

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division

IN RE SENTENCED MISDEMEANANTS:

No. _____

Chief Judge Robert Morin

PROPOSED ORDER TO SHOW CAUSE

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19, the viral disease caused by a newly discovered coronavirus, a global pandemic; and

WHEREAS, on March 13, 2020, acting pursuant to his Constitutional and statutory authority under sections 201 and 301 of the National Emergencies Act (50 U.S.C. § 1601, *et seq.*), the President of the United States declared that the COVID-19 outbreak constitutes a national emergency; and

WHEREAS, on March 11, 2020, the Mayor of the District of Columbia issued Mayor's Order Nos. 2020-045 and 2020-046, which declared a State of Emergency and a Public Health Emergency because "[t]he spread of COVID-19 is an imminent threat to the health, safety, and welfare of District residents that requires emergency protective actions," including the closures of public schools and the cancelling of non-essential mass gatherings; and

WHEREAS, as of March 25, 2020, according to the World Health Organization, there were more than 414,179 confirmed cases of COVID-19 worldwide, with over 18,440 resulting deaths; and

WHEREAS, as of March 25, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were 54,453 confirmed cases of COVID-19 in the United States, with

737 of those cases having resulted in death—over 7 times the number of cases and deaths reported just a week ago; and

WHEREAS, as of March 25, 2020, there were close to 1,000 confirmed cases of COVID-19 in the D.C., Maryland, and Virginia region; and

WHEREAS, as of March 25, 2020, a U.S. Marshal who worked in D.C. Superior Court, a MPD Detective, and a WMATA Transit Authority officer have already tested positive for COVID-19; and

WHEREAS, a 20-year-old man incarcerated at the Correctional Treatment Facility was admitted to the infirmary on March 25, 2020 and tested positive for COVID-19; this individual has been detained since July 2019 and the Department of Corrections has not yet identified how he was exposed to the virus; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, public health experts, epidemiologists, and government officials, including officials at the CDC, believe that infections will continue to spread at exponential rates unless aggressive action is taken to minimize person-to-person contacts and to reduce any unnecessary interactions; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 25, 2020, faced with the escalating number of infections, the Mayor closed all non-essential businesses—including gyms, salons, theaters, auditoriums, tours, retail shops, and professional service businesses—banned gatherings of more than 10 people for at least the next month, and issued a Stay at Home request to all District residents; and

WHEREAS, the Mayor has extended road closures, limited pedestrian and bicycle traffic throughout the city, significantly cut metro operations, and restricted access to the Tidal Basin to prevent further community spread; and

WHEREAS, the members of the National Guard have been deployed to aid the District of Columbia in responding to the impacts of COVID-19; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet of one another or through respiratory droplets produced when an infected individual coughs or sneezes; and

WHEREAS, the CDC reports COVID-19 is easily transmitted because individuals can display symptoms 2 to 14 days after being exposed to the virus, meaning that asymptomatic individuals can spread the virus for up to two weeks without knowing it; and

WHEREAS, as a result, the CDC has recommended that individuals practice “social distancing” to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of “remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible”; and

WHEREAS, social distancing measures are required for a period of as-yet-undetermined duration, and the COVID-19 outbreak will have significant effects on the District of Columbia’s criminal justice systems as long as social distancing measures are in place; and

WHEREAS, the Chief Judge of the D.C. Superior Court has closed all but four courtrooms—which are limited to hearing presentments, juvenile initial hearings, habeas petitions, requests for removal in neglect and abuse cases, and emergency matters—and continued all other hearings and all trials until after May 15, 2020; and

WHEREAS, the risk of infection and transmission in jails is extraordinary¹ because, according to the CDC, “[i]ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced” and there is consistently “high turnover” in the population as new people enter and others are released, such as the individual at CTF that recently tested positive for COVID-19; and

WHEREAS, incarcerated people have limited ability to fight the spread of any infectious disease² because they cannot control the people with whom they have contact, may not be able to utilize all recommended preventive health measures, including social distancing, and have limited access to medical care; and

WHEREAS, although jails can take steps to mitigate risk, they simply cannot eliminate it, which endangers public health at large because an outbreak at the jail could spread quickly to the surrounding community and risks overwhelming healthcare systems that are responding to the crisis with limited space and supplies;³ and

¹ See, e.g., Josiah Bates, *Anticipating COVID-19 Outbreaks, Rikers Island Offers Warning for U.S. Jails, Prisons*, Time, March 24, 2020 (a jail investigator for Rikers Island tested positive for COVID-19 and died less than a week ago, and within five days, 39 inmates and 21 personnel had tested positive and another 58 people were being monitored); Alice Su, Emily Baumbaertner, *They were already in China’s prisons. Now the coronavirus is there, too*, L.A. Times, February 28, 2020, available at <https://www.latimes.com/world-nation/story/2020-02-28/lawyers-activists-pastors-ughurs-families-of-detainees-in-china-fear-coronavirus-spread-outbreak-in-camps-and-prisons> (describing how China, a country with a significantly lower rate of incarceration than the United States, experienced an outbreak of over 500 COVID-19 cases in prisons in the Hubei Province).

² See, e.g., Emma Grey Ellis, *COVID-19 Poses a Heightened Threat in Jails and Prisons*, Wired, March 24, 2020, available at <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/> (noting that incarcerated individuals have higher rates of HIV infection and tuberculosis).

³ See, e.g., German Lopez, *A coronavirus outbreak in jails or prisons could turn into a nightmare*, Vox, March 17, 2020, available at <https://www.vox.com/policy-and-politics/2020/3/17/21181515/coronavirus-covid-19-jails-prisons-mass-incarceration> (discussing the heightened risk of COVID-19 outbreak to a relatively massive population that disproportionately suffers from chronic illnesses and health conditions, the spillover effects to the

WHEREAS, the health and safety of incarcerated people, correctional officers, Department of Corrections employees, U.S. Marshals, attorneys, and others who work in correctional facilities are at significant risk during this pandemic, and downsizing the jail population can help mitigate the risk of spread and allow for social distancing measures to be put into place; and

WHEREAS, under the Code of the District of Columbia, misdemeanors are considered “petty crimes or offenses,” *Fretes-Zarate v. United States*, 40 A.3d 374, 376 (D.C. 2012), that carry a maximum penalty of 180 days of incarceration, *id.* at 378; *see, e.g.*, D.C. Code § 22-3212 (b) (penalty for theft in the second degree), and individuals typically serve misdemeanor sentences at a D.C. Department of Corrections facility; and

WHEREAS, Superior Court judges are authorized under D.C. Code § 16-710 to “impose sentence and suspend the execution thereof; or impose sentence and suspend the execution of a portion thereof” and place an individual on probation “if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby”; and under Super. Ct. Cr. R. 35(b)(2) to reduce and modify sentences already imposed; and

IT IS on this _____ day of March, 2020,

ORDERED that the Attorney General for the District of Columbia and U.S. Attorney for the District of Columbia should show cause within 2 calendar days of the issuance of this Order why individual release Orders should not be entered: Releasing any defendant serving a

community, and the strain on healthcare resources and personnel); Nathalie Baptiste, *Correctional Facilities Are the Perfect Incubators for the Coronavirus*, Mother Jones, (March 6, 2020), available at <https://www.motherjones.com/politics/2020/03/correctional-facilities-are-the-perfect-incubators-for-the-coronavirus/>;

Nicole Wetsman, *Prisons and jails are vulnerable to COVID-19 outbreaks*, The Verge, March 7, 2020, available at <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

misdemeanor sentence at the Central Detention Facility or Correctional Treatment Facility. Those individuals with misdemeanor sentences of jail time only shall have their sentences reduced to time served resulting in immediate release. Those individuals serving a split sentence of jail time to be followed by a probationary period shall have the remaining amount of executed time on their jail sentences suspended so that they can immediately be released and commence the probationary period of their sentences.

For the Court,

Chief Judge