No. 99344-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In Re Personal Restraint Petition of ROBERT R. WILLIAMS,

Petitioner.

BRIEF OF *AMICI CURIAE* PUBLIC HEALTH AND HUMAN RIGHTS EXPERTS

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I. Introduction

Amici Curiae, a group of public health officials who are familiar with the unique dangers associated with infectious diseases in detention facilities, strongly urge this Court to grant petitioner's Personal Restraint Petition (Dkt. # 99344-1), and to order Washington State Department of Corrections ("DOC") officials at the Coyote Ridge Correctional Center ("Coyote Ridge") to release the petitioner in this case—Robert Williams, an inmate who has already suffered a severe case of COVID-19 and is at high risk of serious illness and death if he is again infected. Releasing Mr. Williams will minimize the public health risk to Coyote Ridge's staff, incarcerated people, visitors, and the public at large.

The spread of SARS-CoV-2, the novel coronavirus that causes the potentially deadly disease COVID-19, has created a once-in-a-lifetime global health crisis that led to the adoption and implementation of unprecedented mitigation strategies around the world. These measures have included the canceling of public events, the closing of schools and businesses, and stay-at-home orders to the general public. There is no cure for COVID-19, and while there are now vaccines on the market, these vaccines are not yet widely accessible. Contracting COVID-19 can be life-threatening to anyone, but some categories of people are at higher risk for serious complications or death than others. In particular, the likelihood that a COVID-19 infection will be serious or life-threatening is much higher if

the infected person has a high-risk health profile, such as advanced age or certain underlying illnesses.

Managing the spread of COVID-19 within prisons such as Coyote Ridge is critically important because they are enclosed environments, like cruise ships or nursing homes, that are highly susceptible to epidemics. In the case of COVID-19 specifically, the only way to mitigate the risk of serious infection is through hygienic measures like frequent hand washing and social distancing to limit exposure. But those prevention methods are all but impossible in a correctional facility setting such as Coyote Ridge, in which incarcerated people are crowded together, sharing bathroom products, and where sanitizing products are infrequently used. And once an outbreak occurs, as it already has at Coyote Ridge, correctional facilities are rarely equipped to provide the intensive care and support needed to treat patients suffering from COVID-19.

Because social distancing and rigorous hygiene measures cannot be implemented effectively in shared, enclosed settings such as correctional facilities, the risk of contracting COVID-19 at Coyote Ridge is essentially impossible to eliminate. Accordingly, this court should protect the health and safety of Mr. Williams by granting his Personal Restraint Petition.

II. Statement of Interest of *Amici Curiae*

Amici curiae are experts in infectious diseases, healthcare policy, and correctional healthcare who have spent decades studying the provision of healthcare in detention facilities. Based on their experience, and their review of the available information about the COVID-19 pandemic, it is their view that Mr. Williams is at risk of serious, life-threatening COVID-19 infection, and that his continued confinement at Coyote Ridge puts him at a heightened risk of contracting and further spreading COVID-19.

Amici are committed to ensuring correctional facilities provide quality healthcare to incarcerated people, and that correctional facilities do not exacerbate the health risks of their populations. They understand the COVID-19 pandemic has placed enormous strains on society, and are committed to doing their part to ensure that correctional facilities take a prudent, science-based approach to addressing the virus. They respectfully submit this brief to offer their view that the Washington State DOC and Coyote Ridge should release Mr. Williams, who has already experienced a life-threatening COVID-19 infection and is at high risk of further serious infection.

Amici are the following:

Peter Chin-Hong, M.D., is Associate Dean for Regional Campuses at the University of California San Francisco School of

Medicine. He is a physician and medical educator who specializes in treating infectious diseases, particularly infections that develop in patients who have suppressed immune systems. During the COVID-19 pandemic, he has been a leader of institutional and community education around the disease, including efforts to address unsafe conditions in California's Patton State Hospital for the mentally ill. He has also been part of the Association of Black Cardiologists national webinars on the impact of COVID-19 on minority populations. He directs the immunocompromised host infectious diseases program at UCSF, where his research focuses on infectious diseases in patients with suppressed immune systems.

Robert L. Cohen, M.D., has worked as a physician, administrator and expert in the care of prisoners for 40 years. Dr. Cohen was the Director of the Montefiore Rikers Island Health Services from 1981 through 1986. In 1986, he was appointed Vice President for Medical Operations of the New York City Health and Hospitals Corporation. Dr. Cohen represented the American Public Health Association on the Board of the National Commission for Correctional Health Care for 17 years. He has served as a federal court-appointed monitor overseeing efforts to improve medical care for prisoners in Florida (*Costello* v. *Wainwright*), Ohio (*Austin* v. *Wilkinson*), New York (*Milburn* v. *Coughlin*) and Michigan (*Hadix* v. *Caruso*). He also has been appointed to oversee the care of all prisoners living with HIV in Connecticut (*Doe* v. *Meachum*).

He currently serves on the nine member New York City Board of Correction, which regulates and oversees New York City's correctional facilities.

III. Factual Background

Amici adopt and incorporate by reference the factual background set forth in petitioner's Personal Restraint Petition (Dkt. # 99344-1).

IV. Argument

A. The COVID-19 Pandemic Requires Continued Dedication to Proactive Distancing Measures

The COVID-19 pandemic is an ongoing pandemic of coronavirus disease 2019 that is caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The novel coronavirus that causes COVID-19 first emerged in the province of Hubei, China in December 2019.[1] As of March 2, 2021, there were nearly 114 million confirmed cases of COVID-19 and more than 2.5 million deaths in 223 countries worldwide.[2] In the United States alone, there have been over 28 million confirmed cases and over 500,000 deaths.[3] Washington, the first

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1 Kenji Mizumoto & Gerardo Chowell, *Estimating Risk of Death from 2019 Novel Coronavirus Disease, China, January–February 2020*, 26 Emerging Infectious Diseases, no. 6, June 2020, https://doi.org/10.3201/eid2606.200233.

2 World Health Organization, *Coronavirus Disease (COVID-19) Pandemic*, https://www.who.int/emergencies/diseases/novel-coronavirus-2019.

3 World Health Organization, *Coronavirus Disease COVID-19 Dashboard*, https://covid19.who.int.

state to report a confirmed case of COVID-19, has recorded over 300,000 total cases and nearly 5,000 deaths.[4]

The consensus of doctors and epidemiologists since the emergence of COVID-19 as a global pandemic has been that the primary way to gird against spread of the virus is to take proactive and early action to minimize transmission.[5] Accordingly, a leading and frequently cited report from the Imperial College London has suggested that "suppression will minimally require a combination of social distancing of the entire population, home isolation of cases and household quarantine of their family members," in addition to school and university closures.[6] In other words, social distancing is necessary at every level, including the institutional level.

The current status of vaccine development has not changed the need for social distancing measures to reduce transmission. Vaccines developed by Pfizer-BioNTech and by Moderna both received emergency approval from federal regulators, giving access to millions of people across

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4 *See* Washington State Department of Health, COVID-19 Data Dashboard, https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard.

5 *See, e.g.*, Neil M. Ferguson et al., Imperial College of London, *Impact of Non-Pharmaceutical Interventions (NPIs) to Reduce COVID-19 Mortality and Healthcare Demand* 7 (2020), https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf.

6 *Id.* at 1.

the United States.[7] As of February 20, 2020, over 41 million people had received at least one dose of the vaccine, and over 17 million had received the two doses required for full vaccination.[8] But these vaccinations, while a promising development, are not a cure-all solution to the COVID-19 pandemic, especially in the near future. Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases and Chief Medical Advisor to President Biden, estimates that up to 90 percent of the population will need to be resistant to the coronavirus to halt the pandemic.[9] The number of fully vaccinated people in the United States sits at roughly five percent after two months of vaccine distribution.[10]

The virus is also evolving. Scientists have identified multiple new variants of coronavirus around the world, at least one of which spreads more quickly and may be linked with a heightened risk of death

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7 Danielle Ivory et al., *Interactive: See How the Vaccine Rollout Is Going in Your State*, N.Y. Times (last accessed Feb. 18, 2021), https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html.

8 Centers for Disease Control and Prevention, *COVID Data Tracker: COVID-19 Vaccinations in the United States* (last accessed Feb. 20, 2021), https://covid.cdc.gov/covid-data-tracker/#vaccinations.

9 Donald G. McNeil Jr., *How Much Herd Immunity Is Enough?*, N.Y. Times (Dec. 24, 2020), https://www.nytimes.com/2020/12/24/health/herd-immunity-covid-coronavirus.html.

10 Pien Huang and Audrey Carlsen, *How Is The COVID-19 Vaccination Campaign Going In Your State?*, NPR (last accessed Feb. 19, 2021), https://www.npr.org/sections/health-shots/2021/01/28/960901166/how-is-the-covid-19-vaccination-campaign-going-in-your-state.

relative to other variants.[11] Current vaccines may be less effective against new variants of the virus.[12] Accordingly, social distancing should not only continue to be practiced, but also mandated and enforced by all levels of government, including correctional facilities.

B. The Danger Is Greatest for People Over 50, with Underlying Illnesses, or from a Racial or Ethnic Minority Group

Emerging data suggests that about 1.8% of people infected with COVID-19 in the United States will die.[13] Even those patients who ultimately recover might suffer from permanent damage to their lungs and other vital organs.[14] Such serious cases of COVID-19 overwhelmingly afflict older individuals and individuals with underlying chronic health conditions, such as heart disease, lung disease, liver disease, kidney disease, diabetes and other immunodeficiency problems.[15] For example, while

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11 Centers for Disease Control and Prevention, *COVID-19: About Variants of the Virus that Causes COVID-19* (last accessed Feb. 19, 2021), https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html.

12 Denise Grady, Apoorva Mandavilli, and Katie Thomas, As Virus Grows Stealthier, Vaccine Makers Reconsider Battle Plans, N.Y. Times (Feb. 12, 2021), https://www.nytimes.com/2021/01/25/health/coronavirus-moderna-vaccine-variant.html.

13 Johns Hopkins University & Medicine, *Coronavirus Resource Center: Cases and mortality by country* (last accessed Feb. 20, 2021) https://coronavirus.jhu.edu/data/mortality.

14 Pam Belluck, *What Does Coronavirus Do to the Body?*, N.Y. Times (Mar. 18, 2020), https://www.nytimes.com/article/coronavirus-body-symptoms.html.

15 Fei Zhou et al., *Clinical Course and Risk Factors for Mortality of Adult Inpatients with COVID-19 in Wuhan, China: A Retrospective Cohort Study*, The Lancet (Mar. 9, 2020), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext.

people over the age of 75 account for only 6.5% of COVID-19 cases, the same age group accounts for approximately 60% of COVID-19 deaths.[16] And diabetes and hypertension are both associated with a potential increased risk for severe illness from COVID-19.[17] Furthermore, racial and ethnic minority groups are disproportionately infected with COVID-19. While only 12% of the United States population is Black, Black patients account for 44% of people hospitalized with COVID-19.[18] In short, COVID-19 presents a tremendous danger to older individuals, those suffering from underlying conditions, and those from racial and ethnic minority groups.

C. Correctional Facilities Are at a Heightened Risk for the Spread of COVID-19

Correctional facilities such as Coyote Ridge, which are enclosed environments in which it is impossible to fully implement and enforce social distancing guidelines, are at a heightened risk for the spread of COVID-19. Indeed, numerous public health officials have recognized that outbreaks of contagious diseases are more common in correctional

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[16] Centers for Disease Control and Prevention, *COVID Data Tracker: Demographic Trends of COVID-19 cases and deaths in the US reported to CDC* (last accessed Feb. 20, 2021), https://covid.cdc.gov/covid-data-tracker/#demographics.

[17] Centers for Disease Control and Prevention, *COVID-19: People with Certain Medical Conditions* (Feb. 3, 2021) https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.

[18] Centers for Disease Control and Prevention, *COVID-19 Racial and Ethnic Health Disparities* (updated Dec. 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-hospitalization.html.

settings than in communities at large.[19] COVID-19 has been no exception. One out of three prisoners in Washington has tested positive, a rate over 8 times higher than the state as a whole.[20]

The risk for widespread contagion is exacerbated by the fact that staff, visitors, contractors and vendors all pass between communities and detention facilities, and each group can bring infectious diseases into those facilities. Moreover, if incarcerated people themselves must make court appearances, they risk contracting infections and introducing them into the facility upon return. These factors, all of which make it effectively impossible for correctional facilities to protect themselves from outbreaks, are made worse by the fact that it is difficult to identify and isolate those individuals who are infected with COVID-19, because they may suffer from only mild symptoms or even be entirely asymptomatic, while still be carrying and spreading the disease.

The unique attributes of prisons also make it challenging to adopt and implement the mitigation efforts that have become a necessary

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[19] *See* David Reuter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/; Bianca Malcolm, *The Rise of Methicillin-Resistant Staphylococcus aureus in U.S. Correctional Populations*, Journal of Correctional Health Care (May 13, 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3116074/; Stephanie M. Lee, *Nearly 900 Immigrants Had The Mumps In Detention Centers In The Last Year*, Buzzfeed News (Aug. 29, 2019) https://www.buzzfeednews.com/article/stephaniemlee/mumps-ice-immigrant-detention-cdc.

[20] Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (last accessed Feb. 19, 2021), https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.

safeguard of life outside these facilities. Enforcing social distancing, the hallmark of the United States' COVID-19 prevention efforts, has proven difficult in such carceral settings. Incarcerated individuals share close quarters, including dining halls, bathrooms, showers, and other common areas, each presenting dangerous opportunities for transmission.[21] Additionally, poor ventilation within prisons promotes the transmission of viruses, like SARS-CoV-2, that spread primarily via respiratory droplets. Other hygiene-based prevention strategies are similarly ineffective in a correctional setting. Incarcerated people do not typically have access to sufficient soap and alcohol-based sanitizers to engage in the kind of frequent hand washing encouraged throughout the rest of the country. And staff often only sporadically clean or sanitize high-touch surfaces like door handles, light switches, or telephones.

Once an outbreak occurs, it is difficult for correctional facilities like Coyote Ridge to properly treat those who become infected or to limit the spread of the virus. COVID-19's most common symptoms are fever, cough and shortness of breath. Serious cases can develop that require invasive measures to improve respiratory function, including the use of highly specialized equipment like ventilators. While serious infections have

[21] Poor inmate hygiene has in previous years led to staph infection outbreaks, spread by, *inter alia*, the shared use of soap and towels and person-to-person contact via contaminated hands. *See* Management of Methicillin-Resistant Staphylococcus aureus (MRSA) Infections, Federal Bureau of Prisons Clinical Practice Guidelines, 1-2 (April 2012), https://www.bop.gov/resources/pdfs/mrsa.pdf.

developed in all demographics, they are much more likely to occur when in high-risk populations. The COVID-19 virus has put ventilators in high demand and short supply around the world, and the virus even has led to shortages of less specialized equipment such as face masks and gloves.[22]

The necessary clinical management for those infected with coronavirus, especially those in high-risk populations, is labor-intensive. It requires that nurses tend to a limited number of patients at a time, and may require physicians with specialized backgrounds in infectious diseases or respiratory, cardiac and kidney care. Correctional facilities such as Coyote Ridge are unable to address these needs. Moreover, a concentrated coronavirus outbreak puts significant strain on local hospitals. That problem will be dangerously exacerbated if correctional facilities such as Coyote Ridge do not act immediately to release those incarcerated individuals who are at the greatest risk of serious infection.

D. Coyote Ridge's Current Efforts to Combat COVID-19 Are Inadequate, Particularly for its Vulnerable Population

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[22] Karen Weise & Mike Baker, *'Chilling' Plans: Who Gets Care as Washington State Hospitals Fill Up?*, N.Y. Times (Mar. 20, 2020), http://nytimes.com/2020/03/20/us/coronavirus-in-seattle-washington-state.html. While product shortages are less extreme now than they were in the early months of the pandemic, the FDA still maintains a list of device shortages; the most updated lists identifies personal protective equipment, testing supplies and equipment, and ventilation-related products as being in short supply. *See* U.S. Food and Drug Administration, *Medical Device Shortages During the COVID-19 Public Health Emergency* (last updated Feb. 18, 2021), https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/medical-device-shortages-during-covid-19-public-health-emergency.

Coyote Ridge has already proven itself incapable of protecting its inmates and employees from COVID-19. The first COVID-19 case at Coyote Ridge was reported on May 14, 2020, after which there was a two-day delay before the affected units began quarantining. By the end of June 2020, the outbreak had spread to infect over 100 inmates and nearly 50 staff members.

While amici have not examined Mr. Williams, the Court of Appeals documented Mr. Williams' experience with coronavirus in its decision denying the Personal Restraint Petition. *In re Pers. Restraint of Williams*, 15 Wn. App. 2d 647 (2020). The court explained that after presenting with COVID-19 symptoms, Mr. Williams was transported to a hospital on June 9, 2020, where he tested positive for the virus. *Id*. at 656. His condition was serious; he received oxygen, antibiotics, and steroids, and was treated for kidney failure. *Id*. After seven days in the hospital, he was transferred to an inpatient setting where he received nursing care around the clock. *Id*. Mr. Williams was transferred again in July, this time to an intensive management unit at the Monroe Correctional Complex. *Id*. at 657. He did not return to Coyote Ridge until August 7, 2020. *Id*. At Coyote Ridge, Mr. Williams resides in a shared cell with three other men. *Id*. He is also frequently exposed to common spaces, such as the restroom and cafeteria. *Id*.

Coyote Ridge continues to see confirmed cases of COVID-19. To date, nearly 400 inmates and over 150 staff members have tested positive for coronavirus, with 12 of those positive inmate tests coming in the last 30 days.[23] As coronavirus continues to spread at Coyote Ridge, Mr. Williams remains in danger of becoming re-infected with COVID-19. While data about the risk of reinfection is still emerging, the Centers for Disease Control continues to recommend that all people continue to engage in prevention strategies such as social distancing and frequent handwashing, regardless of previous infection.[24] The risk of reinfection likely increases as time passes since a person's initial infection, and any immune system protection from previous exposure is unlikely to protect against new strains of the virus.[25] The risk is also higher in situations with continued widespread transmission of and exposure to COVID-19.[26]

V. Conclusion

For these reasons, Mr. Williams faces heightened risk of further harm and death if he remains incarcerated at Coyote Ridge. Because the prison is an enclosed environment shared by thousands of people,

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[23] *See* Washington State Department of Corrections, *COVID-19 Data* (last updated Feb. 19, 2021), https://www.doc.wa.gov/corrections/covid-19/data.htm.

[24] *See* Centers for Disease Control, *COVID-19: Interim Guidance on Duration of Isolation and Precautions for Adults with COVID-19* (last updated Feb. 13, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html.

[25] *Id*.

[26] *Id*.

including staff who go back and forth between the prison and the surrounding community, it is effectively impossible for Coyote Ridge to prevent the spread of COVID-19. *Amici* urge the Court to consider this information when assessing whether to grant Mr. Williams' Personal Restraint Petition.

Dated: March 2, 2021

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I hereby certify that on March 2, 2021, the foregoing document was electronically filed with the Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

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