

**IN THE SUPREME COURT OF THE STATE OF KANSAS**

JAMES HADLEY, JOHN EDWARD TETERS, MONICA BURCH, TIFFANY TROTTER, KARENA WILSON, ABRAHAM ORR, DAVID BROOKS, SASHADA MAKTHEPHARAK through his next friend KAYLA NGUYEN; *on their own and on behalf of a class of similarly situated persons;*

*Petitioners,*

v.

JEFFREY ZMUDA, in his official capacity as the Secretary of Corrections for the State of Kansas, SHANNON MEYER, in her official capacity as the Warden of Lansing Correctional Facility, DONALD LONGFORD, in his official capacity as the Warden of Ellsworth Correctional Facility, and GLORIA GEITHER, in her official capacity as the Warden of Topeka Correctional Facility,

*Respondents.*

Original Action No. 122,760

**Class Action**

**IMMEDIATE RELIEF SOUGHT**

**REPLY IN SUPPORT OF PETITIONERS' MOTION  
FOR CLASS CERTIFICATION**

COME NOW Petitioners and submit this Reply in Support of Their Motion for Class Certification. Petitioners note that in light of this Court's broad remedial powers, they need not certify the proposed class at this time in order to grant the remedies that Petitioners have requested. *See* K.S.A. 60-1505(d); *Schoenholz v. Hinzman*, 295 Kan. 786, 797 (Kan.

2012); *Gannon v. State*, 303 Kan. 682, 739 (Kan. 2016). However, Petitioners will briefly respond to several of Respondents’ arguments.

**I. There are no procedural constraints or rules of propriety preventing this Court from certifying a class action.**

The fact that no appellate or local rule addresses class-action certification does not mean that an appellate court must refuse to hear a request for class certification. Indeed, federal appellate courts do not decline to certify class actions simply because the federal analog lacks a procedural mechanism to do so. Moore’s Manual of Federal Practice and Procedure § 28.100 (“the fact that no appellate or local rule addresses class-action certification does not mean that an appellate court must refuse to hear a request for class certification in the circuit court”); *Back-Wenzel v. Williams*, 297 Kan. 346, 349 (Kan. 2005). Moreover, and as Respondents note, habeas actions are not subject to the ordinary rules of civil procedure. *Banks v. Simmons*, 265 Kan. 341, Syl. ¶ 1, 963 P.2d 412 (1998) (“[p]roceedings on a petition for writ of habeas corpus filed pursuant to K.S.A. 60-1501 are not subject to ordinary rules of civil procedure”). This Court’s decision to certify a class action would therefore be appropriate.

**II. Intensive fact-finding is not required to certify the class or subclasses proposed Petitioners.**

Respondents are incorrect that this Court must conduct intensive fact-finding prior to class certification. *See, e.g., Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285, 294 (Kan. 2011) (noting a “mini-trial” is not required to determine whether class action is a procedurally preferable manner to adjudicate a particular claim). Here, the proposed class is uniquely and exceptionally straightforward: Petitioners and other inmates

incarcerated in KDOC facilities share a common interest and injury in that they are being exposed to an unconstitutional risk of harm based on KDOC's systemwide failure to implement adequate prevention, testing, and treatment measures to protect them from the coronavirus. In the event the Court believes that additional fact finding would be necessary, the Court could appoint a Special Master to handle any class definitions, delineations, or monitoring. *See Comprehensive Health of Planned Parenthood of Kan. & Mid-Missouri, Inc. v. Kline*, 287 Kan. 372, 388 (Kan. 2008) ("this court appointed District Judge David King as a special master" to answer 17 questions posed by the Supreme Court).

### CONCLUSION

For the foregoing reasons, Petitioners request that this Court certify the class and subclasses identified in the Verified Petition.

Dated: April 14, 2020

Respectfully Submitted,

**ACLU FOUNDATION OF KANSAS**

/s/ Lauren Bonds

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## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2020, I electronically filed the foregoing with the Clerk of the Appellate Court's electronic filing system which will serve all registered participants and a copy was also served by email, addressed to Jeff Cowger ([jeff.cowger@doc.ks.gov](mailto:jeff.cowger@doc.ks.gov)), Natasha Marie Carter ([natasha.carter@ag.ks.gov](mailto:natasha.carter@ag.ks.gov)), Kristafer Ailsieger ([Kris.Ailsieger@ag.ks.gov](mailto:Kris.Ailsieger@ag.ks.gov)), and Fred W. Phelps, Jr ([Fred.PhelpsJr@ks.gov](mailto:Fred.PhelpsJr@ks.gov)), Counsel for Respondents.

/s/ Lauren Bonds \_\_\_\_\_  
Lauren Bonds