STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Arnold Baker, Deiven Branch, Gregory Green, Ronald Paul Habedank, Dameon Henley, Ronald Hill, Charles Jackson, Nathaniel Moore, Deontaye Russell, Robert Raphael Schultz, Ali Washington, Antonio Williams, William Ballard, Resa Gauthier, Ardelle Manthey, Elijah Milsap, Brian Pippitt, Adrian Riley, and Marshawn Winston, on behalf of themselves and all others similarly situated,

Petitioners,

v.

Minnesota Department of Corrections, and Paul Schnell, Commissioner, in his official capacity,

Respondents.

Case No: 62-CV-20-5143

AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF MANDAMUS

Petitioners above-named, on behalf of themselves and all others similarly situated, pursuant to Minnesota Statutes, Chapter 586, hereby bring this Amended and Supplemental Petition against Respondents above-named (collectively the "DOC") for a Writ of Mandamus, and in support of their

Amended and Supplemental Petition, by and through their undersigned attorneys, complain and allege as follows:

NATURE OF THIS ACTION

1. This Petition presents an extraordinary issue of public safety: the urgent need to protect the health, safety, and lives of all people, both staff and people in the custody and control of the DOC in its correctional facilities, and ultimately of residents of the state of Minnesota, by limiting the spread of COVID-19, the disease resulting from the novel coronavirus.

2. The novel coronavirus and COVID-19 have engendered a growing and alarming global health crisis unlike anything the world has seen for over a century. This public health crisis threatens the health and lives of hundreds of millions of persons throughout the world. To date there have been more than 32 million confirmed COVID-19 cases and one million deaths worldwide, with over seven million confirmed cases and 215,000 deaths in the United States.[1] Minnesota has had over 110,000 confirmed cases and 2,000 deaths. *Id*. COVID-19 does not respect even the most powerful person in the world, who, at the risk of health and life, must respect COVID-19.

[1] Available at https://www.startribune.com/coronavirus-covid-19-minnesota-tracker-map-county-data/568712601/.

3. In nearly every respect, the State of Minnesota has taken extraordinary steps to slow the COVID-19 pandemic, by heeding the expert advice of public health officials to order a statewide "stay home order," implementing school, court, and business closures, requiring wearing of masks in enclosed spaces, and limiting public gatherings. In many regards, Minnesota has been among the leading states in implementing these critical measures.

4. There has been one blind spot in Minnesota's leadership on the COVID- 19 pandemic: jails and prisons. In contrast to the speed with which Minnesota has followed public health officials' other warnings, it has failed almost completely to act in any coordinated way to prevent COVID-19 from spreading rapidly through correctional facilities and overwhelming medical resources in nearby communities.

5. Prisons are especially vulnerable to the pandemic. As one federal court explained on April 3, 2020, "once the Coronavirus is introduced into a detention facility, the nature of these facilities makes the mitigation measures introduced elsewhere in the country difficult or impossible to implement . . . the crowded nature of the facilities can make social distancing recommended by the CDC impossible."[2]

[2] *Coreas v. Bounds*, No. 8:20-cv-0780-TDC, 2020 WL 1663133, at *2 (D. Md. Apr. 3, 2020).

6. Leading public health officials have warned that once COVID-19 gets into a detention facility, it will spread like wildfire, and that unless courts act now, the "epicenter of the pandemic will be jails and prisons."[3]

7. The most important methods to reduce transmission, now well-known after more than seven months of experience, are social distancing, regular testing, mask-wearing, regular sanitizing of communal facilities, and measures to reduce population density to facilitate compliance with U. S. Center for Disease Control ("CDC") and Minnesota Department of Health ("MDH") guidance. Of particular importance is the early release of prisoners with pre-existing conditions that render them especially vulnerable to COVID-19, such as age, asthma, and other infirmities. Early release of these susceptible prisoners, potentially to home confinement, both protects them from COVID-19 and facilitates social distancing for the remaining prisoner population.

8. This is not just a prisoners' rights or correctional staff issue. Prisons and jails are not hermetically sealed. Once the virus enters a detention center, often through correctional staff or the transfer of prisoners without adequate testing, the regular movement of staff in and out of the facility means that the

[3] Amanda Klonsky, An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues, New York Times (Mar. 12, 2020), *available at* https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html.

virus will spread back to the community. Whether COVID-19 cases occur in detention centers or in the community, they exacerbate the strain on the healthcare system throughout the communities in which they are located, where COVID-19 will inevitably spread, with potentially devastating effects.

COVID-19 AND MOOSE LAKE

9. In Minnesota, COVID-19 first entered DOC correctional facilities in February or March, 2020, at the Moose Lake Correctional Facility ("Moose Lake").[4] By the end of March, 2020, Moose Lake had six confirmed COVID-19 cases. By April 7, there were 29 confirmed cases; by April 14, 39 cases. No other DOC prison had a single case by April 14, except for nearby Willow River, a minimum security boot camp taking prisoners from and sharing staff with Moose Lake.

10. On April 15, the American Civil Liberties Union of Minnesota ("ACLU-MN") and the Minnesota State Public Defender ("MSPD"), representing three Moose Lake prisoners, brought suit against the DOC in Carlton County

[4] October 12, 2020: https://mn.gov/doc/about/covid-19-updates/. This is the October 12, 2020, web page for COVID-19 updates on the official DOC web site ("*DOC COVID-19 Updates*"). This web page continues to provide a history and the current status of COVID-19 in DOC correctional facilities. Petitioners request that this Court take judicial notice of this page on a continuing basis under Minn. R. Evid. 201 as adjudicative facts not subject to reasonable dispute, and Minn. R. Evid. 801(d)(2) as a statement by a party opponent.

District Court seeking writs of habeas corpus and mandamus on account of the DOC's violation of its legal duty to protect prisoners from COVID-19.[5] The *Foster* case petition was supported by declarations of the three prisoners and medical and public health professionals. *Foster* MNCIS Docket 1, 2-6. The declarations detailed the dangers and spread of COVID-19 at Moose Lake and the failure of the DOC to take preventive and remedial action to protect prisoners. *Id*. By the time the case ended on July 13, there were 77 COVID-19 cases at Moose Lake. *Id*.

11. On April 28, following a hearing, the Court ordered the DOC to answer the habeas claim in the petition. *Foster* MNCIS Docket 26. The following day, April 29, the Court issued a combined order and alternative writ of mandamus ordering the DOC to show cause

> why they should not be ordered to perform their legal duty to keep Petitioners reasonably safe from COVID-19 while in Respondents' custody at the Minnesota Correctional Facility- Moose Lake, to include providing for appropriate testing, social distancing, and medical treatment, so long as the COVID-19 pandemic continues. [*Foster* MNCIS Docket 27, at 6.]

[5] The case was originally brought as a class action on behalf of two classes of Moose Lake prisoners. MNCIS Docket 1, Petition, *Foster et al. v. Minnesota Department of Corrections et al.*, Court File No. 09-CV-20-633 ("the *Foster* case"). The Carlton County District Court never reached the issue of class certification. Petitioners ask this Court to take judicial notice of the *Foster* case file pursuant to Minn. R. Evid. 201 as adjudicative facts not subject to reasonable dispute.

12. In support of its order, the Court found, first, that the DOC has the duty to provide medical care and safety for prisoners under both federal law, *Estelle v. Gamble*, 429 U. S. 97 (1976), and state law, *Cooney v. Hooks*, 535 N. W. 2d 609 (Minn. 1985). *Id*., at 5. Second, the court found that the "allegations in the Petition, supported by sworn affidavits and declarations, demonstrate that thus far, MNDOC has not met its duty" to "implement reasonable measures to slow or stop the transmission of the highly contagious COVID-19 virus." *Id*., at 6. Finally, the court found no adequate legal remedy, given "the seriousness of the situation, the rapid spread of COVID-19 in the Moose Lake Facility, indeed throughout the State of Minnesota and the United States, and the particular vulnerability of the Petitioners." *Id*.

13. The DOC responded on June 5 with a motion to dismiss the Petition and supporting declarations and exhibits purporting to show its successful efforts at protecting prisoners and preventing and mitigating the spread of COVID-19 at Moose Lake. *Foster* MNCIS Docket 46-54, 57-69. Petitioners replied on June 15 with declarations demonstrating that the measures the DOC claimed to be taking were not in fact occurring or being enforced at the prison, and requested an evidentiary hearing so the court determine what the facts actually were. *Id*., 71-86.

14. The court held a hearing on June 23 on the DOC's motion to dismiss and the petitioners' request for an evidentiary hearing. *Id.*, 88-89.

15. On July 13, taking the DOC "facts" as true and purporting to do the same with the petitioners' contradictory facts, the court dismissed the case without an evidentiary hearing, finding that the DOC had done all it could to protect Moose Lake prisoners and had successfully defeated COVID-19 at the prison. *Id.*, 91-92.

16. The Moose Lake Petitioners appealed the dismissal to the Minnesota Court of Appeals on July 21. *Id.*, 94. They filed their opening brief with the Court of Appeals on October 12, 2020.

COVID-19 IN THE REST OF THE DOC SYSTEM

17. While the DOC was telling Carlton County court how well it was handling COVID-19 at Moose Lake, a very different story was unfolding in its other prisons, contradicting its story about Moose Lake.

18. At the DOC Faribault Correctional Facility ("Faribault), there were no confirmed COVID-19 cases when the ACLU-MN and MSPD filed the Moose Lake case on April 15, 2020. On June 2, three days before the DOC responded to the Moose Lake petition as ordered by the court, there were three confirmed cases. Four days after the DOC's June 5 filing, that number had exploded to 158 confirmed positive cases. By the time of the Court dismissed the Moose Lake

case on July 13, Faribault had recorded 205 confirmed positive COVID-19 cases, including two deaths. As of December 8, 2020, Faribault has had 829 confirmed positive COVID-19 cases, almost 50 percent of the prison population. *DOC COVID-19 Updates.*

19. At the DOC St. Cloud Correctional Facility ("St. Cloud"), there were no confirmed COVID-19 cases when the Moose Lake case was filed on April 15. The day after the court dismissed the Moose Lake case on July 13, St. Cloud was up to 33 confirmed positive COVID-19 cases. It now has had 638 confirmed positive COVID-19 cases, virtually the entire prison population. *Id.*

20. At the DOC Lino Lakes Correctional Facility ("Lino Lakes"), there were no confirmed positive COVID-19 cases when the Moose Lake case commenced on April 15. The first case appeared in the following two weeks. When the Court dismissed the Moose Lake case on July 13, there were 12 confirmed COVID-19 cases. Lino Lakes now has had 348 confirmed positive COVID-19 cases, over one-third of the prison population. *Id*.

21. At the DOC Oak Park Heights Correctional Facility ("Oak Park Heights"), there were no confirmed positive COVID-19 cases while the Moose Lake case was pending in the district court. The first confirmed positive COVID-19 case appeared in late July. By the beginning of September, there were five confirmed positive cases. There are now 58 cases. *Id*.

22. At the Rush City Correctional Facility, there were no confirmed positive COVID-19 cases while the Moose Lake case was pending in the district court. The first confirmed positive COVID-19 case appeared in late July. Rush City has now had 206 confirmed positive 206 COVID-19 cases. *Id*.

23. As noted above, at the time the Moose Lake case commenced on April 15, the nearby DOC Willow River Correctional Facility ("Willow River"), which shared staff with Moose Lake, had six confirmed positive COVID-19 cases. By early June, there were 80 confirmed positive COVID-19 cases. The DOC apparently closed Willow River for a period of time, but has since reopened it. It has had 82 confirmed positive COVID-19 cases. *Id*.

24. The DOC Stillwater Correctional Facility ("Stillwater") had no confirmed positive COVID-19 cases before the beginning on September. It now has had 977 confirmed positive COVID-19 cases, 73 percent of the inmate population. *Id.*

25. The DOC confines its women prisoners at Shakopee Correctional Facility ("Shakopee"). Shakopee had no confirmed positive COVID-19 cases during the pendency of the Moose Lake case. Shakopee's first confirmed case appeared in the last two weeks of July. To date, there have been 18 confirmed cases at Shakopee. *Id*.

26. COVID-19 has also now entered the Togo Correctional Facility, which had no confirmed positive COVID-19 cases prior to December 1, but now has five. *Id.*

27. Even Moose Lake has not been spared. This facility, where the DOC convinced the Court that COVID-19 was under control, now has had 151 confirmed positive COVID-19 cases, an increase of 74 cases since dismissal of the Moose Lake case, all in the last five weeks. COVID-19 is back with a vengeance at Moose Lake. *Id*.

28. In summary, the record of the DOC is not one of prevention of COVID-19 and protection of its prisoners from the virus. Instead it has been chasing the spread of COVID-19 through its prisons. COVID-19 is now running free at all the DOC's prisons. Whatever COVID-19 expertise the DOC professed to have in the Moose Lake case is clearly not apparent now, as COVID-19 has invaded and ravaged the DOC's prisons both during and after the Moose Lake case. *Id*.

29. Since March 1, 2020, there have been 3,277 confirmed positive COVID-19 cases in DOC prisons. Of those, 2905 cases, almost 90 percent, have occurred since the Court dismissed the Moose Lake case on July 13, 2020. *Id.*

30. Now winter is coming. And with it has come the expected second COVID-19 wave. The undisputed record on the DOC's own web site shows that

the DOC either does not or cannot protect its prisoners from COVID-19, as it is legally required to do. This Court must therefore issue its writ of mandamus to require the DOC to perform its legal duty.

THE PARTIES

31. Petitioner Baker, 60 years old, is a prisoner at Faribault, confined in a unit containing approximately 100 prisoners in which social distancing is impossible and a number of prisoners have been infected with COVID-19. Mr. Baker has been diagnosed with chronic obstructive pulmonary disease ["COPD"], emphysema, asthma, hepatitis B, and high blood pressure. The prison has denied him requested treatment for his conditions, and he fears contracting COVID-19 because of vulnerability from his pre-existing conditions. He has applied for and been denied conditional medical release ("CMR"). Baker Declaration ("Decl.") ¶¶ 1-2, 4, 11-14.[6]

[6] Multiple declarations are designated "Decls." In addition to their own declarations, Petitioners have submitted declarations from a number of other DOC prisoners who are not petitioners, but have relevant evidence: Weston Harbison; Harry Helps; Ryan Robinson; Alfredo Rosillo; and James Smith. With this Amended and Supplemental Petition, Petitioners are submitting the additional declarations of Garyegus Cooper, Gerald Henry, Mickiah Jackson, and Angelo Parker. Although former Petitioner Joseph Rewitzer has voluntarily dismissed his claims pursuant to Minn. R. Civ. P. 41.01(a)(1), his declaration is still part of the record and will be cited hereafter as appropriate in support of the Amended and Supplemental Petition.

32. Petitioner Deiven Branch has been a prisoner at Faribault since January, 2019, and fears getting COVID-19 because of his asthma and high blood pressure. His cousin, Adrian Keys, was also a prisoner at Faribault and died from COVID-19 contracted in the prison. Nurses at Faribault have advised Mr. Branch that he would be "in grave danger" if he contracted the virus. He has applied for and been denied CMR. He has experienced continuing lapses in the enforcement of social distancing and other preventive measures at Faribault. Branch Decl. ¶¶ 1-8, 10-19,22. Mr. Branch was allowed out on work release on October 8, 2020, but remains under the custody or control of DOC, and is subject to return to prison for violation of the terms of his work release. MN Department of Corrections Work Release Fact Sheet, available at https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf.

33. Petitioner Gregory Green has been a prisoner at Faribault since May 17, 2020, after previously being at St. Cloud since January 27, 2020. Because of the entry of COVID-19 at Faribault, he has repeatedly applied for early release, but the DOC has not responded to his requests. While Mr. Green was at St. Cloud, prison layout and facilities made social distancing impossible. There were also inadequate cleaning procedures and supplies. Mr. Green has health conditions that put him at increased risk from COVID-19, including COPD, asthma, chronic sleep apnea, and high blood pressure. He has applied for and

been denied CMR. Since he has been at Faribault, Mr. Green has found social distancing impossible in common areas. Green Decl., ¶¶ 2-7, 11-12, 16-17, 20, 22.

34. Petitioner Ronald Paul Habedank has been a prisoner at Moose Lake since early March, 2020. He suffers from asthma and dysfibrinogenemia, a serious blood-clotting disorder. This disease requires blood-drawing every two weeks. He therefore fears that contracting COVID-19 will prove fatal for him. Because of the COVID-19 pandemic, staff at Moose Lake failed to draw blood from him for more than a month. He has applied for and been denied CMR. He has observed that staff do not regularly wear masks and that it is impossible to social distance at Moose Lake. Habedank Decl. ¶¶ 1-10, 16, 18-19.

35. Petitioner Dameon Henley is a prisoner in the treatment unit at Lino Lakes. He has completed a six to eight month substance abuse program in TRIAD, a 306-bed therapeutic community at Lino Lakes. He now works as a mentor and clerk in the program. He suffers from chronic asthma, which makes him extremely vulnerable to COVID-19. Because of its layout, social distancing is impossible in the common area of his unit. Since March, 2020, he has suffered from a pinched nerve in his back, which causes his leg to go numb. Because of the COVID-19 pandemic, he has not received adequate medical assistance for this condition. He has applied for and been denied CMR. Henley Decl. ¶¶ 1-4, 6-16.

36. Petitioner Ronald Hill has been a prisoner in the medical unit at Faribault for the past two years. His medical conditions include hypertension, breathing problems, and a lung issue arising from an internal decapitation and a double stroke. He requires a walker because his left leg drags. He has had pneumonia twice. He eats through a feeding tube. He is thus extremely fearful of contracting COVID-19 because of these vulnerabilities. He has applied for and been denied CMR. He has observed that social distancing is not possible in the medical unit, and staff are not complying with proper protective procedures for COVID-19, including mask wearing and appropriate sanitation. Hill Decl. ¶¶ 1-8.

37. Petitioner Charles Jackson has been a prisoner at Faribault since July 27, 2020, and was a prisoner at St. Cloud beginning on March 18, 2020. He fears getting COVID-19 because of serious pre-existing medical conditions, which the DOC has recognized as "Major Medical Concerns." These include hypertension, only one properly functioning kidney, spinal issues, and leg infections. He has applied for CMR, but received no response. When he first arrived at St. Cloud in March, staff were not wearing masks or PPE, and even after masks were distributed, staff did not wear them and mocked prisoners who did. Prisoners on house crew, who cleaned and distributed food, also did not wear masks. While at St. Cloud, Mr. Jackson was forced to stay in filthy and unsanitary

segregation. Mr. Jackson was not tested for COVID-19 until June 4. Because he reported losing his senses of taste and smell, he was placed in segregation for two weeks even though his test and a re-test both came back negative. Mr. Jackson has not observed any improvement in conditions or COVID-19 safeguards since his transfer to Faribault. He applied for CMR in June while at Faribault, and has yet to receive a response. Jackson Decl. ¶¶ 2-9, 16-21, 28-35.

38. Petitioner Nathaniel Moore is a prisoner at Faribault and has previously been a prisoner at St. Cloud and Red Wing. From January to March, 2020, and for a week in May, he participated in the DOC's Institution Community Work Crews ("ICWC") program, which puts minimum-security prisoners to work in the community under the supervision of a DOC crew leader. ICWC prisoners work 8 a.m. to 4:30 p.m. shifts and also get passes to go out alone into the community on an honor system basis. Mr. Moore suffers from HIV, high blood pressure, chronic kidney disease in his one remaining kidney, and is a kidney cancer survivor. In May, the DOC ordered Mr. Moore returned to Faribault to be quarantined for a "medical" reason, which the DOC has failed and refused to identify. Mr. Moore fears for his safety and health because of COVID-19 and his pre-existing medical conditions. Moore Decl. ¶¶ 1-10.

39. Petitioner Deontaye Russell has been a prisoner at Red Wing since July 28, 2020. Before that, he was a prisoner at Faribault, where he observed that

the correctional officers did not take COVID-19 seriously before there was an outbreak at the prison, which included the deaths of two prisoners and the infection of hundreds of others. Mr. Russell knew one of the prisoners who died—"a muscle dude in great shape," with whom Mr. Russell worked out. When this prisoner was taken from his cell to receive medical care, he needed help to walk. Once the COVID-19 outbreak hit the prison, staff removed Mr. Russell and several other prisoners from his unit and transferred them to the kitchen unit on May 29. On June 4, staff ordered Mr. Russell back to his unit, where the outbreak still existed. When he refused, he was threatened with punitive segregation. He then went back to his unit, where staff confined him with another inmate with COVID-19 symptoms. While Mr. Russell was confined with this prisoner, staff confirmed that the prisoner had tested positive for COVID-19. During this time, Mr. Russell had repeatedly requested being tested for COVID-19. Staff refused all his requests until his cellmate was confirmed positive. Russell Decl. ¶¶ 1-11, 14. Mr. Russell was allowed out on work release on October 1, 2020, but remains under the custody or control of DOC, and is subject to return to prison for violation of the terms of his work release. MN Department of Corrections Work Release Fact Sheet, available at https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf.

40. Petitioner Robert Raphael Schultz is a 52-year old prisoner at Faribault, who fears for his health and life because of COVID-19. He suffers from respiratory and kidney issues, which render him particularly vulnerable to COVID-19. He has applied for and been denied CMR. He is confined in a unit where social distancing is impossible and the ventilation system is connected room to room with recirculating air. Facilities for hand sanitizing are inadequate, poorly located, and frequently without hand sanitizer. The showers are not cleaned because cleaning supplies are unavailable. Schultz Decl. ¶¶ 1-12.

41. Petitioner Ali Washington has been a prisoner at Faribault since mid-March, 2020, and has lived in three different units during that time. During the time he lived in the second unit, K4B, in June, he contracted COVID-19. His symptoms included headache, body aches, lung discomfort, and loss of taste and smell, which have still not returned. Despite his symptoms, staff required him to work in the prison balloon shop. After he was confirmed positive following a test during the week of June 16, he was quarantined in another unit with other confirmed positive prisoners. Mr. Washington did not receive any appreciable medical care while in this unit, although he complained to staff of pain and requested medication. In the same unit were other prisoners who had not tested positive. One of these prisoners, Leroy Bergstrom, who had previously been healthy and fit, contracted COVID-19 and died. Mr. Washington suffers from

Type 2 diabetes, high blood pressure, heart arrhythmia, and sleep apnea, all of which render him susceptible to COVID-19 and fearful of contracting it again. He has applied for and been denied CMR. Washington Decl. ¶¶ 2-12.

42. Petitioner Antonio Williams has been a prisoner at Faribault since May, 2019. He has Type 2 diabetes and high blood pressure, which render him vulnerable to COVID-19. He requires an insulin shot three times a day. The prison went on lockdown in March, 2020. Since the lockdown, Mr. Williams has not been receiving adequate medical care. His insulin shots have been reduced to two per day, and the prison has failed and refused to provide a diet to accommodate his diabetes despite his numerous requests. He began experiencing COVID-19-like symptoms in mid-July, which included headache and trouble breathing. He has requested without success to see a doctor. He has applied for and been denied CMR. Williams Decl. ¶¶ 2-6, 8-9.

43. Petitioner William Ballard has been a prisoner at Stillwater since January 23, 2020, and before that was a prisoner at Oak Park Heights. The testing for COVID-19 at Stillwater has involved self-testing, with prisoners required to test themselves with nose swabs, which many prisoners cannot or will not do correctly. The prison has also neglected social distancing, freely letting groups of prisoners mingle with each other. In addition, prisoners reporting COVID-19 symptoms were confined in disciplinary segregation, which

discouraged self-reporting. Mr. Ballard has observed guards failing to wear masks. Ballard Decl. ¶¶ 1, 6-10, 13-14.

44. Petitioner Resa Gauthier is a prisoner at Shakopee women's correctional facility. She suffers from congestive heart failure, has had a third of a lung removed, and has diabetes and blood clots on her heart, all of which renders her especially vulnerable to COVID-19. The prison has not provided hand sanitizer stations. Inmates have been permitted to mingle in violation of social distancing requirements. The prison does not quarantine prisoners who have been in contact with prisoners tested positive for COVID-19. Prisoners confirmed positive with COVID-19 are placed in segregation. "It's horrible to be placed in segregation." Gauthier Decl. ¶¶ 1-2, 7, 11-13.

45. Petitioner Ardelle Manthey has been a prisoner at Shakopee since 2004. She is 87 years old and has numerous conditions besides her age that render her especially vulnerable to COVID-19. These include stroke, which requires her to use a walker; Graves Disease, an autoimmune disease that causes hyperthyroidism; Wolff-Parkinson-White Syndrome, which is a heart condition; and congestive heart failure. Because of these conditions, she requires numerous medications. She has observed that Shakopee does not enforce social distancing or mask-wearing, and does not provide hand-washing stations. In fact, "it is impossible to social distance inside Shakopee." Because of this disregard of the

dangers of COVID-19 by the prison, Ms. Manthey lives in great fear of contracting the virus, and must spend almost all of her time, 23 hours of every day alone in her cell without human companionship. As she puts it,

> I am very scared of getting COVID because of my age. I figure that, if I get it, I am gone. And I don't mind dying. I have reached an age where I know it is going to happen. But I just don't want to suffer for two weeks, be in the hospital on a ventilator, and then die alone.

When she fell ill this year and the prison wrongly suspected she had COVID, they confined her in segregation, which she found especially punitive. She applied for and was denied CMR because she was reportedly eligible for parole. She has a number of family members she can stay with if released. Manthey Decl., ¶¶ 1-5, 6-17, 20. [7]

46. Petitioner Elijah Milsap is a prisoner at Stillwater. He resides in the B-West unit containing about 250 prisoners, 80 percent of who have contracted COVID-19 Mr. Milsap estimates. He has not yet contracted the virus, but fears getting it because he continues to be housed with prisoners confirmed positive

[7] Counsel for Petitioners have had contact with a number of other Shakopee prisoners who have expressed interest in being Petitioners and providing supporting declarations. Counsel are encountering difficulties in communicating with these prisoners in recent days, however, because of what one case manager described as a "situation" at the prison. Counsel have also detected staff interference with their communications with Shakopee prisoners, but are trying to resolve this issue with opposing counsel. When Petitioners' counsel are able to resume their discussions with Shakopee prisoners, Petitioners may seek to amend to add these other Shakopee prisoners as Petitioners.

for COVID-19. Guards do not wear masks, or wear them around their throats with their noses exposed. Social distancing is not practiced in common areas such as a small recreation room and where phones are located. "Social distancing doesn't happen at Stillwater." "Staff members say they hope everyone catches the virus so this can be over with." Milsap Decl. ¶¶ 1-2, 5-6, 11-13, 15, 17.

47. Petitioner Brian Pippitt is a 58-year old Native American prisoner at Faribault. He has been at Faribault for a year and is very concerned about how the prison is dealing with COVID-19. He has Type 2 Diabetes, severe asthma, and chronic bronchitis with scarring on his lungs from prior pneumonia. He has applied for and been denied CMR without an explanation. Guards are allowed into Mr. Pippitt's unit even after a guard has tested positive for COVID-19. "It is impossible to do social distancing properly." Both the laundry room and the kitchen are too small to accommodate the number of inmates permitted to be present. Pippitt Decl. ¶¶ 1, 4-6, 8-12, 17-20.

48. Petitioner Adrian Riley has been a prisoner at Rush City for two years and is currently assigned to the cleaning crew. He suffers from asthma. He believes that 90 percent of the 170 people in his unit have contracted COVID-19. One kitchen staff prison employee who was confirmed positive with COVID-19 came to work anyway and infected the prisoners working in the kitchen, one

of whom infected Mr. Riley. The failure to test staff regularly has been a problem in slowing the rate of COVID-19 infection at Rush City. On October 31, Mr. Riley tested positive for an "amplified" case of COVID-19. He did not learn of his test results for a number of days, although the prison had known the results and permitted him to remain in the general population and mingle with other prisoners. When Mr. Riley's symptoms worsened substantially, "The nurses have told us we just have to let nature take its course. I still haven't seen a doctor despite having a positive test." Guards do not consistently wear masks or practice social distancing. Riley Decl. ¶¶ 1-2, 5-10, 14-17.

49. Petitioner Marshawn Winston has been a prisoner at Oak Park Heights since 2018. He works in the warehouse sorting and distributing MNCORE items, which are sold at canteens throughout the prison system. Most of the prisoners in the unit in which Mr. Winston resides, Complex-3, work in the warehouse on MNCORE business. Despite requests for testing, the prison substantially delayed testing for Complex-3 prisoners working in the warehouse. Then the prisoners were required to self-test. Mr. Winston has observed that guards often fail to wear masks and that social distancing is not practiced or enforced at the prison. Because of severe obesity and hypertension, Mr. Winston applied for CMR, but was denied. Winston Decl. ¶¶ 1-3, 5-7, 9-14.

50. Respondent Minnesota Department of Corrections is an agency of the State of Minnesota and is responsible for the "care, custody, and rehabilitation" of anyone committed to the Commissioner of the DOC by the courts. It operates 10 correctional facilities housing approximately 7,500 prisoners. Respondent Paul Schnell is the Commissioner of the Department of Corrections and is sued in his official capacity only.

51. Respondents individually and collectively have custody and control of Petitioners.

52. Respondents individually and collectively have the legal duty to protect their prisoners safe from COVID-19.

THE COVID-19 PANDEMIC IN CUSTODIAL SETTINGS

53. COVID-19 is a disease, caused by the novel coronavirus officially known as SARS-CoV-2, and presents an unprecedented challenge and risk to public health. On March 11, 2020, the World Health Organization ("WHO") declared COVID-19 a global "pandemic." At that time, there were 118,000 confirmed cases of COVID-19 in 114 countries, resulting in 4,291 deaths. As of the date of this filing—seven months since WHO declared COVID-19 a global pandemic—the number of identified cases worldwide has rapidly increased to more than a staggering 34,287,239, with a total of more than 1,022,858 deaths. The United States now leads the world with more than 214,000 deaths.

54. On March 13, two days after WHO declared a pandemic, President Donald J. Trump proclaimed that the COVID-19 outbreak in the United States constituted a national emergency, noting that as of March 12, 2020, 1,645 people from 47 States had been infected with the virus that causes COVID-19. Proclamation No. 9994, 85 FR 15337 (March 13, 2020), https://www.federalregister.gov/d/2020-05794.

55. That same day, Minnesota Governor Tim Walz declared COVID-19 a peacetime emergency in Minnesota, stating that local resources were inadequate to fully address the COVID-19 pandemic. Minn. Emergency Exec. Order No. 20-01 (March 13, 2020), https://mn.gov/governor/assets/EO%2020-01_tcm1055-422957.pdf.

56. On March 25, 2020, due to "[r]ecent developments, including the presence of community spread in Minnesota, the rapid increase in COVID-19 cases both globally and in Minnesota, and the first COVID-19 related death in our state," Governor Walz issued a stay-at-home order requiring "all persons currently living within the State of Minnesota … to stay at home or in their place of residence[.]" Minn. Emergency Exec. Order No. 20-20 (March 25, 2020), https://www.leg.state.mn.us/archive/execorders/20-20.pdf. The Governor has thereafter extended and modified his order to adjust to changing circumstances.

57. As of April 13, 2020, Minnesota reported 1,650 confirmed COVID-19 cases and 70 deaths. Those numbers have been increasing daily and are expected to continue to do so. As of October 12, 2020, Minnesota reported a total of 112,268 cases and 2,141 deaths, two of them at Faribault. https://www.startribune.com/coronavirus-covid-19-minnesota-tracker-map-county-data/568712601/.

58. Dr. Lynne S. Ogawa is the Medical Director, St. Paul- Ramsey County Department of Public Health. She has provided testimony under oath concerning the coronavirus in proceedings in the United States District Court for the District of Minnesota as a matter of public record. A copy of her sworn Declaration dated March 29, 2020, and filed March 31, is attached to this Petition as Exhibit A ("Ogawa Decl."), and hereby incorporated herein by reference as if set forth in full. The St. Paul-Ramsey County Department of Public Health is one of the largest public health departments in Minnesota. Through state and federal mandates, the Department works to prevent the spread of disease and plan for and respond to health emergencies. Dr. Ogawa has been working to protect the health of the St. Paul-Ramsey County community through limiting the spread of COVID-19. Ogawa Decl., ¶ 1.

59. According to Dr. Ogawa, "jails and detention facilities are of particular concern" for the spread of COVID-19 because of their inability to impose effective social distancing:

> The first COVID-19 case in Minnesota was identified on March 6, 2020. In less than three weeks, the disease has spread to nearly every county in Minnesota. … ***There is no vaccination available to prevent COVID-19. The best-known means of limiting the spread of the disease is to socially distance people. Minnesota, like other jurisdictions in the U.S., is working aggressively to impose the social distancing measures necessary to slow the spread of COVID-19. Despite our aggressive steps to protect the public health, I remain concerned that populations who are unable to socially distance present a significant threat to the public health. Conditions in jails and detention facilities are of particular concern.***

Id., ¶ 3 (emphasis added).

60. In 2019, the Minnesota Legislature created the Office of the Ombudsperson for Corrections by enacting Minnesota Statutes Chapter 241.90-95. The Ombudsperson and staff are given "the authority to investigate decisions, acts, and other matters of the Department of Corrections so as to promote the highest attainable standards of competence, efficiency, and justice in the administration of corrections." *Id*. Governor Walz appointed Mark Haase, Executive Director of the Minnesota Justice Research Center, to be Minnesota's new Ombudsperson for Corrections. Mr. Haase began working on January 13, 2020. On March 24, 2020, the Ombudsperson reported:

> The appropriate correctional response to this pandemic is critical to the health and safety of people held in our State and local

> correctional facilities, correctional staff, and the broader community. A high percentage of individuals in correctional facilities are more vulnerable to the COVID-19 virus. At the same time, close, enclosed quarters; difficulty maintaining sanitary conditions; and movement in and out of facilities creates increased risk of virus transmission both within and outside of jails and prisons. … Additionally, correctional healthcare can only treat relatively minor problems for a limited number of people. This means that people who become seriously ill will need to be transferred to the community outside of facilities for care.

Id., ¶ 4.

61. Dr. Ogawa believes that these concerns are well-founded:

> Statistics show that COVID-19 is a highly contagious respiratory virus that presents a significant mortality and morbidity threat especially to vulnerable populations as well as a resource strain on our healthcare system. Given the large population density in detention centers, the ease of COVID-19 transmission, and the basic reproductive rate of this virus (R0=2; it is highly likely an infected individual will pass the infection along to others), it is believed that the majority of detainees and staff within a facility are at risk of infection once the virus is introduced. Of these, one in five will require hospital admission, and about 10% will develop severe disease requiring hospitalization in an intensive care unit. The statistics have led some physicians to call detention facilities a "tinderbox."

Id., ¶ 5.

62. Of particular concern are inmates with preexisting medical conditions:

> In addition to the explosive transmission rate in high density settings where individuals cannot socially distance, individuals in detention who suffer from underlying medical conditions are at an exceptionally high risk of developing a severe illness if they contract COVID-19. Detainees who are: older; HIV positive; have asthma; are

> pregnant; severely obese; diabetic; or have renal failure, liver disease, or a heart condition are at elevated risks of severe disease from COVID-19.

Id., ¶ 6.

63. Jails in the Twin Cities have recognized the importance of reducing inmate populations so as to facilitate social distancing to avoid the spread of COVID-19:

> Across the United States, Sheriffs have recognized that social distancing is paramount to public safety and have moved to reduce the number of detainees in jails to avoid the spread of COVID-19. In Minnesota, the Hennepin and Ramsey County Jails have reduced their population by more than 30% in an effort to protect the health and welfare of detainees and the public from the spread of COVID-19. This is an appropriate response to the unprecedented threat COVID19 poses to our health and well-being.

Id., ¶ 8.

64. Dr. Ogawa concludes with a strong plea that other places of detention follow the precautions taken by Hennepin and Ramsey County jails:

> The COVID-19 pandemic is placing a major strain on health care providers in Minnesota. As part of our work to protect the public health, we are working to identify groups of people who are at high risk of serious disease from COVID-19. ***Detained individuals with underlying medical conditions, are at a high risk of developing a severe disease that requires emergency medical care. It is in the public interest to minimize the health risk inherent to the spread of COVID-19 to vulnerable individuals. The public health is served when individuals who are at high risk of serious illness from COVID-19 are released from detention to locations where they are able to socially distance and practice the hygiene necessary to limit their exposure to COVID-19***.

Id., ¶ 9 (emphasis added).

65. Dr. Susan Hasti is a faculty member of the Department of Family and Community Medicine at Hennepin Healthcare Family Medicine Residency Program. In the Moose Lake case, Dr. Hasti submitted two declarations as a matter of public record. MNCIS Docket 2-3, 74. Copies of her sworn Declaration and Curriculum Vitae dated April 13, 2020 and filed April 15, 2020, and her sworn Declaration dated June 12, 2020, and filed June15, 2020, are attached to this Petition as Exhibit B, C, and D, respectively, and hereby incorporated herein by reference as if set forth in full.

66. Dr. Hasti describes her practice and involvement with COVID-19 as follows:

> Our department trains Family Physicians, many of whom join the community of physicians who practice in the state of Minnesota. Upon introduction of COVID19 in Minnesota, my hospital, Hennepin County Medical Center, has been very active in preparations to address the expected surge of illness here. Our department is currently involved in the screening process for COVID-19, as well as continuing to monitor and manage the chronic health conditions of our clinic patients, both inpatient and outpatient. We have undergone an extensive restructuring of workflows in the past several weeks to meet these needs.
>
> As a teaching faculty, I am involved in both interpreting and analysis of medical data, research and journal articles, as well as training residents in these skills. I am also responsible for designing and implementing curricula for training of Family Medical residents.

Exhibit B, ¶¶ 1,2.

67. Dr. Hasti has read the Declaration of Dr. Ogawa at the request of counsel for Petitioners and concurs with the observations and opinions in Dr. Ogawa's declaration. (*Id.*, ¶¶ 3-5.)

68. Dr. Hasti adds:

> In my ongoing observation of the pandemic, my review of medical literature and statistics, and the analysis of the spread of this new and highly infectious virus, I have become very concerned about the risk of developing a nidus or nest of viral growth in prisons and other correctional facilities. I was alerted to this issue by a patient of mine who has a partner at Moose Lake. Any dense population has limited means to control viral spread; witness the overwhelming situations of New York City, New Orleans, northern Italy, Madrid etc. More to the point, we are seeing rapid spread in Riker's Island and Cook County jails.

Id., ¶ 5.

69. In her second Declaration, Dr. Hasti reaffirmed her original observations and added that efforts to contain COVID-19 are no longer possible, which has necessitated a shift to a mitigation phase:

> From the medical community perspective, at both a state and national level, it is clear that we are no longer in a "containment" phase as it pertains to the novel coronavirus. Rather, we are operating in a "mitigation" phase of the pandemic. What this means is that the medical community has recognized that it is not possible to contain, or eliminate, the virus, as it has spread too far into the community at large. Now, the efforts are directed toward mitigating the potential harms.

Exhibit D, ¶ 6b.

70. This requires that "the focus turns to protecting the most vulnerable individuals in society and to slowing the spread in the general population in order to avoid overwhelming the hospital system," which, according to the CDC, includes individuals suffering from asthma, chronic kidney or lung disease, diabetes, hemoglobin disorders, compromised immune-systems, liver disease, serious hearts conditions, and severe obesity. It also includes people over the age of 65. *Id.*, ¶ 6c.

71. In Dr. Hasti's opinion, not only does the prison population "reflect this reality," but also, "The unique characteristic of a particularly dense population in the prison setting … will assure faster spread of the novel coronavirus than would be seen in a less dense area." *Id.*, ¶¶ 6e-f.

72. Dr. Hasti concludes that the DOC has failed to protect those most vulnerable to COVID-19 because it has not been adequately tracking and identifying this segment of its prison population, or employing an effective "process for removing them from harm before an outbreak enters the facility in which they are housed," or removing or safeguarding them once the virus has entered the prison. *Id.*, ¶¶ 6g-i.

73. Dr. Hasti also finds that the DOC has failed to educate prisoners to the dangers of airborne transmission of COVID-19, the prevention of which requires strict observance of mask-wearing and social distancing. *Id.*, ¶ 6j.

74. Finally, Dr. Hasti concludes that it is her opinion that if the DOC had done before the Moose Lake lawsuit "all that it states it was doing during that time when the novel coronavirus was first identified in Minnesota and the state began shutting down, it might have avoided, or at least lessened, the outbreak of COVID-19 in Moose Lake, and now in its other facilities." *Id.*, ¶ 7.

75. Events have proven Dr. Hasti absolutely correct. As shown above, at the time of Dr. Hasti's June 13 declaration, there were close to 200 confirmed positive COVID-19 cases at Faribault, which now has had 829; no confirmed cases at Oak Park Heights, which now has had 58; only two cases at St. Cloud, which now has had 637; no cases at Stillwater, which now has had 989; and no cases at Shakopee, which now has had 18. *DOC COVID-19 Updates.*

76. Dr. Carlos Franco-Paredes, M.D., M.P.H., has submitted a declaration in support of this Petition ("Franco-Paredes Decl."). Dr. Paredes is an Associate Professor of Medicine at the University of Colorado, working in the Department of Medicine, Division of Infectious Diseases. He also teaches a course "on caring for underserved populations, including immigrants and the incarcerated population, and on best practices in global health (IDPT 8056)."

(Franco-Paredes Decl. ¶ 1.) Besides his medical degree, he holds a Master's Degree in Public Health in global health, with a concentration on the dynamics of global infectious disease epidemics and pandemics, from the Rollins School of Public Health, Emory University. *Id.*, ¶ 2. From 2006-09, he served as a consultant with the World Health Organization, Geneva, Switzerland, and participated in the development of a global action plan for responding to an influenza pandemic. *Id.*, ¶ 3. He has 219 scientific publications in peer-reviewed journals, 12 of which are recent publications on the impact of COVID-19 on minorities, in correctional facilities, and in immigration detention centers. *Id.*, ¶ 7.

77. Dr. Franco-Paredes has provided direct patient care to more than 170 COVID-19 patients in the medical ward and intensive care unit. The majority of patients who did not survive had evidence of an underlying cardiovascular disease or diabetes mellitus. *Id.*, ¶ 5.

78. This is the 20th lawsuit involving COVID-19 in which Dr. Franco-Paredes has served as an expert witness in courts throughout the United States. *Id.*, ¶ 6.

79. Dr. Franco-Paredes has found that people with the following conditions are at increased risk of severe illness and death from COVID-19: cancer; chronic kidney disease; chronic obstructive pulmonary disease (COPD);

immunocompromised from solid organ transplant; obesity (with a body mass index (BMI) of 30+); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; and Type II diabetes mellitus. In addition, people with the following conditions are at increased risk of severe illness from COVID-19: asthma (moderate to severe); cerebrovascular disease (affecting blood vessels and blood supply to the brain); cystic fibrosis; hypertension; immunocompromised from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or other immune-suppressing medications; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissue); smoking; thalassemia; and Type I diabetes mellitus. *Id.*, ¶¶ 11-12. "Approximately 90% of hospital admissions due to COVID-19 have occurred among individuals with underlying medical conditions." *Id.*, ¶ 15. Older COVID-19 patients are particularly susceptible to serious long-term health effects. *Id.*, ¶ 16.

80. Dr. Franco-Paredes finds prisoners in correctional facilities to be especially vulnerable to COVID-19 because of the close quarters in which they are confined. "The current outbreaks of the novel coronavirus SARS-CoV-2 inside of correctional facilities across the United States highlight the ease of transmission of COVID-19 inside these facilities." *Id.*, ¶¶ 22-23. Dr. Franco-Paredes therefore concludes, "To contain the spread of the disease in such a

setting, infection prevention protocols must be meticulously followed." *Id.*, ¶ 23. *See also Id.*, ¶¶ 32-36, detailing the unique characteristics of prisons that facilitate the spread of COVID-19.

81. According to Dr. Franco-Paredes:

> These infection prevention protocols include "social distancing" measures, where individuals maintain a distance of at least six feet from each other, mask wearing, and frequent hand-washing and other good hygiene practices. These protocols apply to both incarcerated and non-incarcerated individuals. In the carceral setting, these protocols would require, for example, that individuals sleep one person per cell, rather than in shared cells. These measures are necessary to prevent spread of COVID-19 among otherwise healthy people and are imperative for high-risk individuals.

Id., ¶ 24.

82. Further, COVID-19 is able

> to survive for extended periods of time on materials that are highly prevalent in prisons, such as metals and other non-porous surfaces. Current outbreak protocols require frequent disinfection and decontamination of all surfaces of the facility, which is exceedingly difficult given the large number of incarcerated individuals, frequent interactions between incarcerated persons and staff, and regularity with which staff move in and out of the facility.

Id., ¶ 25.

83. Dr. Franco-Paredes is in complete agreement with the opinions of Drs. Ogawa and Hasti. *Id.*, ¶ 31.

84. After reviewing a draft of the original Petition and the supporting declarations in this case, Dr. Franco-Paredes concluded:

> [P]risons in Minnesota, including Moose Lake, Faribault, Lino Lakes, Oak Park Heights, Shakopee, St. Cloud, Stillwater, Willow River, Togo, Rush City, and Red Wing, are at heightened risk for the continued spread of coronavirus. The facilities are enclosed environments in which it is extremely challenging, if not impossible, to implement and enforce any meaningful degree of social distancing and other infection prevention protocols.

Id., ¶ 39.

85. Because of the specialized equipment required, "it is extremely difficult to properly treat those who have been infected or limit the spread of the virus." *Id.*, ¶ 40. "The problem will be dangerously exacerbated if jails and prisons do not act immediately to limit its spread." *Id.*, ¶ 41. "The only way to mitigate the risk of serious infection is through hygienic measures such as frequent hand washing, face masks, and physical distancing to limit viral exposure. These prevention measures, however, require far greater diligence in a correctional setting, such as the prisons in Minnesota, where inmates are crowded together, sleep in shared cells, share bathrooms, and often have inadequate hygiene resources." *Id.*, ¶ 43.

86. Dr. Franco-Paredes predicts, "The COVID-19 virus will inevitably continue to ravage through the prisons in Minnesota. These facilities are not designed to contain the spread of a highly contagious disease or to treat those with significant illness." *Id.*, ¶ 44. The only way to avoid this "proactive social

distancing measures," which is best achieved "through population reduction." *Id.*, ¶ 45. He has proven to be right.

87. He concludes,

> Therefore, it is my professional and expert opinion that the prompt release of individuals with medical conditions, at risk of severe COVID-19 and death, and prompt reduction in prisoner populations in all Minnesota prisons (i.e., population thinning) is necessary to reduce the impact of this outbreak. Reducing the number of incarcerated individuals from the Minnesota prisons is necessary for effective infection control/mitigation, sanitization practices, and physical distancing, all of which could dramatically reduce the burden of COVID-19 on Minnesota correctional facilities and community health care services.

Id., ¶ 46.

88. As will be shown in the next section, the DOC has failed to implement these measures to protect Minnesota prisoners from COVID-19.

THE DOC'S FAILURE TO PROTECT MINNESOTA PRISONERS

89. There is no dispute about what needs to be done to protect Minnesota prisoners from COVID-19: social distancing; timely, widespread, and regular testing; strictly enforced universal mask-wearing; provision of supplies, personal protective equipment, and facilities for hand-washing and other sanitary measures; appropriately safe and non-punitive isolation and quarantine of infected and exposed prisoners; and identification and protection of those most vulnerable.

90. Throughout its prison system, the DOC has failed to do this.

91. First, there is virtually no social distancing in cells or common areas. Decls. Baker, ¶ 4 ("It is not possible to social distance in the cells, or in the common area, even when only half of the unit is out of their cells."); Branch, ¶¶ 11-14; Green, ¶¶ 5, 11-12, 25 ("It isn't possible to social distance when we are out of our cells, because people line up to use the phones."); Habedank, ¶¶ 19 ("It is impossible to social distance from other inmates in the unit."), 20-22; Weston Harbinson, ¶¶ 3 ("It is not possible to social distance in the cell because we sleep on bunk beds."), 4 ("It is not possible to social distance or be six feet apart in the common areas…"); Ron Hill, ¶ 6 ("It is not possible to social distance in the Linden unit."); Jackson, ¶¶ 28 ("There was no social distancing at St. Cloud."), 29, 31 ("When we were going to the chow hall, we were within two feet of other inmates as we ate. It wasn't possible to social distance."), 38-39; Rewitzer, ¶ 19 ("Showers and the bathroom stalls are not spaced out to promote social distancing"); Ryan Robinson ¶ 15 ("There is no social distancing in the unit."); Russell, ¶ 16 ("There was no way to social distance in the dining hall, and we had to fill in all of the seats, so people were sitting right next to each other."); Schultz, ¶ 4 ("We can't social distance, especially when we're in our rooms."); James Smith, ¶¶ 10 ("I am a kitchen worker, and it is not possible to social distance while in the kitchen."), 14 ("There was also no social distancing in the

dining hall. It is not possible to social distance there."); Washington, ¶ 15 ("Some, people, myself included, don't feel safe going back to work in the balloon shop. It is impossible to social distance, because I have to sit at a table with other people to fold my balloons."); Williams, ¶¶ 10-12; Gauthier, ¶ 11 ("Even now, they let inmates mingle in violation of social distancing requirements."); Manthey, ¶¶ 15, 17 ("Because of COVID and because it is impossible to social distance inside Shakopee, I don't interact with anyone anymore."); Garyegus Cooper, ¶¶ 22-23 ("The prison just isn't designed to allow for social distancing."); Milsap, ¶ 15 ("Social distancing doesn't happen in Stillwater."); Winston , ¶ 11); Riley, ¶ 17; Gerald Henry, ¶19; Angelo Parker, ¶¶ 5, 12; Pippitt, ¶18 ("It is impossible to do social distancing properly.").

92. The DOC has failed and refused to provide universal, regular testing to prisoners, or has limited testing to only when prisoners are in extremis, exhibiting the most serious COVID-19 symptoms. Decls. Baker, ¶ 10 ("I was told by a guard that there won't be any additional testing, though I don't know why."); Branch, ¶ 19 ("The prison is now opening up and the DOC has stopped testing inmates, and I don't think they are testing employees."); Green, ¶¶ 18, 23; Habedank, ¶¶ 13-14 ("I have only been tested once for COVID-19."); Harbinson, ¶ 9; Harry Helps, ¶ 10; Rewitzer, ¶¶ 4-5; Robinson, ¶ 13 ("Since mid-July, my unit has been tested 3 times for COVID-19. The test was self-administered, and

I'm concerned that none of us did it right"); Alfred Rosillo, ¶¶ 3 ("None of us were tested for the virus until June."), 9 ("I was told by a CO that testing stopped in mid-July because no one had the virus."); Russell, ¶¶ 6-7 ("I asked every person I could for a test."); Smith, ¶¶ 5 ("He [my cellmate] and I both kept asking for tests, but they wouldn't give us one."), 6 ("…the DOC has now stopped testing people."), 12 ("Again, it makes me uneasy that people are coming and going from the prison and the DOC has stopped testing and doing temperature checks."); Williams, ¶¶ 8, 16; Cooper, ¶ 17 ("In May everyone was tested in our unit but the testing was a joke. We were told to swab our own noses so most of us just swabbed the front of our noses."); Milsap, ¶¶ 6, 9; Winston, ¶¶ 5-6, 12 ("When we are tested for COVID, they would hand us a q-tip and tell us to swab our noses."); Riley, ¶¶ 6-12; Ballard, ¶¶ 6-12; Henry, ¶ 9 ("When we were tested for the virus, the inmates are forced to swab their own noses so I don't think we are doing it right."); Mickiah Jackson, ¶¶ 4-5.

93. The DOC has not enforced wearing of masks by either prisoners or staff, so that mask-wearing is widely neglected and disregarded. Decls. Branch ¶¶ 22-23; Green ¶ 13; Habedank, ¶ 18 ("The prison has given inmates masks to wear, but many people do not wear them correctly. For example, people wear the masks below their noses or above their mouths."); Harbison ¶ 7 ("We did not receive masks until April or May of 2020, and the DOC still isn't enforcing the

requirement that all inmates and Cos (corrections officers) wear them."); Helps ¶ 15; Hill ¶¶ 5 ("[In March, 2020] Staff were coming in and out of the units not wearing masks."), 19 ("I still see some Cos without masks behind their desks, which are inside the unit."); ¶¶ 5 ("The COs and healthcare professions didn't wear the masks and multiple times, I heard COs making fun of inmates for wearing the masks."), 28; Jackson ¶¶ 4, 5 ("The COs and healthcare professions didn't wear the masks and multiple times, I heard COs making fun of inmates for wearing the masks."), 6; Robinson ¶ 11 ("The guards consistently do not wear masks here."); ¶¶ 10 ("We were given masks in April of 2020, and they have been a huge issue here. They are made of a canvas material and are super thick and hard to breathe through. They are also one-size fits all, so they don't fit everyone and some fall off of people."), 11-12, 13 ("The COs (Correctional Officers) don't wear the masks consistently. I have seen 3 COs do their rounds in our unit without masks."), 14-15; Smith ¶ 11 ("I am concerned about the Cos coming in and out of the kitchen because they don't always wear masks."); Washington ¶22 ("I've seen over 50 guards in this prison not wearing masks."); Williams ¶ 14 ("There are problems with the staff wearing masks correctly and wearing them all the time.); Gauthier, ¶ 6; Manthey, ¶ 14 ("…proper mask wearing is not enforced"); Cooper, ¶ 23 ("While some guards wear masks, others don't."); Milsap, ¶ 5 ("Guards don't wear masks or wear them around their

throats instead of over their nose. This is dangerous because the inmates don't go anywhere but the guards can bring the virus in from the outside."); Winston, ¶¶ 8, 10; Riley, ¶ 16 ("Some guards won't wear masks unless their superior is in the room with them. After that, they pull the masks down."); Ballard, ¶ 14 ("Guards haven't been wearing their masks unless an inmate says something. Usually the masks are hanging around their throats."); Henry, ¶ 18; M. Jackson, ¶ 4 ("I would often see guards talking without wearing masks."); Parker, ¶¶ 5-7.

94. The DOC has not provided adequate hand-washing supplies and sanitizing facilities for prisoners. For example, the only extra soap provided was a one-time issue of two very small "hotel-size" bars. Decls. Baker ¶ 7; Branch ¶ 18; Green ¶ 9; Harbinson ¶ 10 (Mr. Harbinson remembers "tiny bars of soap only two times"); Schultz ¶ 10; Washington ¶ 23; Gauthier, ¶ 7; Manthey, ¶ 16 ("Shakopee has not set up hand sanitizer stations or any extra handwashing stations."); Cooper, ¶6; Milsap, ¶ 19; Riley, ¶¶ 12-13; Henry, ¶ 16 ("They didn't give us any extra soap or put any hand sanitizers into our area. If we want those things, we have to buy it on our own."); Pippitt, ¶ 16.

95. Hand-washing stations are outside the prisoners' living units and inaccessible to the extent they exist. Decls. Baker ¶ 6 ("There have not been additional hand-washing or hand-sanitizing stations placed in our unit. There is a hand-sanitizer dispenser outside of the unit, but it has been empty for at least 3

weeks."); Branch ¶ 16; Green ¶ 26; Harbison ¶ 11; Helps ¶ 14; Henley ¶ 5; Jackson ¶ 30 ("There aren't hand-sanitizing or hand-washing stations in the house or unit. The only ones I've seen are down by the chow hall, and everyone from all the units would touch them."); Rewitzer ¶ 7; Rosillo ¶ 16; Schultz ¶ 6; Smith ¶16; Washington ¶ 16; Gauthier, ¶ 7 ("We do not have any hand sanitizer stations and they didn't set up extra hand washing stations in Shakopee."); Cooper, ¶ 6 ("Around July, they removed the hand sanitizers, stopped giving us soap, and stopped the staggered eating."); Milsap, ¶ 19; Henry, ¶ 16; Pippitt, ¶ 15.

96. Cleaning supplies are scarce and insufficient. Decls. Branch ¶¶ 15-17; Green ¶¶ 8, 25; Habedank ¶ 22; Harbison ¶ 12 ("There is no soap or towels in the common areas to clean."); Helps ¶ 19 ("There were no cleaning supplies in the common areas. We could only clean our cell once a week."); Hill ¶¶ 6, 7 ("In my unit, there is one shower per wing, for about 30 people. There is a spray bottle with diluted germicide but again, no towels to wipe down the showers."); Moore ¶ 24; Jackson, ¶¶ 9, 29; Rewitzer ¶ 13 ("We only have cleaning supplies available to us during our time out of our cells, which is currently two hours a day. But you can't really use the cleaning supplies on the phones or the showers, because you have to wait in line to use both."); Schultz ¶¶ 7-8; Manthey, ¶ 16.

97. Lockdown, quarantine, and isolation procedures are chaotic and punitive. Lockdown confines prisoners that eventually test positive for COVID-19 with prisoners not yet infected. Quarantine facilities are unsanitary, and, without social distancing, prisoners confirmed positive mix with prisoners who do not have COVID-19. Decls. Harbison ¶ 6 ("If an inmate shows symptoms of COVID-19, they are put in unit K4D, which is the segregation unit. The person is let out of their cell for an hour a day. This is the same as punishment, so people who have had symptoms are hesitant to report them."); Hill ¶¶ 11-13; Jackson ¶ ¶ 7-8, 12-18, 23 ("The segregation units at MCF-Faribault are also really dirty…. None of the cells have been decontaminate in any way, shape, or form."); Moore ¶¶ 18-23; Jackson ¶¶ 7-27; Rewitzer ¶ 16 ("Inmates will absolutely not be reporting symptoms because they don't want to go to segregation."); Washington ¶¶ 5-6; Gauthier, ¶¶ 12-13 ("People suspected of COVID are placed in segregation. It's horrible to be placed in segregation."); Manthey, Decl. ¶¶ 10-12; Cooper, ¶¶ 13-14 ("I was quarantined in segregation like I was being punished. For three days I was put in a small room that only had a bunk, toilet and sink. It didn't have a TV or any access to tablets."); Ballard, ¶ 9 ("If you complained of symptoms at Stillwater, you were put in disciplinary segregation. No one wants to have that happen so inmates would routinely lie about having symptoms.").

98. All original Petitioners except Mr. Russell have pre-existing conditions rendering them especially vulnerable to COVID-19. Decls. Baker ¶ 11; Branch ¶ 4; Green ¶ 16; Habedank ¶¶ 4-5; Henley ¶ 6; Hill ¶ 3; Jackson ¶ 33; Moore ¶¶ 7-8; Rewitzer ¶ 14; Schultz ¶ 11; Washington ¶ 10; Williams ¶ 3. Many of the newly added Petitioners and declarants do as well. Gauthier, ¶ 2; Manthey, ¶ 5; Cooper, ¶ 18; Winston, ¶14; Riley, ¶ 14; Pippitt, ¶ 5.

99. Nonetheless, the DOC not only denied their requests for CMR, but also failed to provide adequate medical treatment for many of them during the pandemic. Decls. Baker ¶¶ 12-14; Branch ¶¶ 6-8; Green ¶¶ 17-21; Habedank ¶¶ 8-10; Henley ¶¶ 7-16; Hill ¶¶ 8-10, 13-16; Jackson ¶¶ 10-13, 19, 34; Rewitzer ¶ 14; Schultz ¶ 11; Washington ¶¶ 11-12; Williams ¶¶ 3-9; Manthey, ¶ 7; Cooper, ¶ 19; Winston, ¶ 14; Riley, ¶ 14; Pippitt, ¶¶ 6-7.

100. The CMR program the DOC put in place to identify and protect prisoners with pre-existing conditions rendering them especially vulnerable to COVID-19 has failed because of inadequate DOC staffing and resources unable to cope with prisoner demand. The original design of the CMR program was to have prisoners self-identify themselves as having pre-existing conditions making them especially vulnerable to COVID-19. They were then required to prepare and submit applications to the DOC for early release. They did so by the thousands, a total of 2,438 applications from 2,392 prisoners, roughly a quarter of

the prison population. Overwhelmed by the flood of applications, the DOC approved only 154, an approval rate of 6%. The total number of prisoners eventually released was only 153. *DOC COVID-19 Updates.*

101. The DOC admitted the failure of the CMR program on August 24, 2020, by ending the application process and returning to "the traditional process of Health Services staff identifying those individuals who may be appropriate candidates for conditional medical release rather than using an application process initiated by incarcerated individuals." https://mn.gov/doc/assets/CMR%20Notice%20to%20Offenders%20-%20Update%20to%20CMR%20Process_tcm1089-444672.pdf.

102. Today, the DOC reports only a single potential CMR case under review. *DOC COVID-19 Updates.*

103. In summary, evidence of the DOC's approach to protecting prisoners from COVID-19 appears in a memo posted at Faribault entitled "COVID-19 Frequently Asked Questions for Households." Petitioner Jackson, in his declaration, describes and quotes from the memo:

> The DOC posted a memo on the wall of unit K3B titled "COVID-19 Frequently Asked Questions for Households." The document has advice from the CDC and has multiple Bible verses on it. There are questions on the form and then answers to those questions. The DOC is telling use [*sic*] to quote scriptures for our

health and safety instead of actually keeping us safe. For example, the document says:

> Question: How can I make the wisest use of my times?
>
> Answer: Make sure of the important things." --Phil. 1:10
>
> While it is good to keep up-to-date, excessive viewing of sensational news reports about COVID-19 can have a negative impact. Additionally, it is vital to maintain a good spiriting routine. Regarding managing stress, Awake! No. 1 of 2020 has additional helpful guidelines—Isa. 41:10: Matt, 6:33, 34: Phil. 4:6-8.

Jackson Decl. ¶ 43.

Relying on the Bible rather than science to protect prisoners from COVID-19 is no way to run a prison system.

THE DOC'S LEGAL DUTY TO PRISONERS

104. When a person has custody of another under circumstances in which the other person is "deprived of normal opportunities of self protection," a duty is imposed on the custodian because of the special relationship that exists between custodian and detainee. *Cooney v. Hooks*, 535 N.W.2d 609, 611 (Minn. 1995).

105. This duty requires the government to exercise reasonable care to safeguard prisoners. *Id.*; *Davis v. State Dept. of Corrections*, 500 N.W.2d 134, 136 (Minn. App. 1993); *Sandborg v. Blue Earth Cty*, 601 N.W.2d 192, 196 (Minn. App. 1999).

106. The duty of protection arises when the harm to be prevented is foreseeable under the circumstances. *Sandborg*, 601 N.W.2d at 197.

107. The DOC's duty to protect prisoners from COVID-19 became foreseeable and therefore arose at least as early as March 13, 2020, when President Trump acknowledged the COVID-19 pandemic and announced a national emergency, and Minnesota Governor Walz declared COVID-19 "a peacetime emergency in Minnesota."

108. The DOC's duty to protect Petitioners from COVID-19 also arises under provisions of the Constitution of the State of Minnesota.

109. Article I, Section 1, of the Minnesota Constitution provides that "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent."

110. The DOC has failed and refused to protect Petitioners from COVID-19.

111. Article I, Section 5, provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted."

112. By failing and refusing to protect Petitioners from COVID-19, the DOC has inflicted cruel or unusual punishment on Petitioners.

113. Article I, Section 7, provides, "No person shall … be deprived of life, liberty or property without due process of law."

114. By failing and refusing to protect Petitioners from COVID-19, the DOC is depriving Petitioners of liberty and potentially life without due process of law.

115. The DOC's duty to protect Petitioners from COVID-19 also arises under provisions of the statutes and rules of the State of Minnesota.

116. Minnesota Statutes Chapter 241, Section 241.021, subd. 1 requires that for correctional facilities, the Commissioner of Corrections "shall promulgate pursuant to chapter 14, rules establishing minimum standards for these facilities with respect to their management, operation, physical condition, and the security, safety, health, treatment, and discipline of persons detained or confined therein."

117. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 1.

118. Minnesota Statutes Chapter 241, Section 241.021, subd. 4, requires the Commissioner of Corrections to provide professional health care to persons confined in institutions under the control of the commissioner of corrections and

pay the costs of their care in hospitals and other medical facilities not under the control of the commissioner of corrections."

119. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 4.

120. Minnesota Statutes Chapter 241, Section 241.021, subd. 5 provides that when the Commissioner of Corrections finds that a facility "does not substantially conform to the minimum standards established by the commissioner and is not making satisfactory progress toward substantial conformance, the commissioner shall promptly notify the chief executive officer and the governing board of the facility of the deficiencies and order that they be remedied within a reasonable period of time."

121. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 5.

122. Minnesota Statutes Chapter 243, Section 243.57 provides, "In case of an epidemic of any infectious or contagious disease in any state correctional facility under control of the commissioner of corrections, by which the health or lives of the inmates may be endangered, the chief executive officer thereof, with

the approval of the commissioner of corrections may cause the inmates so affected to be removed to some other secure and suitable place or places for care and treatment."

123. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Statutes Chapter 243, Section 243.57.

124. Minnesota Rule 2911.0300, subp. 2, provides, "When conditions do not substantially conform or where specific conditions endanger the health, welfare, or safety of inmates or staff, the facility's use is restricted pursuant to Minnesota Statutes, section 241.021, subdivision 1, or legal proceedings to condemn the facility will be initiated pursuant to Minnesota Statutes, section 641.26 or 642.10."

125. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Rule 2911.0300, subp. 2.

126. Minnesota Rule 2911.5800, subpart 4, provides that a correctional facility "shall develop a written policy and procedure that requires that the facility provide 24-hour emergency care availability as outlined in a written plan, which includes provisions for…emergency evacuation of the inmate from within

the facility…[and] security procedures that provide for the immediate transfer of inmates when appropriate."

127. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Rule 2911.5800, subpart 4.

128. Minnesota Rule 2911.5800, subpart 8 provides. "A facility shall develop a written policy and procedure that requires that inmates' health complaints are acted upon daily by health trained staff, followed by triage and treatment by health care personnel if indicated."

129. By failing and refusing to protect Petitioners from COVID-19, the DOC has violated its duties to Petitioners under Minnesota Rule 2911.5800, subpart 8.

PETITIONERS' RIGHT TO A WRIT OF MANDAMUS

130. Minnesota Statutes, Chapter 586, governs the right to obtain a writ of mandamus. Section 586.01 provides:

> The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

131. Section 586.03 provides that the writ shall be either peremptory, which requires the respondent's immediate performance of a duty, or alternative, which requires the respondent to appear and show cause why the court should not order the respondent's performance of a duty.

132. Under Section 586.04, "When the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given, a peremptory writ may be allowed in the first instance. In all other cases the alternative writ shall first issue."

133. Section 586.12 requires the trial of issues of fact in mandamus proceedings: "Issues of fact in proceedings commenced in a district court shall be tried in the county in which the defendant resides, or in which the material facts stated in the writ are alleged to have taken place. Either party shall be entitled to have any issue of fact tried by a jury, as in a civil action."

134. Although mandamus is an extraordinary remedy, its use is appropriate when there is no plain, adequate, and speedy remedy at law. *Farmers & Merchants Bank of Cochrane v. Billstein*, 283 N.W. 138, 139 (Minn. 1938). "The two primary uses of mandamus are (1) to compel the performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion

when that exercise is required by law." *Mendota Golf v. City of Mendota Hgts*, 708 N.W.2d 162, 171 (Minn. 2006).

135. To be entitled to a writ of mandamus compelling the performance of an official duty, a petitioner must show that (1) the respondent "failed to perform an official duty clearly imposed by law"; (2) the petitioner "suffered a public wrong and was specifically injured" by the respondent's failure; and (3) the petitioner has "no other adequate legal remedy." *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. Ct. App. 2009).

136. Here, Petitioners have shown that the DOC has an official duty to protect Petitioners from COVID-19 and that the DOC has failed and refused to perform that duty.

137. There is no other adequate legal remedy to compel the DOC to perform this duty, and particularly not a speedy remedy. The advance of COVID-19 through crowded spaces like the DOC's prisons is relentless and exponential, as every person infected with COVID-19 will probably infect at least two others at the earliest opportunity. Time is absolutely of the essence in requiring the DOC to perform its duty in protecting Petitioners from COVID-19.

138. In this particular case, the right to require the DOC to protect Petitioners from COVID-19 is clear, and it is apparent that the DOC can give no

valid excuse for not protecting Petitioners from COVID-19. This Court should therefore issue the peremptory writ in the first instance ordering the DOC to perform its duty to protect Petitioners from COVID-19.

139. Alternatively, if the Court does not issue the peremptory writ in the first instance, it should issue an alternative writ ordering the DOC to appear before this Court at the earliest possible time convenient for this Court to show cause why the DOC has failed and refused to perform its duty to protect Petitioners from COVID-19, and then ordering the DOC then and there to perform that duty.

140. In the event that the DOC's response to the Petition raises disputed issues of fact, this Court should set the resolution of those issues of fact for trial as provided by § 586.12.

141. Pursuant to Minnesota Rule of Civil Procedure 23.01 and 23.02(a) and (b), Petitioners bring this action for a writ of mandamus on behalf of themselves and a class of all similarly situated persons, specifically all prisoners within the custody or control of the DOC.

142. Inasmuch as DOC correctional facilities house approximately 7,500 prisoners,[8] the class is so numerous that joinder of all members is impracticable.

[8] *DOC COVID-19 Updates.*

143. Questions of law and fact are common to the class including, but not limited to, the nature and extent of the legal duty the DOC has to protect Petitioners from COVID-19 and whether the DOC has violated that duty.

144. The claims of Petitioners are typical of the class, in that Petitioners and all class members seek protection from COVID-19.

145. Petitioners will fairly and adequately protect the interests of the class, because they are represented by experienced and committed civil rights attorneys.

146. A class action is appropriate because the DOC has acted and refused to act on grounds generally applicable to the class in failing and refusing to protect the class from COVID-19; because inconsistent or varying adjudications with respect to individual members of the class could establish incompatible standards of conduct for the DOC; and because adjudications with respect to individual members of the class could as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

147. For these reasons, Petitioners ask that this Court certify the class described above or such sub-classes as the Court deems appropriate for purposes of Petitioners' claim for a writ of mandamus.

AN OBVIOUS SOLUTION

148. Press reports now indicate that Minnesota will soon be receiving its first shipments of COVID-19 vaccine. "What you need to know about Minnesota's COVID-19 vaccine plan" Dec. 10, 2020, available at: https://www.startribune.com/minnesota-covid-19-coronavirus-vaccine-vaccinations-pfizer-moderna-astrazeneca-pandemic/573336221/.

149. At present, expected priorities for receiving the 183,400 doses scheduled for Minnesota are as follows:

> A CDC advisory panel voted Dec. 1 to recommend that health care workers and nursing home patients — about 24 million Americans, or roughly 7% of the U.S. population — should be prioritized for access to the first vaccine doses. The panel will meet again in the future to decide which groups should be next in line.
>
> In Minnesota, first priority will be given to front-line health care workers in COVID-19 hospital units, emergency departments and nursing homes along with paramedics, COVID-19 testing personnel and some public health workers. Residents in nursing homes will also be in the highest priority group.
>
> In later phases, essential workers and adults with high-risk medical conditions and those 65 or older are expected to be prioritized for vaccination.
>
> *Id.*

150. If the DOC obtains sufficient doses of COVID-19 vaccine to vaccinate (1) all staff having contact with prisoners, (2) all prisoners in its custody or control who have not yet contracted the virus, and (3) all new

prisoners entering the system during the pandemic, this will satisfy the interests of (1) Petitioners and the putative class, (2) the DOC, and (3) communities surrounding DOC correctional facilities. Petitioners and the class will be protected from COVID-19. The DOC will have adequately protected prisoners within its custody and control. It will also have freed itself of the burden and expense of devising, promulgating, and enforcing measures currently needed to protect prisoners from the introduction and spread of COVID-19 in its prisons, and to treat and care for them once they have contracted COVID-19. Surrounding communities will be protected from transmission of COVID-19 from DOC prisons, and its spread outside the prisons to burden local health care systems. The only other measure required to fulfill the DOC's legal duty to protect prisoners from COVID-19 will be to quarantine those prisoners, if any, who decline vaccination.

151. Petitioners estimate that given the current prisoner population of 7,388 inmates, 3,292 confirmed positive prisoner cases, 2,570 recovered infected prisoners, 875 staff confirmed or suspected positive, and 644 staff returned to work, perhaps no more than 10,000 doses of vaccine, roughly 5 percent of the currently scheduled initial shipments of vaccine will allow the DOC to satisfy its legal duty to keep prisoners safe from COVID-19.

152. Petitioners therefore request that this Court's writ of mandamus require the DOC to use its best efforts to obtain a sufficient quantity of vaccine to vaccinate (1) all staff having contact with prisoners, (2) all prisoners in DOC custody or control who have not yet contracted the virus, and (3) all new prisoners entering DOC correctional facilities during the COVID-19 pandemic.

RESERVATION OF RIGHT TO AMEND TO SEEK DAMAGES

153. In the event that this Court denies Petitioners' pending motion for class certification in its entirety, Petitioners respectfully request this Court to grant leave to amend to add such additional Petitioners as have requested to join these proceedings, and to assert claims for damages for all Petitioners.

PRAYER FOR RELIEF

WHEREFORE, Petitioners hereby demand and pray for judgment as follows:

A. That this Court certify Petitioners' mandamus class as defined herein or such sub-classes as the Court deems appropriate; define the issues to be decided as the nature and extent of the legal duty of the DOC to protect Petitioners and the Class from COVID-19 and whether the DOC has violated that

duty; appoint Petitioners as Class Representatives; and appoint the undersigned attorneys as class counsel.

B. That this Court find, adjudge, and decree that the DOC has failed and refused to perform its legal duty to protect Petitioners and the Class from COVID-19.

C. That this Court issue a peremptory writ of mandamus compelling the DOC to perform its legal duty to protect Petitioners and the Class from COVID-19, or an alternative writ of mandamus ordering the DOC to appear before this Court at the earliest possible time convenient for this Court in order to show cause why the DOC should not be ordered to perform its legal duty to protect Petitioners and the Class from COVID-19, and then ordering the DOC then and there to perform that duty.

D. That this Court's writ of mandamus further order the DOC to use its best efforts to obtain a sufficient quantity of vaccine to vaccinate (1) all staff having contact with prisoners, (2) all prisoners in DOC custody or control who have not yet contracted the virus, and (3) all new prisoners entering DOC correctional facilities during the COVID-19 pandemic.

E. That in the event that the DOC's response to this Petition raises disputed issues of fact, that this Court set this matter for trial at its earliest convenience as required by Minn. Stat. § 586.12.

F. That in the event this Court denies Petitioners' pending motion for class certification in its entirety, this Court grant Petitioners leave to amend to add such additional Petitioners as have requested to join these proceedings, and to assert claims for damages for all Petitioners.

G. That if such damages claims are added and asserted, Petitioners recover all such damages as the evidence supports and the jury shall find, with interest as provided by law.

H. That this Court order the DOC to pay Petitioners' cost and expenses incurred in this action as required by law.

I. That this Court grant to Petitioners such other and further relief as may be just, lawful, and appropriate.

Dated: December 10, 2020.

By: /s/ Daniel R. Shulman

Daniel R. Shulman (#0100651)
Teresa Nelson (#0269736)
Ian Bratlie (#0319454)
Isabella Salomão Nascimento (#0401408)
Clare Diegel (#0400758)

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By: /s/Cathryn Middlebrook

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ACKNOWLEDGEMENT

The Petitioners by the undersigned hereby acknowledge that pursuant to Minn. Stat. Sec. 549.211 sanctions may be imposed under this section.

/s/ Daniel R. Shulman

Filed in District Court
State of Minnesota
4/15/2020 4:06 PM

DECLARATION OF LYNNE S. OGAWA, M.D.

I, LYNNE S. OGAWA, M.D., hereby declare under penalty of perjury, that the following is true and correct to the best of my knowledge.

1. I am the Medical Director, St. Paul- Ramsey County Department of Public Health. The St. Paul-Ramsey County Department of Public Health is one of the largest public health departments in Minnesota. Through state and federal mandates, we work to prevent the spread of disease and plan for and respond to health emergencies. Daily I am working to protect the health of our community through limiting the spread of COVID-19.

2. COVID-19 was first reported to the World Health Organization (WHO) on December 31, 2019. Within a month, due to COVID-19's fast rate of spread and high morbidity rate, WHO declared COVID-19 a public health emergency of international concern. On March 11, 2020, just as the U.S. was starting to identify infections in the United States, WHO declared COVID-19 a pandemic. In less than a month, COVID-19 infections in the U.S. have skyrocketed. As of March 27, 2020, the U.S. Center for Disease Control reports there are over 85,000 infections in the U.S. Over 1,240 people have died from the virus. The U.S. is now the global epicenter of COVID-19.

3. The first COVID-19 case in Minnesota was identified on March 6, 2020. In less than three weeks, the disease has spread to nearly every county in Minnesota. Even with a limited supply of testing materials and state efforts to limit testing to high priority specimens, the number of confirmed cases has jumped to 398 and there have been 4 deaths. There is no vaccination available to prevent COVID-19. The best-known means of limiting the spread of the disease is to socially distance people. Minnesota, like other jurisdictions in the U.S., is working aggressively to impose the social distancing measures necessary to slow the spread of COVID-19. Despite our aggressive steps to protect the public health, I remain concerned that populations who are unable to socially distance present a significant threat to the public health. Conditions in jails and detention facilities are of particular concern.

4. On March 24, 2020, the Ombudsperson for the Minnesota Department of Corrections stated:

> "The appropriate correctional response to this pandemic is critical to the health and safety of people held in our State and local correctional facilities, correctional staff, and the broader community. A high percentage of individuals in correctional facilities are more vulnerable to the COVID-19 virus. At the same time, close, enclosed quarters; difficulty maintaining sanitary conditions; and movement in and out of facilities creates increased risk of virus transmission both within and outside of jails

 Exhibit A

> and prisons. … Additionally, correctional healthcare can only treat relatively minor problems for a limited number of people. This means that people who become seriously ill will need to be transferred to the community outside of facilities for care."

5. The Minnesota Department of Corrections concerns are well founded. Statistics show that COVID-19 is a highly contagious respiratory virus that presents a significant mortality and morbidity threat especially to vulnerable populations as well as a resource strain on our healthcare system. Given the large population density in detention centers, the ease of COVID-19 transmission, and the basic reproductive rate of this virus (R0=2; it is highly likely an infected individual will pass the infection along to others), it is believed that the majority of detainees and staff within a facility are at risk of infection once the virus is introduced. Of these, one in five will require hospital admission, and about 10% will develop severe disease requiring hospitalization in an intensive care unit. The statistics have led some physicians to call detention facilities a "tinderbox."

6. In addition to the explosive transmission rate in high density settings where individuals cannot socially distance, individuals in detention who suffer from underlying medical conditions are at an exceptionally high risk of developing a severe illness if they contract COVID-19. Detainees who are: older; HIV positive; have asthma; are pregnant; severely obese; diabetic; or have renal failure, liver disease, or a heart condition are at elevated risks of severe disease from COVID-19.

7. On March 24, 2020, the Immigration and Customs Enforcement Website confirmed that civil detainees in ICE's custody are sent to local hospitals when they need a higher level of care than the basic care available at a detention facility. I do not know the number of ICE detainees held in Minnesota jails. I do not know how many of those detainees have underlying medical conditions that put them at risk of severe disease from COVID-19. However, it is known the cost of hospitalization for severe disease is in the order of $5,000 to $8,000 dollars per day for those requiring mechanical ventilation. I do know that our public health depends upon taking immediate steps to slow the spread of COVID-19 by aggressively pursuing policies that further social distancing.

8. Across the United States, Sheriffs have recognized that social distancing is paramount to public safety and have moved to reduce the number of detainees in jails to avoid the spread of COVID-19. In Minnesota, the Hennepin and Ramsey County Jails have reduced their population by more than 30% in an effort to protect the health and welfare of detainees and the public from the spread of COVID-19. This is an appropriate response to the unprecedented threat COVID-19 poses to our health and well-being.

9. The COVID-19 pandemic is placing a major strain on health care providers in Minnesota. As part of our work to protect the public health, we are working to identify groups of people who are at high risk of serious disease from COVID-19. Detained individuals with underlying medical conditions, are at a high risk of developing a severe disease that requires emergency medical care. It is in the public interest to minimize the health risk inherent to the spread of COVID-19 to vulnerable individuals. The public

health is served when individuals who are at high risk of serious illness from COVID-19 are released from detention to locations where they are able to socially distance and practice the hygiene necessary to limit their exposure to COVID-19.

Dated: 3/29/2020

Lynne S. Ogawa, M.D.

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State of Minnesota
4/15/2020 4:06 PM

DECLARATION OF SUSAN HASTI, M.D.

I, SUSAN HASTI, M.D., hereby declare under penalty of perjury, that the following is true and correct to the best of my knowledge:

1. I am a faculty member of the Department of Family and Community Medicine at Hennepin Healthcare Family Medicine Residency Program. Our department trains Family Physicians, many of whom join the community of physicians who practice in the state of Minnesota. Upon introduction of COVID-19 in Minnesota, my hospital, Hennepin County Medical Center, has been very active in preparations to address the expected surge of illness here. Our department is currently involved in the screening process for COVID-19, as well as continuing to monitor and manage the chronic health conditions of our clinic patients, both inpatient and outpatient. We have undergone an extensive restructuring of workflows in the past several weeks to meet these needs.

2. As a teaching faculty, I am involved in both interpreting and analysis of medical data, research and journal articles, as well as training residents in these skills. I am also responsible for designing and implementing curricula for training of Family Medical residents. Attached is my CV.

3. I have read the declaration provided by Dr. Ogawa attached as Exhibits A to the Petition in this matter.

4. The lawyers of ACLU of Minnesota (ACLU-MN) requested that I provide my opinion on my agreement or disagreement with the cited declaration.

5. I am in complete agreement with the declaration provided. In my ongoing observation of the pandemic, my review of medical literature and statistics, and the analysis of the spread of this new and highly infectious virus, I have become very concerned about the risk of developing a nidus or nest of viral growth in prisons and other correctional facilities. I was alerted to this issue by a patient of mine who has a partner at Moose Lake. Any dense population has limited means to control viral spread; witness the overwhelming situations of New York City, New Orleans, northern Italy, Madrid etc. More to the point, we are seeing rapid spread in Riker's Island and Cook County jails. *See* New York State, Department of Corrections and Community Supervision, "DOCCS COVID-19 Report," https://doccs.ny.gov/doccs-covid-19-report (last visited April 12, 2020); Cook County Sheriff, "COVID-19 Cases at CCDOC," *available at*

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https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/ (last visited April 12, 2020).

6. I understand that the correctional facility at Moose Lake currently has 1,045 prisoners. With no practical means to guarantee that the virus can be contained, in a worst case scenario it can be reasonably assumed that everyone confined there will be exposed, both inmates as well as staff, who I expect would have a "high risk" of exposure based on OSHA risk stratification. *See* United States Department of Labor, Occupational Safety and Health Administration, "COVID-19: Hazard Recognition," *available at* https://www.osha.gov/SLTC/covid-19/hazardrecognition.html#risk_classification (last visited April 12, 2020). Current understanding of the virus is that about 20% of people will show no symptoms, but 14% will exhibit severe symptoms, with 5% becoming critically ill. Centers for Disease Control and Prevention, Coronavirus Disease 2019, "Interim Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)," *available at* https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#Asymptomatic (last visited April 12, 2020). Using these percentages, we can roughly estimate over 836 inmates could become symptomatic, and of those, approximately 117 would require hospital care, about half in the ICU, with 41 or so needing intubation. Given that prisoners tend to be in poorer health than the general public, these simple calculations could easily be an underestimate of the severity.

7. The two local hospitals in Moose Lake and Cloquet together have only 102 beds, 6 of which are ICU beds. Rilyn Eischens, "The COVID-19 pandemic could be 'devastating' in rural areas," Minnesota Reformer (Mar. 19, 2020), https://minnesotareformer.com/2020/03/19/the-covid-19-pandemic-could-be-devastating-in-rural-areas-expert-says/; "Mercy to hold groundbreaking, anniversary celebration May 31," Moose Lake Star Gazette (May 23, 2020), https://www.mlstargazette.com/story/2013/05/23/news/mercy-to-hold-groundbreaking-anniversary-celebration-may-31/577.html; Community Memorial Hospital, About, https://cloquethospital.com/about/ (last visited April 13, 2020). The local hospital system does not have capacity to manage an influx of this enormity. And in these calculations, I have not included affected prison employees or any community members that could catch the illness through community transmission from the employees. Hospitalized patients exceeding the capacity of Carlton County will need to be placed in other communities' hospitals, spreading the burden across several areas of the state. Lack of appropriate containment and mitigation measures from just one of our state prisons has potential for far ranging and dire burdens on our state health systems and their

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ability to respond to this emergency. Should other, highly dense and contained populations become infected, the multiplier effect from the spread could easily overwhelm the state.

Dated: 4/13/2020

s/ Susan Hasti

Susan Hasti, M.D.

Exhibit B

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4/15/2020 4:06 PM

Susan Hasti M.D.
Curriculum Vitae

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hasti@gmail.com
susan.hasti@hcmed.org

Education
M.D. -- University of Minnesota Medical School, 1988
B.A. -- Oberlin College, 1984

Residency
Family Practice, United Health Services Johnson City, NY, 1992

Board Certification
American Board of Family Practice (most recent exam in 2015)

Employment
Hennepin Faculty Associates/Hennepin Health Care 5/17/10- present
Department of Family Medicine, residency program faculty. Inpatient, outpatient, Obstetrics, certified ALSO instructor, Centering Pregnancy, advising, recruitment and various faculty assignments

Hennepin County Medical Center Family Medical Center 8/1/09- 5/15/10 community preceptor

University of Minnesota Broadway Family Medicine 5/1/09-3/12/10 community preceptor

Open Cities Health Center, 7/99-9/09
OCHC is a federally qualified community health clinic. I practiced a full range of outpatient medical care as well as obstetrics all 10 years, and inpatient care until 2004.

Concordia Languages Villages, 2002-2009
"Camp doctor" for two weeks per year in a Spanish language immersion program.

Greater Bristol Primary Care, 11/97-6/99
Full scope, out-patient and in-patient family medical care and obstetrics in a hospital owned practice.

Central Connecticut ObGyn Women's Health Group, 11/92-11/97
CCOG was an all female, private Ob/Gyn practice, located in a town with no female primary care doctors. They hired me to develop the primary care component of the practice. I was responsible for essentially setting up a new practice within this group, which was later sold to Bristol Hospital (GBPC).

Exhibit C

Second languages
Spanish - working knowledge
French – limited, will need interpreter

HCMC Committees
Medical Executive Committee (1/2016 – present)
Clinical Competency Committee
Behavioral Science Curriculum Committee

Other Boards, Committees and Service
Perinatal Peer Review Committee, Regions Hospital (8/2008 – 8/2009)
Ob/Gyn section meeting, Regions Hospital (12/2005-4/2008)
Ad Hoc working group to develop collaborative practice guidelines for Regions Hospital Ob/Gyn department and the Community Clinics (2006)
Medical Reserve Corps of Hennepin County (4/2006 – 2016)
HCAMn (Health Care for All Minnesota) board member. HCAMn is what developed after the restructuring of MUHCC. (1/2010-11/2012, 2014)
MUHCC (Minnesota Universal Health Care Coalition) Board chair. (5/2006 – 1/2010)
MUHCC was a small advocacy organization dedicated to passing Single Payer health care reform in Minnesota.
MUHCC Steering Committee (10/2003 – 2006)

Scholarly activities

National Collaborative for Education to Address the Social Determinants of Health (NCEAS). Member since 10/19/2018. Subcommittee: curriculum review committee

Hasti S, Petersen K Simulation Facilitators for "Ovarian Torsion". 2019 Family Medicine Resident Simulation Session. Hennepin Healthcare Interdisciplinary Simulation & Education Center. Jan. 30, 2019. Minneapolis, MN.

Hasti S Simulation Facilitator for “G2 Skills”. 2019 Family Medicine Resident OSSE Sim and Skills Session. Hennepin Healthcare Interdisciplinary Simulation & Education Center. Mar. 20, 2019. Minneapolis, MN.

Hasti S, McCarthy R, Pace S Simulation Facilitators for "Watch out for the Shakes". 2019 Interdisciplinary Labor & Delivery InSitu Simulation Session. Hennepin Healthcare Interdisciplinary Simulation & Education Center. Mar. 28, 2019. Minneapolis, MN.

Hasti S, Easton M Simulation Facilitators for "Shoulder Dystocia". 2019 Family Medicine Resident Simulation Session. Hennepin Healthcare Interdisciplinary Simulation & Education Center. Nov. 27, 2019. Minneapolis, MN

Population Health: How you can develop a comprehensive curriculum building on structures already in place in your program, Family Medicine Midwest Conference, October 2016

Exhibit C

Moving Centering Pregnancy From an Educational Experience to a Longitudinal Rotation: Building a Curriculum and Milestone-Based Evaluations, Society for Teachers of Family Medicine Spring Conference, May 2016

Centering Pregnancy: A Resident Led Interdisciplinary Group Approach for Cross Cultural Learning in Family Medicine, Society for Teacher of Family Medicine Spring Conference, May 2014

Marking the Milestones: A Direct Observation Tool for Outpatient Clinic, Society for Teachers of Family Medicine Spring Conference, May 2014

Beyond the Likert scale: creating a core curriculum evaluation program that is engaging and effective, Society for Teachers of Family Medicine Spring Conference, May 2013

Participated in seminar for Curriculum Development, University of Minnesota Spring 2011

International Medicine

International Health Services – Honduras 2/2009

A two-week health care project in which we worked in the Miskito coast, running clinics in the village of Uhi. IHS has been operating in Honduras for over 25 years and has excellent continuity with the communities they revisit each year.

International Health Services -Honduras 2/2004

A two-week health care project in which we worked mainly in mountainous areas, running clinics in several villages.

Salve Project - El Salvador 2/2001

A one week emergency medical relief trip following the earthquakes of 2000/2001.

Doctors to the World - Tecolutla, Veracruz, Mexico. 2/2000-5/2000

This was a medical and cultural trip that my entire family participated in. We rented a house and lived in town as residents. I worked with DIF, the municipal social services organization, and was taken to neighboring villages to run clinics

Public presentations and legislative testimony

Health Care Reform from Dollars to Sense – Are We There Yet?" International Women's Day workshop 3/2010

Chapter Organizing: Tools and Advice, PNHP Annual meeting workshop, Boston, 10/2009

Universal Health Care: Incentives or Mandates, panelist, Minnesota Physicians Forum, Minneapolis, 6/2007

Health and Human Services Budget Division of the Finance Committee (testimony regarding cost savings) 2/2005

Senate Health and Family Security Committee (testimony on behalf of SF339) 11/2003

Various presentations on radio, cable TV, grand rounds, public forums 2003-2010

References Available on request

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DECLARATION OF SUSAN HASTI, M.D.

I, SUSAN HASTI, M.D., hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am a faculty member of the Department of Family and Community Medicine at Hennepin Healthcare Family Medicine Residency Program. My CV was provided with my initial declaration to the Court and is attached again here. I incorporate herein paragraphs 1 & 2 of my prior Declaration in this case, detailing my background.

2. In addition to my practice as a Family Medicine doctor, working in the COVID-19 pandemic in the general clinic setting, as well as in the virus screening environment, I have consistently read the literature produced to keep up with the new information surrounding the novel coronavirus as it becomes available.

3. I previously submitted a declaration in support of the Petition in this case. I hereby reaffirm everything in my original declaration. There is nothing that I wish to change. It remains my professional opinion that, at the time the Petition was filed, the Department of Corrections was not taking adequate measures to protect the prisoners in its care from COVID-19.

4. The lawyers of the ACLU of Minnesota (ACLU-MN) requested that I provide my opinion on the measures being taken by the Department of Corrections at the Moose Lake Facility, based on the "Facility-by-Facility Measures to Combat COVID-19" that appear on its website (https://mn.gov/doc/about/covid-19-updates/mcf-moose-lake-covid-19-response/).

5. On June 12, 2020, I read the measures being taken at Moose Lake in the "facility by facility measures" link on the Department of Corrections web site (available at: https://mn.gov/doc/about/covid-19-updates/mcf-moose-lake-covid-19-response/) and have a number of concerns with the adequacy of those measures, which I detail in the paragraphs that follow.

    a. The Department of Corrections indicates it has implemented a "Stay with Unit" plan "to provide living unit separation, and to minimize the potential for COVID-19 spread." The Department does not specify how many people are in a unit. The Department does not specify whether employees

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are included in the "Stay with Unit" plan to avoid staff transmission of COVID-19 between units. This additional information is necessary, as keeping a large grouping of people together as a "unit" or still permitting staff to travel between "units" is not advisable and cannot be considered best practices.

b. The Department of Corrections requires that "Barrier Masks" are to be worn while in the facility. The Department specifies that inmates must wear cloth barrier masks. The Department does not specify whether staff are also required to wear barrier masks. Under the "Screening" section, it says staff are "strongly encouraged" to wear masks, which seems contrary to its statement in the "Masks" section that mask wearing is required. Additionally, the Department does not indicate how mask wearing is enforced. Again, this additional information is necessary.

c. In its section entitled "Protecting Staff and Families," the Department of Corrections does not specify what, if any, instructions are given to staff and their families to avoid respiratory droplet spread at home. Nor does the Department specify what testing, if any, is offered to staff and their families. This information is necessary to be sure the Department is complying with best practices to reduce the possible transmission of COVID-19.

d. I have reviewed several tables of COVID testing at DOC facilities over time. Until April 30, no other facility had a positive case in the inmate population. On April 30th, Lino Lakes identified one case. Comparing the two facilities, Moose Lake and Lino Lakes, it is clear that Lino Lakes prioritized inmate contact testing per DOC guidelines as evidenced by the high ratio of negative tests to positive tests, 18:1, for a positive test ratio of 0.06%, whereas Moose Lake continued to lag in testing for the remainder of April. Between April 15 and 30th 60 people were tested at Moose Lake, with 21 new positives, which is a greater than 33% positive rate. This was improved between May 1 and May 29 when 54 additional tests were performed and 6 found to be positive, 11% positive rate. While at Lino Lakes during that same time period 257 inmates were tested with 9 new positives, a 3.5% positive rate. It is clear that even with improvements in testing at Moose Lake, other facilities were more diligent.

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e. The Department of Corrections indicates that it installed hand washing stations in the facility, but does not specify how many inmates are expected to share a single hand washing station.

f. The Department of Corrections says in its "Screening" section that staff are screened daily, but there is no mention if inmates are screened and what screening protocol for inmates is. Moreover, the Department does not discuss how, if at all, it is implementing contact tracing when an infected individual is detected. This information too is necessary.

g. The Department of Corrections states that there is an isolation plan in place for inmates displaying symptoms or who test positive for COVID-19, including placing those inmates in an "isolation area." There is no mention of a plan to separate possible contacts of those inmates to avoid asymptomatic spread. Nor is there a description given for what the physical space looks like under "isolation" conditions. The Department does not include, for example, whether there is a separate bathroom and shower facility from that used by the non-positive inmates. That information is necessary to assess the effectiveness of the measures being taken by the Department.

h. The Department of Corrections states that the phone banks are sanitized with germicidal by living unit workers, and the number of times of sanitization is "dependent upon who the use is from, non-quarantine inmates [or] those quarantined." The Department does not indicate how many inmates share a phone station or whether there is sanitizer available for the inmates to clean the phones between uses.

i. The Department of Corrections, in its "Video Visiting" section, does not specify whether there is sanitizer available to clean the high touch parts of the video kiosks between each use.

j. The Department of Corrections does not specify how many people share one shower and the bathroom facility. The Department also does not specify how the high touch parts, such as faucets and handles, are cleaned between each use.

k. The Department of Corrections states that inmates have access to televisions in the common areas, but does not specify how social distancing is maintained in the common areas. The Department also does not specify

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whether there is a risk of cross-contamination between units through these common areas. This information is necessary to assess whether the Department is implementing best practices in its facility to reduce the risk of COVID-19 transmission.

6. The lawyers of the ACLU of Minnesota (ACLU-MN) also requested that I provide my opinion on the Respondents' Opposition to the Petition in this case. I have read the Respondents' Opposition, focusing on pages 4 through 19, where the Department of Corrections details the steps it claims that it has taken to protect the prisoners in its care from COVID-19. In the following paragraphs, I detail my opinions and concerns.

    a. First, I am pleased to see the dedication that Department of Corrections Medical Director, James Amsterdam, has taken in crafting medical policy around COVID-19, as well as how frequently the Department of Corrections is in contact with epidemiological experts. It is very useful that there has been educational information about COVID-19 that has been written specifically for managing the novel coronavirus in the prison setting.

    b. From the medical community perspective, at both a state and national level, it is clear that we are no longer in a "containment" phase as it pertains to the novel coronavirus. Rather, we are operating in a "mitigation" phase of the pandemic. What this means is that the medical community has recognized that it is not possible to contain, or eliminate, the virus, as it has spread too far into the community at large. Now, the efforts are directed toward mitigating the potential harms.

    c. In the effort toward mitigation, the focus turns to protecting the most vulnerable individuals in society and to slowing the spread in the general population in order to avoid overwhelming the hospital systems.

        i. The U.S. Centers for Disease Control and Prevention (CDC) has identified those considered to be most vulnerable to the novel coronavirus. That group of people includes individuals suffering from:

            1. Asthma;

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2. Chronic kidney disease being treated with dialysis;

3. Chronic lung disease;

4. Diabetes;

5. Hemoglobin disorders;

6. The immunocompromised;

7. Liver disease;

8. People ages 65 years and older;

9. People in nursing homes or long-term care facilities;

10. Serious heart conditions;

11. Severe obesity.

d. The mitigation phase recognizes that many individuals will get sick, but most of those individuals will recover without needing hospitalization and also will not die from the virus.

e. It is my opinion that the prison population will reflect this reality.

f. The unique characteristic of a particularly dense population in the prison setting, however, will assure faster spread of the novel coronavirus than would be seen in a less dense area.

g. Based on my review of the Facility-by-Facility Measures specific to Moose Lake and the Respondents' Opposition to the Petition, the Department of Corrections failed to specify what tracking is being done to make sure the Department is making progress in the goals of the mitigation phase of the pandemic that we are now in—namely, in the goals of protecting the most vulnerable and preventing the medical systems from getting overwhelmed. One such tracking mechanism, which the Department used to publicize, but no longer maintains publicly, is a statistics column on the Department's webpage that provides the number of inmates currently hospitalized. The Department has not provided explanation for removing this column from its

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online tracking statistics table.

h. Again, based on my review of the aforementioned sources, the Department of Corrections has failed to identify a procedure being used to proactively identify those inmates who fall into the CDC categories for individuals most vulnerable to COVID-19. Nor has the Department identified a process for removing them from harm before an outbreak enters the facility in which they are housed. Given the rapidity of spread, it is my opinion that this effort should be prioritized and completed with urgency.

i. My opinion on the identification of the medically-vulnerable population is informed by my working for 20 years in the community health setting where I frequently encounter vulnerable populations. The burden of identifying vulnerable individuals should be the responsibility of the system, not the individual. My experience working with vulnerable populations has illuminated that the level of medical literacy within these populations is often very low, and an individual may not be able to effectively self-identify their medical vulnerabilities; further, many have difficulty in asking for help in the medical realm.

j. Based on my review of the aforementioned sources, it is not clear to me what education the Department of Corrections is providing to inmates to clearly explain the respiratory spread of the novel coronavirus and how the Department is ensuring that the information is being well understood. For example, in the Facility-by-Facility Measures for Moose Lake, the Department of Corrections recommended the use of masks, but emphasized hand washing. While handwashing is important, and highlighting it is appropriate, hand-to-hand transmission is not the primary route of viral transmission. The Department's measures did not clearly explain that air droplets contain the virus, how a mask reduces the volume of particles in the air, define what "social distancing" is in easy-to-understand terms, or provide how social distancing plays its role by keeping apart individuals at a distance that air droplets cannot cross to be passed from person to person. Based on my experience with vulnerable populations, this explicit education is critical. Knowledge cannot be assumed; nor can complete understanding of written information be assumed.

7. Finally, it is my opinion that, if the Department of Corrections had done before this lawsuit was filed all that it states it was doing during that time when the novel coronavirus was first identified in Minnesota and the state began shutting down, it

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might have avoided, or at least lessened, the outbreak of COVID-19 in Moose Lake, and now in its other facilities.

Dated: June 12, 2020

/s/ Susan Hasti
Susan Hasti, M.D.

Exhibit D