

IN THE SUPREME COURT OF PENNSYLVANIA

In re: the Petition of C.Z., A.O., and
Z.S.-W., on behalf of all similarly
situated individuals

No. ____

Petitioners.

**APPLICATION FOR EXTRAORDINARY RELIEF UNDER THE
COURT’S KING’S BENCH JURISDICTION**

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I. INTRODUCTION

This petition seeks extraordinary relief for extraordinary circumstances. To mitigate the potentially catastrophic harm that the COVID-19 pandemic will inflict upon incarcerated youth, corrections staff, and on all of our communities, this Petition asks this Court to exercise its King's Bench and plenary authority to reduce the numbers of youth in detention, correctional and other residential facilities across the Commonwealth.

In just over three months, COVID-19, the novel lethal and highly contagious coronavirus, has spread across the world and the Commonwealth exponentially. The United States now has the highest number of reported cases in the world, with 163,539 confirmed cases and 2,860 deaths across the country.¹ In Pennsylvania, there have been 4,843 confirmed cases and 63 deaths as of March 31, 2020.² The numbers increase exponentially each day. *Id.* There is no vaccine against COVID-19, and there is no known effective treatment. No one is immune, including teenagers. [Graves Decl.]. While the death rate varies, every day people die from COVID19. As we ask ourselves how many will die today or tomorrow, we must also ask ourselves what public officials can do to decrease that number.

¹ Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* (Mar. 31, 2020) (“*CDC Coronavirus Disease 2019*”), <https://bit.ly/2xzjqX9>.

² Pa. Dep't of Health, *COVID-19 Cases in Pennsylvania* (Mar. 31, 2020) (“*COVID-19 Cases in Pennsylvania*”), <https://bit.ly/2ynK3P6>.

Leading public health officials have warned that unless courts act immediately, the “epicenter of the pandemic will be jails and prisons.”³ As the Centers for Disease Control and Prevention (“CDC”) has explained, correctional facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, [detention center] staff, and visitors.”⁴ More specifically, medical professionals have called on state governors, courts, and departments of corrections to “[i]mmediately release youth in detention and correctional facilities who can safely return to the home of their families and/or caretakers, with community-based supports and supervision, in order to alleviate potential exposure to COVID-19.”⁵ And indeed, jurisdictions around the country and around the world have begun to do so.⁶

Outbreaks in detention and correctional facilities will not only put at risk the lives and health of incarcerated youth, but they will also endanger correctional officers and medical staff, their families, and their communities as staff cycle

³ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 16, 2020), <https://nyti.ms/3aycWX4>.

⁴ Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (“CDC Guidance”)* (Mar. 23, 2020), <https://bit.ly/2ygqU1k>.

⁵ Letter from Physicians for Criminal Justice Reform, to State Governors, State and Local Juvenile Detention and Correctional Departments, and Juvenile Court Judges and Magistrates at 1 (Mar. 22, 2020), <https://bit.ly/3az51sz>.

⁶ See *infra* Section III.D.

through the facilities. The more people who contract the virus, the more treatment they will need, and the more depleted our precious resources for their treatment will become. These outbreaks imperil us all. For similar reasons, Governor Tom Wolf has required every school across the Commonwealth to close, noting that “we are in desperate times and need to make drastic changes in order to save lives.”⁷

The physical distancing necessary to stop the spread of COVID-19 – the only known and effective step individuals alone can take – is impossible in juvenile detention, placement, and correctional settings. In crowded detention and correctional facilities, youth cannot maintain the recommended distance from each other, will not be fully distanced from staff, and cannot properly sanitize the surfaces they touch. [Ambrose Decl.; Farlow Decl.] As the outbreak on the Princess cruise ship showed, confining a large number of people to one enclosed area – even when they are in separate rooms – creates the perfect breeding ground for the virus.⁸

⁷ Gov. Tom Wolf (@GovernorTomWolf), Twitter (Mar. 23, 2020, 2:20 PM), <https://bit.ly/2UWq7uq>; see also *PA Education Secretary Says School Should Open by April 9 – as long as COVID-19 Spread Doesn’t Worsen*, Pittsburgh’s Action News (Mar. 25, 2020), <https://bit.ly/345D1dx>.

⁸ Rebecca Ratcliffe & Carmela Fonbuena, *Inside the Cruise Ship That Became A Coronavirus Breeding Ground*, Guardian (Mar. 6, 2020), <https://bit.ly/2WXwsrP>; K. Oanh Ha, *How A Cruise Ship Turns into A Coronavirus Breeding Ground*, Fortune (Feb. 10, 2020), <https://bit.ly/2wHC2nN>.

To the extent that correctional facilities attempt to mitigate the physical risks, however, they will most likely exacerbate mental health risks. A common approach to attempt physical distancing is to place youth alone in a cell or room. Such isolation has long been shown to have particularly harmful effects on adolescents, causing anxiety, depression, self-harm, and even suicide. It may be particularly harmful for the many young people in the justice system with histories of trauma and abuse. [Ambrose Decl.; Farlow Decl.; Haney Decl.]

Moreover, the pandemic itself poses a risk of emotional damage to children. Experts advise that youth can best weather the emotional harms of the pandemic by spending time with family and receiving regular and consistent emotional reassurance and support. Youth in juvenile justice settings, and especially those subjected to stringent physical distancing rules, will be deprived of these supports. [Farlow Decl.; Haney Decl.]

This Court has already recognized the spread of COVID-19 as a judicial emergency and recognized the need to “safeguard the health and safety of court personnel, court users, and members of the public” in the face of this virus.⁹ This

⁹ Order at 1, *In re Gen. Statewide Judicial Emergency*, Nos. 531 & 532, Judicial Admin. Docket (Pa. Mar. 18, 2020), <https://bit.ly/39uBVcw>; *see also* Gov. Tom Wolf, *Amendment to the Order the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home* (Mar. 30, 2020), <https://bit.ly/2JtEwZv>.

Court has authorized lower courts to take all “appropriate measures” to safeguard health and has closed all courtrooms to the public. *Id.* This Petition asks the Court to give the same recognition to the serious risk of contagion in our youth detention and correctional facilities by issuing an order to: limit the number of youth entering juvenile or pre-trial detention; reduce the number of youth currently confined in jail as well as in youth detention or post-confinement facilities, by reviewing all cases and directing release in designated situations; and ensure the safety and security of youth returned home and those in placement, as further described below.

If undertaken immediately, these emergency measures will mitigate the spread of COVID-19 into and beyond the Commonwealth’s juvenile facilities, saving lives and preventing devastating harm to young people in state custody.

II. PETITIONERS

C.Z., a 16-year-old female resident of Philadelphia County, PA, has been incarcerated at the Juvenile Justice Services Center (“JJSC”) for the past eight months. C.Z. cannot engage in social distancing from other youth or staff and is facing a deprivation in education, programming, and visitation. [C.Z. Decl.]

A.O., a 17-year-old male resident of Delaware County, PA, has been incarcerated in the Juvenile Unit of the George W. Hill Correctional Facility (“George W. Hill”), an adult jail, for the past three months. A.O. is confined to a

cell almost all the time, and is deprived of education and visitation. Nonetheless, he still is not able to safely engage in physical distancing to protect himself from COVID-19, nor has the jail informed youth about the pandemic or how to protect themselves from it. [A.O. Dec.]

Z.S.-W., a 20-year-old male resident of Philadelphia County, PA, has been incarcerated at Youth Forestry Camp #3 for over one month. He is in close contact with youth and staff daily, including overnight, and is unable to engage in social distancing. He has been deprived of the ability to continue his GED studies, which is a condition for his release. He is also being deprived of family visitation and has limited access to connect with family by phone or video. [Z.S.-W. Dec.]

III. JURISDICTION

The Court has jurisdiction pursuant to its King's Bench authority to decide this application and order the requested relief to "cause right and justice to be done" in a matter involving "an issue of immediate public importance." 42 Pa.C.S. § 726; Pa. Const. art. V, § 10(a).

IV. FACTUAL BACKGROUND

A. The COVID-19 global pandemic demands extraordinary measures be taken to protect public health.

COVID-19 has reached pandemic status. According to the World Health Organization ("WHO"), as of March 31, 2020 at 7 AM EST there were 750,890

confirmed cases of COVID-19 worldwide and 36,405 confirmed deaths.¹⁰ The United States has the highest number of confirmed cases in the world with 163,539 confirmed cases and 2,860 confirmed deaths as of March 31, 2020.¹¹ In Pennsylvania alone, there have been 4,843 confirmed cases and 63 deaths as of March 31, 2020.¹² These numbers are growing exponentially. The CDC's projections show that, without effective public health intervention, more than 200 million people in the United States could be infected with COVID-19, with as many as 1.7 million deaths in the most severe projections.¹³

The need for medical treatment, hospitalization, and possibly intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound kidney damage, lung damage, heart damage, and damage to the nervous system. [Graves Decl.]

While older individuals face greater chances of serious illness or death from COVID-19, it is now known that the younger population is just as susceptible to

¹⁰ World Health Org., *Coronavirus Disease (COVID-2019) Situation Reports – 70*, (Mar. 31, 2020), <https://bit.ly/2yqMO2h>.

¹¹ *CDC Coronavirus Disease 2019 supra* note 1.

¹² *COVID-19 Cases in Pennsylvania supra* note 2.

¹³ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times (Mar. 18, 2020), <https://nyti.ms/2JrLgal>.

contracting the virus and face the same dangers as the older population,¹⁴ [Graves Decl.], and children constitute a small but tragic percentage of COVID-19 deaths.¹⁵ In a virtual press conference held on March 20, 2020, WHO Director General Tedros Adhanom Ghebreyesus warned that younger people are not spared of contagion, but also worldwide, they make up a “significant proportion” of patients requiring hospitalization, sometimes for weeks and sometimes resulting in their deaths.¹⁶ The largest study of pediatric COVID-19 patients to date shows that approximately 6% of infected children and 11% of infected infants have had severe or critical cases,¹⁷ and U.S. data shows a growing number of pediatric cases requiring intensive care.¹⁸ These cases have included children and infants who

¹⁴ Stephanie Nebehay, *WHO Message To Youth on Coronavirus: ‘You Are Not Invincible’* (Mar. 20, 2020), <https://reut.rs/343yLvq>.

¹⁵ Taryn Luna et al., *L.A. County Reports First Death of A Possible Coronavirus Patient Under 18 as COVID-19 Cases Top 660* (L.A. Times (Mar. 24, 2020), <https://lat.ms/2Jv9Abe>; Jennifer Millman, *‘It Attacks Everyone:’ NYC Loses 1st Child to Virus as State Deaths Eclipse 1,300; NJ Cases Soar*, NBC New York (Mar. 31, 2020), <https://bit.ly/2Jx4R9i>; Ctrs. for Disease Control & Prevention, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12-March 16, 2020* (Mar. 26, 2020), <https://bit.ly/2JsvAUe>.

¹⁶ Nebehay, *supra* note 14.

¹⁷ See Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China* (2020), Am. Acad. of Pediatrics, <https://bit.ly/39hz1Yz> (pre-publication in journal of *Pediatrics*).

¹⁸ Virtual Pediatric Sys., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), <https://covid19.myvps.org/>.

suffered from respiratory failure, shock, encephalopathy, heart failure, coagulation dysfunction, acute kidney injury, and life-threatening organ dysfunction.¹⁹ Even when asymptomatic, these younger individuals still pose a very serious risk of transmission to those with whom they come in contact, including older, more vulnerable adults.²⁰

The dire public health threat posed by the COVID-19 pandemic has prompted extraordinary responses at every level of government. On March 29, 2020, President Trump extended national social distancing guidelines advising against all gatherings of more than 10 people until at least the end of April.²¹ Three quarters of Americans are currently living under a “stay at home” order.²² Pennsylvania, like many states and counties across the country, has taken the extraordinary step of closing all schools in the State indefinitely²³ and ordering all non-essential businesses shuttered in 26 counties in an effort to combat the spread

¹⁹ See Dong, *supra* note 17.

²⁰ See Guoqing Qian et al., *A COVID-19 Transmission Within a Family Cluster by Presymptomatic Infectors in China* (2020), Clinical Infectious Diseases, <https://bit.ly/2R2tjmY>.

²¹ Donald J. Trump, President, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing* (Mar. 29, 2020), <https://bit.ly/2wUkKUe>.

²² Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times (Mar. 31, 2020), <https://nyti.ms/2Uxxk56>.

²³ Jan Murphy, *Pa. School Closure Order Extended for an Indefinite Period of Time* (Mar. 30, 2020), <https://bit.ly/2UyQCqF>.

of the virus and limit the number of its casualties.²⁴ Extraordinary steps must also be taken to protect the youth and staff in juvenile justice and adult carceral settings across the Commonwealth.

B. Youth confinement poses dire health risks during the COVID-19 pandemic.

There is no cure or vaccine for this highly contagious virus. [Graves Decl.] The only way to avoid transmission of COVID-19 is for individuals to practice “social distancing” (maintaining a distance of at least six feet from the nearest person) and frequent hand washing, and for those who are ill to be in medical quarantine. [Graves Decl.] For this reason, the CDC deems social distancing a “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”²⁵ To limit the spread of the virus requires physical distancing, quarantining, and vigilant hygiene. [Graves Decl.]

The rapid transmission of COVID-19 in congregate settings is clearly evidenced by the tragic spread of the virus within cruise ships, nursing homes, and correctional facilities worldwide. More than 800 people have tested positive for

²⁴ Gov. Tom Wolf, *Amendment to the Order the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home* (Mar. 30, 2020), <https://bit.ly/2JtEwZv>.

²⁵ *CDC Guidance*, *supra* note 4.

COVID-19 on cruise ships in Japan and off the coast of California.²⁶ At a nursing home facility in Washington, two-thirds of the residents and 47 staff members tested positive for COVID-19, with 35 people dying from the virus.²⁷ Such outbreaks are tragically continuing as the virus spreads across the country, due to the close proximity of residents, the shared social spaces, the vulnerability to the infection of the residents, and the limited training and low pay of the workers tasked with infection control.²⁸

Correctional settings pose these same risks – close proximity and communal spaces, vulnerability of many residents, and poor infection control – often with the added challenge of poor access to quality medical care, poor ventilation, and poor

²⁶ Victoria Forster, *What Have Scientists Learned About COVID-19 and Coronavirus By Using Cruise Ship Data?*, Forbes (Mar. 22, 2020), <https://bit.ly/2UeSgNS>.

²⁷ Jack Healy & Serge F. Kovalski, *The Coronavirus's Rampage Through a Suburban Nursing Home*, N.Y. Times (Mar. 21, 2020), <https://nyti.ms/2QIcVaS>; see also Sam Karlin et al., *Louisiana Identifies New Cluster of Coronavirus Cases in Donaldsonville Retirement Home*, Advocate (Mar. 23, 2020), <https://bit.ly/39hxQZ9>.

²⁸ See, e.g., Jack Dolan et al., *Coronavirus Outbreaks at Nursing Homes Rise Sharply in L.A. County*, L.A. Times (Mar. 30, 2020), <https://lat.ms/341d66P>; Halley Freger et al., *As Health Officials Feared, Coronavirus Outbreak Invading Nursing Homes*, ABC News (Mar. 30, 2020), <https://abcn.ws/33WWahO>; Jack Healy et al., *Nursing Homes Becoming Islands of Isolation Amid 'Shocking' Mortality Rate* N.Y. Times (Mar. 10, 2020), <https://nyti.ms/2WYINMI>; see also Joe Pinsker, *America's Nursing Homes Are Bracing for an Outbreak*, Atlantic (Mar. 4, 2020), <https://bit.ly/2QXgNVW>.

hygiene.²⁹ [Farlow Decl.; Ambrose Decl.] Indeed, in China and Iran, major and devastating COVID-19 outbreaks occurred in prisons, and experts predict the same will happen here.³⁰ Recent experience in New York City’s Rikers Island complex bears out that prediction. As of March 30, 2020, more than 160 inmates and 130 staff members had tested positive for COVID-19, more than 800 inmates were being held in isolation, and the facility’s 88-bed contagious disease unit was filled to capacity.³¹

COVID-19 outbreaks in youth confinement settings threaten not just the health of residents and staff, but the health of the communities around them as well. As correctional staff enter and leave the facility, they will carry the virus with them.³² [Graves Decl.] Many such facilities are in less populated areas that

²⁹ See, e.g., Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 1047, 1047 (Oct. 2007), <https://bit.ly/2QZA494> (in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”); see also Claudia Lauer & Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, Associated Press (Mar. 7, 2020), <https://bit.ly/2R17fch>.

³⁰ Evelyn Cheng & Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC (Feb. 21, 2020), <https://cnb.cx/39qJqkE>; see also Jan Ransom & Alan Feuer, ‘*A Storm Is Coming*’: Fears of An Inmate Epidemic as the Virus Spreads in the Jails (Mar. 20, 2020), <https://nyti.ms/2QZLLg1>.

³¹ Jan Ransom & Alan Feuer, ‘*We’re Left for Dead*’: Fear of Virus Catastrophe at Rikers Jail (Mar. 31, 2020), <https://nyti.ms/2WYT37q>.

³² Josiah Rich et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, Wash. Post (Mar. 17, 2020) (The authors – including a professor of

lack the healthcare resources of more urban areas. An outbreak of COVID-19 in a congregate environment could quickly overwhelm local health care services and force individuals to be transported to more distant hospitals and clinics, utilizing more resources and potentially exposing health care workers in communities where the disease is not yet prevalent.³³

C. Youth in confinement face an exceptionally high risk of serious harm.

1. Youth in confinement are at a high risk of contracting and spreading the coronavirus.

Pennsylvania's juvenile detention centers, residential treatment centers, congregate care facilities, adult jails, and other carceral settings risk becoming hotbeds of contagion during this pandemic. Youth and staff in detention, placement, or correctional facilities cannot take the necessary measures to mitigate the risk of exposure, putting them at heightened risk of COVID-19 infection. Youth live, sleep, eat, and spend the full day in close contact with each other as well as with staff members. [Ambrose Decl.; Farlow Decl.]; *see also infra* Section III.D. Some juvenile facilities in Pennsylvania have dormitory-style living with 12

medicine and epidemiology – warn that unless States act swiftly to release inmates from jails and prisons the virus threatens not only prisoners and corrections workers but the general public.), <https://wapo.st/2QZ1A6L>.

³³ *See* Brie Williams & Leann Bertsch, *A Public Health Doctor and Head of Corrections Agree: We Must Immediately Release People from Jails & Prisons*, Appeal (Mar. 27, 2020), <https://bit.ly/2X0WA5p>.

or 15 young people sleeping and living in one room, often in bunk beds, and are at or near full capacity, making it impossible for youth to maintain distance, even when sleeping. [Hardy Decl.] Moreover, while the CDC guidance recommends “medical isolation of confirmed or suspected COVID-19 cases,”³⁴ few facilities have the proper space, capacity, or medical expertise for such quarantines. [Haney Decl.; Farlow Decl.]

Problems with sanitation in youth facilities and adult jails heighten the risks still further. The CDC instructs that individuals should wash their hands for 20 seconds regularly, and after sneezing, coughing, blowing their nose, eating or preparing food, before taking medication, and after touching garbage.³⁵ Yet youth in justice facilities often lack soap, or even access to a sink, and do not have regular access to hand sanitizer. [Ambrose Decl.]; *see also infra* Section III.D. The CDC also instructs that staff should clean and disinfect commonly touched surfaces and shared equipment several times a day.³⁶ In juvenile detention and correctional facilities, youth share toilets, sinks, and showers, without disinfection between each use and staff do not regularly decontaminate surfaces. [Farlow Decl.]; *see also infra* Section III.D. This lack of access to proper sanitation,

³⁴ *CDC Guidance supra* note 4 (capitalization altered).

³⁵ *Id.*

³⁶ *Id.*

combined with shared bathrooms and sinks, and regular close contact with other youth and staff creates an intolerably high risk of infectious spread.

The concern about an outbreak in Pennsylvania’s juvenile facilities is not hypothetical – indeed, it is already occurring. An employee at Philadelphia’s Juvenile Justice Services Center recently tested positive for COVID-19.³⁷ In New York City, at least three staff members working at juvenile correctional facilities have contracted the virus and have been hospitalized,³⁸ and the New York Legal Aid Society, which represents youth in delinquency proceedings, has been receiving daily reports of symptomatic suspected COVID-19 individuals in the city’s juvenile detention centers.³⁹ Outbreaks have also already begun in Pennsylvania’s adult correctional facilities, with one prisoner and three employees testing positive as of March 30, 2020.⁴⁰

³⁷ Sean Collins Walsh, *Philly Juvenile Justice Services Center Employee Tests Positive for Coronavirus Amid Growing Call to Release Children*, Phila. Inquirer (Mar. 31, 2020).

³⁸ Eileen Grench, *Three Juvenile Detention Staff Test Positive for COVID-19, But No Teens Released*, Juvenile Justice (Mar. 20, 2020), <https://bit.ly/2UWGGGC>.

³⁹ Verified Pet. for Writ of Habeas Corpus ¶ 46, *New York ex rel. Williams v. Brann*, No. ___ (N.Y. Mar. 19, 2020), <https://bit.ly/2WZFghc>.

⁴⁰ Pa. Dep’t of Corrs., *PA DOC COVID-19 Dashboard*, <https://bit.ly/2JpP4Jg> (last visited Mar. 31, 2020).

2. *Attempts to limit the spread of COVID-19 in confinement place youth at substantial risk of serious mental and emotional harm.*

Placement in a juvenile or criminal justice facility creates serious mental and physical health risks for youth under any circumstances; the added pressures of the COVID-19 pandemic will exacerbate these harms, putting young people at serious risk of lasting physical and emotional problems.

Even under normal circumstances, taking youth from their homes and placing them in confinement causes harm, leaving children with higher rates of both medical and psychiatric problems and shorter lifespans. [Haney Decl.]⁴¹ These harms will be exacerbated in the harsher conditions caused by the COVID-19 pandemic. To attempt to implement social distancing, many facilities have already begun to resort to isolation, [Farlow Decl.; Hardy Decl.]; this is a common response across the country. [Ambrose Decl.; Farlow Decl.; Haney Decl.] Isolation has been repeatedly shown to lead to devastating consequences for youth, including anxiety, depression, self-harm, psychosis, and suicide. [Farlow Decl.; Haney Decl.]⁴² Isolation can also exacerbate underlying trauma disorders. *Id.*

⁴¹ See also Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* 29 *Pediatrics* 1 (2017), <https://bit.ly/2xyL8mJ>.

⁴² See also Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 *Ann. Rev. Psychol.* 187, 199 (2014), <https://bit.ly/2R0My04>.

Even young people not placed in isolation will be deprived of education, counseling, and other programming as facilities try to limit personal contact and increase physical distance. [Ambrose Decl.; Farlow Decl.] As staff fall ill or are subject to quarantines, programming will be cut short even more and mandated staffing ratios needed for basic safety will be jeopardized. *Id.* Unlike children outside of these facilities, who are also limited in their opportunities for school and typical social interaction, youth in confinement may be left with no forms of social, educational, or physical activity *at all*, as they are separated from their families and isolated in their cells.

The harms of isolation and programming deprivation are particularly devastating to teenagers; during adolescence, the brain reaches what is referred to as the “second period of heightened malleability.”⁴³ As a result, youth are uniquely responsive to environmental changes – and uniquely susceptible to harm from adverse experiences.⁴⁴ If there is “[a] lack of stimulation or aberrant stimulation” for youth during this period, the results can lead to “lasting effects on physical and mental health in adulthood.”⁴⁵ Youth especially need positive social

⁴³ Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 Trends Cognitive Sci. 558, 559 (2015).

⁴⁴ Nancy Raitano Lee, Ph.D., Drexel Univ. Dep’t of Psychology, *Presentation for the Juvenile Law Center: Neuroplasticity and the Teen Brain: Implications for the Use of Solitary Confinement with Juveniles* (2016).

⁴⁵ Fuhrman, *supra* note 43, at 561.

interactions to help them “develop a healthy functioning adult social identity”⁴⁶ and build their social skills,⁴⁷ so that they can successfully “reintegrate into the broader community upon release” from confinement.⁴⁸ [See also Haney Decl.]

Young people in detention, placement, and correctional facilities are at even graver risk of psychological harm than usual; WHO has cautioned that children and teens, in particular, are at risk of harm from the stress of the pandemic, and has instructed parents to support and reassure their children, maintain routines, and facilitate connections with friends and family. [Haney Decl.] Youth in facilities are deprived of these supports; in facilities struggling to ensure social distancing, the problems are further intensified. [Farlow Decl.] Returning as many youth safely to their homes as possible is the only way to avoid this devastating scenario. [Ambrose Decl.; Farlow Decl.]

⁴⁶ Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment*, 30 Buff. Pub. Interst L.J. 31, 47 (2012), <https://bit.ly/2xzXxqy>.

⁴⁷ Blakemore, *supra* note 41, at 199.

⁴⁸ Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 J.L. & Pol’y 241, 256 (2012), <https://bit.ly/2WX7KrH>.

3. *Many youth in confinement have underlying physical and mental health issues that exacerbate the substantial risk of serious harm.*

Many of the youth in Pennsylvania's juvenile detention, placement, and adult correctional facilities have underlying health issues that render them especially vulnerable to serious harm in the event of an outbreak.

COVID-19 is especially damaging and even deadly to individuals with underlying medical conditions, including lung diseases (including asthma), heart disease, chronic liver or kidney disease (including patients with hepatitis and those requiring dialysis), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, and developmental delay. People with these conditions are at an increased risk of developing serious complications or dying from COVID-19, regardless of age. [Graves Decl.] Youth in correctional facilities are particularly likely to be medically vulnerable, with asthma being among the most commonly diagnosed problems.⁴⁹ [Hardy Decl. (62% of Defender clients have a documented mental or medical health diagnosis)].⁵⁰ Indeed, in Philadelphia's Juvenile Justice Service Center, 41 children have been identified as

⁴⁹ Comm. on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 Pediatrics 799-803 (2001), <https://bit.ly/2UxTW5y>.

⁵⁰ Nicole Wetsman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention* (July 30, 2018), <https://bit.ly/2Jq7Os7>.

more medically vulnerable, but only around half have been released to date.

[Hardy Decl.] Youth in detention and correctional facilities are also highly likely to have underlying mental health issues or have experienced past trauma that renders them especially vulnerable to damage from isolation and family separation. [Haney Decl.]

Finally, the harms of the pandemic in juvenile facilities will disproportionately impact Black, Latinx, and Native American youth. Black youth are nine times more likely to be incarcerated, and Latinx and Native American youth are three times more likely to be incarcerated than white youth in Pennsylvania. [Hardy Decl.]⁵¹ Studies have shown that youth are disproportionately affected by racial and ethnic health disparities; Black and Latinx suffer from most major chronic diseases including asthma, diabetes, and obesity and cardiovascular issues, at higher rates than their white peers.⁵² Underlying health issues like these, combined with the poor health care access, high poverty rates, and other factors too often experienced by youth of color, all contribute to

⁵¹ Based on a one-day count of “detained, committed, or otherwise sleeping somewhere other than their homes per orders of the court.” W. Hayward Burns Inst., *Unbalanced Youth Justice*, <https://bit.ly/2wQSm5z> (last visited Mar. 31, 2020).

⁵² James H. Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, Biomed Res. Int’l (2013), <https://bit.ly/2UP2Ydb>.

the substantial risk of serious harm posed by a potential COVID-19 outbreak in a juvenile facility. Indeed, experts point to each of these factors in predicting that Chicago, Detroit, and New Orleans may soon become “hot spots” for the virus.⁵³

D. Each of the individual petitioners is at an intolerable risk of harm from the COVID-19 pandemic due to realities at their respective facilities or their health conditions.

Petitioners are confined in diverse facilities across the state: all have experienced conditions incompatible with safe social distancing and sanitation. They come in close contact with other youth and staff in their rooms or cells, common spaces, and sometimes sleeping spaces. At the same time, they are facing a deprivation of programming, education, rehabilitation, and even contact with their families.

C.Z., a female resident of Philadelphia County, PA, has been incarcerated at the Philadelphia Juvenile Justice Services Center (“PJJSC”) for the past eight months. C.Z. is assigned to a 10-room unit with 7 other girls. All 8 girls in C.Z.’s unit share a common room and two showers. Since the COVID-19 pandemic began, C.Z. and the other girls in her unit have not been able to eat in the cafeteria, learn in the designated classrooms, exercise at all, or go outside. C.Z. has not been able to reliably socially distance herself from the other girls and the staff in her unit

⁵³ Carlie Porterfield, *Why Chicago, Detroit and New Orleans Could Become the Next Coronavirus ‘Hot Spots’*, Forbes (Mar. 27, 2020), <https://bit.ly/2R0OQfG>.

and has not received instruction from the PJJSC to use increased caution in response to the pandemic. [C.Z. Decl.]

A.O., a 17-year-old resident of Delaware County, PA, has been incarcerated in the Juvenile Unit of George W. Hill, an adult jail, for the past three months. A.O. is housed in the “Max” section of the Juvenile Unit, spending all day in a 4-foot x 7-foot cell except for one hour of recreation. A.O. goes to recreation with 4 other boys and 3 staff members in either an 8-foot wide common space or a 20-foot x 20-foot outdoor space. A.O. is responsible for cleaning the Juvenile Unit and does so without a mask and sometimes without gloves. Since the COVID-19 pandemic began, A.O. has not had schooling in nearly a month and has not had family visits. A staff member at George W. Hill to whom three boys in A.O.’s unit were exposed tested positive for COVID-19. A.O. attended recreation in the same space as those three boys during their quarantine, just at a different time. Staff at George W. Hill have not instructed youth on how to stay safe during the pandemic. [A.O. Decl.]

Z.S.-W., a 20-year-old resident of Philadelphia County, PA, has been incarcerated at Youth Forestry Camp #3 for over one month. At Youth Forestry Camp #3, Z.S.-W. is assigned to the “B” Dorm. In the B Dorm, Z.S.-W. sleeps in an open room with 8 other people, all of whom sleep in beds 3 or 4-feet apart. Z.S.-W. shares one bathroom with all of the other males from his wing of the B

Dorm and one common room with everyone else in B Dorm, approximately 16 other people. Z.S.-W. has not been instructed to socially distance, and he continues to eat in the cafeteria with everyone from the B Dorm, walk to the gym with others at an arm's-length distance, and walk to school at an arm's-length distance. Since class times have been reduced to two hours per day, Z.S.-W. has not been able to continue his GED studies, the successful completion of which is a condition for his release. Z.S.-W. has not been able to visit with his family and has limited access to his family via video calls. [Z.S.-W. Decl.]

Five non-petitioner youths, T.C., K.L., L.J., K.Q., and T.S., provided declarations affirming their inability to adhere to CDC Guidelines for COVID-19 while in juvenile detention or placement. These facilities include: St. Gabriel's Hall, Youth Forestry Camp #3, North Central Secure Treatment Center ("Danville"), and the Philadelphia Juvenile Justice Services Center ("JJSC"). All of the non-petitioners relayed that the medical facilities at their juvenile detention centers or placements are tiny, function more or less as nurses' offices, and are inadequately prepared to handle a COVID-19 outbreak. Two of the non-petitioners, T.C. and K.L., have underlying conditions and are considered medically fragile, and one of the non-petitioners, L.J., has asthma. While most of the non-petitioners described interruptions and/or cessations in schooling, exercise, and vocational training, others such as T.S. expressed that the juvenile placement

has not made any changes to its operations, and is not abiding by social distancing or other CDC-issued guidance. Both of these institutional responses increase risk for the safety and wellbeing of the youth, as is detailed throughout this petition.

All of the non-petitioners are exposed to their unit mates and staff in their common area and in shared bathrooms, and all stated their difficulty in maintaining six feet of space between individuals.

E. Immediately and dramatically reducing the number of youths in confinement is the only way to prevent substantial harm to youth, staff, and the community.

The only viable way to protect youth – and the community – from COVID-19 is to release all youth who can be returned safely to their communities.

[Ambrose Decl.; Farlow Decl.] Attempts at protective measures within facilities have not proven successful; just two weeks after New York’s Department of Correction implemented an “action plan” for sanitizing and maintaining social separation in jail facilities, infection rates at Rikers Island and other facilities skyrocketed.⁵⁴ The shared living space, poor ventilation, limited capacity of staff to engage in regular sanitizing and decontamination, and inadequate access to hygiene supplies for youth all contribute to these devastating outcomes. [Ambrose Decl.; Farlow Decl.] Put simply, carceral and other congregate care settings are

⁵⁴ Ransom & Feuer, *supra* note 31.

fundamentally incompatible with the hygiene and social distancing measures necessary to prevent spread of COVID-19. [Graves Decl.]

For these reasons, courts across the country have begun to limit populations in juvenile facilities. Hearings are underway in Chicago to release confined young people,⁵⁵ California's Governor issued an executive order halting the intake of youth into California's juvenile correctional settings and prisons,⁵⁶ the Clayton County, Georgia juvenile court issued an order limiting detention,⁵⁷ and Milwaukee, Wisconsin has held emergency hearings to release youth.⁵⁸

Similarly, in the adult system, courts have begun to recognize the importance of immediately reducing jail and prison populations. The Supreme

⁵⁵ Annie Sweeney & Megan Crepeau, *Hearings Start on Releasing Some Youths from Cook County Juvenile Detention Over COVID-19 Fears*, Chi. Tribune (Mar. 24, 2020), <https://bit.ly/2yiPC16>.

⁵⁶ Gov. Gavin Newsom, *Governor Newsom Issues Executive Order on State Prisons and Juvenile Facilities in Response to the COVID-19 Outbreak* (Mar. 24, 2020), <https://bit.ly/2UOVK8V>.

⁵⁷ Judge Steven Teske (@scteskelaw), Twitter (Mar. 28, 2020, 9:32 AM), <https://bit.ly/2w2nQ8m>.

⁵⁸ Liz Robbins, *Coronavirus Prompts Urgent Calls for Minors in Detention to be Released*, Appeal (Mar. 30, 2020), <https://bit.ly/2xF9Txs>.

Courts of New Jersey,⁵⁹ Montana,⁶⁰ South Carolina,⁶¹ and Washington⁶² have all issued orders to reduce jail populations. In an effort to prevent new admissions to county jails, the chief judge of Maine’s trial courts, with the approval of the chief justice of the state’s supreme court, vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.⁶³ In Maryland⁶⁴ and Colorado,⁶⁵

⁵⁹ Consent Order at 4, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. Mar. 22, 2020), <https://bit.ly/3aJOim8>. The order provided a mechanism for prosecutors, within 24 to 48 hours, objections to the release of specific prisoners who “would pose a significant risk to the safety of the inmate or the public,” with such objections to be considered by judges or special masters appointed by the Supreme Court.

⁶⁰ Letter from Mike McGrath, Chief Justice, Mont. Supreme Ct., to Montana Cts. of Limited Jurisdiction Judges (Mar. 20, 2020), <https://bit.ly/3aAv4iX>.

⁶¹ Memorandum from Donald W. Beatty, Chief Justice of S.C. Supreme Ct., to Magistrates, Municipal Judges, & Summary Ct. Staff (Mar. 16, 2020), <https://bit.ly/3dJ69LY>.

⁶² Am. Order, *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), <https://bit.ly/39DHyoU>.

⁶³ *See* Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Me. Sup. Ct. Mar. 17, 2020), <https://bit.ly/2JqgmIH>.

⁶⁴ Letter from Marilyn J. Mosby, State’s Att’y for Baltimore City, to Gov. Larry Hogan at 2 (Mar. 23, 2020) (calling for wide-ranging releases “to reduce the prison population to enable social distancing and self-isolation, and to facilitate adequate health care resources inside these institutions”), <https://bit.ly/39wEURH>.

⁶⁵ Gov. Jared Polis, *Guidance to Counties Municipalities, Law Enforcement Agencies, and Detention Centers* at 5 (Mar. 24, 2020) (encouraging “the courts and law enforcement, together with prosecutors and defense attorneys, to work to evaluate the detention centers’ populations and determine how to reduce the number of individuals in custody”), <https://bit.ly/2X9tssP>.

executive officers have urged courts to take similar measures. In other jurisdictions, including Cuyahoga County, Ohio,⁶⁶ Los Angeles, California,⁶⁷ Alameda and Santa Clara, California,⁶⁸ Jefferson County, Colorado,⁶⁹ and Larimer, Colorado,⁷⁰ local authorities have acted to sharply reduce prison populations.

Yet, youth across Pennsylvania remain in juvenile detention and placement, and adult jails. Pennsylvania frequently places youth for non-criminal acts and has particularly high rates of placement for technical probation violations. Four out of five Pennsylvania youth have been placed for offenses not on the violent crime index, and 26% of youth in Pennsylvania placements were committed for technical violations (compared to 15% nationally). [Hardy Decl.]⁷¹ Pennsylvania youth will

⁶⁶ Scott Noll & Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic*, ABC News (Mar. 20, 2020), <https://bit.ly/2xDntS6>.

⁶⁷ Shelly Isheiwat, *L.A. County Releases 1,700 Inmates to Lessen Jail Population Due to COVID-19 Crisis*, Fox 11 (Mar. 25, 2020), <https://bit.ly/39zz1Df>.

⁶⁸ Robert Salonga, *Bay Area Courts, Authorities Ramp Up Release of Inmates to Stem COVID-19 Risks in Jails*, Mercury News (Mar. 20, 2020), <https://bayareane.ws/2yoQyRM>.

⁶⁹ Elise Schmelzer, *Uneven Response to Coronavirus in Colorado Courts Leads to Confusion, Differing Outcomes for Defendants*, Denver Post (Mar. 21, 2020), <https://dpo.st/2Uv15DA>.

⁷⁰ Carina Julig, *Larimer County Inmate in Community Corrections Program Tests Positive for Coronavirus*, Denver Post (Mar. 22, 2020), <https://dpo.st/2WYzKuU>.

⁷¹ Pew Charitable Trs., *Juveniles in Custody for Noncriminal Acts* (Oct. 15, 2018) (Pew's analysis was based on data from the Census of Juveniles Residential Placement and "include[d] residential facilities, such as group homes, boot camps, long-term secure facilities, and other settings, on Oct. 28, 2015, before or after

also suffer more than youth in other states because the Commonwealth has a significantly higher rate of juvenile court placement. [Hardy Decl.]⁷² It is unconscionable to continue to confine young people who pose little to no risk to the public in dangerous carceral and other settings during this pandemic.

Officials in Pennsylvania have just begun to address the pending crisis, and efforts so far are substantially inadequate to protect youth and staff from the imminent risk of serious harm. There is no statewide guidance requiring that the population of youth in confinement be reduced, or even reviewed. Indeed, it is unclear from the current judicial emergency order⁷³ whether courts can continue to review existing detention or placement orders, and county practice varies widely. For instance, Allegheny County is regularly conducting detention hearings and reviewing dispositional placements,⁷⁴ whereas in other counties courts may have ceased reviewing existing detention and placement orders entirely, leaving youth to sit in confinement potentially for the duration of this crisis. Even in counties

adjudication, except those in the District of Columbia, who were omitted because of data limitations.”), <https://bit.ly/3dDOiGt>.

⁷² Pennsylvania youth are 29% more likely to be incarcerated than youth around the country. Office of Justice Programs, U.S. Dept. of Justice, *Statistical Briefing Book: Juveniles in Corrections* (2017), <https://bit.ly/3dLLLd5>.

⁷³ Order, *In re Gen. Statewide Judicial Emergency*, Nos. 531 & 532, Judicial Admin. Docket (Pa. Mar. 18, 2020), <https://bit.ly/39uBVcw>.

⁷⁴ *Declaration of Judicial Emergency: COVID-19 Updated Emergency Operations Order* (Pa. 5th Jud. Dist. Mar. 26, 2020), <https://bit.ly/39t3nal>.

where some reviews are occurring, courts lack substantive guidance on the operative standard for detention and placement during this crisis, leading to many youth unnecessarily remaining in detention and placement. For example, judges in Philadelphia are responding to petitions for release by the Defender Association, but the Juvenile Justice Services Center is housing significantly more youth than it has in years, including dozens of medically fragile youth and youth with only technical probation violations. [Hardy Decl.] Across the Commonwealth, youth remain in detention, correctional, and other congregate care facilities in significant numbers. Without immediate statewide actions, juvenile facilities, as well as adult jails housing youth throughout Pennsylvania are likely to become “petri dishes” spreading contagion around the Commonwealth.

V. ARGUMENT

A. This Court Has the Legal Authority to use its King’s Bench Jurisdiction to Order the Requested Relief.

The Court has King’s Bench jurisdiction to decide this application in order to “cause right and justice to be done” in a matter involving “an issue of immediate public importance.” 42 Pa.C.S. § 726; Pa. Const. art. V, § 10(a). This case raises “an issue of immediate public importance affecting operation of government throughout the Commonwealth.” *Silver v. Downs*, 425 A.2d 359, 362 (Pa. 1981).

As a result of its enduring King’s Bench authority, this Court possesses “every judicial power that the people of the Commonwealth can bestow under the

Constitution of the United States.” *In re Bruno*, 101 A.3d 635, 666 (Pa. 2014) (quoting *Stander v. Kelley*, 250 A.2d 474, 487 (Pa. 1969) (Roberts, J., concurring)). This Court’s precedent has long “described the King’s Bench power in the broadest of terms” and, as such, has recognized that the Court “would be remiss to interpret the Court’s supervisory authority at King’s Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power.” *Id.* at 679.

The Court’s exercise of its King’s Bench authority is appropriate here because the COVID-19 public health crisis is an unprecedented matter of public importance, which “requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015). This Court has already recognized, in its two emergency orders of March 16 and 18, 2020, that the emergency presented by the virus warrants extraordinary steps to protect the public. This Petition calls upon the Court to meet the unprecedented health challenge by directing each judicial district to take reasonable and necessary measures to prevent widespread contagion. Petitioners call upon the Court to take this necessary action to protect not just the youth held within juvenile detention or correctional facilities, but staff, their families, their respective communities and ultimately the public health of all Commonwealth residents.

Time is of the essence. Timely intervention by this Court is necessary to avoid “the deleterious effects arising from delays incident to the ordinary process of law.” *Id.* The risk to the general public of delaying further review cannot be understated. To date, local jurisdictions throughout the Commonwealth have relied on a piecemeal strategy without any guidance from this Court. The lack of an immediate, unified, and concerted effort to address the obvious grave public health risk will result in any future measures constituting too little, too late. There will be outbreaks in juvenile facilities, an inevitable community spread, increased suffering and death.

Application of the King’s Bench power is also particularly suited to this case, which asks that this Court exercise its “general supervisory and administrative authority over all the courts.” Pa. Const. art. V, §10(a). This Court further has power “to prescribe general rules governing practice, procedure and the conduct of all courts.” *Id.* § 10(c). “By its ‘supreme’ nature, the inherent adjudicatory, supervisory, and administrative authority of this Court at King’s Bench ‘is very high and transcendent.’” *In re Bruno*, 101 A.3d at 669 (quoting *Commonwealth v. Chimenti*, 507 A.2d 79, 81 (Pa. 1986)). This “supervisory power over the Unified Judicial System is beyond question.” *Id.* at 678.

Under its King’s Bench authority, this Court has the power to exercise general jurisdiction over the Unified Judicial System even “where no matter is

pending in a lower court.” *In re Avellino*, 690 A.2d 1138, 1140 (Pa. 1997). When exercising King’s Bench authority, this Court’s “principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.” *Williams*, 129 A.3d at 1206 (citation omitted).

With the courts closed and judicial processes ground to a halt across the Commonwealth, and thousands of lives at risk, the dignity and integrity of the judicial system is likewise at risk. If this tribunal declares itself “powerless” to save those currently condemned to live and work in juvenile detention and correctional facilities across the Commonwealth, “it would thereby declare itself unwilling to administer the trust imposed on it by the organic law.”

Commonwealth ex rel. Smith v. Ashe, 71 A.2d 107, 119 (Pa. 1950). The issues raised by Petitioners plainly fall within the Court’s King’s Bench authority.

B. This Court Should Exercise Its Plenary and Supervisory Jurisdiction to Expediently Grant Relief to Release Youth from Detention and Correctional Placements.

This Court’s intervention is necessary to protect the health of youth confined in detention and correctional facilities, employees of those facilities, and all Pennsylvanians.

Pursuant to Section 726, “[t]his Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance.” *Bd. of Revision of*

Taxes v. City of Phila., 4 A.3d 610, 620 (Pa. 2010). If ever there were a case that is of “immediate public importance,” it is this one, which necessarily involves a myriad of rights under the Federal and Pennsylvania Constitution.

1. Subjecting youth to a likely outbreak of COVID-19 raises significant constitutional concerns.

Keeping anyone in a correctional setting during this pandemic raises serious constitutional concerns; for youth, this Court’s obligations are heightened. Over the course of the last half-century, the United States Supreme Court has repeatedly reaffirmed that “[c]hildren have a very special place in life which law should reflect.” *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (“[O]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.”) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). The basic principle that the “distinctive attributes of youth” require heightened Constitutional protections is widely recognized. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 471 (2012) (“[C]hildren are constitutionally different from adults for purposes of sentencing.”); *J.D.B.*, 564 U.S. at 272 (explaining that children “‘are more vulnerable or susceptible to . . . outside pressures’ than adults,” and adopting a “reasonable child” standard for determining the scope of *Miranda* protections) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)) (ellipses in original); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364,

379 (2009) (relying upon the unique vulnerability of adolescents, and their heightened expectation of privacy, to hold a suspicionless strip search unconstitutional in the school context); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (recognizing that exposure to obscenity may be harmful to minors even when it would not harm adults).

For children in state custody, this principle takes on heightened importance. These children, who have been involuntarily removed from the custody of their parents and often have complex histories and needs, are entirely dependent upon the Commonwealth for their care, safety, and well-being. *See, e.g., Youngberg v. Romeo*, 457 U.S. 307, 317 (1982) (“When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist.”). For those held under the Juvenile Act, the State has explicitly assumed custody to provide care and treatment. *See* 42 Pa.C.S. § 6301(b) (one purpose of the Juvenile Act is “to provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter”).

2. *Failing to Protect Youth from the Pandemic Violates their Right to Due Process.*

Youth held pre-trial and those who have been adjudicated have a right to care and treatment under the Fourteenth Amendment. The State has a heightened duty to any pre-trial detainee, child or adult. In *Bell v. Wolfish*, the Court held that

because they have not been “convicted of any crimes,” pre-trial detainees cannot be subjected to conditions that “amount to punishment.” 441 U.S. 520, 535, 541 (1979); *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015) (clarifying that the Fourteenth Amendment excessive force standard applicable to pre-trial detainees is indeed more protective than the Eighth Amendment standard); *Youngberg*, 457 U.S. at 321–22 (clarifying that involuntarily committed individuals “are entitled to more considerate treatment and conditions of confinement” than individuals post-conviction whose conditions of confinement are “designed to punish”).

Based upon the U.S. Supreme Court’s reasoning in *Youngberg* and *Bell*, courts around the country have concluded that the Fourteenth Amendment also provides heightened protections to youth held post-adjudication. Like pre-trial detainees and involuntarily committed patients, youth in state custody due to a delinquency adjudication are not confined for punitive purposes. *See, e.g., Vann v. Scott*, 467 F.2d 1235, 1239 (7th Cir. 1972) (applying the Fourteenth Amendment because the purpose of the “delinquent” classification is “to afford the State an adequate opportunity to rehabilitate and safeguard delinquent minors rather than to punish them”); *see also A.J. ex rel. L.B. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431–32 (9th Cir. 1987); *H.C. ex rel. Hewett*

v. Jarrard, 786 F.2d 1080, 1084–85 (11th Cir. 1986); *Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 795–96 (D. S.C. 1995).

Under the Fourteenth Amendment, youth must be protected from punishment and known risks of harm. *See, e.g., Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’”) (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (the government violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”) (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Exposing youth to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

The Fourteenth Amendment also guarantees youth the right to treatment and rehabilitation. *See Youngberg*, 457 U.S. at 321–22; *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (youth have a right to “rehabilitative treatment”; because the State has assumed the role of the parent such treatment must be “what proper parental care would provide”); *see also C.P.X. v. Garcia*, No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that juvenile facility’s failure to provide appropriate mental health care violates youth’s substantive due process rights

under the Fourteenth Amendment). Depriving youth of programming, education, and social interactions and keeping them isolated in conditions known to cause long-term psychological harm falls far short of this standard.

3. *Failing to Protect Youth from the Pandemic Violates the Eighth Amendment.*

Even under the Eighth Amendment, which applies to youth held in the adult system, the constitutional standard must take into account the unique needs and developmental characteristics of youth. *See Miller*, 567 U.S. at 471 (striking down mandatory imposition of life without parole sentences for youth and noting that children are “constitutionally different” from adults under the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (striking down life without parole sentences for youth convicted of nonhomicide offenses because the Eighth Amendment requires consideration of children’s unique characteristics); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (striking down the juvenile death penalty as unconstitutional because key defining characteristics distinguish youth from adults).

For anyone – youth or adult – conditions that pose an unreasonable risk of future harm violate the constitutional protections of the Eighth Amendment. *See Helling*, 509 U.S. at 33 (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition.”). The Eighth Amendment requires that “inmates be furnished with . . . reasonable safety,” and the Supreme Court has

explicitly recognized that the risk of contracting “serious contagious diseases” may constitute such an “unsafe, life-threatening condition” that it threatens “reasonable safety.” *Id.* at 33–34; *see also Hutto*, 437 U.S. at 682–85 (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke,⁷⁵ contaminated water,⁷⁶ use of chemical toilets,⁷⁷ and paint toxins.⁷⁸ A potential COVID-19 outbreak poses at least such a substantial risk of serious harm to every incarcerated person in the Commonwealth.

King’s Bench jurisdiction is particularly warranted here because of the exigent public health crisis. Experts are urging this Court to act, and to act now to mitigate a swelling public health catastrophe. For the reasons stated above, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter and instruct the President Judge of each Judicial District to take measures that both expeditiously reduce the population in all youth

⁷⁵ *Helling*, 509 U.S. at 35.

⁷⁶ *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001).

⁷⁷ *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995).

⁷⁸ *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325 (W.D.N.Y. 1999).

detention and correctional facilities, including youth under jurisdiction of the juvenile and criminal courts.

Petitioners therefore urge this Court to:

1. Reduce the number of new youth entering juvenile detention or adult jail by:
 - a) Requiring juvenile courts and criminal courts considering pre-trial detention of “Direct File Juveniles” (youth charged as adults pursuant to 42 Pa.C.S. § 6302) to consider on the record the serious health risks posed by detention to the youth, other detained individuals, staff, and the community before ordering a youth detained, and to order a youth detained only if their release would otherwise pose an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.
 - b) Prohibiting detention of any youth for:
 - i) Failure to appear;
 - ii) Failure to pay any outstanding fines or fees;
 - iii) Inability to pay cash bail (for Direct File Juveniles);
 - iv) Technical probation violations;
 - v) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
 - vi) Any other reason other than that the youth poses an immediate, specific, articulable and substantiated risk of serious physical harm to another.
 - c) Suspending all conditions of probation for youth in the juvenile justice system and for youth in the adult system that:
 - i) Require the youth to violate WHO, CDC, and Pennsylvania physical distancing or isolation requirements, including, but not limited to: in-person drug testing; employment or education requirements; and any in-person check-ins or meetings with probation officers or others; or
 - ii) Require monetary payments of any sort.

2. Reduce the number of youth currently detained in juvenile detention centers by:

- a) Requiring all juvenile courts to immediately conduct a review of all youth currently held in county detention centers, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense cannot be a surrogate for such a risk.
- b) Directing these courts to vacate all existing detention orders and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
 - i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
 - ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.
 - iii) All youth detained based solely upon a finding of:
 - (1) Failure to appear;
 - (2) Failure to pay any outstanding fines or fees;
 - (3) Technical probation violations;
 - (4) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
 - (5) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.

3. Reduce the number of youth currently placed in congregate care settings by:

- a) Requiring juvenile courts to immediately conduct a review of all youth currently held in congregate care delinquent placements, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no

condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense alone cannot be a surrogate for such a risk.

- b) Directing juvenile courts to order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
 - i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
 - ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.

- c) Ordering the presumptive release, subject to c)iii below, to family or guardian, to a non-congregate care facility, or to medical care, of:
 - i) Youth who are within 3 months of completing their program or disposition;
 - ii) Youth whose release from a congregate care facility is conditioned upon completion of an educational, treatment, or other program that is suspended or delayed due to the current COVID-19 crisis;
 - iii) Ordering that any objection to the presumptive release of a particular youth must be lodged within 24 hours of this Court's order. In the event of a district-attorney-initiated objection, the attorney for the youth must have the opportunity to respond to the objection prior to a judicial ruling.

4. Reduce the number of Direct File Juveniles currently detained in adult jails by:

- a) Requiring criminal courts to immediately conduct a review of all youth currently held in adult jails, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.

- b) Directing these courts to vacate all existing detention orders (including those in lieu of bail) and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
 - i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
 - ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.
 - iii) All youth detained based solely upon a finding of:
 - (1) Failure to appear;
 - (2) Failure to pay any outstanding fines or fees;
 - (3) Inability to pay cash bail;
 - (4) Technical probation violations;
 - (5) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
 - (6) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.
5. Take the following additional steps to effectuate and ensure the safety of all youth:
- a) Direct juvenile and criminal courts to ensure that all released youth have a plan in place to meet their basic food, housing, and health needs;
 - b) Require facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;
 - c) Require facilities housing youth to provide free and regular access to phones and video visitation with family and to online or other educational, physical or mental health services and opportunities; and
 - d) Appoint a Special Master to administer and monitor compliance with this order and direct the President Judge of each Commonwealth judicial district, or such official(s) designated by each President Judge, to provide compliance reports to the Special Master and petitioners' counsel in this case, in a manner, and at a time interval, directed by this Court.

VI. CONCLUSION

For the foregoing reasons, the Court should exercise its King's Bench jurisdiction and grant the relief Petitioners request.

Dated: April 1, 2020

Respectfully submitted,

/s/ Courtney Saleski

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