

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. _____

SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS
BERRY, and THEODORE ROOSEVELT RHONE,

Petitioners,

v.

JAY INSLEE, Governor of the State of Washington, and STEPHEN
SINCLAIR, Secretary of the Washington State Department of Corrections,

Respondents.

DECLARATION OF ALEX BERGSTROM

Nicholas Allen, WSBA #42990
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I, Alex Bergstrom, declare under penalty of perjury under the laws of the State of Washington that the contents of this declaration are true and correct.

1. I am an employee of Columbia Legal Services, where I work as an Advocacy and Community Engagement Specialist.

2. I have a bachelor's degree in Public Health from the University of Washington and a Master's in Public Health (MPH) from Columbia University.

3. I live in King County, Washington, which is the epicenter of the COVID-19 outbreak in Washington State. Because of the public health emergency in our area and because of my work with Columbia Legal Services, I have been following the news closely to monitor the current situation and the recommendations of public health officials and government authorities.

4. A team of two coworkers and I have been closely monitoring the news and research regarding COVID-19 situation as it has unfolded, particularly with regard to the threat it poses to people who are residing in correctional custody. We have compiled a running list of articles, reviewed each of them, and highlighted one or two key takeaway excerpts from each source. We created an index of the most relevant sources from our research, and I have attached it to my declaration. The

articles have been numbered #1 through #54 for ease of reference. *See*, Attachment A. All of these articles and resources are available to the public. We were able to find them by following the news and by conducting simple internet searches for additional information. We each did this research in the same way. I know this because we have been in close contact about how we should do this and worked collaboratively on this project.

5. We have found many articles, news sources, and some academic studies that discuss the dangers of COVID-19 as it pertains to individuals who are incarcerated in correctional custody, both here in Washington and around the world.

6. From the sources we have gathered, there is a clear consensus that congregate environments, like prisons, (i.e., places where people eat, sleep, and live in close proximity to one another) greatly increase the risk of transmission of COVID-19 from person to person. *See*, Articles #28-44.

7. One study that we reviewed, that was published in the *Journal of Travel Medicine*, found that trying to contain an active COVID-19 outbreak on the Diamond Princess cruise ship resulted in eight-times more confirmed cases than what would have occurred if the passengers

had been permitted to disembark and self-quarantine in the community.

See, Articles #30; 40.

8. The New York Times recently reported on the COVID-19 outbreak in the Daenam Hospital psychiatric ward in South Korea, where all but two patients in the ward contracted the virus. *See*, Article #21.

Similarly, in Iran, more than 14,000 people in correctional custody became infected with COVID-19, and more than 850 people died. *See*, Article #39.

9. It is clear from the news stories around the world that these are not unique, isolated incidents. Places across the country are reporting similar problems in congregate care facilities, including prisons and jails. *See*, Articles #21; 31-35; 37-39; 41; 43.

10. We found many news articles that discussed the risks of COVID-19 in correctional facilities, and how critical it is to take immediate steps to prevent this sort of massive outbreak. *See*, Article #28. There are now jurisdictions around the country where there are confirmed cases of COVID-19 in correctional facilities, whether among residents or staff or both. *See*, Articles #17-26. Many of these sources indicate that even if there is not a current outbreak within a particular correctional facility that it is “only a matter of time. Due to the confines of these

facilities, it will be virtually impossible to contain the spread of the virus.”

See, Article #13.

11. Another major concern highlighted in articles about COVID-19 is that many people who become infected will not develop significant symptoms, yet they are still contagious and can spread the virus to others with whom they come in contact. *See*, Articles #45-54. One study found that undiagnosed individuals with few or no symptoms may have been responsible for as many as 90% of the early cases in China at the start of the outbreak in late 2019. *See*, Article #48

12. The articles we reviewed point out that this reality is particularly dangerous in the context of congregate settings, especially correctional facilities. They reflect the well-founded fear that protective measures (like temperature screenings) won't be adequate to prevent the introduction of COVID-19 into correctional facilities like DOC. *See e.g.*, Article #48. The articles indicate that if an exposure occurs in a correctional facility like DOC, the virus is likely to spread in a rapid, out of control fashion, because not all patients will show symptoms, but can still transmit the virus to others who may become gravely ill. *See*, Articles #34; 48-49.

13. The sources we reviewed show that if a major COVID-19 outbreak occurs in a correctional facility, this puts not only the people who

live there at risk, but also the people who work there, their families, and the larger community. *See*, Articles #9; 28; 35. Many of the articles indicate that an uncontrolled outbreak in a correctional setting not only puts employees at risk of infection leading to infections amongst their household members and communities outside the correctional facility, but also could result in large numbers of correctional residents who must be transferred to an already-overstretched health care system. *See*, Article #35. The more patients who are sent to hospitals and intensive care facilities amidst the COVID-19 crisis from prisons, the higher the likelihood that there will not be capacity to serve all those in need who live in communities located near prisons. *See*, Article #38.

14. Many experts have concluded that the most effective way to mitigate the risk of a massive outbreak in correctional facilities is to release these individuals from custody. *See*, Articles #1-16. These sources point out that unless correctional facilities take steps to reduce their populations, protective measures such as social distancing and proper hygiene are impracticable. In fact, in all of our research we found no citation to any public health expert who recommends against prisons reducing their populations as part of a full response to the COVID-19 epidemic behind bars.

15. The news reports indicate that many jurisdictions have begun to release individuals from correctional custody as a way of preventing against (or mitigating) uncontrolled outbreaks in jails and prisons. These include, but are not limited to, jurisdictions in the states of Washington, Texas, Ohio, California, New York, Iowa, North Carolina, as well as countries such as Ireland and Iran. *See*, Articles #1-16. Each day, new jurisdictions are taking action to protect the members of their communities who are residing in correctional custody by releasing these residents back into the broader community. The Chief Justice of Montana's Supreme Court authored an advisory memo to the state's trial court judges asking them to reduce the populations of the correctional facilities in their state. *See*, Article #13. The New York City Board of Corrections authored a similar plea to the city's criminal justice leaders. *See*, Article #14.

16. The sources we reviewed demonstrate that the COVID-19 crisis is still evolving, and new information and resources become available every day. The information that we compiled highlights that illness presents a very serious risk, and that steps must be taken to protect ourselves and the most vulnerable members of our community. This includes people living in correctional facilities who are at a heightened risk of exposure due to the environments in which they are kept.

DATED this 23rd day of March, 2020 at Seattle, Washington.

A handwritten signature in cursive script, appearing to read "Alex Bergstrom".

Alex Bergstrom, MPH
Columbia Legal Services

Declaration of Alex Bergstrom: Attachment A

This document contains publicly available information, news, and media resources that show that release of inmates from correctional facilities is the primary means by which prisons should be addressing COVID-19. Categories of news, media and publications is as follows:

- (1) Examples of Counties, Cities, States and/or Countries that are releasing people from correctional facilities**
- (2) Examples of Correctional Facilities with Confirmed COVID-19 Cases/Exposure**
- (3) Studies & News/Public Media about Necessity of Release and/or Removal from Congregate Settings**
- (4) Publications Detailing the Spread of COVID-19 by People Without Symptoms**

Category 1: Examples of Counties, Cities, States and/or Countries that are Releasing People from Correctional Facilities		
	Article Citation	Key Quote(s)
1.	Salvador Hernandez, <u>Los Angeles Is Releasing Inmates Early and Arresting Fewer People Over Fears Of The Coronavirus In Jails</u> , Buzz Feed News (Mar. 16, 2020), https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release	““Our population within our jails is a vulnerable population just by who they are, where they are located, so we're protecting that population from potential exposure,’ Los Angeles Sheriff Alex Villanueva told reporters.”
2.	Chad Sokol, <u>Dozens released from Spokane County custody following Municipal Court emergency order</u> , The Spokesman Review (Mar. 17, 2020), https://www.spokesman.com/stories/2020/mar/17/dozens-released-from-spokane-county-custody-follow/ .	““People in jail are unable to distance themselves from others and take other necessary preventative measures,’ the nonprofit Bail Project said in a recent letter to city and county leaders. ‘The risk of spreading infection is especially severe in light of the Spokane County Jail’s chronic overcrowding. This threatens everyone incarcerated in a jail, along with their loved ones, jail staff and the state’s public health infrastructure at large.’”
3.	Ryan Autullo, <u>Travis County judges releasing inmates to limit coronavirus spread</u> , Statesman (Mar. 16, 2020), https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread .	““The escalating threat, judges and attorneys say, prompted defense attorneys to seek relief for inmates who are thought to be particularly vulnerable to getting sick.”

COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

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Transmittal Information

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Comments:

Declaration in Support of Petition for Mandamus

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