



or to isolate and treat individuals who become infected. For the reasons set forth below, Defendant's ongoing incarceration poses an imminent threat to Defendant's life and to the health and safety of the community from a deadly infectious disease.

Under these unique circumstances, the parties bring their motion under N.C. Gen. Stat. §§ 15A-1415(b)(8) and -1420(e), the Eighth Amendment to the United States Constitution, and Article I, § 27 of the North Carolina Constitution. The Court makes the following findings and conclusions, and enters the following order with the consent of the parties:

1. Defendant was convicted on July 22, 1998, of trafficking controlled substances.

Defendant was also convicted on that date of maintaining a dwelling for the use, keeping, or selling of controlled substances in the above-captioned file number.

2. Defendant's sentence for maintaining a dwelling in the above-captioned matter was 5-6 months.

3. Defendant is currently 66 years old.

4. According to North Carolina Department of Public Safety Offender Public Information data, Defendant's current projected release date is August 17, 2020.

5. On March 11, 2020, the World Health Organization declared a global pandemic.<sup>6</sup> Citing "deep[] concern[] both by the alarming levels of spread and severity, and by the alarming levels of inaction," it called for countries to take "urgent and aggressive action."<sup>7</sup>

6. The Governor has declared a Public Health Emergency identifying COVID-19 as an imminent threat to the health and safety of the community, requiring emergency protective

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Coronavirus Guidelines for America, Whitehouse.gov (Mar. 16, 2020), [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf).

<sup>6</sup> See *supra* note 1.

<sup>7</sup> *Id.*; see also "Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says," NPR (March 11, 2020), <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says>.

actions. Since then, normal life has ceased. Businesses, restaurants, schools, government offices, and churches are closed. People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease.

7. As of March 26, 2020, 68,440 people have been diagnosed with COVID-19 in the United States, with 994 deaths confirmed.<sup>8</sup>

8. The number of people infected is growing exponentially. The death toll in Italy, which began experiencing this epidemic about a week earlier than the first diagnosed American case, saw a rise of 30% overnight in the 24 hours between March 5, 2020, and March 6, 2020 and a rise of 25% on March 15 alone—a day that killed 368 people in Italy.<sup>9</sup> Experts predict similar rapid growth in the United States.

9. The numbers of people diagnosed reflect only a portion of those infected;<sup>10</sup> very few people have been tested, and many are asymptomatic transmitters.<sup>11</sup> Thousands of people are carrying a potentially fatal disease that is easily transmitted—and few are aware of it.

10. The current estimated incubation period is between 2 and 14 days.<sup>12</sup> Approximately 20% of people infected experience life-threatening complications, and between 1% and 3.4% die.<sup>13</sup>

11. The virus is thought to spread through respiratory droplets or by touching a surface or

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<sup>8</sup> Centers for Disease Control, Coronavirus 2019, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>

<sup>9</sup> “Italy coronavirus deaths near 200 after biggest daily jump,” Crispian Balmer & Angelo Amante, Reuters (Mar. 6, 2020), <https://www.reuters.com/article/us-health-coronavirus-italy/italy-coronavirus-deaths-near-200-after-biggest-daily-jump-idUSKBN20T2ML>.

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

<sup>11</sup> Roni Caryn Rabin, “They Were Infected with the Coronavirus. They Never Showed Signs,” N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>; Aria Bendix, “A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,” Bus. Insider (Feb. 24, 2020), <https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms>.

<sup>12</sup> “Coronavirus Disease COVID-19 Symptoms,” Centers for Disease Control (updated: Feb. 29 2020), <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>.

<sup>13</sup> Vox, *Why Covid-19 is worse than the flu, in one chart*, <https://www.vox.com/science-and-health/2020/3/18/21184992/coronavirus-covid-19-flu-comparison-chart>.

object that has the virus on it.<sup>14</sup> Thus, infected people—who may be asymptomatic and not even know they are infected—can spread the disease even through indirect contact with others.

12. According, officials and experts urge “social distancing”—isolating oneself from other people as much as possible.<sup>15</sup> Social distancing is virtually impossible inside the correctional facilities.

13. During pandemics, incarceration facilities become “ticking time bombs” as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”<sup>16</sup> As Dr. Jaimie Meyer, an expert in public health in jails and prisons, recently explained, “[T]he risk posed by COVID-19 in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected.”<sup>17</sup> This is due to a number of factors: the close proximity of individuals in those facilities; their reduced ability to protect themselves through social distancing; ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill; the increased susceptibility of the population in jails and prisons; the fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic; and loss of both medical and correctional staff to illness.<sup>18</sup>

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<sup>14</sup> Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

<sup>15</sup> See *supra* notes 2 & 3.

<sup>16</sup> See Saint Louis University, “Ticking Time Bomb,” *Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

<sup>17</sup> Declaration of Dr. Jaimie Meyer, Yale School of Medicine, filed in case number 1:20-CV-1803 in the United States District Court for the District of Oregon, available at <https://www.documentcloud.org/documents/6817018-318-2.html> (hereinafter “Meyer Declaration”).

<sup>18</sup> *Id.* ¶¶ 7-19; “The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside.” *Pandemic Influenza and Jail Facilities and Populations*, American Journal of Public Health, October, 2009; See also

14. When coronavirus suddenly exploded in China’s prisons, there were reports of more than 500 cases quickly spreading across five facilities in three provinces.<sup>19</sup> In Iran, 54,000 prisoners were temporarily released to protect them and to protect the community from propagation of an outbreak.<sup>20</sup>

15. People incarcerated:

- a. Are typically housed in close proximity to others and unable to distance themselves;
- b. Spend significant time in communal spaces, such as eating areas, recreation rooms, bathrooms, and cells or holding areas, and they are unable to choose to do otherwise;
- c. Live in spaces with open toilets within a few feet of their beds, and unable to access a closed toilet that would not aerosolize bodily fluids into their living spaces;
- d. Are constantly within six feet of other people, likely none of whom have been tested for COVID-19, and they are unable to choose to do otherwise;
- e. Must physically touch others or be touched by others, such as correctional officers and medical staff, many of whom have not been tested for COVID-19, and they are unable to opt out of this contact; and
- f. Are frequently subjected to intimate contact by correctional staff, many of whom have not been tested for COVID-19, during searches of their person, including having those staff place their hands inside of people’s mouths and other body cavities.

16. People in prison also lack access to quality, efficient medical care. Although an incarcerated person can request to see a member of the medical staff, those requests take significant time to process.

17. This combination of close quarters and limited medical capacity create an intolerably dangerous situation, putting detainees, correctional staff, and the communities they belong to at greater risk of illness and death.

18. Science shows that, within jails and prisons, isolation, segregation, and lockdown are

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Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF Administrators\\_3.9.2020.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF Administrators_3.9.2020.pdf)

<sup>19</sup> Claudia Lauer & Colleen Long, “US prisons, jails on alert for spread of coronavirus,” AP News (Mar. 7, 2020), <https://apnews.com/af98b0a38aaabedbc059092db356697>.

<sup>20</sup> *Id.*

ineffective against COVID-19,<sup>21</sup> and regardless, prisons do not have the physical space to accomplish these efforts for the current population. COVID-19 can survive in the air, so separation in a facility where there is still other movement of people, and occasional interaction, will not contain it. Surfaces are still touched—inside cells, in bathrooms, and in transport, at the very least. Further, the reality is that some contact with others, whether through close proximity or actual contact, is inevitable. Kitchen staff, intake staff, officers and medical staff all interact with incarcerated people as a matter of course, even on lockdown.

19. In Dr. Meyer’s words, “[r]educing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those within those facilities and for the community at large.”<sup>22</sup>

20. Defendant has been imprisoned since July 22, 1998.

21. Defendant has served 260 of the possible 265 months, or 98%, of his sentence.

22. Defendant is currently housed in minimum custody.

23. Defendant has only incurred six infractions during his 22 years in prison.

24. In light of the foregoing, the State and Defendant agree that Defendant’s conviction in the above-captioned case should be vacated to reduce the risk to Defendant and those who come in contact with Defendant of severe illness from COVID-19.

25. The State and Defendant agree that no part of this Consent Order is binding or may be used by either party for any purpose unless and until the whole has been accepted by the Superior Court Judge and entered by the Court as its order.

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<sup>21</sup> Meyer Decl. ¶ 10

<sup>22</sup> Meyer Decl. ¶ 37.

WHEREFORE, the parties pray the Court ORDER that Defendant's conviction in file number 97 CRS 10365 be VACATED.

IT IS SO ORDERED.

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Superior Court Judge Presiding

Consented to by the State:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
NAME  
Assistant District Attorney

Consented to by Defendant:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Ben Finholt  
Attorney for Defendant