

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION**

<p>BRANDON LEE LOVELACE, AUSTIN SCOTT TURNER, PROTECTION AND ADVOCACY FOR THE PEOPLE WITH DISABILITIES, INC., and JOHN and JANE DOES #1-10,</p> <p style="text-align:right">Plaintiffs,</p> <p>vs.</p> <p>CHUCK WRIGHT, Spartanburg County Sheriff, ALLEN FREEMAN, Jail Administrator, in their official capacities,</p> <p style="text-align:right">Defendants.</p>	<p style="text-align:center">C/A NO.: _____</p> <p style="text-align:center"><b>PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF</b></p>
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Plaintiffs Brandon Lee Lovelace, Austin Scott Taylor, Protection & Advocacy for the People with Disabilities, Inc., and John and Jane Does #1-10, on their own and on behalf of a class of similarly situated persons, by and through their attorneys, bring this Complaint for Injunctive and Declaratory Relief against Spartanburg County Sheriff Chuck Wright and Spartanburg County Jail Administrator Allen Freeman, in their official capacities, and state as follows in support:

**INTRODUCTION**

1. We are in the midst of the most significant pandemic in generations. COVID-19, a highly contagious and deadly disease, has swept the globe. In South Carolina, as of May 22, 2020, there are 9,638 confirmed COVID-19 cases and 419 COVID-19 deaths.<sup>1</sup>

2. Congregate settings like jails, by their very nature, are especially prone to becoming epicenters of disease. Crowded conditions, inadequate hygiene products and personal protective equipment, and limited access to medical care all enhance the risk of infection.

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<sup>1</sup> S.C. Department of Health and Environmental Control (“DHEC”), *Latest COVID-19 Update* (May 22, 2020), <https://www.scdhec.gov/news-releases/south-carolina-announces-latest-covid-19-update-may-22-2020>.

3. Both incarcerated individuals and jail staff are at much higher risk of contracting COVID-19 than the general population. A recent analysis by the Council of State Governments showed that, as of May 3, 2020, rates of COVID-19 cases among people incarcerated in state prisons were more than 3.75 times higher than the rate of the general population.<sup>2</sup> Rates among corrections staff were 3.33 times higher.<sup>3</sup> While both inmates and staff are at increased risk of infection, inmates have died from COVID-19 at 15 times the rate of corrections staff.<sup>4</sup>

4. African-Americans in particular face increased risks from COVID-19 because of underlying health conditions, jobs which increase the risk of exposure, and lack of access to quality healthcare. While African-Americans make up just 27% of South Carolina's population, they account for 53% of deaths due to COVID-19 in the state.<sup>5</sup>

5. The Spartanburg County Detention Center ("Spartanburg Jail" or "Jail") houses 539 individuals as of May 22, 2020, the vast majority of whom are there awaiting disposition of their charges.<sup>6</sup> Like most carceral facilities, the Spartanburg Jail houses a population that is uniquely vulnerable to COVID-19. For example, African-Americans, who already die at nearly twice the rate of whites from COVID-19, make up 43% of the Spartanburg Jail population, but only 22% of the Spartanburg County population.<sup>7</sup>

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<sup>2</sup> Council of State Governments Justice Center, *New Analysis Shows Surge of COVID-19 Cases and Deaths Inside State Prisons* (May 6, 2020), <https://csgjusticecenter.org/new-analysis-shows-surge-of-covid-19-cases-and-deaths-inside-state-prisons/>. While this analysis was conducted using data from state prisons rather than jails, there is little reason to believe that the results in jails would be substantially different.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> DHEC, *SC Demographic Data (COVID-19)* (May 22, 2020), <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-demographic-data-covid-19>.

<sup>6</sup> Spartanburg Jail Roster of Inmates, <http://www.spartanburgsheriff.org/bookings/jailrosterb.xml> (last accessed May 22, 2020); *see also* Spartanburg County Sherriff's Office Detention Services Division Website, <http://www.spartanburgsheriff.org/detention-services-division.php> (last accessed May 20, 2020).

<sup>7</sup> U.S. Census Bureau, 2018 American Community Survey 1-Year Estimates, Tables B02008 and B02009; Spartanburg County Jail Roster of Inmates, *supra* note 6.

6. Conditions at the Spartanburg Jail dramatically and unnecessarily enhance the risks of COVID-19 to an already-vulnerable population. For the individuals housed in the Jail, social distancing is impossible, personal protective equipment is unavailable, and conditions are unsanitary. If these issues are not corrected, COVID-19 is likely to spread rapidly through the Jail and the broader community, jeopardizing the health of individuals detained at the Jail, Jail employees, and the larger community.

7. Defendants Sheriff Chuck Wright and Jail Administrator Allen Freeman have demonstrated callous and deliberate indifference to the health and indeed, the survival, of individuals detained at the Spartanburg Jail:

- a. Those who are incarcerated have no access to personal protective equipment (“PPE”), to include masks or gloves, even those who are medically vulnerable;
- b. Staff have access to PPE, but rarely use it because it makes those incarcerated “nervous;”<sup>8</sup>
- c. Those who are incarcerated have limited and inadequate access to soap, hot water, hand sanitizer, clean towels, and clean clothes;
- d. The sanitation at the Jail to prevent against the spread of the virus is below Centers for Disease Control (“CDC”) standards, including having incarcerated people clean their own cells with substandard equipment and cleaners, using the same cleaning supplies for multiple cells, and failing to sanitize high traffic areas;
- e. Individuals who have potentially been exposed to the coronavirus have been inadequately quarantined or not quarantined at all;

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<sup>8</sup> Declaration of Anna Maria Connor, attached as **Exhibit 1** (“P&A Declaration”), ¶ 18.

- f. Medical care is not available for serious conditions and is often delayed;
- g. There has been no education for the incarcerated population on the virus, how to protect themselves, and preventative measures;
- h. The Jail continues to be overcrowded, with three to four people in one cell that is approximately six by eight feet in dimensions, and with a population in the Main Jail, which is rated for 436 people, of over 500;
- i. The Defendants are in defiance of South Carolina Supreme Court Chief Justice Beatty's April 10, 2020 and May 7, 2020 orders<sup>9</sup> by continuing to detain people in the Spartanburg Jail for family court bench warrants; and
- j. Individuals continue to be detained on minor infractions and charges such as shoplifting, drug possession, and home detention violations.

8. Sheriff Wright made his indifference to the safety of incarcerated individuals at the Jail plain early in the pandemic. On March 18, 2020, the American Civil Liberties Union of South Carolina sent a letter to Wright and others asking for steps to be taken to ensure the safety of incarcerated individuals and staff including evaluation of certain detainees for release. While Wright never formally responded to this letter, he reacted as follows to a reporter's question about its recommendations: "They are nuts. Until we hear from the governor we are not releasing anybody."<sup>10</sup>

9. Plaintiffs bring this action seeking safety for individuals housed in the Spartanburg Jail, including the release of medically vulnerable individuals. Despite a clear constitutional duty

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<sup>9</sup> Order of the Supreme Court of the State of South Carolina (April 10, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2478>; Order of the Supreme Court of the State of South Carolina (May 7, 2020), <https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2497>.

<sup>10</sup> Chris Lavender, *Union County Jail Releasing Non-Violent Offenders During Coronavirus Outbreak*, GoUpstate.com, March 21, 2020, <https://www.goupstate.com/news/20200321/union-county-jail-releasing-non-violent-offenders-during-coronavirus-outbreak>.

to care for those in their custody, Defendants have willfully disregarded public health guidelines and placed detained people, correctional staff, and the public at grave risk. COVID-19 is spreading in Spartanburg County and beyond, and only immediate action by this Court will change the harmful course of events unfolding at the Spartanburg Jail.

10. Absent immediate intervention from this Court to align the operation of the Spartanburg Jail with public health principles, devastating, and in many cases deadly, irreparable harm will befall detained persons, Jail staff, and the community. The outbreaks in detention facilities around the country, many with more resources, space, and sophisticated health delivery systems than the Spartanburg Jail,<sup>11</sup> prove the need for immediate and significant reductions in population and other preventative steps.<sup>12</sup>

11. Accordingly, the named Plaintiffs—on their own behalf and on behalf of all those detained at the Spartanburg Jail—bring this action to compel Defendants to immediately comply with public health principles designed to minimize the risk of COVID-19 to incarcerated people, staff, and the broader community.

## I. JURISDICTION AND VENUE

12. Plaintiffs bring this class action pursuant to 42 U.S.C. § 1983, 22 U.S.C. §§ 2241 and 2254, and 28 U.S.C. § 2201, *et seq.*, for relief from both detention and conditions of confinement that violate their Eighth and/or Fourteenth Amendment rights under the United States Constitution.

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<sup>11</sup> Sam Kelly, *134 inmates at Cook County Jail confirmed positive for COVID-19*, CHICAGO SUN-TIMES (Mar. 30, 2020), <https://chicago.suntimes.com/coronavirus/2020/3/29/21199171/cook-county-jail-coronavirus-positive-134-cases-covid-19>.

<sup>12</sup> *See, e.g.*, Memorandum and Order, *Thakker v. Doll*, No. 20-CV-0480 (M.D.Pa. Mar. 31, 2020) (categorically releasing petitioners who “suffer[] from chronic medical conditions and face[] an imminent risk of death or serious injury if exposed to COVID-19”); Emmanuel Felton, *A Judge Ordered The Release Of Low-Level Prisoners Because Of The Coronavirus. People Were Absolutely Furious.*, BUZZFEED NEWS (Mar. 27, 2020), <https://www.buzzfeednews.com/article/emmanuelfelton/a-judge-ordered-the-release-of-low-level-prisoners-because>.

13. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 2241 and 2254 (habeas corpus), 28 U.S.C. §§ 1331 and 1343(a) (federal question), and 28 U.S.C. § 1651 (all writs act).

14. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the Defendants reside in this district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. This case is properly filed in the Spartanburg Division pursuant to Local Civil Rule 3.01 because a substantial part of the events or omissions alleged herein occurred in Spartanburg Division counties.

## **II. PARTIES**

15. Plaintiff Brandon Lee Lovelace is detained pretrial at the Spartanburg Jail. He has been incarcerated since April 21, 2020 and has no bond. Mr. Lovelace is 28 years old. He was previously incarcerated at Kirkland Correctional Facility, where he was present during the ongoing COVID-19 outbreak. Upon arrival at the Spartanburg Jail, Mr. Lovelace was placed in so-called "quarantine" because he had been at Kirkland, but he had a roommate after two days and was released into the general population after only six days. If Mr. Lovelace were not at the Jail, he would practice social distancing.<sup>13</sup>

16. Plaintiff Austin Scott Taylor is detained pretrial at the Spartanburg Jail. He has been incarcerated since April 24, 2020. Mr. Taylor is 25 years old. If Mr. Taylor were not at the Jail, he would practice social distancing.<sup>14</sup>

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<sup>13</sup> See Declaration of Bridget Brown (Summary of Interview with Brandon Lee Lovelace), attached as **Exhibit 2** ("Lovelace Declaration").

<sup>14</sup> See Declaration of Bridget Brown (Summary of Interview with Austin Scott Turner), attached as **Exhibit 3** ("Turner Declaration").

17. Because Plaintiffs Lovelace and Taylor are being held pretrial, they have not been convicted of the alleged offense(s) for which they are being detained in the jail and are presumed innocent.

18. Plaintiffs John and Jane Doe #1-10 are individuals held at the Spartanburg Jail, similarly situated to the above-referenced plaintiffs but whose identities are at this time unknown.

19. Plaintiff Protection & Advocacy for the People with Disabilities, Inc. (“P&A”) is a non-profit corporation. It is the protection and advocacy system for the state under federal and South Carolina law, and is charged with the duty to “protect and advance the legal rights of people with disabilities.”<sup>15</sup> The organization’s offices are located at 3710 Landmark Drive, Suite 208, Columbia, SC 29204. P&A’s interest is specifically in regard to individuals with disabilities in the Jail population.<sup>16</sup>

20. Defendant Sheriff Chuck Wright and his agents currently, or will in the future, have immediate custody over the Plaintiffs and all other putative class members. Defendant Wright is a final policymaker for Spartanburg County with respect to the customs, policies, and practices of the Jail. All of Defendant Wright’s actions and inactions at issue herein occurred under color of state law.

21. Defendant Spartanburg County Jail Administrator Allen Freeman and his agents currently, or will in the future, have immediate custody over the Plaintiffs and all other putative class members. Defendant Freeman is a final policymaker for Spartanburg County with respect to the customs, policies, and practices of the Jail. All of Defendant Freeman’s actions and inactions at issue herein occurred under color of state law.

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<sup>15</sup> Petitioner Protection & Advocacy for People with Disabilities, Inc., <https://www.pandasc.org/> (last visited May 1, 2020).

<sup>16</sup> See P&A Declaration, *supra* note 8.

### III. FACTUAL ALLEGATIONS

#### A. COVID-19 Poses a Significant Risk of Illness, Injury, or Death

22. The novel coronavirus that causes COVID-19 has led to a global pandemic.<sup>17</sup> COVID-19 is a highly contagious respiratory disease that kills between 1 and 6% of those infected: at least ten times more than the common flu that kills thousands each year.<sup>18</sup> The World Health Organization estimates that one in five people who become infected require hospitalization.<sup>19</sup> As of May 22, 2020, the United States led the world in confirmed cases of COVID-19.<sup>20</sup>

23. The virus is spreading exponentially: as of May 22, 2020, there are more than 1,571,000 confirmed cases in the United States.<sup>21</sup> South Carolina is battling spread of the disease, with 9,638 confirmed cases and 419 confirmed deaths, as of May 22, 2020.<sup>22</sup> Spartanburg County alone has 439 confirmed cases.<sup>23</sup>

24. Scientists and infectious diseases specialists expect that the virus and its mutations will continue to circulate at epidemic levels and require risk mitigation protocols and procedures for the next two years.<sup>24</sup>

25. There is no vaccine or cure for COVID-19. According to public health experts, the only course of action to slow and prevent transmission is primarily through a practice known as

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<sup>17</sup> Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

<sup>18</sup> Johns Hopkins Univ. & Med. Coronavirus Resource Center, *COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE)*, <https://coronavirus.jhu.edu/map.html> (last visited May 20, 2020).

<sup>19</sup> World Health Organization, *Q&A on Coronaviruses (COVID-19), Should I Worry About COVID-19?* (May 4, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

<sup>20</sup> Johns Hopkins Univ. & Med. Coronavirus Resource Center, *COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE)*, <https://coronavirus.jhu.edu/map.html> (last visited May 22, 2020).

<sup>21</sup> Centers for Disease Control and Prevention, *Coronavirus Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 22, 2020).

<sup>22</sup> DHEC, *supra* note 1.

<sup>23</sup> DHEC, *SC Cases by County & ZIP Code* (May 22, 2020), <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-cases-county-zip-code-covid-19>.

<sup>24</sup> Declaration of Dr. Melissa Nolan, attached as **Exhibit 4** (“Nolan Declaration”), ¶ II.3.



“social distancing,” which requires all people to stay at least six feet away from all other people.<sup>25</sup> Indeed, the only assured way to curb the pandemic is through dramatically reducing contact for all.<sup>26</sup> Consequently, every American institution—from schools<sup>27</sup> to places of worship,<sup>28</sup> from businesses<sup>29</sup> to legislatures<sup>30</sup>—has been exhorted to reduce the number of people in close quarters, if not empty entirely. These imperatives apply with special force to jails, where detained individuals and staff are packed together in close quarters and the government controls almost entirely a person’s ability to avoid others and to maintain adequate sanitation.

26. The virus is known to spread from person to person through respiratory droplets, close personal contact, fecal matter, and from contact with contaminated surfaces and objects.<sup>31</sup> Social distancing and a vigilant hygiene regimen, including washing hands frequently and

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<sup>25</sup> World Health Organization, *Coronavirus*, [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1) (“At this time, there are no specific vaccines or treatments for COVID-19.”) (last accessed May 20, 2020); *Dawson v. Asher*, Case No. 20-cv-409 (W.D. Wash.) at Dkt. No. 4, Declaration of Dr. Robert B. Greifinger, MD, ¶ 8 (“Social distancing and hand hygiene are the only known ways to prevent the rapid spread of COVID-19.”).

<sup>26</sup> Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to “Flatten the Curve,”* WASH. POST (Mar. 14, 2020), <https://www.washingtonpost.com/graphics/2020/world/corona-simulator/>.

<sup>27</sup> Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs*, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html> (last visited May 20, 2020).

<sup>28</sup> Centers for Disease Control and Prevention, *Interim Guidance for Administrators and Leaders of Community-and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html> (last visited May 20, 2020).

<sup>29</sup> Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited May 20, 2020).

<sup>30</sup> National Conference of State Legislatures, *Coronavirus and State Legislatures in the News*, <https://www.ncsl.org/research/about-state-legislatures/coronavirus-and-state-legislatures-in-the-news.aspx> (last visited May 20, 2020).

<sup>31</sup> Centers for Disease Control and Prevention, *Interim Infection Prevention and Control Recommendations for Patience with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings*, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Finfection-control%2Fcontrol-recommendations.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Finfection-control%2Fcontrol-recommendations.html) (last visited May 20, 2020).

thoroughly with soap and water, are the only known effective measures for protecting against transmission of COVID-19.<sup>32</sup>

27. Because COVID-19 spreads among people who do not show symptoms, staying away from people is the best way to prevent contraction.<sup>33</sup> In other words, *everyone*, including officials at the Spartanburg Jail, has to act as if *everyone* has the disease. The South Carolina Department of Health and Environmental Control (“DHEC”) estimates that, as of May 22, 2020, the 439 COVID-19 confirmed cases represent a fraction of the cases in Spartanburg County. DHEC estimates that there are actually between 2,697 and 3,136 COVID-19 cases in Spartanburg County.<sup>34</sup>

28. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs, such as the heart and liver.<sup>35</sup>

29. People over the age of 50 face a greater risk of serious illness or death from COVID-19.<sup>36</sup> In a February 29, 2020 preliminary report, individuals ages 50-59 had an overall mortality rate of 1.3%; 60-69-year-olds had an overall 3.6% mortality rate, and those 70-79 years old had an 8% mortality rate.<sup>37</sup>

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<sup>32</sup> *Dawson v. Asher*, Case No. 20-cv-409 (W.D. Wash.) at Dkt. No. 5, Declaration of Dr. Jonathan Louis Golob at ¶ 8, attached as **Exhibit 5**.

<sup>33</sup> See Nolan Declaration, *supra* note 24, ¶ II.9.

<sup>34</sup> DHEC, *supra* note 23.

<sup>35</sup> Golob Dec., *supra* note 32, ¶ 4; *see also* Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited May 20, 2020).

<sup>36</sup> Xianxian Zhao, et al., medRxiv, *Incidence, clinical characteristics and prognostic factor of patients with COVID-19: a systematic review and meta-analysis* (March 20, 2020), <https://www.medrxiv.org/content/10.1101/2020.03.17.20037572v1.article-info>.

<sup>37</sup> *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* Chart, available at <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (data analysis based on WHOChina Joint Mission Report) (last visited May 20, 2020).

30. People of any age who suffer from certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, high blood pressure, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and asthma, also have an elevated risk.<sup>38</sup> Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.<sup>39</sup>

31. In many people, COVID-19 causes fever, cough, and shortness of breath. However, for people over the age of 50 or with medical conditions that increase the risk of serious COVID-19 infection, shortness of breath can be severe.<sup>40</sup> Most people in higher risk categories who develop serious illness will need advanced support. This requires highly specialized equipment like ventilators that are in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians.<sup>41</sup>

32. In serious cases, COVID-19 causes acute respiratory disease syndrome (“ARDS”), which is life-threatening: those who receive *ideal* medical care with ARDS have a 30% mortality

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<sup>38</sup> World Health Organization, *Coronavirus disease (COVID-19) advice for the public: Myth busters*, , <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> (“Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”).

<sup>39</sup> World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”).

<sup>40</sup> Golob Dec., *supra* note 32, ¶ 3; Zhao, *supra* note 36.

<sup>41</sup> Golob Dec., *supra* note 32, ¶ 6.

rate.<sup>42</sup> Even in non-ARDS cases, COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause permanent loss of breathing capacity.<sup>43</sup>

33. COVID-19 may target the heart, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can reduce the heart's ability to pump.<sup>44</sup> This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work.

34. COVID-19 can also trigger an over-response of the immune system and result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.<sup>45</sup>

35. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.<sup>46</sup>

36. Even some younger and healthier people who contract COVID-19 may require supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.<sup>47</sup>

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<sup>42</sup> Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland (March 25, 2020), <https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>.

<sup>43</sup> Golob Decl., *supra* note 32, ¶ 7.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> CDC, *Interim Clinical Guidance*, *supra* note 35.

<sup>47</sup> Golob Decl., *supra* note 32, ¶ 5.

37. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage, loss of digits, and loss of respiratory capacity.<sup>48</sup>

**B. Persons Incarcerated in Jails Face Grave and Immediate Danger Due to COVID-19.**

38. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19,<sup>49</sup> as already evidenced by the rapid spread of the virus in cruise ships<sup>50</sup> and nursing homes.<sup>51</sup>

39. It is virtually impossible for people who are confined in prisons, jails, and detention centers to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, both for those who are incarcerated and those who work within the facilities.<sup>52</sup> This is demonstrated by dramatic outbreaks in the Cook County Jail<sup>53</sup> and Rikers Island in New York City, where the transmission rate for COVID-19 has made it one of the most dangerous workplaces in the United States.<sup>54</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> Nolan Decl., *supra* note 24, ¶ II.6.

<sup>50</sup> The CDC is currently recommending that travelers defer cruise ship travel worldwide. “Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19.” Centers for Disease Control and Prevention, *COVID-19 and Cruise Ship Travel*, <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship> (last visited May 20, 2020).

<sup>51</sup> The CDC notes that long-term care facilities and nursing homes pose a particular risk because of “their congregate nature” and the residents served. Centers for Disease Control and Prevention *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, [https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fprevent-spread-in-long-term-care-facilities.html) (last visited May 20, 2020).

<sup>52</sup> Nolan Decl., *supra* note 24, ¶ II.11.

<sup>53</sup> See Cheryl Corley, *The COVID-19 Struggle in Chicago’s Cook County Jail*, NATIONAL PUBLIC RADIO (Apr. 13, 2020), <https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-cook-county-jail>.

<sup>54</sup> Deanna Paul and Ben Chapman, *Rikers Island Jail Guards Are Dying in One of the Worst Coronavirus Outbreaks*, WALL STREET JOURNAL (April 22, 2020), <https://www.wsj.com/articles/rikers-island-jail-guards-are-dying-in-one-of-the-worst-coronavirus-outbreaks-11587547801>.

40. To comply with public health guidelines, jail administrators must ensure that incarcerated people be allowed to eat, sleep, use the toilet, and socialize while maintaining six feet of distance from all others.<sup>55</sup> Failure to take these actions will have serious consequences.

41. Jails are not hermetically sealed—quite the opposite. Jail populations shift significantly each day as people are arrested and released. The people who go in—from correctional and medical staff, to those detained prior to trial, to those serving short sentences—typically come out in very short order. In fact, of the 1,471 individuals booked into the Spartanburg Jail between March 13, 2020, when Governor McMaster declared a state of emergency related to COVID-19, and May 20, 2020, more than 83% were released during that time.<sup>56</sup> Of those released during that time, more than 81% spent fewer than two days in the Jail.<sup>57</sup>

42. In South Carolina, an average of 11,000 people are in county jails at any one time.<sup>58</sup> Hundreds of people are released from jail each day after making bond or having their charges dismissed. Failing to prevent and mitigate the spread of COVID-19 endangers not only those within the institution, but the entire community. Hence, immediate and aggressive action to allow incarcerated persons and correctional staff to practice social distancing and other protective measures is an essential mitigation effort that the Spartanburg Jail must undertake to comport with public health guidance and to prevent a catastrophic outbreak at the facility.<sup>59</sup>

43. Correctional settings further increase the risk of contracting COVID-19 due to the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal

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<sup>55</sup> Nolan Decl., *supra* note 24, ¶ III.1.d.

<sup>56</sup> Spartanburg County Jail Roster of Inmates Booked within the Last 90 Days, <http://www.spartanburgsheriff.org/bookings/booked90.xml> (last updated May 20, 2020 at 11:02am).

<sup>57</sup> *Id.*

<sup>58</sup> Prison Policy Initiative, *Correctional Control 2018: Incarceration and Supervision by State*, [https://www.prisonpolicy.org/graphs/correctional\\_control2018/SC\\_correctional\\_control\\_2018.html](https://www.prisonpolicy.org/graphs/correctional_control2018/SC_correctional_control_2018.html) (last visited May 20, 2020).

<sup>59</sup> Nolan Decl., *supra* note 24, ¶ III.1.d.

levels of sanitation, limited access to personal hygiene, limited access to medical care, presence of many high-contact non-porous surfaces, and no possibility of staying at a distance from others.<sup>60</sup>

44. Correctional facilities house large groups of people together, and move people in groups to eat, recreate, and go to court.<sup>61</sup> They frequently have insufficient medical care for the population even outside times of crisis.<sup>62</sup> Hot water, soap, and paper towels are often in limited supply. Incarcerated people, rather than professional cleaners, are responsible for cleaning the facilities<sup>63</sup> and often are not given appropriate supplies.

45. Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, jails and prisons dealt with a disproportionately high number of cases.<sup>64</sup>

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<sup>60</sup> Letter from Johns Hopkins Faculty, *supra* note 42; *Velesaca v. Decker*, Case No. 20-cv-1803 (S.D.N.Y.) at Dkt. No. 42 (March 16, 2020) (Declaration of Dr. Jaimie Meyer, attached as **Exhibit 6**) (noting, *inter alia*, that jail environments have reduced prevention opportunities, increased susceptibility, and are often poorly equipped to diagnose and manage outbreaks of infection disease).

<sup>61</sup> See, e.g., Nathalie Baptiste, *Correctional Facilities are the Perfect Incubators for the Coronavirus*, MOTHER JONES (Mar. 6, 2020), <https://www.motherjones.com/politics/2020/03/correctional-facilities-are-the-perfect-incubators-for-the-coronavirus/>.

<sup>62</sup> See, e.g., Steve Coll, *The Jail Health-Care Crisis*, THE NEW YORKER (Feb. 25, 2019), <https://cutt.ly/ftERHNg>.

<sup>63</sup> See, e.g., Wendy Sawyer, *How much do incarcerated people earn in each state?*, PRISON POLICY INITIATIVE (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> (noting that “custodial, maintenance, laundry” and “grounds keeping” are among the most common jobs for incarcerated people); North Carolina Department of Corrections, *North Carolina Prison Inmates at Work*, <https://www.doc.state.nc.us/work/workover.htm> (noting that cleaning the grounds and facilities is one of the jobs of incarcerated persons in North Carolina).

<sup>64</sup> See, e.g., Meyer Dec., *supra* note 60, ¶ 19; Golob Dec., *supra* note 32 ¶ 13; This H1N1 “swine flu” pandemic outbreak spread dramatically in jails and prisons in 2010, but that strain of virus had a low fatality rate because of the characteristics of the virus—COVID-19’s fatality rate is far higher. David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, PRISON LEGAL NEWS (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

46. Numerous public health experts, including Dr. Gregg Gonsalves,<sup>65</sup> Ross MacDonald,<sup>66</sup> Dr. Marc Stern,<sup>67</sup> Dr. Oluwadamilola T. Oladeru and Adam Beckman,<sup>68</sup> Dr. Anne Spaulding,<sup>69</sup> Homer Venters,<sup>70</sup> Jaimie Meyer,<sup>71</sup> the faculty at Johns Hopkins schools of nursing, medicine, and public health,<sup>72</sup> and Josiah Rich<sup>73</sup> have all strongly cautioned that people booked into and held in jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

47. Because of the severity of the threat posed by COVID-19, and its potential to rapidly spread throughout a correctional setting, public health experts recommend the rapid release from custody of people most vulnerable to COVID-19.<sup>74</sup> Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation

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<sup>65</sup> Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, CONNECTICUT MIRROR (Mar. 11, 2020), <https://ctmirror.org/2020/03/11/elderly-prison-population-vulnerable-to-potential-coronavirus-outbreak/>.

<sup>66</sup> Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming.'* NEW YORK POST (Mar. 19, 2020), <https://nypost.com/2020/03/19/top-rikers-doctor-coronavirus-storm-is-coming/>.

<sup>67</sup> Marc F. Stern, MD, MPH, Washington Assoc. of Sheriffs & Police Chiefs, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* (Mar. 5, 2020), <https://www.themarshallproject.org/documents/6796536-Suggestions-for-Jails-3-5-20>.

<sup>68</sup> Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America's Incarcerated Population – and How to Ensure It's Not Left Behind*, HEALTH AFFAIRS (Mar. 10, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/>.

<sup>69</sup> Anne C. Spaulding, MD MPH, Emory Center for the Health of Incarcerated Persons, *Coronavirus COVID-19 and the Correctional Facility* (March 9, 2020), [https://www.prisonlegalnews.org/media/publications/Emory\\_CHIC\\_Coronavirus\\_and\\_the\\_Correctional\\_Facility\\_2020.pdf](https://www.prisonlegalnews.org/media/publications/Emory_CHIC_Coronavirus_and_the_Correctional_Facility_2020.pdf).

<sup>70</sup> Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, MOTHER JONES (Mar. 12, 2020), <https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/>.

<sup>71</sup> Meyer Dec., *supra* note 60.

<sup>72</sup> See Johns Hopkins Letter, *supra* note 42.

<sup>73</sup> Amanda Holpuch, *Calls Mount to Free Low-Risk US Inmates to Curb Coronavirus Impact on Prisons*, THE GUARDIAN (Mar. 13, 2020), <https://www.theguardian.com/us-news/2020/mar/13/coronavirus-us-prisons-jails>.

<sup>74</sup> See Meyer Dec., *supra* note 60, ¶¶ 37–38 (noting that population reduction in jails will be “crucially important to reducing the level of risk both for those within [jail] facilities and for the community at large,” and that stemming the flow of intakes is a part of the necessary intervention); Greifinger Dec., *supra* note 25, ¶ 13 (“In my opinion, the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.”); *Dawson v. Asher*, Case No. 20-cv-409 (W.D. Wash.) at Dkt. No. 6, Declaration of Marc Stern, ¶¶ 9–10 (noting that release is “a critically important way to meaningfully mitigate” the risks of harm to persons who are at high risk of serious illness or death, as well as to support the broader community health infrastructure).



for people held or working in a jail and the broader community.<sup>75</sup> Release also reduces the burden on the region's health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

**C. Existing Procedures and Protocols at the Spartanburg Jail Are Not Sufficient to Ensure the Safety of the Plaintiffs, Class Members, or the General Public**

48. Here in South Carolina, prior to the pandemic, almost all jails housed incarcerated people in conditions that made social distancing impossible, with prisoners eating, sleeping, and using the toilet within a few feet of one another. However, based on guidance from the CDC, several South Carolina jails and detention centers have substantially decreased their jail population in an effort to make social distancing more possible and to protect high-risk individuals.<sup>76</sup>

49. The Spartanburg Jail, however, is far behind other South Carolina counties in efforts to safely lower the detention center population, and current conditions in the Jail pose a serious, obvious, and emergent health and safety risk to individuals detained there, staff, and the public.

50. The Spartanburg Jail has a Main Jail and an Annex.

51. In the Main Jail, there are six pods. Within each pod, individuals are housed in groups of 3 to 4 people, all in one cell estimated at 6ft x 8ft.<sup>77</sup> Most cells have a “boat bed,” a cot

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<sup>75</sup> *Id.*

<sup>76</sup> See, e.g., Anna Lee, *Police, Jails Change the Way they Operate in Coronavirus Outbreak*, THE GREENVILLE JOURNAL (April 30, 2020) (discussing a Greenville jail population of 841, down from 1,250 in January, and protocols in place like mandatory 14 day quarantines), <https://greenvillejournal.com/news/greenville-sc-police-jail-change-way-they-operate-coronavirus-outbreak/>.

<sup>77</sup> P&A Declaration, ¶ 7; Lovelace Declaration, ¶ 3.h; Declaration of Franklin Garner, attached as **Exhibit 7** (“Garner Declaration”), ¶ 6; Declaration of Katherine Weaver Patterson (Summary of Interview with William Joseph Mosteller), attached as **Exhibit 8** (“Mosteller Declaration”), ¶ 3.g.

that slides out from underneath the sink.<sup>78</sup> All of the individuals in a given cell use the same open-air toilet within the cell.<sup>79</sup> These conditions make it impossible for individuals to socially distance.<sup>80</sup>

52. In the Annex, there are several sections. Each section is a large bay with rows of bunk beds, holding up to 20 people.<sup>81</sup> All of the individuals share an open-air row of toilets.<sup>82</sup> Social distancing is not enforced in the Annex.<sup>83</sup>

53. Most of the surfaces in the Jail are metal.<sup>84</sup> The individuals detained at the Spartanburg Jail are responsible for cleaning their own cells but they are given diluted unlabeled cleaning supplies and no instructions regarding proper disinfection techniques.<sup>85</sup>

54. Detained individuals have no access to PPE, such as masks.<sup>86</sup> While some of the guards wear PPE, most do not.<sup>87</sup>

55. Shower facilities are shared by 20 to 40 individuals and are not routinely cleaned.<sup>88</sup> Indigent individuals receive one small bar of soap, while non-indigent individuals must purchase their own soap.<sup>89</sup>

56. Hand sanitizer is not available to individuals detained at the Spartanburg Jail.<sup>90</sup>

57. Individuals in the Jail do not have access to hot water in their cells.<sup>91</sup>

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<sup>78</sup> P&A Declaration, ¶ 7; Mosteller Declaration, ¶ 3.g.

<sup>79</sup> Lovelace Declaration, ¶ 3.i; Garner Declaration, ¶ 8.

<sup>80</sup> Lovelace Declaration, ¶ 3.i; Mosteller Declaration, ¶ 3.h.

<sup>81</sup> P&A Declaration, ¶ 11; Garner Declaration, ¶ 7.

<sup>82</sup> Garner Declaration, ¶ 12.

<sup>83</sup> P&A Declaration, ¶ 12.

<sup>84</sup> P&A Declaration, ¶ 21.

<sup>85</sup> Lovelace Declaration, ¶ 3.o; Garner Declaration, ¶ 17; Mosteller Declaration, ¶ 3.m.

<sup>86</sup> P&A Declaration, ¶ 19.

<sup>87</sup> P&A Declaration, ¶ 18.

<sup>88</sup> P&A Declaration, ¶ 8; Garner Declaration, ¶ 9.

<sup>89</sup> Lovelace Declaration, ¶ 3.l; Mosteller Declaration, ¶ 3.l.

<sup>90</sup> Lovelace Declaration, ¶ 3.m; Garner Declaration, ¶ 15.

<sup>91</sup> See Declaration of Bridget Brown (Summary of Interview with Iesha Gray-Nash), attached as **Exhibit 9** (“Gray-Nash Declaration”), ¶ 3.i; Turner Declaration, ¶ 3.g.

58. Individuals are given a change of clothing once, sometimes twice, a week. They are also given one towel and one rag for the week, which they are required to use to wash themselves, their cell, and their utensils.<sup>92</sup>

59. At mealtimes, detained individuals, sometimes in groups of 80 to 100, line up shoulder-to-shoulder to retrieve their food trays.<sup>93</sup>

60. When detained individuals are given access to recreational space, they share the same gymnasium-sized space, with approximately 30 other people.<sup>94</sup> Even in areas where social distancing would be possible, it is not being practiced.<sup>95</sup>

61. Detained individuals share television remote controls and telephones that are not cleaned between uses, and many individuals place clean socks on the telephones before using them.<sup>96</sup>

62. Detained individuals have not been informed about COVID-19 or how to protect themselves against the virus.<sup>97</sup>

63. Rather than taking proactive measures at the start of this crisis to comply with public health guidance, Defendants have eschewed the seriousness of the pandemic and ignored the science and data underlying public health experts' concerns regarding dangerous spread of the virus within overcrowded jails. Defendants have refused to make any meaningful efforts to allow social distancing. Indeed, the Jail is "operating pretty much as normal."<sup>98</sup>

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<sup>92</sup> Gray-Nash Declaration, ¶ 3.k, 3.o; Garner Declaration, ¶ 17.

<sup>93</sup> Lovelace Declaration, ¶ 3.k; Garner Declaration, ¶ 10; Mosteller Declaration, ¶ 3.i.

<sup>94</sup> Lovelace Declaration, ¶ 3.i; Garner Declaration, ¶ 8; Mosteller Declaration, ¶ 3.h.

<sup>95</sup> P&A Declaration ¶ 12.

<sup>96</sup> Lovelace Declaration, ¶ 3.q; Mosteller Declaration, ¶ 3.j.

<sup>97</sup> Garner Declaration, ¶ 13; Mosteller Declaration, ¶ 3.k.

<sup>98</sup> P&A Declaration, ¶ 14.

64. Defendants' failure to act to protect people who live and work in the Jail is particularly egregious given the current state of affairs in Spartanburg County. Of all South Carolina counties, Spartanburg County has the 6th highest number of COVID-19 infections in the state.<sup>99</sup>

65. Defendant Wright has recognized the importance of social distancing for himself but done nothing to allow individuals detained at the Spartanburg Jail to practice the necessary social distancing.<sup>100</sup>

66. The failure to act to substantially reduce the Spartanburg Jail population or to improve conditions in the facility is alarming given the county-wide infection rate. Spartanburg Jail correctional staff daily interact with prisoners in a crowded environment and then return home to their families. And, of course, Spartanburg Jail County detainees are commonly released to the community, as with Mr. Garner, Ms. Gray-Nash and Mr. Mosteller, who provided declarations for this action. There is no line, thin or otherwise, between the health of Spartanburg Jail detainees, the health of Spartanburg Jail correctional staff, and the health of Spartanburg County as a whole.

67. Defendants have demonstrated throughout this crisis an unwillingness or inability to safely care for people in his custody. Defendants have cavalierly refused to take any apparent precautions whatsoever within the facility. Despite there being individuals showing possible symptoms of the virus, the impossibility of social distancing, and widespread inadequate sanitation, a Jail official reported that no detainees had been tested for COVID-19 as of April 22, 2020.<sup>101</sup>

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<sup>99</sup> DHEC, *supra* note 23.

<sup>100</sup> Conor Hughes, *Coming together without coming together: Upstate SC sheriffs host socially distanced prayer meetings*, GREENVILLE NEWS (Apr. 9, 2020), <https://www.greenvilleonline.com/story/news/2020/04/09/coronavirus-upstate-sc-sheriffs-host-socially-distanced-prayer-meetings/2972696001/>.

<sup>101</sup> Chris Lavender, *SCDOC, Upstate jails test inmates who exhibit COVID-19 symptoms*, GoUpstate.com, April 22, 2020, <https://www.goupstate.com/news/20200422/scdoc-upstate-jails-test-inmates-who-exhibit-covid-19-symptoms>.

68. Therefore, Defendants are, with deliberate indifference, failing to take adequate precautions to avoid the spread of COVID-19 in the Jail despite the obvious risks to detained persons and near-ideal conditions for it to occur.

69. The Spartanburg Jail must respond to and manage the continued risk of harm posed by the COVID-19 outbreak by following CDC<sup>102</sup> and other public health guidelines. This requires, among other things:<sup>103</sup>

- a. daily symptom assessment of all individuals detained, working in, or entering the Jail;
- b. polymerase chain reaction (PCR) testing of all detainees upon admission to the Jail and all detainees and staff at least bimonthly. Newly admitted detainees should be appropriately quarantined until they receive a negative test result. Detainees or staff who test positive should be appropriately quarantined;
- c. socially distancing all detainees from one another and staff, which necessitates at least six feet of distance between individuals at all times;
- d. utilizing outdoor space as much as possible;
- e. on a daily basis, thoroughly and professionally disinfecting and sanitizing the Jail using an EPA approved (for COVID-19) disinfectant;
- f. every two hours, disinfecting high touch surfaces, particularly metal and plastic, using an EPA approved (for COVID-19) disinfectant;

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<sup>102</sup> Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited May 20, 2020).

<sup>103</sup> Nolan Decl., *supra* note 24, ¶ IV.1-10.

- g. providing infection control training to staff;
- h. providing hygiene supplies, including antibacterial hand soap and hand sanitizer containing at least 60% alcohol to wash hands and EPA approved (for COVID-19) disinfectants to disinfect common areas, to detainees at all times and free of charge;
- i. providing clean towels and individualized cleaning supplies to each incarcerated person, so as not to promote spread through common cleaning tools and soiled towels;
- j. providing PPE, including but not limited to cloth masks which should be laundered daily, to all staff members and incarcerated individuals and requiring consistent use of this equipment;
- k. taking particularly heightened precautions with respect to food handling and delivery, such as ensuring that people who come into contact with food are not displaying any potential symptoms of COVID-19, have not recently been in contact with people displaying potential symptoms of COVID-19, and are wearing appropriate personal protection at all times when in contact with food (including but not limited to appropriate masks and gloves);
- l. isolating any individual who has shown potential COVID-19 symptoms for a period of at least 7 days following the resolution of their last symptom;
- m. appropriately quarantining all individuals newly admitted to the jail for a period of 14 days;
- n. maintaining and providing to the Court and Plaintiffs' counsel a list of individuals who qualify for the Medically Vulnerable Subclass; and

- o. providing accurate, up-to-date educational and informational materials regarding sanitation and prevention of COVID-19, the status of how COVID-19 is affecting the facility including the number of infected prisoners and staff, and daily access to news reports regarding COVID-19.

Additionally, the Spartanburg Jail should reduce the detainee population.

- 70. Plaintiffs have fully exhausted all administrative remedies available to them.

#### **IV. CLASS ACTION ALLEGATIONS**

71. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedures on behalf of themselves and a class of similarly situated individuals.

72. As will be explained more fully in Plaintiffs' motion for class certification, Plaintiffs seek certification of the following class of individuals: all persons who are now or will in the future be detained at the Spartanburg Jail during the course of the COVID-19 pandemic.

73. Plaintiffs seek certification of the following subclass of individuals ("Medically Vulnerable Subclass"): all persons who are now, or will in the future be, detained at the Spartanburg Jail who are at high risk of complications from COVID-19 because:

- a. they are 65 years old or older;
- b. they have the following chronic health conditions: diabetes mellitus; chronic lung disease (including asthma, chronic obstructive pulmonary disease, and emphysema); cardiovascular disease; chronic renal disease; chronic liver disease; a former or current tobacco smoker; immunosuppressing conditions; neurologic disorder (including, dementia, memory loss, or Alzheimer's disease, seizure disorder, Parkinson's disease, migraine/headache, stroke, autism, aneurysm, multiple sclerosis, neuropathy, hereditary spastic paraplegia,

myasthenia gravis, intracranial hemorrhage, and altered mental status); hypertension; thyroid disease; gastrointestinal disorder; hyperlipidemia; cancer or history of cancer; rheumatologic disorder; hematologic disorder; obesity (body mass index greater than 30); non-rheumatoid arthritis; non-arthritic musculoskeletal disorder; mental health condition; urologic disorder; cerebrovascular disease; obstructive sleep apnea; fibromyalgia; gynecologic disorder; pulmonary or venous embolism; ophthalmic disorder; hypertriglyceridemia; endocrine; substance abuse disorder; dermatologic disorder; or genetic disorder; or

c. they are currently pregnant.

74. Class certification is proper under Federal Rule of Civil Procedure 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). This is further explained in Plaintiffs' motion for class certification.

75. In addition, the proposed class must be certifiable under one of the three sub-provisions of Rule 23(b). Here, Plaintiffs seek certification under Rule 23(b)(2), because the parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).



**V. CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**Unconstitutional Conditions of Confinement in Violation of the Fourteenth Amendment to the U.S. Constitution**

42 U.S.C. § 1983/28 U.S.C. §§ 2241 and 2254

*All Plaintiffs and the Class They Represent*

76. Under the Fourteenth Amendment, corrections officials are required to provide for the reasonable health and safety of persons in pretrial custody. *Youngberg v. Romeo*, 457 U.S. 307, 315–16, 324 (1982) (the state has an “unquestioned duty to provide adequate . . . medical care” for detained persons). In addition, individuals in pretrial custody may not be subjected to punishment including conditions which are not reasonably related to a legitimate goal. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1977)

77. As part of the right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail to at least the same degree of persons in custody subsequent to a conviction. Deliberate indifference to the serious risk COVID-19 poses to Plaintiffs and members of the Class violates this right.

78. Defendants have unconstitutionally failed to comply with public health guidelines to prevent or manage an outbreak of COVID-19 and unconstitutionally failed to provide for the safety of the individually named Plaintiffs and the Class. Defendants’ actions and inactions result in the confinement of these Plaintiffs and Class members in a jail where their rights to reasonably safe conditions of confinement and adequate medical care are being violated.

79. Accordingly, Defendants, as supervisors, direct participants, and policy makers for Spartanburg County have violated the rights of Plaintiffs and the Class under the Fourteenth Amendment.

## **SECOND CLAIM FOR RELIEF**

### **Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution**

42 U.S.C. § 1983/28 U.S.C. §§ 2241 and 2254

*All Plaintiffs and the Class They Represent*

80. Under the Eighth Amendment, persons in carceral custody have a right to be free from cruel and unusual punishment. As part of the right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. *See, e.g., Estelle*, 429 U.S. at 104; *DeShaney*, 489 U.S. at 200. Deliberate indifference to the serious risk COVID-19 poses to Plaintiffs and the members of Class constitutes cruel and unusual punishment. Defendants violate the Eighth Amendment rights of Plaintiffs and the Class by subjecting them to conditions of confinement that do not ensure their safety and health.

81. Defendants have unconstitutionally failed to comply with public health guidelines to prevent or manage an outbreak of COVID-19 and unconstitutionally failed to provide for the safety of Plaintiffs and the Class. Defendants' actions and inactions result in the confinement of these Plaintiffs and the Class in a jail where their rights to reasonably safe conditions of confinement and adequate medical care are being violated.

82. Accordingly, Defendants, as supervisors, direct participants, and policy makers for Spartanburg County have violated the rights of Plaintiffs and the Class under the Eighth Amendment.

## **THIRD CLAIM FOR RELIEF**

### **Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (on behalf of the Medically Vulnerable Subclass)**

83. Plaintiffs seek relief under 28 U.S.C. § 2241 on behalf of themselves and members of the Medically Vulnerable Subclass who are not in custody pursuant to a judgment of conviction of a state court.

84. Plaintiffs should be deemed to have exhausted state court remedies. Because they seek release in light of the immediate and urgent risks to their health and lives, there is no remedy that could be pursued in the State of South Carolina that would protect their rights. Exhaustion of any such remedy would be futile.

85. Defendants are holding Plaintiffs in custody in violation of the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the Constitution of the United States. The Constitution forbids exposing Plaintiffs to a severe risk of death, pain, permanent severe injury, or cruel or unusual punishment, and at this time no options are available to Defendants that will adequately mitigate that risk other than immediate release from custody.

#### **FOURTH CLAIM FOR RELIEF**

##### **Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (on behalf of the Medically Vulnerable Subclass)**

86. Plaintiffs seek relief under 28 U.S.C. § 2254 on behalf of themselves and members of the Medically Vulnerable Subclass who are in custody pursuant to a judgment of conviction of a state court.

87. Plaintiffs should be deemed to have exhausted state court remedies. Because they seek release in light of the immediate and urgent risks to their health and lives, there is no remedy that could be pursued in the State of South Carolina that would protect their rights. The COVID-19 pandemic presents circumstances which render any such process ineffective to protect Plaintiffs' rights.

88. Defendants are holding Plaintiffs in custody in violation of the Eighth Amendment to the Constitution of the United States which forbids exposing cruel or unusual punishment, and at this time no options are available to Defendants that will adequately mitigate that risk other than immediate release from custody.

## **VI. REQUEST FOR RELIEF**

89. Plaintiffs, for themselves and for the members of the proposed Class, respectfully request that the Court order the following:

1. Certification of this action as a Class Action;
2. A temporary restraining order, preliminary injunction, and/or permanent injunction requiring Defendants to:
  - a. provide daily symptom assessment of all individuals detained, working in, or entering the Jail
  - b. PCR testing of all detainees upon admission to the Jail and all detainees and staff at least bimonthly. Newly admitted detainees should be appropriately quarantined until they receive a negative test result. Detainees or staff who test positive should be appropriately quarantined;
  - c. socially distance all detainees from one another and staff, which necessitates at least six feet of distance between individuals at all times;
  - d. utilize outdoor space as much as possible;
  - e. on a daily basis, thoroughly and professionally disinfect and sanitize the Jail using an EPA approved (for COVID-19) disinfectant;
  - f. every two hours, disinfect high touch surfaces, particularly metal and plastic, using an EPA approved (for COVID-19) disinfectant;
  - g. provide infection control training to staff;
  - h. provide hygiene supplies, including antibacterial hand soap and hand sanitizer containing at least 60% alcohol to wash hands and EPA approved (for COVID-

19) disinfectants to disinfect common areas, to detainees at all times and free of charge;

- i. provide clean towels and individualized cleaning supplies to each incarcerated person, so as not to promote spread through common cleaning tools and soiled towels;
- j. provide PPE, including but not limited to cloth masks which should be laundered daily, to all staff members and incarcerated individuals, and requiring consistent use of this equipment;
- k. take particularly heightened precautions with respect to food handling and delivery, such as ensuring that people who come into contact with food are not displaying any potential symptoms of COVID-19, have not recently been in contact with people displaying potential symptoms of COVID-19, and are wearing appropriate personal protection at all times when in contact with food (including but not limited to appropriate masks and gloves);
- l. isolate any individual who has shown potential COVID-19 symptoms for a period of at least 7 days following the resolution of their last symptom;
- m. appropriately quarantine all individuals newly admitted to the jail for a period of 14 days and the Medically Vulnerable Subclass;
- n. maintain and provide to the court a list of individuals who qualify for the Medically Vulnerable Subclass; and
- o. provide accurate, up-to-date educational and informational materials regarding sanitation and prevention of COVID-19, the status of how COVID-19 is affecting

the facility including the number of infected prisoners and staff, and daily access to news reports regarding COVID-19.

3. A writ of habeas corpus for members of the Medically Vulnerable Subclass declaring that the Spartanburg Jail's policies violate their Fourteenth Amendment rights to reasonable safety and freedom from punishment prior to conviction;
4. A declaration that Defendants' policies violate Plaintiffs' and the Class members' Eighth Amendment right to be free from cruel and unusual punishment;
5. An award of Plaintiffs' attorney fees and costs under 42 U.S.C. § 1988 and other applicable law; and
6. Any further relief this Court deems appropriate.

Dated: May 22, 2020

s/ Rita Bolt Barker

Wallace K. Lightsey (Fed. ID No. 1037)

Rita Bolt Barker (Fed. ID No. 10566)

James E. Cox, Jr. (Fed ID No. 13054)

WYCHE, P.A.

200 East Camperdown Way

Greenville, SC 29601

Email: [wlightsey@wyche.com](mailto:wlightsey@wyche.com)

[rbarker@wyche.com](mailto:rbarker@wyche.com)

[jcox@wyche.com](mailto:jcox@wyche.com)

Telephone: (864) 242-8200

Facsimile: (864) 235-8900

*and*

s/ Katherine Weaver Patterson (Fed. ID No. 11902)

Katherine Weaver Patterson

ROOT & REBOUND/SECOND CHANCE

JUSTICE COLLABORATIVE

210 Shaw Street

Greenville, SC 29609

Email: [kpatterson@rootandrebound.org](mailto:kpatterson@rootandrebound.org)

Telephone: (864) 272-0681

*and*

/s Susan K. Dunn (Fed. ID No. 647)

Susan K. Dunn

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

OF SOUTH CAROLINA

P.O. Box 20998

Charleston, SC 29413-0998

Tel.: (843) 282-7953

Fax: (843) 720-1428

sdunn@aclusc.org

*and*

/s Adam Protheroe (Fed. ID No. 11033)

Adam Protheroe

Bridget Brown (Fed ID No. 12043)

SOUTH CAROLINA APPLESEED LEGAL  
JUSTICE CENTER

P.O. Box 7187

Columbia, SC 29202

Office – (803) 779-1113

Fax – (803) 779-5951

adam@scjustice.org

bbrown@scjustice.org

*Counsel for Plaintiffs*