal hall in between dorms.

c. In the morning, I receive my medication through the MAT program, where it is also impossible to distance. During this process, I am locked in a small space with six other prisoners, two to three officers, and a nurse. The prisoners are seated so close that we are bumping elbows. None of us can wear masks. Officers get really close as we have to lift our tongues, show our lips and the insides of our mouth several times throughout the process. The officers are wearing cloth masks, but they have to get so close that they are almost breathing into my mouth.

d. At medication line at the end of the day, the nurse is in a bubble and often does not wear a mask when handing us our medication. After we get our medication, we have to show our tongue to another officer. We wear masks in line, but can't wear masks while we're taking the medication.

e. The phone area is in the dorm and eighty prisoners share the phones. The phone area is cleaned only once a day, if that.

16. I am afraid that even if other prisoners get sick, they will try to hide it (and infect the rest of us) because they're afraid of getting quarantined. A few weeks ago, someone in my dorm had a cough and other symptoms but refused to self-report to officers because he did not want to go to segregation or quarantine.

17. DOC continues to transfer people between dorms. The day before yesterday, someone was transferred from a medium dorm to a close custody dorm. He was not quarantined for any period of time.

18. DOC tries to keep us limited to our dorms, but I am still worried that the staff could quickly spread the disease between the dorms. Officers from many different dorms congregate together (often without masks) and then travel to and from the dorms all around the facility. Not to mention that the staff travel to and from the community every day.

    a. Officers from the "Special Operations Group" go from dorm to dorm multiple times a day. If one of them was carrying the virus, they could spread it through the entire facility.

    b. Officers are not consistently assigned to one dorm, but can circulate through multiple different dorms through the week. If one officer was infected, they could spread it to multiple different dorms that way.

    c. Officers search our cells two or three times a week. They close the door as they search, so we do not know whether or not they are wearing masks. They do not change their gloves between searches.

19. I have provided authority to use my electronic signature.

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

Dated May 23, 2020

/s/ Arthur Gray

Arthur Gray

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JOSEPH A. DENBOW and SEAN R. RAGSDALE, *on their own and on behalf of a class of similarly situated persons,* *Petitioners,* v. RANDALL A. LIBERTY, Commissioner of Maine Department of Corrections *in his official capacity*, MAINE DEPARTMENT OF CORRECTIONS, *Respondents*	Case No. 20-cv-00175

DECLARATION OF EMMA BOND, ESQ.

I, Emma Bond, am over the age of 18 and fully competent to make the following declaration:

1. I am an attorney residing in Portland, Maine. My bar number is 005211.
2. I am a staff attorney at the American Civil Liberties Union of Maine and, in that capacity, serve as an attorney for Petitioners Joseph A. Denbow and Sean R. Ragsdale and have sought to serve as an attorney for the putative class in the above-captioned case.
3. Throughout this litigation, we have relied on communications with prisoners in the Maine Department of Corrections (DOC) custody to learn about conditions within DOC facilities. There have been several challenges with ensuring such communication remains available, especially given some of the precautions associated with the COVID-19 pandemic. The difficulty in contacting certain prisoners has become even more severe since the confirmed positive COVID-19 tests in the Maine Correctional Center in Windham.
4. For example, we have unsuccessfully attempted to contact two incarcerated people at the Maine Correctional Center, but were unable to set up calls with them due to "lock-down" precautions. I emailed the case worker for one of the men on Tuesday, May 26, 2020, stating "I am checking in on the requested call with [named prisoner]. When I called several times last week (Wednesday, Thursday, and Friday), the update was [that] you were not able to get in touch with [this prisoner] because of the lock-down. Has there been any update in setting up a call with him?" The case worker responded "Sorry we still cannot get anyone for calls at this time."
5. We were able to contact a third prisoner at the Maine Correctional Center, whose declaration is being filed alongside the Petitioners' reply.
6. Even for prisoners who we are able to contact, we are only able to speak with the prisoner when they are in a DOC case worker's office (which is not a confidential setting) or on a

recorded phone line for which prisoners have to pay by the minute. Each time a prisoner calls me on the recorded phone line, the call begins by stating the call is recorded and monitored. Some prisoners are unable to reach me or must shorten phone calls because they do not have enough money on their phone accounts.

7. DOC has stated that prisoners have access to electronic tablets, but I understand (from conversations with case workers) that prisoners are supervised by DOC staff in close proximity while using the tablets. Some case workers have also stated that they are attempting to work on a system to have professional visits conducted on tablet, but have not yet determined a method of doing so.

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

Dated May 29, 2020

/s/ Emma E. Bond

Emma E. Bond