NO. _____

IN THE
SUPREME COURT OF ALABAMA

IN RE STATE OF ALABAMA EX REL.

CHILDREN AND YOUTH ADVOCACY NETWORK

EMERGENCY ORIGINAL PETITION FOR EXTRAORDINARY RELIEF

Oral Argument Requested

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STATEMENT REQUESTING ORAL ARGUMENT

Petitioner, the Children and Youth Advocacy Network ("CYAN"), requests oral argument because it seeks unique and extraordinary relief in the face of an unprecedented public health crisis. In Alabama, COVID-19 has spread rapidly in jails, prisons, nursing homes, other congregate settings, and meat processing plants, where compliance with social distancing guidelines and recommended hygiene practices is impracticable. The Centers for Disease Control & Prevention warns that a second wave of COVID-19, likely to occur in the fall or winter, could be deadlier than the first. The virus will not spare children in Alabama juvenile facilities who continue to eat, sleep, and live in close proximity.

The Alabama Supreme Court should exercise its constitutionally created supervisory and administrative power to direct each judicial district to take reasonable and necessary measures to protect children in Alabama's juvenile facilities. Oral argument will help this Court resolve the unique issues presented and determine a remedy that will protect Alabama's children and public health during this crisis.

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STATEMENT OF THE CASE

A. Introduction

To protect Alabama's children and the public health, the Children and Youth Advocacy Network ("CYAN") petitions this Court to exercise its constitutional superintending authority over inferior courts and order them, like other high state courts have done, to reduce the number of children in Alabama's juvenile facilities. [App. Exs. E,F]. Given the many outbreaks of COVID-19 in congregate settings across Alabama,[1] it will only be a matter of time before the state joins 27 other states and the District of Columbia[2] with confirmed cases in juvenile facilities. Indeed, youthfulness does not immunize children from COVID-19 [App. Ex. B]. With the Centers for Disease Control ("CDC") warning of a second "deadlier" wave of COVID-19 that could last through the winter, the time to act is now.

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[1] *See 31 Ala. nursing homes report positive COVID-19 cases*, WSFA 12 NEWS (Apr. 6, 2020), https://bit.ly/3aMoWDG; *79 COVID-19 cases hit east Alabama nursing home hard*, WSFA 12 NEWS (Apr. 16, 2020), https://bit.ly/2zLrzc9; Phil Pinarski, *4th inmate tests positive for COVID-19, ADOC says*, CBS 42 (Apr. 22, 2020), https://bit.ly/2Shl1YP.

[2] Josh Rovner, *COVID-19 in Juvenile Facilities*, SENT'G PROJECT (Apr. 28, 2020), https://bit.ly/2yT970I.

Social distancing and vigilant hygiene are the only protective measures against COVID-19. Juvenile facilities are incapable of complying with these necessary measures to prevent the spread of COVID-19. [App. Ex. B]. For example, the Alabama Department of Youth Services ("DYS") domiciles hundreds of children in close quarters with other incarcerated young people and their facilities' staff.

Less than one month ago, DYS had 370 children in its custody with about 250 more children held in 12 county-operated regional detention centers.[3] From 2016 to 2019, one-third of DYS admissions were for probation violations.[4] Juvenile courts order children to regional facilities and residential treatment programs pre-adjudication, pending case resolution, and post-adjudication, which appear to be still receiving new admissions.[5]

While DYS, its contract facilities, and some regional detention centers have implemented helpful COVID-19 protocols, DYS and facilities' operators lack the one

[3] Conversation with Steven Lafreniere, Director, Ala. Dep't of Youth Servs. (Apr. 7, 2020).
[4] *Data & Analytics*, ALA. DEP'T. OF YOUTH SERVS., https://bit.ly/2KGWfgR (last visited Apr. 29, 2020).
[5] *DYS COVID-19 Weekly Update*, ALA. DEP'T OF YOUTH SERVS. (Apr. 20, 2020), https://bit.ly/2xiEqS0.

essential tool needed to fight the virus – space. Despite their good intentions, DYS and facilities' operators are ill-equipped to protect young people from the lethal virus that overwhelms healthcare systems nationwide. [*See* App. Ex. B].

Facility outbreaks also endanger facility staff, their families, and the broader public. Medical professionals have therefore called on state governors, courts, and departments of corrections to "[i]mmediately release children in detention and correctional facilities who can safely return to the home of their families and/or caretakers."[6]

To protect vulnerable Alabamians during this extraordinary public health emergency, Petitioners ask this Court to exercise its constitutional supervisory and administrative authority over inferior courts. *See* Article VI, §§140, and 150, Ala. Const. 1901. More specifically, Petitioners ask this Court to order and direct each judicial circuit in Alabama to implement reasonable, necessary, and immediate measures to reduce the number of children in juvenile facilities and protect public health. [App. Ex. G].

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

B. Summary of Petitioner

CYAN petitions this Court on behalf of the State of Alabama in the public interest to protect Alabama's children in juvenile facilities and Alabama's statewide public health during the global COVID-19 pandemic. CYAN is comprised of Alabama advocates and organizations committed to protecting the safety, health, education, and overall best interest of Alabama's children, including children with disabilities who are over-represented in the population of children in the juvenile justice system.

CYAN members include the Southern Poverty Law Center, the Alabama Disabilities Advocacy Program, the Alabama Criminal Defense Lawyers Association, and the Southern Juvenile Defender Center, who work to ensure that Alabama's legal system promotes the best interests of young people by centering rehabilitation as a primary function and using scientific research that proves children are physiologically different than adults.

C. Jurisdiction

The Supreme Court of Alabama has original jurisdiction over this Petition under Article VI, sections 140 and 150 of the Alabama Constitution of 1901 granting supervisory and administrative powers over all inferior courts. The Court's superintending power "is not limited by forms of procedure or by the writ used for its exercise." *Ex parte State ex. rel. Ala. Policy Inst.*, 200 So.3d 495, 510 (Ala. 2015) *abrogated on other grounds Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)(quoting P.V. Smith, Annotation, *Superintending Control Over Inferior Tribunals*, 112 A.L.R. 1351, 1356 (1938)). As a result, this Court may constitutionally consider the requested relief under these extraordinary circumstances as it already has in prior emergency orders during the COVID-19 pandemic.

STATEMENT OF FACTS

A. Background

The transmission of COVID-19 reached pandemic status on March 11, 2020.[7] According to the World Health Organization ("WHO"), there were 3,059,642 confirmed cases of COVID-19

[7] *Coronavirus Disease (COVID-2019) Situation Reports – 51*, WORLD HEALTH ORG. (Mar. 11, 2020), https://bit.ly/35eBen9.

worldwide and 211,028 confirmed deaths at the time of filing.[8] The United States has the highest number of reported COVID-19 cases in the world, with 1,064,836 confirmed cases and 61,680 deaths across the country.[9]

Governor Kay Ivey recognized the pandemic's threat to Alabama's children and communities by declaring a State of Emergency on March 13, 2020,[10] and closing schools for the rest of the 2019-2020 academic year.[11] The State Health Officer issued a "Stay at Home" order which expires on April 30, 2020.[12] As of April 30, 2020, Alabama health authorities have confirmed 6,943 cases and 267 deaths.[13] These numbers have increased since filing this petition and will continue to grow in the coming weeks and months. The State Department

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[8] *Coronavirus Disease (COVID-2019) Situation Reports – 93*, WORLD HEALTH ORG. (Apr. 22, 2020), https://bit.ly/2W7XwCM.
[9] *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://bit.ly/2VMHXS7 (last visited Apr. 29, 2020).
[10] Gov. Kay Ivey, Ala. Proclamation No. 2020-03-13 (Mar. 13, 2020), https://bit.ly/2KATSfq.
[11] Trisha Powell Crain, *Alabama schools closed for rest of year, instruction goes online*, AL.COM (Mar. 26, 2020), https://bit.ly/3bDjvIt.
[12] State Health Officer Scott Harris, Ala. Order of the State Health Officer No.2020-04-03 (Apr. 3, 2020), https://bit.ly/2Y4oGwV.
[13] *Alabama's COVID-19 Data and Surveillance Dashboard*, ALA. DEP'T OF HEALTH, https://bit.ly/2S9F0ZK (last visited Apr. 29, 2020).

of Health recognized that Alabama was not ready to resume "business as usual" by issuing a new "Safer at Home" order.[14] The Centers for Disease Control and Prevention ("CDC") warns that this is only the first wave, with a likely second wave lasting into the fall or winter which could be deadlier than the first.[15]

The virus poses a pernicious threat to Alabama's public health because there is no known vaccine or medication to treat it. Social distancing (maintaining physical separation of at least six feet from others) and vigilant hygiene, including handwashing and use of alcohol-based hand sanitizers are the only known measures for protection against COVID-19. Once infected, the treatments needed to fight the disease are greater than those for common influenza. [App. Ex. B]. A patient who does not die from COVID-19 can expect a prolonged recovery, including the need for extensive rehabilitation for profound kidney damage, lung damage, heart damage, and nervous system damage. [App. Ex. B].

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[14] State Health Officer Scott Harris, Ala. Order of the State Health Officer No.2020-04-28 (Apr. 28, 2020), https://bit.ly/3f56Yj9.

[15] Bob Fredericks, *Second coronavirus wave could be deadlier, CDC chief warns*, NEW YORK POST (Apr. 21, 2020), https://bit.ly/2S5wmv4.

Young people can contract the virus and face the same dangers as older people. [App. Ex. B]. On March 20, 2020, WHO Director General Tedros Adhanom Ghebreyesus warned that younger people are not spared the contagion.[16] In fact, worldwide, young people make up a "significant proportion" of patients requiring hospitalizations worldwide, sometimes admitted for weeks and dying as a result.[17]

One of the largest studies of pediatric COVID-19 patients showed about 6% of infected children and 11% of infected infants had severe or critical cases.[18] Already, data of reported cases shows an increase in child patients who require intensive care.[19] These cases include children and infants who suffered from respiratory failure, shock, encephalopathy, heart failure, coagulation dysfunction, acute kidney injury, and life-threatening organ dysfunction.[20]

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[16] Tedros Adhanom Ghbreyesus (@DrTedros), TWITTER (Mar. 20, 2020, 12:11 PM), https://bit.ly/2y3ismF.
[17] Stephanie Nebehay, *WHO Message to Youth on Coronavirus: 'You Are Not Invincible'*, REUTERS (Mar. 20, 2020), https://reut.rs/343yLvg.
[18] *See* Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China*, AM. ACAD. OF PEDIATRICS (Jul. 2, 2020), https://bit.ly/39hz1Yz.
[19] Virtual Pediatric Sys., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), https://covid19.myvps.org/.
[20] *See* Dong, *supra* note 18.

B. The COVID-19 pandemic poses dire health risks to children and staff in congregate settings.

The tragic spread of the virus within Alabama's poultry plants and in congregate care settings such as nursing homes, long term care facilities for veterans, and correctional institutions, shows the rapid transmission of COVID-19 in certain settings where people live or work in close quarters.[21] COVID-19 is highly contagious, and spreads through close personal contact mostly through respiratory droplets produced when an infected person coughs, sneezes, or speaks, or through contact with contaminated surfaces and objects.[22] It can spread asymptomatically.[23]

As the CDC has explained, correctional-type facilities present unique challenges for control of COVID-19 transmission among incarcerated and detained persons, staff,

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[21] *See* Amy Yurkanin, *'An absolute war' breaks out as coronavirus spreads in Alabama nursing homes*, AL.COM (Apr. 18, 2020), https://bit.ly/2Yj3G5Y; *45 Confirmed COVID-19 cases, 2 deaths at Ala. veterans homes*, WSFA 12 NEWS (Apr. 14, 2020), https://bit.ly/3aPxGcf; Amy Yurkanin, *Alabama chicken plants scramble to slow outbreaks of coronavirus*, AL.COM (Apr. 27, 2020), https://bit.ly/3aNcuDu; Mary Scott Hodgin, *Inside Alabama's Prisons, Fear of a Coronavirus Outbreak*, WBHM (Apr. 23, 2020), https://bit.ly/3eXufn3.

[22] *How Coronavirus Spreads*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 1, 2020), https://bit.ly/3cZzErL.

[23] *Id.*

and visitors.[24] Congregate youth detention settings and correctional facilities have communal spaces, many medically vulnerable residents, and poor infection control, poor access to quality medical care, poor ventilation, and poor hygiene.[25] COVID-19 could claim the lives of about 100,000 more people than current projections stipulate if public officials and courts do not immediately reduce jail populations.[26]

Consistent with these projections, COVID-19 cases in juvenile facilities are rising:

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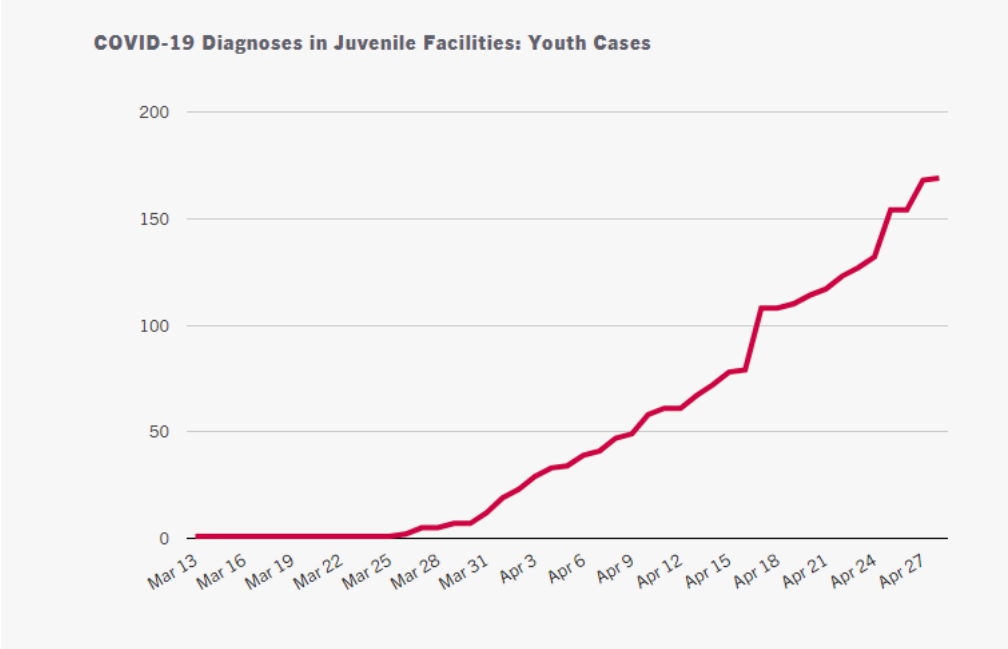
[24] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities ("CDC Guidance")*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 23, 2020), https://bit.ly/2ygqU1k.

[25] *See, e.g.*, Joseph Bick, *Infection Control in Jails and Prisons*, 45 CLINICAL INFECTIOUS DISEASES 1047, 1047 (Oct. 2007), https://bit.ly/2QZA494 (in jails "[t]he probability of transmission . . . is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise"); *see also* Claudia Lauer & Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, ASSOCIATED PRESS (Mar. 7, 2020), https://bit.ly/2R17fch; Connor Sheets, *Alabama prison system's COVID-19 plan anticipates widespread infection, deaths, National Guard intervention*, AL.COM (Apr. 5, 2020), https://bit.ly/35fV4yp.

[26] *COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures to Reduce Jails*, AM. C.L. UNION (Apr. 22, 2020), https://bit.ly/2KMqYsI.



[27]

In a Virginia youth detention facility, 25 children tested positive for the virus.[28] In New York City, at least three staff members working at juvenile correctional facilities contracted the virus and were hospitalized.[29] Nationwide, at least 169 detained young people[30] and 300 staff have contracted the virus in juvenile facilities.[31]

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[27] Josh Rovner, *COVID-19 in Juvenile Facilities*, THE SENT'G PROJECT (Apr. 28, 2020), https://bit.ly/2yT970I.
[28] Mallory Noe-Payne, *Virginia Detention Facility Overwhelmed by Coronavirus*, NAT'L PUB. RADIO (Apr. 20, 2020), https://n.pr/2S5LDfo.
[29] Eileen Grench, *Three Juvenile Detention Staff Test Positive for COVID-19, But No Teens Released*, THE CITY (Mar. 20, 2020), https://bit.ly/2UWGGGC.
[30] THE SENT'G PROJECT, supra note at 27.
[31] *See id.* (confirming 24 states report infections of facilities staff, 14 of these states also report infections of confined youth); *see also, e.g.*, The News Serv. of Fla.,

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

Alabama's juvenile facilities, residential treatment centers, and other congregate care facilities, risk becoming hotbeds of contagion. Children and staff in detention or correctional facilities are at heightened risk of COVID-19 infection because they lack the necessary space to avoid the contagion.

Children eat, sleep, and live each day in close contact with each other and staff members. Some Alabama juvenile facilities have dormitory-style living with 10 or more young people sleeping and living in one room, and are near capacity, making it impossible for youth to maintain distance. DYS and detention facilities continue to admit children, risking the introduction and spread of COVID-19 with each entry. Staff, probation officers, law enforcement, and healthcare personnel interact with young people in these facilities daily, and

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Infections of juvenile justice workers increase, CBS 12 (Apr. 20, 2020), https://bit.ly/2VNFXcl; Eileen Grench, *COVID Kills Staffer At Juvenile Center Where Youth Are Being Sent For Safety*, THE CITY (Apr. 9, 2020), https://bit.ly/2yZwO7l; Carol Marbin Miller, *As coronavirus breaches Florida juvenile justice staff, even judges kept in the dark*, MIAMI HERALD (Mar. 30, 2020), https://hrld.us/2KHhIWX.

then return to their homes and communities. While the CDC guidance recommends "medical isolation of confirmed or suspected COVID-19 cases,"[32] few state facilities have the proper space, capacity, or medical expertise for such quarantines. [App. Ex. C].

Problems with sanitation in youth facilities heighten the risks. The CDC instructs that individuals should wash their hands for 20 seconds regularly, and after sneezing, coughing, blowing their nose, eating or preparing food, before taking medication, and after touching garbage.[33] The CDC also instructs that staff should clean and disinfect commonly touched surfaces and shared equipment several times per day.[34] In juvenile facilities, children share toilets, sinks, and showers, without disinfection between each use and it is unclear whether staff regularly decontaminate surfaces. The potential lack of access to proper sanitation, combined with shared bathrooms and sinks, and regular close contact with other young people and staff creates an intolerably high risk for viral transmission.

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[32] CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 22.
[33] *Id.*
[34] *Id.*

2. Attempts to limit the spread of COVID-19 in confinement place Alabama children at substantial risk of serious harm.

For many facilities, solitary confinement is the only way to achieve social distancing.[35] Experts are clear that isolation can lead to severe mental and physical harm. [App. Ex. C].[36] Even young people not placed in isolation will be deprived of education, counseling, and other programming as facilities limit personal contact and increase physical distance. Detained children may be left with no forms of social, educational, or physical activity at all, due to family separation and isolation.

The harms of isolation and programming deprivation are devastating to adolescents and teenagers who are experiencing

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[35] *See Update from the Florida Department of Juvenile Justice Regarding COVID-19*, FLA. DEP'T OF JUV. JUST. (Apr. 22, 2020), https://bit.ly/3aJCsrr("if a youth becomes symptomatic, he or she is isolated from other youth"); Mary Jane Skala and Kim Schmidt, *Three YRTC teens test positive for COVID-19, are isolated*, KEARNEY HUB (Apr. 9, 2020), https://bit.ly/2zIS81t (Nebraska's primary juvenile facility compels all infected children into isolation); Nidia Bautista, *US: Calls grow to release detained youth amid coronavirus crisis*, AL JAZEERA (Apr. 7, 2020), https://bit.ly/2yXQg4I(reporting on isolation and quarantining practices in California).

[36] *See also* Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 ANN. REV. PSYCHOL. 187, 190 (2014), https://bit.ly/2R0My04.

the "second period of heightened malleability" in their brain development.[37] As a result, adolescents and teenagers are uniquely responsive to environmental changes and uniquely susceptible to harm from adverse experiences due to their ongoing brain development.[38] If there is "[a] lack of stimulation or aberrant stimulation" for them during this period, the results can lead to "lasting effects on physical and mental health in adulthood."[39] These young people especially need positive social interactions to help them "develop a healthy functioning adult social identity" and build their social skills,[40] so that they can successfully "reintegrate into the broader community upon release" from confinement.[41] [*See also* App. Ex. C].

Children in juvenile facilities are at graver risk of psychological harm because of the stress surrounding the COVID-19 outbreak. The CDC recognizes the psychological

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[37] Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 TRENDS COGNITIVE SCI. 558, 559 (2015).
[38] Jessica Feierman, et al., *Unlocking Youth: Legal Strategies to End Solitary Confinement*, JUV. LAW CENTER (2017), https://bit.ly/2KGWmJg.
[39] *Id.*
[40] Blakemore, *supra* note 36, at 199.
[41] Jean Casella and James Ridgeway, *Children Spend Months in Solitary Confinement in Texas Jails*, SOLITARY WATCH (May 10, 2012), https://bit.ly/2ySU0UT.

threat the COVID-19 pandemic poses, recommending that parents reassure children they are safe and ensure that they take breaks, get plenty of sleep, exercise, and eat well.[42] Similarly, the WHO recommends that care providers keep children close to their parents and family and avoid separating children and their caregivers as much as possible.[43] Juvenile facilities are unable to adequately support the mental health needs of young people during the pandemic.

3. Children in juvenile facilities are at greater risk of COVID-19 due to underlying physical and mental health conditions.

Many children in Alabama's juvenile facilities have underlying health issues and disabilities[44] that render them especially vulnerable to serious harm in an outbreak. COVID-19 is especially damaging and deadlier to individuals with underlying medical conditions and disabilities, including

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[42] *Coronavirus Disease 2019 (COVID-19): Stress & Coping*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://bit.ly/3aBbhiI.
[43] *Helping children cope with stress during the 2019-nCoV outbreak*, WORLD HEALTH ORG., https://bit.ly/2KOuxhW.
[44] *See Youths with Intellectual and Developmental Disabilities in the Juvenile Justice System*, OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION (May 2017), https://bit.ly/2W9TA4t (according to a federal government report, around one-third of all incarcerated children have an intellectual, cognitive, or emotional disability).

lung diseases (such as asthma), heart disease, chronic liver or kidney disease (including patients with hepatitis and those requiring dialysis), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (such as sickle cell disease), inherited metabolic disorders, stroke, and developmental delay.[45] People with these conditions are at an increased risk of developing serious complications or dying from COVID-19, regardless of age. [App. Ex. B]. Children in juvenile facilities are often medically vulnerable, have disabilities, or both, with asthma the most commonly diagnosed and other disabilities which may render these children incapable of complying with hygiene and distancing rules effectively.[46] And children in congregate settings have high likelihoods of underlying mental health issues[47] or have experienced trauma that renders them

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[45] *See COVID-19: Who's at higher risk?*, MAYO CLINIC (Apr. 9, 2020), https://mayocl.in/2zw5wpE.

[46] *Comm. on Adolescence, Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 PEDIATRICS 799 (2001), https://bit.ly/2UxTW5y; Nicole Wetsman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention*, JUV.JUST. INFO. EXCHANGE (July 30, 2018), https://bit.ly/2Jq7Os7.

[47] Matthew C. Aalsma, et al., *Preventive Care Use Among Justice-Involved and Non-Justice-Involved Youth*, PEDIATRICS (2017), https://bit.ly/3deHaPV.

especially vulnerable to damage from isolation and family separation. [App. Ex. C].

Finally, the harms of the pandemic in juvenile facilities will disproportionately impact Black, Latinx, and Native American children. Black children are five times more likely to be detained or committed than White children in Alabama.[48] Further, Black and Latinx children suffer from most major chronic diseases including asthma, diabetes, obesity, and cardiovascular issues, at higher rates than their White peers.[49] Underlying health issues like these, combined with the poor health care access, high poverty rates, and other factors disproportionately experienced by children of color, all contribute to the substantial risk of serious harm posed by a COVID-19 outbreak in congregate facilities. Gov. Ivey admitted Black Alabamians comprise nearly half the state's

[48] *See Unbalanced Youth Justice*, W. HAYWARD BURNS INST., https://bit.ly/2wQSm5z.
[49] James H. Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, BIOMED RES. INT'L (2013), https://bit.ly/2UP2Ydb.

confirmed deaths,[50] even though Black people constitute only 26.8% of the state's population.[51]

C. Courts in other jurisdictions recognize that reducing the number of detained children is the only way to prevent substantial harm and community spread.

Nationwide, courts have begun limiting populations in juvenile facilities. Hearings are underway in Chicago to release confined young people.[52] California's governor issued an executive order halting all intake of youth into the state's juvenile correctional settings and prisons.[53] In Georgia, the Clayton County juvenile court issued an order limiting detention[54] and in Milwaukee, Wisconsin, emergency

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[50] PBS Newshour, *WATCH LIVE: Alabama Governor Kay Ivey gives coronavirus update -- April 28*, YOUTUBE (Apr. 28, 2020), https://bit.ly/3f7Z0pw.

[51] *Quick Facts Alabama*, US CENSUS BUREAU, https://www.census.gov/quickfacts/AL (last visited Apr. 29, 2020).

[52] Annie Sweeney & Megan Crepeau, *Hearings Start on Releasing Some Youths from Cook County Juvenile Detention Over COVID-19 Fears*, CHI. TRIBUNE (Mar. 24, 2020), https://bit.ly/2yiPC16.

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

[54] Judge Steven Teske (@scteskelaw), TWITTER (Mar. 28, 2020, 9:32 AM), https://bit.ly/2w2nQ8m.

hearings were held to release children.[55] As a result of COVID-19, high courts in Pennsylvania and Maryland have issued orders to inferior courts, directing them to assess children for release from custody and to ensure that incarcerated children are housed safely in facilities. Similarly, in the adult system, courts began to recognize the importance of immediately reducing jail and prison populations.[56]

The CDC hails social distancing as the "cornerstone of reducing transmission of respiratory diseases such as COVID-19."[57] But social distancing is impossible in these settings leaving children in juvenile facilities across Alabama in danger.

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[55] Liz Robbins, *Coronavirus Prompts Urgent Calls for Minors in Detention to be Released*, THE APPEAL (Mar. 30, 2020), https://bit.ly/2xF9Txs.

[56] The Supreme Courts of New Jersey, Montana, South Carolina, and Washington all issued orders to reduce jail populations. Torevent new admissions to county jails, the chief judge of Maine's trial courts, with the approval of the chief justice of the state's supreme court, vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to appear. In Maryland and Colorado, executive officers urged courts to take similar measures. In other jurisdictions, including Cuyahoga County, Ohio, Los Angeles, California, Alameda and Santa Clara, California, Jefferson County, Colorado, and Larimer, Colorado, local authorities have acted to sharply reduce prison populations.

[57] CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 24.

STATEMENT OF ISSUES

Petitioner asks this Court to exercise its constitutionally created supervisory and administrative power by directing each judicial district to take reasonable and necessary measures to reduce the number of children in Alabama's juvenile facilities to prevent widespread contagion and protect public health. Under these extraordinary circumstances, extraordinary relief from this Court is necessary. Without prompt guidance from this Court, the varied responses among individual judicial districts will undermine the state's efforts to control this outbreak, lead to fundamental inequities, and leave many children and communities vulnerable to serious harm.

To mitigate the harm that the COVID-19 pandemic will inflict upon detained children, detention facility staff, Alabama communities, and the public, Petitioner asks this Court to exercise its superintending control and order Alabama's inferior courts to immediately:

A. Work with state agencies and county stakeholders to begin the review process detailed in Appendix Exhibit G to identify children and groups of

children for release from juvenile facilities without threatening public safety;

B. Ensure that juvenile facilities that continue to house children in Alabama comply with CDC guidance on management of COVID-19 in correctional and detention facilities, provide medical and mental health care, and provide preventive education;

C. Develop safe placement plans for released youth;

D. Provide publicly available reporting on courts' compliance with this Court's order; and

E. Meet, confer, and propose permanent rules of juvenile and administrative procedure that addresses custodial circumstances for children in public health emergencies.

STATEMENT WHY RELIEF SHOULD ISSUE

A. This Court has the legal authority to order the requested relief.

The Supreme Court of Alabama has inherent and expansive powers of supervision, control, and administration over inferior courts in the State. Ala. Const. Art. VI §§ 140, 150. Superintending control is an "extraordinary power," which is "so general and comprehensive that . . . [i]t is

unlimited, being bound only by the exigencies which call for its exercise." *Ex parte State,* 200 So.3d at 510. This Court, "having authority to exercise it will, by virtue of it, possess the power to invent, frame, and formulate new and additional means, writs, and processes whereby it may be exerted." *Ex parte State,* 200 So.3d at 510; *see also Piccolo v. Piccolo*, 251 Ala. 483, 487 (Ala.1948) (citing § 140(b) to create and issue a supersedeas order to serve the best interests of a child in a custody proceeding).

Supervisory power is distinct from, and much broader than, this Court's appellate jurisdiction. *See Thompson v. Lea,* 28 Ala. 453, 463 (1856) (finding that the Supreme Court's appellate jurisdiction and its superintending control over inferior tribunals are "distinct things, and must not be confounded" and stating that "'[a] general superintendence and control of inferior jurisdictions' is, by the constitution, granted to this court unconditionally"). Exercising the supervisory authority is appropriate in cases of "more than ordinary magnitude and importance" that present a need for immediate, uniform relief. *See Ex parte State,* 200 So.3d at 510.

This Court's expansive powers also include the authority to make rules of practice and procedure for its own courts. *See, e.g.*, *Pankey v. City of Mobile*, 35 So. 2d 497, 499 (Ala. 1948) (finding that the Supreme Court's supervisory authority under Section 140 "includes by implication the power to make rules"). The legislature enables this inherent power in the Alabama Code stating, "The Supreme Court shall have authority ... [t]o make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts." Ala. Code § 12-2-7(4). This authority empowers the Court to adopt procedural rules to ensure that a statutory scheme follows constitutional requirements. *See, e.g. Beck v. State*, 396 So.2d 645 (Ala. 1980) (finding that the Alabama Supreme Court has the power to adopt procedural rules governing sentencing proceedings in capital cases).

The COVID-19 public health crisis requires immediate, statewide action by this Court to prevent significant harm to incarcerated children, staff, and the community. This Court has already exercised its extraordinary supervisory and administrative power to protect the public from the COVID-19 pandemic. In five emergency orders since March 12, 2020, this

Court has declared a judicial state of emergency and directed inferior courts to close courthouses, cancel trials, and conduct hearings by videoconference under its "inherent constitutional and statutory authority" under Article VI.[58] Similar action must protect public health and the constitutional rights of children in juvenile facilities, residential treatment centers, and other carceral settings.

B. This Court has the constitutional obligation to protect the health of children in Alabama's custody and their constitutional rights.

The State's affirmative constitutional obligation to ensure the safety of young people in secure state custody empowers this Court to provide necessary remedies to protect them from the pandemic. "Children have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) ("'[O]ur

[58] *In re: COVID-19 Pandemic Emergency Response*, Admin. Order (Mar. 13, 2020),https://bit.ly/3eWKeSa; *In re:COVID-19 Pandemic Emergency Response*, Admin. Order No. 2 (Ala. Mar. 15, 2020), https://bit.ly/3aMo69J; *In re:COVID-19 Pandemic Emergency Response*, Admin. Order No. 3 (Ala. Mar. 17, 2020), https://bit.ly/3bE9x9F; *In re:COVID-19 Pandemic Emergency Response*, Admin. Order No. 4 (Ala. Mar. 17, 2020), https://bit.ly/357FIfd; *In re:COVID-19 Pandemic Emergency Response*, Admin. Order No. 5 (Ala. Apr. 2, 2020), https://bit.ly/2VCtOqr.

history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults.") (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). The basic principle that the "distinctive attributes of youth" require heightened Constitutional protections is widely recognized. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 471 (2012) ("[C]hildren are constitutionally different from adults for purposes of sentencing."); *J.D.B.*, 564 U.S. at 272 (explaining that children "'are more vulnerable or susceptible to . . . outside pressures' than adults," and adopting a "reasonable child" standard for determining the scope of *Miranda* protections) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)) (ellipses in original).

Moreover, failing to protect children from the pandemic violates their right to due process. The State has a heightened duty to any pretrial detainee. *Mays v. Dart*, 2020 WL 1987007, 23 (N.D. Ill. 2020). Because they have not been "convicted of any crimes," pretrial detainees cannot face conditions that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535, 541 (1979); *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015) (clarifying that the Fourteenth Amendment excessive force standard applicable to

pretrial detainees is indeed more protective than the Eighth Amendment standard); *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)(clarifying that involuntarily committed individuals "are entitled to more considerate treatment and conditions of confinement" than individuals post-conviction whose conditions of confinement are "designed to punish").

Based on the U.S. Supreme Court's reasoning in *Youngberg* and *Bell*, courts around the country conclude that the Fourteenth Amendment also provides heightened protections to children held post-adjudication. Like pretrial detainees and involuntarily committed patients, children in state custody because of a delinquency adjudication are not confined for punitive purposes. *See, e.g., H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1084–85 (11th Cir. 1986) ("the due process clause forbids punishment of pretrial detainees").

Under the Fourteenth Amendment, young people must be protected from punishment and known risks of harm. *See, e.g., Keith v. Dekalb Co. Ga.*, 749 F.3d 1034, 1044 n.35 (11th Cir. 2014) ("'the due process rights of a [pretrial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner.'") (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *Helling v.*

McKinney, 509 U.S. 25, 33 (1993)(the government violates the Eighth Amendment when it crowds prisoners into cells with others who have "infectious maladies") (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Exposing them to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

At the same time, the Fourteenth Amendment also guarantees children the right to treatment and rehabilitation. *See Youngberg*, 457 U.S. at 321–22; *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (children have a right to "rehabilitative treatment"; because the State has assumed the role of the parent such treatment must be "what proper parental care would provide"); *see also C.P.X. v. Garcia*, No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that the juvenile facility's failure to provide appropriate mental health care violates children's substantive due process rights under the Fourteenth Amendment). Depriving children of programming, education, and social interactions and keeping them isolated to achieve social distancing, will cause long-term psychological harm.

Furthermore, these deprivations unconstitutionally convert the children's custody from rehabilitative to punitive.

If children remain in facilities and residential treatment programs, then their right to counsel must be protected. *In re Gault,* 387 U.S. 1 (1967) (a child charged with a delinquency is entitled to representation and due process); ALA. CODE § 12-15-102. Alabama law mandates juvenile defenders meet with children prior to court proceedings, discuss case strategy and goals, and maintain privileged communications. *See* ALA. CODE §§ 12-15-102(5)- 202(f)(1). COVID-19 protocols cannot justify diminished child-attorney contact or diminished regard for attorney-client communications.

This Court can protect the health and constitutional rights of children in Alabama's juvenile facilities by immediately ordering inferior courts to act according to the relief sought.

CONCLUSION

For these reasons, this Court should exercise its expansive supervisory and administrative powers and grant the Petitioner's request for relief.

[Signatures on following page]

Respectfully submitted this 30th day of April, 2020.

s/ Brock Boone
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2020, I electronically filed a copy of the foregoing with the clerk of the Court and served a copy of the foregoing by emailing the same to the email addresses shown below.

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Appendix Index

Exhibit A

Code of Alabama
Official Recompilation of the Constitution of Alabama of 1901, as Amended (Refs & Annos)
Article VI. Judicial Department. (Refs & Annos)

Ala.Const. Art. VI, § 140
Alternatively cited as AL CONST Amend. No. 328

Sec. 140. The supreme court.

Currentness

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Credits
(Original § 140 repealed by Amendment 328; current § 140 derived from § 6.02, as added by Amendment 328.)

Ala. Const. Art. VI, § 140, AL CONST Art. VI, § 140
Current with amendments ratified through December 3, 2018.

End of Document

Exhibit B

DECLARATION OF DR. JULIE DEAUN GRAVES

I, Dr. Julie DeAun Graves, declare as follows:

1. My name is Julie DeAun Graves. I am a physician licensed to practice medicine in the states of Alabama, Florida, Maryland, Missouri, New Jersey, South Carolina, Texas, Virginia, Wisconsin, and in the District of Columbia. I am currently working in family medicine and public health private practice as the Associate Director of Clinical Services at Nurx. I have been certified by the American Board of Family Medicine since 1989.

2. I am a public health physician, previously serving as Regional Medical Director for the Texas Department of State Health Services for the Houston region, as Medical Services Coordinator for the Texas Department of Aging and Disability Services, and as a medical consultant to the Texas Medical Board. I managed the H1N1 influenza outbreak for the Texas State Supported Living Centers in which none of our 3000 residents contracted the illness, and oversaw public health efforts for the Houston region (population seven million) for Ebola virus, Zika virus, West Nile virus, highly pathogenic avian influenza, tuberculosis outbreaks, and natural disasters.

3. I obtained my medical degree and completed a surgical internship then family medicine residency at the University of Texas Southwestern Medical School in Dallas, Texas, then completed a fellowship in faculty development at the McLennan County Medical Education and Research Foundation in Waco, Texas. I earned a Master's degree in Public Health and a Doctor of Philosophy in Management, Policy, and Statistics at the University of Texas School of Public Health. I have

practiced family medicine and public health since 1989, and in 2018-2019 I was Associate Professor and Vice-Chair for Education at Georgetown University School of Medicine. At Nurx I care for patients seeking contraception, HIV (human immunodeficiency virus) prevention, sexually transmitted infection diagnosis and treatment, cervical cancer screening, and coronavirus (SARS-CoV-2, the virus that causes COVID-19) testing and treatment. I am a former member of the Public Health Committee of the Texas Medical Association and a former member of the Executive Board and current Governing Councilor of the American Public Health Association.

COVID-19

4. COVID-19 is an illness caused by the SARS-CoV-2 virus, which is a novel coronavirus that was first detected in humans during the outbreak (now a pandemic) we are experiencing now. The Centers for Disease Control and Prevention reports that as of April 29, 2020 there were 1,037,526 cases reported in the United States, with cases reported in every state and territory, and 58,264 reported deaths so far. See https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html , https://www.statista.com/statistics/1105914/coronavirus-death-rates-worldwide/ , and www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6. On March 18, 2020, there were 7,038 cases reported and 150 deaths.

5. The United States is in the early stages of the pandemic, and because there has been insufficient testing for cases, the reported cases numbers are lower than actual cases, despite the high probability that

there are many more infected individuals in the population. The spread of the virus is faster and more dangerous when people are in close quarters. People with health conditions such as diabetes, asthma, emphysema, heart disease, kidney disease, pregnancy, diabetes, cancer, HIV, and autoimmune diseases such as lupus and rheumatoid arthritis are at higher risk for severe illness, complications, and death from COVID-19. People over age 60 have higher death rates, but severe cases of illness and deaths are reported in people of all ages, including children. The ratio of cases of COVID-19 to deaths from this illness is much higher than for other contagious diseases such as influenza. The SARS-CoV-2 virus damages the lung tissue, which means that even those who recover need prolonged medical care and rehabilitation. They are likely to have permanent disability from loss of lung capacity. The heart itself can be infected, and kidneys and the nervous system can also be impacted and damaged permanently.

6. There is no vaccine and no effective treatment yet for COVID-19. We only have prevention as a tool to stop the pandemic. If people remain in congregate settings, most of them plus the staff who work with them will become infected, and many will die or have permanent disability. COVID-19 is transmitted from person to person by breathing in expired air that contains the droplets an infected person has coughed or the virus they have shed, or by touching a surface with the virus on it, unless there is full personal protective equipment: mask, gloves, gown, plus thorough hand washing before putting on the equipment and after removing it. The only way to avoid transmission is for people to distance themselves at least six feet from others (commonly referred to as “social distancing” or “physical distancing”). People should not be in large buildings full of many people, and people must practice frequent and thorough hand washing with adequate soap and water. If

we do not implement these two steps – physical distancing and hand washing – the pandemic will only continue to spread, and the number of deaths will continue to increase.

7. There is a national shortage of COVID-19 tests. Medical providers cannot test everyone who they believe should be tested, and so are presuming that people with a certain set of symptoms are positive. This is an appropriate and common situation with new infectious diseases and is a widely recognized strategy in public health disease control. Individuals and communities should not rely solely on the criteria of a positive COVID-19 test to implement precautions or quarantine symptomatic persons. A public health response requiring widespread preventive measure of physical distancing and appropriate hand washing along with contact tracing, isolation, and quarantine is our only tool to slow the spread of the virus.

8. While children may make up a minority of COVID-19 patients, children have died from COVID-19 and have also experienced serious medical complications that required ventilators and extended hospitalization. Additionally, children with pre-existing medical conditions such as asthma and diabetes are at heighted risk for serious complications, and the Government's brief does not identify any special measures that are being taken to protect these children.

9. There is no question that requiring children to remain detained in congregate care facilities is more dangerous than the travel required to release children to their homes. While there is level of risk in traveling at this time, the risk of exposure in congregate care environments is much higher. All of the risks of exposure during travel – such as persons coming within six feet and transmitting the virus through

respiratory droplets – also apply to congregate care environments, because multiple staff members are constantly entering and exiting the facility and there is potential for them to expose children to the virus. These children are at risk every single time a staff member or visitor walks into the facility – because any one of them could be an asymptomatic carrier of COVID-19. Even if juvenile and criminal justice facilities faithfully adhere to screening protocols to minimize the risk of transmission, there is still the risk that a staff member is an asymptomatic carrier. Children will be significantly safer in a home environment, where they can truly avoid public spaces and practice appropriate social distancing.

10. Many facilities are quarantining youth who exhibit coughing, fever, or difficulty breathing. This response is too late – if a child is not quarantined when there is an initial exposure, then there is much higher likelihood that the virus spreads around the facility, especially when everyone is in such close contact and social distancing is not possible.

CDC COVID-19 Guidance for Correctional and Detention Facilities

11. I have reviewed the CDC "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (CDC Detention Facility Guidance) issued April 17, 2020, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html. The CDC Detention Facility Guidance highlight many ways in which people in detention facilities and congregate environments are at a higher risk of contracting COVID-19.

12. The CDC Detention Facility Guidance acknowledges that "(i)ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced." Further, it states that "(t)here are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members."

13. The CDC Detention Facility Guidance instructs facilities to "implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally six feet between all individuals, regardless of the presence of symptoms," but acknowledges that "not all strategies will be feasible in all facilities." Social distancing does not work when it is only followed part of the time. The CDC's "Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19)" issued on April 14, 2020 states that "(d)ata are insufficient to precisely define the duration of time that constitutes a prolonged exposure. However, until more is known about transmission risks, it is reasonable to consider an exposure greater than a few minutes as a prolonged exposure. Brief interactions are less likely to result in transmission; however, clinical symptoms of the patient and type of interaction (e.g., did the patient cough directly into the face of the HCP) remain important" and "(e)xamples of brief interactions include: briefly entering the patient room without having direct contact with the patient or their secretions/excretions, brief conversation at a triage desk with a patient who was not wearing a facemask." Repeated

interactions, even brief, that occur throughout the day in these facilities, are each an independent opportunity for transmission of infection. Because it is not known whether people who have recovered from infection develop immunity to subsequent infections with COVID-19, and because transmission may occur when the infected person has no symptoms, each interaction between a staff member and a detainee and each interaction between two individual detainees or two individual staff members is an independent opportunity with the same risk of infection. The risks are additive with each interaction.

14. The CDC Detention Facility Guidance states that "The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent hand washing) may be limited and is determined by the supplies provided in the facility and by security considerations." Facilities are instructed to provide no-cost access to liquid soap (or bar soap), running water, and hand drying supplies.

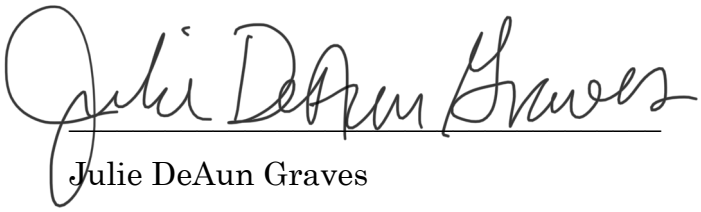
15. Detention facilities are instructed to "(o)ffer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza seasons." Preventing influenza cases in these facilities can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.

16. Even if all of the recommendations made in the CDC Detention Facility Guidance are followed, the conditions of detention are such that children in detention and correctional settings would still be at high risk of contracting COVID-19. Because this virus is transmitted through droplets, through the air, and on surfaces, and because people who do not have symptoms but are infected transmit the virus to others, even one infected person in a facility, either a detainee or a

staff member, can infect the majority of people in the facility. This is worsened by the crowded conditions in the facilities.

17. If we are to contain the spread of the COVID-19 virus, we must relocate as many people as possible out of congregate settings. If we prevent people from practicing adequate physical distancing from others and the other steps outlined above, institutional centers will become clusters in which high percentages of persons are infected with COVID-19. Such clusters not only endanger those who are immediately infected, but the health of those residing in the communities in which congregate facilities are located.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2020 in North Bay Village, Florida.



Julie DeAun Graves

Exhibit C

DECLARATION OF DR. CRAIG W. HANEY, PHD

I, Craig W. Haney, declare as follows:

1. I am a Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz in Santa Cruz, California, where I engage in research applying social psychological principles to legal settings, including the assessment of the psychological effects of living and working in institutional environments, especially the psychological effects of incarceration. I was a co-founder and co-director of the UC Criminal Justice & Health Consortium – a collaborative effort of researchers, experts and advocates from across the University of California system working to bring evidence-based health and healthcare solutions to criminal justice reform in California and nationwide.

2. I also have served as a consultant to numerous governmental, law enforcement, and legal agencies and organizations on jail- and prison-related issues. Those agencies and organizations include the Palo Alto Police Department, various California Legislative Select Committees, the National Science Foundation, the American Association for the Advancement of Science, the United States Department of Justice, the Department of Health and Human Services (HHS), the Department of Homeland Security, and the White House (under both the Clinton and Obama Administrations). In 2012, I testified as an expert witness before the Judiciary Committee of the United States Senate in a hearing that focused on the use and effects of solitary confinement and was appointed as a member of a National Academy of Sciences committee analyzing the causes and consequences of high rates of incarceration in the United States. My research, writing, and testimony have been cited by state courts, including the California Supreme Court, and by Federal District Courts, Circuit Courts of Appeal, and the United States Supreme Court.[1]

3. COVID-19 is a serious, highly contagious disease and has reached pandemic status. At least 2,544,792 people around the world have

[1] For example, see *Brown v. Plata,* 563 U.S. 493 (2011).

received confirmed diagnoses of COVID-19 as of April 23, 2020;[2] as of April 21, 2020, there were 802,583 confirmed cases in the United States.[3] At least 175,694 people have died globally as a result of COVID-19 as of April 23, 2020;[4] as of April 21, 2020, 44,575 have died in the United States.[5] These numbers are predicted by health officials to increase, perhaps exponentially. For example, the CDC estimated at one point that as many as 214 million people may eventually be infected in the United States, and that as many as 21 million could require hospitalization.[6]

4. The COVID-19 Pandemic poses such a threat to the public health and safety in the State of California that, on March 4, 2020, Governor Gavin Newsom declared a statewide State of Emergency/ On March 19, 2020, he ordered all California residents to stay home or at their place of residence except to facilitate certain authorized necessary activities.[7] His office has estimated that, in the absence of taking appropriate steps to mitigate the spread of the virus, as many as 56% of all Californians will contract it.[8]

5. COVID-19 is a novel virus. At present there is no vaccine and no cure for COVID-19. No one has immunity. Currently, the most

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

[3] Center for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

[4] *Supra,* fn. 2.

[5] *Supra,* fn. 3.

[6] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths,* N.Y. TIMES (Mar. 18, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html.

[7] Executive Department, State of California, Executive Order N-33-20, https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf

[8] Office of the Governor, "Letter to President Donald Trump" (March 18, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf.

effective way to control the virus is to use preventive strategies, including social distancing, in order to maximize our healthcare capacity to treat a manageable number of patients. Otherwise, healthcare resources will be overwhelmed and the Pandemic will certainly be exacerbated.

6. Social distancing presents serious challenges for everyone in every part of our society, but nowhere more than in penal institutions, where living conditions are unusually sparse, prisoners necessarily live in unescapably close quarters, and have unavoidable contact with one another. Juvenile institutions are no exception to this general institutional rule.

7. Moreover, jails and prisons are already extremely stressful environments for adult prisoners and for children who are confined in secure facilities.[9] Research has shown that these environments are psychologically and medically harmful in their own right, leaving formerly incarcerated persons with higher rates of certain kinds of psychiatric and medical problems.[10] In fact, incarceration

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[9] Much of this evidence is summarized in several book-length treatments of the topic. For example, see: Haney, C., *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. Washington, DC: American Psychological Association (2006); Liebling, A., & Maruna, S. (Eds.), *The Effects of Imprisonment*. Cullompton, UK: Willan (2005); and National Research Council (2014). *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press. In addition, there are numerous empirical studies and published reviews of the available literature. For example, see: Haney, C., Prison effects in the age of mass incarceration. *Prison Journal, 92*, 1-24 (2012); Johns, D., Confronting the disabling effects of imprisonment: Toward prehabilitation. Social Justice, 45(1), 27-55.

[10] E.g., see: Schnittaker, J. (2014). The psychological dimensions and the social consequences of incarceration. *Annals of the American Association of Political and Social Science, 651*, 122-138; Turney, K., Wildeman, C., & Schnittker, J., As fathers and felons: Explaining the effects of current and recent incarceration on major depression. *Journal of Health and Social Behaviour, 53(4),* 465-481 (2012). See, also: Listwan, S., Colvin, M., Hanley, D., & Flannery, D., Victimization, social support, and psychological well-being: A study of recently released prisoners. *Criminal Justice and Behavior, 37(10),* 1140-1159 (2010).

leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).[11]

8. The COVID-19 Pandemic presents penal institutions with an enormous challenge that they are ill-equipped to handle. Juvenile facilities in particular lack the operational capacity to address the needs of youth in custody in a crisis of this magnitude. They do not have the resources needed to provide youth with ready access to cleaning and sanitation supplies, or to ensure that staff sanitize all potentially contaminated surfaces during the day. Most lack the capacity to provide more than minimal emergency mental health or medical care. Yet the demand for such services in this crisis will grow, stretching already scarce treatment resources even further. In addition, juvenile facilities typically provide children in custody with very limited access to telephonic or other forms of remote visiting. However, these ways of connecting to others will become critically important if contact visiting is limited or eliminated. Furthermore, juvenile facilities cannot readily protect youth from contact with staff who regularly enter facilities after having been in the outside world. Staff members are at risk of contractracting COVID-19 and then transmitting it to both youth and other staff inside.

9. Penal settings have limited options to implement the social distancing that is now required in response the COVID-19 Pandemic. It is very likely that many of them will resort to the use of solitary confinement. Indeed, I have seen precisely this form of social distancing utilized as a matter of course in numerous correctional institutions throughout the country, where medical quarantines are conducted in prison infirmaries or other housing units by effectively placing prisoners in solitary confinement.

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[11] E.g., see: Binswanger, I., Stern, M., Deyo, R., et al., Release from prison: A high risk of death for former inmates. *New England Journal of Medicine, 356,* 157-165; Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behavior, 49(1),* 56-71; and Massolglia, M., & Remster, B., Linkages Between Incarceration and Health. *Public Health Reports, 134*(Supplement 1), 85-145 (2019); and Patterson, E. (2013). The dose-response of time served in prison on mortality: New York state, 1989-2003. *American Journal of Public Health, 103(3),* 523-528.

10. Yet the experience of solitary confinement inflicts an additional set of very serious harmful effects that significantly undermine mental and physical health. The scientific literature on the harmfulness of solitary confinement in jails and prisons is now widely accepted and the research findings are consistent and alarming.[12] This research has led a number of professional mental and physical health-related, legal, human rights, and even correctional organizations to call for severe limitations on the degree to which solitary confinement is employed—specifically by significantly limiting when, for how long, and on whom it can be imposed.[13]

11. Although there is some variation in the specific recommendations, virtually all of them call for the drastic reduction or outright elimination of the use of solitary confinement with juveniles.[14] That

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[12] These many studies have been carefully reviewed in a number of publications. For example, see: K. Cloyes, D. Lovell, D. Allen & L. Rhodes, Assessment of psychosocial impairment in a supermaximum security unit sample. *Criminal Justice and Behavior, 33*, 760-781 (2006); S. Grassian, Psychiatric effects of solitary confinement. *Washington University Journal of Law & Policy, 22*, 325-383 (2006); C. Haney, Restricting the use of solitary confinement. *Annual Review of Criminology, 1*, 285-310 (2018); C. Haney & M. Lynch, Regulating prisons of the future: The psychological consequences of solitary and supermax confinement. *New York Review of Law & Social Change, 23*, 477-570 (1997); and P. Smith, The effects of solitary confinement on prison inmates: A brief history and review of the literature, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441-528). *Volume 34.* Chicago: University of Chicago Press (2006).

[13] For a list of these organizations and their specific recommendations, see: Haney, C. (2018) Restricting the use of solitary confinement. *Annual Review of Criminology, 1*, 285-310; Haney, C., Ahalt, C., & Williams, B., et al. (2020). Consensus statement of the Santa Cruz summit on solitary confinement. *Northwestern Law Review*, in press.

[14] For example, in December 2015, the U.N. General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules") that, among other things, prohibited the use of solitary confinement for juveniles. See: Commission on Crime Prevention and Criminal Justice. 2015. *United Nations standard minimum rules for the treatment of prisoners.* New York: UN Economic and Social Council.

is, because of the categorically greater vulnerability of children to harsh conditions of confinement and the potentially irreversible mental and physical harm that they are more likely to experience, solitary confinement should rarely if ever be imposed on them. In fact, current California law significantly limits the use of solitary or solitary-like confinement[15] for juveniles to durations of no longer than four hours. In rare instances when longer times are absolutely necessary, in response to emergency or exigent circumstances, they must be limited to the shortest amount of additional time possible and, even then, always under the care of a licensed physician.[16] These severe limitations on the use of solitary confinement with children are critically important to acknowledge and adhere to in the face of the COVID-19 Pandemic and in the context of the social distancing steps that juvenile institutions are likely to engage in.

12. The COVID-19 Pandemic will be a traumatic experience for many, especially for children. In the case of children housed in juvenile institutions, this trauma will affect an already highly traumatized population. In addition to the traumatic effects of incarceration itself for children,[17] and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood "risk factors" or "adverse childhood experiences."[18] Thus, juvenile incarceration represents a form of "retraumatization" for many of them. And even this retraumatization can be made worse, for example by placement in

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[15] Juvenile facilities often use different terms for solitary confinement, such as "segregation," "isolation," "seclusion," and "room confinement." My statements about solitary confinement apply to these terms as well. (E.g. see, Sue Burrell and Ji Seon Song, Ending "Solitary Confinement" of Youth in California. *Children's Legal Rights Journal, 39*, 42, 45 (2019).)

[16] Calif. Welf. & Inst. Code § 208.3.

[17] For example, see: Sue Burrell, Trauma and the Environment of Care in Juvenile Institutions, *National Child Traumatic Stress Network* (2013).

[18] For example, see: Carly Dierkhising, Susan Ko, Briana Woods-Jaeger, et al., Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology, 4*, (2013)

solitary confinement. It is thus hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.

13. Indeed, the United States Center for Disease Control and Prevention (CDC) has acknowledged that the COVID-19 Pandemic poses a threat the mental as well as physical health of the nation, especially to its children and teens.[19] In order to mitigate the stressors created by the COVID-19 Pandemic, the CDC has recommended that parents and other caregivers undertake the following practices to support their children:[20]

- Take time to talk with your child or teen about the COVID-19 outbreak. Answer questions and share facts about COVID-19 in a way that your child or teen can understand.
- Reassure your child or teen that they are safe. Let them know it is ok if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you.
- Limit your family's exposure to news coverage of the event, including social media. Children may misinterpret what they hear and can be frightened about something they do not understand.
- Try to keep up with regular routines. If schools are closed, create a schedule for learning activities and relaxing or fun activities.
- Be a role model. Take breaks, get plenty of sleep, exercise, and eat well. Connect with your friends and family members.

14. Similarly, the World Health Organization (WHO) also has recognized that the COVID-19 poses an existential threat to the

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[19] Center for Disease Control and Prevention, *Manage Anxiety & Stress*, https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html

[20] *Ibid.*

mental health of children.[21] The WHO recommended that care providers undertake the following practices to support the mental health of children in their care:[22]

- Help children find positive ways to express feelings such as fear and sadness. Every child has their own way to express emotions. Sometimes engaging in a creative activity, such as playing, and drawing can facilitate this process. Children feel relieved if they can express and communicate their feelings in a safe and supportive environment
- Keep children close to their parents and family, if considered safe for the child, and avoid separating children and their caregivers as much as possible. If a child needs to be separated from their primary caregiver, ensure that appropriate alternative care is provided and that a social worker, or equivalent, will regularly follow up on the child. Further, ensure that during periods of separation, regular contact with parents and caregivers is maintained, such as twice-daily scheduled phone or video calls or other age-appropriate communication (e.g., social media depending on the age of the child).
- Maintain familiar routines in daily life as much as possible, or create new routines, especially if children must stay at home. Provide engaging age appropriate activities for children, including activities for their learning. As much as possible, encourage children to

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[21] World Health Organization, *Helping children cope with stress during the 2019-nCoV outbreak,* https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff_2

[22] World Health Organization, *Mental Health and Psychosocial Considerations During COVID-19 Outbreak,* https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf

continue to play and socialize with others, even if only within the family when advised to restrict social contract.

- During times of stress and crisis, it is common for children to seek more attachment and be more demanding on parents. Discuss COVID-19 with your children using honest and age appropriate way. If your children have concerns, addressing those together may ease their anxiety. Children will observe adults' behaviors and emotions for cues on how to manage their own emotions during difficult times.

15. The COVID-19 Pandemic is a natural disaster that has already had a significant worldwide impact whose catastrophic effects are beginning to mount in the United States. The Pandemic has traumatic psychological as well as physical consequences. The consequences are especially severe for children who are not only experiencing the Pandemic but also trying to comprehend its magnitude and implications. They are seeking safety in an otherwise suddenly unsafe-feeling world. Not surprisingly, the CDC and WHO both recommend intense and expansive forms of family support, caring, and coping to ameliorate these traumatic effects. Yet this kind of familial support, caring, and coping is simply unavailable in (and in essence precluded by) juvenile institutions.

16. Thus, it should be obvious that few if any of the CDC or WHO recommendations for the appropriate way to address the needs of children in light of the present Pandemic can be effectively implemented in a secure juvenile facility. Of course, their recommendations for optimizing children's meaningful family contacts and ensuring that children are able to follow as normal a routine as possible should apply no less forcefully to children who have been placed in juvenile institutions. In fact, for the aforementioned reasons, in light of the likely past trauma they have suffered and the traumatic nature of their present circumstances, the recommendations apply with even more logic and force.

17. As I have noted, the continued detention/confinement of children during the COVID-19 Pandemic constitutes a grave threat to their physical and mental health. Young people confined to juvenile facilities are vulnerable emotionally; they are separated from their

families; they likely face unhealthy and unsanitary physical conditions in such institutions, which will exacerbate any existing medical conditions and heighten the risk of their contracting and transmitting coronavirus; and their incarceration in the midst of this crisis will likely result in their placement in settings that are the equivalent of solitary confinement, placing them at even greater risk. The combination of these factors argues in favor of removing them from secure institutions and returning them to their families for proper protection and care. Of course, the release of children from secure institutions can and should be done with adequate measures to protect them, their families and the broader community.[23]

18. With these things in mind, it is my professional opinion that returning incarcerated children to their families, where they can receive the kind of familial support that the CDC and WHO recommend, is the best possible course of action to take in response to the COVID-19 Pandemic.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2020 at Santa Cruz, California.

Craig W. Haney

DR. CRAIG W. HANEY, PH.D., J.D.

[23] *See* Council for State Governments, Justice Center, "Seven Questions About Reentry Amid COVID Confusion."

Exhibit D

IN THE SUPREME COURT OF ALABAMA

IN RE: COVID-19 PANDEMIC EMERGENCY RESPONSE

March 13, 2020

ADMINISTRATIVE ORDER SUSPENDING ALL IN-PERSON COURT PROCEEDINGS FOR THE NEXT THIRTY DAYS

The President of the United States having declared a national emergency and the Governor of Alabama having declared a state of emergency for the State of Alabama amid the Coronavirus Disease 2019 ("COVID-19") pandemic, the Supreme Court of Alabama, pursuant to the authority vested in it under Article VI, §§ 139, 140, and 150, Ala. Const. 1901, hereby declares a state of emergency for the entire Judicial Branch of the State of Alabama.

The local and state courts of the State of Alabama are open and will remain open under all circumstances, subject to the provisions of this order.

Under the constitutional, statutory, and inherent authority of the Supreme Court, we adopt the following provisions. All in-person proceedings in all state and local courts in Alabama, including, but not limited to, proceedings in the circuit court, district court (including cases on the small claims docket), juvenile court, municipal court, probate court, and appellate courts, are suspended beginning Monday, March 16, 2020 through Thursday, April 16, 2020, subject to the exceptions below.

Exceptions to this suspension of in-person court proceedings include, but are not limited to:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters and plea agreements for incarcerated individuals.
- Civil and criminal jury trials that are in progress as of March 13, 2020.
- Proceedings related to protection from abuse.
- Proceedings related to emergency child custody and protection orders.
- Department of Human Resources emergency matters related to child protection.

- Proceedings related to petitions for temporary injunctive relief.
- Proceedings related to emergency mental health orders.
- Proceedings related to emergency protection of elderly or vulnerable persons.
- Proceedings directly related to the COVID-19 public health emergency.
- Any emergent proceeding as needed by law enforcement.
- Other exceptions as approved by the Chief Justice.

The presiding judge or the designee of the presiding judge of each judicial circuit is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge.

Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. Nevertheless, all judges and court clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing. Any Alabama state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended until April 16, 2020.

This order expressly does not prohibit court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings.

Any deadlines that are set by or subject to regulation by this Court that are set to expire between March 16, 2020 and April 16, 2020, are hereby extended to April 20, 2020. This Court cannot extend any statutory period of repose or statute of limitations period.

Orders of protection and temporary injunctions that would otherwise expire between March 16, 2020, and April 16, 2020, are hereby extended until April 16, 2020, unless the trial court elects to enter an order to the contrary.

This order is subject to modification, revision, or rescission by the Supreme Court at any time during the time periods stated herein.

Parker, C.J., Bolin, Shaw, Wise, Bryan, Stewart, and Mitchell, JJ., concur.

Witness my hand and seal this the 13th day of March, 2020.

Julia Jordan Weller

Julia Jordan Weller
Clerk, Supreme Court of Alabama

IN THE SUPREME COURT OF ALABAMA
IN RE: COVID-19 PANDEMIC EMERGENCY RESPONSE
April 2, 2020

ADMINISTRATIVE ORDER NO. 5:
EXTENDING ORDERS AND DEADLINES CONCERNING THE SUSPENSION OF IN-PERSON PROCEEDINGS UNTIL APRIL 30, 2020

This Court hereby extends until **April 30, 2020**, the state of emergency for Alabama's Unified Judicial System initially declared by order dated March 13, 2020. The Court hereby adopts the administrative orders issued by the Chief Justice dated March 16, 2020, March 18, 2020, and March 24, 2020. Any deadlines in the Court's Administrative Orders that are set to expire on April 16, 17, or 20, 2020, are hereby extended through **April 30, 2020**, and the orders shall remain in full force and effect through **April 30, 2020.** Furthermore, trial courts shall continue to utilize available technologies such as teleconferencing and videoconferencing to conduct hearings when it is practical and feasible to do so.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, Stewart and Mitchell, JJ., concur.

Witness my hand and seal this the 2nd day of April, 2020.

Julia Jordan Weller
Clerk of Court
Supreme Court of Alabama

Exhibit E

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: THE PETITION OF C.Z., A.O., AND Z.S.-W., ON BEHALF OF ALL SIMILARLY SITUATED INDIVIDUALS, Petitioners	:	No. 24 EM 2020

ORDER

PER CURIAM

AND NOW, this 7th day of April, 2020, the "Application for Extraordinary Relief under the Court's King's Bench Jurisdiction," asking this Court to direct the reduction of the number of youth in detention, correctional, and other residential facilities under the jurisdiction of the juvenile and criminal courts across the Commonwealth by ordering, *inter alia*, that juveniles entering the juvenile system not be placed into detention and that juveniles in detention be reviewed for release, with certain presumptive categories of juveniles being immediately released, in order to prevent the spread of COVID-19 in facilities housing juveniles is **DENIED**. Nevertheless, pursuant to Pennsylvania Rule of Judicial Administration 1952(A) and this Court's constitutionally conferred general supervisory and administrative authority over all courts and magisterial district judges, *see* PA. CONST. art V, § 10(a), this Court explains and DIRECTS as follows:

The potential outbreak of COVID-19 in facilities housing juveniles in detention poses an undeniable threat to the health of juvenile detainees, facility staff and their families, and the surrounding community. Accordingly, action to mitigate the potential of a public health crisis is appropriate. We acknowledge that in many judicial districts, judges, district attorneys, the defense bar, juvenile probation officers, and other relevant

stakeholders are currently engaged in a concerted proactive effort to reduce transmission of the disease in juvenile facilities and surrounding communities through careful, individualized, reduction of institutional populations and other preventative measures. In light of Petitioners' allegations that not all judicial districts have so responded, there remains the potential of unnecessary overcrowding in these facilities which should be addressed for the health and welfare of correctional staffs, juvenile residents, medical professionals, as well as the general public.

We emphasize, however, that the immediate release of juveniles detained in various facilities, as sought by Petitioners, fails to take into account the individual circumstances of each juvenile, including any danger to them or to others, as well as the diversity of situations present within individual institutions and communities. Nevertheless, we recognize that the public health authorities, including the Centers for Disease Control and Prevention and the Pennsylvania Department of Health, continue to issue guidance on best practices for institutions where individuals are detained specifically and congregate settings generally to employ preventative measures, including social distancing to control the spread of the disease. Moreover, we acknowledge the statewide efforts of the Juvenile Court Judges' Commission to eliminate the threat of COVID-19 within Pennsylvania's juvenile residential placements.

Accordingly, we DIRECT President Judges, or their designees, to engage with all relevant county stakeholders to review immediately the current capabilities of residential placements within their counties where judges have placed juveniles to address the spread of COVID-19. President Judges should also consult with relevant county stakeholders to identify juveniles and/or classes of juveniles for potential release from placement to reduce the current and future populations of the institutions during this public health crisis with careful regard for the individual circumstances of juveniles in placement

as well as their safety and the public's safety with awareness of any statutory rights of victims. Moreover, consistent with these considerations, judges are to undertake efforts to limit the introduction of new juveniles into the juvenile detention system during the COVID-19 pandemic.

Finally, we observe that Petitioners express confusion regarding whether county courts can review existing detention and placement orders pursuant to our Statewide Emergency Order dated March 18, 2020, generally closing Pennsylvania courts to the public as to non-essential functions. As set forth in our March 18, 2020, Statewide Emergency Order, we reiterate that essential court functions include: juvenile delinquency detention; juvenile emergency shelter and detention hearings; and emergency petitions for child custody or pursuant to any provision of the Juvenile Act, 42 Pa.C.S. §§ 6301 - 6375.

Finally, Petitioners' "Application for Relief to File Reply Brief in Support of Petitioners' Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction" is **GRANTED**.

Justice Dougherty did not participate in the consideration or decision of this matter.

Exhibit F

IN THE COURT OF APPEALS OF MARYLAND

ADMINISTRATIVE ORDER

GUIDING THE RESPONSE OF

THE CIRCUIT COURTS SITTING AS JUVENILE COURTS

TO THE COVID-19 EMERGENCY AS IT RELATES TO THOSE JUVENILES WHO ARE

DETAINED, COMMITTED PENDING PLACEMENT OR IN COMMITMENTS

WHEREAS, Pursuant to the Maryland Constitution, Article IV, § 18, the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State; and

WHEREAS, Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure sets forth the emergency powers of the Chief Judge of the Court of Appeals; and

WHEREAS, In instances of emergency conditions, whether natural or otherwise, that significantly disrupt access to or the operations of one or more courts or other judicial facilities of the State or the ability of the Judiciary to operate effectively, the Chief Judge of the Court of Appeals may be required to determine the extent to which court operations or judicial functions shall continue; and

WHEREAS, Due to the outbreak of the novel coronavirus, COVID-19, and consistent with guidance issued by the Centers for Disease Control, an emergency exists that poses a threat of imminent and potentially lethal harm to individuals who have contracted or have come into contact with a person(s) who have contracted COVID-19; and

WHEREAS, The COVID-19 emergency requires further expansion of comprehensive measures to protect the health and safety of Maryland residents including

those juveniles detained, committed pending placement, or committed under the laws of Maryland; and

WHEREAS, COVID-19 poses a risk of transmittal to juvenile respondents residing, staff working, and attorneys visiting clients in Maryland juvenile detention and treatment facilities; and

WHEREAS, The detained, committed pending placement, and committed juvenile populations of Maryland include individuals who, because of underlying medical conditions, are at a heightened risk of severe or fatal outcomes if they contract COVID-19; and

WHEREAS, The Maryland Department of Juvenile Services has confirmed the existence of COVID-19 in Maryland detention and treatment facilities for juveniles; and

WHEREAS, Pursuant to Maryland Rule 11-116, a juvenile court, acting under its own motion, may modify or vacate a prior order of the court where it is in the best interest of the child or the public; and,

WHEREAS, The judges of Maryland's juvenile courts must take into account the unique considerations of the case of each individual before them in considering issues of detention, commitment, and release during the COVID-19 emergency;

WHEREAS, A significant effort is already being undertaken in many jurisdictions to address the circumstances of juveniles detained and committed to placements, the need nevertheless exists to ensure that such efforts continue to be made statewide by the juvenile courts,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 13th day of April 2020, and effective immediately, as follows:

(a) Administrative Judges of the Circuit Courts or their designees are encouraged to communicate with juvenile justice system stakeholders to identify detained and committed juveniles for potential release in order to protect the health of at-risk juveniles during the COVID-19 pandemic crisis with careful regard for the safety of victims and communities in general; with respect for the statutory rights of victims; and with due consideration given to public health concerns related to juvenile respondents who may have contracted COVID-19; and

(b) Judges responsible for handling juvenile matters are encouraged, consistent with sections (c) and (d), to limit detention or commitment, unless necessary to protect the safety of that juvenile respondent or the safety of others, in or to Maryland juvenile detention and treatment facilities; and

(c) Judges responsible for handling juvenile matters shall, in addition to considering the statutorily required considerations set forth in Maryland Code, Courts and Judicial Proceedings Article §§ 3-8A-15 and 3-8A-19, relating to the detention or release of juveniles, consider:

(1) whether the juvenile suffers from a pre-existing condition that renders him or her more vulnerable to COVID-19; and

(2) whether the juvenile displays COVID-19 symptoms or tests positive for COVID-19 and whether the facility in which the juvenile is committed or detained is able to address related medical issues or needs; and

(3) whether the juvenile was committed to a facility for a treatment or education program that has now been suspended; and

(4) whether the purpose of the commitment can be achieved under current circumstances; and

(5) whether the Department of Juvenile Services has notified the court of a viable alternative plan for detention or commitment; and

(6) whether the juvenile has family or a placement resource available to meet basic food, housing, and health needs, including any period of quarantine that may be required; and

(7) whether release poses a risk to safety to the juvenile or another, and the extent to which any such risk can be mitigated in the community with conditions or supervision, or with placement in an alternative setting during the COVID-19 emergency; and

(8) whether the risk to the safety of the juvenile or others as mitigated in the community with conditions or supervision or placement in an alternative setting during the COVID-19 emergency outweighs the risk of harm that continued detention of the juvenile poses to the juvenile, to other detained individuals, to staff, and to the community; and

(9) whether release of the detained or committed juvenile during the COVID-19 emergency is in the interest of justice; and

(d) Judges responsible for hearing juvenile matters shall, prior to ordering a juvenile to be detained during the COVID-19 emergency, take the following into consideration, in addition to the factors in (c), and make findings on the record:

(1) whether detention poses serious health risks to the juvenile, other detained individuals, staff, or the community; and

(2) whether any condition of release, including supervision, can mitigate that risk of physical harm to self or others such that the juvenile can be released safely into the community; and

(3) any additional circumstances specific to the juvenile that are warranted in the interest of justice; and

(e) To the extent that a juvenile remains detained, either pending adjudication or pending placement, a review hearing that is consistent with the requirements of Maryland Code, Courts and Judicial Proceedings Article § 3-8A-15 shall be conducted no less often than every 14 days during the pendency of the COVID-19 emergency with findings made on the record as to whether continued detention is appropriate or warranted; and

(f) Judges hearing juvenile matters are to act expeditiously to issue a ruling or schedule a remote hearing on a request by the Department of Juvenile Services or counsel for the juvenile or on the Court's own initiative pursuant to Maryland Rule 11-116 to modify or rescind detention or a commitment in light of considerations related to COVID-19 stated above; and

(g) Consistent with statutory requirements and reflecting the urgency caused by the COVID-19 pandemic, the aforementioned matters shall continue to be addressed on an emergency basis; and

(h) To the extent that this Administrative Order conflicts with extant Administrative Orders, local administrative orders or policies, this Administrative Order shall prevail; and

(i) This Administrative Order will be revised as circumstances warrant.

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: April 13, 2020

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Exhibit G

IN THE SUPREME COURT OF ALABAMA
IN RE: COVID-19 PANDEMIC EMERGENCY

April ___, 2020

ADMINISTRATIVE ORDER GUIDING THE RESPONSE OF THE CIRCUIT AND DISTRICT COURTS SITTING AS JUVENILE COURTS TO THE COVID-19 EMERGENCY AS IT RELATES TO JUVENILES WHO ARE DETAINED, COMMITTED PENDING PLACEMENT OR IN COMMITMENTS

The President of the United States having declared a national emergency amid the Coronavirus Disease 2019 ("COVID- 19") pandemic; the Governor of Alabama having declared a state of emergency for the State of Alabama due to COVID-19, and the Supreme Court of Alabama having declared a state of emergency for the entire judicial branch, this Court, pursuant to the authority vested in it under Article VI , §§ 140 , and 150 , Ala. Const. 1901, hereby directs circuit and district court judges presiding over juvenile matters to immediately do the following:

(1) Engage with all relevant state agencies and county stakeholders to identify and undertake any necessary efforts to reduce the number of children entering detention or currently held in state custody;

(2) Reduce the number of children entering juvenile detention by:

a. Prohibiting detention of any child unless such child poses a substantial and imminent threat to others.

b. Prohibiting detention of medically vulnerable children at higher risk for severe illness from COVID-19 and children who display symptoms or test positive for the illness;

(3) Reduce the number of children currently detained or ordered to other congregate settings related to delinquency actions by:

a. Modifying all existing detention orders and order the immediate release, with or without conditions, to family or guardian, to a non-congregate care facility, or to medical care, of:

i. All medically vulnerable children at higher risk for severe illness from COVID-19 and children who display symptoms or test positive for the illness;

ii. All children in custody for a probation violation, summary or misdemeanor offense, failure to pay fines or fees, failure to appear, inability to attain a secured or

unsecured bond, non-violent offenses, or any other technical violations, except upon a specifically articulated finding that such child poses a substantial and imminent threat to others.

iii. All children under the age of 16, except upon a specifically articulated finding that such child poses a substantial and imminent threat to others.

iv. All children within six months of completion of their dispositions, or who are currently confined for the purpose of completing an educational or treatment program that is stalled due to this crisis, except upon a specifically articulated finding that such child poses a substantial and imminent threat to others.

b. Engaging with all relevant state agencies and county stakeholders to immediately identify any other children and classes of children for immediate release.

(4) Ensure that juvenile facilities housing children ordered by the inferior court: comply with CDC guidance on management of COVID-19 in correctional and detention facilities; provide appropriate personal protective equipment for juvenile facility staff; provide appropriate medical care, including COVID-19 screening, testing, and treatment; educate children on the hazards of COVID-19 and how to protect themselves; provide free daily telephone and video visitation; provide free physical or mental health services or other therapeutic services and opportunities; prohibit the use of lockdown, solitary confinement, or isolation to prevent the spread of COVID-19.

(5) Ensure that all children have a plan in place to meet their basic food, housing, and health needs when released from state custody;

(6) Administer and monitor compliance with this order by directing inferior courts to provide publicly available compliance reports to this Court; and

(7) Meet, confer, and propose permanent rules of juvenile and administrative procedure that address detention,

sentencing, incarceration, and all other custodial circumstances for children during public health emergencies.

The Court provides this order in recognition of the rapid pace with which COVID-19 may spread in congregate settings; the unique vulnerabilities of children that make them particularly susceptible to physical and psychological harm in such congregate settings; and an awareness that a central tenet of the Alabama juvenile justice system is to rehabilitate youth, rather than punish them.

The aforementioned matters shall continue to be addressed on an emergency basis and this Order shall be revised as circumstances warrant. To the extent that this Order conflicts with any administrative order, policy, or rule, this Order shall prevail.