

Roger Foster and Kristopher Mehle, on behalf of themselves and all others similarly situated; and Adam Dennis Sanborn, on behalf of himself and all others similarly situated,

Petitioners,

Case No.:

**PETITION FOR WRITS OF
HABEAS CORPUS, MANDAMUS**

v.

Minnesota Department of Corrections; Paul Schnell, Commissioner; Minnesota Correctional Facility-Moose Lake; and William Bolin, Warden,

Respondents.

Roger Foster and Kristopher Mehle, Petitioners above-named, on behalf of themselves and all others similarly situated, and Adam Dennis Sanborn, Petitioner above-named, on behalf of himself and all others similarly situated, hereby bring this Petition against Respondents above-named for Writs of Habeas Corpus and Mandamus, and in support of their Petition, by and through their undersigned attorneys, complain and allege as follows:

NATURE OF THIS ACTION

1. This petition presents an extraordinary issue of public safety: the urgent need to protect the health and lives of all the people, both staff and those incarcerated at the Minnesota Correctional Facility-Moose Lake (“Moose Lake”), and ultimately of residents of the City of Moose Lake and Carlton County by limiting the spread of COVID-19.

2. The novel coronavirus and resulting coronavirus disease (“COVID-19”) have

engendered a growing and alarming global health crisis unlike anything the world has seen for over a century. This public health crisis threatens the health and life of hundreds of thousands, if not millions, of persons.

3. In nearly every respect, the State of Minnesota has taken extraordinary steps to slow the COVID-19 pandemic, by heeding the expert advice of public health officials to order a statewide “stay home order,” implementing school, court, and business closures, and limiting public gatherings. In many regards, Minnesota has led the nation in implementing these critical measures.

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

5. Prisons are especially vulnerable to the pandemic. As one federal court explained on April 3, 2020, “once the Coronavirus is introduced into a detention facility, the nature of these facilities makes the mitigation measures introduced elsewhere in the country difficult or impossible to implement . . . the crowded nature of the facilities can make social distancing recommended by the CDC impossible.”¹

6. Leading public health officials have warned that once COVID-19 gets into a detention facility it will spread like wildfire, and that unless courts act *now*, the “epicenter of the

¹ *Coreas v. Bounds*, No. 8:20-cv-0780-TDC, 2020 WL 1663133, at *2 (D. Md. Apr. 3, 2020).

pandemic will be jails and prisons.”²

7. The most important method to reduce transmission is to reduce population density to facilitate compliance with CDC guidance.

8. This is not just a prisoners’ rights or correctional staff issue. Prisons and jails are not hermetically sealed. Once the virus enters a detention center, the regular movement of staff in and out of the facility means that the virus will spread back to the community. Whether COVID-19 cases occur in detention centers or in the community, they exacerbate the strain on the healthcare system throughout the communities in which they are located, here the City of Moose Lake and Carlton County, where COVID-19 will inevitably spread, with potentially devastating effects.

9. Among Minnesota correctional facilities, Moose Lake is the epicenter of the COVID-19 pandemic. As of the date of this Petition, COVID-19 has already entered and spread in Moose Lake and will continue to spread and threaten the lives of Petitioners, other Moose Lake inmates and staff, and residents of the City of Moose Lake and Carlton County as staff travel in and out of Moose Lake. As of April 15, 2020, the DOC reported that 14 persons at Moose Lake had been tested for COVID-19, and that 12 of them tested positive, one tested negative, and one was awaiting results. The DOC further presumed another 31 persons at Moose Lake were COVID-19 positive based on symptoms and close contact to a person confirmed positive through testing. With a single exception, no other DOC correctional facility has as yet reported a positive test result, although other facilities have conducted only a limited number of

² Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

tests.³ The lone exception, with three confirmed cases and five presumed cases, is Willow River Correctional Facility. Willow River Correctional Facility is, however, also located in the City of Moose Lake. The Duluth News Tribune has reported 42 cases of COVID-19 at Moose Lake, including 10 staffers and 32 inmates, only seven of which have recovered to date.⁴

10. Respondents are under a legal duty to make Petitioners' confinement at Moose Lake as safe as reasonably possible.

11. They have violated that duty by failing to take reasonable measures to protect Petitioners and other similarly situated inmates from COVID-19 through widespread testing, treatment, sanitary practices, and social distancing.

12. By reason of Respondents' violations and failures to perform their legal duty, Petitioners and all those similarly situated at Moose Lake are entitled to a writ of habeas corpus ordering their immediate release to a safe location during the pendency of the COVID-19 pandemic. They are also entitled to a peremptory writ of mandamus requiring Respondents to perform their legal duty to Petitioners and all those similarly situated at Moose Lake, or alternatively, to an alternative writ of mandamus requiring Respondents to show cause why this Court should not order them to perform their legal duty to Petitioners and all those similarly situated at Moose Lake.

THE PARTIES

13. Petitioner Roger Foster is incarcerated at Moose Lake and has less than 180 days

³ Available at <https://mn.gov/doc/about/covid-19-updates/>.

⁴ Available at <https://www.duluthnewstribune.com/newsmd/coronavirus/5034679-Concern-in-Moose-Lake-where-prison-has-COVID-19-outbreak>.

to serve on his sentence for assault. He is now scheduled to be released on October 8, 2020. Declaration of Roger Foster (“Foster Decl.”), ¶¶ 1-2. He has been experiencing COVID-19-like symptoms since the beginning of April. His symptoms currently include headache, respiratory congestion, sore throat, and loss of his sense of smell. *Id.*, ¶ 4. He has requested to be tested, but Moose Lake staff have refused his requests. *Id.*, ¶¶ 4-5. Moose Lake staff have failed and refused to permit Mr. Foster to practice social distancing. *Id.*, ¶¶ 9, 17. They have also compelled him to practice personal hygiene in unhygienic facilities. *Id.*, ¶ 10. If Mr. Foster is released at this time, he has a place to stay during the COVID-19 pandemic in which he can practice social distancing, the home of his ex-wife. He also expects to be able to get a job as a mechanic or in construction. *Id.*, ¶ 18.

14. Petitioner Kristopher Mehle is incarcerated at Moose Lake for a threat of violence felony offense. He has been a model prisoner, however, with no discipline infractions, has completed all his classes and trainings ahead of schedule, and is scheduled to go on work release on May 14, 2020. Declaration of Kristopher Mehle (“Mehle Decl.”), ¶¶ 1-2. Mr. Mehle is concerned because of the presence and rapid spread of COVID-19 at Moose Lake. *Id.*, ¶¶ 3, 7. He has been unable to practice social distancing and is required to practice personal hygiene in unhygienic facilities. *Id.*, ¶¶ 5, 9-10, 13. As a result, he fears for his health, safety, and life. *Id.*, ¶¶ 3, 7. He is aware of other inmates who were supposed to be released to work release and were not because of the virus, and he fears that he will not be released on his scheduled work release date. *Id.* at ¶7. If Mr. Mehle is released at this time, he has a place to stay during the COVID-19 pandemic in which he can practice social distancing. He has the means to buy a home upon his release and believes he can find work as a mechanic. *Id.*, ¶ 14.

15. Petitioner Adam Dennis Sanborn is incarcerated at Moose Lake serving a

sentence for felony DUI with a scheduled release date of August 17, 2022. Declaration of Adam Dennis Sanborn (“Sanborn Decl.”), ¶¶ 1-2. Mr. Sanborn is particularly vulnerable and susceptible to serious physical impairment and death from COVID-19 because he is a smoker, has asthma and breathing problems, and requires a prescription inhaler. *Id.*, ¶ 3. Mr. Sanborn has been in a six-person cell in which three of his cellmates have shown COVID-19 symptoms, but none have been tested. *Id.*, ¶ 4. He is now in quarantine with two of them. *Id.* He is at present unable to engage in social distancing. *Id.*, ¶ 9. Staff has advised him that because there is at least one person who has COVID-19 in each unit at Moose Lake, there will be no more testing for the virus. *Id.*, ¶ 10. He is required to practice personal hygiene in non-hygienic facilities. *Id.*, ¶ 12. If Mr. Sanborn is released at this time, he has a place to stay with his partner, Meyer Belkin, in which he can practice social distancing during the COVID-19 pandemic. *Id.*, ¶ 13.

16. Respondent Paul Schnell is the Commissioner of the Department of Corrections (DOC) and is sued in his official capacity. The DOC is an agency of the State of Minnesota and is responsible for the “care, custody, and rehabilitation” of anyone committed to the Commissioner of the DOC by the courts. It operates 10 correctional facilities, one of which is Moose Lake, housing approximately 9400 people.

17. Respondent William Bolin is the Warden of the Moose Lake Correctional Facility and is sued in his official capacity. Moose Lake is a medium security prison of the DOC located off Highway 73 in the City of Moose Lake in Carlton County, Minnesota. It opened in 1988 and has a capacity of 1,061 male inmates. At present it has approximately 1,045 adult inmates on site.

18. Respondents individually and collectively have custody of Petitioners.

19. Respondents individually and collectively have the legal duty to make Petitioners' custody at Moose Lake as safe as possible.

THE COVID-19 PANDEMIC AND CUSTODIAL SETTINGS

20. COVID-19 is a disease, caused by the novel coronavirus officially known as SARS-CoV-2, and presents an unprecedented challenge and risk to public health. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a global “pandemic.” At that time, there were 118,000 confirmed cases of COVID-19 in 114 countries, resulting in 4,291 deaths. As of the date of this filing—four weeks since WHO declared COVID-19 a global pandemic—the number of identified cases worldwide has rapidly increased to more than a staggering 2,008,850, with a total of more than 129,000 deaths. The United States now leads the world with more than 610,774 identified cases (more than three times the next highest reported total) and more than 26,000 deaths.

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

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

23. On March 25, 2020, due to “[r]ecent developments, including the presence of

community spread in Minnesota, the rapid increase in COVID-19 cases both globally and in Minnesota, and the first COVID-19 related death in our state,” Governor Walz issued a stay-at-home order requiring “all persons currently living within the State of Minnesota . . . to stay at home or in their place of residence[.]” Minn. Emergency Exec. Order No. 20-20 (March 25, 2020), <https://www.leg.state.mn.us/archive/execorders/20-20.pdf>. The Governor has now extended the stay at home order from April 10 to May 4, 2020. Minn. Emergency Exec. Order No. 20-33 (April 8, 2020), <https://www.leg.state.mn.us/archive/execorders/20-33.pdf>.

24. As of April 13, 2020, Minnesota reported 1,650 confirmed COVID-19 cases and 70 deaths. Those numbers have been increasing daily and are expected to continue to do so.

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

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

The first COVID-19 case in Minnesota was identified on March 6, 2020. In less than three weeks, the disease has spread to nearly every county in Minnesota. ...

There is no vaccination available to prevent COVID-19. The best-known means of limiting the spread of the disease is to socially distance people. Minnesota, like other jurisdictions in the U.S., is working aggressively to impose the social distancing measures necessary to slow the spread of COVID-19. ***Despite our aggressive steps to protect the public health, I remain concerned that populations who are unable to socially distance present a significant threat to the public health. Conditions in jails and detention facilities are of particular concern.*** [*Id.*, ¶ 3; emphasis added.]

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

The appropriate correctional response to this pandemic is critical to the health and safety of people held in our State and local correctional facilities, correctional staff, and the broader community. A high percentage of individuals in correctional facilities are more vulnerable to the COVID-19 virus. At the same time, close, enclosed quarters; difficulty maintaining sanitary conditions; and movement in and out of facilities creates increased risk of virus transmission both within and outside of jails and prisons. ... Additionally, correctional healthcare can only treat relatively minor problems for a limited number of people. This means that people who become seriously ill will need to be transferred to the community outside of facilities for care. [*Id.*, ¶ 4.]

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

Statistics show that COVID-19 is a highly contagious respiratory virus that presents a significant mortality and morbidity threat especially to vulnerable populations as well as a resource strain on our healthcare system. Given the large population density in detention centers, the ease of COVID-19 transmission, and the basic reproductive rate of this virus ($R_0=2$; it is highly likely an infected individual will pass the infection along to others), it is believed that the majority

of detainees and staff within a facility are at risk of infection once the virus is introduced. Of these, one in five will require hospital admission, and about 10% will develop severe disease requiring hospitalization in an intensive care unit. The statistics have led some physicians to call detention facilities a “tinderbox.” [*Id.*, ¶ 5.]

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

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

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

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

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

The COVID-19 pandemic is placing a major strain on health care providers in Minnesota. As part of our work to protect the public health, we are working to identify groups of people who are at high risk of serious disease from COVID-19. ***Detained individuals with underlying medical conditions, are at a high risk of developing a severe disease that requires emergency medical care. It is in the public interest to minimize the health risk inherent to the spread of COVID-19 to vulnerable individuals. The public health is served when individuals who are at high risk of serious illness from COVID-19 are released from detention to locations where they are able to socially distance and practice the hygiene necessary to limit their exposure to COVID-19.*** [*Id.*, ¶ 9; emphasis added.]

31. Dr. Susan Hasti is a faculty member of the Department of Family and Community

Medicine at Hennepin Healthcare Family Medicine Residency Program. She has submitted a declaration (“Hasti Decl.”) in support of this Petition.

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

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

As a teaching faculty, I am involved in both interpreting and analysis of medical data, research and journal articles, as well as training residents in these skills. I am also responsible for designing and implementing curricula for training of Family Medical residents. [Hasti Decl. ¶¶ 1,2.]

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

34. She adds,

In my ongoing observation of the pandemic, my review of medical literature and statistics, and the analysis of the spread of this new and highly infectious virus, I have become very concerned about the risk of developing a nidus or nest of viral growth in prisons and other correctional facilities. I was alerted to this issue by a patient of mine who has a partner at Moose Lake. Any dense population has limited means to control viral spread; witness the overwhelming situations of New York City, New Orleans, northern Italy, Madrid etc. More to the point, we are seeing rapid spread in Riker’s Island and Cook County jails. [Id., ¶ 5.]

37. She also notes serious problems at Moose Lake:

I understand that the correctional facility at Moose Lake currently has 1,045 prisoners. With no practical means to guarantee that the virus can be contained, in a worst case scenario it can be reasonably assumed that everyone confined there will be exposed, both inmates as well as staff, who I expect would have a “high risk” of exposure based on OSHA risk stratification. *See* United States Department of Labor, Occupational Safety and Health Administration, “COVID-

19: Hazard Recognition,” *available at* https://www.osha.gov/SLTC/covid-19/hazardrecognition.html#risk_classification (last visited April 12, 2020). Current understanding of the virus is that about 20% of people will show no symptoms, but 14% will exhibit severe symptoms, with 5% becoming critically ill. Centers for Disease Control and Prevention, Coronavirus Disease 2019, “Interim Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19),” *available at* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#Asymptomatic> (last visited April 12, 2020). Using these percentages, we can roughly estimate over 836 inmates could become symptomatic, and of those, approximately 117 would require hospital care, about half in the ICU, with 41 or so needing intubation. Given that prisoners tend to be in poorer health than the general public, these simple calculations could easily be an underestimate of the severity. [*Id.*, ¶ 6.]

38. Given that the Cities of Moose Lake and Cloquet together have only approximately 102 hospital beds, of which only six are designated as intensive care units, Dr. Hasti concludes that the local hospital system lacks “the capacity to manage an influx of this enormity,” particularly since her calculations do not include “affected prison employees or any community members that could catch the illness through community transmission from the employees.” (*Id.*, ¶ 7.)

39. This shortage of available beds will require other communities to accommodate hospitalized COVID-19 patients, thus increasing the threatened spread of the virus to other areas of the state. Dr. Hasti concludes, “Lack of appropriate containment and mitigation measures from just one of our state prisons has potential for far ranging and dire burdens on our state health systems and their ability to respond to this emergency.” This means that potentially “the multiplier effect from the spread [from Moose Lake alone] could easily overwhelm the state.” (*Id.*)

CONDITIONS AT MOOSE LAKE AND COVID-19

40. As set forth in paragraph 8 above, Moose Lake is the epicenter of the COVID-19 pandemic in Minnesota correctional facilities. COVID-19 has entered and spread in Moose Lake

and will continue to spread and threaten the lives of Petitioners, other Moose Lake inmates and staff, and residents of the City of Moose Lake and Carlton County as staff travels in and out of Moose Lake. As of April 15, 2020, the DOC reported that 14 persons at Moose Lake had been tested for COVID-19, and that 12 of those persons were tested positive, one was negative, and one was still awaiting results. The DOC presumed another 31 persons at Moose Lake were COVID-19 positive based on symptoms and close contact to a person confirmed positive through testing. Except for three confirmed cases and five presumed cases in Willow River, which is also in the City of Moose Lake, no other DOC correctional facility has as yet reported a positive test result, although other facilities have conducted only a limited number of tests. The Duluth News Tribune has reported 42 cases of COVID-19 at Moose Lake, including 10 staffers and 32 inmates, only seven of which have recovered to date.

41. The introduction and rapid spread of COVID-19 at Moose Lake is undoubtedly the result of Respondents' neglect and failure and refusal to provide even the most rudimentary measures at prevention, mitigation, and protection, as set forth in the paragraphs immediately following.

42. Unit 8 at Moose Lake (which houses Petitioners Foster and Mehle among approximately 120 inmates) has had one inmate test positive. The individual who tested positive was medically isolated, but his three cell mates have been left in the unit and allowed out into the commons area as well as the showers and lavatory, exposing the rest of the Unit's inmates to COVID-19. Foster Decl., ¶ 10; Mehle Decl., ¶ 8.

43. Unit 4, the segregation unit housing another 120 or so inmates, is full. People coming into Moose Lake and people being moved out of segregation to make room for the sick are now being housed in Building 84. Building 84 lacks showers, so these individuals shower in

Unit 8, where COVID-19 has been detected and inmates have been exposed. Foster Decl., ¶¶ 12-13; Mehle Decl., ¶¶ 10-11; Sanborn Decl., ¶¶ 6, 12.

44. Because Unit 4 is now full, the gymnasium is being used for additional space for those who are sick with COVID-19 or its symptoms. *Id.*

45. Given the number of people incarcerated, Moose Lake cannot provide for adequate social distancing. It is typical that four men will share a 15x10 cell. Foster Decl., ¶ 9. Until recently, hundreds of inmates were still eating meals together, walking together to meals, and passing other units leaving meals, thereby increasing the risk of both contracting COVID-19 themselves and spreading COVID-19 to other inmates. Moose Lake did not even start what minimal social distancing measures are in place until March 26. Foster Decl., ¶¶ 8-11, 17; Mehle Decl., ¶¶ 5-6, 9-12; Sanborn Decl., ¶¶ 4, 9, 12.

46. On or about April 10, 2020, Moose Lake largely shifted the responsibility of social distancing to inmates by instructing inmates to “police themselves,” and in addition opened up certain areas of the prison to all inmates. Foster Decl., ¶¶ 17, see also 8-11; see Mehle Decl., ¶¶ 5-6, 9-12; see Sanborn Decl., ¶ 12.

47. There is no workable quarantine within the units at Moose Lake. Inmates currently in quarantine in Unit 8 have access to the phones, common areas, vending machines, and J-pay Kiosk. They also use the same bathrooms and showers as everyone else. Foster Decl., ¶ 10; Mehle Decl., ¶¶ 10-11.

48. At least 11 guards reportedly have COVID-19, and many continue to come to work over the objection of nurses at Moose Lake. Foster Decl., ¶ 16. Although the guards have masks, only about half actually use them. The same is true for inmates. Use of masks is not required. Sanborn Decl., ¶ 11.

49. Moose Lake is either unable or unwilling to test prisoners for COVID-19 unless they have a very high fever or other life-threatening symptoms, such as inability to breathe. Foster Decl., ¶¶ 4-5; Mehle Decl., ¶ 4; Sanborn Decl., ¶¶ 4, 10. Indeed, because at least one person in each Unit has now tested positive for COVID-19, reportedly Moose Lake has discontinued all testing. Sanborn Decl., ¶ 10.

50. The use of segregation to hold those diagnosed with COVID-19 creates extreme hardship both for those with COVID-19 and for those confined for other reasons. Inmates with COVID-19 in segregation lack access to amenities in non-segregation Units, although they are segregated through no fault of their own. There is concern and fear among the inmate population of being sent to segregation, which makes inmates reluctant to seek testing that may confirm they have COVID-19 and thereby endangers not only themselves but also other inmates and fuels the spread of COVID-19. Sanborn Decl., ¶8.

51. Cleaning supplies, including soap and disinfectant, are in short supply. Guards have instructed inmates to use less because, once gone, such supplies will not be replenished. Mehle Decl., ¶ 13.

52. Although sick guards are coming to work, as noted, other staff are not, and Moose Lake is currently under-staffed. Mehle Decl., ¶ 13.

53. A number of inmates work on the cleaning detail with the responsibility for cleaning Units. None are provided with protective gear and clothing. Foster Decl., ¶ 7.

54. All of the foregoing circumstances have without question caused and contributed to the introduction and spread of COVID-19 at Moose Lake, and the result of neglect and refusal of Respondents to perform their legal duty.

LEGAL DUTY OWED BY TO PETITIONERS BY RESPONDENTS

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

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

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

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

59. Respondents' duty to protect Petitioners from COVID-19 also arises under provisions of the Constitution of the State of Minnesota.

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

61. Respondents have failed and refused to protect Petitioners from COVID-19.

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

63. By failing and refusing to protect Petitioners from COVID-19, Respondents have inflicted cruel and unusual punishment on Petitioners.

64. Article I, Section 7, provides, “No person shall ... be deprived of life, liberty or property without due process of law.”

65. By failing and refusing to protect Petitioners from COVID-19, Respondents are depriving Petitioners of liberty and potentially life without due process of law.

66. Respondents’ duty to protect Petitioners from COVID-19 also arises under provisions of the statutes and rules of the State of Minnesota.

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

68. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 1.

69. Minnesota Statutes Chapter 241, Section 241.021, subd. 4, requires the Commissioner of Corrections to provide professional health care to persons confined in institutions under the control of the commissioner of corrections and pay the costs of their care in hospitals and other medical facilities not under the control of the commissioner of corrections.”

70. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 4.

71. Minnesota Statutes Chapter 241, Section 241.021, subd. 5 provides that when the Commissioner of Corrections finds that a facility “does not substantially conform to the

minimum standards established by the commissioner and is not making satisfactory progress toward substantial conformance, the commissioner shall promptly notify the chief executive officer and the governing board of the facility of the deficiencies and order that they be remedied within a reasonable period of time.”

72. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Statutes Chapter 241, Section 241.021, subd. 5.

73. Minnesota Statutes Chapter 243, Section 243.57 provides, “In case of an epidemic of any infectious or contagious disease in any state correctional facility under control of the commissioner of corrections, by which the health or lives of the inmates may be endangered, the chief executive officer thereof, with the approval of the commissioner of corrections may cause the inmates so affected to be removed to some other secure and suitable place or places for care and treatment.”

74. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Statutes Chapter 243, Section 243.57.

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

76. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Rule 2911.0300, subp. 2.

77. Minnesota Rule 2911.5800, subpart 4, provides that a correctional facility “shall

develop a written policy and procedure that requires that the facility provide 24-hour emergency care availability as outlined in a written plan, which includes provisions for...emergency evacuation of the inmate from within the facility...[and] security procedures that provide for the immediate transfer of inmates when appropriate.”

78. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Rule 2911.5800, subpart 4.

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

80. By failing and refusing to protect Petitioners from COVID-19, Respondents have violated their duties to Petitioners under Minnesota Rule 2911.5800, subpart 8.

PETITIONERS’ RIGHT TO A WRIT OF HABEAS CORPUS

81. Minnesota Statutes, Chapter 589, governs the right to obtain a writ of habeas corpus. Section 589.01 provides:

A person imprisoned or otherwise restrained of liberty, except persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon the judgment, may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint. For purposes of this section, an order of commitment for an alleged contempt or an order upon proceedings as for contempt to enforce the rights or remedies of a party is not a judgment, nor does attachment or other process issued upon these types of orders constitute an execution.

82. The law has long been clear that Section 589.01 permits the issuance of the writ upon a showing of unlawful conditions of confinement, such as Petitioners have demonstrated exist at Moose Lake as a result of Respondents failure and refusal to protect Petitioners from COVID-19. *Kelsey v. State*, 283 N.W.2d 892, 895 (Minn. 1979):

While the habeas statute, see, Minn.St. 589.01, does not provide for the use of habeas in this kind of situation, this court clearly has the inherent judicial power to create an exception to the general rule that habeas is unavailable to a prisoner confined pursuant to a final judgment. In fact, both in Minnesota and in other states, exceptions have been made to the rule so as to provide prisoners with a ready means of relief where none would otherwise be available. Thus, habeas corpus is available under certain circumstances to test a claim of a prisoner that the conditions of his confinement constitute cruel and unusual punishment.

State ex rel. Guth v. Fabian, 716 N.W.2d 23, 26-27 (Minn. App. 2006) (“A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant's liberty or to challenge the conditions of confinement.”); *State v. Schnagl*, 859 N.W.2d 297, 302-03 (Minn. 2015) (“Although we have not expressly endorsed the use of habeas corpus to challenge the Commissioner's administrative decisions regarding the length of an offender's release term, we have implicitly approved it.”).

83. Petitioners here challenge and have proven that the Respondents’ failure and refusal to protect Petitioners from COVID-19 violates their fundamental constitutional rights, constitutes a significant unlawful restraint on their liberty, and unlawful conditions of their confinement .

84. Petitioners are therefore entitled to the issuance of a writ of habeas corpus ordering their immediate release from Moose Lake to safe locations where they can socially isolate and obtain medical treatment if necessary during the pendency of the COVID-19 pandemic.

PETITIONERS’ RIGHT TO A WRIT OF MANDAMUS

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

The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as

a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

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

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

88. Although mandamus is an extraordinary remedy, its use is appropriate when there is no plain, adequate, and speedy remedy at law. *Farmers & Merchants Bank of Cochrane v. Billstein*, 204 Minn. 224, 283 N.W. 138, 139 (Minn. 1938). "The two primary uses of mandamus are (1) to compel the performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion when that exercise is required by law." *Mendota Golf v. City of Mendota Hgts*, 708 N.W.2d 162, 171 (Minn. 2006).

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

90. Here, Petitioners have shown that Respondents have an official duty to protect Petitioners from COVID-19 and that Petitioners have failed and refused to perform that duty.

91. There is no other adequate legal remedy to compel Petitioners to perform this duty, and particularly not a speedy remedy. The advance of COVID-19 through a crowded space like Moose Lake is relentless and exponential, as every person infected with COVID-19 will infect at least two others at the earliest opportunity. Time is absolutely of the essence in requiring Respondents to perform their duty in protecting Petitioners from COVID-19.

92. In this particular case, the right to require Respondents to protect Petitioners from COVID-19 is clear, and it is apparent that Respondents can give no valid excuse for not protecting Petitioners from COVID-19. This Court should therefore issue the peremptory writ in the first instance ordering Respondents to perform their duty to protect Petitioners from COVID-19.

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

PETITIONERS' RIGHT TO APPOINTMENT OF SPECIAL MASTER

94. Minnesota Rule of Civil Procedure 53 permits the Court to appoint a special master under circumstances relevant to this matter. The Rule provides:

53.01 Appointment

(a) Authority for Appointment.

Unless a statute provides otherwise, a court may appoint a master only to:

(1) perform duties consented to by the parties;

(2) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

- (A) some exceptional condition, or
- (B) the need to perform an accounting or resolve a difficult computation of damages; or
- (3) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge.

95. The appointment of a special master is within the sound discretion of the Court and is appropriate for the handling of complex matters not within the Court’s expertise, competence, or availability and schedule. *Brickner v. One Land Development Company*, 742 N.W.2d 706, 712 (Minn. App. 2007) (affirming appointment of special master in view of “the ‘sheer volume’ of the record ... the length and complexity of the trial, the number of exhibits, and the request for a sizeable amount of fees and costs.”); *Burdette v. Raiche*, No. A18-0626, Ramsey County District Court, File No. 62-FA-16-936, 2018 WL 5780443, *3 (Minn. App. November 5, 2018) (affirming special master’s appointment because of “the parties need [for] ‘a more nimble process’ that permits a decision-maker to make early ‘real time decisions’ to provide them the ‘possibility to change their behavior ... ‘”); *Call v. Call*, A19-0074, LeSueur County District Court, File No. 40-CV-18-19, 2019 WL 4165018, *3 (Minn. App. September 3, 2019).

96. This case presents just a situation where a special master is appropriate, involving as it does real time urgency affecting life or death not just for Petitioners and other Moose Lake inmates, but also prison staff, and the populations of the City of Moose Lake, Carlton County, and potentially the entire state of Minnesota. It also presents issues of complexity, expertise, and public policy not often seen by courts or counsel. Appointment of a special master, particularly at the very outset of these proceedings, is therefore well within this Court’s discretion and service of the public interest.

97. Petitioners accordingly request this Court to appoint a special master to work with the parties and the Court to craft a just and equitable solution to the claims and issues raised by this Petition.

HABEAS CORPUS CLASS ACTION ALLEGATIONS

98. Pursuant to Minnesota Rule of Civil Procedure 23.01 and 23.02(a) and (b), Petitioners bring this action for a writ of habeas corpus on behalf of themselves and a class of all similarly situated persons, specifically all Moose Lake inmates (1) who have either less than six months to serve in their sentences or pre-existing conditions or age rendering them particularly vulnerable to COVID-19; (2) whose release will not be a danger to the community; and (3) who have a safe place to stay and socially isolate during the pendency of the COVID-19 pandemic.

99. Inasmuch as Moose Lake houses over 1,000 inmates, the class is so numerous that joinder of all members is impracticable.

100. Questions of law and fact are common to the class including, but not limited to, the nature and extent of the legal duty Respondents have to protect Petitioners from COVID-19 and whether Respondents have complied with that duty.

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

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

103. A class action is appropriate because Respondents have acted and refused to act on grounds generally applicable to the class in failing and refusing to protect the class from COVID-19; because inconsistent or varying adjudications with respect to individual members of the class could establish incompatible standards of conduct for Respondents; and because

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

104. For these reasons, Petitioners ask that this Court certify the class described above for purposes of Petitioners' petition for a writ of habeas corpus.

MANDAMUS CLASS ACTION ALLEGATIONS

105. Pursuant to Minnesota Rule of Civil Procedure 23.01 and 23.02(a) and (b), Petitioners bring this action for a writ of habeas corpus on behalf of themselves and a class of all similarly situated persons, specifically all Moose Lake inmates.

106. Inasmuch as Moose Lake houses over 1,000 inmates, the class is so numerous that joinder of all members is impracticable.

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

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

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

110. A class action is appropriate because Respondents have acted and refused to act on grounds generally applicable to the class in failing and refusing to protect the class from COVID-19; because inconsistent or varying adjudications with respect to individual members of the class could establish incompatible standards of conduct for Respondents; and because adjudications with respect to individual members of the class could as a practical matter be

dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

111. For these reasons, Petitioners ask that this Court certify the class described above for purposes of Petitioners' claim for a writ of mandamus.

PRAYER FOR RELIEF

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

- A. That this Court certify Petitioners' habeas corpus class and mandamus class as defined herein; define the issues to be decided as the nature and extent of the legal duty of Respondents to protect Petitioners from COVID-19 and whether Respondents have violated that duty; and appoint the undersigned attorneys as class counsel for each class.
- B. That this Court appoint a special master at the outset of these proceedings to oversee pretrial matters and assist the parties in their efforts to reach a just, speedy, and inexpensive resolution of the claims and issues raised in this Petition.
- C. That this Court find, adjudge, and decree that Respondents have failed and refused to perform their legal duty to protect Respondents from COVID-19.
- D. That this Court issue a writ of habeas corpus for the immediate release of Petitioners and habeas corpus class members on such terms as this Court deems necessary and proper.
- E. That this Court issue a peremptory writ of mandamus compelling Respondents to perform their duty to protect Petitioners and the mandamus class from COVID-19, or an alternative writ of mandamus ordering Respondents to appear before this Court at the earliest possible time convenient for this Court to show cause why Respondents

- have failed and refused to perform their duty to protect Petitioners from COVID-19, and then ordering them then and there to perform that duty.
- F. That this Court order Respondents to pay Petitioners' cost and expenses incurred in this action as required by law.
- H. That this Court grant to Petitioners such other and further relief as may be just, lawful, and appropriate.

Dated: April 15, 2020

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ACKNOWLEDGEMENT

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

s/ Daniel R. Shulman

DECLARATION OF LYNNE S. OGAWA, M.D.

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

1. I am the Medical Director, St. Paul- Ramsey County Department of Public Health. The St. Paul-Ramsey County Department of Public Health is one of the largest public health departments in Minnesota. Through state and federal mandates, we work to prevent the spread of disease and plan for and respond to health emergencies. Daily I am working to protect the health of our community through limiting the spread of COVID-19.
2. COVID-19 was first reported to the World Health Organization (WHO) on December 31, 2019. Within a month, due to COVID-19's fast rate of spread and high morbidity rate, WHO declared COVID-19 a public health emergency of international concern. On March 11, 2020, just as the U.S. was starting to identify infections in the United States, WHO declared COVID-19 a pandemic. In less than a month, COVID-19 infections in the U.S. have skyrocketed. As of March 27, 2020, the U.S. Center for Disease Control reports there are over 85,000 infections in the U.S. Over 1,240 people have died from the virus. The U.S. is now the global epicenter of COVID-19.
3. The first COVID-19 case in Minnesota was identified on March 6, 2020. In less than three weeks, the disease has spread to nearly every county in Minnesota. Even with a limited supply of testing materials and state efforts to limit testing to high priority specimens, the number of confirmed cases has jumped to 398 and there have been 4 deaths. There is no vaccination available to prevent COVID-19. The best-known means of limiting the spread of the disease is to socially distance people. Minnesota, like other jurisdictions in the U.S., is working aggressively to impose the social distancing measures necessary to slow the spread of COVID-19. Despite our aggressive steps to protect the public health, I remain concerned that populations who are unable to socially distance present a significant threat to the public health. Conditions in jails and detention facilities are of particular concern.
4. On March 24, 2020, the Ombudsperson for the Minnesota Department of Corrections stated:

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

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

5. The Minnesota Department of Corrections concerns are well founded. Statistics show that COVID-19 is a highly contagious respiratory virus that presents a significant mortality and morbidity threat especially to vulnerable populations as well as a resource strain on our healthcare system. Given the large population density in detention centers, the ease of COVID-19 transmission, and the basic reproductive rate of this virus ($R_0=2$; it is highly likely an infected individual will pass the infection along to others), it is believed that the majority of detainees and staff within a facility are at risk of infection once the virus is introduced. Of these, one in five will require hospital admission, and about 10% will develop severe disease requiring hospitalization in an intensive care unit. The statistics have led some physicians to call detention facilities a “tinderbox.”
6. In addition to the explosive transmission rate in high density settings where individuals cannot socially distance, individuals in detention who suffer from underlying medical conditions are at an exceptionally high risk of developing a severe illness if they contract COVID-19. Detainees who are: older; HIV positive; have asthma; are pregnant; severely obese; diabetic; or have renal failure, liver disease, or a heart condition are at elevated risks of severe disease from COVID-19.
7. On March 24, 2020, the Immigration and Customs Enforcement Website confirmed that civil detainees in ICE’s custody are sent to local hospitals when they need a higher level of care than the basic care available at a detention facility. I do not know the number of ICE detainees held in Minnesota jails. I do not know how many of those detainees have underlying medical conditions that put them at risk of severe disease from COVID-19. However, it is known the cost of hospitalization for severe disease is in the order of \$5,000 to \$8,000 dollars per day for those requiring mechanical ventilation. I do know that our public health depends upon taking immediate steps to slow the spread of COVID-19 by aggressively pursuing policies that further social distancing.
8. Across the United States, Sheriffs have recognized that social distancing is paramount to public safety and have moved to reduce the number of detainees in jails to avoid the spread of COVID-19. In Minnesota, the Hennepin and Ramsey County Jails have reduced their population by more than 30% in an effort to protect the health and welfare of detainees and the public from the spread of COVID-19. This is an appropriate response to the unprecedented threat COVID-19 poses to our health and well-being.
9. The COVID-19 pandemic is placing a major strain on health care providers in Minnesota. As part of our work to protect the public health, we are working to identify groups of people who are at high risk of serious disease from COVID-19. Detained individuals with underlying medical conditions, are at a high risk of developing a severe disease that requires emergency medical care. It is in the public interest to minimize the health risk inherent to the spread of COVID-19 to vulnerable individuals. The public

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

Dated: 3/29/2020

A handwritten signature in black ink, appearing to read 'L. Ogawa', written in a cursive style.

Lynne S. Ogawa, M.D.