

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

KENNETH ANDERSON )  
DARRYL BLUE )  
GEORGE FRAZIER )  
NATHANIEL KARGBO )  
MARCUS PEARSON )  
VERNON THOMAS )  
ROSA WIGGINS, *et al.*, )

Petitioners )

v. )

No. \_\_\_\_\_ )

THEODORE JACKSON, )  
Sheriff, Fulton County )  
MARK ADGER, )  
Chief Jailer, )

Respondents. )  
\_\_\_\_\_)

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

Petitioners, acting under the Constitution of the United States, the Georgia Constitution, and OCGA § 9-14-1 *et seq*, ask this Court to inquire into the legality of their restraint by Respondent; to find that their continued detention violates their constitutional rights; and to order their

release in light of the extraordinary physical danger posed by their confinement during the pendency of the COVID-19 pandemic.<sup>1</sup>

## INTRODUCTION

1. Petitioners are men and women who are charged with criminal offenses in the Superior or State Court of Fulton County. Each is being detained pending trial at the Fulton County Jail or at another facility under the control of Respondents.
2. At their first appearances after arrest, or on motions filed in their individual criminal cases, a judge has fashioned conditions of release for each Petitioner that include the posting of a money bond. Many Petitioners have also sought bond reductions during

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<sup>1</sup>Because they are numerous, and confined under the authority of the same Respondents, Petitioners have consolidated their Petition and its supporting Memorandum of Law for ease of reference and to conserve resources during this period of crisis. Each Petitioner is identified in Exhibit 1 to this Petition. Should the Court require, Petitioners will file individual Petitions incorporating by reference the allegations made here.

All Petitioners are clients of the Office of the Public Defender for the Atlanta Judicial Circuit (“the Public Defender”). Pursuant to the Indigent Defense Act of 2003, the Public Defender is responsible for ensuring potential clients’ eligibility for its services. OCGA § 17-12-24(a). The office may only represent persons who are indigent, that is, persons who lack independent resources sufficient to enable them to retain counsel without undue hardship and who earn less than 100% of federal poverty guidelines in misdemeanor cases and 150% of federal guidelines in felony cases. OCGA § 17-2-2(6)(a), (c).

All Purpose Hearings or during appearances on other calendars. Others' cases have been assigned to judges who have indicated broadly that they are refusing to entertain requests for bond reconsiderations that are primarily based on the dangers arising from the COVID-19 pandemic. All Petitioners remain behind bars solely because they cannot afford to post the money bonds that were set for them, either initially or on reconsideration.

3. Age, illness, or disability leave some Petitioners especially vulnerable to infection with COVID-19 and to severe health outcomes, including death, once infection occurs. The conditions of their confinement magnify the risks they face. Herded together in a crowded facility with deficient infection controls in place, with jail staff and new arrestees cycling in and out, Petitioners are all prey to a virus that continues to sweep through this community and that is confirmed to have reached inside the jail itself, where confirmed positives are steadily rising and numerous undiagnosed infections almost certainly exist. Forced physical proximity, scarce resources for handwashing or sanitizing surfaces, and a shifting population with a host of preexisting ills

create an ideal environment for transmission of the virus. And human beings have no immunity.

4. Subjecting Petitioners to these conditions because they lack money violates federal and state guarantees of due process of law and of the equal protection of the laws. Petitioners would be free if they could pay bonds that judges have deemed sufficient to ensure their return to court and protect the community. That they continue to languish in dangerous custody is a feature of the State's categorically different treatment of the wealthy and the poor. In addition to this unlawful discrimination, Petitioners are suffering ongoing harm from Respondent's failure to protect their health. There being no way to house Petitioners in reasonable safety while Georgia COVID-19 cases continue to mount, Petitioners must be released on solely non-financial conditions.

### **JURISDICTION**

5. This Court has jurisdiction over this action under OCGA § 9-14-4.

### **PARTIES**

6. Petitioners are adults who have been charged with misdemeanor or felony offenses and who await pre-judgment proceedings in

their respective criminal cases. Their sites of confinement include the Fulton County Jail, 901 Rice Street NW, Atlanta, Georgia, which houses men and some women, and the South Fulton Municipal Regional Jail, 5060 Union Street, Union City, Georgia, which houses women. Both facilities are in Fulton County. Some Petitioners have been charged by indictment or formal accusation, but many are being held on sworn complaints only, or on a complaint and a judicial determination of probable cause made after a hearing.

7. During one or more court appearances, a judicial officer has set conditions of release for each Petitioner that include the posting of a financial bond, either directly with the Court or through a bonding company. Each of the Petitioners lacks the means to satisfy the financial condition that is currently in force with respect to his or her release, and on information and belief, every Petitioner who could have satisfied the financial condition would have done so rather than remain confined at risk to his or her health. On further information and belief, each Petitioner is willing

to comply with the non-financial conditions that have been crafted in his or her case.

8. Exhibit 1 to this Petition describes names Petitioners and describes their bond status along with some relevant particulars.
9. Respondent Theodore Jackson is the Sheriff of Fulton County, Georgia. Sheriff Jackson is the chief executive of the Fulton County Sheriff's Office. In that role, he oversees and controls each of the Fulton County Sheriff's Office's four divisions, including the Jail Division. As Sheriff, he is required by Georgia law to operate the Fulton County Jail system, to maintain the custody of people held in his jails, and to ensure safe and sanitary conditions of confinement. See O.C.G.A. §§ 42-4-4, 42-4-5.
10. Respondent Mark Adger is the Chief Jailer for the Fulton County Sheriff's Office. As Chief Jailer, Defendant Adger has been delegated and exercises the Sheriff's authority to operate the Fulton County Jail system and to ensure safe and sanitary conditions of confinement. Respondent Adger reports to and is supervised by Defendant Jackson.

## FACTUAL ALLEGATIONS

### Pretrial Release in the Current Judicial Emergency

11. On March 14, 2020, acting pursuant to OCGA § 38-3-60 *et seq.*, Chief Justice Melton issued an amended Order Declaring Statewide Judicial Emergency “to protect the health, safety, and liberty of all citizens in this State[.]”<sup>2</sup> Despite its general mandate to postpone many proceedings, and thereby to avoid gatherings of persons, the Chief Justice’s order maintains throughout that courts must remain open to consider bond applications. “[I]n particular,” it states, “courts should give priority to matters necessary to protect health, safety, *and liberty* of individuals” Order at 1 (emphasis added). Acknowledging that an “essential functions” test, used to determine which proceedings should not be suspended, is imprecise, the Chief Justice held, “[S]ome matters that fall into the essential function category are . . . where an immediate liberty or safety concern is present requiring the attention of the court as soon as the court is available.” And he

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<sup>2</sup><https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf>

specified “bond reviews” as an example of a proceeding belonging in this critically important category. *Id.* On March 13, 2020, Chief Judge Brasher had also entered an Order Declaring Judicial Emergency for courts in the Atlanta Judicial Circuit.<sup>3</sup>

12. On March 19, District Attorney Paul Howard wrote criminal justice agencies requesting joint efforts to limit the population of the main jail to 2,800, which he said was the detainee count at the facility when Chief Judge Brasher declared an emergency on March 13. *See* Exh. 2. The letter, which nowhere explicitly mentions COVID-19, dictates no change from standard practices with respect to arrestees in several categories, reinforcing the view that arrests should continue “if the offender presents any safety or risk of violence concerns to any member of the public.” *Id.* at 1. Howard also directed that, “If the offender refuses to accept, sign, or receive [a] citation acknowledging a court date, the offender shall be taken into custody.” But the letter does ask that persons be cited rather than arrested for a few offenses, such as holding over

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<sup>3</sup> <https://www.fultoncourt.org/temp/StampFiledJudicialEmergencyOrder.pdf>

rental cars past their return date, forgery, drug possession and criminal damage to property. *Id.* at 2.

### **Confinement in Respondents' Jails Threatens Life and Health**

13. Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.<sup>4</sup> Detainees and staff cycle enter Respondents' facilities continually. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited.<sup>5</sup> Many people who are incarcerated also have chronic conditions, like diabetes, asthma, heart disease, or HIV, which make them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals "are at special risk of infection, given their living situations," and "may also be less able to participate in proactive measures to keep themselves safe[;] infection control is

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<sup>4</sup> Joseph A. Bick (2007). Infection Control in Jails and Prisons. *CLINICAL INFECTIOUS DISEASES* 45(8):1047-1055, <https://doi.org/10.1086/521910>.

<sup>5</sup> Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

challenging in these settings.”<sup>6</sup> Correctional health expert Dr. Brie Williams has found that an estimated 39 to 43% of all prisoners, and over 70% of older prisoners, have at least one chronic health condition rendering them more susceptible to COVID-19 infection and to severe disease if infected. This includes the substantial number of confined persons who, regardless of age, suffer from asthma. *See* Exh. 3 at ¶¶9-10; *see also* Exh. 4 (Affidavit of Dr. Jonathan Giftos) at ¶¶8-9.

14. Several features of coronavirus make it particularly difficult to inhibit the disease’s spread, particularly within crowded areas or dense populations. The numbers of people diagnosed reflect only a portion of those infected<sup>7</sup>; very few people have been tested, and some are asymptomatic transmitters.<sup>8</sup> Thousands of people are

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<sup>6</sup> “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), <https://bit.ly/2W9V6oS>.

<sup>7</sup> Melissa Healy, *True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say*, L.A. TIMES (Mar. 10, 2020), <https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA>.

<sup>8</sup> Roni Caryn Rabin, *They Were Infected with the Coronavirus. They Never Showed Signs*, N.Y. TIMES (Feb. 26, 2020, updated Mar. 6, 2020), <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>; Aria Bendix, *A Person Can Carry and Transmit COVID-19 without Showing Symptoms, Scientists*

carrying a potentially fatal disease that is easily transmitted – and few are aware of it. Moreover, the current estimated incubation period is between two and 14 days.<sup>9</sup> The virus is thought to spread through respiratory droplets or by touching a surface or object that has the virus on it.<sup>10</sup> Thus, infected people – who may be asymptomatic and not even know they are infected – can spread the disease even through indirect contact with others. A study released in the New England Journal of Medicine found that the coronavirus can survive for up to three days on surfaces such as plastic and steel, which are prevalent in jail.<sup>11</sup> Exh. 4 at ¶¶10-11.

15. Apart from the risks of death or grave illness that detainees face inside the jail, the spread of the virus there also threatens the health of the surrounding community. A long-term study published in the American Journal of Public Health (AJPH)

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*Confirm*, BUSINESS INSIDER (Feb. 24, 2020), <https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms>.

<sup>9</sup> *Coronavirus Disease COVID-19 Symptoms*, Centers for Disease Control (updated: Feb. 29 2020), <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>.

<sup>10</sup> Centers for Disease Control, *Coronavirus Factsheet* (Mar. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

<sup>11</sup> Apoorva Mandavilli, *How Long Will Coronavirus Live on Surfaces or in the Air Around You?*, N.Y. TIMES (March 20, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-surfaces-aerosols.html>.

demonstrated that increases in county jail incarceration rates are significantly associated with subsequent increases in infectious disease mortality rates throughout the entire population of the county.<sup>12</sup> As affiant Dr. Giftos recently said in an interview about a COVID-19 crisis at Rikers Island – a crisis that was then only expected, but was realized a few days later<sup>13</sup>– “Jails are not closed systems despite what people may think. There’s [a] tremendous flux of people in custody as well as, 24/7, health care workers and officers who are coming to staff three [shifts] per day.”<sup>14</sup>

16. The risk of COVID-19 infection among persons who are confined or work in the Fulton County Jail is neither academic nor speculative. As of April 3, at least 16 detained men had tested

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<sup>12</sup> Sandhya Kajeepeta, Caroline G. Rutherford, Katherine M. Keyes, Abdulrahman M. El-Sayed, and Seth J. Prins, *County Jail Incarceration Rates and County Mortality Rates in the United States, 1987–2016*, AMERICAN JOURNAL OF PUBLIC HEALTH 110, pp. S109–S115, <https://doi.org/10.2105/AJPH.2019.305413>; see also Sandhya Kajeepeta & Seth J. Prins, *Why Coronavirus in Jails Should Concern All of Us*, THE APPEAL (Mar. 24, 2020), <https://theappeal.org/coronavirus-jails-public-health/>

<sup>13</sup>Parker, So, Heath & Smith, Spread of coronavirus accelerates in U.S. jails and prisons, REUTERS (March 28, 2020) (reporting on March 28 that at least 132 inmates and 104 staff had tested positive for COVID-19 in New York City’s jail system), <https://tinyurl.com/rkpn2o5>.

<sup>14</sup>“Recipe for Disaster: The Spread of Coronavirus Among Detained Populations,” Interview of former Rikers Medical Director Dr. Jonathan Giftos, MSNBC (March 18, 2020), <https://www.msnbc.com/all-in/watch/-recipe-for-disaster-the-spread-of-coronavirus-among-detained-populations-80947781758> (quotation commences at approx. 3:00).

positive at the main jail.<sup>15</sup> On information and belief, one to two detainees had tested positive in the Union City facility. The first detainee to test positive, a man with another chronic health condition, had been in custody there for 77 days before he showed symptoms, rendering it virtually certain that he acquired the infection from someone in the facility, or during a trip to court.<sup>16</sup> Four men who tested positive shortly thereafter were inmate trustees, whose status permitted them more freedom to move about the facility than other inmates have.<sup>17</sup>

17. The likelihood that many more detainees at the jail are infected with COVID-19 than have confirmed positive tests is tremendously high. Every day, the state Department of Public Health reports that Fulton County harbors more cases of COVID than any other county in Georgia. The jail, moreover, holds arrestees and draws staff members from a multi-county Metro

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<sup>15</sup> Expert to Fulton jail: Release 800 inmates or risk ‘disaster’, ATLANTA JOURNAL-CONSTITUTION (April 1, 2020), <https://tinyurl.com/w5d27u5> .

<sup>16</sup>**Error! Main Document Only.**Court Trip May Have Exposed Fulton Inmate to Coronavirus, WSB Radio News (March 26, 2020), <https://tinyurl.com/strzlle>.

<sup>17</sup>“4 Fulton County jail inmates test positive for the coronavirus,” Fox5 Atlanta (March 26, 2020), <https://www.fox5atlanta.com/news/4-fulton-county-jail-inmates-test-positive-for-the-coronavirus>.

Atlanta area. When considered together, these counties bear a tremendous share of the state's overall COVID burden. Case counts increase daily, but as a snapshot only, at midday on April 4, the 941 cases of COVID-19 in Fulton alone constituted 15.3% of Georgia's 6,160 cases, and its 26 deaths constituted 12.9% of Georgia's 201. When a 15-county Metro Atlanta area is considered, its 3,411 cases make up 55.4% of Georgia's, with its 101 deaths accounting for 50.2% of the state's deaths overall. These figures will doubtless have been surpassed by the time the Court reviews this Petition.<sup>18</sup>

18. On March 23, 2020, the Centers for Disease Control and Prevention issued INTERIM GUIDANCE ON MANAGEMENT OF CORONAVIRUS DISEASE 2019 (COVID-19) IN CORRECTIONAL AND DETENTION FACILITIES (hereinafter "CDC Guidance" or "CDC Recommendations"), which accompanies this Petition as Exhibit 5.

The 26-page document addresses in detail operational

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<sup>18</sup>Current data are at GEORGIA DEPARTMENT OF PUBLIC HEALTH COVID-19 DAILY STATUS REPORT, <https://dph.georgia.gov/covid-19-daily-status-report>. "Metro Atlanta," for purposes of this Petition, consists of the following counties: Bartow, Carroll, Douglas, Cherokee, Clayton, Cobb, Coweta, DeKalb, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.

preparedness, prevention of virus transmission, and management of confirmed and suspected cases of COVID-19 infection within correctional settings.

19. Respondent Jackson contracts with Naphcare, Inc., an Alabama corporation, to provide Inmate Medical Services within his facilities. An addendum to the contract that is now in force also accompanies this Petition as Exhibit 6.<sup>19</sup> This Exhibit, the contract's Scope of Work stipulation, outlines the company's responsibility for pre-booking and subsequent health screenings of detainees, *id.* at 49-53, provision of urgent/emergency health care, *id.* at 57, and monthly reporting of statistics on jail population, encounters with onsite providers, inpatient and outpatient admissions, and medications, among other topics. *Id.* at 68. Mental as well as physical health care is to be provided by contractor. The Scope of Work provision requires Naphcare to "establish policy and procedures for the care and handling of inmates diagnosed with an infectious disease," *id.* at 55, and it states, "Service Provider

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<sup>19</sup>The entire contract is viewable at [https://drive.google.com/open?id=1G1nqQxGr73kSSFLl8v\\_ZJf-tHeHFekXw](https://drive.google.com/open?id=1G1nqQxGr73kSSFLl8v_ZJf-tHeHFekXw)

must maintain current guidelines that conform to CDC and OSHA recommendations for communicable diseases.” *Id.* at 56.

### **Crisis, Courts, and Custody**

20. Both prior to and since the day of the Declaration of Statewide Judicial Emergency, by which time the pandemic’s existence was widely acknowledged, Respondents have failed to protect Petitioners from substantial risks of serious harm.
21. Respondent Adger notified a representative of the Public Defender’s Office on March 14, 2020 that a detainee with a positive COVID-19 test had been in court on March 9. *See* Exh. 7 (Affidavit of Elizabeth Markowitz) at ¶11.
22. In the first days after Chief Judge Brasher’s order, Respondents conferred with criminal justice actors. They declined to limit the number of detainees in the holding cells adjacent to the courtrooms, asserting that that they had no other place to put them. *Id.* at ¶¶3-10.
23. The practice of confining large groups of detainees in the holding tanks adjacent to courtrooms continued during the following week, March 16-20. Detainees had no barriers among themselves

or between them and court staff members. Numerous detainees made the trip to the Fulton County Courthouse for court appearances before several judges. Even detainees who were known to be COVID-19 positive continued to be transported downtown. *Id.* at ¶¶16.

24. Briefly between March 23 and the cessation of live court appearances on March 25, Respondents transported ten detainees at a time downtown, rather than the larger number who are usually bused to the Courthouse each day. *Id.* at ¶19.

25. In separate interviews on March 27 and March 31, Assistant Chief Jailer Lt. Col. Adam Lee and Respondent Col. Mark Adger, respectively, discussed the first few confirmed cases of COVID-19 infection at the jail. Addressing four men whose test results came back on the same day, Lee told a WABE reporter that “we were able to quarantine those individuals because they were all housed . . . in the same area of the jail . . . . [I]t has made it easier for us to just lock down that whole area and place everybody in that area in quarantine because basically they have all been exposed. All of them in that area have been exposed. So, we’re not going to move

those folks out of that zone. . . . and place them anywhere else in the jail.” Exh. 8 at 7-8.<sup>20</sup>

26. In remarks reported four days later, but addressing the very first confirmed positive test at the jail, Respondent Adger related the patient had been given a signature bond – the very relief that could rescue Petitioners from grave risks of contagion – and was hospitalized at Grady Memorial. “The tier on which the 38-year-old inmate was living has been sanitized,” WSB Radio reported Adger saying, “and those who had or may have had contact with him before, during, and after his hearing trip to Fulton County courtroom 2-F have been alerted. Many have been urged to self-quarantine, says Adger, and it's a wait-and-see at this point.” See Exh. 8 at 6.<sup>21</sup>

27. Lee’s and Adger’s public remarks suggest gross deficiencies in Respondents’ infection control measures, consistent with the

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<sup>20</sup>Fulton County Jail Responds After 4 Inmates Test Positive For COVID-19 (March 27, 2020); audio at <https://tinyurl.com/vtujl7l>.

<sup>21</sup>Court Trip May Have Exposed Fulton Inmate to Coronavirus, WSB Radio News (March 26, 2020), audio at <https://tinyurl.com/strzlle>.

experiences of Petitioners as confirmed positive tests increase and detainees remain in congregate conditions.

28. Petitioner F, a 54 year old man with a chronic health condition that predisposes him to respiratory infections, is detained on drug charges because he is too poor to post his \$32,000 bond. A COVID-specific Motion to Modify Bond filed on March 18 has so far yielded no relief. Mr. F was living in a jail zone with a man, John Doe for purposes of this Petition, who showed symptoms and ultimately tested positive for COVID-19. Doe had a cellmate who remained in the cell after Doe was removed, and while jail officials cleaned the cell upon moving Doe out, it was not cleaned again when the cellmate was later also moved, days later. The cellmate had continued to move around the pod freely.

29. Petitioner F and his podmates are being held, generally two men to a cell, for all but 30 minutes per day - generally early in the morning when their attorneys are inaccessible by phone. They have been issued no masks or gloves and have trouble making the soap they are issued last a full week, as they must. When outside their cells, they remain in close proximity to their podmates.

30. Mr. F, who has been in the jail since January, recalls his zone being sprayed down with disinfectant exactly once, on the day John Doe was removed. Showers and common area surfaces are not being sanitized. Deputies, and trustees who deliver food, usually wear masks and gloves, and commissary staff refuse or are not permitted to enter the pod to deliver detainees' purchases of personal items. Detainees improvise with shirts over their faces or go without any facial barriers at all.
31. The day before John Doe became ill, says Petitioner F, several trustees moved out of the pod they all shared. Doe had been interacting with all of them.
32. Petitioner F's zone in the jail is on lockdown. He and his podmates are anxious as information is lacking about the scope and duration of lockdowns in the facility, and about plans for future court proceedings.
33. During proceedings conducted by Zoom teleconference, attorneys have seen clients seated successively before cameras, with no infection control measures taken as one Defendant leaves and another's case is called for hearing.

34. Especially since on or about April 1, abrupt jail lockdowns have cut off all attorney access to Petitioners and other clients, due to loss of telephone contact. Some Petitioners have, but remain unaware of, offers to resolve their cases that will result in sentences of probation or time served if the Court accepts the negotiated pleas. Counsel cannot review rights and options with, or otherwise prepare for court, clients who are incommunicado.
35. Petitioners are informed and believe that Respondents' Union City facility for women detainees exhibits gross deficiencies in infection control, disease prevention, and case management measures that are substantially similar to those prevailing at Respondents' main jail.
36. At the Union City facility, it is standard for women to be housed in large congregate areas. Ten to 16 detainees sleep in bunk beds in a single room in non-medical portions of the facility. On information and belief, at least one Union City detainee has tested positive for COVID-19.
37. Respondents' management of detainees and staff fails to comport with guidance from the Centers for Disease Control and

Prevention relating to COVID-19 in correctional settings.

Respondents also fail, on an ongoing basis, to ensure that their health services contractor enacts effective measures for infection control and management of confirmed or suspected COVID-19 cases.

**38.** Taken together, the statements of Respondent Adger and his Assistant Chief Jailer, observations of detainees and their counsel, accounts given by contractors and employees of Respondent Jackson, records maintained by Respondents and by this Court, and other evidence, demonstrate Respondents' awareness of a substantial risk of serious injury or death to Petitioners from COVID-19 infection, and a general failure to achieve meaningful mitigation of those risks. These failures include addressing diagnoses of COVID-19 infection by removing positive cases from their pod or zone of residence, conducting some cleaning of the positive case's living and recreation areas, and then locking down the pod or zone in question, with close contacts of the positive case remaining confined in contact with each other and with few, if

any, additional measures taken until another individual in the zone tests positive.

- 39.** Due to space, staffing, and resource limitations in their facilities and the extraordinary rates at which COVID-19 is spreading – and notwithstanding any subjective desire to keep Petitioners safe from infection -- Respondents are powerless to create reasonably safe conditions of confinement for Petitioners. Nor can Respondents transfer Petitioners to other facilities with the speed, or under the precautions, that are necessary to prevent substantial continuing risks to their health and their lives.

## CLAIMS FOR RELIEF

### COUNT ONE

#### **Unlawful Discrimination: Due Process and Equal Protection Clauses**

40. Petitioners incorporate by reference the foregoing Factual Allegations and the allegations in Exhibit 1 respecting each of them.

41. Petitioners remain confined in jail pending further proceedings in their criminal cases solely because they cannot meet the financial conditions that were set for their release at their initial appearances or at subsequent hearings.

42. Petitioner's continued confinement in Respondents' jails presents a substantial and growing threat of infection with a virus to which the population lacks immunity and from which severe illness or death may result.

43. The Fourteenth Amendment and Georgia Const., Art. I, Sec. I, Pars. I-II (1983), guarantee due process of law and the equal protection of the laws with respect to actions by the State and its subdivisions.

44. Taken together, the Due Process and Equal Protection Clauses forbid Respondents to retain persons in custody because they cannot afford to post a money bond.

## COUNT TWO

### **Violation of Right Not to Suffer Cruel and Unusual Punishment**

45. Petitioners incorporate by reference the foregoing Factual Allegations and the allegations in Exhibit 1 respecting each of them.
46. In their totality, the conditions in Respondents' jails deprive Petitioners of effective means to guard against contagion with COVID-19 and thereby pose a direct and growing threat to the Petitioners' health.
47. Respondents bear responsibility for the conditions of Petitioners' confinement. They are aware of the nature of the threat to Petitioners' health and of the practices recommended by public health experts to dispel or mitigate that threat.
48. Due to the gulf between the infection control measures necessary to protect Petitioners' health and current practices in Respondents'

jails, only Petitioners' release from custody on non-financial decisions can reasonably vindicate their right to protect themselves from contagion. U.S. CONST., AMENDS. 8, 14; GA. CONST., ART. I, SEC. I, PAR. XVII (1983).

## REQUEST FOR RELIEF

49. For all the reasons stated herein and to be stated at a hearing on this Petition, Petitioners respectfully request that their continued confinement due to indigency be held a violation of their substantial constitutional rights, and that they be released *instanter* on their own recognizance or on such nonfinancial conditions as the Court may require.

Respectfully submitted this 6<sup>th</sup> day of April, 2020.

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No. \_\_\_\_\_

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served copies of the within  
**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS** upon the  
persons, and in the manners, set forth below:

Recipient	Manner of Service
Sheriff Theodore Jackson 185 Central Avenue SW Ninth Floor Atlanta, GA 30303 Respondent	By hand delivery to the Fulton County Jail, 901 Rice Street NW Atlanta, GA 30318 as permitted in O.C.G.A § 9-14-8 and by email to <a href="mailto:theodore.jackson@fultoncountyga.gov">theodore.jackson@fultoncountyga.gov</a>
Col. Mark Adger 901 Rice Street NW Atlanta, GA 30318 Respondent	By hand delivery to the Fulton County Jail, 901 Rice Street NW Atlanta, GA 30318 as permitted in O.C.G.A § 9-14-8 and by email to <a href="mailto:mark.adger@fultoncountyga.gov">mark.adger@fultoncountyga.gov</a>
Patrise M. Perkins-Hooker, Esq. Ashley Palmer, Esq. Office of the County Attorney 141 Pryor St SW #4038 Atlanta, GA 30303 Counsel for Respondents	By email delivery to <a href="mailto:ashley.palmer@fultoncountyga.gov">ashley.palmer@fultoncountyga.gov</a>
Paul L. Howard, Jr. Lyndsey H. Rudder, Esq. Office of the District Attorney 136 Pryor Street SW, Third Floor Atlanta, GA 30303	By email delivery to <a href="mailto:Lyndsey.rudder@fultoncountyga.gov">Lyndsey.rudder@fultoncountyga.gov</a>

**This 6<sup>th</sup> day of April, 2020.**

/s/ Steven E. Phillips  
 STEVEN E. PHILLIPS  
 Georgia Bar No. 576855  
 Counsel for Petitioners