**Instructions for Use**

The GA-13 Subcommittee of the COVID-19 Task Force has crafted several documents for you to use in litigating against Executive Order GA-13. The Subcommittee recommends filing the attached writ of habeas corpus in cases where your client qualifies for PR bond but:

1. Has been previously convicted of:

A. a crime that involves something that could be construed as physical violence;

B. or the threat of physical violence; or

2. Has been arrested for:

A. a crime that involves something that could be construed as physical violence;

B. or the threat of physical violence.

To aid in making and preserving your arguments, the GA-13 Subcommittee has also put together the Order Setting Hearing, the Proposed Order Denying PR Bond, and the Proposed Order Granting PR-Bond for you to use, depending on which direction the judge in your case wants to go.

In this document, the subcommittee has tried to highlight those areas where case-specific information is necessary. Of course, these are simply a starting point. You should make sure whatever you file is tailored to the specific facts of your case.

***This document is intended to be a guide, but you need to customize it to fit the particular facts of your case.***

**Cause No. \_\_\_\_\_\_\_**

Ex Parte § In the <<court name>>

 §

 § of

 §

<<Defendant’s Name>> § <<name>> County, Texas

**Pretrial Application for Writ of Habeas Corpus**

To the Honorable Judge of Said Court:

 Comes now Applicant in the above entitled and numbered cause, by and through his attorney of record, to present this Pretrial Application for Writ of Habeas Corpus and would show as follows:

**I.**

**Underlying Facts**

 The Applicant is unlawfully restrained of his liberty by the Sheriff of <<Name>> County, Texas, having been charged with the offenses of <<offense alleged>>. The Applicant is presently confined in the <<name of facility of incarceration>>. The Applicant’s bond is currently set at <<bond amount>>. <<*if applicable* Applicant has never been convicted of a crime of violence *or* Applicant is not charged with a crime of violence>>.

 <<Name>> County, Texas, is in the middle of a deadly global pandemic caused by the COVID-19 virus. The President has declared a national emergency. Presidential Proclamation, “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak” (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/. The Governor has declared a state of disaster in all counties in the State of Texas. Proclamation, “Governor Abbott Declares State of Disaster in Texas Due to COVID-19,” (Mar. 13, 2020), https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19. <<Insert any specific county-level or city-level declarations appropriate for the jurisdiction>>.

**II.**

**Requirement for Reasonable Bond**

 Said restraint is illegal because Applicant is entitled to a reasonable bond under the statutory and constitutional provisions set out above. The amount of bond is a tool to guarantee the defendant’s presence in court and shall not to be used as an instrument of oppression. *Ex Parte Vasquez*, 558 S.W.2d 477 (Tex. Crim. App. 1977); *Eggleston v. State*, 917 S.W.2d 100 (Tex. App.—San Antonio 1996, no pet.). The bond amount currently set in this case far exceeds that necessary to ensure Applicant’s appearance at future court proceedings, resulting in an illegal confinement and restraint of Applicant.

<<*if applicable* Furthermore, Applicant’s bond is set at an amount far higher than that normally required of similarly situated Defendants.>>

**III.**

**Prohibition Against Excessive Bail**

 Both our Federal and State Constitutions forbid excessive bail. U.S. Const. amend. VIII (“Excessive bail shall not be required . . . .”); Tex. Const. art. I, § 13 (same). In setting bail, the trial court must balance the accused’s presumption of innocence and the State’s interest in assuring the accused’s appearance at trial. *Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref’d). Bail is excessive if it is “set in an amount greater than is reasonably necessary to satisfy the government’s legitimate interests.” *Id.*

 In addition to the constitutional prohibition against excessive bail, the Texas Legislature has given the following statutory guidelines:

* The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with;
* The power to require bail is not to be so used as to make it an instrument of oppression;
* The nature of the offense and the circumstances under which it was committed are to be considered;
* The ability to make bail is to be regarded, and proof may be taken upon this point;
* The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15. Texas case law further suggests consideration of the following factors:

* the possible length of sentence for the indicted offense;
* the nature and any aggravating factors of the offense;
* the accused's employment record; the accused’s family and community ties;
* the accused’s length of residency in the jurisdiction;
* the accused’s conformity with previous bond conditions; and
* the accused’s prior criminal record.

*Ex parte Milburn*, 8 S.W.3d 422, 425 (Tex. App.—Amarillo 1999, no pet.) (citing *Ex parte Rubac*, 611 S.W.2d 848, 849–850 (Tex. Crim. App. 1981)) (citation omitted).

 The bond required of Applicant is excessive. Applicant does not have the personal assets required to post the current bond, <<*if applicable* as well as retain the counsel of his choosing—a fundamental right repeatedly recognized by the United States Supreme Court. *Luis v. United States*, 578 U. S. \_\_\_\_ (2016), slip op. at 5 (“We nonetheless emphasize that the constitutional right at issue here is fundamental: “[T]he Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire.”).>> By posting the bonds at their current, respective amounts, Applicant would be denied his rights to Due Process and the Effective Assistance of Counsel of his choice guaranteed by the Fifth, Sixth, and Fourteenth Amendments.

**IV.**

**Executive Order GA-13 Does Not Prohibit the Court from Ruling on this Application and Motion**

***A. Executive Order GA-13***

 On March 29, 2019, the Governor of Texas issued Executive Order GA-13. That order suspends five articles of the Code of Criminal Procedure and two articles of the Government Code. The suspension relevant to the instant pleading mandates,

Article 17.03 of the Texas Code of Criminal Procedure, and all other relevant statutes and rules relating to personal bonds, are hereby suspended to the extent necessary to preclude the release on personal bond of any person previously convicted of a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause. I hereby order that no authority should release on personal bond any person previously convicted of a crime that involves physical violence or the threat of physical violence, or any person currently arrested for such a crime that is supported by probable cause.

Article 17.151 of the Texas Code of Criminal Procedure is hereby suspended to the extent necessary to prevent any person's automatic release on personal bond because the State is not ready for trial.

The Governor of the State of Tex., Ex. Order GA 13, at 2 (Mar. 29, 2020) (available upon request) [“EO-GA-13”].

***B. Executive Order GA-13 Violates
the Bail Provisions of Both the Federal and State Constitutions***

 The Eighth Amendment of the Federal Constitution mandates, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” As the Supreme Court recognized more than half a century ago, “federal law has unequivocally provided that a person arrested for a non-capital offense *shall be admitted to bail*.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (emphasis added).

Similarly, Article I, Section 11 of the Texas Constitution also dictates “[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident.” Tex. Const. art. I, § 11. “The general rule favors the allowance of bail.” *Taylor v. State*, 667 S.W.2d 149, 151 (Tex. Crim. App. 1984). The Court of Criminal Appeals has called attempts to undermine the age-old right to bail “abhorrent to the American system of justice.” *Id.* at 152. “It is for this reason that the provisions contained in Article I, Section 11a of the Texas Bill of Rights ‘contain strict limitations and other safeguards’ to ensure that bail is not used as an instrument of oppression.” *Pharris v. State*, 165 S.W.3d 681, 689 (Tex. Crim. App. 2005).

 Indeed, Executive Order GA-13 is “abhorrent” to the American and Texan system of justice. The constitutional requirements, as interpreted and applied by both the United States Supreme Court and the Texas Court of Criminal Appeals, are clear—the state cannot simply arrest a person and refuse to set bail. The Executive Order, however, directs judges not release entire groups of people on personal bond. This order directly contradicts the plain language of both the Federal and State Constitutions, as well as decades—if not centuries—of precedent.

***C.* *Executive Order GA-13 Violates Due Process Guaranteed by Both the Federal and State Constitutions***

 The Due Process Clause of the Fifth Amendment mandates that no one can be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Similarly, the Due Course of Law Clause of the Texas Constitution establishes, “[n]o citizen of this State shall be deprived of . . . liberty . . . except by the due course of the law of the land.” Tex. Const. art. I, § 19. These values are so fundamental that “[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 750, 755 (1987) (holding the “individual’s strong interest in [pretrial] liberty is ‘fundamental.’”). This norm reflects the longstanding principle that “[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (citing *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982)).

Applicant in this case has been ordered released—but because that release is contingent on Applicant making an upfront monetary payment, and because Applicant cannot afford that payment, Applicant remains in custody. To be clear: Applicant continues to be detained in an enclosed, closely-confined population with little access to basic sanitation supplies in the middle of a health crisis because s/he is too poor to make bail. There has been no finding that Applicant’s ongoing detention is necessary to serve any compelling state interest.

Even if there had been, that decision must be revisited because of changed circumstances: the government’s interest in continued incarceration cannot be justified where incarceration itself exacerbates an ongoing and devastating public health crisis and brings a heightened risk of illness and death to people inside and outside the jail.

This Court can—and should—identify conditions of release that better protect public health and safety, including the health and safety of Applicant, and it must do so urgently. Refusing to release Applicant on a personal bond in reliance on Executive Order GA-13 and without articulation of compelling state interests violates Applicant’s due process rights. *See Tate v. Short*, 401 U.S. 395, 398 (1971) (recognizing a person may not be “subjected to imprisonment solely because of his indigency”); *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (“The incarceration of those who cannot [afford to pay monetary bail], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.”).

***D. Executive Order GA-13 Violates the
Separation of Powers Established in the Texas Constitution***

 Article 2 of the Texas Constitution creates the legislative, executive, and judicial branches as three distinct entities in Texas. It also unequivocally establishes “no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others . . .” Tex. Const. art. II.

 In Chapter 17 of the Code of Criminal Procedure, the Texas Legislature crafted a series of requirements that members of the Judicial Branch must respect regarding the determination and imposition of bail. The sixty-six articles in that chapter are instructions from the Legislative Branch to the Judicial Branch. The Executive Branch cannot via executive order interject itself into the scheme. And yet, through Executive Order GA-13, that is exactly what the Executive Branch has attempted. The Court cannot, however, give credence to this attempt. Directives given by the legislature on the judiciary continue until the judiciary finds those directives unconstitutional or until the legislature changes the directives itself. The Executive Branch has no authority over those legislatively crafted mandates.

 Executive Order GA-13 seeks to find footing in the Government Code. The Order recites that Section 418.016(a) of that code permits the governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance with the provisions would in any way prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(a). This reliance on Section 418.016(a) is unfounded, as it incorrectly assumes all laws are equal and that the governor is the supreme official over every one of them.

 There are, in fact, multiple sources and types of law. Constitutional law, for example, comes from the Constitution; statutory law is handed down by the Legislative Branch; caselaw is crafted by the Judicial Branch; and regulatory law is created by the Executive Branch. Under the constitutional structure of Texas, if one branch finds a law crafted by another branch to be offensive, it can seek to change or abrogate that law (going through the procedures previously established and in place).

The *ad hoc* power contemplated by Executive Order GA-13 vesting the Executive Branch with absolute and unchecked power to suspend a law of the Legislative or Judicial Branch is repugnant to the Separation of Powers established 175 years ago in the Texas Constitution. *See* Tex. Const. arts. I, § 28, II; *State v. Williams*, 938 S.W.2d 456, 462 (Tex. Crim. App. 1997) (noting the constitutional separation of powers provision “reflects a belief on the part of those who drafted and adopted our state constitution that one of the greatest threats to liberty is the accumulation of excessive power in a single branch of government”). A basic understanding of the different sources of law makes Section 418.016(a) clear. The section permits the governor to suspend “any regulatory statute.” Tex. Gov’t Code § 418.016(a). This statute gives the governor ultimate authority over *regulatory* statutes as the head of the Executive Branch. It does not give him unilateral power over *all* laws—simply those laws which his branch has implemented.

 The problem, then, becomes clear: The Order attempts to suspend non-regulatory laws, i.e. articles of the Code of Criminal Procedure enacted by the Texas Legislature. The Executive Branch has tried to usurp the Legislative Branch’s authority. This action is barred by the Separation of Powers Clause of the Texas Constitution.

 The Order interferes with not only the Legislative Branch but also the Judicial Branch. Discretion for release on bond is invested solely in the Judicial Branch. *See* Tex. Code Crim. Proc. Ann. art. 17.03 (“a magistrate may, in the magistrate’s discretion, release the defendant on personal bond without sureties or other security.”). The Executive Branch cannot attempt to claim power over a decision not within its purview. Executive Order GA-13 steps in front of the Judicial Branch, imposing blanket bond determinations while simultaneously ordering the courts to ignore their legislatively imposed duty to make individual bond determinations. This action again violates the Separation of Powers Clause.

***E. Executive Order GA-13 Unconstitutionally Usurps the Legislature’s Suspension of Law Power***

Only the Legislative Branch can suspend laws. Tex. Const. art. I, § 28. (“No power of suspending laws in this State shall be exercised except by the Legislature.”). The State Constitutions of 1845, 1861, 1866, and 1869 actually permitted delegation of suspension authority. *McDonald v. Denton*, 63 Tex. Civ. App. 421, 426 (1910). The 1867 amendment, however repealed that authority. To this day, only the Legislature itself has the power to suspend laws.

Executive Order GA-13 suspends Articles 17.03, 17.151, 15.21 and 42.042 of the Code of Criminal Procedure “and all other relevant statutes and rules.” As discussed above, these provisions are not regulatory statutes but are rules of criminal procedure intended to effectuate the constitutional rights to bail and release by way of applications for writs of habeas corpus. Only the Legislature can suspend its own laws.

Insofar as Executive Order GA-13 relies on Section 418.016 of the Government Code as a delegation of this authority by the Legislature, such reliance would be misplaced. The Legislature cannot constitutionally delegate its suspension power. *Brown Cracker & Candy Co. v. Dallas*, 104 Tex. 290, 295, 137 S.W. 342, 343 (1911); *McDonald*, 63 Tex. Civ. App. at 426 (1910); *Burton v. Dupree*, 19 Tex. Civ. App. 275 (1898). To the extent the Legislature intended to delegate its suspension authority in Section 418.016, that attempt is also unconstitutional, as delegation of suspension power is strictly prohibited. *See* Tex. Const. art. I, § 28. Because the power to suspend laws resides exclusively with the Legislature and cannot be delegated, Executive Order GA-13 violates Article I, Section 28 of the Texas Constitution, and consequently is null and void.

***F. Executive Order GA-13 is Unconstitutionally Vague***

Executive Order GA-13 seeks to refuse personal bonds to anyone previously convicted of, or who stands charged with, “a crime that involves physical violence or the threat of physical violence.” However, nowhere in the Order or any other Texas criminal statute is such a crime “of physical violence” defined. Pursuant to the Due Process Clause and the Fifth Amendment to the United States Constitution and Article I, Section 10 of the Constitution of the State of Texas, any criminal statute or law “gives rise to the danger of arbitrary and discriminatory application" is void for vagueness.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. [Among them], if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

*Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). There is nothing in Executive Order GA-13 that gives a judge any direction or guidance in what is to be considered , “a crime that involves physical violence or the threat of physical violence.” Judges throughout the State of Texas may easily differ on what constitutes such a crime and thus Applicant, and all the citizens accused throughout the State who are being held because of this vague directive, are subject to arbitrary and discriminatory application of the Governor’s Executive Order. Without some delineation of what specific provisions of the Texas Penal Code would be considered under such a title, there is no way to ensure consistency in the application of the directive as to all citizens accused.

***G. Executive Order GA-13 is Not Binding on This Court***

 The final provision of Executive Order GA-13 indicates “nothing herein shall prevent the lawful exercise of authority by a county criminal court judge, district judge, or appellate judge in considering release on an individualized basis for health or medical reasons . . .” EO-GA-13 at 3. Moreover, the language of the provision at issue is that “no authority *should* release on personal bond . . .” *Id.* at 2. This language indicates that the suspension is not binding on this Court (and indeed, as indicated above, there is no authority where it could be binding because it is not a valid order).

**V.**

**Continuing to Confine Applicant During a State of
Emergency Violates Applicant’s Due Process Rights**

Continuing to confine Applicant in the county jail during a state of emergency where the jail is understaffed and under-equipped to treat the spread of disease violates Applicant’s right to due process under the law and violates the basic human tenant of preservation of life. These are issues not simply of Applicant’s legal rights, but also of Applicant’s fundamental human rights.

***A. The Due Process Rights of Pretrial Detainees***

A pretrial detainee is presumed to be an innocent person. The only thing restraining his liberty is a judicial determination of probable cause following his arrest. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Accordingly, under the Due Process Clause,[[1]](#footnote-1) a detainee may not be punished prior to an adjudication of guilt. *See* *Ingraham* v. *Wright*, 430 U.S. 651, 671-672 n. 40, 674 (1977); *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 165-167, 186 (1963); *Wong Wing* v. *United States*, 163 U.S. 228, 237 (1896). “[P]retrial detainees (unlike convicted prisoners) cannot be punished at all, much less ‘maliciously and sadistically.’” *Kingsley*, 135 S.Ct. at 2475 (quoting *Ingraham* v. *Wright*, 430 U.S. 651, 671-672, n. 40 (1977)).

While the State undoubtedly has a legitimate interest in securing a person’s presence to answer to the charges levied, that interest does not supersede all others. Securing a person’s attendance in court should not come at the price of the detainee’s health and possibly his life;[[2]](#footnote-2) nor should it come at the price of *other people’s* health and lives. The Constitution imposes upon the government the duty to assume responsibility for the safety and well-being of pretrial detainees, and it trusts the courts to intervene when the government can no longer meet those responsibilities. *See Deshaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989); *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535, n. 16 (1979). The Supreme Court has also recognized that the State “has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution.” *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982).

***B. COVID-19 Threatens the Lives of Applicant, Other People Incarcerated Alongside Applicant, and the Staff at the Detention Facility***

 As the Court is aware, multiple worldwide, federal, and state agencies have issued warnings about the spread of the Novel Coronavirus, COVID-19. Under current guidelines, mass gatherings (defined as those including more than 250 people) should be cancelled; gatherings of more than 10 people in a high-risk population should not occur. “Interim Guidance for Coronavirus Disease 2019 (COVID-19), Ctrs. for Disease Control & Prevention (Mar. 15, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community
/large-events/mass-gatherings-ready-for-covid-19.html. When mass gatherings cannot be avoided, participants ought to wash their hands often or routinely use hand sanitizer. *Id.* Of course, imposition of these guidelines is aspirational at best, but usually simply impossible, in county jails. As the World Health Organization has recognized,

People deprived of their liberty, such as people in prisons, are likely to be more vulnerable to various diseases and conditions. The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19. In addition to demographic characteristics, people in prisons typically have a greater underlying burden of disease and worse health conditions than the general population, and frequently face greater exposure to risks such as smoking, poor hygiene and weak immune defen[s]e due to stress, poor nutrition, or prevalence of coexisting diseases, such as bloodborne viruses, tuberculosis and drug use disorders.

. . .

In these circumstances, prevention of importation of the virus into prisons and other places of detention is an essential element in avoiding or minimizing the occurrence of infection and of serious outbreaks in these settings and beyond.

*World Health Organization, Preparedness, prevention and control of COVID-19 in Prisons and Other Places of Detention* 1, 2 (Mar. 15, 2020), http://www.euro.who.int/
\_\_data/assets/pdf\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1. While the Centers for Disease Control have issued guidelines for Management of Coronavirus in Correctional and Detention Facilities, *see id.*, there has been no public indication that the jail confining Applicant has the capacity or even the intention of fulfilling these guidelines. Simply put, the county jail institution is woefully underprepared, understaffed, and cataclysmically underequipped to provide adequate medical care to detainees, some of whom are likely high-risk, pending formal charge. This is a threat not only to Applicant but to jail staff and other inmates.

***C. Refusing to Release Applicant on Recognizance Bond Despite the
 Threat of COVID-19 Violated Applicant’s Due Process Rights***

 The facility in which Applicant is currently housed does not, and indeed cannot, meet the recommendations of these multiple health organizations in limiting the transmission of COVID-19. While the Court has found probable cause to justify Applicant’s detention, there is nothing that can justify exposing a presumed innocent person to a deadly virus.

<< The urgency of Applicant’s situation is heightened by the fact that Applicant is at a higher risk of death upon contraction of the illness. *Specify any health concerns.*>>

Continuing to detain Applicant, a presumed innocent person, in an environment unsafe for his/her health constitutes a horrific, nightmarish punishment. It flagrantly undermines Applicant’s safety and well-being. *See Deshaney*, 489 U.S. at 200; *Revere*, 463 U.S. at 244; *Bell*, 441 U.S. at 535, n. 16. Moreover, it puts the safety of the jail staff, inmates, and other personnel at risk. *See Youngberg*, 457 U.S. at 324. Persisting in such confinement without articulated, compelling state interests justifying such confinement violates Applicant’s due process rights. *See Ingraham*, 430 U.S. at 671-72 n. 40; *Kennedy*, 372 U.S. at 165-67. <<The due process violation is exacerbated by the fact that Applicant *pick one, if applicable* has never been convicted of a crime prior to this arrest *or* has not been convicted of a crime in the last 5 years *or* has not been convicted of a crime in the last 10 years.>>

**VI. Conclusion and Prayer**

 Because Applicant intends to remain in the <<County>> area to appear for Court and clear <<his/her>> name, <<s/he>> intends to post a property bond and act as <<his/her>> own surety, evidencing even further why <<his/her>> bond should be substantially reduced.

 WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests the Court issue a writ of habeas corpus and set bail at personal recognizance with a promise to appeal. If a hearing is necessary, Counsel requests a hearing be conducted in line with proper safety procedures.

 Respectfully submitted,

<<signature block>>

**CERTIFICATE OF SERVICE**

I certify that at the time I filed this writ with the Court, I also served this motion on opposing counsel via the email address opposing counsel has listed with the state electronic-filing service provider.

 /s/ Attorney’s Name

 Attorney’s Name

1. The Due Process Clause of the Fourteenth Amendment, as opposed to the Cruel and Unusual Punishment Clause of the Eighth Amendment, governs treatment of pretrial detainees. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015). [↑](#footnote-ref-1)
2. Even the mere indifference to a viable threat to a pretrial detainee’s safety is not constitutionally permissible. *See Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (holding “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment); *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). When a legitimate, viable, undeniable, recognized threat to a pretrial detainee’s health is present, the reviewing court must take actions to protect the detainee from that threat. [↑](#footnote-ref-2)