

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RHONDA JONES;

RANDOLPH MITCHELL;

MICHAEL SINGLETON; and

BARRY WATKINS, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

VICTOR HILL, in his official capacity
as Sheriff of Clayton County, Georgia;

ROLAND BOEHRER, in his official
capacity as Chief Deputy;

TERRANCE GIBSON, in his official
capacity as Jail Administrator;

KEVIN THOMAS, in his official
capacity as Jail Security Operations
Section Commander;

MAURICE JOHNSON, in his official
capacity as Jail Administrative
Operations Section Commander,

Defendants.

CIVIL ACTION

NO. 1:20-CV-_____

CLASS ACTION

**CLASS ACTION COMPLAINT AND PETITION
FOR WRIT OF HABEAS CORPUS**

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INTRODUCTION

Plaintiffs respectfully file this complaint for declaratory and injunctive relief, and petition for a writ of habeas corpus, on behalf of themselves and similarly situated detainees in the Clayton County Jail. In support thereof, Plaintiffs allege the following:

1. This is an action to enforce disease prevention measures and to protect people who are uniquely susceptible to the effects of COVID-19 at Georgia's second most populous jail. Three months into a global coronavirus pandemic that has killed over 125,000 Americans, Defendant Victor Hill, the sheriff of Clayton County, and his subordinates have done little to protect the Clayton County Jail's approximately 2,000 detainees from serious illness or death. As a result, there is a significant outbreak of COVID-19 at the jail. The outbreak poses a substantial risk of serious harm to detainees, staff, and the community at large. It threatens the lives of medically vulnerable people and people with disabilities.

2. The Sheriff of Clayton County has not made any public statement regarding the outbreak at his facility, and he has declined to produce to undersigned counsel any document showing its scope or duration. According to the Georgia Department of Public Health, however, as of June 11, 2020, 45 people at the Clayton County Jail tested positive for COVID-19 (32 detainees and 13 staff

members). The outbreak is escalating, with 16 positive tests (13 detainees and 3 staff members) occurring in the first eight days of June alone.

3. Many of the people in the Clayton County Jail are serving brief sentences for minor offenses, such as misdemeanors or technical probation violations. Many are in jail awaiting trial because they are indigent and cannot afford to purchase their release on bail. A significant number are aged or have preexisting health conditions.

4. Plaintiff Rhonda Jones is 58 years old and has chronic obstructive pulmonary disease. She has been hospitalized twice for pneumonia in the past year. She has been charged with a felony offense and is awaiting trial. She is indigent and unable to pay her bail amount.

5. Plaintiff Randolph Mitchell is 72 years old and has high blood pressure and a heart condition that may soon require a pacemaker. He has served over 10 months of a 12-month sentence for a misdemeanor offense.

6. Plaintiff Michael Singleton is 59 years old and has high blood pressure. He is serving a one-year sentence for violation of probation.

7. Plaintiff Barry Watkins is 60 years old and has diabetes requiring a controlled diet and insulin injections. He has been charged with a property crime and is awaiting trial. He is indigent and unable to purchase his release on bail.

8. Ms. Jones, Mr. Mitchell, Mr. Singleton, Mr. Watkins and other detainees face a substantial risk of serious harm and or death absent intervention by this Court.

9. The magnitude of the COVID-19 pandemic is by now well understood. The disease causes serious illness in a significant number of those exposed to it and has a high mortality rate among people with certain health problems. The virus that causes COVID-19 is highly contagious and spreads primarily through respiratory droplets produced by an infected person and also by exposure to contaminated surfaces. Because there is no vaccine or cure for the disease, the only way to prevent an infection is to avoid exposure, and this is accomplished through social distancing, protective equipment, and adequate personal hygiene.

10. The risk of COVID-19 outbreaks in institutional settings likewise is well known by now. Many outbreaks have occurred in congregate environments such as nursing homes, cruise ships, funerals, worship services, and correctional facilities—places where many people interact in a confined area.

11. Due to their design, jails pose unique risks for the spread of disease. People in jails are confined in close proximity to many others, sharing common toilets, showers, equipment, and living areas. Constant turnover of the detainee

population and rotation of officers in and out of the jail's housing areas create vectors for disease to enter a facility and infect large numbers of people, many of them vulnerable due to age, health conditions, or disabilities. Not surprisingly, many of the worst COVID-19 outbreaks in the United States have occurred at jails and prisons. Jails have become a significant source of the virus's spread to the wider community.

12. Recognizing the obvious risk of serious harm to detainees, staff and communities, many officials responsible for Georgia's jails have acted to prevent and mitigate outbreaks inside their facilities by reducing jail populations, screening detainees, swiftly responding to suspected infections, and promoting reasonable cleanliness and hygiene in the areas where detainees live and congregate. To take just one measure of these efforts in Georgia, the statewide jail population fell by 9,962 people between March 5 and May 7, 2020, ending with an average statewide jail population at 57 percent of overall jail capacity—down from 77 percent two months earlier.

13. The obvious need for prevention and mitigation efforts has not spurred meaningful action by those responsible for the Clayton County Jail. Eponymously dubbed “the Hill-ton” by Defendant Hill, whose administration states that he runs Georgia's “toughest para-military jail,” the Clayton County Jail

remains at nearly 100 percent capacity, with most detainees housed three to a two-bed cell. The third person sleeps on the floor near an open toilet. Detainees interact in close proximity to numerous others, with no physical distancing, during meal distribution, pill call, video court, and other out-of-cell activities.

14. Detainees share cells, showers, telephones, and other fixtures that are rarely if ever sanitized. To maintain personal hygiene, they are issued four ounces of liquid soap per week (for bathing, in-cell cleaning, and, in some instances, laundering of essential items) and small quantities of toilet paper and toothpaste.

15. Although COVID-19 is rapidly spreading through the jail, jailers have provided virtually no information to detainees about COVID-19 prevention.

16. For most detainees, the sum total of Defendants' prevention effort has been to tell detainees to use a towel, t-shirt, sock, or underwear as a makeshift facemask, and to limit some (but not all) out-of-cell time to groups of 12 people. From mid-March through the end of May, Defendants made no discernible effort to ensure minimally adequate personal hygiene, facility sanitation, and disease prevention efforts.¹

¹ Following the start of Plaintiffs' investigation into the jail's conditions, jailers in early June distributed some facemasks and began cleaning certain areas of the jail more regularly, but those minor changes are insufficient to protect detainees from spreading infection. Cleaning occurs in a cursory manner, at irregular intervals, and

17. Even as the number of positive cases increased, Defendants failed to take reasonable, easy-to-implement measures to protect people. For example, for months, even medically vulnerable detainees had no jail-issued masks, and some still lack them. Former detainee F.S. used a cut-up sheet as a makeshift mask. M.B. wore a piece of torn underwear over her face. Plaintiff Mitchell bought a mask made of underwear from a detainee in exchange for two packets of soup.

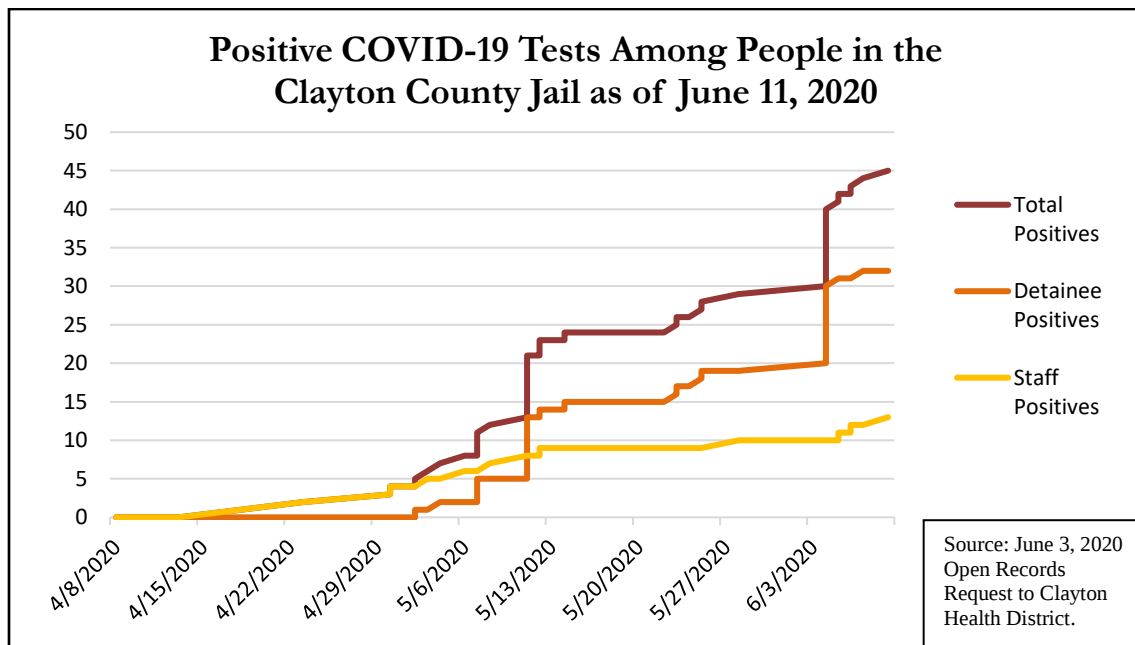
18. Efforts to identify and isolate infected persons are often haphazard or nonexistent. When individuals exhibit and report symptoms consistent with COVID-19—such as fever, shortness of breath, and coughing—jailers often leave them in overcrowded cells for days before attempting to isolate them. Sometimes, symptomatic individuals are not isolated at all. They are instead told to submit a “sick call” request but must then wait up to a week before seeing a medical provider. Meanwhile, the infected individuals spread the coronavirus to the other occupants of their cells and dormitories.

19. In some cases, people who experience symptoms related to COVID-19 have no timely way to request medical assistance because they lack access to the jail’s electronic kiosk system.

often at the initiative of individual detainees. Sanitizing products remain scarce and are often available only to officers.

20. If an infected person is removed from a cell, no consistent effort is made to sanitize the detainee's former living areas or to quarantine those who shared the cell. Instead, new people are immediately assigned to occupy the beds of people who are suspected to be infected.

21. The need for court intervention is urgent. The following chart shows the steep increase in the number of detainees and staff who have tested positive for COVID-19 between April 8, 2020 and June 11, 2020.



22. The rise in infections in May and June is a direct result of Defendants' consistent and ongoing failures to take reasonable steps to mitigate the risk of a COVID-19 outbreak in the jail.

23. The named Plaintiffs bring this action on behalf of themselves and

similarly situated detainees to end Defendants' unlawful practices and vindicate their rights under the Eighth and Fourteenth Amendments to the United States Constitution, and under the Americans with Disabilities Act and the Rehabilitation Act.²

JURISDICTION AND VENUE

24. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a) (3) and (4) because it raises claims arising under the United States Constitution; 42 U.S.C. § 1983; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12133; and the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq. The Court also has jurisdiction under 28 U.S.C. §§ 2241 and 2243 because Plaintiffs are in custody in violation of the Constitution, laws, and treaties of the United States.

25. The Court has authority to grant declaratory relief under 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

26. The Court has authority to grant injunctive relief under 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

² Plaintiffs are filing declarations of Clayton County Jail detainees contemporaneously with this complaint.

27. The Atlanta Division of the Northern District of Georgia is the proper venue under 28 U.S.C. § 1391(b)(1) and Local Rule 3.1B(1) because all defendants are Georgia residents and at least one defendant resides in the Atlanta Division of the Northern District of Georgia; and under 28 U.S.C. § 1391(b)(2) and Local Rule 3.1B(3) because a substantial part of the acts and omissions giving rise to this action occurred in the Atlanta Division of the Northern District of Georgia.

PARTIES

A. Plaintiffs

28. Randolph Mitchell is a 72-year-old African-American man. He has been confined to the Clayton County Jail since August 9, 2019. He has fewer than two months left to serve on a 12-month sentence for simple battery, a misdemeanor. He is currently assigned to Housing Unit 5-5. He has been diagnosed with high blood pressure and a heart condition. Mr. Mitchell is susceptible to serious illness or death if he contracts COVID-19.

29. Rhonda Jones is a 58-year-old African-American woman. She has been confined to the Clayton County Jail since April 9, 2020, for a charge of aggravated assault. A \$10,000 bond was set in her case, but she cannot afford it. She is currently assigned to Housing Unit 3-3. She has chronic obstructive pulmonary disease and has been hospitalized twice in the past year for pneumonia.

Ms. Jones is susceptible to serious injury or death if she contracts COVID-19.

30. Michael Singleton is a 59-year-old African-American man. He has been confined to the Clayton County Jail since February 17, 2020. He is currently assigned to Housing Unit 5-5. He has high blood pressure. He is serving a one-year sentence for violation of probation. Mr. Singleton is susceptible to serious injury or death if he contracts COVID-19.

31. Barry Watkins is a 60-year-old Caucasian man. He has been confined to the Clayton County Jail since August 31, 2018, for a charge of theft by deception. A \$5,500 bond was set in his case, but he cannot afford it. He is currently assigned to Housing Unit 5-1. He has Type I diabetes that requires a controlled diet and regular insulin injections. Mr. Watkins is susceptible to serious injury or death if he contracts COVID-19.

32. Plaintiffs sue on behalf of themselves and six classes of similarly situated detainees.

33. The principal classes are the Principal Pretrial Class and the Principal Post-Adjudication Class. Plaintiffs further seek to certify four subclasses: a Medically Vulnerable Pretrial Subclass, a Medically Vulnerable Post-Adjudication Subclass, a Disability Pretrial Subclass, and a Disability Post-Adjudication Subclass. Plaintiffs Jones and Watkins are the putative class representatives for the

pretrial classes, and Plaintiffs Singleton and Mitchell are the putative class representatives for the post-adjudication classes. Each class is defined below.

B. Defendants

34. Defendant Victor Hill is sued in his official capacity as the Sheriff of Clayton County, Georgia, a position he has held since January 1, 2013, and previously held from January 1, 2005 to December 21, 2008. Defendant Hill is the chief executive of the Clayton County Sheriff's Office. In that role, he oversees and controls each of the Clayton County Sheriff's Office's four divisions: the Executive Operations Division, the Jail Operations Division, the Field Operations Division, and the Administrative Operations Division. As Sheriff, he is required by Georgia law to operate the Clayton County Jail system, to maintain the custody of people held in his jails, and to ensure safe and sanitary conditions of confinement. *See* O.C.G.A. §§ 42-4-4, 42-4-5. Defendant Hill is a resident of Clayton County, Georgia. At all times relevant to this complaint, Defendant Hill has acted under color of state law. The Clayton County Sheriff's Office is a program or entity receiving federal financial assistance. *See* 29 U.S.C. § 794(b).

35. Defendant Roland Boehrer is sued in his official capacity as Chief Deputy for the Clayton County Sheriff's Office. Defendant Boehrer was appointed as Chief Deputy by Defendant Hill. As Chief Deputy, Defendant Boehrer has been

delegated and exercises the Sheriff's authorities in supervising and managing the Clayton County Sheriff's Office's operations, including operations in the Clayton County Jail. Defendant Boehrer reports to and is supervised by Defendant Hill. Defendant Boehrer is a resident of Clayton County, Georgia. At all times relevant to this complaint, Defendant Boehrer has acted under color of state law.

36. Defendant Terrance Gibson is sued in his official capacity as Jail Administrator for the Clayton County Sheriff's Office. Defendant Gibson was appointed as Jail Administrator by Defendant Hill. As Jail Administrator, Defendant Gibson has been delegated and exercises the Sheriff's authorities in supervising and managing the Clayton County Jail. Defendant Gibson reports to and is supervised by Defendants Hill and Boehrer. Defendant Gibson is a resident of Clayton County, Georgia. At all times relevant to this complaint, Defendant Gibson has acted under color of state law.

37. Defendant Kevin Thomas is sued in his official capacity as Jail Security Operations Section Commander for the Clayton County Sheriff's Office. Defendant Thomas was appointed as Security Operations Section Commander by Defendant Hill. As Security Operations Section Commander, Defendant Thomas has been delegated and exercises the Sheriff's authorities in supervising and managing the Clayton County Jail's operations, including providing security and

ensuring detainees' basic needs are met. Defendant Thomas reports to and is supervised by Defendants Hill, Boehrer, and Gibson. Defendant Thomas is a resident of Clayton County, Georgia. At all times relevant to this complaint, Defendant Thomas has acted under color of state law.

38. Defendant Maurice Johnson is sued in his official capacity as Jail Administrative Operations Section Commander for the Clayton County Sheriff's Office. Defendant Johnson was appointed as Administrative Operations Section Commander by Defendant Hill. As Administrative Operations Section Commander, Defendant Johnson has been delegated and exercises the Sheriff's authorities in supervising and managing the Clayton County Jail's operations, including procuring necessary equipment for the jail and maintaining the jail's physical plant. Defendant Johnson reports to and is supervised by Defendants Hill, Boehrer, and Gibson. Defendant Johnson is a resident of Clayton County, Georgia. At all times relevant to this complaint, Defendant Johnson has acted under color of state law.

ALLEGATIONS OF FACT

A. The Clayton County Jail Is Unsanitary, Is Understaffed, and Holds Three People in Cells Built for Two.

39. Clayton County, Georgia, is a municipal entity and political subdivision of the State of Georgia. It is located in the Atlanta metropolitan area approximately 20 miles south of Atlanta. It has a population of approximately 292,000.

40. The Sheriff of Clayton County, Defendant Victor Hill, operates the Clayton County Jail, a detention facility located in the Harold E. Banke Justice Center at 9157 Tara Boulevard, Jonesboro, Georgia. The jail has been in operation since 2000 and holds primarily pretrial detainees for Clayton County and the cities of Jonesboro, Lake City, Forest Park, Lovejoy, Morrow, and Riverdale.

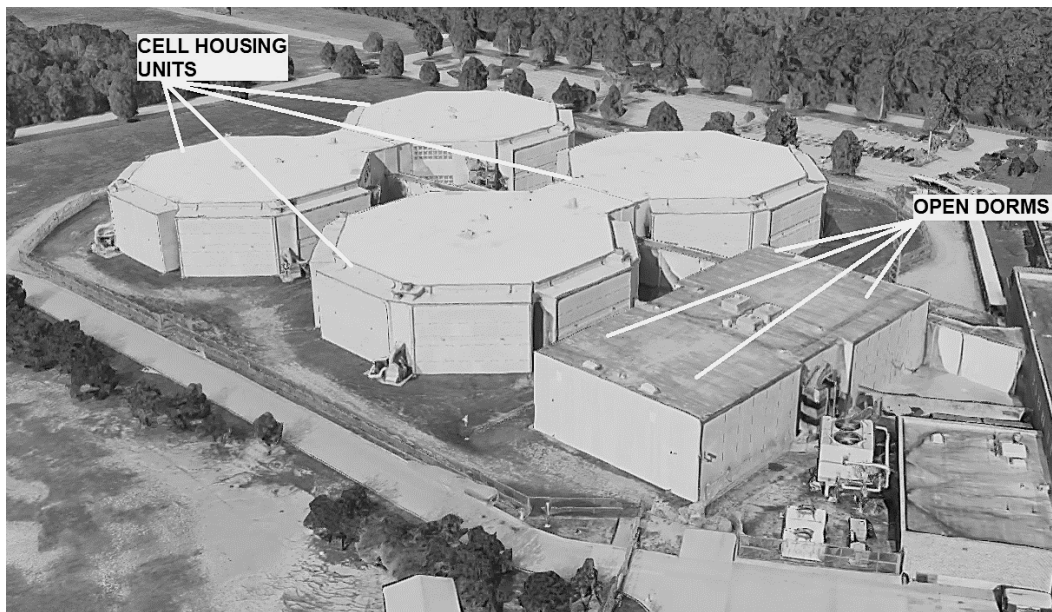
41. The Clayton County Jail has 768 cells located in eight octagonal housing units, divided between four buildings.

42. Each housing unit consists of six pods, and each pod contains 16 cells. An officer assigned to the booth in the center of each housing unit is responsible for monitoring all six pods.

43. In addition to cells, the jail has eight open dormitories designed for up to 48 people each. The dormitories house “inmate workers,” who maintain the jail

and perform services in the community, and people serving work release or “weekender” sentences.

44. The following image depicts the jail’s housing units and dormitories, as viewed from above:



45. Although the Clayton County Jail has a nominal bed capacity of 1,920, in practice it does not hold that many beds because maintenance problems render some cells unusable, and operational concerns, such as classification decisions, limit where certain detainees may be housed.

46. As a result of these operational and maintenance considerations, the jail regularly places three—and sometimes four—people in cells designed for only two, even when the jail’s population is below its design capacity.

47. When three or four people are placed in a cell, the third and fourth

persons in each cell sleep on a thin mattress placed on the floor. An open toilet shared by cell occupants is feet away from where that person sleeps.³

48. The following image depicts the interior of a standard cell:



49. Detainees held in cells normally get one to two hours per day of out-

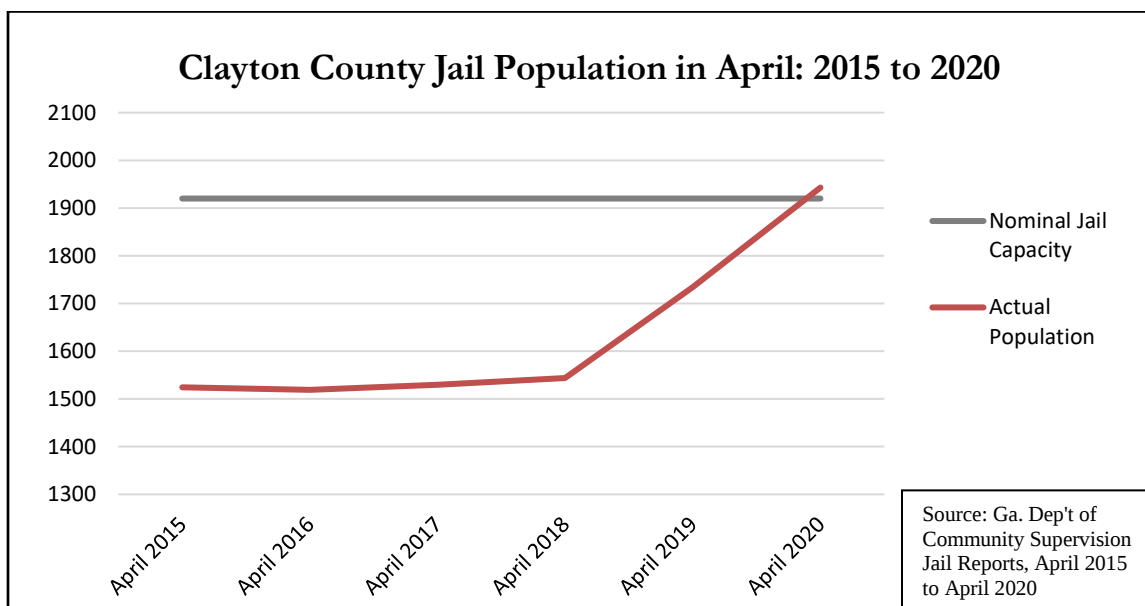
³ Requiring prisoners to sleep on the floor as a matter of routine, as occurs in the Clayton County Jail, has been found unconstitutional. *See, e.g., Lareau v. Manson*, 651 F.2d 96, 107-08 (2d Cir. 1981); *cf. Fambro v. Fulton Cty., Ga.*, 713 F. Supp. 1426, 1428-29 (N.D. Ga. 1989) (concluding that a combination of conditions, including requiring detainees to sleep on floor, resulted in “unquestionably unconstitutional” conditions sufficient to support a release order); *Union County Jail Inmates v. DiBuono*, 713 F.2d 984, 996 (3d Cir. 1983) (criticizing “the unsanitary and humiliating practice of forcing detainees to sleep on mattresses placed either on the floor adjacent to the toilet and at the feet of their cellmates, or elsewhere in the jail.”). At a minimum this situation imposes a duty on Defendants to take reasonable steps to mitigate the health hazards that these cramped quarters create.

of-cell time and are confined to their cells continuously for the remainder of the time.

50. The majority of two-person cells in the jail house three detainees. This is in part because the population of the jail has sharply increased in recent years.

51. Over the past year, the detainee population of the jail has been near or above its design capacity, averaging 101 percent of capacity from June 2019 to June 2020.

52. The population of the jail in April this year exceeded the jail's nominal capacity, and was a marked increase from the population level at the same time in previous years:



53. Defendant Hill, the controversial⁴ sheriff of Clayton County, cultivates an image of himself as a comic book hero.⁵ He refers to the jail eponymously as “The Hill-ton,” and bills it as “Georgia’s toughest para-military jail.”⁶ Defendant Hill has established various policies and practices with no discernible purpose other than to dehumanize people in his custody. Detainees must greet Hill and other supervisors by loudly announcing the supervisor’s presence, immediately placing their hands behind their back, facing the closest available wall, and remaining silent unless spoken to—including detainees who are locked inside their cells when supervisors enter housing units. Defendant Hill has adopted a practice of administering repulsive “special management meals”—more commonly known as “nutraloaf”—as punishment for certain infractions. The jail is known among detainees as a “hands-on facility” with respect to use-of-force

⁴ See, e.g., Leon Stafford, *Victor Hill Rival Says Clayton Sheriff Arrested Wife to Intimidate Him*, Atlanta J.-Const., Aug. 16, 2018 (“Over the years . . . , detractors have described his behavior as everything from reckless to criminal.”).

⁵ Advisory, Clayton Cty. Sheriff’s Office, *The Origin of ‘The Sheriff’s Batcave Café’*, Feb. 3, 2020, local.nixle.com/alert/7793824 (“Sheriff Victor Hill now dubbed as ‘The Crime Fighter’ has been personified as Clayton County’s ‘Dark Knight’, and the county has become his ‘Gotham City’. The Sheriff’s patrol vehicle starkly resembles the Bat-Mobile, and his jail dubbed ‘The Hill-ton’, has been teased to be his ‘Arkham Asylum’.”); see also Kate Briquetelet, *Batman Sheriff Shoots Woman, Walks Free*, The Daily Beast, Apr. 14, 2017, <https://bit.ly/3gg7SJi>.

⁶ See, e.g., Alice Queen, *Odd Coincidence Surprises Clayton Sheriff Victor Hill, Deputies*, Clayton News-Daily, May 9, 2020, <https://bit.ly/2Bx0Ocz>.

practices, meaning that officers frequently resort to unnecessary physical force to punish detainees. Defendants have used restraint chairs to punish detainees who displease the Sheriff. Detainees are punished for committing minor rule infractions, such as failing to fold the end of their toilet paper roll into the letter “V.”

54. Defendant Hill has failed to prioritize vital aspects of responsible jail management. He and his staff hold around 2,000 people—often people accused of misdemeanors, technical probation violations, or other minor offenses—in a facility where detainees’ basic needs go unmet.

55. As noted above, people assigned to cell-based housing units, as most detainees are, spend 22 to 23 hours per day confined in a small space, usually with two and sometimes three other people.

56. When they come out of their cells, they are restricted to a dayroom area inside of the pod for “free time,” which is detainees’ opportunity to shower, use the telephone, or use the electronic kiosk, a computer device used to file requests for medical care, submit grievances, and order items from the jail commissary. Detainees interact with other detainees during free time, often conversing or playing card games.

57. Each pod has two or three showers for up to 48 detainees. Through

the end of May 2020, the showers were cleaned infrequently. In some pods, showers were not cleaned for months at a time, because jail officers failed to provide detainees with cleaning materials. In other pods, showers were cleaned at most once per week. Assuming that each detainee in a pod showers daily, that the pod has three working showers (not all do), and that showers are cleaned weekly (most are not), the average shower would be used at least 112 times between cleanings. The showers thus present an obvious way for contagious diseases to spread among many detainees.

58. Each dayroom also has a toilet and sink. Though most detainees have toilets in their cells, certain cells have toilets that do not work, and detainees assigned to those cells must wait for free time to use the dayroom toilet. Like the showers, the toilet and sink in the dayroom were cleaned infrequently (less than weekly in most units) through late May, making them another obvious hub for contagious diseases to pass between detainees.

59. Most pods have five telephones for up to 48 detainees. The telephones are spaced approximately 18 inches apart, resulting in people using the telephones in close proximity to one another. Many telephones are broken. In none of the units are detainees provided with sanitary wipes or disinfectant to clean the telephone between uses. As a result, detainees who use the telephones have

indirect contact with numerous people who have touched and breathed on the telephones before them.

60. Most but not all pods have at least one electronic multipurpose kiosk. As with the telephones and showers, the jail has created no system by which the kiosks are cleaned between uses, resulting in indirect contact among the numerous detainees who use them.

61. Detainees in certain pods are denied any access to a kiosk. In addition, jail staff often deny detainees access to the kiosk as punishment for minor rule violations. For detainees who cannot access a kiosk, there is no way to submit a medical request form or other kind of request, because the jail does not use or distribute paper forms.

62. A purported grievance procedure is available on the kiosk only, not through paper forms. Grievances are rarely answered, and detainees cannot have more than two grievances pending at a time. People who have two grievances pending cannot file grievances about new problems. Many detainees have had two grievances pending for months without a response. There is no way to withdraw a pending grievance via the kiosk, and detainees are given no guidance about how to appeal a grievance decision. No information about the grievance procedure is given to detainees when they enter the jail; detainees do not receive inmate

handbooks explaining the grievance procedure and other jail rules.

63. Detainees in segregation units and other housing units without a kiosk are completely barred from accessing the grievance procedure, as are detainees who have been deprived of kiosk access as a disciplinary sanction.

64. The jail is designed to have at least two officers in each housing unit, one in a central booth overseeing up to 192 detainees and the other officer on the floor. Currently, however, due to understaffing, most housing units have only a single officer in a booth overseeing up to 288 detainees. The officer in the booth remains in the booth unless relieved by another officer to conduct headcounts, distribute meals or medication, or respond to problems.

65. The Clayton County Jail lacks sufficient resources to effectively respond to emergencies. Due to understaffing, detainees have difficulty notifying staff members of emergencies and face delays in getting aid when emergencies occur. Although cells originally had intercoms and emergency call buttons installed, the call buttons appear to have been disabled in many cells. To get officers' attention, detainees must yell and beat on their cell doors, then wait for an available officer.

66. Understaffing, lack of resources, and poor supervision by administrators prevent the jail from providing adequate sanitation and hygiene.

67. At best, the sum total of personal hygiene supplies issued to detainees includes one approximately four-ounce bottle of liquid soap per week, toilet paper, and a toothbrush and toothpaste. In practice, the jail often runs out of one or more of these items each week, resulting in some detainees going without soap, toothpaste, or toilet paper. Some detainees must wait a week or more after entering the jail to receive a toothbrush. Women often go without sanitary napkins and have to stuff their underwear (if they have any) with toilet paper (if they have any) during their menstrual cycles. Detainees are only permitted to shave for court appearances, if at all. The small amount of liquid soap issued is all detainees have with which to clean themselves, their cells, and in some cases, their clothing for an entire week. This is insufficient to maintain minimally adequate personal hygiene, especially during a pandemic.

68. Housing unit cleaning is ordinarily assigned to “inmate workers,” sometimes called trustees, who live in open dormitories.

69. Due to lack of supplies and inadequate supervision, the “inmate workers” responsible for most housing units do not regularly clean common area tables, telephones, kiosks, showers, bathrooms, door handles, and other items used frequently by detainees.

70. There is no system in place for supervisory officers to ensure that

housing units are sanitary. Some detainees recognize the importance of sanitation and proactively attempt to clean the units with what few supplies are available—such as bath soap—but most officers do not promote those efforts because Defendants are indifferent to the matter.

71. The overcrowded cells where detainees spend most of their time are almost never sanitized. The only cleaning materials provided regularly are a broom and a dirty mop for the floor. In some housing units, there is only one mop for all 96 cells. There is no regular schedule for cleaning and sanitizing toilets, sinks, bedframes, walls, doors, and other cell fixtures. Some detainees resort to using their four-ounce weekly supply of liquid soap and bits of toilet paper to wipe down their cells. While jailers reportedly increased the frequency of cell cleaning in late May, detainees report that such cleaning often involves only the spraying of a teaspoon-like quantity of cleaner into their cell sinks.

72. The lack of adequate sanitation is evident throughout the jail. Many cells and showers have significant amounts of mold and mildew in them. Dorms are infested with roaches, spiders, gnats, and ants.

73. The only clothing items issued to detainees upon entry into the jail are one jumpsuit, one towel, and one washcloth. The jail does not issue socks or undergarments, which must be purchased by detainees. Those who lack money to

purchase undergarments go without them.

74. Lacking other options, detainees who wish to clean the toilets, sinks, and other fixtures in their cells sometimes resort to using their jail-issued towel and washcloth, or pieces of toilet paper, to wipe down surfaces.

75. Laundry is supposed to be collected approximately once every week to two weeks. There are often not enough clean jumpsuits to go around, resulting in detainees wearing the same jumpsuit for weeks or even a month at a time. Many detainees use the same towels and washcloths for months between laundering. Sheets are often not laundered for a month or more at a time. Many detainees go weeks without sheets, sleeping directly on thin plastic mattresses while waiting for their sheets to be returned.

76. The 20-year-old jail facility has recurring maintenance issues. Many toilets are inoperable. Some cells have putrid standing water in them from leaking toilet fixtures. In certain pods, water leaks result in puddles of standing water in the common areas. Defective showers flood the dayroom and cause water to seep into cells. Some detainees resort to placing their blankets around their toilets or against their cell doors to absorb the water.

77. The Sheriff's budget for fiscal year 2020 is \$37.8 million, and \$38.5

million has been proposed for 2021.⁷ As Sheriff, Defendant Hill has broad discretion to spend that budget as he sees fit. *See, e.g., Chaffin v. Calhoun*, 262 Ga. 202, 203 (1992) (“[A]lthough the county commission has the power and the duty to issue a budget, the county commission may not dictate to the sheriff how that budget will be spent in the exercise of his duties.”). Accordingly, Defendant Hill could allocate more of his budget to the jail to address many of the problems discussed above. But he spends his budget on other things.

78. In the recent past, those things have reportedly included patrol vehicles customized with lights that flash his initials,⁸ first-class airfare to various events around the country,⁹ week-long stays at casino hotels,¹⁰ four-day tai chi workshops,¹¹ “extreme video eyewear,”¹² machetes,¹³ and \$2,000 worth of “commemorative coins which feature his name on one side, and a Batman emblem

⁷ *See* Clayton Cty. Bd. of Comm’rs, *Annual Operating Budget 38* (2020), available at <https://www.claytoncountyga.gov/Home/ShowDocument?id=12546>.

⁸ *See, e.g.,* Victor Hill, Facebook (Apr. 3, 2020), <https://www.facebook.com/sheriff.hill/posts/2912826828793865>.

⁹ *See, e.g.,* News Staff, *The Money Trail: Clayton County Sheriff Victor Hill*, 11Alive News, Jul. 30, 2015, <https://bit.ly/38gY5zZ>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

on the other.”¹⁴

79. By contrast, some of the roughly 2,000 detainees at the Clayton County Jail do not receive their allotments of bath soap, toilet paper, sanitary napkins, and toothpaste.

80. In sum, the Clayton County Jail is understaffed, unsanitary, and chronically mismanaged. The jail’s deficiencies in these areas are so obvious that jailers knew about them long before the COVID-19 pandemic prompted official declarations of a public emergency in March 2020. Defendants’ response has been to disregard the entrenched problems at this jail, even after the onset of a global pandemic that threatens the lives of detainees, staff, and the community.

B. The Coronavirus Pandemic Presents a Substantial Risk of Serious Harm to People in the Clayton County Jail.

81. COVID-19 is a highly contagious respiratory disease that spreads aggressively from person to person and can cause death. The virus is easily transmitted through respiratory droplets, close personal contact, and from contact with contaminated surfaces or objects.¹⁵ COVID-19 is thought to survive for three

¹⁴ *Id.*

¹⁵ See World Health Organization, *Modes of Transmission of Virus Causing COVID-19: Implications for IPC Precaution Recommendations* (Mar. 29, 2020), <https://bit.ly/2VEsx1J>.

hours in the air in droplet form, up to twenty-four hours on cardboard, up to two days on plastic, and up to three days on steel.¹⁶

82. Infected people—who may be asymptomatic—can spread the disease even through indirect contact with others. The virus’s current estimated incubation period is between 2 and 14 days.¹⁷ Recent studies show that as many as half of all transmitted cases pass from an infected person with few or no symptoms.¹⁸

83. As of July 1, 2020, over 10 million persons worldwide have tested positive for COVID-19, and over 500,000 have died.¹⁹ In the United States, over 2.5 million people have tested positive for COVID-19, and over 125,000 people have died.²⁰ Over the past three months, an average of more than 1,200 Americans have died from complications related to COVID-19 each day.²¹

¹⁶ Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *New England J. Medicine* (Mar. 17, 2020), <https://bit.ly/2Vxdjvx>.

¹⁷ U.S. Ctrs. for Disease Control & Prevention, *Coronavirus Disease COVID-19 Symptoms* (May 13, 2020), <https://bit.ly/2YSWbT8>.

¹⁸ David Cox, *Could Nearly Half of Those with COVID-19 Have No Idea They Are Infected?*, *The Guardian*, May 30, 2020, <https://bit.ly/3dUSKzo>.

¹⁹ World Health Org., *Coronavirus Disease (COVID-19) Pandemic*, <https://bit.ly/3ifdyF8>.

²⁰ U.S. Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in the US* (June 30, 2020), <https://bit.ly/2TtboH5>.

²¹ *Id.*

84. Projections by the U.S. Centers for Disease Control and Prevention (CDC) indicate that over 200 million individuals in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention,²² with as many as 2.2 million deaths in the worst projections.²³

85. In Georgia, at least 80,000 people have tested positive for COVID-19.²⁴ More than 2,800 have died.²⁵ The numbers in the state are trending upwards: reported COVID-19 cases have risen to a new high in each of the past three weeks.²⁶ Researchers at Georgia Tech predict that Georgia's COVID-19 infections and deaths will continue to rise through mid-August.²⁷ By the peak, the model predicts that without strict social distancing as many as 17,900 Georgians could die and that the illness could impact at least 28 percent of the state's population.²⁸

²² James Glanz et al., *Coronavirus Could Overwhelm U.S. without Urgent Action, Estimates Say*, N.Y. Times, Mar. 20, 2020, <https://nyti.ms/2QAE7Z8>.

²³ Holly Yan, *More Than 3,000 people in the US Have Died from Coronavirus*, CNN, Mar. 31, 2020, <https://cnn.it/3eQPTIZ>.

²⁴ Ga. Dep't of Public Health, *Daily Status Report* (June 30, 2020), <https://bit.ly/2VC9NzP>.

²⁵ *Id.*

²⁶ J. Scott Trubey, *Georgia Coronavirus Cases Spike Among Young Adults as Virus Surges*, Atlanta J.-Const., June 24, 2020, <https://bit.ly/31zXhVx>.

²⁷ Beth Galvin, *Georgia Tech Model Predicts Summer Jump in COVID-19 Cases, Deaths*, Fox 5 Atlanta, May 11, 2020, <https://bit.ly/3if9Jjg>.

²⁸ *Id.*

86. A recent study found that COVID-19, the disease caused by the coronavirus, is between ten and forty-four times deadlier than a severe seasonal influenza.²⁹

87. COVID-19 can damage lung tissue, lead to acute respiratory distress syndrome, and affect cardiac functions. Emerging evidence also indicates that the disease may be associated with other serious health problems. For example, COVID-19 can trigger an over-response in the immune system and further damage the body's tissues or organs, including permanent harm to the kidneys or neurologic injury.

88. Complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days.

89. Further, patients with serious cases of COVID-19 need advanced medical support with highly specialized equipment that is in limited supply.

90. Everyone is at risk of contracting the coronavirus, but certain groups of people face elevated risk of severe illness. Age is a significant risk factor for

²⁹ Jeremy Faust & Carlos del Rio, *Assessment of Deaths From COVID-19 and From Seasonal Influenza*, JAMA Intern. Med. (May 14, 2020), <https://bit.ly/2YPH1O9>; see also Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, Wall St. J., Mar. 10, 2020, <https://on.wsj.com/2YNRM3M>.

complications and death. People over the age of 50 account for 74 percent of patients hospitalized.³⁰ The mortality rate is at least 1 to 3 percent for those over 55.³¹ Even some younger and healthier people who contract COVID-19 may require supportive care.

91. Serious illness and death are also significantly more common among people with underlying chronic health conditions regardless of age.³² The case fatality rate exceeds 5 percent (1 in 20 cases) for those with pre-existing medical conditions including cardiovascular disease, respiratory disease, diabetes, and immune compromise. One analysis found mortality rates of 13.2 percent for patients with cardiovascular disease, 9.2 percent for diabetes, 8.4 percent for

³⁰ U.S. Ctrs. for Disease Control & Prevention, *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Cases*, Morbidity and Mortality Weekly Report (Apr. 17, 2020), <https://bit.ly/2Zqt4Wk>.

³¹ Stephanie Bialek et al., *Severe Outcomes Among Patients With COVID-19*, Ctrs. for Disease Control & Prevention (Mar. 27, 2020), <https://bit.ly/3dOASWL>; Xianxian Zhao et al., *Incidence, Clinical Characteristics and Prognostic Factor of Patients with COVID-19: A Systematic Review and Metaanalysis* (Mar. 20, 2020), <https://bit.ly/2NMdbzd>.

³² See Harvard Medical School, *If You Are at Higher Risk: How to Reduce Risk of Infection and What to Do If You Get Sick*, Harvard Health Publishing (May 6, 2020), <https://bit.ly/31CzBjo>; see also Ctrs. for Disease Control & Prevention, *Groups at Higher Risk for Severe Illness*, <https://bit.ly/2BTYiNt>.

hypertension, 8.0 percent for chronic respiratory disease, and 7.6 percent for cancer.³³

92. African Americans are at increased risk for the medical conditions and disabilities that increase the risk of serious illness or death from COVID-19. The rate of diabetes is 60 percent higher in African Americans than in white Americans;³⁴ the rate of hypertension is 40 percent higher.³⁵ Recent analysis of CDC data shows that the COVID-19 mortality rate among African Americans is 2.3 times that of white Americans.³⁶ The CDC released a study showing that, although Georgia's population is 32 percent African-American, African-American people account for approximately 83 percent of the hospitalizations from COVID-19 in the state.³⁷ Clayton County is over 72 percent African-American.³⁸ Three of

³³ World Health Org., *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* 12 (Feb. 28, 2020), <https://bit.ly/38lGR4d>.

³⁴ U.S. Dep't of Health and Human Services, Office of Minority Health, *Diabetes and African Americans*, <https://bit.ly/3dNmvlP>.

³⁵ U.S. Dep't of Health and Human Services, Office of Minority Health, *Heart Disease and African Americans*, <https://bit.ly/31CwUya>.

³⁶ APM Research Lab Staff, *COVID-19 Deaths by Races and Ethnicity in the U.S.*, APM Research Lab (May 12, 2020), <https://bit.ly/2YTAPtz>.

³⁷ Jeremy Gold et al., *Characteristics and Clinical Outcomes of Adult Patients Hospitalized with COVID-19 — Georgia, March 2020*, Ctrs. for Disease Control & Prevention (May 8, 2020), <https://bit.ly/3dQsX6L>.

³⁸ U.S. Census Bureau, *QuickFacts: Clayton County, Georgia*, <https://bit.ly/2NNM5MN>.

the named Plaintiffs are African-American.

93. The coronavirus causes serious illness in about 20 percent of people it infects. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage, loss of digits, and loss of respiratory capacity.³⁹ At this early point, not all of the long-term effects of the disease are known.

94. There is no vaccine for COVID-19, nor is there any known medication to prevent or cure infection from the coronavirus. It is unclear whether people who have recovered from COVID-19 are immune to reinfection. The only known effective measure to reduce the risk of severe illness or death to individuals is to prevent new infections.

95. According to health experts, the *only* way to prevent new infections and mitigate spread of the virus is to avoid exposure to infected persons and contaminated surfaces. This is accomplished by avoiding close contact with others through social distancing and the use of personal protective equipment; maintaining good personal hygiene, particularly through handwashing and

³⁹ See U.S. Ctrs. for Disease Control & Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)* (June 2, 2020), <https://bit.ly/2C0uLSk>.

avoiding touching one's face; and disinfecting surfaces that may be contaminated.⁴⁰

96. Social distancing—isolating oneself from other people at a minimum distance of six feet—is especially significant because the virus can spread through people who have no apparent symptoms.⁴¹

97. Public officials in Georgia have reordered everyday life to acknowledge these new risks. Governor Brian Kemp declared COVID-19 a public health emergency, required medically fragile and older Georgians to shelter in place, and ordered all Georgians who leave their homes to adhere to social distancing measures recommended by the CDC.⁴² Both Governor Kemp and Georgia Department of Public Health Commissioner Kathleen Toomey have urged Georgians to stay at home if they can, and to wear masks when in public.⁴³

⁴⁰ Press Release, Ga. Dep't of Public Health, *Georgia DPH Exceeds 100,000 COVID-19 Tests in 10 Days Testing Now Available to All Georgians* (May 7, 2020), <https://bit.ly/2LSOfK4>.

⁴¹ Katherine Courage, *How People are Spreading COVID-19 Without Symptoms*, Vox, Apr. 22, 2020, <https://bit.ly/3dS3aQ8>.

⁴² Ga. Exec. Order No. 05.28.20.02 (May 28, 2020), <https://bit.ly/3iqbgDs>.

⁴³ Press Release, Office of the Gov., *Gov. Kemp, Dr. Toomey Urge Georgians to Wear Face Coverings to Fight COVID-19* (May 1, 2020), <https://bit.ly/2AptRhG> (“Wear a face covering in public settings, practice social distancing, and wash your hands frequently.”); see also Elwyn Lopez, *I Worry That They Don't Understand*:

Additionally, under a public health control order entered by Commissioner Toomey, individuals with suspected or confirmed cases of COVID-19 are currently required to self-isolate, and those who have been exposed to COVID-19 under circumstances likely to result in an infection are required by law to self-quarantine.⁴⁴ Failure to comply with the order is punishable as a misdemeanor.⁴⁵

98. Jail and prisons become ticking time bombs during a pandemic. According to the Georgia Department of Public Health, “Correctional and detention facilities are considered at very high risk for COVID-19 spread and outbreaks due to having a high volume of people within a close, congregate setting.”⁴⁶ The CDC similarly warns that the “congregate environments” in prisons and jails “heighten[] the potential for COVID-19 to spread once introduced.”⁴⁷

Georgia Health Commissioner Reiterates Importance of Masks, Social Distancing, 11Alive, May 4, 2020, <https://bit.ly/3gcZIBe>.

⁴⁴ Ga. Dep’t of Public Health, Fifth Am. Admin. Order for Public Health Control Measures 1-4 (May 12, 2020). With minor changes not relevant here, the order has been in effect since March. *See, e.g.*, Ga. Dep’t of Public Health, Am. Admin. Order for Public Health Control Measures 1-4 (Mar. 23, 2020).

⁴⁵ *Id.* at 4; *see* O.C.G.A. § 31-5-8.

⁴⁶ Ga. Dep’t of Public Health, *Interim Guidance for Management of COVID-19 in Correctional and Detention Facilities in Georgia* 1 (Apr. 15, 2020), <https://bit.ly/3bvwECh>.

⁴⁷ U.S. Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 6 (Mar. 23, 2020), <https://bit.ly/3bu83xS>.

99. In addition to causing significant harm to those incarcerated, outbreaks of COVID-19 in jails can cause additional infections, hospitalizations, and deaths among jail staff and the surrounding community in which a jail sits.

100. Recognizing these risks, on March 30, 2020, the CDC published guidance for correctional and detention facilities, including local jails, to follow in order to minimize the risk of an outbreak.⁴⁸ The CDC recognized that incarcerated people must exist “within congregate environments” that “heighten[] the potential for COVID-19 to spread once introduced.”⁴⁹ Indeed, “[t]here are many opportunities for COVID-19 to be introduced into a correctional or detention facility” including “daily staff ingress and egress,” the “transfer of incarcerated/detained persons between facilities and systems,” the transport of people to “to court appearances,” and the “high turnover” of “admit[ted] new entrants.”⁵⁰ Accordingly, the CDC recommends that correctional facilities undertake the following preventive measures, few of which are being undertaken in the Clayton County Jail:

⁴⁸ U.S. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2BX2gES>.

⁴⁹ *Id.*

⁵⁰ *Id.*

- Post signage throughout the facility communicating COVID-19 symptoms and hand hygiene instructions, ensure such signage is understandable for non-English speaking people as well as those with low literacy, and provide clear information about the presence of COVID-19 cases within a facility and the need to increase social distancing and maintain hygiene precautions;
- Provide a no-cost supply of and access to soap to detained persons, sufficient to allow frequent hand washing.
- Provide running water, hand drying machines or disposable paper towels for hand washing, and tissues (providing no-touch trash receptacles for disposal);
- Ensure that sufficient stocks of cleaning supplies are on hand and available, and have a plan in place to restock items as needed, including tissues, cleaning supplies, and EPA-registered disinfectants effective against the virus that causes COVID-19;
- Ensure that sufficient stocks of personal protective equipment (PPE) and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility, including standard medical supplies for daily clinic needs, and recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls);
- Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty;

- Suspend co-pays for incarcerated people seeking medical evaluation for respiratory symptoms;
- Implement “intensified cleaning and disinfecting procedures” that clean and disinfect high-touch surfaces and objects “[s]everal times per day,” and ensure adequate supplies to support intensified cleaning and disinfection practices”;
- Perform pre-intake screening for all new entrants, enforce increased space between all new entrants in waiting areas, and implement daily temperature checks in housing units where COVID-19 cases have been identified;
- “[E]nsure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms,” including an evaluation “to determine whether COVID-19 testing is indicated”;
- If an individual has symptoms of COVID-19 (fever, cough, shortness of breath), require the individual to wear a face mask and place her under medical isolation; and
- Implement social distancing strategies to increase space between individuals, including by rearranging bunking to ensure that beds are at a minimum six feet apart in all directions, and increasing space in lines and waiting areas (ideally a distance of six feet), regardless of the presence of symptoms.

101. On May 15, 2020, the CDC released its first report on the extent of COVID-19 outbreaks in correctional facilities across the country.⁵¹ Eighty-six percent of reporting jurisdictions had at least one confirmed case among incarcerated or detained persons or staff members. In the report, the CDC cites new data demonstrating that “symptom screening alone is inadequate to promptly identify and isolate infected persons in congregate settings such as correctional and detention facilities.”⁵² To supplement strategies of screening and isolation, the CDC recommends that correctional facilities should implement additional strategies to prevent and manage the spread of the virus, including by “physical distancing,” “use of cloth face coverings,” “intensified cleaning,” “infection control training for staff members,” and “disinfection of high-touch surfaces in shared space.”⁵³

102. Experts predict that “[a]ll prisons and jails should anticipate that the

⁵¹ Megan Wallace et al., U.S. Ctrs. for Disease Control & Prevention, *COVID-19 in Correctional and Detention Facilities—United States, February–April 2020*, Morbidity and Mortality Weekly Report (May 15, 2020), <https://bit.ly/3ig7MTT>.

⁵² *Id.*; Most people do not show symptoms for two to fourteen days while being contagious. See *Coronavirus Disease COVID-19 Symptoms*, Ctrs. for Disease Control & Prevention (May 13, 2020), <https://bit.ly/2VB4KzV>. Others—as many as 50 percent of those infected—never exhibit any symptoms at all. See Courage, *How People are Spreading COVID-19 Without Symptoms*.

⁵³ *Id.*

coronavirus will enter their facility.”⁵⁴ Indeed, the number of people in U.S. prisons who are known to be infected doubled in the past month to more than 68,000.⁵⁵ At least 657 people who live or work in U.S. jails or prisons have died of complications related to COVID-19.⁵⁶

103. In mid-March, the Rikers Island jail complex in New York City had no confirmed cases of COVID-19. By March 30, 167 detainees, 114 correctional staff, and 20 health workers at Rikers Island had tested positive for COVID-19. Today, more than 1,700 people working or incarcerated in the New York City jails have tested positive, including more than 1,200 staff.⁵⁷ The Chief Medical Officer of Rikers Island has described the spreading COVID-19 infection as a “public health disaster unfolding before our eyes.”⁵⁸

⁵⁴ Evelyn Cheng & Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC, Feb. 20, 2020, <https://cnb.cx/2C0hYyV> (quoting Tyler Winkelman, co-director of the Health, Homelessness, and Criminal Justice Lab at the Hennepin Healthcare Research Institute in Minneapolis).

⁵⁵ Timothy Williams, et al., *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times, June 16, 2020, <https://nyti.ms/3hxhdOs>.

⁵⁶ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, <https://nyti.ms/39jvJEY>.

⁵⁷ Jan Ransom, *Virus Raged at City Jails, Leaving 1,259 Guards Infected and 6 Dead*, N.Y. Times, May 20, 2020, <https://nyti.ms/2zhF1UW>.

⁵⁸ Miranda Bryant, *Coronavirus Spread at Rikers Is a ‘Public Health Disaster’, Says Jail’s Top Doctor*, The Guardian, Apr. 1, 2020, <https://bit.ly/2V1SuqU>.

104. The Cook County Jail in Chicago underwent a similar trajectory, leaping from two confirmed COVID-19 cases on March 23 to more than 350 confirmed cases two weeks later.⁵⁹ Today, more than 1,000 people have been infected.⁶⁰ Seven detainees and three staff members have died.⁶¹ Nurses at Cook County’s Stroger Hospital have warned that the virus is a “growing beast” that threatens not only staff and people behind bars but all of Cook County.⁶²

105. As of July 1, the five largest COVID-19 clusters in the country were all correctional or detention facilities.⁶³ Mass testing reveals that the virus spreads quickly and often invisibly through correctional facilities.⁶⁴

106. For these reasons, medical and public health experts have urged emergency action to fight the spread of COVID-19 in jails and other carceral

⁵⁹ Williams & Ivory, *Chicago’s Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*.

⁶⁰ N.Y. Times, *Coronavirus in the U.S.: Latest Map and Case Count*.

⁶¹ Diane Pathieu, *Cook County Correctional Officer Antoine Jones Dies of Apparent COVID-19 Complications, Sheriff’s Office Says*, WLS, May 11, 2020, <https://abc7.ws/2VTeOV9>.

⁶² Shannon Heffernan, *Nurses Warn COVID-19 Cases At Cook County Jail Aren’t Just Staying Behind Bars*, WBEZ, Chicago’s NPR, Apr. 11, 2020, <https://bit.ly/2C0vyCM>.

⁶³ N.Y. Times, *Coronavirus in the U.S.: Latest Map and Case Count*.

⁶⁴ Linda So & Grant Smith, *In Four U.S. State Prisons, Nearly 3,300 Inmates Test Positive for Coronavirus—96% Without Symptoms*, Reuters, Apr. 25, 2020, <https://reut.rs/3dQRRYs>.

facilities, including release of particularly vulnerable individuals, improved access to medical care, compliance with CDC guidelines, and more.⁶⁵ Public health experts, including Dr. Gregg Gonsalves,⁶⁶ Dr. Ross MacDonald,⁶⁷ Dr. Marc Stern,⁶⁸ Dr. Oluwadamilola T. Oladeru,⁶⁹ and Dr. Anne Spaulding⁷⁰ have all strongly cautioned that people booked into and held in jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

107. Across the country, governments and jail staff have concluded that targeted jail release measures are a necessary and appropriate public health intervention to the threat that COVID-19 poses to incarcerated people and the

⁶⁵ See, e.g., Brad Lander, *Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus*, Medium, Mar. 12, 2020, <https://bit.ly/2ZrObrg>; Ltr. from Johns Hopkins faculty to Gov. Hogan, Mar. 25, 2020, <https://bit.ly/2YMHfA>.

⁶⁶ Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, Connecticut Mirror, Mar. 11, 2020, <https://cutt.ly/BtRSxCF>.

⁶⁷ Craig McCarthy & Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming'*, N.Y. Post, Mar. 19, 2020, <https://cutt.ly/ptRSnVo>.

⁶⁸ Dr. Marc F. Stern, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Washington Ass'n of Sheriffs & Police Chiefs (Mar. 5, 2020), <https://cutt.ly/EtRSm4R>.

⁶⁹ Oluwadamilola T. Oladeru et al., *What COVID-19 Means for America's Incarcerated Population—And How to Ensure It's Not Left Behind*, HealthAffairs Blog, Mar. 10, 2020, <https://cutt.ly/QtRSYNA>.

⁷⁰ Dr. Anne C. Spaulding, *Coronavirus COVID-19 and the Correctional Jail*, Emory Ctr. for the Health of Incarcerated Persons (Mar. 9, 2020).

surrounding community. For example, New York City has released more than 1,600 people;⁷¹ New Jersey 1,000 people;⁷² Cuyahoga County, Ohio more than 800 people.⁷³

108. Across Georgia, positive tests in correctional facilities continue to rise. As of July 1, the Georgia Department of Corrections (GDC) had confirmed 888 positive cases among people in its custody and 223 prison staff.⁷⁴ Twenty-two incarcerated people and one staff member have died.⁷⁵ There have also been numerous outbreaks confirmed in Georgia's jails,⁷⁶ including one currently emerging at the Clayton County Jail.

⁷¹ Rosa Goldensohn, *COVID-Sick at Rikers On \$1 Bail—And A Parole Violation*, The City, May 3, 2020, <https://bit.ly/3dLW3c8>.

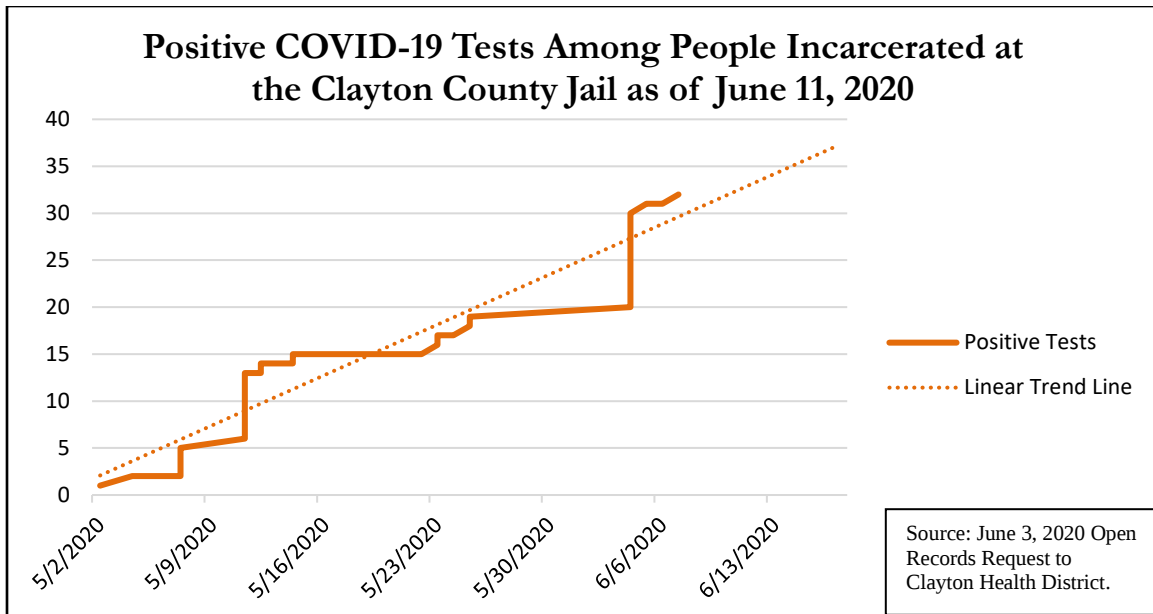
⁷² Tracey Tulley, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times, Mar. 23, 2020, <https://nyti.ms/3dQyYVV>.

⁷³ Ronnie Dahl, *Will Reduced Crowding at Cuyahoga County Jail Continue After the Coronavirus Crisis?*, Cleveland 19 News, May 3, 2020, <https://bit.ly/31ABPiZ>.

⁷⁴ Ga. Dep't of Corrs., *Confirmed COVID-19 Cases*, <https://bit.ly/3ifcCR8>.

⁷⁵ *Id.*

⁷⁶ See Lauren Gill, *Advocates Push for Details on Georgia's Response to COVID-19 in Prisons and Jails*, The Appeal, May 8, 2020, <https://bit.ly/2VCLyl6> (noting "at least 31 prisoners and seven staff members have tested positive" at Fulton County Jail); Jonathan Raymon, *8 Inmates, 1 Employee Test Positive for COVID-19 at Gwinnett County Jail*, 11Alive, May 22, 2020, <https://bit.ly/2YOhHZ5>.



109. Medical experts have made clear that the need for action is urgent and that the window of opportunity is narrowing to reduce the spread of outbreaks in jails. Given the Defendants’ failure to take reasonable steps to respond to the threat of the virus, detainees and staff at the Clayton County Jail are at grave risk of death or serious illness in the absence of court-ordered relief. Each day the jail continues to operate as described in this complaint will increase the likelihood of illness and death for detainees, jail staff, and people in the community.

C. Defendants Have Failed to Respond Reasonably to the Known Risk of a COVID-19 Outbreak in the Clayton County Jail.

110. Each Defendant is actually aware of the risk posed by COVID-19 and the dangers of large outbreaks in detention facilities. Each Defendant is actually aware of the conditions in the Clayton County Jail and the risks posed by those

conditions in light of COVID-19, through their personal observations of the jail's housing units and operations, communications with staff members and detainees, and reviews of detainee grievances and other records.

111. Defendants are actually aware of the risks posed by COVID-19, through their personal review of coronavirus-related documents published by entities such as the CDC and the National Institute of Corrections.

112. Numerous detainees submitted written grievances related to the Defendants' failure to mitigate the risk posed by COVID-19. The Defendants are aware of detainees' grievances including but not limited to the following.

- a. On May 14, J.P.⁷⁷ stated that he was concerned about not having a face mask and asked jailers "we have one towel that we dry off with and we are to wear that on our face?"
- b. On May 15, C.C. wrote that he had congestive heart failure, was confined to an overcrowded cell, and had not been issued a protective mask.
- c. On May 16, B.T. stated that he lacked "proper cleaning chemicals for [his] cell," noted "no proper social distancing,"

⁷⁷ Plaintiffs are using initials instead of full names to protect the privacy of third parties.

and voiced concern that detainees had to “make [their] own protective mask.”

- d. On May 16, T.J. stated that there were no cleaning or disinfectant supplies being distributed and stated that there was improper “screening of bunkmates after one is found with [COVID-19] symptoms.”
- e. On May 17, D.H. stated “I have . . . been appointtd [sic] inmate worker, but have not receive[d] a face mask[.] (I wear a dirty torn towel on my face).”
- f. On May 18, Q.W. stated that no cleaning supplies were being distributed. He added that “sick inmates don[’]t [receive] medical attention in [a] timely manner.”
- g. On May 19, Q.T. stated that he was tested for COVID-19 on May 4 and sent back to his dorm before receiving the test results. He learned that he had tested positive on May 19.
- h. On May 22, C.S. wrote that “We have not been given an[y] info. related to COVID 19” and noted that he had no access to masks or cleaning supplies. He added: “RESOLUTION, I REQUEST TO ADDRESS THIS MATTER A.S.A.P.

BECAUSE MY LI[F]E AND OTHER INMATES LIVES
AR[E] IN JEOPARDY.”

- i. On May 29, M.M. stated “I have been from top to bott[o]m of jail and have yet to receive a mask, the living conditions here are terrible, it is very unsanitary[.] [T]here are never no chemicals no bleach, I sleep on floor T [sic] toilet and I wake up daily with my mat floating in fec[e]s water.”
- j. On May 29, J.B. wrote that he tested positive for COVID-19 and did not receive necessary medical attention.
- k. On May 31, A.H. wrote that he was “scared for [his] life” because “conditions in this jail” are “really dangerous.”
- l. On May 31, A.B. noted that many “inmate workers” had tested positive for COVID-19, that he had no face mask, and that “the staff here is not taking this pandemic serious[ly].”
- m. On June 1, D.J. wrote “this grievance is being submitted due to C.C.D.C. failure to follow Covid-19 guidelines and regulation[s,] which are placing myself and others lives in jeopardy.”

- n. On June 1, Q.T. wrote that he worked in an area where people infected with COVID-19 were quarantined. He stated “[f]or a full week I’ve asked an officer on every rank from co to lt for [a] protective mask but nobody has helped me out.”
- o. On June 1, J.G. expressed concern about “the Covid-19 outbreak amongst the inmates in dorm D-7” and asked for supplies to clean the bunks of infected people.
- p. On June 3, K.R. wrote that the jail’s “failure to follow Covid-19 guidelines” placed his life in jeopardy.
- q. On June 4, J.I. stated that “[n]othing has changed in spite of Covid 19,” “[o]ur cells are seldom cleaned,” and that phones and kiosks were seldom sanitized.

113. In response to a public records request, the Sheriff’s Office provided undersigned counsel with 28 grievances related to COVID-19, dated between April 1 and June 5. For 21 of those 28 grievances, no one from jail staff appears to have responded to the detainee.

114. There are certain concrete, feasible actions that Defendants could take to prevent the rapid spread of the coronavirus. A jail must take reasonable steps necessary to promote social distancing, ensure sanitation of shared surfaces, and

achieve early detection and isolation of suspected COVID-19 cases to limit the number of people exposed to the virus. Many of these measures are recommended by the CDC and were implemented months ago in other jails across the state.

115. Defendants, however, have not taken steps reasonably aimed to mitigate the risk of a COVID-19 outbreak in the Clayton County Jail. Three months into a global pandemic that has killed over 120,000 Americans and two months into a known outbreak within its facility, the jail continues to be run in all material respects exactly how it was run six months ago.

116. In particular, Defendants have failed to respond reasonably in at least five ways. First, Defendants have failed to take reasonable steps to ensure effective social distancing. Second, Defendants have failed to provide minimally adequate sanitation and personal hygiene. Third, Defendants have failed to provide adequate protective equipment. Fourth, Defendants have failed to adequately identify and respond to COVID-19 cases. Fifth, Defendants have failed to provide information to detainees about avoiding infection.

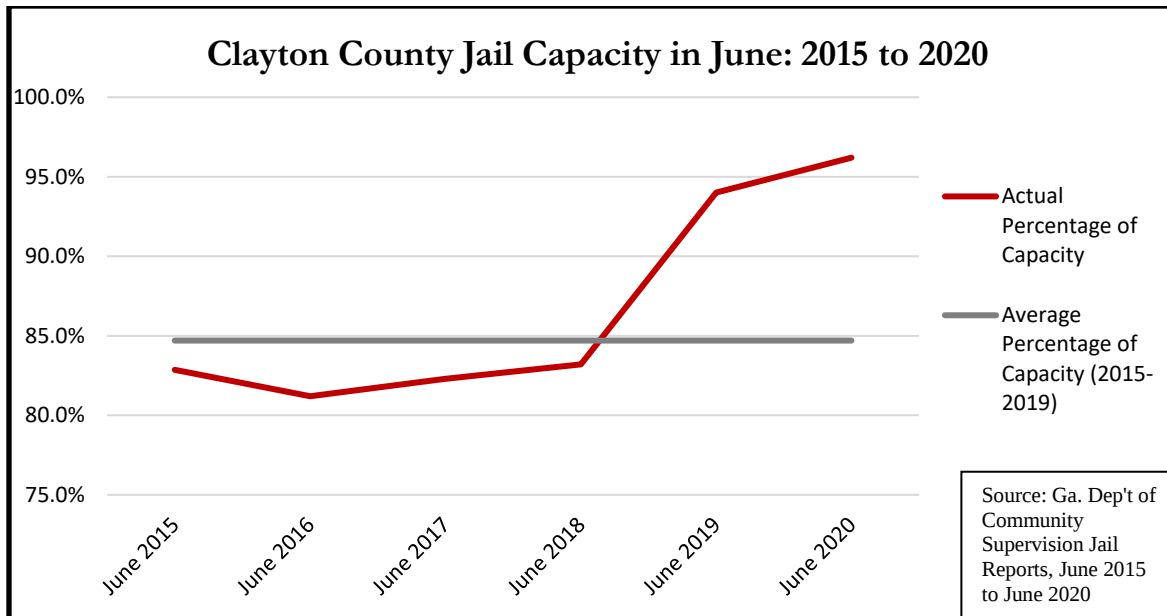
1. Defendants continue to house three or four detainees in two-person cells and have made no effective effort at social distancing.

117. It is widely understood that social distancing “is a cornerstone of reducing transmission of respiratory diseases such as COVID-19.”⁷⁸

118. Defendants have failed to make reasonable efforts to achieve social distancing at the Clayton County Jail.

119. First, Defendants have failed to make reasonable efforts to reduce the jail population. As of June 4, 2020—nearly three months after the Governor of Georgia declared a public health emergency—the Clayton County Jail was operating at 96 percent capacity, with 1,847 detainees confined in the jail designed for 1,920 according to the Georgia Department of Community Affairs. By a substantial margin, that is the highest population recorded by the Department for the month of June since 2015. It is over thirteen percent higher—and includes more than 220 more detainees—than the average population recorded for the month of June across the previous five years.

⁷⁸ U.S. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 4 (Mar. 23, 2020).



120. The Clayton County Jail’s population density is not an unavoidable consequence of the pandemic or outside of Defendant Hill’s ability to ameliorate. Other jails in Georgia have responded to the pandemic by substantially reducing their populations so that they operate well below normal levels and provide the space and services needed to effectively prevent outbreaks of COVID-19.

121. Between March 5 and May 7, 2020, the total population-to-capacity ratio for all Georgia jails fell from 77 percent to 57 percent statewide. Thus, many jurisdictions responded to the pandemic by ensuring that their jails were operating well below capacity to facilitate social distancing. By contrast, the Clayton County Jail is operating well above the number of people for which it can implement effective social distancing.

122. Defendant Hill has authority to release certain detainees from the jail in light of the serious risk of harm posed by COVID-19. For example, Georgia law allows sheriffs to award credit for good behavior to certain detainees serving sentences for misdemeanors or felony probation violations. *See, e.g.*, O.C.G.A. § 42-4-7(b). Sheriffs also have authority to release detainees to home confinement under certain circumstances. *See, e.g.*, O.C.G.A. § 42-1-8.

123. As a result of a pre-pandemic policy decision, Defendant Hill does not consider early release for most of the detainees eligible under state law for early release. In January 2014, Defendant Hill posted a notice on social media that his office was “removing ‘good time’ [credits] to keep criminals off the street longer.”⁷⁹ He instead decided to limit opportunities for early release to the relatively small number of detainees assigned to work details or, in the alternative, “rare discretionary circumstances.”⁸⁰

124. Defendant Hill continues to adhere to his policy of refusing to consider early release for most of the detainees otherwise eligible. On March 16, 2020, Valerie L. Fuller, a communications administrator for Clayton County, sent

⁷⁹*See* Clayton County Sheriff’s Office, Facebook (Jan. 3, 2014), <https://www.facebook.com/ClaytonCountySheriffGA/posts/effective-immediately-the-clayton-county-sheriffs-office-will-no-longer-allow-in/639803502746696>.

⁸⁰ *Id.*

an email to Defendant Hill regarding local law enforcement agency responses to COVID-19. She asked, “Are you all releasing anyone from the jails[?]” The next day, Defendant Hill responded, “We are not releasing anyone from jail unless they are being bonded out.”

125. Instead of attempting to reduce the jail’s population, Defendant Hill has taken steps to increase it. After the tragic shooting death of seven-year-old Gabriel Vasquez on April 11 in the Conley area of Clayton County, Defendant Hill stated “that all criminals in a 5 mile radius of the shooting would incur the wrath of the Sheriff’s Office until the shooter is found.”⁸¹ Two months later, the Sheriff’s Office had made over 500 arrests within the “5 mile radius” Defendant Hill chose to target.

126. During the course of the global pandemic, employees of the Clayton County Sheriff’s Office and other local law enforcement entities have continued to arrest and book people for minor offenses, even where arrest is not required by law. They have done so knowing that some such persons will have bond amounts set that they are unable to pay. Some people arrested for minor offenses are jailed for weeks or months only because they cannot afford to pay bail. To take only a

⁸¹ See Clayton Cty. Sheriff’s Office Advisory, May 6, 2020, <https://local.nixle.com/alert/7980002>.

few examples, detainee T.S. has been jailed 27 days for jaywalking and disorderly conduct, with bail set at \$2,400. Detainee J.P. has been jailed for 26 days for disorderly conduct, with bail set at \$1,300. Detainee G.Y. has been jailed for 30 days for shoplifting, with bail set at \$2,400. Detainee H.D. has been jailed for 89 days for criminal trespass, with bail set at \$2,400. And detainee T.L. has been jailed for 176 days for public drunkenness, with bail set at \$1,300.

127. In short, in the middle of a pandemic understood by jailers across Georgia to necessitate reducing jail populations *below* normal levels, Defendants are doing the opposite by intentionally detaining substantially *more* people than usual.

128. Due in part to Defendant Hill's actions and failures to act, the jail's population size is not being managed effectively during the outbreak. This poses especially great danger to people who are medically vulnerable or have disabilities—people for whom exposure to the coronavirus creates much higher risk of serious illness and death.

129. In addition to failing to release eligible detainees, Defendants have failed to take other reasonable steps to mitigate the risk of COVID-19 infections in light of the number of people in custody. Defendants consistently staff the jail with too few officers. Given the current jail population, officers are responsible for

supervising far more detainees than they can effectively manage. Defendants' understaffing of the jail has resulted in ongoing failures to ensure that high-traffic areas are sanitized, that detainees are informed about the risks of COVID-19 and prevention measures, that detainees avoid congregating in close proximity, that detainees who are sick are promptly removed from housing units and evaluated by medical staff, and that other basic mitigation steps are followed.

130. The jail's only apparent effort at promoting social distancing is unreasonable: the jail reduced to 12 the number of people who can leave their cells during each rotation of "free time" in a pod's day area. But that solution ignores CDC guidelines because Defendants permit those 12 people to congregate during their hour out-of-cell, including playing card games, watching television, and using telephones in close proximity to one another.

131. Indeed, the jail's policies *require* that detainees congregate in close proximity *every single day* in order to obtain food and medicine. For instance, in most pods, detainees are required to leave their cells in groups of 24 or more and line up in close proximity in order to be issued their noon meal (which they then eat in their cells with up to three cellmates). Likewise, detainees with medical prescriptions are required to leave their cells as a group and line up in close proximity for "pill call" to receive their medications. When detainees go to sick

call—the designated time for medical staff to examine and treat detainees—they walk to the medical unit as a group, often with other detainees from their housing unit of up to 288 people, but jail staff make no effort at enforcing social distancing. When detainees arrive at the medical unit, they are usually placed inside of a holding area with detainees from other housing units, where they wait to be called to see a nurse or medical provider. When detainees go to video court, they are crowded together in a small waiting area with no opportunity for physical distancing.

132. With all of these requirements for detainees to interact directly and indirectly with other detainees, including detainees from other housing units, limiting free time to 12 individuals at a time is plainly inadequate to mitigate the risk that an infected detainee will spread the virus throughout the jail.

2. Defendants have failed to provide basic sanitation and personal hygiene.

133. A second component of an effective COVID-19 response is to implement “intensified cleaning and disinfecting procedures” to promote “healthy hygiene practices.”⁸² However, Defendants have failed to take any reasonable action to improve sanitation and hygiene.

⁸² U.S. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*

134. Though there is some variation among the housing units as a result of individual detainees' ingenuity in improvising cleaning supplies and individual officers' willingness to provide limited supplies to detainees on request, people in multiple housing units go weeks and sometimes months at a time with no opportunities to disinfect toilets, sinks, and other in-cell fixtures.

135. The only "cleaning" done for cells on a regular basis is to sweep the floors and sometimes provide a mop that is so filthy, it is more likely to spread than prevent disease.

136. Regardless of housing unit, the ability of detainees to clean and sanitize their living areas is so limited as to be meaningless. For instance, showers, common area tables, telephones, kiosks, door handles, and other objects are cleaned by the "inmate workers" at irregular intervals, sometimes as infrequently as every one or two months.

137. Defendants have not implemented an adequate or effective plan for maintaining sanitation in the jail's overpopulated housing units during the pandemic.

9-10 (Mar. 23, 2020) ("Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas.").

138. The “inmate workers” are responsible for cleaning the common areas, including day rooms and showers. Jail staff permit them to make their own rules about what items to clean, how often to clean them, and the manner in which to clean them.

139. Each detainee is responsible for cleaning her or his cell, but, as discussed above, the only materials provided regularly are a broom and a dirty mop. On rare occasions, detainees may convince a sympathetic detention officer or “inmate worker” to provide them with sanitizing chemicals, but Defendants do not have any system in place for ensuring that minimally adequate cleaning supplies are offered to detainees.

140. Personal hygiene products are similarly restricted. At best, detainees receive approximately four ounces of liquid soap, toilet paper, and toothpaste once per week. Frequently, toothpaste, toilet paper, or sanitary napkins are unavailable. Detainees have to make the limited soap they are issued last for a week of showers and handwashing. Lacking cleaning products, some detainees attempt to wipe down their cells with their jail-issued soap, further limiting their ability to maintain good hygiene.

141. Defendants have not taken steps to ensure that detainees have clean clothing and bedding. Each detainee has one jumpsuit that she or he must wear for

at least one week, and often a month or more, before being issued a clean replacement. Towels and washcloths are washed infrequently, sometimes not for months. Linens often go missing for lengthy periods. For example, as of late May, detainees in multiple housing units had been without sheets for over two weeks.

3. Defendants have failed to issue reasonably adequate protective equipment.

142. In settings where effective social distancing is not possible, face coverings reduce the risk that those who have COVID-19 will spread the disease to others by limiting emissions of respiratory droplets. For that reason, the CDC “recommends that everyone wear cloth face coverings when leaving their homes, regardless of whether they have fever or symptoms of COVID-19.”⁸³

143. To work effectively, face coverings must fully cover the nose and mouth, fit snugly against the sides of the wearer’s face so that there are no gaps, and be secured in a manner that prevents slipping.⁸⁴

144. Defendants have failed to ensure that detainees have adequate face coverings or other protective equipment.

⁸³ U.S. Ctrs. for Disease Control & Prevention, *Important Information About Your Cloth Face Coverings*, <https://bit.ly/3gAe0gv>.

⁸⁴ *Id.*

145. For the first two and one-half months of the pandemic, few detainees at the Clayton County Jail had jail-issued masks. Instead of providing masks, jailers verbally instructed detainees to cover their faces with towels or other cloth items such as socks, underwear, a t-shirt, or a torn-off section of bedsheet.

146. To give one example, in May 2020, Plaintiff Randolph Mitchell, age 72, asked an officer for a mask. The officer told Mr. Mitchell that he could not have a mask because he was not a trustee. Afraid of getting sick, Mr. Mitchell “purchased” an improvised mask made out of underwear from another detainee in exchange for two packets of soup. Similarly, in May 2020, former detainee M.B., a 68-year-old woman who recently underwent chemotherapy for breast cancer, asked officers and nurses for a face mask. No mask was provided. M.B. instead used a torn piece of jail-issued underwear to try to protect herself from the virus. Detainees like Mr. Mitchell and M.B. are given no guidance about how to make, use, and wash an improvised face covering.

147. Starting only in early June—two and one-half months into the pandemic, and in anticipation of this litigation—the jail began to provide masks to a limited number of additional people. The masks are made of a thin paper-like material. They are not consistently replaced or cleaned when they break or

become soiled. There are still numerous detainees who have never been provided a mask by jail staff.

148. Defendants' approach to providing face coverings is objectively unreasonable and inadequate. Using a face covering is a safe practice only insofar as the covering is not contaminated with a virus, bacteria, or other agent that will make the wearer sick. The CDC thus recommends that face coverings be washed "after each use," be "completely dry" before use, and be handled carefully when touching it to avoid cross-contamination from a person's hands to the mask.⁸⁵

149. Suggesting that detainees cover their faces with the same towels they use over the course of a week for showering is objectively unreasonable because a towel that a person uses throughout the week for showering will not be clean and dry when the person uses it. And expecting detainees to craft a functional mask out of towels and undergarments, with no instruction regarding how a mask should fit or how it should be used and washed, is objectively unreasonable because a dirty or poorly fitting mask cannot effectively serve its purpose.

⁸⁵ U.S. Ctrs. for Disease Control & Prevention, *How to Safely Wear and Take Off a Cloth Face Covering*, <https://bit.ly/2BgJP66>.

4. Defendants have failed to implement a process for identifying medically vulnerable and disabled people and taking affirmative steps for their protection.

150. As discussed above, a number of conditions, a subset of which are also “disabilities” pursuant to the Americans with Disabilities Act and the Rehabilitation Act, increase the risk of serious illness or death if a person is exposed to COVID-19. One high-risk group consists of people aged 55 or older. In addition, people diagnosed with asthma, diabetes, hemoglobin disorders, disorders compromising the immune system, kidney disease requiring dialysis, liver disease, lung disease, serious heart conditions, or who are pregnant all face a substantially higher risk of serious illness or death from COVID-19.

151. A large number of people in the Clayton County Jail have disabilities that increase their risk of serious illness or death if they are exposed to COVID-19. Although the exact number of these individuals is presently unknown, it likely is high, as approximately 40 percent of all jail detainees nationwide have chronic medical conditions, many of which constitute “disabilities” under the Americans with Disabilities Act and the Rehabilitation Act. Several of the medical conditions that make detainees medically vulnerable to COVID-19—such as asthma and diabetes—are common among jail detainees generally.

152. Defendants are aware that a large number of Clayton County Jail detainees have medical conditions or disabilities that make them uniquely vulnerable to serious illness or death should they become infected. However, Defendants have taken no meaningful action to address the risk of COVID-19 infections among medically vulnerable detainees. Defendants do not attempt to identify the medically vulnerable, and they do not provide sufficient protections for these individuals. Instead, Defendants continue to house medically vulnerable detainees, including people with disabilities, in the same conditions as all other detainees, usually in unsanitary three-person cells with no meaningful effort at social distancing or other disease-prevention measures.

153. Because COVID-19 poses an increased threat of severe illness and death to medically vulnerable people, and circumstances at the Clayton County Jail make further spread of the disease highly likely, no set of conditions can adequately protect members of this class. Public health experts recommend rapidly releasing people most vulnerable to COVID-19 from custody. Release not only protects the most vulnerable people from being infected with the virus, but also eases crowding, thereby allowing for greater risk mitigation for people held or working in a jail, and the broader community. Release of the most vulnerable people from custody also reduces the burden on the region's health care

infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

154. As of June 8, 2020, the Clayton County Jail—based on testing fewer than 150 detainees—had 32 confirmed cases of detainees with COVID-19, more than 20% of those tested. Yet the jail population was at 96 percent of capacity on June 4, 2020, with most cells housing three detainees.

155. Immediate release of medically vulnerable Plaintiffs and class members is a necessary public health intervention. Release is needed both to prevent irreparable harm to at-risk individuals and to reduce the jail's population to a level sufficient to ensure effective physical distancing, thereby reducing the risk of transmission for all class members and the wider public.

156. Until such time as they are released, Plaintiffs and other medically vulnerable detainees must be provided with enhanced protections to mitigate their risk of contracting COVID-19. Despite clear guidance from public health authorities and the CDC that these prisoners are at a significant risk, Defendant Hill and other defendants are not taking any of a number of possible steps to even attempt to protect this vulnerable population, such as:

- Prohibiting housing medically vulnerable people in open dormitory housing units;

- Ensuring medically vulnerable people are housed in single cells; and
- Implementing long-term staff assignment by test-confirmed negative staff to prevent staff-prisoner transmission.

5. Defendants have failed to implement a reasonable process for identifying, testing, and isolating COVID-19 infections.

157. The Georgia Department of Public Health emphasizes that “[a]ll correctional and detention facility personnel should be preparing for the possibility of a COVID-19 outbreak within their facility,” and “[a]ll employees should be on high alert for potential COVID-19 cases within their population.”⁸⁶ “Facilities should take steps to isolate symptomatic inmates/detainees IMMEDIATELY.”⁸⁷ Detainees who display symptoms of infection must be placed in medical isolation, and those who have been in close contact with an infected patient must be placed in quarantine.⁸⁸

158. The CDC recommends that all individuals in quarantine be “monitored for COVID-19 symptoms twice per day, including temperature

⁸⁶ Ga. Dep’t of Public Health, *Interim Guidance for Management of COVID-19 in Correctional and Detention Facilities in Georgia* 1 (Apr. 15, 2020), <https://bit.ly/3bvWECh>.

⁸⁷ *Id.*

⁸⁸ *Id.* at 1-2.

checks.”⁸⁹ The CDC further recommends “daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.”⁹⁰

Defendants do not have any process for proactively identifying COVID-19 infection among detainees. Although jailers have quarantined certain pods where detainees have exhibited COVID-19 symptoms (keeping both people who tested positive and people who tested negative in the same housing area and, in some cases, in the same cell), there is no proactive effort to check detainees’ temperatures in units where COVID-19 cases are suspected by jailers.

159. Reporting COVID-19-like symptoms and receiving medical care for those symptoms requires detainees to file a request for medical care electronically using a kiosk system; yet, Defendants often prevent that from occurring. For example, in late May, M.B., a woman in Housing Unit 3, was experiencing symptoms consistent with COVID-19 and wanted to see medical staff, but she could not submit a sick call request because jailers restricted her kiosk access as punishment for a disciplinary infraction.

⁸⁹ U.S. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 21 (Mar. 23, 2020).

⁹⁰ *Id.* at 22.

160. Many detainees lack access to kiosks because their housing units do not have them, because they are restricted to their cells, or because they have been denied use of a kiosk as punishment.

161. When those detainees report COVID-19 symptoms and other medical problems to officers, the officers frequently ignore them.

162. When detainees are able to use the kiosk to report COVID-19 symptoms, the medical and security staff often take three or four days to respond. In the meantime, detainees remain in their housing units, exposing others in those units to a risk of infection.

163. After a detainee exhibits symptoms of the virus, Defendants have no procedure for determining which detainees have been in close contact with the sick detainee and then testing them.

164. In addition, there is no procedure to ensure that the cell and bed that the sick detainee occupied will be sanitized before a new detainee is assigned to that cell and bed.

165. For example, in late April, multiple people in one of the open dormitories became seriously ill, with symptoms including coughing, fever, and vomiting. The sick detainees remained in the open dormitory for over a week being moved to the infirmary. Apart from spraying the sick detainees' bedding

with an unidentified cleaning product, staff did nothing to sanitize the dormitory, and instead assigned other detainees to occupy those beds. Several additional detainees in that dormitory have since experienced symptoms consistent with COVID-19.

166. In mid-May, R.S., a man in Housing Unit 7, experienced symptoms consistent with COVID-19, including a high fever, body aches, loss of appetite, and loss of his senses of taste and smell. When the man complained to officers that he had these symptoms and needed medical attention, the response was that there was nothing officers could do and that the man should put in a medical request using the kiosk. The man's cellmate submitted a medical request on his behalf. For three days, the man continued to seek help from officers, but he was not taken to the medical unit. Three days after submitting a medical request and not receiving a response, the man, with the assistance of his cellmate, was able to get a nurse's attention during pill call. The nurse sent the man back to his cell until late in the evening, when he was taken to the medical unit. Jail staff did not provide the man's cellmate with instructions or equipment to sanitize his cell. The cellmate resorted to using personal soap to clean the cell. The cellmate was not assessed for COVID-19 symptoms. Soon thereafter, another prisoner was assigned to the bed that R.S. had vacated.

167. Similarly, in late May, a detainee in Housing Unit 8 complained of a fever, shortness of breath, and back pain. The detainee and his cellmates informed officers, but the officers did not respond. It took two days for the man to be seen by medical staff, after which he was removed from Housing Unit 8. Staff made no effort to clean the sick man's cell or assess whether his former roommates had symptoms of COVID-19. Another prisoner was soon after assigned to the sick man's bed.

168. Additionally, Defendants have failed to create and implement a system to adequately screen newly arrived detainees for COVID-19 and to quarantine each new arrival for a sufficient amount of time prior to placing that person into the general population.

169. Defendants have also failed to create and implement a system to adequately track the prior contacts of persons who exhibit symptoms of COVID-19 and to then remove those contacts from the general population.

6. Defendants have failed to educate detainees about COVID-19.

170. Another cornerstone of preventing and mitigating COVID-19 infections in jails is to inform all detainees about the “symptoms of COVID-19,” “hand hygiene,” and the need to “report symptoms to staff.”⁹¹

171. Defendants have provided no information to detainees about COVID-19.

172. Around the same time that the Governor declared a statewide public health emergency, Defendants stopped allowing detainees to watch television news programs.

173. As a result of Defendants’ unreasonable failure to provide information to detainees, many detainees do not know the symptoms of COVID-19 or how to prevent infection.

D. Defendants Are Discriminating Against Detainees with Disabilities by Failing to Provide Reasonable Accommodations to Reduce Their Risk of Serious Illness or Death.

174. As defined below, the members of the Disability Subclasses have “disabilities” as defined under the Americans with Disabilities Act and the

⁹¹ U.S. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 6 (Mar. 23, 2020).

Rehabilitation Act that make them susceptible to serious illness or death if they contract COVID-19, including people with asthma, diabetes, hemoglobin disorders, disorders compromising the immune system, kidney disease requiring dialysis, liver disease, lung disease, and serious heart conditions.

175. All detainees in the Clayton County Jail are entitled to participate in their criminal court proceedings—if they are being detained prior to trial—and to serve the sentences imposed—if they have been convicted of a crime—in reasonably safe conditions. To that end, the jail is required to provide adequate medical care, food, and services to keep people alive and healthy until their cases are resolved and their sentences are completed.

176. The COVID-19 pandemic prevents members of the Disability Subclasses from resolving their court cases and completing their sentences. Those who become infected with COVID-19 may experience long-term debilitating symptoms that prevent them from attending court appearances, and those who die from COVID-19 will never reach a resolution of their court cases or, for those serving sentences, complete the sentence imposed.

177. The conditions at the jail present a heightened risk to the Disability Subclasses and the Defendants are discriminating against the Disability Subclasses by not making reasonable accommodations.

178. Defendants could provide reasonable modifications to their programs, services, and activities to ensure that the members of the Disability Subclasses are adequately protected from COVID-19 infections. The modifications could include releasing individuals who qualify for release under state law, not requiring them to be held in multi-person cells, providing more frequent and thorough cleaning of their living areas, issuing them adequate protective equipment, and similar measures. However, Defendants have failed to make accommodations for members of the Disability Subclasses. Defendants have accordingly discriminated against members of the Disability Subclass on account of their disabilities.

CLASS ACTION ALLEGATIONS

179. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and six classes of similarly situated prisoners.

180. Plaintiffs make the following class action allegations concerning the classes and subclasses:

A. Principal Pretrial Class

181. Plaintiffs seek to certify a Principal Pretrial Class defined as follows: “All persons who are now or will in the future be confined in the Clayton County Jail who are not also being confined under a sentence of imprisonment.” The

Principal Pretrial Class will be represented by Plaintiffs Jones and Watkins, both of whom are held in the Clayton County Jail awaiting trial.

182. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class is so numerous that joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of over half of the 1,900 people presently jailed by Defendants, and an unknown number of people who will be jailed by Defendants in the future pending trial or for other reasons not involving the service of a sentence of imprisonment. As of May 7, 2020, 51 percent of the Clayton County Jail's detainees were being held pending trial. Further, the duration of the COVID-19 pandemic is unknown, meaning that there will be a steady stream of future class members.
- (b) There are questions of law and fact common to the class. Common questions of fact include whether the class members' living conditions increase their risk of COVID-19 infections. Common questions of law include whether

Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Fourteenth Amendment Due Process Clause.

- (c) The policies and practices challenged in this action apply with equal force to Plaintiffs Jones and Watkins and all members of the class so that Plaintiffs Jones and Watkins' claims are typical of those of the class. Plaintiffs Jones and Watkins are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.
- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Jones and Watkins, the representatives for the Principal Pretrial Class, possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the American

Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple telephone interviews with people in the jail and substantial document collection and review.

183. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

184. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final

injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs Jones and Watkins seek to represent the class in challenging Defendants' failures to provide safe conditions of confinement to people confined in the Clayton County Jail who are not under sentences of imprisonment. Any prospective relief granted to Plaintiffs Jones and Watkins with respect to those matters will necessarily benefit each member of the class.

B. Principal Post-Adjudication Class

185. Plaintiffs seek to certify a Principal Post-Adjudication Class defined as follows: "All persons who are now or will in the future be confined in the Clayton County Jail under sentence of imprisonment." The Principal Post-Adjudication Class will be represented by Plaintiffs Mitchell and Singleton, who are held in the Clayton County Jail under a sentence of imprisonment.

186. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class is so numerous that joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of over one-third of the approximately 1,900 people presently jailed by Defendants, and an unknown number of people who will be jailed by Defendants in the

future under sentences of imprisonment. As of May 7, 2020, 40 percent of the Clayton County Jail's detainees had been sentenced to imprisonment in state custody (6 percent) or county custody (34 percent). Further, the duration of the COVID-19 pandemic is unknown, meaning that there will be a steady stream of future class members.

- (b) There are questions of law and fact common to the class. Common questions of fact include whether the class members' living conditions increase their risk of COVID-19 infections. Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; and whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Eighth and Fourteenth Amendments.

- (c) The policies and practices challenged in this action apply with equal force to Plaintiff Mitchell, Plaintiff Singleton, and all members of the class so that Plaintiffs Mitchell's and Singleton's claims are typical of those of the class. Plaintiffs Mitchell and Singleton are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.
- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Mitchell and Singleton possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the American Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple telephone interviews with people in the jail and substantial document collection and review.

187. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

188. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs seek to represent the class in challenging Defendants' failures to provide safe conditions of confinement to people confined in the Clayton County Jail under a sentence of imprisonment. Any prospective relief granted to Plaintiffs Mitchell and Singleton with respect to those matters will necessarily benefit each member of the class.

C. Medically Vulnerable Pretrial Subclass

189. Plaintiffs seek to certify a subclass defined as follows: “All individuals in the Clayton County Jail, who are not under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people aged 55 or older, or people who have been diagnosed with, or are receiving treatment for, the following conditions:

- a. asthma;
- b. cerebrovascular disease;
- c. chronic kidney disease;
- d. COPD (chronic obstructive pulmonary disease);
- e. cystic fibrosis;
- f. diabetes mellitus (types 1 and 2);
- g. Serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies)
- h. hypertension;
- i. immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines);
- j. liver disease;
- k. neurologic conditions (such as dementia);
- l. obesity (body mass index [BMI] of 30 or higher);
- m. pregnancy;
- n. pulmonary fibrosis;
- o. sickle cell disease;
- p. thalassemia.”⁹²

⁹² According to the CDC, people with the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease, COPD, immunocompromised state (from solid organ transplant), obesity, serious heart conditions, sickle cell disease, and type 2 diabetes mellitus. People with the other

190. The Medically Vulnerable Pretrial Class will be represented by Plaintiffs Jones and Watkins, both of whom are held in the Clayton County Jail awaiting trial.

191. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class meets the numerosity requirement because joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of over 100 people currently confined in the jail and an unknown number of people who will be jailed in the future. In April 2020, the Clayton County Jail held a total of 739 chronic care patients, and Plaintiffs expect to show that a significant number of those individuals were not under a sentence of imprisonment and had conditions making them medically vulnerable to COVID-19. The class is ascertainable because the members' medical conditions

conditions listed above might be at increased risk of severe illness from COVID-19 based on what is known at this time. See CDC, Coronavirus Disease 2019, Who is at Increased Risk for Severe Illness?, <https://bit.ly/2NKP34T>.

can be determined by reference to documents in the possession of Defendants.

- (b) There are questions of law and fact common to the class. Common questions of fact include whether the class members' living conditions and preexisting medical conditions increase their risk of COVID-19 infections and of serious illness or death if they become infected. Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious harm; whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Fourteenth Amendment Due Process Clause.
- (c) The policies challenged in this action apply with equal force to Plaintiff Jones, Plaintiff Watkins, and all members of the class so that Plaintiffs Jones's and Watkins's claims are typical of those of the class. Plaintiffs Jones and

Watkins are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.

- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Jones and Watkins possess no interests adverse to those of other class members. Plaintiffs Jones and Watkins are represented by attorneys with the American Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple visits with people in the jail and substantial document collection and review.

192. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition,

prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

193. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs Jones and Watkins seek to represent the class in challenging Defendants' failures to provide safe conditions of confinement to medically vulnerable people confined in the Clayton County Jail who have not been sentenced to incarceration. Any prospective relief granted to Plaintiffs Jones and Watkins with respect to those matters will necessarily benefit each member of the class.

D. Medically Vulnerable Post-Adjudication Subclass

194. Plaintiffs seek to certify a subclass defined as follows: "All individuals in the Clayton County Jail, who are under a sentence of imprisonment, whose age or medical conditions make them susceptible to serious illness or death

if they contract COVID-19, specifically, people aged 55 or older, or people who have been diagnosed with, or are receiving treatment for the following conditions:

- a. asthma;
- b. cerebrovascular disease;
- c. chronic kidney disease;
- d. COPD (chronic obstructive pulmonary disease);
- e. cystic fibrosis;
- f. diabetes mellitus (types 1 and 2);
- g. serious heart conditions (such as heart failure, coronary artery disease, or cardiomyopathies)
- h. hypertension;
- i. immunocompromised state (from solid organ transplant, blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines);
- j. liver disease;
- k. neurologic conditions (such as dementia);
- l. obesity (body mass index [BMI] of 30 or higher);
- m. pregnancy;
- n. pulmonary fibrosis;
- o. sickle cell disease;
- p. thalassemia.”

195. The Medically Vulnerable Post-Adjudication Class will be represented by Plaintiffs Mitchell and Singleton, who are held in the Clayton County Jail under a sentence of imprisonment.

196. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class meets the numerosity requirement because joinder of all members of the class is impracticable.

Plaintiffs expect to show that the class consists of over 100 people currently confined in the jail and an unknown number of people who will be jailed in the future. In April 2020, the Clayton County Jail held a total of 739 chronic care patients, and Plaintiffs expect to show that a significant number of those individuals were in the jail under a sentence of imprisonment and had conditions making them medically vulnerable to COVID-19. The class is ascertainable because the members' medical conditions can be determined by reference to documents in the possession of Defendants.

- (b) There are questions of law and fact common to the class. Common questions of fact include whether the class members' living conditions and preexisting medical conditions increase their risk of COVID-19 infections and of serious illness or death if they become infected. Common questions of law include whether Defendants' failures to ensure adequate social distancing, sanitation, and personal hygiene present a substantial risk of serious

harm; and whether Defendants have responded reasonably to the risk of harm created by conditions at the Clayton County Jail; and whether Defendants have violated the class members' rights under the Eighth and Fourteenth Amendments.

- (c) The policies and practices challenged in this action apply with equal force to Plaintiff Mitchell, Plaintiff Singleton, and all members of the class so that Plaintiffs Mitchell's and Singleton's claims are typical of those of the class. Plaintiffs Mitchell and Singleton are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members
- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Mitchell and Singleton possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the American Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The

attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple visits with people in the jail and substantial document collection and review.

197. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

198. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs Mitchell and Singleton seek to represent the class in challenging Defendants' failures to provide safe conditions of confinement to

medically vulnerable people confined in the Clayton County Jail who have been sentenced to incarceration. Any prospective relief granted to Plaintiffs Mitchell and Singleton with respect to those matters will necessarily benefit each member of the class.

E. Disability Pretrial Subclass

199. Plaintiffs seek to certify a subclass defined as follows: “All individuals in the Clayton County Jail who have not been sentenced to imprisonment and whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for, a medical condition which would qualify as a disability under the Americans with Disabilities Act or the Rehabilitation Act.” The subclass includes people with any of the conditions listed in paragraph 192, except those who are medically vulnerable solely because of age, pregnancy, or BMI. The Disability Pretrial Subclass will be represented by Plaintiffs Jones and Watkins, both of whom are held in the Clayton County Jail awaiting trial.

200. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class meets the numerosity requirement because joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of over 100 people currently confined in the jail and an unknown number of people who will be jailed in the future. In April 2020, the Clayton County Jail held a total of 739 chronic care patients, and Plaintiffs expect to show that a significant number of those individuals were not under a sentence of imprisonment and had disabilities making them medically vulnerable to COVID-19. The class is ascertainable because the members' medical conditions can be determined by reference to documents in the possession of Defendants.
- (b) There are questions of law and fact common to the class, including whether Defendants have prevented the class members from benefiting from programs, services, and activities on account of their disabilities, and whether Defendants have failed to provide reasonable accommodations for the class members' disabilities.

- (c) The policies challenged in this action apply with equal force to Plaintiffs Jones and Watkins and all members of the class so that Plaintiffs Jones's and Watkins's claims are typical of those of the class. Plaintiffs Jones and Watkins are subject to the same challenged policies and practices as the class members and face the same risk of harm as the class members.
- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Jones and Watkins possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the American Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple visits with people in the jail and substantial document collection and review.

201. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

202. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs Jones and Watkins seek to represent the class in challenging Defendants' failures to provide reasonable accommodations to disabled people confined in the Clayton County Jail who have not been sentenced to incarceration. Any prospective relief granted to Plaintiffs Jones and Watkins with respect to those matters will necessarily benefit each member of the class.

F. Disability Post-Adjudication Subclass

203. Plaintiffs seek to certify a subclass defined as follows: “All individuals in the Clayton County Jail who have been sentenced to imprisonment and whose medical conditions make them susceptible to serious illness or death if they contract COVID-19, specifically, people who have been diagnosed with, or are receiving treatment for, a medical condition which would qualify as a disability under the Americans with Disabilities Act or the Rehabilitation Act.” The subclass includes people with any of the conditions listed in paragraph 192, except those who are medically vulnerable solely because of age, pregnancy, or BMI. The Disability Post-Adjudication Subclass will be represented by Plaintiffs Mitchell and Singleton, who are held in the Clayton County Jail under a sentence of imprisonment.

204. Plaintiffs meet the requirements of Rule 23(a) for the following reasons:

- (a) The class meets the numerosity requirement because joinder of all members of the class is impracticable. Plaintiffs expect to show that the class consists of over 100 people currently confined in the jail and an unknown number of people who will be jailed in the future. In April

2020, the Clayton County Jail held a total of 739 chronic care patients, and Plaintiffs expect to show that a significant number of those individuals were under a sentence of imprisonment and had disabilities making them medically vulnerable to COVID-19. The class is ascertainable because the members' medical conditions can be determined by reference to documents in the possession of Defendants.

- (b) There are questions of law and fact common to the class, including whether Defendants have prevented the class members from benefiting from programs, services, and activities on account of their disabilities, and whether Defendants have failed to provide reasonable accommodations for the class members' disabilities.
- (c) The policies challenged in this action apply with equal force to Plaintiff Mitchell, Plaintiff Singleton, and all members of the class so that Plaintiffs Mitchell's and Singleton's claims are typical of those of the class. Plaintiffs Mitchell and Singleton are subject to the same

challenged policies and practices as the class members and face the same risk of harm as the class members.

- (d) Plaintiffs and their counsel will adequately protect the interests of the class. Plaintiffs Mitchell and Singleton possess no interests adverse to those of other class members. Plaintiffs are represented by attorneys with the American Civil Liberties Union and the Southern Center for Human Rights, both of which focus on protecting the rights of people in the criminal legal system. The attorneys have experience in prison litigation and class action litigation and have devoted substantial resources and time to investigating this case, including multiple visits with people in the jail and substantial document collection and review.

205. Plaintiffs meet the requirements of Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants. In addition, prosecuting separate actions by individual class members would create a risk of

adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

206. Plaintiffs meet the requirements of Rule 23(b)(2) in that Defendants have acted or failed to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole. In particular, Plaintiffs Mitchell and Singleton seek to represent the class in challenging Defendants' failures to provide reasonable accommodations to disabled people confined in the Clayton County Jail who have not been sentenced to incarceration. Any prospective relief granted to Plaintiffs Mitchell and Singleton with respect to those matters will necessarily benefit each member of the class.

CLAIMS FOR RELIEF

COUNT I

Unconstitutional Punishment in Violation of the Fourteenth Amendment Due Process Clause 42 U.S.C. § 1983 / 28 U.S.C. § 2241

*On Behalf of the Principal Pretrial Class, Medically
Vulnerable Pretrial Subclass, and Disability
Pretrial Subclass Against All Defendants*

207. Plaintiffs hereby incorporate paragraphs 1 through 23 and 28 through 206 as if fully set out herein.

208. Under the Fourteenth Amendment, persons in pretrial custody cannot be punished as part of their detention. Punishment occurs if the Defendants' conduct either is not rationally related to a legitimate, nonpunitive, government purpose or is excessive in relation to a legitimate, nonpunitive government purpose.

209. Defendants have subjected Plaintiffs to unlawful punishment through acts and omissions that are not reasonably related to a legitimate non-punitive government purpose or are excessive in relation to that purpose. No legitimate government purpose is served by unnecessarily subjecting pretrial detainees to an excessive risk of exposure to and contracting COVID-19. Nor is any legitimate government purpose served by failing to address these risks. Exposing pretrial

detainees to an excessive risk of contracting COVID-19, and of serious illness and death for those who are medically vulnerable, is not rationally related to the purpose of pretrial confinement, which is to ensure the presence of a detainee at trial. Plaintiffs seek injunctive and declaratory relief against Defendant to prevent the continued violation of the rights of Plaintiffs and the classes they represent. Plaintiffs further seek a writ of habeas corpus under 28 U.S.C. §§ 2241 and 2243 directing Defendants to release or transfer the members of the Medically Vulnerable Pre-Trial Subclass and Disability Pretrial Subclasses from the Clayton County Jail facility, to remedy ongoing violations of the federal rights of these class members.

COUNT II

Unconstitutional Conditions of Confinement in Violation of the Eighth and Fourteenth Amendments 42 U.S.C. § 1983 / 28 U.S.C. § 2241

*On Behalf of All Plaintiffs and Class
Members Against All Defendants*

210. Plaintiffs hereby incorporate paragraphs 1 through 23 and 28 through 206 as if fully set out herein.

211. The coronavirus pandemic presents a substantial risk of serious harm to detainees' health, safety, and lives. Defendants' failure to take adequate and reasonable steps to protect detainees from injury and death as described herein, and

indeed their creation and implementation of policies that will *increase* the likelihood that the virus will spread in the jail, violates contemporary standards of decency.

212. Defendants have plenary authority to prescribe conditions of confinement in the Clayton County Jail and substantial authority to release certain categories of detainees to mitigate the spread of COVID-19.

213. Each Defendant is actually aware that the conditions in the jail present a substantial risk of serious harm to detainees, and each Defendant has exhibited deliberate indifference in the face of that risk by failing to take reasonable, necessary, and easily available steps to reduce the risk of harm, violating the Principal Pretrial Class's Fourteenth Amendment Due Process Clause right to safe custodial conditions and the Principal Post-Adjudication Class's Eighth and Fourteenth Amendment right against cruel and unusual punishments.

214. Plaintiffs seek declaratory and injunctive relief under 42 U.S.C. § 1983 on behalf of themselves and the Pretrial and Post-Adjudication Classes to prevent further violations of their rights by Defendants. Plaintiffs further seek a writ of habeas corpus under 28 U.S.C. §§ 2241 and 2243 directing Defendants to release or transfer the members of the Medically Vulnerable and Disability

Subclasses from the Clayton County Jail facility, to remedy ongoing violations of the federal rights of these class members.

COUNT III

Violations of the Americans with Disabilities Act 42 U.S.C. §§ 12101 *et seq.* / 28 U.S.C. § 2241

On Behalf of the Disability Pretrial Subclass and Disability Post-Adjudication Subclass Against All Defendants

215. Plaintiffs hereby incorporate paragraphs 1 through 23 and 28 through 206 as if fully set out herein.

216. Congress enacted the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*, to provide a clear and comprehensive mandate for the elimination of discrimination against people experiencing disabilities and to provide strong and consistent standards for identifying and addressing such discrimination. 42 U.S.C. § 12101(b)(1)–(2).

217. The ADA is based on Congress’s finding that “discrimination against individuals with disabilities” is “a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

218. Title II of the ADA mandates that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or

be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130.

219. The ADA defines a “disability” as “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A).

220. Plaintiffs Jones, Mitchell, Singleton, and Watkins, and the members of the Disability Subclasses, are qualified individuals with disabilities, as that term is defined in the ADA, and are entitled to the protections of the ADA.

221. The ADA directed the Attorney General of the United States to promulgate regulations enforcing Title II of the ADA and provide guidance on their content. 42 U.S.C. § 12134. The regulations that the Attorney General promulgated require public entities to “make reasonable modifications” to their programs and activities “when the modifications are necessary to avoid discrimination.” 28 C.F.R. 35.130(b)(7).

222. The regulations also specify that it is unlawful for a public entity to:

- (a) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others;
- or (b) provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same

result, to gain the same benefit, or to reach the same level of achievement as that provided to others. *See* 28 C.F.R. 35.130(b)(1)(ii)–(iii).

223. Defendants deny important services, programs, and activities that would mitigate the risk of COVID-19 to Plaintiffs Jones, Mitchell, Singleton, and Watkins, and other members of the Disability Subclasses, solely by reason of their disabilities.

224. Defendants have not permitted reasonable accommodations for Plaintiffs Jones’s, Mitchell’s, Singleton’s, and Watkins’s disabilities and have discriminated against the members of the Disability Subclasses in the provision of programs and services.

COUNT IV

Violations of the Rehabilitation Act 29 U.S.C. § 794(a) / 28 U.S.C. § 2241

On Behalf of the Disability Pretrial Subclass and Disability Post-Adjudication Subclass Against All Defendants

225. Plaintiffs hereby incorporate paragraphs 1 through 23 and 28 through 206 as if fully set out herein.

226. Section 504 of the Rehabilitation Act provides: “No otherwise qualified individual with a disability in the United States . . . shall solely by reason of his or her disability, be excluded from the participation in, be denied the benefits

of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance.” See 29 U.S.C. § 794(a).

227. The regulations implementing Section 504 of the Rehabilitation Act require that entities receiving federal financial assistance avoid unnecessary policies, practices, criteria, or methods of administration that have the effect of discriminating against persons with disabilities. 28 C.F.R. § 41.51(b)(3)(i).

228. Defendants receive “Federal financial assistance” within the meaning of 28 U.S.C. § 794(a).

229. Defendants deny important services, programs, and activities that would mitigate the risk of COVID-19 to Plaintiffs Jones, Mitchell, Singleton, and Watkins, and other members of the Disability Subclasses, solely by reason of their disabilities. Defendants receive federal funds in connection with those services, programs, and activities.

230. Defendants have not permitted reasonable accommodations for Plaintiffs Jones’s, Mitchell’s, Singleton’s, and Watkins’s disabilities and have discriminated against the members of the Disability Subclasses in the provision of programs and services.

COUNT V

Petition for a Writ of Habeas Corpus Under 28 U.S.C. §§ 2241 and 2243 for Confinement in Violation of the Eighth and Fourteenth Amendments, the Americans with Disabilities Act, and the Rehabilitation Act

On Behalf of the Medically Vulnerable and Disability Subclasses Against All Defendants

231. Plaintiffs hereby incorporate paragraphs 1 through 23 and 28 through 206 as if fully set out herein.

232. For the reasons discussed above, Defendants' continued confinement of the members of the Medically Vulnerable and Disability Subclasses violates the Eighth and Fourteenth Amendments, the Americans with Disabilities Act, and the Rehabilitation Act.

233. Members of the Medically Vulnerable and Disability Subclasses are particularly susceptible to infection, injury, and death from COVID-19. As a result of their specific characteristics, there are no conditions of confinement that will adequately protect members of the Medically Vulnerable and Disability Subclasses from the risk of infection, serious injury, and death, even if Defendants could adequately reduce the risk of infection, injury, and death for individuals without medical vulnerabilities by improving certain conditions.

234. Continuing to confine the Subclass members in the Clayton County Jail subjects them to a significantly higher risk of serious injury or death, relative to the general population, if they become infected with the coronavirus.

235. Defendants are therefore holding members of the Medically Vulnerable and Disability Subclasses in custody in violation of the Eighth Amendment's right to be free from cruel and unusual punishments; the Due Process Clause of the Fourteenth Amendment; the Americans with Disabilities Act; and the Rehabilitation Act.

236. Plaintiffs seek a writ of habeas corpus under 28 U.S.C. §§ 2241 and 2243 directing Defendants to release or transfer the members of the Medically Vulnerable and Disability Subclasses from the Clayton County Jail facility, to remedy ongoing violations of the federal rights of these class members.

REQUEST FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully ask that this Court:

- (1) Assume jurisdiction over this action;
- (2) Certify this case as a class action under Rule 23 of the Federal Rules of Civil Procedure and appoint the undersigned as class counsel;
- (3) Declare that Defendants are violating the federal rights of Plaintiffs and other class members;
- (4) Enter preliminary and permanent injunctive relief requiring Defendants to, among other things:
 - (a) Release or transfer all Medically Vulnerable and Disability Subclass Members to home confinement or other safe location, through an expedited process to be ordered by the Court;
 - (b) Reasonably mitigate the conditions in the Clayton County Jail that facilitate the spread of COVID-19, including by implementing social distancing measures, providing personal protective equipment, and releasing certain detainees;
 - (c) Provide safe and sanitary conditions of confinement to Plaintiffs and other class members, with heightened protections for detainees who are susceptible to serious and/or fatal COVID-19 infections.
- (5) Issue a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2243 directing the immediate release or transfer of members of the Medically Vulnerable and Disability Subclasses to home confinement or other safe location;
- (6) Award Plaintiffs reasonable attorney's fees, expenses, and costs of litigation under 42 U.S.C. § 1988, 42 U.S.C. § 12205, and other applicable law; and

- (7) Award such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Ryan Primerano

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Counsel for Plaintiffs

July 1, 2020

VERIFICATION

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Ryan Primerano

July 1, 2020

CERTIFICATE OF COMPLIANCE

I certify that this document has been prepared in compliance with Local Rule 5.1C using 14-point Times New Roman font.

/s/ Ryan Primerano

July 1, 2020