

April 3, 2020

Judge John B. Adams  
P.O. Box 607  
Folkston, GA 31537

Dear Judge Adams:

We write regarding the spread of the Coronavirus Disease 2019 (COVID-19) to people in Georgia’s jails. Because social distancing<sup>1</sup> is not possible in jail, incarcerated people and jail employees are at a heightened risk of becoming ill. Swift action is needed to reduce the serious likelihood of widespread infection and death. As a judge, you hold the public’s trust and bear the responsibility of advancing fairness and integrity in our legal system. **The most critical step you can take at the present moment is to reduce the jail population in your jurisdiction by reducing jail admissions and by releasing as many people as possible, consistent with public safety.** We respectfully urge you to act now, if you have not already done so, as the public health crisis is rapidly escalating.

#### **A. COVID-19 in Georgia’s Prisons and Jails**

There are currently more than 4,748 confirmed cases of COVID-19 in 142—nearly 90 percent—of Georgia’s 159 counties. There have been at least 154 reported deaths.<sup>2</sup> In the past week, the number of confirmed cases in Georgia has more than tripled and experts predict that the infection rate will continue to rise for the foreseeable future.<sup>3</sup> COVID-19 has already reached our prisons and jails. On March 20, 2020, Georgia officials announced the first

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<sup>1</sup> See Centers for Disease Control and Prevention, *Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-Confirmed Cases* (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html> (defining “social distancing” as “remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible”).

<sup>2</sup> *Coronavirus in Georgia: COVID-19 Dashboard*, Atlanta Journal-Constitution, <https://www.ajc.com/news/coronavirus-georgia-covid-dashboard/IjORDGLckdP3RI9hJU5CWO/> (last visited Apr. 1, 2020).

<sup>3</sup> See Chas Danner, *CDC’s Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Mag., Mar. 13, 2020, <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7mdead.html> (estimating that over 200 million people in the United States could be infected with COVID-19 without effective public health intervention, with as many as 1.5 million deaths); see also Helena Oliviero, *Study: Georgia COVID-19 deaths to peak on April 23*, Atlanta Journal-Constitution (Apr. 1, 2020), <https://www.ajc.com/news/study-georgia-covid-pandemic-peak-week-april/RvkFEkOv3CRpk4yDjZqeRP/>.

confirmed cases in a Georgia prison in Lee State Prison.<sup>4</sup> Within a week, one man died.<sup>5</sup> As of April 1, officials had confirmed 28 COVID-19 cases in 12 state prisons, affecting both incarcerated people and prison staff.<sup>6</sup> Additionally, local officials had confirmed cases in a number of jails, including the Cobb County Detention Center,<sup>7</sup> Chatham County Jail,<sup>8</sup> DeKalb County Jail,<sup>9</sup> and Fulton County Jail.<sup>10</sup>

## B. Efforts to Reduce Jail Populations

On March 14, Chief Justice Harold Melton of the Supreme Court of Georgia declared a statewide judicial emergency.<sup>11</sup> The Chief Justice's order instructs courts to "give priority to matters necessary to protect health, safety, and liberty of individuals."<sup>12</sup> Consistent with the Chief Justice's mandate, jail population reduction measures should be prioritized because they are "necessary to protect [the] health [and] safety" of detained people and jail staff.

Several jurisdictions have already taken initial steps to reduce the number of jail detainees before infections spread and health systems are overwhelmed.<sup>13</sup> For example, Hall County has released 200 people, Fulton County is preparing to reduce its jail population, and DeKalb County is granting signature bonds to all misdemeanor defendants, with limited exceptions.<sup>14</sup>

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<sup>4</sup> Press Release, Ga. Dep't of Corr., *Lee State Prison Update* (Mar. 23, 2020), <http://gdc.ga.gov/NewsRoom/PressReleases/georgia-department-corrections-covid-19-response>.

<sup>5</sup> Press Release, Ga. Dep't of Corr., *Update* (Mar. 27, 2020), <http://www.dcor.state.ga.us/NewsRoom/PressReleases/georgia-department-corrections-covid-19>.

<sup>6</sup> Ga. Dep't of Corr., *Confirmed COVID-19 Cases*, <http://www.gdc.ga.gov/content/cases> (last visited Apr. 1, 2020).

<sup>7</sup> Christian Boone, *Deputy at Cobb Detention Center Contracts COVID-19*, Atlanta Journal-Constitution (Mar. 27, 2020), <https://www.ajc.com/news/crime--law/deputy-cobb-detention-center-contracts-covid/zTCGPK5iYxpPPF3zJYue2O/>.

<sup>8</sup> Savannah Morning News, *Chatham County Sheriff's Office Employee Tests Positive for COVID-19* (Apr. 1, 2020), <https://www.savannahnow.com/news/20200401/chatham-county-sheriffsquos-office-employee-tests-positive-for-covid-19>.

<sup>9</sup> J.D. Capelouto, *Another DeKalb Jail Inmate Tests Positive for Coronavirus*, Atlanta Journal-Constitution (Mar. 28, 2020), <https://www.ajc.com/news/local/another-dekalb-jail-inmate-tests-positive-for-coronavirus/Tld9EeIVcBbiM0BWGQ8JJP/>.

<sup>10</sup> Christian Boone, *Sheriff: 14 Fulton Jail Inmates Have Contracted COVID-19*, Atlanta Journal-Constitution (Mar. 30, 2020), <https://www.ajc.com/news/crime--law/three-more-fulton-jail-inmates-contract-covid/PFYKK3sFCuQjWwrtxl3fDJ/>.

<sup>11</sup> Ga. Supreme Court, *Order Declaring Statewide Judicial Emergency* (Mar. 14, 2020), <https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> Courts have recognized that, in certain circumstances, releasing incarcerated people can be the only way to ensure the delivery of adequate medical care required by the Eighth and Fourteenth Amendments. See *Brown v. Plata*, 563 U.S. 493, 510-30 (2011).

<sup>14</sup> Christian Boone, *Hall, Fulton Counties Releasing Nonviolent Offenders Early as Virus Looms*, Atlanta Journal-Constitution (Mar. 23, 2020), <https://www.ajc.com/news/crime--law/hall-fulton-counties-releasing->

Releases are also underway in Chatham and Dougherty counties.<sup>15</sup> These efforts are consistent with actions taken by judges in other states.<sup>16</sup> We ask you to help to reduce the spread of COVID-19 and potential loss of life by implementing the measures listed below. **In so doing, we respectfully ask you to reduce populations as much as possible, consistent with public safety. Releasing relatively small numbers of people will not likely stop the spread of the virus inside jails. Nor will the release of small numbers of people help jailors who may need to make space within their facilities to house people in quarantine.**

### C. Recommendations Regarding Release of Detainees

1. **Release As Many People As Possible:** Courts should release—through recognizance bonds, pre-trial diversion, sentence reductions, home monitoring, and/or similar means—people who are vulnerable to infection or pose a lower risk to public safety. The following groups of people may be particularly appropriate for immediate release:
  - a. Individuals the Centers for Disease Control and Prevention (CDC) have classified as vulnerable, including older adults, pregnant women, and people with underlying medical conditions like HIV, asthma, cancer, heart disease,

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nonviolent-offenders-early-virus-looms/IOZTaZ9IVSwoy38Cp6XJIP/; State Court of DeKalb County, *Standing Order Governing Bail During Judicial Emergency* (Mar. 18, 2020), <https://www.dekalbsheriff.org/wp-content/uploads/2020/03/Standing-Order-Governing-Bail-During-Judicial-Emergency.pdf> (ordering that all misdemeanor defendants be granted signature bonds except in cases of stalking, offenses involving family violence, and certain recidivist traffic offenses).

<sup>15</sup> Jan Skutch, *Chatham County Judges Continue to Refine Court Process, Reduce Jail Numbers*, Savannah Morning News (March 31, 2020), <https://www.savannahnow.com/news/20200331/chatham-county-judges-continue-to-refine-court-process-reduce-jail-numbers>; WALB News Team, *Dougherty Co. Jail Reduces Inmate Count Ahead of COVID-19 Outbreak*, WALB (April 1, 2020), <https://www.wtvm.com/2020/04/01/dougherty-co-jail-reduces-inmate-count-ahead-covid-outbreak/>.

<sup>16</sup> See Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times (Mar. 23, 2020), <https://www.app.com/story/news/2020/03/23/nj-coronavirus-up-1-000-inmates-released-jails/2897439001/> (ordering the temporary release of up to 1,000 people serving county jail sentences for probation violations, municipal court convictions, “low-level indictable crimes,” and disorderly persons offenses); Justin Carissimo, *1,700 Inmates Released from Los Angeles County in Response to Coronavirus Outbreak*, CBS News (Mar. 24, 2020), <https://www.cbsnews.com/news/inmates-released-los-angeles-county-coronavirus-response-2020-03-24/>; Scott Buffon, *Coconino County Jail Releases Nonviolent Inmates in Light of Coronavirus Concerns*, Arizona Daily Sun (Mar. 20, 2020), [https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article\\_a6046904-18ff-532a-9dba-54a58862c50b.html](https://azdailysun.com/news/local/coconino-county-jail-releases-nonviolent-inmates-in-light-of-coronavirus/article_a6046904-18ff-532a-9dba-54a58862c50b.html); Scott Noll, *Cuyahoga County Jail Releases Hundreds of Low-Level Offenders to Prepare for Coronavirus Pandemic*, News 5 Cleveland (Mar. 20, 2020), <https://www.news5cleveland.com/news/local-news/oh-cuyahoga/cuyahoga-county-jail-releases-hundreds-of-low-level-offenders-to-prepare-for-coronavirus-pandemic>; Bob Mayo, *Release of Up to 100 Allegheny County Jail Inmates a Day Underway as Coronavirus Precaution*, Pittsburgh’s Action News 4 (Mar. 19, 2020), <https://www.wtae.com/article/release-of-up-to-100-allegheny-county-jail-inmates-a-day-under-way-as-coronavirus-precaution/31787878#>; Kayla Branch, *Coronavirus in Oklahoma: Over 200 Nonviolent Offenders Released from Oklahoma County Jail to Limit COVID-19 Spread*, The Oklahoman (Mar. 25, 2020), <https://oklahoman.com/article/5658504/coronavirus-in-oklahoma-over-200-non-violent-offenders-released-from-oklahoma-county-jail-to-limit-covid-19-spread>.

lung disease, and diabetes.<sup>17</sup> Some of these conditions are significantly more common among those incarcerated in jails than in the general population;<sup>18</sup>

- b. Individuals detained pretrial solely because they cannot afford cash bail;
- c. Individuals incarcerated due to a probation violation that does not include the allegation of a new violent felony offense;
- d. Individuals incarcerated for non-violent offenses;
- e. Individuals with 60 days or less to serve on their jail sentences.

- 2. Accelerate Frequency of Bail Hearings and Review Cases of People Who Cannot Make Bail:** In light of the pandemic, courts should hold frequent bail hearings and bail review hearings, to avoid keeping people in jail only because they cannot afford bail. At these hearings, courts should consider the serious health risks posed by the person's continued incarceration.

#### **D. Recommendations to Reduce Jail Admissions**

- 1. Release Arrestees on Personal Recognizance:** Courts should weigh the threat of COVID-19 in the jail when assessing the need for pretrial detention. Release all arrestees charged with non-violent misdemeanors, ordinance violations, or technical violations of probation on their own recognizance, with or without conditions,<sup>19</sup> unless the court identifies a specific risk to the physical safety of another person. Where possible, initial appearances should occur before new arrestees enter the jail's general population in order to minimize their contact with other detainees and staff.
- 2. Review Warrants and Suspend Arrests for Low-Risk People:** Courts should review the following categories of warrants and consider vacating or suspending them in light of the global pandemic:
  - Bench warrants for failure to appear or unpaid fines;<sup>20</sup>

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<sup>17</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Are you at Higher Risk for Severe Illness?* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

<sup>18</sup> Peter Wagner & Emily Widra, *No Need to Wait for Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (Mar. 6, 2020), <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/?fbclid=IwAR3cZM1oOONBiEEo366kkyMk6WVCgKlhi503mFhydY5AVR69Ft-5xdWw2oY>.

<sup>19</sup> Where necessary, conditions such as home confinement, complying with guidance from public officials, electronic location monitoring, or third-party custodianship can mitigate risks to public safety and ensure an arrestee's appearance in court.

<sup>20</sup> See, e.g., Judy Harrison, *Maine Courts Vacate Warrants for Unpaid Fines and Fees*, Bangor Daily News (Mar. 16, 2020), <https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid->

- Arrest warrants for non-violent misdemeanors;<sup>21</sup> and
- Probation warrants for technical violations.<sup>22</sup>

Additionally, courts should review the case of each person now incarcerated for an alleged probation violation and release such persons wherever possible, consistent with public safety.

- 3. Work with Your Local Probation Officials to Cancel In-Person Probation Reporting for Most or All Cases:** Courts should lift requirements for in-person probation reporting, consistent with the recommendation of the National Association of Probation Executives.<sup>23</sup> Probation officers should contact people on probation to arrange for meetings via telephone during the public health emergency.<sup>24</sup> Where possible, courts should suspend probation conditions—including drug-testing, employment, and education requirements—that require people on probation to defy social distancing recommendations.
- 4. Waive or Suspend Fines and Fees:** Courts should suspend collection of fines and fees to account for vastly reduced employment and lost wages.<sup>25</sup> Probation officers should provide notice to people on probation that nonpayment will not result in revocation of their probation during the pandemic.

## E. Recommendations Regarding Court Administration

- 1. Minimize Court Traffic:** Courts should encourage liberal use of video or telephone appearance by litigants unless the right to confrontation or other constitutional rights require appearance in person. When conducting proceedings remotely, courts

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fines-and-fees (announcing vacatur of all of the state’s bench warrants for unpaid court fines and fees and for failure to appear, affecting over 12,000 people).

<sup>21</sup> See e.g., Travis County Court at Law, *Standing Order to Temporarily Suspend the Execution of Warrants for Certain Travis County Cases* (Mar. 17, 2020), <https://www.traviscountytexas.gov/images/courts/Docs/ccl-order-temp-suspension-warrant-exec-certain-cases.pdf> (suspending warrants for all misdemeanors except for unlawful restraint, violation of a protective order, unlawfully carrying weapons, and several types of assault); see also Travis County Criminal District Court, *Amended Standing Order Temporarily Suspending the Execution of Warrants for Certain Travis County Cases Assigned to the Criminal District Courts of Travis County, Texas* (Mar. 23, 2020), <https://www.traviscountytexas.gov/images/courts/Docs/dc-order-temp-suspension-warrant-exec-certain-cases.pdf> (suspending warrants for a list of nonviolent felony offenses).

<sup>22</sup> See Press Release, *Coronavirus Threat: Parole and Probation Officials Offer Urgent Recommendations* (Mar. 17, 2020), <https://www.exitprobationparole.org/covid19pressrelease>.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Press Release, Circuit Court of Cook County, *Chief Judge Evans Postpones Most Cases for 30 Days Due to Coronavirus* (Mar. 13, 2020), <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2736/Chief-Judge-Evans-postpones-most-cases-for-30-days-due-to-coronavirus.aspx> (excepting bail hearings, arraignments, preliminary hearings, and bail reviews).

<sup>25</sup> See, e.g., Ark. Dep’t of Corr. Div. of Cmty. Corr. (@ADCPIO), Twitter (Mar. 20, 2020, 8:38 PM), <https://twitter.com/ADCPIO/status/1241162208811327488/photo/1> (announcement suspending supervision fees for the month of April 2020 and suspending face-to-face office visits).

should maintain the public's right of access to the courts by publishing advance notice with a link or dial-in number. When counsel and parties do appear in person, courts should follow CDC guidance on social distancing to minimize health risks.<sup>26</sup>

- 2. Protect Meaningful Access to Legal Counsel and the Courts:** Courts should confer with law enforcement to ensure that jail quarantines or other protective measures do not obstruct incarcerated people's ability to meaningfully communicate with counsel. Technology should be used to facilitate access to counsel.
- 3. Create a Court Closure Plan:** Some courts have already been closed. Those that remain open should prepare a court closure plan now, so that people will not languish in jail in the event of a future closure.
- 4. Ensure Transparency:** Courts should provide full information on their websites and/or by direct notice to defendants regarding the steps they are taking relating to COVID-19. Policies adopted in response to COVID-19 should be transparent and clearly communicated to incarcerated people and the public.

Because of the growing number of inquiries we are receiving from incarcerated people and their loved ones, we are sharing this letter publicly. We appreciate the steps many judges are already taking to respond to COVID-19. We urge you to consider and adopt the measures listed in this letter for the protection of people in jail, jail and court staff, and the public at large.

Thank you for your consideration. Best wishes to you and your staff as you navigate this challenging time.

Sincerely,



Sara Totonchi  
Executive Director



Sarah Geraghty  
Managing Attorney

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<sup>26</sup> Centers for Disease Control and Prevention, *Schools, Workplaces & Community Locations*  
<https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html> (last visited, Apr. 1, 2020).