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VIA ELECTRONIC MAIL

Attorney General Mark Herring
202 North Ninth Street
Richmond, Virginia 23219
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Re: Galen Baughman, CL 17-3009, Arlington Circuit Court

Dear Attorney General Herring,

I write to request that your office re-consider its position on the conditional release of my client, Galen Baughman, who was (erroneously, in our view) found to be a sexually violent predator (“SVP”) by an Arlington jury in October 2019.

Mr. Baughman’s conviction was secured because your Office (1) paid an expert to testify at trial that Mr. Baughman met the definition of an SVP; (2) successfully prevented Mr. Baughman from calling Dr. Ilona Gravers, the independent expert appointed by the Department of Behavioral Health and Developmental Services (“DBHDS”) in accordance with the statutory procedures, who opined that Mr. Baughman *did not* meet the definition of an SVP; and (3) succeeded in excluding Mr. Baughman’s own psychological expert, Dr. Richard Krueger of Harvard University, who also found that Mr. Baughman did not meet the definition of an SVP. Though my co-counsel and I wrote a letter to your office asking your office to halt that prosecution last year, you declined to do so.

Setting aside the legal issues in Mr. Baughman’s case (which he intends to pursue with the Virginia Supreme Court), I write now to request that your office re-consider its position regarding Mr. Baughman’s conditional release in light of the disastrous COVID-19 pandemic that is wreaking havoc on institutions such as the Arlington Jail (where Mr. Baughman is currently housed) and the Virginia Center for Behavioral Rehabilitation (“VCBR”), where Mr. Baughman will go if the judge orders him civilly committed.

Put simply, if Mr. Baughman is at home, on electronic monitoring, he is at far less risk for both contracting COVID-19 and for spreading it to other institutionalized people and staff. If he remains at the Arlington jail while the issue of his release is litigated, and if he eventually ends up at an institution such as VCBR, the COVID-19 risk is greater not only for him, but also for other Virginia citizens.

On January 22, 2020, Mr. Baughman had a hearing in Arlington Circuit Court for the court to determine whether he should be conditionally released (and placed back on probation) with an extremely severe set of conditions, such as no personal internet use and electronic monitoring, or placed in the VCBR, a locked facility.

Despite the fact that Mr. Baughman has not been convicted of a crime since 2003; despite the fact that he was offense-free in the community on probation for four years; and despite the fact that your Office had no objection to Mr. Baughman's proposed home plan, your Office is taking the position that Mr. Baughman should *not* be conditionally released.

The Court found that your Office had not met its burden to show that there was no reasonable, less restrictive alternative to confinement, but continued the hearing to April 17, 2020, to receive additional evidence.¹

In the meantime, the COVID-19 crisis pandemic erupted in the United States. On the evening of March 13, 2020, Arlington County Manager Mark Schwartz signed a Declaration of Local Emergency for Arlington County in response to the public health threat posed by the Coronavirus (COVID-19). President Trump declared a national emergency on March 13, and Governor Northam declared a state of Emergency for Virginia on March 12. On March 15, Governor Northam used his emergency powers to ban gatherings of 100 or more people, further recommending that “[i]f you are planning an event with several people, you should cancel it, period.”² The Centers for Disease Control and Prevention urged “a nationwide halt to gatherings of more than 50 people for the next eight weeks.”³ Those restrictions are now even stricter—as of March 30, 2020, Governor Northam ordered all individual in Virginia to “remain at their place of residence” and if individuals go outside, use “they must at all times maintain social distancing of at least six feet from any other person[.]” until June 10, 2020.⁴

Virginia has been hit hard by COVID-19—as of the time of writing, there are 1,250 reported cases in Virginia and 27 deaths.⁵ Those numbers are increasing by the tens, if not

¹ Mr. Baughman remains in the Arlington jail, where he has been for nearly four years—a portion of that time was spent serving a probation violation, but a majority of that time has been spent being detained related to your Office's SVP petition.

² www.dailyprogress.com/news/state/northam-bans-events-over-people-statewide-as-virginia-has-confirmed/article_2053b656-48fe-5db6-bfae-26b15561ce8e.html

³ <https://www.washingtonpost.com/world/2020/03/15/coronavirus-latest-news/>

⁴ [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf)

⁵ <http://www.vdh.virginia.gov/coronavirus/>

hundreds, by the day—there was an increase of over 200 cases from yesterday to today. Virginia has declared a State of Emergency. *Id.* Many of those cases are concentrated in Northern Virginia, where Mr. Baughman is currently incarcerated. *Id.*

Individuals in institutional settings are at a particularly high risk of contracting COVID-19 because they cannot socially distance, have no choice about with whom they interact, and have limited access to cleaning materials. “We do not have a medicine for COVID-19. We do not have a vaccine for COVID-19,” Virginia Health Commissioner Dr. Norman Oliver said, “The only thing we have to prevent the spread of this disease is social distancing, so we need to all do that.”⁶ If Mr. Baughman is released, he will be able to socially distance—he can (and, per the Governor’s Executive Order, will have to) remain at home, on an electronic monitor. If he remains institutionalized, he will only remain a vector for the disease and susceptible to infection.

The special vulnerability of prisons and jails to infectious disease, and particularly COVID-19, is readily apparent from the Coronavirus outbreak in China. Coronavirus “exploded” in China’s prisons, and it did so suddenly and rapidly, with reports of more than 500 cases spreading across five facilities in three provinces.⁷ As of February 25, there were 555 confirmed infections in five prisons of three provinces—Hubei, Shandong, and Zhejiang.⁸ The situation became so dire in Iran’s correctional institutions that on March 9, 2020, it “temporarily freed about 70,000 prisoners to combat the spread of the coronavirus in jails.”⁹

Officials in Virginia have publicly recognized the particular risk to people who are incarcerated and people who are in incarceration-like settings, like VCBR, and started to take steps to lower institutional populations to help halt the spread of the virus.

Governor Northam’s website announces that he “is encouraging local criminal justice officials, including Commonwealth’s attorneys, defense attorneys, sheriffs, and other jail officials, to explore proactive measures to combat the spread of COVID-19 while ensuring public safety,” which include measures like modifying sentences to reduce jail populations, diverting offenders from being admitted to jail, and using alternatives to incarceration, such as home electronic monitoring.¹⁰

⁶ <https://www.wtvr.com/news/coronavirus/no-virginia-inmates-tested-for-covid-19-officials-say>

⁷ https://www.nbcwashington.com/news/coronavirus/us-prisons-jails-spread-of-coronavirus/2233762/?_osource=db_npd_nbc_wrc_twt_shr

⁸ <https://thediplomat.com/2020/03/cracks-in-the-system-covid-19-in-chinese-prisons/>

⁹ <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>

¹⁰ <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-854722-en.html>

Brian Moran, Secretary of Public Safety and Homeland Security, said, "We want to reduce the interaction and particular [sic] this vulnerable population that may exist in our jails."¹¹

Virginia Beach Sheriff Ken Stolle recently said, "I've never been this concerned about the working conditions and what's going to happen in the jail. If it gets into the jail it's going to be too late because it would spread like wildfire."¹²

Albemarle Charlottesville Jail Superintendent Martin Kumer is working to reduce his jail's population, noting that it is "difficult to handle social distancing in a jail" but that his staff is trying to use "home release" to reduce overcrowding.¹³

That is the smart and right thing to do here—agree to conditional home release for Mr. Baughman. Your Office has no objection to Mr. Baughman's home plan. Though his hearing is currently set for April 17, 2020, that date is in jeopardy in light of the Virginia Supreme Court's March 27, 2020 Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency, and Mr. Baughman would remain at the Arlington jail in the meantime, at high risk to be infected and to infect. Or, if your Office is successful in having Mr. Baughman sent to VCBR, he will be at a high risk to be infected and to infect there—VCBR is notoriously overcrowded.¹⁴

Though Mr. Baughman is 36, even relatively young and healthy people are at risk for serious illness from COVID-19.¹⁵ Over 40 percent of those who tested positive for the virus in New York were between the ages of 18 and 44.¹⁶ According to the CDC, nearly 40 percent of patients sick enough to be hospitalized in the U.S. were between the ages of 20 and 54.¹⁷

¹¹ <https://www.wtvr.com/news/local-news/northam-encourages-police-to-avoid-arrests-imprisonment-in-wake-of-covid-19-virus>

¹² <https://www.13newsnow.com/article/news/health/coronavirus/coronavirus-threat-to-jails-if-it-gets-in-its-going-to-spread-like-wildfire/291-045fe84b-bd32-4cdf-a406-60bac9467039>

¹³ https://www.dailyprogress.com/news/local/local-jail-begins-home-release-of-certain-inmates/article_222b4d32-4577-512c-8d1c-39e154c3a322.html

¹⁴ https://www.richmond.com/news/groundbreaking-monday-for-million-expansion-of-treatment-center-for-civilly/article_ebfd87bc-e871-5f77-aa82-d8052cffb456.html

¹⁵ <https://www.nytimes.com/2020/03/20/health/coronavirus-millennials-young-adults.html> (noting obesity as a risk factor for younger adults; Mr. Baughman has gained significant weight since being incarcerated in the Arlington jail).

¹⁶ <https://www.nytimes.com/2020/03/23/nyregion/nyc-coronavirus-young.html>

¹⁷ <https://www.nytimes.com/2020/03/18/health/coronavirus-young-people.html>

This is a once-in-a century crisis. Mr. Baughman, who has not committed a crime since 2003, when he was only 19 years old, and who, if released, would be at home on an ankle monitor, safe from infection and from spreading the virus, should not be a casualty of it.

I intend to file a motion imminently requesting the Court release Mr. Baughman. I respectfully request that your Office join me in filing a supplemental motion with the Court requesting that Mr. Baughman be conditionally released as soon as practicable.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Voshell", with a stylized flourish at the end.

Emily Voshell

CC: Jill Ryan,
Office of Attorney General

CC: Erin Whealton and Susanne Bielaski,
Office of Attorney General