

No. \_\_\_\_\_

DAVID D	, JODIE C.	, and	§	IN THE DISTRICT COURT OF
KEILIE M		, on behalf of themselves	§	
and a class of medically-vulnerable persons,			§	
			§	
Plaintiffs,			§	
			§	
v.			§	DALLAS COUNTY, T E X A S
			§	
DALLAS COUNTY SHERIFF MARIAN			§	
BROWN, in her official capacity,			§	
			§	
Defendant.			§	_____ JUDICIAL DISTRICT

**PLAINTIFFS' VERIFIED PETITION  
FOR EMERGENCY RELIEF AGAINST UNLAWFUL ENDANGERMENT OF  
MEDICALLY-VULNERABLE PERSONS DETAINED IN DALLAS COUNTY JAIL**

Plaintiffs bring this action for themselves and on behalf of a class of medically-vulnerable persons under the Texas Constitution's Bill of Rights and under Texas statutory and common law for emergency injunctive relief against Defendant Dallas County Sheriff Marian Brown (the "Sheriff") for detaining approximately 1,800 medically-vulnerable persons at the Dallas County Jail (the "Jail") in unsafe and unconstitutional conditions that make the ongoing and rapid spread of novel coronavirus disease 2019 ("COVID-19") in the Jail inevitable and thus endanger the lives and health of the medically-vulnerable persons and of the larger Dallas community.<sup>1</sup>

**Necessity of Action**

The reasons that make this action necessary are simple and obvious:

- COVID-19 poses a serious threat to health and life;
- The threat is especially elevated for people who are medically vulnerable;

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<sup>1</sup> For avoidance of doubt, Plaintiffs are not asking the Court to order the release of any person from the Jail. The purpose of this suit is to compel the Sheriff to perform her mandatory, ministerial duty to keep people in her custody safe from a deadly, highly communicable disease by taking steps necessary to allow everyone detained in the Jail to practice effective social distancing.

- The medical consensus is that 6 feet of social distancing is required to prevent the spread of COVID-19; and
- Social distancing is not possible at the Dallas County Jail complex under current conditions.

This pre-pandemic photograph—showing one of the dozens of 64-person “pods” in the Jail at *well below full capacity*—highlights the impossibility of social distancing:

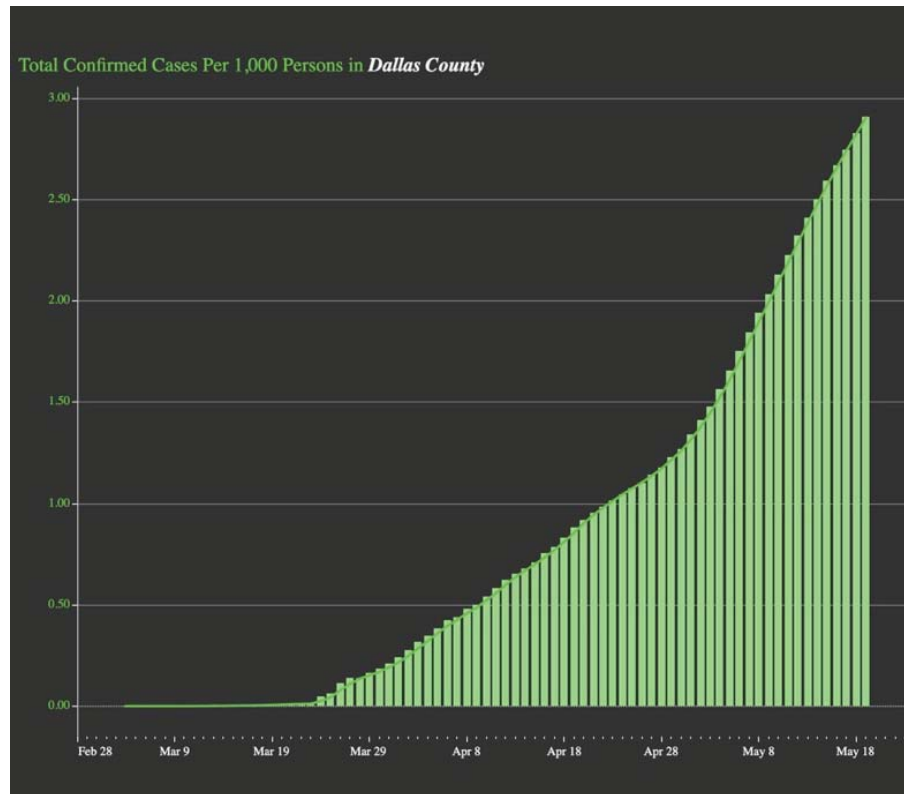


How did conditions at the Jail get so bad? The Sheriff learned on March 25, 2020 that one of the approximately 5,600 men and women then in her custody at the Jail had contracted COVID-19, the most dangerous and infectious disease to appear in more than a century. Since then, the Sheriff’s refusal to enforce social distancing has allowed the Jail to become what the Texas Health and Safety Code declares a “public health nuisance”—a “place . . . that is a possible and probable medium of disease transmission to or between humans.”<sup>2</sup> Indeed, by May 19, 2020, the number of *confirmed* sick detainees had soared to 333<sup>3</sup>—a number that plainly understates the *actual* extent

<sup>2</sup> Tex. Health & Safety Code § 341.011(12).

<sup>3</sup> *Dallas County Health and Human Services 2019 Novel Coronavirus (COVID-19) Summary* (“*Dallas County Summary*”), May 19, 2020, Table 6 (access on May 20, 2020) (available at

of COVID-19 cases due to the Sheriff’s failure to conduct anything close to adequate testing in the Jail.<sup>4</sup> Even with significant under-testing, the Dallas County Jail is the third-highest source of COVID-19 cases in all of Dallas County, behind general community spread and long-term care facilities.<sup>5</sup> And the *rate* of COVID-19 infection in Dallas County is the highest of all large Texas counties and rising rapidly, as this chart by Texas Department of State Health Services shows:<sup>6</sup>



[https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary\\_051920.pdf](https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_051920.pdf).

<sup>4</sup> The Jail averages only 11 COVID-19 tests per day, has capacity for only an average of 25 tests per day, and does not test members of the Jail’s guards and other staff at all. *See* Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

<sup>5</sup> *Dallas County Summary*, May 19, 2020, Table 6 (access on May 20, 2020) (available at [https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary\\_051920.pdf](https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_051920.pdf)),

<sup>6</sup> Texas Department of State Health Services, *Texas COVID-19* (access on May 20, 2020) (available at <https://tabexternal.dshs.texas.gov/t/THD/views/COVIDExternalQC/COVIDTrends?%3AisGuestRedirectFromVizportal=y&%3Aembed=y>). The rate of COVID-19 infection as of May 19, 2020 per 1,000 persons is approximately 1.05 in Bexar County, 1.95 in El Paso County, 1.95 in Harris County, 2.00 in Travis County, 2.15 in Tarrant County, and 2.85 in Dallas County. *Id.*

Texas law requires that Plaintiffs and the class members be granted emergency relief. That is because the Sheriff's exposure of thousands of medically-vulnerable detainees (and 1,300 staff) to the threat of severe illness and death violates their right to "due course of the law,"<sup>7</sup> inflicts on them "cruel or unusual punishment,"<sup>8</sup> and ignores the Sheriff's mandatory duties to "abate a public health nuisance in or on a place [she] possesses as soon as [she] knows that the nuisance exists" and to maintain the Jail "in a clean and sanitary condition".<sup>9</sup> Nor does sovereign immunity shield the Sheriff's conduct, since Plaintiffs are entitled to "injunctive relief under the Texas Constitution"<sup>10</sup> and the Texas Tort Claims Act waives immunity for threats of "personal injury and death so caused by a condition or use of tangible personal or real property."<sup>11</sup>

Emergency relief is necessary to prevent imminent irreparable injury to Plaintiffs—not to mention the Jail's detention services officers ("DSOs"), their family members, and larger community outside the Jail's walls. As a new study by experts at the University of Texas Southwestern Medical Center demonstrates, moreover, enforcing social distancing in the Jail will prevent serious viral infection of the Plaintiffs, the members of the class, and many others in Dallas County. *See* pages 26-28 below. The abundant evidence presented by and incorporated into this Verified Petition amply supports emergency relief, which will compel the Sheriff to do her constitutional and statutory duty but will do so in a way that does not mandate particular methods.<sup>12</sup>

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<sup>7</sup> TEX. CONST. ART. I, § 19.

<sup>8</sup>*Id.* § 13. The guarantee of "due course of the law" and prohibition against "cruel or unusual punishments" have been fundamental Texas law since its founding as an independent republic and appear, respectively, in articles 6 and 11 of the Declaration of Rights in the Constitution of the Republic of Texas (1836).

<sup>9</sup> Tex. Health & Safety Code § 341.012(a); Tex. Local Gov. Code § 351.010(4).

<sup>10</sup> *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 391 (Tex. 2007) (per curiam) (affirming refusal to dismiss "claims for injunctive relief based on alleged constitutional violations").

<sup>11</sup> Tex. Civ. Prac. & Rem. Code § 101.021(2).

<sup>12</sup> The evidence supporting this Verified Petition includes four days of testimony in a pending federal lawsuit against the Sheriff and Dallas County, *Sanchez v. Dallas County Sheriff Marian Brown*, No. 20-cv-832-E (N.D. Tex.); government statistics and statements published on official websites and cited in footnotes; the Declaration of Eric T. Lofgren, MSPH Ph.D.; the Declaration of Ank Nijhawan, M.D., M.P.H., M.S.C., M.S.C.S.; and the Declaration of Robert L. Cohen, M.D., Regarding the Spread of COVID-19 in and from the Dallas County Jail. The federal lawsuit alleges claims exclusively under federal law. The *Sanchez* defendants asserted multiple defenses, including that the

Accordingly, the Court should conditionally certify this case as a class action under Rule 42 of the Texas Rules of Civil Procedure and grant the class a temporary restraining order and temporary and permanent injunctions to remedy the unconstitutional and unlawful conditions at the Jail.

### **Discovery Level**

1. Plaintiffs intend to conduct discovery under Level 3.

### **Parties**

2. Plaintiff David D is a Texas citizen and a resident of Dallas County. D is currently detained in the Jail, has a history of asthma, and is medically vulnerable to COVID-19.

3. Plaintiff Jodie C is a Texas citizen and a resident of Dallas County. C is currently detained in the Jail, has a history of emphysema and asthma, and is medically vulnerable to COVID-19.

4. Plaintiff Keilie M is a Texas citizen and a resident of Dallas County. M is currently detained in the Jail, has a history of high blood pressure, lung problems, and asthma, and is medically vulnerable to COVID-19.

5. Defendant Dallas County Sheriff Marian Brown is a Dallas County official, the head of the Dallas County Sheriff's Department, and the keeper and possessor of the Jail. Although the Sheriff is the final policymaker for running and administering the Jail, she has mandatory, non-discretionary obligations under the Texas Constitution and statutory law. She has immediate custody over Plaintiffs and all other members of the class of detainees. Plaintiffs bring this action against the Sheriff solely in her official capacity.

### **Jurisdiction and Venue**

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plaintiffs should or must seek recourse under Texas law, in Texas state court. The federal court denied immediate relief by of April 27, 2020 but has not issued an opinion explaining the basis for the decision.

6. The Court has jurisdiction over the subject matter under the Texas Constitution, Texas common law, and section 65.021(a) of the Texas Civil Practice and Remedies Code. The case falls within the Court's jurisdictional limits.

7. Venue for the case properly lies in Dallas County under section 15.015 of the Texas Civil Practice and Remedies Code because it is effectively (although not actually) an action against Dallas County.

### **Class Action**

8. Plaintiffs seek to represent a class ("Class") of all medically-vulnerable person who currently are or who come to be detained in the Jail.

9. "Medically-vulnerable person" means the person in custody is over the age of 50 or experiences (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g., bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) hypertension; (f) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (g) blood disorders (including sickle cell disease); (h) inherited metabolic disorders; (i) history of stroke; and/or (j) a current or recent (within the last two weeks) pregnancy.

10. This action has been brought and may properly be maintained as a class action under Texas law. It satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 42(a) of the Texas Rules of Civil Procedure.

11. Joinder is impracticable because (1) the Class is numerous; (2) the Class includes future members, and (3) the Class members are or will be incarcerated, rendering their ability to institute individual lawsuits limited.

12. The Jail currently houses approximately 1,800 Class members.

13. Common questions of law and fact exist as to all members of the Class: all are at unreasonable risk of serious harm from contracting COVID-19 due to the conditions in the Jail and the Sheriff's failure to take reasonable measures to assure their safety from the disease, and all have a right to receive adequate COVID-19 prevention, testing, and treatment. Questions of fact common to all proposed Class members include whether COVID-19 is a serious disease that poses an intolerable risk to health and safety and whether the conditions in the Jail expose Class members to a heightened risk of contracting COVID-19 and heightened risk of serious illness, injury, or death. Questions of law common to all Class members include whether Plaintiffs' rights are being violated and what relief is available to mitigate the risks posed by their confinement in the Jail.

14. Plaintiffs are medically-vulnerable persons detained in the Jail, and their claims are typical of the Class members' claims. The Sheriff has placed them at significant risk of harm by failing to take appropriate steps to address the risk of contracting, and being rendered seriously ill or injured by, COVID-19 in the Jail. Plaintiffs face heightened risk of contracting COVID-19 if they are not adequately protected by the Sheriff.

15. Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests adverse to the interests of the proposed Class. Plaintiffs retained counsel with experience and success in the



prosecution of civil rights litigation. Counsel for Plaintiffs know of no conflicts among proposed Class members or between counsel and proposed Class members.

16. The Sheriff has acted on grounds generally applicable to all proposed Class members, and this action seeks injunctive relief. Plaintiffs therefore seek class certification under Rule 42(b)(2).

## **FACTS**

### **Overview**

17. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the United States declared the COVID-19 pandemic a national emergency.

18. On March 23, 2020, the Centers for Disease Control and Prevention (CDC) issued its Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (“CDC Interim Guidance”). The CDC Interim Guidance recommended “social distancing” as a “cornerstone” of any strategy to prevent the spread of COVID-19 in a jail setting.

19. Ank Nijhawan, M.D. MPH, MSCS, is an infectious diseases expert who works in the Dallas County Jail and has been managing the Jail’s response to the pandemic. She works with the medical care providers who work at the Jail for Dallas County’s Parkland Health and Hospital System (“Parkland”).

20. The serious threat that COVID-19 poses to people detained in the Jail so concerned Dr. Nijhawan that on March 23, 2020, she prepared a list of approximately 2,200 people whose age or poor health makes them especially vulnerable to severe illness and death if they contract COVID-19.



21. Dr. Nijhawan’s concern was prophetic. Two days after she prepared the list, the Jail for the first time discovered that a person detained in the Jail was positive for COVID-19. That person had entered the Jail in December 2019, meaning that he had been living in the general population, potentially spreading the virus to others for weeks if not months, and that he had contracted COVID-19 from someone else who had been in the Jail, but the Jail never determined who. Perhaps coincidentally, on the same day, the Jail received an autopsy report—for a detained person who had passed away in custody in February 2020—that identified the cause of death as “Bronchopneumonia”,<sup>13</sup> “a common and potentially deadly complication of infection with the novel coronavirus that leads to COVID-19.”<sup>14</sup>

22. Before March 25, 2020, the individual who was the first to test positive had lived and slept in two different “pods” in the South Tower of the Jail. Pods in the Jail house up to 64 detainees at a time. Detainees assigned to pods sleep in bunk beds within a few feet of each other and share a day room, toilets, showers, tables, pay phones, an electronic kiosk for (among other things) video conferences and sending and receiving messages, and other common facilities. This person may have exposed a large number of people to the disease, including other people detained in the Jail, along with guards, nurses, food servers, and visiting lawyers and family members. Many of the people the person exposed were subsequently moved elsewhere within the Jail, and some of them were released into the community outside the Jail.

23. Despite the discovery of an active COVID-19 case in the Jail and the high probability that the individual had exposed others in the Jail, including detained persons and staff

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<sup>13</sup> Office of the Attorney General of Texas, *Custodial Death Report*, Mar. 25, 2020 (“The report depicts that the Decedent [Nathaniel Washington] died as a result of Bronchopneumonia. Congestive Heart Failure and Chronic Kidney Disease due to Hypertensive Cardiovascular Disease and Diabetes Mellitus also contributed to the Decedent’s death.”)

<sup>14</sup> Elain K. Howley, *What Is Coronavirus Pneumonia?*, May 1, 2020 (access one May 19, 2020) (available at <https://health.usnews.com/conditions/articles/what-is-coronavirus-pneumonia>).

alike, the Sheriff did not promptly adopt or implement the CDC Interim Guidance. Nor did she provide the CDC Interim Guidance to DSOs or other Jail staff or provide them with training about COVID-19. She has even failed to update the Jail's policy—already a decade old—for handling infectious diseases within the Jail.

24. Indeed, Sheriff Brown did not create or distribute *any* overall policy for dealing with COVID-19.

25. On the same day the first COVID-19 case in the Jail was confirmed, Dr. Nijhawan sent an extraordinary letter to Sheriff Brown and other Dallas County officials. Her letter provided dire warnings of “real and immediate danger to the health of the community.” She wrote (with emphasis added) as follows:

As an infectious diseases doctor, I strongly urge you to consider *releasing defendants* in the Dallas County Jail who are charged with non-violent offenses. For the reasons below, it is important to prioritize inmates who are older (over 50 years of age) or have pre-existing conditions such as cancer, diabetes, lung disease (such as asthma or chronic obstructive pulmonary disease), heart disease, or HIV.

The Dallas County Jail and other large correctional facilities *pose a real and immediate danger to the health of the community*. An even limited outbreak of COVID-19 in the Dallas County Jail has *the potential to overwhelm our already overburdened hospital system and will directly impact security staff and healthcare staff at the jail*. As we have already had *one incarcerated individual test positive for COVID-19*, and *this epidemic can spread quickly* both within the jail and to vulnerable people in our community.

According to the Centers for Disease Control and Prevention, older adults and people with serious chronic medical conditions like heart disease, diabetes, and lung disease are at higher risk of becoming ill from COVID-19. On average, the people housed in our correctional facilities are older and more likely to suffer from poor physical health and illness as compared with the general public, which means they are exactly the type of high-risk group that will fall very sick if they come into contact with COVID-19. Of the 5000+ persons incarcerated at the Dallas County Jail, over half have chronic medical conditions.

To make matters worse, *social distancing is nearly impossible in a jail setting*, where people are housed in a relatively small spaces with up to 60 people at a time. In addition *200-300 inmates enter and leave the Dallas County Jail on a daily basis*,

severely limiting the ability to meaningfully quarantine individuals who have been exposed or who are at high risk for developing the disease.

If we do not reduce the population in the Dallas County Jail substantially, and in very short order, we risk *contributing to an already expanding outbreak, compromising the health of vulnerable incarcerated individuals, jail healthcare providers and security staff as well as jeopardizing the health of the Dallas community at large.*

Sincerely,

/s/

Ank Nijhawan, M.D., MPH, MSCS

26. Since Dr. Nijhawan sent this letter to Sheriff Brown on March 25, 2020, the pace of infection in the Jail has skyrocketed. By April 21, 2020, the number of confirmed positives among people detained in the jail stood at 81. Two weeks later, the number had more than tripled, to 248. As of May 19, 2020, it had risen further to 333.

27. These alarming numbers are almost certainly dramatic undercounts. Astonishingly, although the administrator of medical services at the Jail believes that testing should be expanded, a daily average of only 11 COVID-19 tests *are* being administered at the Jail—and a daily average of only 25 tests *can be* administered at the Jail due to a shortage in available capacity.<sup>15</sup> There are thus very probably far more detained persons (and detention service officers, or DSOs) who are sick with COVID-19 at the Jail than we currently know.<sup>16</sup>

### **The Jail Complex**

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<sup>15</sup> Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

<sup>16</sup> *As Many as 50 Percent of People with COVID-19 Aren’t Aware They Have the Virus*, Apr. 24, 2020 (available at <https://www.healthline.com/health-news/50-percent-of-people-with-covid19-not-aware-have-virus#How-transmission-works>).

28. These tragic circumstances are unfolding in a massive complex that consists of three connected buildings called the Lew Sterrett Justice Center near downtown Dallas. The complex comprises the North Tower, West Tower, and South Tower and can hold up to a total of 7,100 detained persons.<sup>17</sup> As of May 1, 2020, 4,805 people were detained in the Jail,<sup>18</sup> up slightly from the average of 4,714 during May 2019.

29. The North Tower is a maximum-security facility that houses up to 3,292 detained persons but has only 188 single cells. The West Tower has capacity for up to 1,530 detained persons but only 25 single cells. The South Tower has a capacity of 2,304 and 0 single cells and is a “direct supervision facility” in which DSOs “work inside the actual housing unit with the inmates”.<sup>19</sup>

30. The vast majority of detained persons in the Jail occupy bunk beds in tanks and pods capable of holding 8, 28, and 64 individuals, respectively. The West Tower alone has 132 8-person tanks.<sup>20</sup> The tanks in the North Tower hold up to 24 detained persons. Each floor of the South Tower has 9 pods holding as many as 64 detained persons.

31. The pre-pandemic photograph on page 2 above depicts a typical pod in the South Tower. The following image shows part of a typical 24-person tank, including the common area in the foreground and multiple-person cells on the far side, in the North Tower.<sup>21</sup>

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<sup>17</sup> *Dallas County Sheriff Detention Centers* (available at <https://www.dallascounty.org/departments/sheriff/detention.php>).

<sup>18</sup> *Texas Commission on Jail Standards—Abbreviated Population Report for 5/01/2020* at 2 (available at <https://www.tcjs.state.tx.gov/wp-content/uploads/2020/05/AbbreviatedPopulationReport.pdf>).

<sup>19</sup> *Id.*

<sup>20</sup> *Dallas County Detention Centers* (available at <https://www.dallascounty.org/departments/sheriff/detention.php>).

<sup>21</sup> The image was excerpted from a video, “Behind Bars: The World’s Toughest Prisons”, that is available online at <https://www.youtube.com/watch?v=fkX2hanoYYM>. The page on which the video appears provides a date of November 5, 2018. Testimony in the *Sanchez* case established that the image is a fair and accurate depiction of a pod in the South Tower as of April 2020.



### **The Critical Lack of Social Distancing in the Jail**

32. Jails must maintain or create environments that allow social distancing because it is the only way to prevent people from contracting COVID-19.

33. The CDC Interim Guidance says both good hygiene practices and social distancing are indispensable in preventing further transmission of the virus. It is necessary to practice social distancing, meaning people must keep at least 6 feet apart, to reduce the likelihood the virus will spread. The closer people are to each other, the more rapidly the virus spreads.

34. According to the CDC Interim Guidance, social distancing is a “cornerstone” of any strategy to control the spread of COVID-19 in a detention facility like the Jail.

35. Everyone is at risk of catching COVID-19. Congregate settings—like jails, nursing homes, and meatpacking plants—are the most fertile ground for rapid spread because social distancing is impossible in those environments; they are currently the sites of the largest outbreaks

in the United States.<sup>22</sup> The same is true in Dallas County, where congregate settings account for at least 12 percent of known COVID-19 cases.<sup>23</sup> In a statement on May 16, 2020, Texas Governor Abbott referred to nursing homes, meat packing plants, and jails as the “most high-risk areas” in the state in terms of COVID-19 infection.<sup>24</sup>

36. Research shows that COVID-19 has a lengthy incubation period and that many people are asymptomatic carriers, meaning that a person can spread the disease to others without ever knowing that the individual is sick. This reality makes social distancing even more important as a precaution to prevent the spread of COVID-19 by undetected carriers of the novel coronavirus.

37. Indeed, without universal testing, treatment, or a cure, the only way to effectively stop the spread is to separate people and minimize the opportunities for COVID-19-positive people to infect others.

38. Jail populations have experienced a rapid spread in COVID-19, because people are forced to live, 24 hours a day, in cramped, unsanitary quarters, without access to sufficient space to social distance and without the ability to take basic health and sanitation precautions, including

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<sup>22</sup> See Dylan Matthews, *America's Covid-19 hot spots shed a light on our moral failures*, May 1, 2020 (available at <https://www.vox.com/future-perfect/2020/5/1/21239396/covid-19-meatpacking-prison-jail-moral>); *Texas prisons see more than 38,000% spike in coronavirus cases*, May 1, 2020 (available at <https://www.kvue.com/article/news/investigations/defenders/texas-prisons-see-spike-in-coronavirus-cases/269-4ecec259-0c97-4436-884a-66b95a3dd7c7>); Avery Travis, *In under two weeks, Texas jails see 340% increase in inmates testing positive for COVID-19*, Apr. 30, 2020 (available at <https://www.kxan.com/investigations/in-under-two-weeks-texas-jails-see-340-increase-in-inmates-testing-positive-for-covid-19/>); Tyler Hicks, *As COVID-19 Hits Jails and Prisons, Texas Inmates Call for Action*, Apr. 28, 2020 (available at <https://www.dallasobserver.com/news/coronavirus-texas-jails-prisons-11904509>); Lomi Kriel, et al., *Texas Still Won't Say Which Nursing Homes Have COVID-19 Cases. Families Are Demanding Answers*, Apr. 30, 2020 (available at <https://www.propublica.org/article/texas-still-wont-say-which-nursing-homes-have-covid-19-cases-families-are-demanding-answers>); Coltrain, Gruber-Miller & Eller, *Iowa prisons, jails, meatpacking plants and long-term care facilities face growing COVID-19 challenges*, Apr. 20, 2020 (available at <https://www.desmoinesregister.com/story/news/health/2020/04/20/iowa-gov-kim-reynolds-coronavirus-covid-19-news-conference-maps-data-matrix-stay-at-home/5163891002/>).

<sup>23</sup> See Dallas County Summary, May 15, 2020, Table 6 (available at [https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary\\_051520.pdf](https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_051520.pdf)).

<sup>24</sup> Office of Tex. Gov., Press Release: *Governor Abbott Releases Statement, Provides Details on Increased Cases in Amarillo*, May 16, 2020 (available at <https://gov.texas.gov/news/post/governor-abbott-releases-statement-provides-details-on-increased-cases-in-amarillo>).



washing their hands, cleaning communal surfaces, obtaining clean laundry, and avoiding infected or potentially infected people—like the DSOs who might touch them or the kitchen workers who provide them food. Indeed, the Jail’s kitchen has been an especially prolific source of COVID-19 infections.

39. DSOs and other Jail staff are equally vulnerable, and because they leave the Jail every night, they in turn may expose their families and communities to COVID-19.

40. Personal Protective Equipment (“PPE”) is not an effective substitute for social distancing. Effective PPE—such as an N95 mask—is not available for detained persons or for the vast majority of staff in the Jail. Nor has Sheriff Brown provided training for people detained in the Jail on the proper use of the PPE that is available. The limited number of paper masks that have been provided generally do not prevent the wearers from inhaling droplets carrying the novel coronavirus that causes COVID-19 and at best reduce the spread of droplets when the wearers exhale, cough, or sneeze. They do not even do that when they are broken, which is common, or are not worn, which happens often, whether during meals, sleep, showers, or other times.

41. There have been many recent instances of poor and non-existent social distancing practices in the Jail.

42. In each of the Towers, the Sheriff requires DSOs in the Jail to conduct a “round” at least every 44 minutes during their 8-hour shifts. A round involves walking through the pod or tank in close proximity to everyone detained in the pod or tank at least 10 times each shift.

43. Protective measures are so haphazard at the Jail that a DSO working in the South Tower, Emmanuel Lewis, was never told that the pod he was assigned to was on quarantine until he arrived at work, walked into the pod, and saw a sign saying it was locked down.



44. Even when they are under quarantine, pods in the South Tower are still routinely visited by DSOs, nurses, people who deliver meals, people who deliver the mail, and others who cycle throughout the Jail.

45. Detainees in the South Tower still line up for meals in pods without social distancing. The line goes through the restroom area and to the showers, and with limited space to line up, all persons in the pod are in close contact while in line. During meals, which last about 30 minutes, people detained in the Jail sit within 6 feet from each other and do not wear masks.

46. It is not possible to adequately socially distance under these current and ongoing living conditions and density of population at the Jail. Following social distancing guidelines in the Jail would require either reducing density inside the Jail by using currently unoccupied pods and tanks or by releasing some detained persons from the Jail, thus allowing for enough space in the Jail for detained persons, DSOs, and other staff and visitors to keep at least 6 feet apart.

47. The number of people that the population needs to be reduced by is dictated by the number of people that can be in the Jail and allow for eating, living, and sleeping at least 6 feet apart in the pods and tanks that can be staffed with DSOs.

48. The Jail is not making sufficient efforts to protect medically-vulnerable persons from infection because the Jail is not practicing social distancing for those detainees and as a practical matter cannot do so given its ability to staff and use pods, tanks, and other crowded spaces.

49. The Jail has no contingency plan for separating COVID-19-positive patients in light of the availability of only 213 single-person cells in the Jail and is simply crowding detained persons into the pods and tanks it is able to staff with DSOs.

50. There are too many people in the Jail for social distancing to be effective in pods and tanks, and the Jail has refused to release sufficient numbers of medically-vulnerable people, who are highly likely to develop complications and overwhelm the medical staff.

**Lack of Cleaning Shared Areas and Common Surfaces in the Jail**

51. The lack of effective cleaning and poor hygienic practices in the Jail make the lack of social distancing an even greater threat to the health and lives of Plaintiffs and the Class members.

52. The CDC Interim Guidance recommends intensifying cleaning and disinfecting procedures, including wiping down commonly touched surfaces several times per day, as a means of preventing and containing a COVID-19 outbreak.

53. Yet all routine cleaning inside the Jail is done by the people who are detained there—who are not professional cleaners and are not trained on proper cleaning techniques. Further, the Jail does not provide the CDC-recommended bleach-based cleaner.

54. Detainees in the Jail are responsible for cleaning common areas within pods and tanks. No alcohol wipes or other disinfectant wipes are provided.

55. Common surfaces where droplets of the coronavirus may accumulate are not cleaned. When detainees are using the dayrooms in South Tower pods, for example, they take the plastic chairs stacked underneath the staircase and set them up at the tables. In a typical shift, the chairs are not cleaned, wiped down, or sprayed with disinfectant.

56. Nor are the electronic kiosks and pay phones for people detained in the Jail to use for communications cleaned or disinfected. Despite being in almost constant use, the kiosks and pay phones are not cleaned, wiped down, or sprayed with disinfectant. The video kiosks in South

Tower pods are used by up to 64 people and have been used a lot more frequently since the Jail stopped in-person visits as a result of the pandemic.

57. Cleaning of areas that have been occupied by people showing COVID-19 symptoms is also haphazard. Pods where such detainees had been held are not cleaned by professional cleaners.

58. Examples of deplorable hygiene at the Jail are common. In one incident, a detainee in the E pod of South Tower started vomiting in the night, and no one cleaned it up. In the morning, a DSO tried to get the detainee to clean up after himself, but he was unresponsive, and he continued to lay in his bunk, coughing, sneezing, and vomiting. Jail staff simply moved him to a bottom bunk across from the urinal so that he would not have to walk very far in order to throw up.

59. When Jail staff came with gloves and masks to remove the ill person, they did not give the other detainees in pod E any instructions about how to protect their health. Nor did they provide any of the inmates in pod E with any cleaning supplies or PPE.

60. There is one sink in each of the South Tower pods. The sink and the bar of soap at the sink are used by up to 64 people in the pod. People detained in the jail have access only to bars of soap and cannot obtain liquid soap.

### **Lack of Training for DSOs and Detainees in the Jail**

61. Poor or non-existent training further heightens the danger of coronavirus infection to detained persons in the Jail.

62. The CDC Interim Guidance calls for providing up to date information about COVID-19 to DSOs and detainees on a regular basis. It also recommends updating DSOs about facility policies regarding COVID-19 on a regular basis. It further specifies that training should be given by medical personnel.

63. The Parkland administrator for medical care at the Jail agrees that it is important for DSOs to have training specific for social distancing in the age of COVID-19 in order to effectively implement social distancing. Yet Parkland has never provided training for social distancing or other matters addressed by the CDC Interim Guidance to DSOs or detained persons in the Jail—other than making a videotape available for DSOs to view regarding putting on PPE and taking it off.

64. As of May 19, 2020, the only training that any of the DSOs have received relating to COVID-19 also concerned PPE. And even that training was not about preventing the spread of COVID-19 among detained persons or adhering to CDC guidelines but aimed instead at compliance with Occupational Safety and Health Administration requirements.

65. Nor has the Sheriff provided DSOs with any written instruction about social distancing, about guidance for COVID-19 by the CDC, or even about how to identify COVID-19. DSOs were forced to rely on their own common sense and whatever they were able to research on own about COVID-19 because they were not given any training, either orally or in writing, from the Sheriff about what to do during this pandemic.

66. The reality of life for detained persons in the Jail is illustrated by this recent photograph, which shows several detainees in an image communicated through an electronic kiosk on April 22, 2020:



The detainees' inability to practice social distancing, the absence of training to impress on the detainees the importance of social distancing to their lives and health, and the absence of clean and effective PPE are not the exception in the Jail. They are the ever-present rule.

### **Lack of Testing in the Jail**

67. Testing for COVID-19 is essential to determining how far it has spread. It is therefore important to expand testing in Jail populations in order to be able to understand how many persons may be asymptomatic and to identify people who have COVID-19 in order to remove them from the general population.

68. In testimony he gave on April 24, 2020, the Parkland administrator responsible for medical care in the Jail, Patrick Jones, said he believed that more testing should be done in the Jail.

69. But testing is rare and haphazard. DSOs are completely excluded from testing for COVID-19 at the Jail because Parkland provides healthcare exclusively for detained persons, not staff.

70. Detained persons who have COVID-19 and are shedding the coronavirus but are asymptomatic are very unlikely to be tested in the Jail. Even if they have symptoms like fatigue, sore throat, or congestion, they would not come to the attention of the floor nurse or anyone affiliated with Parkland if they did not report their symptoms. Many people infected with COVID-19 are very likely undetected in the Jail.

71. Nor in any event are there enough COVID-19 tests to test more than a small number of people at the Jail on any given day. The Dallas County health department processes the COVID-19 testing for the Jail but does not have the capacity to provide any more than a daily average of 25 test results for the Jail. Although Parkland is not satisfied with the level of testing that is being done at the Jail and wants to expand it, as of May 15, 2020, Parkland was administering an average of only 11 COVID-19 tests at the Jail each day.<sup>25</sup>

72. Nor are people entering and leaving the Jail—lawyers, loved ones, staff who work at the Jail, or medical staff from Parkland—tested for COVID-19 by the Jail. The only people who get tested are people who are symptomatic detainees and for some reason or another come to the attention of Parkland and who Parkland chooses to test.

### **Heightened Danger to Medically Vulnerable Persons in the Jail**

73. The CDC Interim Guidance states that some groups are especially at risk of developing complications and dying from COVID-19. These include persons who have cardiac disease, chronic liver or kidney disease, or diabetes as well as obese persons and immune compromised persons who have had cancer.

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<sup>25</sup> Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

74. Dr. Nijhawan believes it is important to prioritize releasing people who are older (over the age of 50) or have preexisting conditions such as cancer, diabetes, lung disease, such as asthma, or chronic obstructive pulmonary disease (heart disease or HIV).

75. The age of 50 is the right threshold because detained people tend to have a biological age about 10 to 15 years older than their chronological age given that people with poverty, mental and physical health problems, and substance use issues are overrepresented in the jail, and those issues age people significantly. This is the same for convicted persons and pretrial jail detainees because people turn through the systems one day after the next. The population is largely the same.

76. Patrick Jones, the Parkland administrator at the Jail, agrees that if a medically-vulnerable person contracts the COVID-19 disease, the odds that it will cause serious harm to that person are greatly increased because the risk factors are higher. He also agrees that in April 2020 there were more than 2,000 people in the Jail who were at a higher risk of serious harm—enough to require hospitalization or cause death—if they were to become infected by COVID-19. He further agrees that COVID-19 is a disease that is many times more likely to be fatal than a flu disease or a flu.

### **Conditions at the Jail Are Worsening**

77. The rapid increase in detected COVID-19 cases at the Jail reflects worsening conditions and portend graver circumstances in the near future. Even the Parkland administrator testified that as of April 24, 2020, he expected more people detained in the Jail to contract COVID-19 every day. He noted that the rate of infection of detainees with COVID-19 in the Jail was still increasing as of April 24, 2020. And he said the Jail had not yet hit the peak of the outbreak.



78. Dr. Nijhawan agrees that the effects of the pandemic in the Jail have yet to peak and are growing worse daily.

79. The circumstances are worse than we know, given that the deplorable lack of testing at the Jail obscures the true severity of the COVID-19 outbreak in the Jail. Because the Jail tests only those detained persons who exhibit obvious symptoms of COVID-19 and come to the attention of a Parkland nurse, detained persons and DSOs who have COVID-19 but are asymptomatic do not receive tests for the disease and continue to expose others. The number of people who have COVID-19—and who are quietly spreading it in the Jail—is thus likely far higher than the 309 confirmed cases among detained persons (not to mention the dozens of confirmed cases among DSOs).

80. Nor is that all. When a 64-person pod has been suspected of being exposed to COVID-19, all 64 of the men are quarantined together where they commingle with one another as they had done before one of them came under suspicion. If someone else in the pod did not have COVID-19 at the time the quarantine started, they now face very likely exposure to the virus with little hope for relief or safe social distancing.

81. The reason people who may not have COVID-19 have to wait with and potentially be exposed to somebody who does have the virus is because the Jail keeps people detained in 64-person pods rather than in smaller groups. If the Jail had enough single cells or used smaller cells to house just one person or even a few, the Jail would not have to house potentially exposed people with so many others who have not yet been exposed.

### **The Jail Poses a Growing Danger to the Larger Community**

82. As the Sheriff has conceded through the testimony of her representative, Chief Deputy Fredrick Robinson, there is no assurance that the Jail has not spread already COVID-19 beyond the Jail's walls or that it will not do so in the future.

83. That is an unsurprising concession. Hundreds of people who come into contact with DSOs enter and leave the Jail every day.

84. The constant movement of people into and out of the Jail is also problematic because it makes effective identification of exposed persons and their placement into cohorts for observation in the Jail virtually impossible.<sup>26</sup> It also increases the likelihood that people with the virus will interact with those who do not yet have it and that COVID-19 will be spread into the community outside the Jail.

85. In Dr. Nijhawan's medical opinion, if we do not reduce the Jail population substantially and in very short order, you risk contributing to an already expanding outbreak and compromising the health of incarcerated individuals, Jail healthcare providers, DSOs, and the Dallas community at large. This is consistent with the opinions of other public health officials, doctors, and epidemiologists.

86. Dr. Nijhawan believes that reducing the correctional population is a crucial public health step. She would encourage the Jail to decrease its population by a substantial number so that those who remain can practice social distancing.

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<sup>26</sup> The CDC Interim Guidance defines "cohorting" as "the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group."

87. The Parkland Vice President of Correctional Health Services at the Jail, Patrick Jones, agrees that reducing density in the Jail is a “feasible” response to the danger of COVID-19 infection in the Jail.

88. Reducing density in the Jail would also help alleviate the pressure on the Jail’s and County’s health system and resources to handle the pandemic and would allow DSOs to oversee smaller groups of detained persons in pods, tanks, and other shared spaces.

### **Necessity for Emergency Injunctive Relief**

89. As discussed in the CLAIMS section below, the Sheriff’s conduct violates the rights of Plaintiffs and the members of the Class under the Bill of Rights in the Texas Constitution as well as under Texas statutory and common law. Plaintiffs seek emergency injunctive relief to stop the unsafe and unconstitutional conditions causing immediate and irreparable harm and the imminent loss of human life and serious damage to human health.

90. Plaintiffs and the members of the Class meet all of the elements necessary for immediate injunctive relief. Plaintiffs state valid causes of action and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Sheriff’s actions and inactions violate Article I, Sections 13 and 19, of the Texas Constitution, violate the Sheriff’s mandatory obligations under Texas statutory law, and would, unless restrained, cause personal injury and death in contravention of Texas tort law. Plaintiffs have already been injured by the Sheriff’s conduct and will continue to experience imminent and irreparable harm absent injunctive relief.

91. Emergency injunctive relief’s purpose is to maintain the status quo pending trial. “The status quo is the last actual, peaceable, non-contested status that preceded the controversy”

and “the continuation of illegal conduct cannot be justified as preservation of the status quo.”<sup>27</sup> Here, Sheriff Brown’s actions and inactions in her official capacity have caused Plaintiffs to be subject to imminent and irreparable harm that upended the status quo. The last peaceable, non-contested state existed before Plaintiffs were harmed by the Sheriff’s actions and inactions, and injunctive relief is warranted to preserve human life and health and maintain the status quo.

92. Plaintiffs in this suit are three individuals who are currently detained in the Dallas County Jail have already suffered substantial harm. Absent injunctive relief by this Court, Plaintiffs and members of the Class will continue to be imminently and irreparably injured by the Sheriff’s unconstitutional and unlawful actions and inactions as COVID-19 rapidly spreads through the Jail.

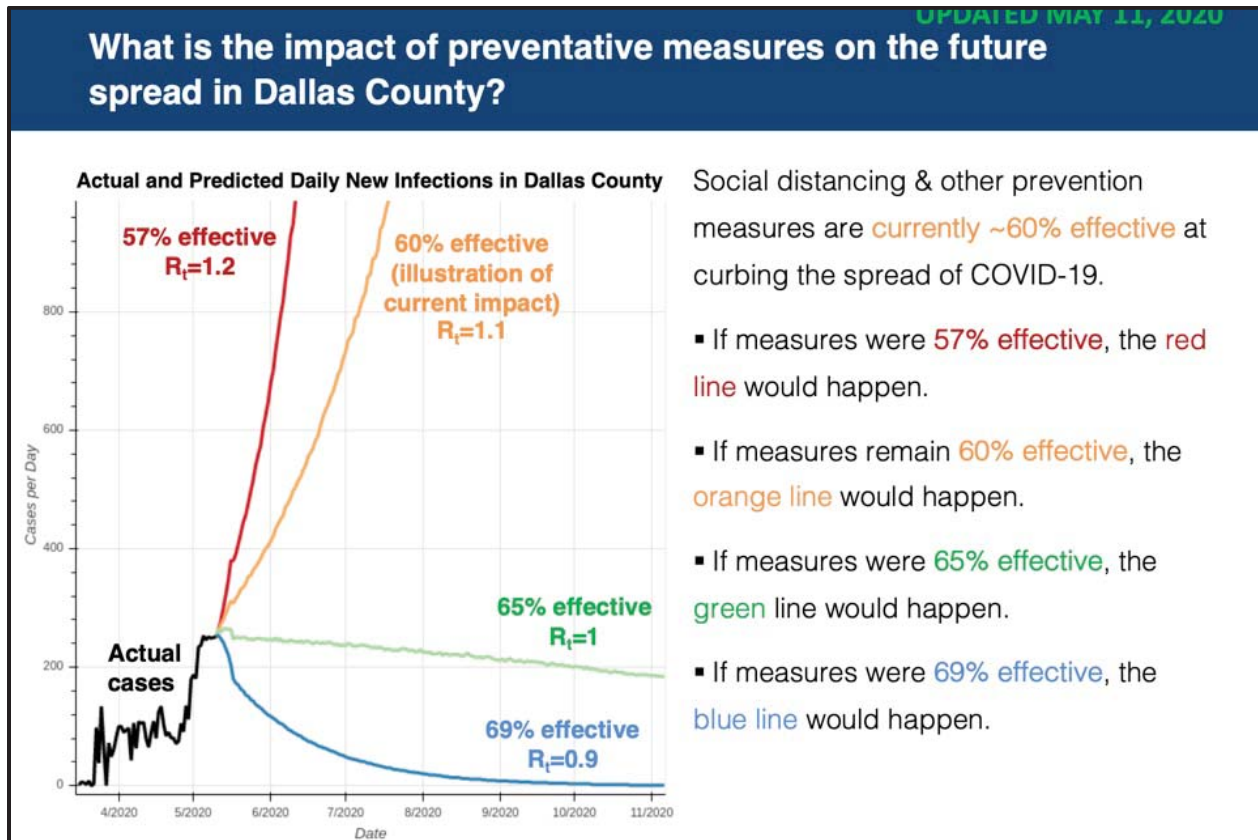
93. Class members face the same imminent and irreparable injuries as named Plaintiffs. Contrary to guidance from public health experts, the Sheriff has chosen to house people close together in the Jail, putting together as many as 64 individuals per pod in closely confined quarters. Unlike members of the general public, Class members are unable to socially distance and avoid close contact with detained individuals and DSOs who are spreading COVID-19 within the Jail, and Class members are also unable to take other steps to protect themselves from injury and death and are utterly dependent on the Sheriff for protection of their health and lives. The Sheriff’s failure to provide adequate PPE, cleaning, training, and other measures to prevent unnecessary spread of COVID-19 makes the lack of social distancing even more dangerous to Plaintiffs and the members of the Class.

94. A study by infectious disease specialists at the University of Texas Southwestern Medical School (“UTSW”) found in May 2020 that an increase in the effectiveness of precautions

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<sup>27</sup> *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

will reduce the spread of COVID-19 in Dallas County.<sup>28</sup> As the following UTSW slide illustrates, a 65 percent effectiveness rate is necessary to avoid explosive growth in the spread of COVID-19 in Dallas County:



95. The UTSW study indicates that a 5-percentage-point gain in the effectiveness of social distancing from 60 percent to 65 percent would prevent 800 new COVID-19 cases a day by the middle of July 2020.<sup>29</sup> Establishing social distancing in the Jail will confer significant benefits on Plaintiffs and the members of the Class, and those benefits will inure to the entire community given the thousands of people who will cycle in and out of the Jail in the coming months. Enabling

<sup>28</sup> UT Southwestern Medical Center, *COVID-19 Current State Analysis and Forecasting for the DFW Region* (access on May 18, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

<sup>29</sup> *Id.* An update of the UTSW study as of May 15, 2020 showed that even a 3-percentage-point increase in the effectiveness of preventative measures would reduce the number of COVID-19 cases in Dallas County by 600 a day as of August 20, 2020. *Id.*

distancing to prevent infection at the Jail is necessary to control the spread of the infection around the community, and thus critical to avoiding the need for future disruptions and shutdowns.

96. Urgent action from this Court is needed. The novel coronavirus spreads rapidly, and every day matters. Given the exigency of this crisis, Plaintiffs request that the Court issue an order restraining Sheriff Brown from continuing to subject Plaintiffs and the Class members to imminent and irreparable harm.

97. For the same reasons above, Plaintiffs request the Court issue a temporary restraining order, a temporary injunction following a hearing within 14 days, and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is necessary to enjoin the Sheriff's unconstitutional and illegal conduct, preserve the status quo, and ensure justice.

98. Plaintiffs stand ready to post a bond for the temporary restraining order and request that the Court set a nominal bond because the Sheriff is acting in a governmental capacity, has no pecuniary interest in the suit, and no monetary damages are available. Tex. R. Civ. P. 684.

### **Sovereign Immunity Does Not Apply**

99. Under Texas law, an action to protect a private party's rights against a county official who has acted without legal or statutory authority is not a suit that sovereign immunity bars.<sup>30</sup> Suits to require a county official to comply with statutory or constitutional provisions are not prohibited by sovereign immunity.<sup>31</sup> Such a case does not seek to alter government policy but rather to enforce existing policy.<sup>32</sup>

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<sup>30</sup> *Federal Sign v. Texas State Univ.* 951 S.W.2d 401, 405 (Tex. 1997).

<sup>31</sup> *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

<sup>32</sup> *Id.*

100. The State of Texas has no power to commit acts contrary to the guarantees in the Texas Bill of Rights.<sup>33</sup> Sovereign immunity thus does not prohibit a suit—like this one—for equitable relief under the Texas Constitution.<sup>34</sup>

101. Nor does sovereign immunity protect a county official’s failure to perform a ministerial act that Texas statutory law mandates.<sup>35</sup> In this case, the Sheriff has failed to perform at least two ministerial acts under the Texas Local Government Code and the Texas Health and Safety Code. The former provides that a “county jail must be . . . maintained in a clean and sanitary condition in accordance with standards of sanitation and health.”<sup>36</sup> The latter mandates that a government “shall abate a public health nuisance existing in or on a place the [government] possesses as soon as the [government] knows that the nuisance exists.”<sup>37</sup> A “public health nuisance” includes “an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.”<sup>38</sup> Because Plaintiffs seek to enjoin the Sheriff to perform her mandatory statutory duties under these statutory provisions, sovereign immunity does not apply to Plaintiffs’ claims.

102. The Texas Tort Claims Act provides a further basis for waiver of sovereign immunity in this case. Plaintiffs seek injunctive relief because “a condition or use of tangible personal or real property” by the Sheriff threatens to cause them personal injury and death.<sup>39</sup> The “condition or use” may include the presence of disease-causing elements of the novel coronavirus and COVID-19 in or on tangible personal or real property and the employment of tangible personal or real property in ways that expose detainees to such disease-causing elements.

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<sup>33</sup> *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148 (Tex. 1997).

<sup>34</sup> *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 391 (Tex. 2007) (per curiam).

<sup>35</sup> *City of Houston v. Houston Municipal Employees Pension System*, 549 S.W.3d 566, 576 (Tex. 2018).

<sup>36</sup> Tex. Local Gov. Code § 351.010(4).

<sup>37</sup> Tex. Health & Safety Code § 341.012(a).

<sup>38</sup> *Id.* § 341.011(12).

<sup>39</sup> Tex. Civ. Prac. & Rem. Code § 101.021(2).



## **CLAIMS**

### **Count I: Violation of Article I, Sections 13 and 19, of the Texas Constitution** **(Injunction)**

1. Plaintiffs reallege each of the preceding allegations.
2. The Sheriff's actions and inactions regarding the confinement of Class members in the Jail violates the prohibitions in Article I, Sections 13 and 19, of the Bill of Rights in the Texas Constitution, respectively, against cruel or unusual punishment and against deprivation of life or liberty except by the due course of the law of the land.
3. Unless the Court immediately restrains the Sheriff from continuing to violate the Class members' rights to be free of cruel or unusual punishment and not to be deprived of life or liberty except by the due course of law, the Class members will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.
4. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must immediately begin and continue to enforce effective social distancing for all Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

### **Count II: Public Health Nuisance** **(Injunction)**

5. Plaintiffs reallege each of the preceding allegations.
6. The Sheriff's actions and inactions regarding the confinement of Class members in the Jail have created an ongoing "public health nuisance" under section 341.011(12) of the Texas Health and Safety Code and have failed to maintain the Jail "in a clean and sanitary condition in

accordance with standards of sanitation and health” under section 351.010(4) of the Texas Local Government Code.

7. Unless the Court immediately restrains the Sheriff from continuing to operate the Jail such that it constitutes a statutory public health nuisance and violates standard of sanitation and health, the Class members will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

8. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must immediately begin and continue to enforce effective social distancing for Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

**Count III: Negligence and Gross Negligence**  
**(Injunction)**

9. Plaintiffs reallege each of the preceding allegations.

10. The Sheriff’s actions and inactions regarding the confinement of Class members in the Jail are negligent and grossly negligent in that they create an unreasonable danger to medically-vulnerable persons, violate CDC health and safety rules and guidance that the Sheriff claims to adhere to as a matter of policy, and exhibit an entire want of care and a high degree of recklessness towards the medically-vulnerable persons, whose health, safety, and lives are entrusted to the Sheriff.

11. Unless the Court immediately restrains the Sheriff from continuing to operate the Jail such that it constitutes a health nuisance under the Texas Health and Safety Code and public nuisance under the common law of Texas, the medically-vulnerable persons will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

12. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must immediately begin and continue to enforce effective social distancing for medically-vulnerable Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

### **CONCLUSION AND PRAYER**

The Sheriff's failure to take basic steps including enforcement of social distancing to mitigate the extreme danger that the COVID-19 pandemic poses to medically-vulnerable people currently detained in the Dallas County Jail, or who will be detained there in the future, violates fundamental principles that underlie the Bill of Rights in the Texas Constitution and Texas statutory and common law. Those principles forbid the Sheriff to continue to detain Plaintiffs and the members of the Class under conditions that gravely endanger their safety, their health, and their very lives. Because the Sheriff has refused to remedy those conditions by taking steps necessary to make social distancing practicable, the Court should grant Plaintiffs and the Class all appropriate relief, including certification of this case as a class action, issuance of a temporary restraining order and temporary and permanent injunctions, and costs of court.

DATE: May 21, 2020

Respectfully submitted,

/s/ Andrea Woods  
AMERICAN CIVIL  
LIBERTIES FOUNDATION  
Andrea Woods\*  
Brandon Buskey\*  
125 Broad Street, 18th  
Floor  
New York, NY 10004  
212-549-2528  
awoods@aclu.org  
  
Henderson Hill\*

/s/ Brian Klosterboer  
ACLU FOUNDATION OF TEXAS  
Brian Klosterboer  
Texas Bar No. 24107833  
Adriana Piñon  
Texas Bar No. 24089768  
Andre Segura  
Texas Bar No. 24107112  
5225 Katy Fwy., Suite 350  
Houston, Texas 77007  
Tel: 713-942-8146  
Fax: 346-998-1577

/s/ Barry Barnett  
SUSMAN GODFREY L.L.P.  
Barry Barnett  
Texas Bar No. 01778700  
Adam Carlis  
Texas Bar No. 24085237  
8115 Preston Road, Suite 575  
Dallas, Texas 75225  
866-754-1900  
bbarnett@susmangodfrey.com  
acarlis@susmangodfrey.com

201 W. Main St., Suite  
402  
Durham, NC 27701  
919-682-9563  
*hhill@aclu.org*

/s/ Katherine Hubbard  
CIVIL RIGHTS CORPS  
Katherine Hubbard\*  
Elizabeth Rossi\*  
1601 Connecticut Ave NW,  
Suite 800  
Washington, D.C. 20009  
202-894-6126  
*katherine@civilrightscorps.org*  
*elizabeth@civilrightscorps.org*

Michael Gervais\*  
1900 Avenue of the Stars,  
Suite 1400  
Los Angeles, CA 90067  
310-789-3100  
*mgervais@susmangodfrey.com*

Rakim Brooks\*  
1301 Avenue of the Americas,  
32nd Floor  
New York, NY 10019-6023  
212-471-8348  
*rbrooks@susmangodfrey.com*

/s/ Kim T. Cole  
NEXT GENERATION ACTION  
NETWORK  
Kim T. Cole  
Texas Bar No. 24071024  
1808 South Good Latimer  
Expressway  
Dallas, Texas 75226  
214-704-6400  
*agrinter@thengan.com*  
*kcole@thengan.com*

ATTORNEYS FOR  
PLAINTIFFS

*\*pro hac vice forthcoming*

## **VERIFICATION**

1. My name is Barry Barnett, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_.  
I verify under penalty of perjury that the statements in this Verification are true and correct.
2. Attached to this Plaintiffs' Verified Petition for Emergency Relief Against Unlawful Endangerment of Medically-Vulnerable Persons Detained in Dallas County Jail ("Verified Petition") as Exhibits A, B, C, and D are true and correct copies of the official transcript of proceedings in *Sanchez v. Dallas County Sheriff Marian Brown*, No. 20-cv-832-E (N.D. Tex.) on April 21, 22, 23, and 24, 2020.
3. Attached to this Verified Petition as Exhibits E, F, G, and H are true and correct copies of, respectively, the Declaration of Eric T. Lofgren, MSPH Ph.D.; the Declaration of Ank Nijhawan, M.D., M.P.H., M.S.C., M.S.C.S.; the Declaration of Robert L. Cohen, M.D., Regarding the Spread of COVID-19 in and from the Dallas County Jail; and the Affidavit of Thomas William Boston.
4. The images of scenes inside the Dallas County Jail on pages 2 and 13 of this Verified Petition were excerpted from a video, "Behind Bars: The World's Toughest Prisons", that is available online at <https://www.youtube.com/watch?v=fkX2hanoYyM>. The page on which the video appears provides a date of November 5, 2018. I believe, based on testimony referred to in paragraph 2 of this Verification, that the images are true and correct depictions of what they appear to show.
5. I understand that the image on page 20 of this Verified Petition was communicated on April 22, 2020 through an electronic kiosk inside a common area within the Dallas County Jail

and that it fairly and accurately depicts detained persons in the Dallas County Jail as they appeared on that date.

6. The image on page 27 of this Verified Petition is a true and correct copy of a slide that is part of a presentation on the official website of the University of Texas Southwestern Medical Center as it appeared on May 18, 2020. *See* UT Southwestern Medical Center, *COVID-19 Current State Analysis and Forecasting for the DFW Region* (access on May 18, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

Executed in Dallas County, State of Texas, on May 21, 2020.

/s/ *Barry Barnett*

Barry Barnett

# EXHIBIT A



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OSCAR SANCHEZ, et al,                   \*       3:20-CV-00832-E  
Plaintiffs,                               \*  
v.   \*  
SHERIFF MARIAN BROWN, et al,       \*       DALLAS, TEXAS  
Defendants.                               \*  
  \*       APRIL 21, 2020

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TRANSCRIPT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER  
BEFORE THE HONORABLE ADA E. BROWN  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

COUNSEL FOR THE PLAINTIFFS:

MS. ANDREA WOODS  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2528  
awoods@aclu.org

MR. BARRY C. BARNETT  
SUSMAN GODFREY, LLP  
8115 Preston Road, Suite 575  
Dallas, Texas 75225  
(866) 754-1900  
bbarnett@susmangodfrey.com

MS. AMY B. FETTIG  
AMERICAN CIVIL LIBERTIES UNION  
NATIONAL PRISON PROJECT  
915 15th St. NW, 7th Floor  
Washington, DC 20010  
(202) 548-6608  
afettig@aclu.org

MR. HENDERSON HILL  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
201 W. Main St., Suite 402  
Durham, North Carolina 27701  
(919) 682-9563

COUNSEL FOR THE DEFENDANTS:

MS. KATHARINE D. DAVID  
MR. BEN STEPHENS  
MR. NICHOLAS DAVID STEPP  
HUSCH BLACKWELL, LLP  
600 Travis St., Suite 2350  
Houston, Texas 77002  
(713) 525-6258  
kate.david@huschblackwell.com  
ben.stephens@huschblackwell.com  
nick.stepp@huschblackwell.com

1 COUNSEL FOR THE INTERVENORS:

2 MR. ADAM ARTHUR BIGGS  
3 OFFICE OF THE TEXAS ATTORNEY GENERAL  
4 PO Box 12548  
5 Austin, Texas 78711  
6 (512) 320-2120  
7 adam.biggs@oag.texas.gov  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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BROOKE N. BARR, CSR (214) 753-2661

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E X H I B I T   I N D E X

**PLAINTIFF:**

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**DEFENDANT:**

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1 (P R O C E E D I N G S)

2 THE COURT: This is Case Number 3:20-CV-00832-E,  
3 styled Oscar Sanchez, et al, Plaintiffs/Petitioners,  
4 versus Dallas County Sheriff Marian Brown, in her  
5 official capacity, and Dallas County, Texas, as  
6 Defendants and Respondents.

7 Who is here for Plaintiff? If you will make  
8 your presence known for the record.

9 MS. WOODS: Good morning, Your Honor. This is  
10 Andrea Woods.

11 THE COURT: Ms. Woods, thank you for your  
12 appearance. Is there anyone else who will be speaking on  
13 behalf of Plaintiffs?

14 MS. FETTIG: Yes, Your Honor. This is Amy  
15 Fettig for the plaintiffs as well.

16 (Brief interruption.)

17 MR. BARNETT: Your Honor, this is Barry Barnett,  
18 and I'll be speaking for the plaintiff as well.

19 I would note, Your Honor, that there's several  
20 people that you can see on the live side of the screen  
21 who are not muted. It would be helpful if everybody  
22 muted, and that would minimize -- the echo.

23 THE COURT: If everyone would do that, I would  
24 appreciate it. Thank you.

25 (Off-the-record discussion.)

1 THE COURT: Who is here for Defendants?

2 MS. DAVID: Your Honor, this is Kate David for  
3 Defendants.

4 THE COURT: Hi, Ms. David.

5 MR. STEPHENS: Ben Stephens for Defendants, Your  
6 Honor.

7 THE COURT: All right, Mr. Stephens.

8 MR. STEPP: Nicholas Stepp for Defendants, Your  
9 Honor.

10 THE COURT: Mr. Stepp.

11 And for -- is -- who is here for Intervenorors?

12 MR. BIGGS: Good morning, Your Honor, this is  
13 Adam Biggs here on behalf of the State of Texas, Governor  
14 Abbott, as well as Attorney General Ken Paxton.

15 THE COURT: Okay. And for the record, I granted  
16 yesterday Intervenorors' motion to intervene. And so I'll  
17 refer to you, just for simplicity sake during this  
18 hearing, as Intervenorors, but you are not officially  
19 Defendants, of course.

20 All right. Great. Well, thank you all for  
21 being here. Thank you for your patience as we work  
22 through technology issues. I look forward to hearing  
23 your evidence and promise to listen with an open heart  
24 and open mind and try to do what the law requires.

25 So with that said, Plaintiffs, you may -- would

1 you like to give me a brief opening of what you expect  
2 the evidence to show in this hearing?

3 MS. WOODS: We would, Your Honor.

4 Can the Court hear me without an echo?

5 THE COURT: I do hear a little echo. If  
6 everyone will mute. Let's try again.

7 MS. WOODS: All right.

8 MR. BARNETT: Your Honor, the plaintiffs are  
9 going to invoke the Rule for this hearing.

10 THE COURT: All right. If there are any  
11 witnesses present who will be testifying in your offices  
12 or wherever they are, if you will exclude them. And --  
13 and if you will pass on to them the Court's instruction  
14 that they are allowed to talk about anything other than  
15 this case. They are not to compare notes or discuss this  
16 case until their testimony is concluded and until they  
17 have been dismissed without being subject to recall.

18 MS. DAVID: Your Honor, this is Kate David.  
19 Does that include our client -- our client  
20 representative, Mr. -- Chief Robinson?

21 THE COURT: I assume Plaintiffs have no  
22 objection to the -- the client staying; is that correct?

23 MR. BARNETT: That's right, Your Honor.

24 THE COURT: All right. So they are excluded.  
25 But everyone else should -- should be subject to the



1 Rule, subject to the Court's Rule.

2 And so, Lawyers, since I'm not here to explain  
3 to the witnesses, if you will do that on my behalf and  
4 explain the Rule of sequestration and that the Court has  
5 ordered it, I would be grateful.

6 So far, I'm not hearing an echo, so that's good.

7 Plaintiffs, you may proceed.

8 MS. WOODS: Thank you, Your Honor.

9 Your Honor, we'll hear testimony today about  
10 Plaintiff Ideare Bailey. Mr. Bailey was incarcerated in  
11 the Dallas County jail recently, and he was scared after  
12 taking every precaution with his family to stay safe from  
13 the Coronavirus, to protect his asthmatic daughter and  
14 himself.

15 Mr. Bailey was booked into the Dallas County  
16 jail on April 6th, 2020 in good health. Once inside the  
17 jail, Mr. Bailey was housed in a 60-person dormitory and  
18 surrounded by men who were coughing. There was no way to  
19 protect himself from exposure to the Coronavirus; no way  
20 to stay six feet apart from other people; no way to  
21 sanitize surfaces or cover his face, other than put a  
22 shirt over it.

23 It wasn't until Friday, April 10th, that  
24 Mr. Bailey had his temperature checked. He had a  
25 106-degree fever. On Monday the 13th, Mr. Bailey found

1 out he had tested positive for the Coronavirus. He was  
2 given a mask for the first time on Tuesday the 14th.

3 Mr. Bailey's wife hired a lawyer to seek a bond  
4 reduction for him. Even after his bond was significantly  
5 lowered, his wife had to sell her wedding ring to pay for  
6 a bail deposit. Yet the ordeal was not over for  
7 Mr. Bailey or his family.

8 One of the requirements of his bond was that he  
9 wear an ankle monitor. But because Mr. Bailey had  
10 contracted COVID-19 from the Dallas County jail, the  
11 Pretrial Services Department refused to fit him with an  
12 ankle monitor.

13 Mr. Bailey was left in complete limbo,  
14 indefinitely stuck in jail and worried about what might  
15 happen if his symptoms grew worse, with no option but to  
16 bang on the windows of his pod to get the nurse's  
17 attention in case of an emergency.

18 The Court will hear testimony today about the  
19 environment at the Dallas County jail. In the Dallas  
20 County jail, detainees are housed in groups, many in  
21 dormitory-style pods like the one Mr. Bailey caught  
22 COVID-19 in, clustered in one space with up to 64 other  
23 people, sleeping in bunk beds within arm's length apart.  
24 Others live in six-, seven-, or eight-person cells, where  
25 getting CDC mandated that the six feet of social distance

1 is similarly impossible.

2 People continue to be booked into the jail, held  
3 in extremely close quarters during intake, so close that  
4 one declarant states he could smell the breath of the  
5 other people. People are then placed throughout the jail  
6 without being tested for COVID-19. The trend of intake  
7 and movement makes it impossible to truly isolate the  
8 disease.

9 It is undisputed that COVID-19 is easily  
10 transmitted, highly lethal. It's undisputed that this  
11 moment marks an unprecedented public health crisis.  
12 Hours and days matter. Projections based on the numbers  
13 Defendants reported last week in the Dallas County jail,  
14 even making generous assumptions about their social  
15 distancing practices, demonstrate that over the course of  
16 the next six months, 800 people in the jail will require  
17 hospitalization, and 250 will die if the most  
18 medically-vulnerable persons are not released or  
19 transferred, and protocols adopted to enable true  
20 continuous social distancing.

21 While these projections extend over six months,  
22 the relief Plaintiffs seek here must be taken immediately  
23 in order to influence those outcomes for the better, much  
24 in the same way we all have been ordered to shelter in  
25 place to flatten the curve of transmission.

1           The evidence presented today will show that the  
2 practices of the Dallas County jail fall critically short  
3 of where they need to, to manage this crisis. Plaintiffs  
4 plan to present four witnesses today to the court.

5           First, David Jones, a man who was incarcerated  
6 in the Dallas County jail for 28 days in March and April  
7 of this year, who was housed in multiple towers and who  
8 has detailed, firsthand knowledge of the jail's  
9 practices.

10           Second, Emmanuel Lewis, a guard who's testifying  
11 at great risk to personal retaliation to himself, who  
12 also has firsthand knowledge of daily practices in the  
13 jail.

14           Third, Dr. Robert Cohen, a doctor and member of  
15 the New York City Board of Corrections. Dr. Cohen is an  
16 expert on managing the spread of infectious diseases,  
17 including COVID-19, in carceral settings like the Dallas  
18 County jail. And he has been qualified as an expert  
19 numerous times in other cases and appointed to serve as a  
20 federal monitor.

21           Finally, fourth, Plaintiffs plan to call Wykivia  
22 Bailey, whose husband, Ideare Bailey, spent two weeks in  
23 the Dallas County jail, as I just described.

24           Plaintiffs also provided the Court with  
25 considerable exhibit and record evidence, including two

1 declarations from epidemiologist Eric Lofgren, who  
2 provides projections about the toll of infections,  
3 hospitalizations, and deaths that will occur not only in  
4 the Dallas County jail, but the broader community, absent  
5 this Court's intervention.

6 Plaintiffs have also provided the statements of  
7 a number of witnesses with direct, firsthand knowledge of  
8 the operations in the jail. These statements stand in  
9 contrast to the picture Defendants paint regarding the  
10 scope and rigor of the jail's response to COVID-19.

11 And Plaintiffs have provided the Court, and will  
12 walk through today, images of the Dallas County jail that  
13 illustrate the environment in which people are housed and  
14 the impossibility of true social distancing.

15 Defendants will show a number of critical  
16 failures on the part of the Dallas County jail to address  
17 this crisis. Most importantly, the evidence will show  
18 the impossibility of social distancing based on the  
19 current population numbers in the Dallas County jail.

20 Second, the evidence will show that persons with  
21 a number of underlying health conditions and those over  
22 50 years old or older stand to suffer serious illness or  
23 death if left in the Dallas County jail.

24 Third, the evidence will show that Defendants  
25 failed to consistently practice even the public health

1 protocols they claim to be following.

2 Fourth and finally, the evidence will show the  
3 gaps in Defendants' stated policies and the ways in which  
4 stated policies of the Dallas County jail still fail to  
5 adequately incorporate public health guidelines.

6 This testimony and the written record provides  
7 the Court with ample evidence that Plaintiffs are likely  
8 to succeed on the merits of their Fourteenth and Eighth  
9 Amendment claims.

10 At the conclusion of the hearing, Plaintiffs  
11 will outline the relief they seek in more detail. But  
12 for now, Plaintiffs submit that the only sufficient way  
13 to address this imminent catastrophe is through, first,  
14 the conditional habeas release or transfer to home  
15 confinement of a subset of the people who stand to face  
16 serious illness or death in the coming days; second, an  
17 injunctive order immediately requiring improved and  
18 consistent public health protocols in the jail; and  
19 third, the appointment of a public health expert who can  
20 investigate the jail and devise a detailed and  
21 facility-specific plan to manage and curve the outbreak.

22 Plaintiffs are prepared to proceed, although we  
23 acknowledge there will be some housekeeping details with  
24 respect to Dr. Cohen's testimony. Thank you.

25 THE COURT: And so that you know, after opening

1 statements I'll give you my ruling on the motion to  
2 strike.

3 MS. WOODS: Thank you.

4 THE COURT: Thank you, Ms. Woods.

5 MR. BARNETT: Your Honor, this is Barry Barnett.  
6 I just wanted to make sure we're -- we're clear that  
7 Dr. Cohen is an expert who's permitted to hear the  
8 evidence, which he will take into account when he  
9 testifies.

10 THE COURT: Defendants, I assume you have no  
11 objection to the expert being not subject to the Rule of  
12 sequestration; is that correct?

13 MS. DAVID: No objection, Your Honor.

14 THE COURT: All right. Thank you for clarifying  
15 that.

16 Okay. Defense, I'd like to hear your opening.

17 MS. DAVID: Your Honor, our opening is basically  
18 an answer to all of your questions. So it's fairly  
19 lengthy. Would you prefer to do that now or after the  
20 Defendants close their evidence?

21 THE COURT: Why don't we do that after -- after  
22 the plaintiffs close their evidence. That would be fine,  
23 if you'd like to reserve your right.

24 MS. DAVID: That would be great.

25 THE COURT: Intervenors, do you wish to give an

1 opening?

2 MR. BIGGS: Judge, at this time -- this --  
3 Judge, this is Adam Biggs on behalf of the State  
4 intervenors. We would reserve for argument at the  
5 conclusion of the evidence.

6 THE COURT: Okay. All right. Defendants having  
7 reserved their right, let's take up the pending motion to  
8 strike.

9 I have read the briefing on that, and I am  
10 denying the motion to strike. So Cohen's testimony will  
11 be admitted at this hearing.

12 Plaintiffs, call your first witness.

13 (Brief pause.)

14 MR. HILL: Good morning, Your Honor. Henderson  
15 Hill from Mecklenburg County in North Carolina, Western  
16 District of North Carolina.

17 I will be calling David Green Jones. He was  
18 sequestered, so he's now signing on. He should be with  
19 us momentarily.

20 (Off-the-record discussion.)

21 THE COURT: Mr. Hill, if as you are directing  
22 your witness, if you could have him explain what is the  
23 process for putting in a sick call. I'm looking at  
24 Paragraph 11 where he talks about four of the four men  
25 putting in several sick calls. That would be helpful if



1 you would give me kind of some context for what that  
2 process is.

3 MR. HILL: Yes, Your Honor.

4 THE COURT: Thank you.

5 Another thing that would be helpful, looking at  
6 Paragraph 12, the term "lockdown" is used. I assume that  
7 that -- well, I don't want to assume.

8 So if you would have him explain what that  
9 means. It's in the context of inmates who had -- had the  
10 virus were held on lockdown 24 hours a day. I'm guessing  
11 that means that they are contained to a room. But if you  
12 could explain what that means so I don't have to guess,  
13 that would be helpful too.

14 MR. HILL: Yes, Your Honor.

15 THE COURT: And as y'all can tell, I won't be  
16 shy when I have questions. So I'll let you know. You  
17 won't have to guess what I need to know.

18 (Off-the-record discussion.)

19 THE COURT: On the record. Is -- and Mr. Hill,  
20 I'll give the floor to you. Remember, we need to have  
21 your witness sworn.

22 MR. HILL: Yes, Your Honor.

23 Good morning, Your Honor. Henderson Hill for  
24 Plaintiffs. Plaintiffs would call as the first witness  
25 David Green Jones.

1           Mr. Jones, I tender to you the madam court  
2 reporter for swearing.

3                       DAVID GREEN JONES,  
4 having been first duly sworn, testified as follows:

5                       DIRECT EXAMINATION

6 BY MR. HILL:

7 Q.    Good morning, Mr. Jones.   Mr. Jones, would you  
8 introduce yourself to the Court, giving us your complete  
9 name and your date of birth, please?

10 A.   My name is David Green Jones.   Date of birth October  
11 14th, 1982.

12 Q.   Where do you live, Mr. Jones?

13 A.   I live in Garland, Texas.

14 Q.   And with whom do you live?

15 A.   With Gail and our daughter, Jaden.

16 Q.   And your daughter is how old?

17 A.   13.

18 Q.   Mr. Jones, when did you become aware of the dangers  
19 of the Coronavirus?

20 A.   Early on.   My wife is a manager at Target, so when  
21 the CDC started making recommendations, Target was all  
22 over it.   I knew about social distancing from the very  
23 beginning.

24 Q.   Are there any members of the household that are  
25 medically vulnerable?

1 A. I have a seizure disorder that they were concerned  
2 about, but I'm the only one.

3 Q. What precautions were taken in response to the --  
4 the Coronavirus threat?

5 A. Oh, on -- for us, to have -- we stocked up on toilet  
6 paper, paper towels, soap, disinfectants, gloves. We had  
7 masks; we still have masks. Just because we were -- we  
8 tried to be a little bit ahead of the curve.

9 Q. And did you understand the concept of sheltering in  
10 place and social distancing?

11 A. Yes, yes, I did.

12 Q. And how did you and the family respond to the -- to  
13 those guidelines?

14 A. Well, as soon as my daughter was out of school, we  
15 pretty much do things in the house. We were already  
16 starting to implement, okay, not just walking to the  
17 dollar store or -- you know, we'd just take walks here  
18 and there. So we started to, say, going straight to work  
19 and home.

20 We -- we cut out a lot of extra curricular  
21 activities because of the virus.

22 Q. Mr. Jones, in early March you were arrested. And on  
23 March 8th, you were taken to the Dallas County jail; is  
24 that correct?

25 A. That's correct.

1 Q. And on March 8th were you at the jail for booking  
2 and arraignment?

3 A. Unfortunately, I was, sir.

4 Q. And can you describe where, physically, you were in,  
5 what part of the jail you were in for booking and  
6 arraignment? Describe that set up, please.

7 A. Well, there's benches, blue benches that have four  
8 seats. And inmates are gathered in a room and sat next  
9 to each other with a few phones on the wall. It's a  
10 small, tight area, some restrooms.

11 Q. Had you been in that room before in prior  
12 experiences?

13 A. Yes, yes, sir, I had, unfortunately.

14 Q. And on March 8th, how long did you spend in that  
15 room?

16 A. 18 hours.

17 MR. HILL: Your Honor, I'm now going to attempt  
18 a share -- a screen share.

19 THE COURT: Go ahead.

20 (Reporter instruction.)

21 THE COURT: While we're waiting for you to do  
22 the screen share, Defendants, I'm looking at the  
23 declaration of Gloria Nelson, Paragraph 4.

24 One of the questions I would like answered,  
25 Ms. Nelson makes reference to being put in a sick -- to

1 putting in a sick call. And I know I said earlier I'd  
2 like to know kind of about the procedures.

3 She's complained that it took three days  
4 before someone saw her in response to her sick call. I'd  
5 like to know the policy and procedures for responding to  
6 that. How long it -- it takes, on average, for -- if I'm  
7 Inmate Brown, and I put in a sick call, how long does it  
8 take for me to see a medical provider? And I'd be  
9 interested to know especially for Coronavirus symptoms.

10 MR. HILL: Your Honor, I can't tell. Does the  
11 Court see a -- a photograph as a Parkland e-mail shared  
12 with this display?

13 THE COURT: I do not see anything on my screen.  
14 David, can you help us?

15 (Off-the-record discussion.)

16 THE COURT: Let's go back on the record.

17 Mr. Hill, you may proceed. Thank you everybody  
18 for your patience.

19 MR. HILL: Thank you, Your Honor.

20 Q. Mr. Jones, I'm going to show you what we're marking  
21 as Plaintiffs' Exhibit 1, it's a photograph.

22 Do you see that photograph on your screen?

23 A. No, I do not. I -- I can change the format with the  
24 toolbar. I only have it set for individual speakers, so  
25 whoever is speaking at the time, that's who I see.

1 Q. Okay. You are familiar with the booking and --  
2 that --

3 A. I see it when you shared your screen.

4 Q. Okay. So do you see the screen -- the photograph of  
5 the booking room, the arraignment room?

6 A. Yes, I do.

7 MS. DAVID: Your Honor, I don't know if it's  
8 just me, but I can't see it.

9 (Off-the-record discussion.)

10 THE COURT: Back on the record.

11 Mr. Hill, you may proceed with the examination  
12 of this witness.

13 MR. HILL: Thank you, Your Honor.

14 Q. Mr. Jones, looking at what we've now marked as  
15 Plaintiffs' Number 1, do you recognize that as the  
16 booking or arraignment room at the jail?

17 A. Yes, I do.

18 Q. And do you see the blue chairs in that room?

19 A. Yes, sir, I do.

20 Q. How are those chairs organized? How many rows and  
21 so forth?

22 A. Okay. It's three sets of chairs, four attached.  
23 And then there's four benches in each row. So there's  
24 three rows of four benches with four seats.

25 Q. And do you see the number of people and the location

1 of people sitting in that room?

2 Does the number of people -- how does that  
3 number of people compare with the people who were in that  
4 room with you on March 8th?

5 A. Well, first of all, the room is constantly rotating  
6 between people who are getting arraigned and people who  
7 are being booked in, having their fingerprints taken,  
8 their mug shot taken, and then sat back in that area. So  
9 that area is constantly rotating within the -- for  
10 instance.

11 But substantially, the room was -- you know,  
12 twice of what I see. Because you don't see a section of  
13 chairs in that photo, so there's a whole section of -- of  
14 benches that you are missing.

15 Q. Are the telephones visible in that photograph?

16 A. Yes, sir, there are. On that back wall, where you  
17 can see the guy standing with the white shirt, the other  
18 three men are actually on the phones with their faces  
19 pressed up against them.

20 Q. And is there a unique design to those telephones?

21 A. Oh, yes, sir, there is. There's no way to --  
22 there's no handle or phone that you would normally use.  
23 You have to -- it has a small speaker and then a place  
24 where you speak into it. So that way you can't rip  
25 anything off; it's all built inside.

1 Q. And so can you describe what contact the face and  
2 the head have with the telephone as you are making and  
3 receiving calls?

4 A. Well, there's obviously noise in the room, which  
5 makes it hard to hear. You have other people going  
6 through, you know, certain situations. But in order to  
7 hear, you have to have your -- your face pressed up --  
8 you have to crouch down, depending on how tall you are.  
9 But generally, it's a bad situation.

10 THE COURT: Mr. Hill, I've got a question. I'm  
11 looking at this photo, and the person third from the left  
12 looks crouched over. And I just want to make sure we're  
13 on the same page.

14 Is he trying to talk on the phone attached to  
15 the wall; is that what I'm seeing?

16 Q. Mr. Jones?

17 A. Yes, that's absolutely what you are seeing.

18 THE COURT: Okay. Thank you.

19 Q. And is that the common way you use that phone?

20 A. Yes, sir, it is.

21 Q. Was there any effort, then, to abide by social  
22 distancing principles?

23 A. No, sir. We were instructed to sit down in the  
24 chairs. When the phones became available, we would raise  
25 our hand, the officer would then give us permission to go



1 use the phone right behind the person who just got off of  
2 it.

3 Q. Was -- was anyone wiping the phone with any sort of  
4 cleaner or disinfectant?

5 A. No.

6 Q. Was there any disinfectant in the room?

7 A. No, sir, there was not.

8 Q. Can you describe any cleaning activities that you  
9 saw during the 18 hours you were in that room?

10 A. Yes, I did. There's a crew of trustees, four of  
11 them, came and swept up -- because they feed us bologna  
12 sandwiches. So once you have been in there for so long,  
13 you get bologna sandwiches. That's what you are provided  
14 as food until you are arraigned and brought upstairs.

15 So the wrappers get swept up and the benches,  
16 they get sprayed and wiped down.

17 Q. And how often did that happen?

18 A. That happened once in the 18 hours that I'd seen.

19 Q. Was there -- did you see any signs that were  
20 relevant to the virus posted in the -- in that room?

21 A. No, I did not, sir.

22 Q. During the intake process, were you asked questions  
23 relative to your medical history?

24 A. Yes, I was.

25 Q. And was the jail familiar with your medical history?

1 A. Yes, sir, they were.

2 Q. Did they ask any questions relevant to the  
3 Coronavirus?

4 A. No, sir.

5 Q. Did they ask you about fevers or chills?

6 A. I believe they took my temperature and my weight,  
7 but no information was provided about the virus.

8 Q. Any questions about shortness of breath?

9 A. No, sir.

10 Q. Any advice about washing your hands with soap or  
11 sanitizer?

12 A. No, sir.

13 Q. And any advice about social distancing?

14 A. No, sir.

15 Q. And Mr. Green, this was not your first experience at  
16 the Dallas County jail, was it?

17 A. Unfortunately, I have had a long history, and all of  
18 my problems have been in Dallas. So Dallas County is  
19 really all I know, as far as jail-wise goes, so I'm very  
20 familiar with the procedures there and that area.

21 Q. And Mr. Green, I'm going to ask you whether you are  
22 the same David Green Jones that in 2013 was convicted of  
23 robbery?

24 A. Yes, sir.

25 Q. And are you the same David Green Jones who in 2013

1 was convicted of misdemeanor theft?

2 A. Yes, sir.

3 Q. Same David Green Jones who in 2001 was convicted of  
4 attempted burglary?

5 A. Yes, sir.

6 Q. And are you the same David Green Jones that in 1999  
7 was convicted of burglary?

8 A. Yes, sir, I am.

9 Q. Mr. Jones, your life experiences have gave you real  
10 familiarity with the Lew Sterrett jail; is that correct?

11 A. Yes, sir, it has.

12 Q. Are you familiar with each of the three towers?

13 A. Yes, sir, the North Tower, the South Tower, and the  
14 West Tower.

15 Q. The booking arraignment center that you were at,  
16 that's not a housing unit, is it?

17 A. No, sir, it's not.

18 Q. How did you get from that facility to your house --  
19 to the first housing unit during this stay?

20 A. Excuse me?

21 Q. How did you get from the arraignment room to the  
22 first housing unit that you were assigned during this  
23 stay?

24 A. Okay. We were in a single-file line, front to back,  
25 instructed to stay close. We were brought on an

1 elevator, loaded in that elevator, brought to a different  
2 floor where we were held until we were given or issued  
3 jail clothing and finished giving them the rest of our  
4 property.

5 So that way we would have it when we got out.  
6 Cell phone -- or not cell phone, but the money we had or  
7 you know, whatever -- whatever kind of property they had  
8 you get your property.

9 THE COURT: Mr. Hill, I have a question for  
10 Mr. Jones.

11 Mr. Jones, can you hear me?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: How -- when you say that you were  
14 instructed to stand close, can you -- and I don't need a  
15 scientific measurement, but can you ballpark for me how  
16 closely you were instructed to stand to the next inmate  
17 in feet or inches?

18 THE WITNESS: We -- we're talking about a foot,  
19 at most. You know, they try to keep you in orderly  
20 fashioned, what they call in orderly fashion, which is  
21 one right directly behind the other. So typically, when  
22 you are stopped, it's inches. When you are walking, it  
23 might be a foot.

24 THE COURT: But nowhere near six feet?

25 THE WITNESS: Nowhere near six feet, no.

1 THE COURT: All right. Thank you.

2 Please continue.

3 Q. And how many men were in that single file in the  
4 elevator that took you to the unit?

5 A. 12, 13.

6 Q. And during that length of time, there was no social  
7 distancing possible; is that correct?

8 A. No, sir.

9 Q. What was the first housing unit you went to during  
10 this stay?

11 A. I went to the fifth floor of the West Tower in 13  
12 tank.

13 Q. And if I understand you correct, how long were you  
14 detained during this period, starting with March 6th --  
15 or March 8th?

16 A. 28 days.

17 Q. How long did you stay at West Tower, fifth floor,  
18 Tank 13?

19 A. About five days.

20 Q. Can you tell us -- or describe what tank 13 is like?

21 A. Well, tank 13 is built differently than tanks 1  
22 through 12. Tanks 1 through 12 are eight-man tanks,  
23 single cells; and 13 and 14 are constructed differently,  
24 where it's a 24-man tank with 8-man cells.

25 And I was placed in an 8-man cell in a 24-man

1 tank.

2 Q. And, Mr. Jones, were you asked in preparation for  
3 your testimony to draw a chart of West Tower to describe  
4 that tank, its location, and description?

5 A. Unfortunately, my familiarity has -- yes.

6 Q. And you have got that the chart in front of you; is  
7 that correct?

8 A. Yes, yes, I do.

9 MR. HILL: Your Honor, we would like that marked  
10 for identification, Plaintiffs' Number 2, which is a  
11 hand-drawn chart by Mr. Jones. At the top says, West  
12 Tower Cell.

13 THE COURT: And I don't know that you formally  
14 moved for admission of Exhibit 1, or are moving to have  
15 that admitted into evidence. I've got the chart, but I  
16 just want to make sure we're clear for the record.

17 MR. HILL: I would move 1 into evidence.

18 THE COURT: All right. Any objection to  
19 Exhibit 1, the photo of the phones and the holding area?

20 MS. DAVID: Yes, Your Honor. This is Kate David  
21 for the defendants. We would object based on lack of  
22 foundation and best evidence.

23 THE COURT: Okay. Well, what's the best  
24 evidence objection? What would be better evidence than  
25 the photo, other than being in the jail?

1 MS. DAVID: Well, being in the jail or someone  
2 who's been in the jail more recently talking about a --  
3 what it looks like today. We have no idea how old that  
4 picture is, when it was taken, who took it.

5 THE COURT: Okay. Got you. So I'll note that  
6 objection.

7 Intervenors, any objections other than  
8 authentication?

9 MR. BIGGS: We would join the objection, the  
10 authentication objection. This is a picture taken from  
11 YouTube and it doesn't accurately reflect what's  
12 occurring currently in the jail. So we would join the  
13 objection.

14 THE COURT: All right. Mr. Hill, if you can  
15 talk to your witness about whether this fairly and  
16 accurately depicts what it looked like at the time he was  
17 there, that would be helpful so the Court can rule on  
18 whether it's in or not.

19 MR. HILL: Yes, Your Honor.

20 Q. Mr. Green, were you at the booking and arraignment  
21 room on March 8th of this year, 2020?

22 A. Yes, I was.

23 Q. And is that the same room that you've been in in  
24 past experiences at the Dallas County jail?

25 A. Yes, sir, it is.

1 Q. Looking at the photo that's been marked Plaintiffs'  
2 Number 1, does that photo accurately depict the  
3 arraignment room at the Dallas County jail?

4 A. Absolutely.

5 Q. And would using that photograph help illustrate your  
6 testimony with the -- for the Court this morning?

7 A. Absolutely.

8 THE COURT: Mr. Hill, if you could just ask one  
9 follow-up question. I'd like to know if it accurately  
10 depicted it on March 8th.

11 Q. You were in the jail on -- in that room on March  
12 8th, 2020; is that right?

13 A. Correct.

14 Q. Does -- does Plaintiffs' 1 accurately depict the  
15 arraignment room at Dallas County jail on March 8th,  
16 2020, as it appeared on March 8th, 2020?

17 A. As far as like, construction-wise, like the way it  
18 is set up and built, yes. The inmates are different.  
19 I'm sure that's not a picture of when I was in there on  
20 March 8th. But that is the setup, that's -- it hasn't  
21 changed. I -- it's like that today, I'm sure.

22 THE COURT: What about the number of people? I  
23 think that's probably the heart of Defendants'  
24 objections. Does the number of people in this photo look  
25 about like it did when you were there, Mr. Jones, on



1 March 8th?

2 THE WITNESS: I would say yes. I don't know how  
3 many inmates were in there when I was in there. Like I  
4 said, it seems a little more full when I was in there.  
5 And not to exaggerate, but it was busy.

6 THE COURT: Okay. I'll overrule your objection.  
7 I note that he's not saying it was exactly like it was on  
8 the day, and I'll let you process in on that, but I'm  
9 going to allow it into the record.

10 MR. BIGGS: Judge, sorry to interrupt. This is  
11 Adam Biggs for State Intervenors. May I make a proposal  
12 that may make this move a little quicker?

13 THE COURT: Sure.

14 MR. BIGGS: So in other TRO hearings, obviously,  
15 that aren't involving -- video technology makes it even  
16 slower. I've seen it work where -- you know, we saw  
17 these last night, many of these exhibits, for the first  
18 time. Would it be possible if we could just presume, for  
19 the purposes of the hearing, they are admitted; and then  
20 the defendants and Intervenors can submit written  
21 objections within 24 hours, so we can kind of move it  
22 along, instead of having to constantly object to the  
23 exhibits?

24 THE COURT: Well, the problem is, I need to  
25 know -- I plan to make a ruling on this case within the

1 next 24 hours, so I don't want to wait 24 hours for you  
2 guys to object to evidence.

3 So I appreciate your proposal, and I -- I know  
4 there's a time delay and -- in walking through this, but  
5 I need to know like, tonight, what's in and what's out.  
6 So if you got objections, I need to hear them live so I  
7 can rule on them. Because if you do, then I have to let  
8 the other side respond and then I have to consider; and  
9 it's back and forth and paperwork.

10 And so I know that there are some technical  
11 difficulties slogging through this, but I really need to  
12 know the parties' positions immediately so I can get  
13 something going here.

14 MR. BIGGS: Understood, Judge.

15 THE COURT: Yeah. So make your objections live,  
16 I'll rule on them live, and then if I have follow-up  
17 questions that I need to resolve it, I'll govern myself  
18 accordingly.

19 So Exhibit 1 is in.

20 Are there any objections -- I can speed it up  
21 this way: Does defendant have any objections to -- have  
22 you all received the e-mail? Okay. The e-mail that was  
23 sent out, the photos that are included in this Word  
24 document, I think it goes down to a picture of -- if you  
25 look through these, we may be able to see which photos to

1 which you guys have objections and knock them all out a  
2 bit more quickly than going one by one.

3 MS. DAVID: Your Honor, this is Kate David for  
4 the County and the sheriff. I don't have those readily  
5 available. I'll try and get them printed. I don't know.

6 I can tell you we do object to his hand drawing  
7 of the jail, because there are official pictures showing  
8 the layout of the jail that we're happy to provide if the  
9 Court would like an official layout of jail. It would be  
10 better evidence than his hand drawing.

11 It sounds like he is very familiar with the  
12 jail. And it's a much better drawing than I could do.  
13 But we have professional drawings we're happy to provide  
14 if that would be helpful to the Court.

15 THE COURT: Okay. We'll go through one by one.  
16 And everybody just try to be patient with one another as  
17 we deal with technology.

18 So before we delve in, Mr. Hill, too much  
19 into this exhibit, if you can lay a foundation and then  
20 move for its admission before we go through it in too  
21 much detail.

22 MR. HILL: Yes, Your Honor.

23 Q. Mr. Jones, during this 28 stay [sic] at the Dallas  
24 County jail, were you housed at the West Tower?

25 A. Yes, I was.

1 Q. How many different -- how many separate times during  
2 this stay were you at the West Tower?

3 A. How many what?

4 Q. The first -- your first assignment was West Tower,  
5 tank 13; is that correct?

6 A. Correct. It was on the fifth floor of the West  
7 Tower in 13 tank.

8 Q. Okay. And during this same stay, were you at a  
9 different unit at the West Tower?

10 A. On this stay was I at a different section of the  
11 West Tower? Is that --

12 Q. A different tank?

13 A. Yes. I was on the ninth floor of the West Tower, in  
14 2 tank and 8 cell.

15 Q. Okay. And over the 20 years that you have been in  
16 and out of the Dallas County jail, are you familiar with  
17 the layout of West Tower, the architectural layout of the  
18 West Tower?

19 A. Yes, sir, I am.

20 Q. And are the architectural layout of West Tower  
21 identical on each of the floors?

22 A. Yes, they are.

23 Q. So the relative location, for example, of Tanks 1  
24 and 2, are they the same on the fifth floor as they are  
25 on the ninth floor?

1 A. Yes, sir, they are.

2 Q. And how many tanks are there on -- on each floor at  
3 West Tower?

4 A. There are 14 tanks on every floor, from the second  
5 floor up. The first floor is used -- go ahead.

6 Q. And are the 14 tanks all identical or are some tanks  
7 designed differently?

8 A. Like I stated before, the ones along the wall in --  
9 are 8-man cells with single cells for each man. 13 and  
10 14 are designed differently with three cells that house  
11 eight men apiece, apiece.

12 Q. And when you were asked to draw the -- to sketch  
13 this diagram, did you draw the sketch based on 20 years'  
14 experience at the Dallas County jail?

15 A. Yes, sir, I did.

16 Q. And is this an accurate description of the layout of  
17 the floor plans from the West Tower at Dallas County  
18 jail?

19 A. Yes, sir, it is.

20 Q. And does this diagram accurately describe the  
21 relative location and placement of the various tanks and  
22 facilities at the West Tower?

23 A. Yes, sir, it does.

24 Q. And would using this chart assist in providing  
25 accurate and fair testimony to the Court regarding your

1 experience at the Dallas County jail?

2 A. Yes, sir, it does.

3 MR. HILL: Your Honor, we would move that  
4 Plaintiffs' Exhibit 2 be used to help illustrate  
5 Mr. Jones' testimony and be admitted into evidence.

6 THE COURT: Okay. And so is this going to be a  
7 demonstrative aid or are you moving to have it admitted  
8 so that it is included in the record?

9 MR. HILL: We would have it admitted to be  
10 included in the record, Your Honor.

11 THE COURT: All right. Any objections from the  
12 defendants?

13 MS. DAVID: Your Honor, I object. We're happy  
14 to get official layouts to the Court if you need them.

15 THE COURT: All right. Intervenors, do you have  
16 any objection other than best evidence?

17 MR. BIGGS: No objection.

18 THE COURT: All right. I'm going to overrule  
19 the best evidence objection, and I welcome during your  
20 cross-examination or during your presentation of the case  
21 for you-all to give me an alternate diagram. But I think  
22 this would be helpful in understanding what this  
23 testimony is all about. So I am going to allow it.

24 Q. Mr. Jones, you were saying that tanks 1 and 2 and  
25 tanks 13 and 14, are those the -- are they different than

1 the other tanks on -- on the West Tower cell?

2 A. No, sir. The only difference is every two floors  
3 has -- has a basketball court. So the second floor, the  
4 fourth floor, the sixth floor, and the eighth floor are  
5 the floors that you have to go to to access the rec  
6 areas.

7 THE COURT: Mr. Hill, if you could pause for  
8 just a moment. I can no longer see Mr. Jones. So I just  
9 want to make sure I'm not having technical problems. I  
10 can hear him, but just a moment ago his screen went  
11 black.

12 THE WITNESS: Oh, no.

13 THE COURT: Mr. Jones, can you move into the --  
14 let me make sure I can see you. If you can speak, I  
15 think -- I think it queues up --

16 THE WITNESS: Yes.

17 THE COURT: -- when you talk.

18 THE WITNESS: Okay. Ma'am, can you hear me now?  
19 (Off-the-record discussion.)

20 THE COURT: Mr. Hill, proceed, please. Exhibit  
21 2, you were walking through Exhibit 2.

22 MR. HILL: Yes, Your Honor.

23 THE COURT: Mr. Jones, you were assigned to tank  
24 13; is that correct?

25 THE WITNESS: That's correct.

1 Q. And can you use the chart and describe where tank 13  
2 is on the chart.

3 A. Tank 13 is right here.

4 Q. Now, we see that there are labeled squares: 12, 11,  
5 9, 10, 7, 8, 5, 6, 3, 4. Where is tank 13 relative to  
6 the identifying tanks?

7 A. Way across from 8, and up.

8 Q. And describe that -- that particular tank, how many  
9 men were in it and how were they positioned?

10 THE COURT: Mr. Hill, if you could pause for a  
11 second. I see what Mr. Jones is referring to. So it  
12 doesn't have the Number 13, right?

13 MR. HILL: That's correct.

14 THE WITNESS: Correct.

15 THE COURT: Okay. I just want to make sure I'm  
16 looking at the right thing. You may proceed.

17 A. In this tank you come in through a sally port right  
18 here. This is a 24-man tank. Eight guys in A, eight  
19 guys in B and eight guys in C. This is a small dayroom  
20 area with a TV, three dayroom toilets, and one dayroom  
21 shower.

22 THE COURT: So just so I understand, Mr. Jones,  
23 in your drawing where you have got the little A, B, and  
24 C, you are saying that there are how many men in A, B,  
25 and C?



1           THE WITNESS:  There's eight men in A, eight men  
2 in B, and eight men in C.

3           THE COURT:  Okay.  Thank you.

4 Q.   And is tank 14 visible on your diagram?

5 A.   Yes, yes, it is sir.  It's built on the other side  
6 of the wall, so it would be across from seven and six.

7 Q.   And does it have the identical layout as tank 13?

8 A.   Yes, sir, it is split.

9 Q.   And so how many men are in tank 14?

10 A.   24.

11 Q.   And can people communicate from tank 13 to tank 14?

12 A.   No, sir, they cannot.

13           THE COURT:  Mr. Hill, I have one more question.  
14 Looking at tank 13, I see the two circles he's drawn.  I  
15 assume those are tables where people would sit and eat;  
16 is that right?

17           THE WITNESS:  Correct.

18           THE COURT:  Okay.

19           MR. HILL:  And Your Honor, the next exhibit that  
20 we would scroll to on that Word document would be  
21 Plaintiffs' Number 3, the photograph.

22           THE COURT:  Okay.

23           We'll scroll down to that.

24           And I think it would be helpful, Mr. Hill, as  
25 we're going through these, if you could do your

1 foundational questions kind of on the front end. And  
2 then we'll see if there's any objection, take that up,  
3 and then you can delve into the kind of, more of the meat  
4 of what's in the photo after you authenticate it.

5 MR. HILL: Yes, Your Honor.

6 Q. Mr. Jones, do you see Plaintiffs' Number 13?

7 A. Yes, sir, I do.

8 Q. Is that a photograph of tank 10 -- do you recognize  
9 that photograph?

10 A. Yes, sir, I do.

11 Q. And does that photograph -- what does that  
12 photograph represent?

13 A. That is a 8-man tank in the West Tower that is ten  
14 tanks, so that would be like, on my diagram, that picture  
15 would have been taken from here going this way, nine,  
16 attached to ten. All these have a sally port.  
17 Essentially, they're all built exactly the same outside  
18 the wall. So it -- it will always look like this.

19 Q. Okay. And do you see tables represented in that  
20 picture?

21 A. Yes, sir, I do.

22 Q. And do they accurately reflect the location of the  
23 tables in tank 10 as you know them to exist?

24 A. Yes, sir, they do.

25 Q. And do they accurately represent the position of

1 those tables as they appeared on -- during your 28-day  
2 stay in March and April of this year at the jail?

3 A. Yes, sir.

4 Q. Do you see men in those pictures seated at the  
5 tables?

6 A. Yes, I do.

7 Q. How many men in the tank would have access to those  
8 dayroom tables?

9 A. All eight, so there's --

10 Q. Was that true for the time that you were there?

11 A. That is true.

12 Q. So Mr. Jones, would you say this picture accurately  
13 reflects the condition of tank 10 as it appeared during  
14 your stay at the Dallas County jail in March and April of  
15 2010?

16 A. Yes, sir. On every floor of the West Tower.

17 Q. And would -- it help you to illustrate your  
18 testimony to use Plaintiffs' Number 3?

19 A. Yes.

20 MR. HILL: Your Honor, we would move  
21 Plaintiffs' 3 into evidence.

22 THE COURT: Any objections from defense?

23 MS. DAVID: Yes, Your Honor. And I think we can  
24 speed this up. My understanding is all of the rest of  
25 the photos were taken from YouTube, we believe, back in

1 2018, as far as we can tell. So we're going to make the  
2 same authentication objections to all of these photos.

3 THE COURT: Okay. Intervenors, do you have any  
4 objection?

5 MR. BIGGS: We would join the objection to  
6 Defendants for the remainder of the photos.

7 THE COURT: The authentication objection.

8 Mr. Hill, to expedite this, if you would, since  
9 we know what the objections will be as to authentication,  
10 why don't you, if you will with your witness, see if he  
11 can -- can say whether this does or doesn't fairly and  
12 accurately depict what it shows at the time of the stay.  
13 And I think I can make a ruling as to all of them.

14 MR. HILL: Yes, Your Honor.

15 THE COURT: Mr. Jones, with respect to  
16 Plaintiffs' 3, does that fairly and accurately depict the  
17 tank 10 area as it appeared during your stay in March and  
18 April of 2020?

19 A. Yes. It accurately depicts every time I've been in  
20 the West Tower.

21 THE COURT: And Mr. Hill, let us know when we  
22 need to scroll down to the next exhibit and we're happy  
23 to do it.

24 MR. HILL: Your Honor, we would ask that the  
25 Court scroll down.

1 THE COURT: All right.

2 Q. Mr. Jones, exhibit -- the tanks are connected or  
3 joined with each other; is that correct?

4 A. Not all the tanks are combined. Just like the sets  
5 in my diagram, 11 is attached to 12 with -- one is  
6 attached to two with a sally port, three is attached to  
7 four with a sally port, five is attached to six, so on  
8 and so forth.

9 Q. Can you use Plaintiffs' Exhibit Number 4 to identify  
10 how tank 10 is connected to its adjacent tank?

11 A. Yes. So if you'll look to the left of those  
12 inmates, that is a sliding glass door. There's a red  
13 circle which is the -- the slot that the door slides on.  
14 Then you'll step into a sally port, which is connected to  
15 9 tank.

16 THE COURT: Okay. I see.

17 A. And actually --

18 Q. And can things be slid from tank 9 to tank 10?

19 A. Yes, sir. Books, commissary, soups -- anything you  
20 want to share, magazines, pictures.

21 THE COURT: So Mr. Hill, I have -- I've got a  
22 question. What I'm seeing circled there, I see darkness  
23 in the photo, but I can't tell if that's an open area  
24 where you slide things in and underneath. Is --

25 THE WITNESS: Well, actually there is an open

1 space in the door as well. But there's that -- that is  
2 a -- a space underneath the door. So there's an opening  
3 in the door that they can put trays through. That stays  
4 open.

5 THE COURT: Okay. What is the little red thing  
6 I'm seeing there? It looks like a little cup or  
7 something.

8 THE WITNESS: The red thing is a circle. It's  
9 circling.

10 THE COURT: It's inside the circle. There is a  
11 little red dot inside the circle; do you know what that  
12 is?

13 THE WITNESS: No.

14 THE COURT: Okay. That's all right.

15 Is that area where -- see where that little red  
16 circle is, Mr. Jones, is that area open?

17 THE WITNESS: Well, it -- it seems like that's  
18 the shadow from the -- from the light kind of, you know.

19 THE COURT: Okay.

20 THE WITNESS: Because there -- it's all black,  
21 but it's encased.

22 THE COURT: Okay. Thank you, Mr. Hill. I --  
23 I --

24 Q. Who is responsible for cleaning that area, that  
25 dayroom?

1 A. The inmates who live in there.

2 Q. What supplies are provided to clean?

3 A. A mop bucket once a day is brought around with a  
4 broom, a mop, and a bottle of watered-down cleaning  
5 solution.

6 Q. Are there any alcohol wipes or other disinfectant  
7 wipes given for cleaning up the common areas, the tables,  
8 and other areas?

9 A. No, sir, it is not.

10 THE COURT: Mr. Hill, I've got another question.  
11 In looking at this, is there a sink? I see everybody  
12 sitting eating or they appear to be eating. Is there a  
13 sink in there, Mr. Jones?

14 THE WITNESS: Yes, yes, ma'am. In this photo,  
15 it would be kind of hard to see, but there are two  
16 inmates sitting with their backs to the camera.

17 THE COURT: Okay.

18 THE WITNESS: If you look directly past the man  
19 on the right, there's a small cubbyhole for the shower,  
20 one toilet with a sink, and one telephone.

21 THE COURT: And Mr. Hill, if you could, as you  
22 are walking through this photo and we're talking about  
23 people eating, if you could walk your witness through  
24 like, hand washing, using the toilet in this room, and if  
25 he's been in this room. That would be helpful to the

1 Court.

2 MR. HILL: Yes, Your Honor.

3 Q. What soap is available to inmates in -- in this tank  
4 cell?

5 A. Okay. Well, if you are not able to afford what  
6 commissary can provide, then you are issued four green  
7 bars of soap per week that are just individual-use, green  
8 bars of lye soap.

9 THE COURT: Just so I understand that, you were  
10 making a motion with your hand and it looked like,  
11 Mr. Jones, like you were doing like a small something  
12 like --

13 THE WITNESS: Yes.

14 THE COURT: -- is it like what you would get at  
15 a hotel, like a little --

16 THE WITNESS: Right, yes, yes. In that  
17 reference it would be a little bit smaller than a hotel  
18 because a hotel bar is going to be a little longer and  
19 about that big. But this -- this bar is about this big  
20 and it's about that thick. It's just a little green bar  
21 of lye soap.

22 THE COURT: Okay. So if you don't have the  
23 money, how many of those do you get a week?

24 THE WITNESS: You get four and a roll of toilet  
25 paper. Everybody is issued the same, whether you have



1 money or not. You still get four green bars of soap and  
2 a toilet paper roll once a week.

3 THE COURT: Got you. But if you have money, you  
4 can go to the commissary and buy extra; is that right?

5 THE WITNESS: You can buy body wash or -- body  
6 wash down in the commissary. I believe bar -- no, there  
7 is no bar soap, they don't sell bar soap anymore; it's  
8 just liquid.

9 THE COURT: What about Clorox wipes, did you see  
10 anything like that, was there anything available in the  
11 commissary?

12 THE WITNESS: No, ma'am.

13 THE COURT: Okay. All right. Thank you.

14 MR. HILL: Your Honor, we would move  
15 Plaintiffs' 4 into evidence.

16 Q. Mr. Jones, does this Plaintiff's 4 fairly and  
17 accurately capture the appearance of tank 10 as it  
18 appeared during your stay in March and April of 2020?

19 A. Yes. I would say it depicts -- it accurately  
20 depicts every tank 10 on every floor of the West Tower.

21 Q. And does the number of individuals pictured in the  
22 tank fairly and accurately describe the use of the tank  
23 by the individuals as you saw them during your stay in  
24 March and April of 2020?

25 A. Yes, sir.

1           MR. HILL: Your Honor, we would move  
2 Plaintiffs' 4 into evidence.

3           THE COURT: And I note that Defendants and  
4 Intervenors have a running authentication objection.  
5 I'll overrule it and admit it.

6           MR. HILL: Scrolling down, Your Honor.

7           THE COURT: Just so we have a clear record, did  
8 we admit Number 3? I can't remember if we admitted that  
9 one or not.

10          MR. HILL: Your Honor, we moved Number 3 into  
11 evidence.

12          THE COURT: Okay. Got you. I want to make sure  
13 we're on the right number. That is admitted. And I note  
14 for the appellate record Defense objection to  
15 authentication.

16          And have you moved on 4? 4 is the one with the  
17 circle, right?

18          MR. HILL: Yes, Your Honor.

19          THE COURT: And are you moving to admit that,  
20 too?

21          MR. HILL: Yes, ma'am.

22          THE COURT: All right. I note there are  
23 authentication objections of the defendant and  
24 Intervenors. I overrule them and I admit 4 into  
25 evidence, too.

1                   Okay. You may proceed, Mr. Hill. Thank you.

2       Q.   Scrolling down, Mr. Jones, showing you what's been  
3 marked as Plaintiffs' Exhibit Number 5.

4                   Do you recognize that photograph?

5       A.   Yes, I can.

6       Q.   And what is that a photograph of?

7       A.   That photograph is when she asked me -- Your Honor,  
8 you asked me about each one, A, B and C, each holding  
9 eight men.

10                  THE COURT: Yes, sir.

11       A.   That's what C would look like because of the rec  
12 room position. So I was housed in an area exactly like  
13 that on a top bunk in the far right-hand corner.

14       Q.   So how many -- how many bunks can you see clearly on  
15 this exhibit, Exhibit 5?

16       A.   Six, six of them clearly.

17       Q.   And on the left-hand, there are how many bunks,  
18 left-hand side of the picture?

19       A.   Four.

20       Q.   And how many on the right-hand side?

21       A.   I can see the left -- I mean, I can see the ones in  
22 the back, but I know what I'm looking for. It is the  
23 iron bars, so there would be two sets of them that house  
24 the bunks. So the one that you see in the front of the  
25 picture is two bunks and then there are an adjacent -- or

1 another set of bunks right beneath it.

2 Q. Okay. So when you were in tank 13, was that tank  
3 sort of identically formatted as the one in  
4 Plaintiffs' 5, Plaintiff's Exhibit 5?

5 A. Yes, sir.

6 Q. And so, does Plaintiffs' Exhibit 5 fairly and  
7 accurately depict the setup of the 8-man tank, as you saw  
8 it and as you experienced it, in March and April of 2020?

9 A. Correct. And all eight men would have to share that  
10 singular sink and toilet.

11 And at that point, we had been watching so much  
12 news that the concern and worry starting to grow about  
13 the Coronavirus and how it was spreading, and it became  
14 very serious.

15 MR. HILL: Your Honor, we would move  
16 Plaintiffs' 5 into evidence.

17 THE COURT: Okay. I note for the record Defense  
18 and Intervenor's authentication objection, and I overrule  
19 it. I admit it.

20 And I've got a question for you, Mr. Jones.  
21 What is that? The man in the -- who is facing away from  
22 us in this photo, if you know, what is that, where he is?  
23 What -- I can't tell what that is.

24 THE WITNESS: He's got his hand in the sink.

25 THE COURT: Okay. That's the sink. And behind

1 that, that little wall I'm seeing, is that where the  
2 toilet would be?

3 THE WITNESS: That's -- the toilet is connected  
4 to the sink; it's all one part, piece.

5 THE COURT: Okay. And I've got a question for  
6 you while it's on my mind. When you were staying in  
7 jail, how often would they change your -- I'm looking at  
8 these beds and it makes me think of bedding -- how often  
9 would they change your bedding?

10 THE WITNESS: Once a week, one time a week we  
11 had access to laundry change.

12 THE COURT: And did they give you any  
13 instructions on like, how -- when you said you had  
14 laundry change, did you have to do your laundry yourself  
15 or just give it to somebody else to do?

16 THE WITNESS: Well, when laundry comes, they  
17 come about 8:00 a.m. You are instructed to be  
18 single-file line, once again front to back. If you leave  
19 the line for something, then they can refuse you  
20 clothing.

21 So if you want clean clothes, then you stay in  
22 the line, single file. You wait until it's your turn,  
23 you shove the dirty clothes to a trustee who is wearing  
24 gloves. He puts them in a basket, a bin of dirty  
25 clothes. And then you tell them your size.

1           And then every other week then you'll get  
2 sheets. So you get clothes and -- and socks and boxers  
3 once a week, but the bedding comes every two weeks.

4           THE COURT: Did it cost you anything or was it  
5 free?

6           THE WITNESS: It's free.

7           THE COURT: If you want it -- let's say  
8 hypothetically, you wanted your sheets changed more than  
9 every two weeks, is that something you could pay for or  
10 arrange or was that impossible?

11          THE WITNESS: No, that's -- that's not even  
12 possible. I --

13          THE COURT: I understand there may be a policy  
14 you don't know about, but as far as you know with your  
15 experience, you don't -- you don't know of it being  
16 possible.

17          THE WITNESS: Well, I mean, I've seen -- I've  
18 seen stuff happen. Because sometimes in the -- in the  
19 diagram I show a -- a mop closet here; I have it labeled  
20 mop closet. Okay. Well, in that mop closet there are  
21 some mattresses, and sometimes there are -- there's like  
22 an extra sheet or an extra blanket that, you know, I --  
23 I've seen them -- them give out.

24          THE COURT: Okay. Thank you, Mr. Jones.

25          THE WITNESS: You're welcome.

1 Q. And so during your -- your stay in March of 2020,  
2 you were assigned to tank 13, which looks identical to  
3 this cell; is that correct?

4 A. Well, that -- that would be like a typical setup  
5 for C. And then you still had A and B, because there is  
6 24 men; that's just 8 of the 24.

7 Q. When you were in tank 13, did you have any concerns  
8 about prisoner movement in that particular tank?

9 A. Absolutely. That's -- that's initially what made  
10 the concern and worry go to another level. Because they  
11 brought in inmates -- and they were moving people at the  
12 time. I guess they were just, you know, using that tank  
13 to fill it up with people until they decided where they  
14 were going to be housed.

15 So you have movement and rotation of the inmates  
16 every day that I was there. You know, couple guys move,  
17 couple guys move in, couple guys move out, more move in.

18 Well, during one of these times, they brought a  
19 guy in that was wearing a mask. And that was very  
20 alarming to me and a lot of the inmates who were in  
21 there. And we were like, hey, hey, what are you putting  
22 this guy in here for?

23 Well, you know, they said it's out of their  
24 hands, this is where he has to go. He came in. Got a  
25 bunk, somebody even gave him a bottom bunk because he was

1 too weak to get on a top bunk. So somebody was like,  
2 yeah, yeah, just go ahead, you know, take the bottom  
3 bunk.

4 But after, he didn't eat for a day. And then  
5 the next day we were telling the officers that, you know,  
6 he -- he was clearly coughing, clearly -- he was wearing  
7 the mask, though. He was doing what he could to --  
8 because I mean, there were some upset guys.

9 THE COURT: Mr. Hill, I've got a couple of  
10 questions that come to mind that I'd like to ask about.

11 You mentioned a mask, Mr. Jones, and this guy  
12 coming in with a mask, so I assume that you-all did not  
13 have masks; is that right?

14 THE WITNESS: That's correct.

15 THE COURT: What about gloves, did anybody have  
16 gloves in the cell?

17 THE WITNESS: No, ma'am.

18 THE COURT: And when people would bring you  
19 things to the cell, did they have on masks or gloves?

20 THE WITNESS: No, ma'am, not at that time, no.

21 THE COURT: And in these photos, you said that  
22 it depicted how the jail looked when you were there. So  
23 this picture that's up on the screen, were the bunks that  
24 close?

25 THE WITNESS: Yes, ma'am.



1           THE COURT:   Okay.   And just one more question.  
2   When you would sleep on your bunks, let's say that you  
3   are on the bottom bunk and somebody else is on the top  
4   bunk, would your heads be on the same side or would  
5   somebody -- I'm calling it sleeping head-to-head, where  
6   your head is the same direction as the person above you.  
7   Or would you guys sleep -- did -- were you given any  
8   instructions to not sleep head-to-head?

9           THE WITNESS:   No, they -- I mean, it was  
10   personal preference, I mean, whether you wanted to sleep  
11   on either end.

12           THE COURT:   But the jail didn't tell you like,  
13   hey, don't sleep head-to-head, nothing like that?

14           THE WITNESS:   No, no, ma'am.

15           THE COURT:   Okay.   And just one more question.  
16   Were there any signs -- because I know this -- these  
17   pictures were before the -- the whole virus.   Were there  
18   any signs up in your -- in your jail cells that said  
19   like, socially distance, wash your hands, anything like  
20   that?

21           THE WITNESS:   No, ma'am.

22           THE COURT:   All right.   Thank you, Mr. Jones.

23           THE WITNESS:   Yes, ma'am.

24   Q.   Now, this individual that came in sick, how long did  
25   he stay in the cell?

1 A. A little over a day.

2 Q. And how long did you stay in that cell, in that  
3 bunk?

4 A. He got -- he got -- he got moved at around 8:00  
5 a.m.; I got moved at around 11:00 a.m. that same day.

6 Q. Were you told why you were moved?

7 A. No, sir.

8 Q. Can you describe how and where you were moved?

9 A. Yes, sir. So I was called over the intercom, Jones,  
10 pack your stuff, don't give anything away. They usually  
11 tell you that when you are just being moved to another  
12 housing unit. They don't want you to think you are going  
13 home and give all your stuff away.

14 So an officer came to retrieve me. I talked to  
15 him about the guy that had been removed at 8:00 with some  
16 concerns. I went to the sally port, and then there were  
17 other people from other tanks being moved. Once again,  
18 single file.

19 We got put into an elevator. We picked up  
20 different people from different floors, ended up going to  
21 the first floor and he -- using the hall to -- to the  
22 South Tower.

23 Once we entered the South Tower, we were pat  
24 searched and our -- our belongings, my -- I had a bag,  
25 trash bag that I was carrying my property in, blankets,

1 sheets, you know, flip-flops, shower shoes, my hygiene.

2 So I'm carrying that in a -- in a trash bag and --

3 Q. If I can, during the transport, were you or any of  
4 the other prisoners given masks?

5 A. No, sir.

6 Q. Gloves?

7 A. No, sir.

8 Q. Okay. Advised to stay a safe distance, social  
9 distance from each other?

10 A. No, sir.

11 Q. In fact, you were lined up in single file,  
12 shoulder-to-back; is that correct?

13 A. Well, front-to-back, yeah.

14 Q. Front-to-back.

15 A. And then I -- he -- we're just -- we're talking,  
16 we're communicating. I mean, it -- preparing to live in  
17 a whole new world.

18 Q. What was the next housekeeping unit you were taken  
19 to, where did they transfer you to?

20 A. 3E, Kays Tower. So I went to the South Tower, on  
21 the third floor, E wing.

22 Q. And how does that setup compare with West Tower?

23 A. It's a much larger setup. This is a 64-man wing.  
24 It's much larger.

25 MR. HILL: Your Honor, scrolling down.

1 Q. Mr. -- Mr. Jones, this is Plaintiffs' Exhibit 7.

2 THE COURT: And is this a pod, just so I know  
3 what we're looking at here?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right.

6 THE WITNESS: That is what I would refer to as a  
7 wing.

8 Q. Okay. Mr. Jones, what does this photograph depict?

9 A. That depicts a pod in the -- in the South Tower.  
10 That is what the pods look like in the South Tower. They  
11 have 64 men and the dayroom is in two parts.

12 Q. So do all wings in the South Tower have this same  
13 design?

14 A. Yeah. It's flipped. And -- right behind her is the  
15 rec area that two wings share. So you and another pod  
16 share a small rec area, which is located directly behind  
17 her.

18 Q. Okay. Can you describe how the sleeping units are  
19 organized on this wing?

20 A. Yes. It's -- cubicles with four bunks in them.

21 Q. And is there an upper and a lower tier?

22 A. Yes. First floor, second floor. You have --

23 Q. Go ahead.

24 A. You have one staircase that inmates are allowed to  
25 use. The other staircase is for officers only.

1 Q. You see on the first floor there's table seating; is  
2 that the day area?

3 A. Yes, that -- that's what we would refer to as the  
4 dayroom.

5 Q. And how many prisoners have access to that dayroom?

6 A. As many as are on the wing.

7 Q. And you see the table arranged in that photograph.  
8 Are those fixed tables and chairs or movable?

9 A. Those are all movable.

10 Q. And you see the number of people seated at those  
11 tables and -- depicted in the photograph. How does that  
12 number of people compare with the number of people that  
13 you saw at South Tower during your stay in March and  
14 April of this year?

15 A. That would be an accurate depiction.

16 Q. Where are the toilet and shower facilities; are they  
17 visible in this picture?

18 A. Yes, sir, they are. If you'll zoom in.

19 On the first floor of -- of the first floor in  
20 the far left-hand corner, there's a partition wall, and  
21 behind that are the showers. There are five showers,  
22 correct, in that area.

23 Q. Are the telephones visible in that picture?

24 A. Yes, sir, they are.

25 Q. Describe where the telephones are.

1 A. There's a partition wall, those little square boxes  
2 are phones. You can see three of them. The column is  
3 actually blocking a phone that's there, because there is  
4 four phones.

5 THE COURT: Okay. Mr. Jones, just so I make  
6 sure I'm looking at the right thing. I see between where  
7 I think are probably the phones, the black boxes, I see  
8 somebody maybe sitting down. Is -- those black things on  
9 that back wall, are those the phones?

10 THE WITNESS: Yes.

11 THE COURT: Where the curser is --

12 THE WITNESS: Yes.

13 THE COURT: Okay. Great, thank you.

14 Q. And where are the toilets --

15 A. Every inmate --

16 Q. Go ahead.

17 A. Every inmate can get a chair, but when you are done  
18 with your chair, you stack the chairs up underneath the  
19 staircase. So when you are in -- when you have to --  
20 when they're going to count or after chow or cleanup,  
21 then every -- everybody has to take their chair and stack  
22 it back up.

23 Q. Where are the toilet facilities in this picture,  
24 Mr. Jones?

25 A. They would be to the far left. Where the -- the

1 showers are, it's along the left wall. And the showers  
2 are on the back. So there's a mop over there, a handicap  
3 -- two handicap accessible toilets, and then four  
4 standard toilets.

5 THE COURT: Mr. Hill, I've got a question about  
6 right in the center of the screen. If you could move  
7 your curser -- or actually, I'll have my -- my assistant  
8 move the cursor.

9 Do you see the bunk beds above that big square,  
10 right over there -- right down -- right there, yes, okay.

11 So, Mr. Jones, I've got a question about that.

12 It looks like those bunk beds are pushed  
13 together. Are they made together or do you know?

14 THE WITNESS: Yes. There's a -- they're made  
15 together. Those four bunks are all screwed in together  
16 tightly -- tightly locked.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Yes, ma'am.

19 Q. So Mr. Jones, does Plaintiffs' Exhibit 7 fairly and  
20 accurately describe the South Tower as it appeared during  
21 your stay in March and April of 2020?

22 A. Yes, sir, it does.

23 Q. And does the number of people that appear and are  
24 depicted in this photograph, do they compare -- how do  
25 they compare with the number of people that were in the

1 South Tower, wing E during your stay?

2 A. I would say that E wing had maybe 10 or 13, 14, 15,  
3 empty bunks. So out of 64 guys, it wasn't filled to  
4 capacity.

5 Q. Does Plaintiffs' Exhibit Number 7 fairly and  
6 accurately represent the South Tower as you saw it and as  
7 you experienced it in March and April of this year?

8 A. Yes. Yes, sir, that picture does. When everyone's  
9 in the dayroom watching the news, I mean, it's tight  
10 quarters. So you're shoulder to shoulder watching TV.

11 MR. HILL: Your Honor, we would move Plaintiffs'  
12 Exhibit 7 into evidence.

13 THE COURT: Okay. I will note the objection by  
14 Defendants and Intervenors as to authentication and  
15 overrule that objection and admit it.

16 I need to take about a five-minute recess.

17 (Brief recess.)

18 THE COURT: This is -- we're resuming the  
19 hearing on the Sanchez case. And Mr. Hill, I think you  
20 wanted to note something for the record.

21 MR. HILL: Yes, Your Honor. During the break,  
22 checking the notes, I mislabeled the last exhibit. It  
23 should be Plaintiffs' 6; I mislabeled it 7. So if we  
24 could correct the record on that. That was Plaintiffs' 6  
25 that was moved into -- and entered into evidence.



1           THE COURT: All right. Plaintiffs' 6, rather  
2 than 7, is admitted. And again, for the record, I note  
3 the running objection of Defendants and Intervenor as to  
4 the authentication. I overrule that objection and admit  
5 Plaintiffs' Exhibit 6.

6           You may proceed, Mr. Hill.

7           MR. HILL: Thank you, Your Honor.

8 Q. Mr. Jones, can -- when you were assigned to E wing  
9 during this stay, what bunk were you assigned?

10 A. I was 34 bunk.

11 Q. And are the bunks in South Tower numbered in an  
12 identical fashion in each of the wings?

13 A. Yes, they are.

14 Q. And can you identify where bunk 34 is?

15 A. Yes, I can. If you'll zoom in behind the TV that's  
16 directly in front of her, to the section that Judge  
17 pointed out earlier. On the left side, I would have been  
18 the bottom bunk, so behind the left-hand corner of the  
19 TV.

20 Q. Okay.

21 A. Correct.

22 Q. And that would be bunk 34?

23 A. Correct.

24 Q. And where would bunk 30 be?

25 A. Bunk 30 would be to the left.

1 Q. And during your stay at -- E wing, did you have any  
2 concern about -- about one of your neighboring prisoners?

3 A. Yes. There was a small Caucasian male. He was  
4 vomiting. I guess he started vomiting in the night and  
5 didn't clean it up. So in the morning when breakfast  
6 rolls around, some other inmates found the throw up and  
7 started to want to know where it came from, who didn't  
8 clean up their mess.

9 So the correctional officer said, I know who it  
10 was. They didn't clean up after themselves. When they  
11 tried to go get the inmate to go clean up after himself,  
12 the inmate was nonresponsive, just laying in his bunk,  
13 coughing, sneezing, you know, going through -- he kept  
14 puking.

15 They placed him in that -- they call -- on the  
16 second floor, they placed him in the bunk on the bottom,  
17 right across from the urinal so that way he would be --  
18 he would be able to get up from his bunk and not have to  
19 walk very far in order to throw up.

20 THE COURT: And Mr. Hill, I've got a question  
21 about this photo. What I'm seeing over to the far left  
22 behind the gentleman on the stairs. Is that the urinals  
23 that he was referring to; is that -- is that what that  
24 barrier --

25 THE WITNESS: Yes, those -- yes.

1 THE COURT: Thank you.

2 THE WITNESS: Those are the closest bunks to any  
3 toilets in the -- on the wing.

4 THE COURT: So when you were talking about them  
5 moving him to the -- to the bunk to the right of the man  
6 on the stairs, would he have been in that bunk bed?  
7 She's moving her curser over -- right there?

8 THE WITNESS: Yes. Yes, he would have been in  
9 that bed. They moved him from the first floor up to the  
10 second floor to -- so that way he could be by the  
11 toilets.

12 THE COURT: Okay. Thank you.

13 Q. And describe these toilets. Are -- is there a lid  
14 to the toilets?

15 A. No, no, sir.

16 Q. And I think you previously described those as a  
17 combination with a sink, one unit?

18 A. Yes, yes, sir, it is one piece.

19 Q. And who was responsible for cleaning the toilets?

20 A. The inmates who live there.

21 Q. And what was the general condition of those toilets?

22 A. The condition of the toilets were dirty.

23 Q. What supplies were provided to clean the toilets and  
24 sinks?

25 A. There's two jugs that you would say -- of cleaning

1 supplies up under the sink. We were provided an ice  
2 machine, a community ice machine where people could go  
3 get ice and water. In the South Tower you have access to  
4 that.

5 So on the -- on that counter, underneath that  
6 counter, there are two jugs of watered-down cleaning  
7 solution that you have access to in the South Tower.

8 Q. Can you describe the process for meals, how food is  
9 delivered and served.

10 A. Yes, sir. To the right side -- or to the left side  
11 of the staircase there on the first floor, people will  
12 line up single file along that wall, from the left side  
13 of that wall, and then down where the showers are on the  
14 other side of the wall. They'll line up in an L-shape  
15 and single file.

16 You'll come up, you'll show the guard your arm  
17 band, tell them your bunk number, and you'll be issued a  
18 tray. And then you find a table to sit at so you can  
19 eat.

20 Q. And how close are people in this single file?

21 A. Inches.

22 Q. Okay. Would you describe the process for  
23 distribution of medications, pills?

24 A. Yes. It's the same, with the exception of on meal  
25 time they have to put the people who have diet trays and

1 high protein trays and you know, people that deal with  
2 cholesterol, high blood pressure, they get a separate  
3 tray. So they would be on the right side of the -- the  
4 staircase and would be issued their food first.

5 Q. Scrolling down to the next photograph, which is  
6 actually Plaintiffs' Exhibit 7.

7 Mr. Jones, do you see Plaintiffs' Exhibit 7?

8 A. Yes, I do, sir.

9 Q. Do you recognize what that is a photograph of?

10 A. Yes, I do. That is part of the bunk area in the  
11 South Tower.

12 Q. So does that fairly and accurately describe the  
13 distance between the bunks as they appeared during your  
14 stay in April and March of this year?

15 A. Yes, sir, it does.

16 Q. How -- are the bunks arranged in -- in areas of  
17 four, four-by-four?

18 A. Yes, yes, they are.

19 Q. And what separates the areas, the four-by-four?

20 A. A partition wall. Or there's a -- there's a long  
21 wall built attached to the bunks. On the top bunk, it  
22 probably goes a foot above the bed, but you and the man  
23 next to you are separated by that little divider.

24 Q. So on the photograph that's Plaintiffs' 7, can you  
25 identify the partition.

1 A. Yes. It would be between the -- the bunks directly  
2 in the middle of the picture. Where the man is sitting  
3 with his back to us, it would be -- yes, to his right,  
4 that -- that's it, where the -- where the cursor is.

5 Q. And to the left of that gentleman, do you see towels  
6 that appear to be hanging?

7 A. Yes. That is -- that is for your towel to dry after  
8 you get out of the shower.

9 Q. And is that a partition -- is that a picture of the  
10 partition that separates the four-by-fours?

11 A. Correct.

12 Q. And both in terms of architecture and in terms of  
13 the people depicted in the photograph, does it fairly and  
14 accurately describe the condition of the -- looking at  
15 the bunk you had at South Tower, E wing?

16 A. Yes, sir, it does.

17 MR. HILL: Your Honor, I would move  
18 Plaintiffs' 7 into evidence.

19 THE COURT: Noting Defendants' running objection  
20 to authenticity, as well as Intervenor's, I'll overrule  
21 the authentication objections and will admit  
22 Plaintiffs' 7 for the record.

23 Q. So Mr. Jones, when you described the person who was  
24 ill in bunk 30, how was he removed? Was he ever removed?

25 A. Yes. The infirmity staff was called down to remove

1 him. They came with gloves, masks, and removed him from  
2 the E wing, and I -- we were told he went to the  
3 infirmary.

4 Q. Did they -- did the staff give you any instructions  
5 about what you should do to protect your -- your health?

6 A. No, sir.

7 Q. Did they tell you anything about the condition of  
8 the man that was removed?

9 A. No, sir.

10 Q. Did they provide you any cleaning supplies to attend  
11 to any problems or concerns you had because of that  
12 gentleman's condition?

13 A. No, sir, they did not.

14 Q. Did they provide you any personal protective  
15 equipment, masks, or gloves?

16 A. No, sir, they did not.

17 Q. How long after that man was removed did you stay in  
18 that South Tower, E wing?

19 A. One more day.

20 Q. How did it come to be that you moved -- you were  
21 moved or transferred from that unit?

22 A. They came in, the sergeant came in and told  
23 everybody that they were moving, that everybody was to  
24 pack up their property, that they were being moved.

25 Q. And did you or anyone else clean up the space before

1     that move?

2     A.    No, sir.

3     Q.    How were you transported from that location to the

4     next location?

5     A.    In packs of 15.

6     Q.    Single file?

7     A.    Single file, front to back, property in hand.

8     Q.    Were the guards, were the officers dressed in

9     personal protective equipment?

10    A.    No, sir.

11    Q.    Did you have to go through an elevator to get to the

12    next location or were y'all on the same --

13    A.    I --

14    Q.    What was your next location?

15    A.    3A.

16    Q.    And is -- so that would be A wing; is that correct?

17    A.    Correct.  A wing, third floor.

18    Q.    How -- and is the layout of A wing identical to the

19    layout out of E wing?

20    A.    It's not identical, very similar.  It -- they --

21    they -- so it's basically flipped.  Because of the -- so

22    whatever is on one side is the opposite on the other,

23    given that the blueprint is just switched.

24    Q.    Scrolling down --

25    A.    There --



1 Q. I'm sorry, go ahead.

2 A. On one pod, the officers' podium would be on the --  
3 the right, and on the adjacent pod it would be on the  
4 left.

5 Q. Scrolling down to what was previously marked, I  
6 believe, Plaintiffs' Exhibit 2.

7 Do you see -- do you recognize -- do you see  
8 that photo again?

9 A. Yes.

10 Q. Can you illustrate on that photograph where the new  
11 pod that you were taken to in A wing was?

12 A. Okay. It would be on the second floor, behind the  
13 other TV this time, in 60 bunk.

14 Q. It would be the second to the extreme right?

15 A. Yes.

16 Q. And would those be the last floor of bunks in A  
17 wing?

18 A. Well, 60, 61, 62, 63, and 64.

19 Q. How long were you in A wing?

20 A. Another five or six days.

21 Q. And can you use -- scrolling down two photographs?

22 A. Yes.

23 Q. And showing you I believe what is now Plaintiffs' 8.  
24 Do you see that photograph?

25 A. Yes, I do.

1 Q. Can you use that photograph to illustrate where your  
2 bunk was, bunk 64 was?

3 A. Correct. So if you are looking at this picture, the  
4 inmate that you see sitting on that bunk 63, below that  
5 is 64. I was housed where you see the towel left, that  
6 partition in -- on this side of that partition, on the  
7 bottom bunk, which is 64 -- or -- excuse me, 60.

8 So that would be 59 on top bunk, 60, 61, 62, 63,  
9 and 64.

10 Q. And how long were you in A wing?

11 A. I was in A wing for five, six days.

12 Q. And were there prisoner movements that gave you  
13 concern while you were in A wing?

14 A. Yes, there was. Once again, this is where I was on  
15 the phone. I actually broke down at this point, because  
16 the concern and the worry just was too much to -- to bear  
17 at that time, with the -- we were seeing the news. It --  
18 it was happening. But, I mean, not to the officers'  
19 fault; they had never dealt with anything like this  
20 either.

21 So now when I moved to A, that is when officers  
22 started wearing masks and gloves. And they were cleaning  
23 their desks -- and you know, they were instructing  
24 inmates to stay away from them and stating that they were  
25 more harmful to us than we were to them since we never

1     went anywhere.

2     Q.   And while you were there in A wing, was there one  
3     particular prisoner who gave you real concern?

4     A.   Yes.  The guy on the other side of the partition  
5     wall on bottom bunk, some inmates -- his cell mate and  
6     the guy across from him noticed that he was having a  
7     really hard time breathing.  So they said, hey, this guy  
8     up here can't breathe.

9                 You know, so then the officer at the -- at the  
10    desk called it in, called the emergency to medical.  The  
11    medical staff then ran down there and -- to help the man.  
12    The nurses, they ran upstairs and just help -- helped him  
13    out of the bunk, helped walk him down the -- the  
14    officer's set of stairs, put him in a wheelchair, and  
15    then carried him out.

16                The guy in 64 bunk was then stating -- because  
17    he was upset because he wasn't getting any medical  
18    treatment from the -- the staff, saying that he had put  
19    in a medical kite that had not been responded to, and he  
20    felt himself running a fever.  He said, I have the  
21    symptoms, what are you guys going to do to help me?

22                And then that's when the next day they came and  
23    got him and three others.

24    Q.   Let's pause here, Mr. Jones, and describe what the  
25    process is for getting medical attention or help.  Is

1     there a process for making a sick call, and what is that  
2     process?

3     A.    Yes.   Okay.   So there's two ways to do it.   You can  
4     ask the officer for a -- a piece of paper that you can  
5     write your problems down on and turn it in and it'll go  
6     with regular mail.

7                 Or there is a kiosk on the wing that 64 men  
8     share, 64 men share one kiosk.   And on that kiosk, if you  
9     can, you know, figure out the technology, then you can --  
10    you can inform medical that you would like assistance.

11                So there -- there are a couple of ways that you  
12    can get attention from medical.   It's just supply and  
13    demand that -- that is a problem.

14    Q.    You used the word kite before.   What is a kite?  
15    Let's just be explicit about that.

16    A.    A kite is a paper form.

17    Q.    And that's separate from the kiosk, different from  
18    the kiosk?

19    A.    Yes, yes.

20    Q.    And you described what appeared to be a verbal  
21    request for medical attention.   Is that just a direct  
22    communication with the officers?

23    A.    Yes.   That's -- there were some inmates that needed  
24    wound change from you know, whatever -- whether it was a  
25    car accident or you know, dog bite.   I seen one dog bite.

1 And they are told to ask for medical attention, like I  
2 need a wound change, can you call the infirmary and have  
3 me called out to get my bandage changed.

4 So those are verbal requests for medical  
5 attention. And in case of an emergency, obviously that  
6 would be, once again, a verbal call for medical  
7 attention.

8 Q. Thank you --

9 THE COURT: Mr. Hill, if he knows, it would be  
10 helpful to the Court to know, just based on his  
11 experience, how long it takes once you make one of these  
12 requests for somebody to respond.

13 Q. Mr. Jones --

14 A. It varies. I -- I heard her question.

15 And like I say, it varies, depending on what the  
16 kite is wrote out for. So if you are just simply  
17 complaining of a headache or dry, cracked feet or  
18 athlete's feet or, you know, one of the random symptoms  
19 that would be quick to fix, I mean, it is prioritized.

20 So depending on how severe the condition is, is  
21 how fast you'll get seen.

22 THE COURT: And Mr. Hill, I'm asking a follow-up  
23 question.

24 Do you -- and only answer this if you know, I  
25 don't want you to speculate, but do you know if anybody

1 in your bunk asked to be seen by medical people for  
2 Coronavirus concerns?

3 THE WITNESS: Yes. 64 bunk. He was -- he -- he  
4 had been -- you know, coughing. And there had been  
5 people sneezing. So when we're watching the news, we're  
6 clearly aware of what's going on. So people are starting  
7 then to get onto their neighbor or hey, cover up your  
8 cough, hey, cover up your sneeze.

9 So at that point, yes, there were growing  
10 concerns and yes, there were questions as far as people  
11 having symptoms and trying to report them.

12 THE COURT: And how long -- only if you know,  
13 answer only if you know, how long did it take for  
14 somebody to be seen if they thought they might have the  
15 symptoms?

16 THE WITNESS: He said he put in his kite three  
17 or four days ago when the -- when the staff came to pick  
18 up the guy that was having breathing problems, and then  
19 they came and got him the next day.

20 THE COURT: Okay. Thank you.

21 Q. How long after they removed that prisoner did --  
22 were you transferred out?

23 A. Oh, we were told -- they brought them out and came  
24 back an hour later. And once again, everybody had to  
25 pack their stuff and everybody was moving at the same

1 time.

2 Q. Were you tested for the virus at this point?

3 A. No, sir. I was -- my temperature was taken and I  
4 was given a mask at that point.

5 Q. And where were you taken?

6 A. I was -- it was get in a single-file line, taken in  
7 packs of ten to the West Tower, ninth floor.

8 Q. So the ten use the elevator to go from one floor to  
9 the next?

10 A. Yes. Ten -- ten inmates, two officers.

11 Q. Okay. And where on the ninth floor were you  
12 assigned?

13 A. Well, when we got to the ninth floor, they were kind  
14 of trying to put the files together to see who was going  
15 where. So they filled up one tank. I went to 2 tank, so  
16 I was in the second group of guys. The groups of ten  
17 kept coming and they were filling the sally port.

18 So they were call -- they were using five to  
19 call our names, six inmates at a time. And then we were  
20 brought around there and put into our tank and all the  
21 cells were open; then once they closed they remained  
22 closed.

23 Q. Mr. Jones, I'm going to point your attention back to  
24 the Plaintiffs' Exhibit 8 and ask whether that fairly and  
25 accurately describes the condition of the South Tower

1 bunk area where 60 and -- 64 bunks appear, and that they  
2 appeared the same during your stay in March and April of  
3 this year?

4 A. Yes, sir, it is an accurate depiction.

5 MR. HILL: Your Honor, I would move  
6 Plaintiffs' 8 into evidence.

7 THE COURT: Okay. Noting Defendants' running  
8 authentication objection and Intervenors join in that  
9 objection, I overrule it and admit this exhibit into  
10 evidence.

11 Q. And Mr. Jones, you said that on -- you were taken to  
12 the ninth floor; is that right?

13 A. That is correct, sir.

14 Q. And pointing your attention back to the chart that  
15 was previously moved into evidence. Can you describe  
16 your location on this move?

17 A. Correct. Yes. I was moved to two, right here.  
18 This picture is only missing the dayroom table. So I was  
19 moved to A cell.

20 Q. So it would be A cell in which tank?

21 A. Ninth floor of West Tower, 2 tank, A cell.

22 Q. And is that a -- is -- is C an eight-person cell or  
23 is that a one-person cell?

24 A. That is an eight-man tank with single cells, so each  
25 man is -- has their own cell.



1 Q. Okay. And scrolling down to the next photo.

2 Sorry, actually skipping -- skipping that one,  
3 please. One more. There we go.

4 Mr. Jones, pointing your attention now to  
5 Plaintiffs' Exhibit 9. Do you recognize that exhibit?

6 A. Yes, I do.

7 Q. And can you -- first of all, just describe the  
8 condition of the cell that you were taken to.

9 A. Okay. It's the identical set up to this picture,  
10 where you come in and A cell is immediately to your left.  
11 And then there are four cells that are connected to each  
12 other, A, B, C, and D on that wall. And then the wall to  
13 the right of that has E, F, G, and H.

14 To the left of A cell where you see the man at,  
15 you can see the toilet in the dayroom and the sink  
16 connected. Behind that is the shower area for the  
17 dayroom, and then a phone is right there in the dayroom.

18 Q. And describe the condition of the cell that you were  
19 placed at when you first got -- what did it look like?

20 A. It was filthy. I immediately looked at it and  
21 turned around to the officer and said, I need some  
22 cleaning supplies. He said that it had already been  
23 cleaned, that this floor hasn't been used in over a year,  
24 and that it would be okay.

25 Q. Was it apparent to you that the room was not clean?

1 A. Yes, it was.

2 Q. Did they give you any -- what in particular in the  
3 room disturbed you, what did you see that disturbed you?

4 A. Wadded-up toilet paper like snot rags. The room was  
5 extremely dusty. It looked like it hadn't been used in  
6 awhile, but it looked like it hadn't been cleaned either.  
7 The sink was disgusting, the floor was filthy. Just  
8 there was trash still in there from prior meals that were  
9 eaten when -- I don't know when.

10 But when I tell you it was filthy, it was  
11 filthy.

12 Q. What cleaning materials were provided to you?

13 A. Absolutely none.

14 Q. Any sanitizer?

15 A. No, sir.

16 Q. You had described to the Court before that you were  
17 provided four bars of soap. What soap did you have in  
18 this unit available to you?

19 A. At that time, what I had previously bought off  
20 commissary.

21 Q. And are you familiar with the term, lockdown?

22 A. Yes.

23 Q. Lockdown status?

24 A. Yes, sir.

25 Q. Describe your status at this part of the West Tower,

1 the ninth floor. Were you in lockdown status?

2 A. Yes.

3 Q. What does that mean, in terms of what you are able  
4 to do?

5 A. Well, it means absolutely no movement. 24 hours a  
6 day, seven days a week I was held in that cell where the  
7 lights did not go off, the TV did not go off. I was  
8 given no information as to why or what was going on or  
9 what was happening, why it was happening.

10 Q. While you were in that cell, did you have access to  
11 a telephone?

12 A. No, sir.

13 Q. For lawyer visits or family calls?

14 A. No, sir.

15 Q. Were you able to send mail?

16 A. No, sir.

17 Q. Were you able to buy anything from the commissary?

18 A. No, sir.

19 Q. Were you provided any sort of new supply of soap?

20 A. No, sir.

21 THE COURT: Mr. Hill, if I may interject.

22 Mr. Jones, you said you weren't able to buy things from  
23 the commissary. I've been looking at some what -- why  
24 was that?

25 THE WITNESS: They said that we would have no

1 contact -- I couldn't even send out mail. The officer  
2 didn't want to take anything from us. And at that point,  
3 they were telling us that we would not have access to  
4 commissary, that we would not be able to shower, that we  
5 were not getting clean clothes. That they weren't --  
6 they didn't know what to do. They -- they put us in  
7 there and -- nothing.

8 I -- the officers would come in and slide  
9 the food up under the door. I'd try to ask, you know,  
10 what -- unfortunately, I have a lot of experience, so I'm  
11 very familiar -- and especially in a situation like this,  
12 where it's gone terribly wrong. And now, I know that  
13 this should not be happening. It's an outrage.

14 Q. So how long were you without access to a shower?

15 A. Ten days.

16 Q. How long were you without access to clean or  
17 laundered clothing?

18 A. 14 days. Because of all the -- because of all the  
19 moves and everything that happened, we weren't able to  
20 change out our clothes.

21 Q. Looking at the photograph that's marked  
22 Plaintiffs' 9. Can you describe how in a typical, in  
23 your prior stays, how you would receive food if you were  
24 in that unit, or medication?

25 A. Well, the doors had a -- a key slot. The officer

1 puts the key in, turns it, and a little -- we called it a  
2 bean chute. It's to get fed through and medication or --  
3 you know, if they need to gas you or whatever, then they  
4 open that chute and you are -- you know, whatever comes  
5 through it.

6 Q. Can you point it on the diagram where that bean  
7 chute is?

8 A. Yes. Oh, on the diagram, on my diagram?

9 Q. I'm sorry, on the photograph, Plaintiffs' Exhibit 9.

10 A. It's -- there are little dark spots on the door.  
11 That -- that would be the key hole.

12 Q. And just to be clear, where the man -- is there a  
13 shower in those single-person cells?

14 A. No, sir, there is not.

15 Q. Where the man is standing, where is he standing at,  
16 in front of?

17 A. He is standing by a partition where the toilet is in  
18 the back of the cell. There's a toilet, a sink, and a  
19 place for you to put your mat on.

20 Q. So for the days that you were -- how long were you  
21 in -- on the ninth floor in the West Tower during this  
22 stay?

23 A. 12 days.

24 Q. During those 12 days, can you describe the process  
25 for receiving food? How did you receive food?

1 A. Okay. Well, at first, the officers when -- like I  
2 said, when it first happened, all of the officers told me  
3 this was the first time it's ever happened that they  
4 didn't know what to do or to give us any answers. So  
5 they were sliding our food from feet away to try to stay  
6 away from us so that way they could feed us, but at the  
7 same time keep their distance from us.

8 Q. So were the trays able to fit -- describe how the  
9 food got to you.

10 A. There's a space underneath the door. It's about  
11 this big. And since our portions had been cut down from  
12 rubber trays to paper trays -- we were now receiving  
13 paper trays, so they're a little smaller, so they easily  
14 slid up under the door instead of the officers you know,  
15 taking the time and getting close enough to put the key  
16 in and opening it.

17 Q. Were you concerned about your food being delivered  
18 under the floor -- or under the door?

19 A. Yes. We still received bologna sandwiches every day  
20 for lunch. And in -- on one occasion, my bread had got  
21 stuck underneath the door. And the guy used the glove to  
22 press the bread down so it would fit under the door.

23 THE COURT: Mr. Hill, when you reach a natural  
24 breaking point, I'd like to break for lunch. Let's go  
25 off the record for just a second.

1 (Brief recess.)

2 THE COURT: Because this witness is going to  
3 need to miss some work to comply with this Court's order,  
4 I just want to make sure -- I think it goes without  
5 saying, there shouldn't be any adversary action for him  
6 complying with my court order.

7 Can you ensure that for the Court?

8 MS. DAVID: Yes, Your Honor, absolutely.

9 THE COURT: Okay. I -- I don't -- hopefully  
10 that wouldn't happen anyway, but just to be clear, I want  
11 him to feel comfortable testifying and not getting in any  
12 trouble for missing work because of my technical  
13 difficulties here. So if you will ensure that, I would  
14 be grateful.

15 Is there anything else -- thank you very much.  
16 Anything else we need to take up before our lunch?

17 (No response.)

18 THE COURT: Okay. Court will be in recess until  
19 1:35. Y'all have a great lunch. And thank you for your  
20 excellent presentation and I look forward to seeing you  
21 after lunch. Court's in recess.

22 (Brief recess.)

23 THE COURT: Back on the record. This is Cause  
24 Number 3:20-CV-00832, Oscar Sanchez, et al, versus Dallas  
25 County Sheriff, et al.

1           We are resuming from our lunch break, and  
2 Mr. Hill was doing a direct examination of Mr. Jones.  
3 Mr. Hill, you may proceed.

4           MR. HILL: Thank you, Your Honor. Good  
5 afternoon, Your Honor.

6           THE COURT: Good afternoon.

7 Q. Mr. Jones, just a couple of points and then just a  
8 very few additional questions. I think you were last  
9 shown Plaintiffs' Exhibit 9, if I'm correct. That has  
10 not been moved into evidence.

11           But on 9, that's the picture that's in front of  
12 you, does that photo fairly and accurately describe the  
13 condition of the single-cell A in the South Tower as it  
14 did during your experience on March -- March and April of  
15 this year?

16 A. Okay. Let me correct you. That is the West Tower.  
17 That is a picture of the West Tower.

18 Q. Oh?

19 A. Not the South Tower.

20 Q. Yes, yes, yes. West Tower, single cell. And does  
21 that accurately reflect the West Tower single-cell unit  
22 that you were in in March and April of this year?

23 A. Yes. March 28th was the day I was moved to the  
24 ninth floor of the West Tower in 2 tank, A cell.

25 Q. And scrolling backwards to Plaintiffs' 8, this is a



1 picture -- let's see.

2 A. Of where I was moved from in the South Tower.

3 Q. And this is South Tower -- South Tower, wing A; is  
4 that correct?

5 A. Yes. Bunk --

6 Q. Is that a fair and accurate description of what the  
7 upstairs of the upper tier on A wing looked like during  
8 your experience in March and April of this year, 2020?

9 A. Yes, sir. In March, not in April.

10 Q. You have been moved by April; is that correct?

11 A. That is correct.

12 MR. HILL: Your Honor, with that I would move  
13 into evidence Plaintiffs' 8 and 9.

14 THE COURT: Okay. Noting the defendants'  
15 running authentication objection, as well as Intervenor's  
16 running objection, I overrule that authentication  
17 objection and admit both exhibits into evidence.

18 Q. Mr. Jones, were you ever tested while you were at  
19 the Dallas County jail for the virus?

20 A. No, I was not.

21 Q. Did you request to be tested?

22 A. Yes, I did.

23 Q. And what was the response given?

24 A. The response is that I wasn't showing enough  
25 symptoms.

1 Q. And --

2 A. I -- it would have to be granted to a doctor, the  
3 doctors ordered that.

4 Q. When you were in West Tower the ninth floor in  
5 ice -- in the single-cell unit, were you able to file a  
6 medical kite?

7 A. No, sir.

8 Q. Were you able to file a grievance?

9 A. No, sir.

10 Q. And (unintelligible).

11 (Reporter instruction.)

12 THE COURT: Mr. Hill, will you reask that?

13 Q. Did you attempt to file a grievance?

14 A. Yes, I did.

15 Q. What would be the process for filing a grievance?

16 A. When you have an altercation with an officer and you  
17 have to file a grievance, either that officer or another  
18 officer usually goes to the command room that they have  
19 and prints it off the computer or they have a drawer that  
20 they open and pull the paper out and bring it to you to  
21 fill out.

22 Q. And when you were on the ninth floor in the single  
23 cell, did you ask for a grievance form?

24 A. Yes, sir, I did.

25 Q. And what was the response?

1 A. I had gotten several responses, because I asked  
2 several different officers. I remember on one occasion,  
3 Officer Bulk (phonetic) told me that this floor hasn't  
4 been used in over a year; they don't have a printing  
5 machine up here; I'll see what I can do for you.

6 I was flat out refused from Officer Rodriguez,  
7 with a finger. And just other officers saying we don't  
8 have any, we're not even taking anything from you.  
9 Because at that point in time, we couldn't even send out  
10 mail.

11 THE COURT: Mr. Hill, I have a question --

12 THE WITNESS: Yes.

13 THE COURT: I'm sorry. I'm stepping on your  
14 toes now, Mr. Jones.

15 I read your declaration and you said that this  
16 guard gave you the middle finger; is that the finger to  
17 which you are referring?

18 THE WITNESS: Yes, ma'am, it is.

19 THE COURT: All right. Thank you.

20 Q. Were your temperatures taken when you were in this  
21 single cell?

22 A. Yes, sir, they were.

23 Q. How were they taken?

24 A. The nurse come around with the officer, and with her  
25 we were instructed to put back on the mask that we were

1 issued as we was brought up to the ninth floor of the  
2 West Tower. They opened the slot in the door, used the  
3 key, opened the slots, we crouched down, and we put our  
4 ear in the hole and they put the thermometer in our ear.

5 Q. Were you concerned about the personal protective  
6 equipment that the nurse and other staff used while  
7 performing that?

8 A. At this point in time, I was overwhelmed with worry  
9 and concern. And I was -- I was trying to get answers.  
10 Anybody that would talk to me, anybody that -- that would  
11 tell me what was going on would have been helpful. I was  
12 reaching out at that point.

13 Q. And these --

14 THE COURT: Mr. Hill, if you could pause for  
15 just a second.

16 There is a distracting sound. Somebody needs to  
17 mute. It sounds like somebody popped a bottle or  
18 something. I'm sure it's inadvertent, but if everybody  
19 would just check. Other than Mr. Hill and Mr. Jones,  
20 everyone else should be on mute, thank you.

21 You can proceed, Mr. Hill. Sorry.

22 MR. HILL: Thank you, Your Honor.

23 Q. So was there a specific concern you had with the way  
24 the nurse was taking these readings from you, either the  
25 temperature or the other readings?

1 A. Yes. The nurse came to the hole and wanted me to  
2 put my finger in the heart rate monitor. And I asked  
3 her, had she wiped it. And she said that if she wipes  
4 it, it's not going to work for a while.

5 I replied that I wasn't going to put my finger  
6 in there. That I would let them take my temperature, but  
7 I felt fine.

8 Q. How did you learn that you -- when did you learn you  
9 were being released?

10 A. Hours before I was.

11 Q. How were you released from this -- from the jail,  
12 what was the process of transporting you from the ninth  
13 floor to the release point?

14 A. Well, an officer came in fully dressed in PPE,  
15 goggles, you know, the whole nine yards, gloves. Came  
16 directly to my cell on the ninth floor. They  
17 fingerprinted me in my cell and they put -- all my  
18 property in my cell with me and told me to get dressed in  
19 what I got arrested in.

20 And I was given my -- I was issued my money at  
21 the dayroom table, they brought up like \$140, gave me  
22 that in cash, then we -- me and one other guy were  
23 brought around to the sally port and waited. He was  
24 getting released too.

25 I asked then about social distancing since you

1 know, we were -- you know, it's scary being in that kind  
2 of situation. So I asked about social distancing and the  
3 officer told me that I can get that once I'm gone.

4 We were then escorted on the back side of the  
5 command room where on -- and on this diagram right here,  
6 it says, officer's elevators. I was brought down the  
7 officer's elevators and they -- and I seen all their  
8 lockers. When they come to work, they put their stuff in  
9 the lockers. They have benches that they get dressed at.  
10 Looks like a -- looks like a locker room.

11 And you wind through lockers and benches and  
12 then through the first floor of Lew Sterrett jail and let  
13 out.

14 Q. Okay. Were you wearing a mask as you were leaving?

15 A. Yes, sir, I was wearing a mask that I was issued  
16 when I went up to the ninth floor.

17 Q. How many days did you have that mask?

18 A. I had that same mask from the 28th until the time I  
19 was released.

20 Q. And what day were you released?

21 A. The 6th, I believe, of April.

22 MR. HILL: Thank you, Your Honor. Those are my  
23 questions. I thank the Court and the witness for your  
24 patience.

25 THE WITNESS: Thank you.

1 (Brief pause.)

2 THE COURT: I'm sorry, were you-all waiting on  
3 me? I had it on mute. That's my fault. Sorry about  
4 that.

5 Thank you, Mr. Jones, for answering those  
6 questions. And now the attorney for the defendants will  
7 have a chance to question you too. Thank you.

8 You may proceed.

9 CROSS-EXAMINATION

10 BY MS. DAVID:

11 Q. Mr. Jones, my name is Kate David. I represent the  
12 defendant, Dallas County Sheriff.

13 Can you hear me?

14 A. Yes, ma'am.

15 Q. Okay. Sir, you were most recently booked into the  
16 Dallas County jail on March 8th, 2020, correct?

17 A. Correct.

18 Q. And what charge were you booked in on?

19 A. It was family violence, impeding breath.

20 Q. Okay. And I believe you testified that you were  
21 released on April 6th; could that have been April 3rd?

22 A. Yeah, I -- I quickly fixed that. I said April 3rd.  
23 I have my declaration in front of me.

24 Q. Okay. So you were released on April 3rd, correct?

25 A. Correct.

1 Q. Okay. And have you been booked into the Dallas  
2 County jail since April 3rd?

3 A. No, ma'am.

4 Q. Okay. So you have been home since April 3rd?

5 A. Yes, ma'am.

6 Q. Okay. And do you recall what time you were booked  
7 in on March 8th, 2020?

8 A. It was the 9th -- or I was booked in on the 8th, I  
9 was arraigned on the 9th. So I got transported from  
10 Garland. And when we showed up to the jail, I'm -- not  
11 sure what time it was. They don't have clocks on the  
12 walls.

13 Q. Okay. Does 5:39 p.m. sound about right?

14 A. Yes, ma'am.

15 Q. Okay. And would you mind pulling up the Plaintiffs'  
16 Exhibit 2 showing the intake area.

17 Do you recall this picture, Mr. Jones?

18 A. Yes, I do.

19 Q. And I believe you testified that this was  
20 representative of the intake area when you were booked in  
21 at 5:39 on March 8th; is that correct?

22 A. That's correct.

23 Q. And I believe you testified that it might have been  
24 a little more crowded; is that accurate?

25 A. Yes.



1 Q. And was it crowded the whole time you were there or  
2 kind of off and on?

3 A. Well, that's -- that's one part. There's another  
4 part. Like if inmates are sleeping, then an officer will  
5 tap them and say hey, there is a place you can lay down  
6 in the back, which is on the other side where they take  
7 your mug shots and your fingerprints.

8 And in that area is -- is the -- where the drunk  
9 people go, like if they're drunk and out of control they  
10 put them in a single cell on the other side of that room.

11 Q. Okay. So -- so the area on the other side of this  
12 room, there are single cells where sometimes people are  
13 isolated to either sleep or drink it off or because they  
14 are combative; is that accurate?

15 A. Yeah. It's to the side, that's on the left side if  
16 you are from -- looking from the back, that's on the  
17 left. On the right side would be the other tank.

18 Q. Okay.

19 A. If I'm explaining it clearly.

20 Q. Okay. So I'm going to try to show my screen, in  
21 which I might not be too successful, but I'm going to do  
22 my best. Let's see.

23 Can everyone see the picture on the screen?

24 THE COURT: I do not see any picture on the  
25 screen yet.

1           MR. HILL: Did I close out my sharing screen? I  
2 think I should, right?

3           THE COURT: Probably so.

4           (Off-the-record discussion.)

5 Q. Can you see it now?

6 A. Yes.

7 Q. Okay. And can you see the date and timestamp on  
8 that photo, sir?

9 A. 9:26:17, 3/8/2020.

10 Q. So March 8th, 2020, at what time, sir?

11 A. 9:26.

12           Do you see how all the inmates are standing up  
13 along the walls? This exact wall right here is lined up  
14 with inmates --

15           THE COURT: Mr. Smith, can you --

16 A. -- how they --

17           THE COURT: -- Mr. Smith, can you get a little  
18 closer? I'm having difficulty hearing you. I'm sorry,  
19 Mr. Jones. I apologize.

20 A. On the right, there are these people. You can see  
21 the feet. Well, along that entire wall are inmates lined  
22 up next -- and stretched around like that, in that photo.

23 Q. So were you in intake at 9:26 on March 8th, 2020,  
24 sir?

25 A. Yes, I was.

1 Q. And is this an accurate representation of what you  
2 saw and experienced at that time?

3 A. I mean, with the benches empty like that, no.

4 Q. So are you in this picture, sir?

5 A. No. I'm in that back far right corner under --  
6 there is two TVs in this room that all the inmates watch.  
7 On this back wall right here, lot -- are inmates lined up  
8 shoulder to shoulder over there by the exit sign past --  
9 by the phones.

10 See how -- how tightly those inmates are packed  
11 in? Well, this whole back wall is packed with inmates  
12 like that as well.

13 Q. So I'm going to ask you to answer my question, sir.  
14 Are you in this picture?

15 A. No, no, ma'am.

16 Q. Okay. But you were in the jail on March 8th -- on  
17 March 8th, 2020 at 9:26 and you were in this area at that  
18 time?

19 A. Yes, ma'am.

20 Q. And from your testimony, it appears this area is  
21 familiar to you?

22 A. Yes, ma'am.

23 Q. Okay. And is this an accurate representation, to  
24 the best of your knowledge, of what this area that is  
25 depicted in this picture looked like on March 8th, 2020

1 at 9:26 p.m.?

2 A. Yes, ma'am.

3 Q. Okay. One more picture that I think is the other  
4 area you are talking about. Let me try to show it to  
5 you.

6 Can you see the new picture?

7 A. I've got it -- no, I see you.

8 THE COURT: I don't see the picture either.

9 Q. Okay. Let's see. Let me know if it's popping up.  
10 I just closed it and reopened it.

11 THE COURT: It's now back up. It's the picture  
12 with the blue chairs I'm seeing.

13 MS. DAVID: Is this the one that's at 9:32? Can  
14 everyone see that?

15 THE COURT: Yes, I can on my end.

16 Q. Okay. Mr. Jones, do -- can you see the picture?

17 A. Yes.

18 Q. Okay. And were you in this area at 9:32 on March  
19 8th, 2020?

20 A. I can't tell.

21 Q. Mr. Jones, are you familiar with the area that's in  
22 the picture?

23 A. Yes. I'm -- I'm looking through the picture to see  
24 if I can see myself. I was wearing a white t-shirt. I'm  
25 on my phone, so I'm trying to zoom in so I can see.

1                   No, I don't believe I'm in this picture.

2       Q.    But do you recall what the -- what this area looked  
3       like the evening of March 8th?

4       A.    Can you rephrase the question?  What was the  
5       question?

6       Q.    I'm sorry.  You testified pretty extensively earlier  
7       about your knowledge of the jail and what the intake area  
8       looked like the night you were booked in.  Do you  
9       remember that?

10      A.    Yes, ma'am.

11      Q.    So you -- you recall pretty clearly what the jail  
12      looked like and what the intake area looked like on March  
13      8th, correct?

14      A.    Yes, ma'am.

15      Q.    And is this a fair representation?

16      A.    Yes, yes, ma'am.

17      Q.    Okay.

18                   MS. DAVID:  Your Honor, I'd like to offer this  
19      exhibit as Defendants' Exhibit 1 -- 2, and the prior  
20      exhibit as Defendants' Exhibit 1.

21                   THE COURT:  Okay.  Any objection from Plaintiffs  
22      or Intervenors?

23                   MR. HILL:  No objection from Plaintiff, Your  
24      Honor.

25                   MR. BIGGS:  No objection from Intervenors.

1           THE COURT: All right. It shall be admitted,  
2 both exhibits.

3           MS. DAVID: Thank you, Your Honor.

4 Q. So then you talked a little bit -- you testified  
5 about the medical screening when you were booked in. Do  
6 you recall that, Mr. Jones?

7 A. Yes, I do.

8 Q. And you testified that you were asked some  
9 questions, correct?

10 A. Correct.

11 Q. But you don't believe that any of those questions  
12 pertained to COVID-19?

13 A. Correct.

14 Q. Do you have any medical training, Mr. Jones?

15 A. I -- I have a seizure disorder. I have no medical  
16 training except for CPR.

17 Q. Okay. And I should have asked this earlier.

18           What is your occupation, sir?

19 A. I am a freelance tattoo artist.

20 Q. Okay. And are you currently working?

21 A. No. No, ma'am, not right now.

22 Q. And you don't have any medical training or  
23 certifications at this time, correct?

24 A. No, ma'am.

25 Q. Okay. And are you familiar with the CDC's general

1 guidance on COVID-19?

2 A. Yes, ma'am.

3 Q. Okay. Do you know whether the CDC considers persons  
4 having seizures as high risk?

5 A. I would say that is an underlying condition.

6 Q. No -- I'm sorry. So do you know whether the CDC  
7 considers seizures, the fact that you have seizures,  
8 whether that makes you high risk for COVID-19?

9 A. No, not that I'm aware of.

10 Q. Okay. Are you familiar with the current CDC  
11 guidance for correctional facilities?

12 A. No, ma'am.

13 Q. Were you -- are you familiar with the CDC's guidance  
14 for correctional facilities that was in place when you  
15 were booked in on March 8th, 2020?

16 A. I know that we were supposed to be practicing social  
17 distancing when I was booked in. I know that we weren't  
18 supposed to be that close to each other.

19 Q. Have you read the CDC's guidance for correctional  
20 facilities?

21 A. If it's been on the news, then I have.

22 Q. I'm sorry. Have you read the guidance? I believe  
23 it is available on --

24 A. No.

25 Q. -- online.

1 A. No, ma'am.

2 Q. Okay. Along those lines, you did -- you have  
3 repeatedly talked about how the news was on the entire  
4 time you were in jail; is that correct?

5 A. People in jail frequently watch the news; yes, that  
6 is correct.

7 Q. Okay. And I think you talked about how you  
8 testified that the -- that everyone was clearly aware of  
9 what was going on; do you recall that?

10 A. I do recall that.

11 Q. Okay. And do you recall the news covering at all  
12 what the best practices were for preventing the spread of  
13 COVID-19?

14 A. More about the virus itself. The nursing homes, the  
15 numbers, the -- the death rate, the death toll. That's  
16 -- at that time the news was -- was more about how many  
17 people were dying than -- we -- we also have, you know,  
18 couch times and -- meal times and -- that interfere with  
19 the news.

20 Q. Right. But you did testify that you were all  
21 clearly aware of what was going on.

22 A. Out in the -- I meant in the free world, like  
23 outside. We were clearly aware that there was pandemic,  
24 we were clearly aware that people were panicking, we  
25 were -- that's what I meant when I said that.



1 Q. Okay. And you testified that because of this  
2 awareness, you heard some of your fellow inmates saying  
3 things like, cover your cough, correct?

4 A. Correct.

5 Q. So you were aware that covering your cough would  
6 stop the spread or help to stop with the spread of  
7 COVID-19, correct?

8 A. Correct.

9 Q. Okay.

10 A. And any cold.

11 Q. And I believe you testified before you were even in  
12 jail, that prior to March 8th that you were very aware of  
13 the situation and that you purchased masks and sanitation  
14 equipment; is that accurate?

15 A. Well, my masks were part of my tattoo supply. I  
16 already had an abundance of PPE due to my career path.  
17 So I mean, but we did stock up on toilet paper, paper  
18 towels, things of that nature, Lysol.

19 Q. What about soap and cleaning supplies?

20 A. We're clean. We were all -- there was -- I mean,  
21 our house -- we're clean people. I mean, I don't know  
22 what you mean by that.

23 Q. I'm sorry. I'm just referring to -- I wasn't -- I  
24 did not at all mean to be insulting. I'm sure you're  
25 very clean.

1           What I mean was, you testified about the fact  
2 that before you went into jail, you and your wife were  
3 both aware of the situation and that you started stocking  
4 up on supplies in anticipation of the pandemic; is that  
5 accurate?

6     A.    Yes, yes.

7     Q.    And so my question simply was, you understood the  
8 importance of soap and sanitation at that time?

9     A.    Correct.

10    Q.    Okay. So when you were in jail, you knew that  
11 washing your hands was a good way to prevent the spread  
12 and the infection, correct?

13    A.    Correct.

14    Q.    Okay. So we just looked at your Exhibit 2, and you  
15 testified about several other pictures of the jail. Do  
16 you recall that?

17    A.    Yes. Yes, ma'am, I do.

18    Q.    Did you take those pictures?

19    A.    No, ma'am, I did not.

20    Q.    Do you know who took those pictures?

21    A.    No, ma'am, I do not.

22    Q.    Do you know when those pictures were taken?

23    A.    No. I really can't say -- like you said earlier,  
24 ma'am, it's a film, it's a documentary about Dallas  
25 County jail on YouTube. So do I know who screenshoted

1 those, yes. Do I know who filmed this and directed the  
2 film, no. You know, just to clarify that.

3 Q. Okay. That's fair.

4 Do you know when the -- whoever did film it, do  
5 you know when it was filmed?

6 A. No, ma'am. I -- I couldn't say with accuracy.

7 Q. Okay. At one point you testified that these  
8 pictures reflected all tanks on all floors; do you recall  
9 that?

10 A. Yes, ma'am.

11 Q. In your --

12 A. The --

13 THE COURT: I'm sorry, I didn't hear that. And  
14 can you --

15 A. Well, in the --

16 THE COURT: I'm sorry. Pause for just a moment.  
17 If you would, Mr. Jones, you did a good job when your  
18 lawyer was questioning -- or when the plaintiffs' lawyer  
19 was questioning you, of delaying your answer by a second  
20 or two just to give technology a chance. If you would do  
21 that again, that would be helpful.

22 If you guys could do that last question and --

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Sure. Absolutely. I know this is  
25 kind of unusual circumstances. We don't talk this way in

1 normal life, but it will help with the time delay with  
2 technology.

3 And Ms. Kate, if you would reask your last  
4 question and get an answer from him, that would be great.  
5 Thank you.

6 MS. DAVID: Absolutely, Your Honor.

7 Q. Sir, I was talking about the pictures that you --  
8 you discussed on your direct testimony. And you had  
9 testified that this reflected all tanks on all floors,  
10 correct?

11 A. Yes.

12 Q. In your most recent stay in the Dallas County jail,  
13 you didn't spend time on all tanks on all floors, did  
14 you?

15 A. No, ma'am.

16 Q. Okay. But you did state, I think, that you have 20  
17 years of familiarity with the jail; is that accurate?

18 A. Unfortunately it is.

19 Q. Okay. Can we talk through that a little bit? When  
20 was the first time you were arrested and spent time in  
21 the Dallas County jail?

22 A. It was 1999, I was 17 years old. I initially went  
23 to Lew Sterrett and then was transferred to Decker at  
24 that time. I was put on probation by the probation -- I  
25 was young. I got rearrested, I went to New Holland.

1 Okay. And -- and then I've been in and out of Lew  
2 Sterrett I mean, a lot of times.

3 Q. So in 1999, what were you arrested for that first  
4 time?

5 A. Burglary of habitation.

6 Q. Okay. And then were you arrested again in 2000?

7 A. Yes, it was late 2000.

8 Q. What was that for?

9 MR. HILL: Objection, Your Honor. This is  
10 impeachment or some other purpose. This doesn't appear  
11 to be the right form.

12 THE COURT: What was your -- what is your legal  
13 objection, improper impeachment?

14 MR. HILL: Yes, Your Honor, the arrest is not  
15 the relevant factor for impeachment.

16 THE COURT: Well, I'm going to allow it.  
17 Overruled.

18 Q. Okay. And just as a reminder, we were talking about  
19 what were you arrested for in 2000, if you recall?

20 A. I had ran back to Chicago where I'm originally from.  
21 I was with my father. We got pulled over, I had a blue  
22 warrant out of Texas and they arrested me for it.

23 THE COURT: And just for the record, my  
24 understanding is a blue warrant is a parole violation; is  
25 that right?

1 THE WITNESS: I believe it's nationwide.

2 THE COURT: Okay.

3 Q. And then you were arrested again in 2001; is that  
4 correct?

5 A. Yes, it was.

6 Q. And what were you arrested for in 2001?

7 A. Attempted burglary of a habitation.

8 Q. Okay. And then were you arrested again in 2003?

9 A. If you say so.

10 Q. Do you recall being arrested in 2003?

11 A. For what charge?

12 Q. I think there were several charges, actually.

13 Driving while license suspended, speeding, driving while  
14 license suspended. Looks like two --

15 MR. HILL: I'm going to object. If this is  
16 impeachment and the County is relying on certified  
17 convictions, that's appropriate. I'm not sure that the  
18 arrest helps the witness respond in a relevant way to an  
19 impeachment question.

20 THE COURT: Okay. Well, I mean, this is --  
21 she's cross-examining -- your witness talked extensively  
22 on direct about his familiarity with the -- the jail. I  
23 assume that came from repeated arrests.

24 MR. HILL: Yes, ma'am.

25 THE WITNESS: Yes, ma'am, it did.

1 THE COURT: So I'll tell you what will be  
2 helpful, ma'am. If you would limit this to just the  
3 charges for which he's been convicted I think that would  
4 be more appropriate.

5 MS. DAVID: All right.

6 Q. Let's move to 2004 then. Do you recall being  
7 convicted of burglary of a habitation in 2004?

8 A. In 2004?

9 Q. Uh-huh.

10 A. No, ma'am. I was charged with burglary of a  
11 habitation originally. I got arrested on that charge in  
12 1999. I have one burglary, one attempted burglary of a  
13 habitation, because the guy I was riding with had 13  
14 garage clickers in the back. And then I have some -- you  
15 know, driving issues where it was just like in-and-out of  
16 jail, you know, in-and-out of jail, in-and-out of jail,  
17 so.

18 But, no -- I didn't commit another burglary of a  
19 habitation. I only have one burglary of a habitation and  
20 one attempted burglary of a habitation.

21 Q. Okay. So prior to this arrest, when was the last  
22 time you were in Dallas County jail?

23 A. It was 2012. And I got sentenced to five years in  
24 TDC and I did all five years. And I got out in 2017.

25 Q. Okay. And then so from 2012 to 2017 you were in

1 prison; that's accurate?

2 A. That is accurate.

3 Q. And then you were not in the Dallas County jail  
4 again until this arrest?

5 A. That is correct.

6 Q. Okay. We talked a little bit about the CDC  
7 guidance. Are you aware that the CDC didn't start  
8 recommending masks for the general population until April  
9 3rd?

10 A. No, I'm not aware of that.

11 Q. Okay. Do you know whether they are recommending  
12 masks for all inmates at this time?

13 A. No, I do not.

14 Q. Okay. Okay. I think this is my last question.

15 So all of your testimony that we have had today  
16 about the jail conditions are about the jail on or before  
17 April 3rd; is that accurate?

18 A. Yes, it is.

19 Q. So you have no personal knowledge about how many  
20 people are -- are housed in a single pod today in jail?

21 A. Well, I -- there actually -- there are three people  
22 that we take collect calls from right now, so I do have  
23 people that I talk to that are still inside.

24 Q. Okay. But you personally have not been inside the  
25 jail since April 3rd?



1 A. Oh, correct, absolutely, correct.

2 Q. Yeah, I apologize. Personal knowledge, just what  
3 you have seen with your own eyes or heard with your own  
4 ears.

5 A. Okay. Yes, ma'am.

6 Q. So with that understanding, do you have any personal  
7 knowledge about how the jail is cleaned as of today or  
8 since April 3rd?

9 A. No, ma'am.

10 Q. Do you have any personal knowledge about how masks  
11 or other personal protective equipment is distributed or  
12 used since April 3rd?

13 A. No, ma'am.

14 Q. Are you aware of when Governor Abbott made his  
15 disaster declaration?

16 A. No, ma'am.

17 Q. Are you aware of when Dallas County's stay-at-home  
18 order went into effect?

19 A. I was aware --

20 Q. Do you have a date?

21 A. I didn't -- no, I do not.

22 Q. Okay.

23 MS. DAVID: Thank you. I appreciate your time.  
24 I don't have any further questions.

25 THE WITNESS: Thank you.

1 THE COURT: All right, Mr. Hill -- actually,  
2 let's pause for a moment.

3 (Brief pause.)

4 THE COURT: Mr. Hill, do you have any redirect  
5 questions for your witness?

6 MR. HILL: Thank you, Your Honor. No redirect.  
7 Thank you, Mr. Jones.

8 THE COURT: All right. Thank you for coming  
9 today -- not for coming in, but for appearing today.

10 THE WITNESS: Thank you as well, Your Honor.

11 THE COURT: All right. Thumbs up if everybody  
12 can hear. I want to make sure we're all on the same  
13 page. Show me your thumb, okay.

14 We've -- a woman on -- the third woman -- okay.  
15 If you could do that one more time. Everybody just show  
16 me a thumb if you can hear me and see me.

17 Okay. Great, we're all on the same page,  
18 fantastic.

19 Plaintiff, please call your next witness.

20 MR. BARNETT: Yes, Your Honor. Plaintiffs call  
21 Emmanuel Lewis.

22 (Off-the-record discussion.)

23 THE COURT: Please begin your direct  
24 examination. I think we're all ready.

25 EMMANUEL LEWIS,

1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BARNETT:

4 Q. Please introduce yourself to Judge Brown, Mr. Lewis.

5 A. I am a detention service officer, Emmanuel Lewis.

6 THE COURT: Thank you for being here today,  
7 Officer Lewis.

8 Q. Officer Lewis, where do you live?

9 A. I live in Irving, Texas.

10 Q. And do you work as a detention service officer in  
11 the Dallas County jail, specifically the South Tower,  
12 which is also called the Suzanne Kays Tower; is that  
13 right?

14 A. Yes.

15 Q. I understand you are in the office with your lawyer,  
16 John Eichman; is that true?

17 A. Yes.

18 Q. And Mr. Lewis, you are aware that Judge Brown asked  
19 the lawyers for the County to agree that there will be no  
20 adverse work consequences for you complying with this  
21 subpoena?

22 A. Yes.

23 Q. You are also aware that Judge Brown required  
24 witnesses not to listen in on other witness' testimony?

25 A. Yes.

1 Q. And have you complied with that requirement by Judge  
2 Brown?

3 A. Yes.

4 Q. And where have you been, relative to Mr. Eichman's  
5 office where you are right now, this morning up until  
6 now?

7 A. I was already in the conference room.

8 Q. Mr. Lewis, how long have you worked in the Dallas  
9 County jail?

10 A. I have been there for seven months.

11 Q. Were you scheduled to work today?

12 A. Yes, at 2:00 p.m.

13 Q. And I see you are wearing a uniform. Is that your  
14 DSO uniform?

15 A. Yes.

16 Q. And DSO, that's short for detention service officer?

17 A. Yes.

18 Q. Before asking you questions about the jail, I have  
19 some concern of your First Amendment protection from  
20 retaliation by your public employer, Dallas County; is  
21 that okay with you?

22 A. Yes.

23 Q. Have you been subpoenaed by the plaintiffs in this  
24 case to testify at this hearing today?

25 A. Yes.

1 Q. Did your counsel, Mr. Eichman, notify your employer  
2 that you weren't able to report for duty today because  
3 you'd been subpoenaed to testify before Judge Brown?

4 A. Yes.

5 Q. Are you testifying on a matter of public concern,  
6 namely the outbreak of COVID-19, in the Dallas County  
7 jail and its effect on the health and safety of detained  
8 persons and jail staff and their family?

9 A. Yes.

10 Q. Is testifying part of your ordinary job  
11 responsibility as an employee of Dallas County?

12 A. No.

13 Q. Mr. Lewis, how much are you paid for your work with  
14 the DSO?

15 A. \$21.65. It's a little more since I have a  
16 bachelor's degree; it's about \$0.40 more since I have an  
17 education.

18 THE COURT: I assume that's per hour, right,  
19 Officer Lewis?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Thank you.

22 Q. And Officer Lewis, how many hours do you work in a  
23 typical week?

24 A. Between 40 to 56 hours a week.

25 Q. Are you concerned about potential retaliation for

1 your testimony today?

2 A. Yes.

3 Q. And why is that?

4 A. From what I observed at the sheriff's department and  
5 also in media reports.

6 Q. And what specifically causes you concern?

7 A. As a newly-hired detention service officer, for the  
8 first year you are on probation, so they can find any  
9 kind of way to get rid of you.

10 Q. Mr. Lewis, please tell the Court where you grew up  
11 and where you went to school?

12 A. I'm originally from Boston, Massachusetts. Grew up  
13 in Salem, Massachusetts; went to high school at Amesbury  
14 High School. And I went to, first, a two-year school,  
15 Manchester College, in Manchester, New Hampshire, and --  
16 where I studied clinical medical assistant. And then I  
17 went on to get my bachelor's school -- bachelor's degree  
18 at Fitchburg State College in Massachusetts.

19 THE COURT: And Mr. Barnett, if I can ask a  
20 question as we get going, of Officer Lewis.

21 Officer Lewis, if you don't mind telling me,  
22 when is your year up for when you will be up for, I  
23 guess, off of probationary status?

24 THE WITNESS: September.

25 THE COURT: Okay. If in September for any

1 reason you are not rehired, I'm instructing you to  
2 contact the Court, okay?

3 THE WITNESS: Thank you, Your Honor, yes.

4 THE COURT: All right. And I would like Counsel  
5 to do that, too. And Dallas County, your attorneys, and  
6 that -- if for some reason he is not rehired, I wish for  
7 you to notify the Court about that. Okay. Thank you.

8 Q. Mr. Lewis, were you the first in your family to go  
9 to college?

10 A. Yes, I was the first to graduate college.

11 Q. Congratulations.

12 And I think you mentioned something about  
13 medical training.

14 A. Yes, sir. I have a two-year degree as a clinical  
15 medical assistant.

16 Q. How long have you lived in the Dallas area?

17 A. 14 years.

18 Q. Since about 2006?

19 A. Yeah, 2006, 2005.

20 Q. And what sort of work have you done since moving to  
21 the Dallas area?

22 A. I worked for General Electric, GE Capital, and I  
23 also worked for a company, Tricon. That was a medical  
24 shipment company. I worked in the elections department.  
25 And I had a home that I rented out 14 years and then also

1 had some rental income to help pay some bills.

2 Q. Thank you. Let's talk about your work in the Dallas  
3 County jail.

4 You said earlier that you worked there for about  
5 seven months, so since September 2019?

6 A. Yes.

7 Q. Do you work -- what's your shift?

8 A. Yes, 2:00 p.m. to 10:30.

9 Q. And since you started working at the jail in  
10 September of last year, have you been on the second  
11 shift?

12 A. Yes. We called it the third shift.

13 Q. Third shift?

14 A. Yes, it's called third watch.

15 Q. And have you been in the South Tower throughout that  
16 time?

17 A. Yes.

18 Q. Have you ever worked in either the North Tower or  
19 the West Tower of the jail?

20 A. I have not. During the probationary period you are  
21 not allowed to work out there.

22 Q. When was the last time you went to work in the South  
23 Tower?

24 A. Saturday.

25 Q. April 18th?



1 A. Yes.

2 Q. Of this year?

3 A. Yes.

4 Q. What days have you worked in the South Tower over  
5 the last several months since the beginning of the year,  
6 say?

7 A. My schedule is from Tuesday to Saturday.

8 Q. So five days a week?

9 A. Yes.

10 Q. Do you have Monday and Sunday off?

11 A. Yes.

12 Q. Do you sometimes work on Sunday or Monday for  
13 overtime?

14 A. I do not. Overtime is done on those days that I'm  
15 working. If I'm making it to stay after, five to ten  
16 minutes before the shift ends they can tell me that I  
17 have to work another eight hours.

18 Q. Is there a particular area within the South Tower  
19 where you've been working since January of 2020?

20 A. South Tower, Kays Tower, first floor.

21 Q. And how many pod --

22 THE COURT: Sorry, Mr. Barnett, if you wouldn't  
23 mind saying that again. There was a little delay on my  
24 end. I think you said pods, but I just want to make  
25 sure.

1 Q. I did. Does each floor of the South Tower have pods  
2 in it?

3 A. Yes.

4 Q. And how many pods are on each floor?

5 A. There are nine pods.

6 Q. And how many pods on the first floor where you work  
7 are currently in use?

8 A. Seven.

9 Q. And do you also work in something called the control  
10 center?

11 A. Yes.

12 Q. Tell the Court what the control center is, please.

13 A. Control center, that's also on the first floor, and  
14 it's in the middle of the nine pods, and there's four on  
15 each side and then there is one on the front. And it  
16 helps to direct the different pods to different pods  
17 everywhere.

18 THE COURT: And, Mr. Barnett, I think one of the  
19 exhibits that the last witness -- there was a woman with  
20 spiky hair, and I think that's the control center, I  
21 guess, she was sitting in, in one of the pods; is that  
22 right?

23 MR. BARNETT: If we can pull that up, Your  
24 Honor, if we could get -- I think it is Exhibit 6. It's  
25 been admitted into evidence.

1 THE COURT: Okay. I just want to make sure I'm  
2 imagining the right thing.

3 MR. BARNETT: Right. Well, I can't pull it up,  
4 but maybe somebody else can.

5 THE COURT: We've got it here. We'll try to  
6 pull it up.

7 MR. BARNETT: You've got it. Okay. I want  
8 Mr. Lewis to tell us about it.

9 Q. Did it come up on your screen?

10 A. Yes, I see it.

11 THE COURT: Is that the command center that you  
12 were speaking of?

13 THE WITNESS: This is a desk that's inside the  
14 pod. The control center is -- something different where  
15 it's outside of the pod and it helps to oversee the  
16 various pods on the -- on the floor.

17 THE COURT: Okay. Thank you.

18 Q. While you have got that up, Mr. Lewis, we're looking  
19 over the shoulder of a DSO; is that right?

20 A. Yes.

21 Q. She is one of your colleagues?

22 A. Yes.

23 Q. And the control center, is that back behind her?

24 A. The control center, that would be outside of the pod  
25 area.

1 Q. Right.

2 A. Something --

3 Q. Relative to --

4 A. -- it would be outside and it would be down the

5 hall.

6 Q. And how big is the control center?

7 A. The control center is not that big. I'd say

8 8-feet-by-10 feet. It is not that big of an area.

9 Q. Are there any windows in it?

10 A. No. It's an open area.

11 Q. And are there desks and computers sitting there?

12 A. Yes. There's a -- this desk, it's all like, one

13 giant desk and then there's two seats by the desk and

14 then there's a couple of chairs next to it. Those are

15 for the relief officers that go in to help with the

16 breaks and lunches.

17 Q. And when you are working at the control center, how

18 many people are there with you, typically?

19 A. Four to five people.

20 Q. And how far apart are they, typically?

21 A. I'd say 4 to 5 feet with -- within each other

22 because it's a small area.

23 Q. Are there any barriers between them?

24 A. No, there's not.

25 Q. Was that -- in 2020 --

1 A. Can you repeat the question, please.

2 Q. Yes. Is that where -- how you work in the control  
3 center, is that -- and how close you are to your  
4 colleagues, has that been the way it's been since  
5 January?

6 A. Yes, since September, since I started there, yes.

7 Q. Since September, okay. Even better.

8 And let's talk about the pods. We did get some  
9 testimony from Mr. Jones, who testified for the point of  
10 view of the detainee about the pods. And I'd like -- I'd  
11 like to get your information for -- from your perspective  
12 as a DSO.

13 Could you just describe with words what a pod is  
14 in the South Tower?

15 A. A pod is a -- a general open area where up to 64  
16 inmates live in a common area where they have shared  
17 toilets, a bunk bed area, and shared showers, and a  
18 shared dayroom.

19 Q. And when you are on duty in a pod, do you sit in  
20 that desk where your colleague is sitting, the one with  
21 the spiked hair?

22 A. Yes.

23 Q. And I -- the side that she's on, and that you sit on  
24 in that elevated desk, is that the narrower part of the  
25 bench tank area?

1 A. Yes.

2 Q. Little bit bigger as you are looking towards the  
3 other side of the room in that photograph, Exhibit 6?

4 A. Yes.

5 Q. How many detainees are in a pod on the first floor,  
6 South Tower?

7 A. In the pod, up to 64.

8 Q. And since January of this year, how many are  
9 typically in a pod that you have been responsible for?

10 A. On the floor level, 40. And there is still some  
11 pods that have 64 inmates in it. Each pod still has 64  
12 inmates.

13 Q. And is this pod on the first floor?

14 A. Yes.

15 Q. And the other pod that you are talking about, what  
16 floor is that on that?

17 A. It's also on the first floor.

18 Q. Okay. So one has 60 or so and the other one has 40  
19 or so?

20 A. Yes.

21 Q. And has the population in the pods that you have  
22 been the DSO for, has that varied over time since  
23 January?

24 A. I rotate to different pods. So when I first  
25 started, a lot of the pods, they were all at the 60 to 64

1 level, they were all -- they were stacked. And recently  
2 some have gotten lower, but each is still 64 inmates.

3 THE COURT: Well, I've got a question. I took  
4 a -- a tour of the jail with the lawyers from both sides  
5 just to get kind of a panoramic view to kind of put all  
6 this into perspective, and I did stick my head in a pod.  
7 And I remember seeing tables there and toilets and it  
8 looked like the inmates did all of their living in the  
9 pod; is that right?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Thank you.

12 Q. Mr. Lewis, the pod that has 64 people in it or so,  
13 does it look like the pod that's depicted in Exhibit 6,  
14 that photograph?

15 A. Yes.

16 Q. So that's about what it looks like when on a normal  
17 day, on Saturday, for example?

18 A. Yes.

19 Q. If you look at that photograph a little bit more,  
20 I'd like you to focus on the bunk bed. About how many  
21 bunk beds are over there?

22 A. There's 64 bunks.

23 Q. Okay. And are the bunk beds, are they in units of  
24 four or two, two together, one on top, one on bottom, or  
25 two that are kind of latched together?

1 A. Yeah, some are one top, one bottom and others are  
2 latched together.

3 Q. Okay. And does that remain the case all through  
4 since January?

5 A. Yes.

6 Q. For the ones that were latched together are still  
7 are?

8 A. Yes.

9 Q. And since you are -- you work until 10:30, is it  
10 typical for detainees to sleep in their bunks while you  
11 are there or do they do that later typically?

12 A. Sometimes some will take a nap.

13 Q. And is there any pattern to where they put their  
14 heads? Do they try to -- if the person next to them in  
15 one of those tied-together bunk bed contraptions is  
16 laying one way, do they try to lay the other way so that  
17 their heads are at the other guy's feet?

18 A. No, there is no pattern.

19 Q. And have they been advised that that would be a good  
20 idea?

21 A. Not that I have been aware of.

22 Q. So would you say that Exhibit 6 is a fair  
23 representation of the inside of the pod that you were  
24 working in as of Saturday, April 18th, the last day you  
25 worked at the jail?



1 A. Yes.

2 Q. And is it an accurate depiction of the inside of the  
3 typical pod in South Tower throughout the period since  
4 December of 2019, assuming there is that many inmates in  
5 there?

6 A. Yes.

7 Q. Thank you. And it looks like there are two levels  
8 of bunk beds. There is an upper tier and a lower tier;  
9 is that right?

10 A. Yes.

11 Q. So there are four beds in each bunk bed unit that  
12 are tied together?

13 A. Yes.

14 Q. And how far apart are these bunk beds, whether the  
15 two together or four together, how far are they?

16 A. About 4 feet.

17 Q. Now, can you tell us what a round is in the context  
18 of a pod in the South Tower?

19 A. A round, which is done under 44 minutes, every 44  
20 minutes or below is -- is the lady that's sitting there,  
21 she would go up to the right up to the stairs and then  
22 would go up to the second floor and then go down the  
23 stairs right there and go where these folks are all  
24 gathered, would cut all through those, and then come back  
25 around. So she would be among the unit inmates.

1 Q. Let's take a look at what was marked and admitted  
2 previously as Exhibit 8. If we can pull that up so you  
3 can see it, Mr. Lewis.

4 A. Yes.

5 Q. Okay. Are you eyeballing it? Can you see it?

6 A. It's -- she is doing a round right there?

7 Q. Yes?

8 A. Yes.

9 Q. Is that what you are calling it, is she doing a  
10 round?

11 A. Yes.

12 Q. And what is she supposed to do and what are you  
13 supposed to be doing while you are doing a round?

14 A. When you are doing a round, we're looking to check  
15 the inmates, make sure they're okay, and see if there's  
16 any you know, safety issues.

17 And also during a round, we can do a shakedown.  
18 We have to do two shakedowns a shift. So we know we go  
19 in and we'll check an inmate's living area.

20 Q. Okay. Well, tell us what a shakedown is, please.

21 A. A shakedown would go to the living area, check the  
22 area to see if there is any contraband, if there is  
23 anything dangerous, and see if there is any extra, you  
24 know, supplies or -- or things and then we notate it.

25 Q. And who does the shakedown, just you or you --

1 somebody else help you?

2 A. When I'm working, it's myself that does the shake  
3 down. There are other shakedowns where nine to eight  
4 officers will come down and shake down the whole pod.

5 Q. And shakedowns continue to occur in the pod that you  
6 are involved in?

7 A. Yes.

8 Q. The week -- have --

9 THE COURT: Mr. Barnett, I've got a question.

10 MR. BARNETT: Yeah.

11 THE COURT: A question for Officer Lewis.

12 Officer Lewis, when you are doing a shakedown, I  
13 want to make sure I heard you right, is it twice a shift  
14 or twice a day?

15 THE WITNESS: Twice during my shift, I would do  
16 it twice.

17 THE COURT: You would do it twice. And I -- it  
18 sounded like you are searching the area like where they  
19 sleep and live. Are you also searching their person,  
20 like physically patting people down, inmates?

21 THE WITNESS: I am not. And if I may clarify --

22 THE COURT: Sure.

23 THE WITNESS: -- Your Honor. I would check  
24 two -- two bunks, that would be two things that I have to  
25 do. I have to check two living areas for my shakedown.

1                   THE COURT:   Okay.   Thank you.   That's helpful.

2   Q.   And Officer Lewis, would it be two bunks a shift or

3   two bunks on a shakedown?

4   A.   Two bunks a shift.

5   Q.   Okay.   And do you just pick them at random?

6   A.   Yes.

7   Q.   Okay.   And let's talk about the -- the rounds again.

8   You said that you do them every 44 minutes or less; is

9   that -- is that right?

10   A.   Yes.

11   Q.   And where does that come from?   Is that a

12   requirement?

13   A.   Yes, it is required by the State.   It was 30

14   minutes, and then a few months back it got moved to, it's

15   got to be below 40 -- 45 minutes.

16   Q.   Okay.   And so it sounds like you -- during the

17   course of a -- I think you said you work eight and a half

18   hours, 2:00 to 10:30; so you do ten or more rounds --

19   A.   Yes.

20   Q.   -- is that right?

21   A.   Yes.

22   Q.   You get down there, you -- detainees more than ten

23   times a shift?

24   A.   Yes.

25   Q.   Right?   And is a shakedown on top of the round?

1 A. Yes.

2 Q. So probably more like 12, 13 times you do that; is  
3 that right?

4 A. Yes.

5 Q. And have the rounds continued to be in place  
6 throughout the period since you started in September of  
7 2019?

8 A. Yes.

9 Q. And the only thing that's different timing wise --  
10 or I'm sorry. There has been no -- relaxation  
11 requirement to do rounds except that they occur a little  
12 bit less frequently; is that right?

13 A. Yes, from under 30 to under 45.

14 Q. Okay. Thank you.

15 Now, the picture of your colleague who is out on  
16 a round, is that an accurate depiction of --

17 A. Yes.

18 Q. -- a pod that you are responsible for looks like or  
19 looked like on Saturday, April the 18th, the last time  
20 you worked?

21 A. Yes.

22 Q. Mr. Lewis, we just got some photographs from the  
23 other side, of the defendants. And I wondered if we  
24 could pull those up where they are. We've had some  
25 objection previously. And I want to make sure we're fair

1 to defendants.

2 Can we pull those up? Does anybody have those  
3 that they can show them to the witness?

4 THE COURT: We'll pull those up in just a  
5 moment.

6 (Brief pause.)

7 MR. BARNETT: I'm not able to see. Let me  
8 refresh.

9 (Off-the-record discussion.)

10 THE COURT: I'm seeing a -- looks like a sally  
11 port.

12 MR. BARNETT: Okay.

13 Q. Yeah, Officer Lewis, can you identify -- do you  
14 recognize the -- the first picture we see here?

15 A. No, that's not my work area.

16 Q. Okay. And let's look at the second one. Does that  
17 look like a place you are familiar with in the jail?

18 A. No, that's not my work area.

19 Q. And how about the third photograph, does that look  
20 familiar? It's just a floor.

21 A. No, that is not my work area.

22 Q. Okay. And how about the next one that shows a bunch  
23 of empty chairs and people clustered along the wall. Do  
24 you recognize that?

25 A. No.

1 Q. And are you involved in intake, the booking process  
2 at the jail?

3 A. No.

4 Q. The next photograph looks like it might be a pod.  
5 What is this?

6 A. Yes, that's a inside of a pod.

7 Q. Does that look like the one in the South Tower?

8 A. Yes, that could be one in the South Tower.

9 Q. Can you identify this particular pod?

10 A. I do not know which one it is. It could be one of  
11 the closed pods, the ones that were recently closed.

12 Q. There's nobody in it that I can see. Do you see  
13 anybody?

14 A. I can't see anyone.

15 Q. Have you ever seen a pod like this being used?

16 A. I've seen G pod, which was recently closed. And F  
17 pod that was recently closed.

18 Q. Okay. Closed in, no use is being made of them; is  
19 that right?

20 A. Right. Because they have to clear out with -- with  
21 F pod they had a -- an exposure so they had to -- they  
22 had to clear it out.

23 Q. Okay. And if you'll look at the next photograph,  
24 which -- looks like it's another picture of the same pod.  
25 Is that what it looks like for you?

1 A. Yes. And they also had a -- a closed -- which is  
2 back open, A. They had to close A and that's back open  
3 again. It was one of the COVID exposures things.

4 Q. Okay. And the -- I can see on the right side of  
5 this photograph there's some round-top tables; do you see  
6 those?

7 A. Yes.

8 Q. They seem to be all smooshed together. Are they  
9 typically like that when there are inmates or detainees  
10 in the pods?

11 A. When the inmates are there, they're using the  
12 tables. When we rack -- rack off -- when we're getting  
13 ready to you know, start off a shift, like those are all  
14 on their bunks, or near the end of a shift where we're  
15 about to do the shift change, we -- we rack off the --  
16 the pod and they -- they set the tables up like that.

17 Q. Okay. And it looks like there are a bunch of -- I  
18 want to say they're plastic chairs, gray things that --  
19 right underneath that stairwell that we're looking at  
20 directly. Do you see that?

21 A. Yes.

22 Q. And when the inmates or detainees are actually in  
23 the pods, where would those chairs be?

24 A. They would take them out and put them under the  
25 tables.



1 Q. Okay. And would there be a time during the day when  
2 you are on a shift, the third shift, where the pod would  
3 look like this?

4 A. When I first show up, it looks like this and the  
5 inmates are on their bunks. And then at the end of the  
6 shift it would look like this.

7 Q. Okay. And I -- I see along the wall, the far wall  
8 there, it looks like there's some boxes. Looks like  
9 maybe they're pay phones; is that what they are?

10 A. Yes.

11 Q. And are those pay phones that -- maybe this is too  
12 obvious, those are pay phones the detainees use?

13 A. Yes.

14 Q. And we're going get to sanitation in a little bit  
15 later. But -- in a typical shift, are the chairs  
16 cleaned, wiped down, sprayed with disinfectant?

17 A. No.

18 Q. How about the pay phone?

19 A. No.

20 Q. And has that been true since you started working at  
21 the jail?

22 A. Yes.

23 Q. We're going to look at a kiosk in a minute.

24 THE COURT: Mr. Barnett, would you -- I'm sorry,  
25 if you would ask Officer Lewis, I'd be interested to know

1 how frequently do they -- if he knows, do they clean  
2 these cells or pods.

3 MR. BARNETT: We'll get right to that, Your  
4 Honor.

5 THE COURT: If that's part of your -- if that is  
6 part of what you were going to ask, then don't change the  
7 order. You can keep going. I just wanted, whenever you  
8 get a chance to ask that, that would be great. But if  
9 you have got it in there, keep going.

10 MR. BARNETT: Yeah, great minds, Your Honor. I  
11 was just about to go there.

12 Q. Mr. -- Officer Lewis, are there times during your  
13 shift when there's a general cleaning of the pods that  
14 you are responsible for?

15 A. When I come in during the -- to start the shift, on  
16 the -- previously -- there's sometimes inmates that are  
17 doing some cleaning, and still finishing up when I show  
18 up there.

19 And then while I'm there, you know, we'll have  
20 dinnertime. And then after dinnertime there'll be some  
21 picking up and some cleaning and spraying down tables.  
22 Some small cleaning going on.

23 And then by the end of the shift, there's some  
24 basic cleaning when we're wrapping up. But it's -- it's  
25 not all the time.

1           THE COURT: Officer Lewis, if you know, is there  
2 a -- all of the cleaning I've heard about so far in this  
3 hearing is being done by the inmates themselves.

4           Do we -- is there a -- if you know, is there a  
5 cleaning crew who comes in and cleans in addition to the  
6 inmates or is all the cleaning in the jail done by the  
7 inmates themselves?

8           THE WITNESS: Not that I am aware. It is done  
9 by the inmates.

10          THE COURT: All right. Thank you.

11 Q. Thank you. And we can see a mop on the left-hand  
12 side of the photograph. And it looks like a --

13 A. Yes.

14 Q. -- kind of one of those buckets that you can push  
15 around on rollers. Is that what those things are?

16 A. Yes.

17 Q. And I -- when during your shift is the mop used?

18 A. At the beginning and sometimes after dinner, and  
19 then near the end of the shift when we're closing down  
20 and it's about to be a shift change.

21 Q. And have the -- the cleaners used to do the mopping  
22 changed in the last month, say?

23 A. Yes. They have access to mops and mop heads that we  
24 can bring in and change them out. We have access to  
25 that.

1 Q. Is bleach-based cleaner used to do the mopping now?

2 A. No, not to do the mopping. They'll use a yellow  
3 liquid, which is like a -- a disinfectant. There's also  
4 a pink liquid, which is like a detergent. But bleach is  
5 not always available.

6 Q. Okay. And when bleach is available, where is it?

7 A. It would be stored at the desk where the officer is  
8 and they would have to request it.

9 Q. And what would be a typical reason in your  
10 experience for somebody, a detainee, to ask for the  
11 bleach cleaner?

12 A. To get some cleaner. And if we have the bleach we  
13 would give it to them.

14 Q. Okay. And how much of the time in the last two or  
15 three weeks have you had bleach available in your pod?

16 A. Last three weeks, last -- like three weeks ago, not  
17 much. But recently we have a lot of bleach available.

18 Q. And the yellow and the purple cleansers that you  
19 mentioned, the purple one is kind of a detergent and the  
20 yellow one is something else. What are the -- is the  
21 yellow one -- is that what you used or the detainees used  
22 to spray down table?

23 A. Yes. It's an antibacterial.

24 Q. And in your experience, are either the purple or the  
25 yellow or the bleach or anything else used to wipe down

1 the chairs, the receivers of the pay phones, the kiosk,  
2 or other common surfaces?

3 A. Not that I've seen on a regular basis.

4 Q. Okay. Let's look at another picture. This is --  
5 now we're looking a little bit to the left. Tell us what  
6 we're seeing off to the left here, Officer Lewis.

7 A. We're seeing the sink, ice machine, we're seeing the  
8 jug that contains the yellow fluid and the one that  
9 contains the purple fluid. And you're seeing a spray  
10 bottle that has the yellow fluid in it.

11 Q. Okay. So those containers that are underneath  
12 the -- on the kind of on the rack, I guess those are bulk  
13 supplies of the red -- I'm sorry, the yellow and the  
14 purple?

15 A. Yes.

16 Q. Okay. Thank you. And then now there looks to be  
17 some kind of a poster -- how to protect yourself from  
18 COVID-19. Have you seen that before?

19 A. I have not seen that.

20 Q. How about something that's just black and white, not  
21 color like this that has the same information on it. Did  
22 you see anything like that?

23 A. Not just set up individually like that. What I did  
24 see is -- recently I've seen like four sheets and it's  
25 kind of small writing and it's put on the side where the

1 desk is, in an area that's not a high visible area.

2 Q. Okay. Thank you. Can you tell us what this is?

3 This looks to be some kind of a telephone.

4 A. Yes, that's a kiosk.

5 Q. Okay. And what use is that put to by the detainee?

6 A. At the kiosks they can have their video visits with  
7 their loved ones and they can make requests on there from  
8 inmate services and also from -- medical requests on  
9 that. This is a device that I hadn't seen. The ones  
10 that are in our pods look different than this one.

11 Q. Okay. We're going to have another picture of it  
12 that you -- no, I -- why don't you go ahead and tell us  
13 about the one that is in your pod that you have worked in  
14 on the first floor that looks different.

15 A. It's more off in the corner and it's just at a lower  
16 level and people usually just put up a chair next to it  
17 where they can sit and have a video visit with their  
18 loved one.

19 Q. Okay. So how many people in the -- the pod use this  
20 device?

21 A. Up to 64.

22 Q. And during the shift when you are working, how often  
23 it is in use?

24 A. It's used a lot and usually, more recently, after  
25 they closed the in-person visits.

1 Q. Okay. So even more so in the last week or two?

2 A. Yes.

3 Q. And do detainees get in line in order to use it?

4 A. They have times set up where they're going to have  
5 the video visits. It's scheduled; it comes up on there.  
6 And then when there is not one, they can go up there and  
7 use it to do their requests.

8 Q. Okay. So if there is not a scheduled one, is it in  
9 use anyway because --

10 A. Yes.

11 THE COURT: Mr. -- Mr. Barnett, we need to take  
12 a short break. Let's take a five-minute break. It's  
13 3:13, if everybody would come back at 3:18, or as soon as  
14 you can. And leave your monitors up and on, if you will.  
15 And we'll be in recess for five minutes.

16 (Brief recess.)

17 THE COURT: All right. Back on the record. You  
18 may proceed.

19 MR. BARNETT: Thank you, Your Honor.

20 Q. Officer Lewis, are you there?

21 A. Yes.

22 Q. Okay. We were talking about Exhibit 10. It's now  
23 been marked as Exhibit 10. These are the photographs  
24 that we just got from the defendants. And we were  
25 looking at Number 9, Page 9.

1           And you'd identified what we're seeing is a  
2 kiosk, which is different from the one that's in your --  
3 your pods in the South Tower; is that right?

4     A.    Yes.

5     Q.    And how is this different from the one that you are  
6 familiar with, or the ones that you are familiar with?

7     A.    The one I'm familiar with is off to the side from  
8 the -- the desk -- not too far from the desk of the pod  
9 officer.  It's in the -- in the corner where, you know,  
10 there's a chair right next to it where there -- and it's  
11 usually -- those bars, like around the bars were there  
12 are seats, how you saw those seats under the -- under the  
13 stairwell --

14    Q.    Yes.

15    A.    -- that are by there.

16    Q.    Okay.  So people sit in one of those chairs while  
17 they're on the phone -- on the kiosk?

18    A.    Yes.

19    Q.    Okay.  And you heard earlier, I think Judge Brown  
20 asked about kites or about medical requests.

21    A.    Yes.

22    Q.    Is that something that you can -- like a kite  
23 request form?

24    A.    Yes, you can do a medical request through the kiosk.

25    Q.    And is that something that the -- the detainees do



1 or the DSOs do?

2 A. That's something the inmates do.

3 Q. Okay. What if there is an emergency, do they do a  
4 kite on the kiosk?

5 A. If it's -- they need to be seen right away they can  
6 do a kite and they can write, "emergency" on it.

7 Q. Okay. And you said earlier that the -- a kiosk is  
8 used for visitation for family, and I think you said it  
9 might also be used for talking with counsel; is that --  
10 did I get that right?

11 A. No. Usually the counsel, it -- in booth 12 and 13,  
12 and that would be over by the control center.

13 Q. Okay. So that's --

14 A. Yes.

15 Q. Are lawyers permitted to visit people in your pod  
16 currently?

17 A. Not in the pod, no.

18 Q. Where can they meet?

19 A. They've been doing a lot of the video visits in  
20 booth 12 and 13. So they would call in and do a video  
21 visit to meet with the inmate.

22 Q. So where is the -- wherever the inmate be taken,  
23 outside of the pod or next to it or what?

24 A. Yes. They would have to go out and go to the  
25 control center and they would have to go into booth 12 or

1 booth 13.

2 THE COURT: And I have a question for you. I'm  
3 so sorry. I didn't mean to step on you there.

4 Officer Lewis, I've got a question for you. One  
5 of my concerns is that we make sure that when people are  
6 talking to their lawyers, that the -- the attorney-client  
7 privilege, the -- the confidential communications are  
8 maintained.

9 I know sometimes the jail will record calls. Do  
10 you know if from these booths when people are talking to  
11 lawyers if they are recording the calls or making sure  
12 that they are not recorded if they're doing a video call?

13 If you don't know, that's okay.

14 THE WITNESS: Yeah, I do not know that, Judge.

15 THE COURT: All right. Thank you.

16 Q. Okay. And the -- the calls with lawyers increased,  
17 decreased, say in the last two or three weeks?

18 A. It's increased, increased so much that they'll call  
19 in and it's backed up and the system will not work and  
20 we'll have to do IT requests.

21 Q. What does that mean for people trying to talk with  
22 their lawyers?

23 A. It's a very frustrating experience. Because they're  
24 called out at the control center and they're sitting not  
25 too far from us, you know, waiting to get to speak with

1 their attorney. And sometimes we have to send them back  
2 because you know, it's backed up or the system  
3 disconnected.

4 Q. How frequently do you have problems with the system  
5 going down?

6 A. This is recently in the last two to three weeks.

7 Q. And how often does that happen, does it happen once  
8 a day, once every two days?

9 A. It could happen once or twice a day. And you have  
10 got, you know, 45 attorneys calling in, that's a --  
11 that's trouble.

12 Q. Okay. Now around the corner it looks like there may  
13 be a shower on Page 9 of Exhibit 10; is that what that  
14 is?

15 A. I'm not aware of what that is.

16 Q. Okay. Let's look at the next photograph. That  
17 would be Page 10 of Exhibit 10. It looks like there's  
18 a -- some kind of a column, with four sheets of paper  
19 stacked on top of each other stacked to the column.

20 Have you seen anything like this at the jail?

21 A. Nothing like this. I've seen like -- like a -- four  
22 squares. But it's a smaller print, and it's off to the  
23 side of the -- the desk. And I've seen that on one of  
24 the pods. I haven't seen these everywhere in the jail,  
25 especially not that font.

1 Q. Okay. So you have seen something that relates to  
2 Coronavirus. And I think you said maybe four pages; is  
3 that right?

4 A. Right.

5 Q. Taped to the desk, not on the column?

6 A. Yeah, taped to the side of the desk in an area  
7 that's not -- it's not -- it's not a visible area.

8 Q. Why isn't it visible?

9 A. It's sort of like on the back side. Like for me,  
10 I -- I caught it because I was coming back on one of my  
11 rounds and then I -- I remember seeing that there. And  
12 it's still -- it's still far away. It's not something  
13 that I'd go up to, nor would the inmates. The inmates  
14 wouldn't be on that side.

15 Q. Who taped those pages up, do you know?

16 A. I'm not aware who.

17 Q. Okay. Is there another place within the pod where  
18 announcements or information for the detainees would be  
19 posted?

20 A. By the multipurpose room there's a lot of things  
21 posted up on the window. And that's more of a high  
22 visible area. It has information on commissary,  
23 information on Legal Aid, it has a calendar on there. So  
24 that's more of an area where people would look at that.  
25 Because a lot of inmates always go over there to take a

1 look.

2 Q. Okay. Do you know why -- let me ask you this: Is  
3 there any COVID-19 information posted in that area?

4 A. Not that I'm aware of, not that I noticed.

5 Q. Let's look at the next page, which should be 11 of  
6 Exhibit 10. Do you recognize anything in this picture,  
7 Officer Lewis?

8 A. I do not.

9 Q. Well, it looks like this is near an elevator. Does  
10 that ring any bells or --

11 A. No, that's not an area where I -- I work in. I see  
12 on the flier it says Ebola on it, but I definitely would  
13 have noticed that. But never seen that in my area.

14 Q. And are the -- are there elevators in the pod or in  
15 any of the pods that you are aware of?

16 A. It's far away from the pods, but our elevators don't  
17 look like that, with that color in the background.

18 Q. Okay. Would detainees typically be able to -- let's  
19 say this is over where the elevators are, would they  
20 typically be able to go look at something that is hanging  
21 on the wall like that?

22 A. No, not at all. Because they would have to pause  
23 their limit before they entered the elevator and it would  
24 be far away from the elevator, we'd open the elevator,  
25 and then they would have to go in there and put their

1 face to the wall on that back end.

2 Q. Let's look at the next picture, Page 12, Exhibit 10.  
3 Here are a couple of color pages. One says, Droplet  
4 isolation. The other one says, Airborne precautions.  
5 And they've got a young woman who appears to have an --  
6 in each of them you have got people that have masks on.

7 Have you seen either of these before?

8 A. I have not seen these before.

9 Q. If you had seen --

10 A. I have not seen these before, no.

11 Q. And I notice on this one, these two, it looks there  
12 is some Spanish. Do you see that? You may not be able  
13 to read it, it's in Spanish?

14 A. I see the Spanish, yes.

15 Q. Okay. And if we could go back to the previous one  
16 that had the previous page, Page 11. Then you can go to  
17 the one before that, Page 10. It's kind of hard for me  
18 to read these pages.

19 I mean, do you recognize the quality of the  
20 printing job? Is that something --

21 A. No, I -- I do not.

22 Q. -- you are familiar with?

23 A. Especially that font. That seems like a big font  
24 and I would notice that.

25 Q. Right. What I'm thinking of is, it looks like

1 pieces of the writing are missing.

2 MR. BIGGS: Judge, I'm sorry, I don't mean to  
3 object, but these guys are going to testify about signs  
4 he's never seen before.

5 Q. Yeah, I'm asking if he's ever seen anything like  
6 this. Is it typical to get signs like this in the jail  
7 where pieces of the words are missing.

8 A. I think that's a photo quality issue there.

9 Q. All right. I don't see anything on these pages  
10 where there is anything that is in Spanish, do you?

11 A. I do not.

12 Q. In your pod in your experience, is there -- is there  
13 a number of detainees who are not literate in English,  
14 can't read English?

15 A. Yes. There's 70 -- 60, 70 percent Spanish -- there  
16 is a lot of Spanish speakers in the pods.

17 Q. Right. So are there that many that can't read  
18 English?

19 A. Yes, there are some that cannot read English.  
20 They'll bring up another inmate with them to ask them to  
21 help them if they need to talk to us.

22 Q. Okay. Do you know Spanish?

23 A. I do not know Spanish.

24 Q. Okay. And are there low-literacy people who are --  
25 that are detained in the pod that you are responsible

1 for?

2 A. I do not know their reading level.

3 Q. Okay. Fair enough. Let's go to Page 12 -- and now  
4 Page 13.

5 Can you identify what's depicted in Page 13,  
6 Officer Lewis?

7 A. That's not my area of -- my work area, but the sign,  
8 I do see a mandatory sign.

9 Q. Right.

10 A. Mandatory masks.

11 Q. Yep. Have you seen that before anywhere?

12 A. I have not.

13 Q. You -- I guess you enter into the -- the South  
14 Tower. Is there an entrance like this that you go  
15 through when you come to work?

16 A. Yes. It's -- it's different than this one, but.

17 Q. And is there -- where you go in is there a sign like  
18 this that says mandatory or --

19 A. No.

20 Q. -- have you --

21 A. No.

22 Q. And there are a couple of pieces of paper, one is  
23 yellow and one is white. And I -- maybe it's a photo-  
24 quality issue, but I can't read what that says.

25 Are there -- is there information in the place



1 that you enter, the South Tower, when you come to work  
2 were there's information posted about COVID-19?

3 A. No, not that I've seen.

4 Q. All right. Let's look at the next page. This is --  
5 tell us what this is, Page 14 of Exhibit 10.

6 A. This is inmate's soap.

7 Q. Is that the kind of soap that you have available in  
8 your pod in the South Tower?

9 A. Yes.

10 Q. Did you hear me, Officer Lewis?

11 A. Can you repeat that, please. I didn't hear you.

12 Q. Do -- do detainees have access to soap like this in  
13 the pods that you are responsible for?

14 A. Yes.

15 Q. And where is that soap kept?

16 A. We have soap at the desk and then also, we'll have  
17 some soap over by the sink.

18 Q. Is that the sink, is that the one sink that  
19 everybody uses?

20 A. Yes.

21 Q. Does a piece of soap that one detainee has used stay  
22 there for when the next detainee wants to wash his hands  
23 or his face or whatever?

24 A. Yes, there's soap that stays there.

25 THE COURT: And so how many people are using the

1 sink, Officer Lewis?

2 THE WITNESS: Up to 64 people.

3 THE COURT: And there is one sink.

4 THE WITNESS: One sink, Your Honor.

5 Q. Not to put too fine a point on it, but they -- they  
6 use the same bar of soap; is that right?

7 A. Yes.

8 THE COURT: I've got a question.

9 Officer Lewis, in the staff -- where the staff  
10 washes their hands, do you-all use those tiny bars of  
11 soap or do you have liquid soap; what do you do, if you  
12 know?

13 THE WITNESS: We have liquid soap.

14 THE COURT: Have you seen liquid soap for the  
15 inmates, or just the bars?

16 THE WITNESS: I've just seen the bars.

17 THE COURT: All right. Thank you.

18 Q. All right. Let's look at the next one. We've got  
19 maybe 14 -- oh, 15.

20 Can you tell us what's shown in Page 15 of  
21 Exhibit 10, Officer Lewis?

22 A. It's some cleaning supplies. The -- the stain  
23 that's on there, I noticed that one. The next one that  
24 looks like Nester [sic], I haven't seen that one. And  
25 that Green -- it looks like something Green, I've seen

1     that one.

2                 So those -- the stain remover one and the Tuff  
3     Green, that would be at the desk; we would have that  
4     behind the desk.

5     Q.    Okay.  And the other two you're not familiar with,  
6     the Acclaim and the --

7     A.    I've not seen those.

8     Q.    -- Bestuff?

9                 Did this look like a familiar place in the --  
10    the pod that you work in?

11    A.    No, this is not in a pod.

12    Q.    Okay.  Do you know what the Tuff Green is for?

13    A.    The Tuff Green, I believe that has a bleach  
14    substance in it.

15    Q.    Okay.  Is that new, is that something that y'all  
16    just started getting?

17    A.    We've had the Tuff Green around and we've had the  
18    stain remover around.  But it's not in all the pods.  
19    We'll have it -- sometimes I'll go into a pod and it'll  
20    be there and I can go into another pod and it won't be  
21    there.

22    Q.    Okay.  Let's look at Page 16, Exhibit 10.  Can you  
23    identify what this is?

24    A.    That is a visitation booth.

25    Q.    Can you tell what tower it's in?

1 A. It looks like the one in our tower. I'm not sure  
2 which one it is. But it looks like one -- we have a  
3 similar setup for our visitation booths.

4 Q. So if a lawyer wanted to come to the jail, the  
5 lawyer could sit on the other side of that glass?

6 A. Yes. And when they were -- whenever they had the  
7 in-visit visitations with their loved ones they would  
8 have this.

9 Q. Okay. And how can they hear each other?

10 A. I guess through that little vent area -- I guess  
11 that is a little vent.

12 Q. Okay. All right. And when somebody has the good  
13 luck to have a lawyer come visit them at the jail these  
14 days, does a DSO take them to this booth?

15 A. Yes.

16 Q. And wait for them to finish and then take them back?

17 A. Yes.

18 Q. Okay. Look at Number 17. This is also a visitation  
19 booth; is that right?

20 A. A video visitation booth.

21 Q. Okay. And what -- how does that work, the video  
22 visitation? Do they come to the jail and --

23 A. Yeah --

24 Q. -- or --

25 A. Yeah, an attorney would first call in and say that

1 they wanted to speak to an inmate, and then they would  
2 have to then connect to one of these lines, either 12 or  
3 13, and then we would call the inmate out to come and  
4 speak with the attorney.

5 Q. Okay. So is this typically the way people would be  
6 able to talk to their lawyers now, the last two or three  
7 weeks?

8 A. Yes.

9 Q. And is this the system that comes and goes or --

10 A. Yeah.

11 Q. -- is that the kiosk system? This is it?

12 A. There is trouble with the kiosks as well when  
13 they're trying to have a video visit or they're trying to  
14 do a kite. Sometimes that will also go down. It has to  
15 be reset with a key.

16 THE COURT: Officer Lewis, I've got a question.

17 I heard testimony about kites and I've heard  
18 about kites and kiosks and I'm a little confused. Are  
19 they one in the same and people call sending a message on  
20 the kiosk kiting? I just want to make sure I'm  
21 understanding.

22 THE WITNESS: On medical requests, and that  
23 would be done through the kiosk.

24 THE COURT: Okay. And is that the same thing as  
25 sending a kite?

1 THE WITNESS: Right.

2 THE COURT: Okay. Thank you.

3 THE WITNESS: And a kite can be done -- if I  
4 may, Your Honor?

5 THE COURT: Please.

6 THE WITNESS: It can be done through the kiosk  
7 and some of the older people who are not into the  
8 technology, they want to -- you know, write that out, and  
9 then we'll drop that off at the control center.

10 THE COURT: Okay. Thank you.

11 Q. And that's a good point. I -- let me ask you about  
12 that. You said that some of the older detainees, they're  
13 not familiar with the technology and can -- some people  
14 that just can't use the kiosk because the technical  
15 challenges or maybe there are language challenges?

16 A. Yes.

17 Q. And is the kiosk in Spanish too, does it have a  
18 Spanish option?

19 A. I do not know that.

20 Q. Okay. Let's look at the last page, Exhibit 10. Can  
21 you tell us what this is?

22 A. I'm not familiar with that.

23 Q. Okay.

24 MR. BARNETT: Your Honor, I move the admission  
25 of Exhibit 10, but only to the extent Officer Lewis is

1 able to identify the photographs and what they showed.

2 MR. BIGGS: No objection.

3 MR. BARNETT: Your Honor, I'm sorry. Did you  
4 admit Exhibit 10?

5 THE COURT: I did. I'm sorry, I was on mute. I  
6 muted it so you guys wouldn't hear me type, but then  
7 you -- then I forget I'm on mute.

8 So yes, that is admitted. Please proceed.

9 Q. Now we'll talk about personal protective equipment.  
10 Do you know what that is, PPE?

11 A. Yes.

12 Q. Do you wear PPE when you do rounds?

13 A. Recently, yes.

14 Q. What do you mean recently?

15 A. When they gave us our masks and said that it was all  
16 right to wear masks, then that's when I started to do  
17 that. Previously we were told not to wear masks because  
18 it might spook the inmates.

19 Q. Who told you that?

20 A. The lieutenant.

21 Q. Lieutenant in the South Tower?

22 A. Yes.

23 Q. So how long have you been wearing PPE in the jail,  
24 specifically masks?

25 A. It was around the time of the lawsuit. That's when

1 everything started to change a lot.

2 Q. So the lawsuit was filed the afternoon of Thursday  
3 November -- I'm sorry, April the 9th. And in the -- the  
4 coming week, did things change at the jail?

5 A. It was all of the sudden a string of activity.

6 Q. Okay. Let's talk a little bit about the PPE and  
7 we'll come back to the change.

8 When you do rounds, you said you wear a mask.

9 A. Yes.

10 Q. Is it an N95?

11 A. No, it's not an N95 mask.

12 Q. Can you describe for the Court what the mask is  
13 like?

14 A. I have one, if I may show it?

15 THE COURT: Please.

16 Q. It's okay with me. I --

17 THE COURT: Is there any objection from  
18 Intervenors or Defendants?

19 Hearing none, please do.

20 A. Here is one of the masks that we were given.

21 THE COURT: Okay. So for the record, that looks  
22 like the kind of mask I might use if I were sanding my  
23 floors. Doesn't look like a -- it's very sturdy.

24 A. And then, it's hard -- it's hard to get the masks.

25 THE COURT: Now, do they provide those to you at



1 the jail?

2 THE WITNESS: Recently. But we have to request  
3 it. And then this is like, another one.

4 Q. What does that look like? I don't -- I can't see.

5 A. Maybe if I put it on. It's --

6 THE COURT: A face shield.

7 THE WITNESS: Yeah. And it's very thin.

8 And going back, Your Honor, to this one that's  
9 like a paint mask, it smells strong with a chemical scent  
10 --

11 (Brief interruption.)

12 THE WITNESS: Going back to the one -- it's like  
13 a painter's mask. It smells like a strong chemical and  
14 when you wear it, you got to wear it for eight hours,  
15 it's really -- it's really bad. Like it's either, you  
16 know, a chemical was put on there or it's made from a  
17 material that's really bad.

18 But it's -- it's very strong and you know, we  
19 get these for the eight hours.

20 THE COURT: And how often do they give you new  
21 ones? Do you have to request new ones or --

22 THE WITNESS: You have to request it. It's  
23 looking like it's going to be like once a week. And then  
24 it's a big process that you have to go and ask. And it  
25 took us awhile to get these things.

1           After the lawsuit that's when it seemed that  
2 we're going to have these more.

3           THE COURT: Have you seen any N95 masks? I  
4 don't know if you know what they look like, but they have  
5 a very different look than what you've got in your hand.  
6 I don't know if the jail even has them. Do you know?

7           THE WITNESS: Yes, I've seen them. And they're  
8 a lot nicer mask; it's a lot stronger, sturdier mask.

9           THE COURT: And have you requested other -- like  
10 the two masks that you showed me, have you requested to  
11 get other masks, replacement masks? You said you wear  
12 them for eight hours. What's the process and what's that  
13 been like for you?

14           THE WITNESS: When it breaks -- you know, I had  
15 one that is similar to this one and it broke and then I  
16 had to go and request one. Have to go all the way to the  
17 lieutenant's office and request it. They may or may not  
18 be there. And it's -- it's a process to go through the  
19 different secure areas to go and get this on top of my  
20 other responsibilities.

21           THE COURT: And does it cost you anything to do  
22 that or are they free, I hope?

23           THE WITNESS: Yeah, these ones are -- are free.  
24 But I'm now, you know, starting to try to just get my own  
25 instead of going through that process.

1           THE COURT: And Mr. Barnett, I don't want to  
2 step on your toes or jump questions, but I'm curious,  
3 while we're on this topic, to know about gloves too. Do  
4 you mind if I ask him about that? That may have been in  
5 your list of questions.

6           MR. BARNETT: It is. But please, go ahead.

7           THE COURT: Do they give you gloves?

8           THE WITNESS: Yes, we've had gloves in -- you  
9 know, these are the kind of gloves, you know, we have. A  
10 lot of these gloves, they are smaller, so you know, you  
11 put them on and everything and it's kind of a challenge.

12           THE COURT: Okay. Go ahead, Mr. Barnett. And  
13 I'll reserve my questions and fill in if there is  
14 anything I want to know that you don't cover. Thank you,  
15 I appreciate it.

16 Q. When you do your rounds, Officer Lewis, do you wear  
17 PPE now as you're walking?

18 A. Yes, I wear one of these masks.

19 Q. Do you wear gloves?

20 A. We're told only about the masks, we weren't told  
21 about anything about gloves.

22 Q. Okay. And was there any change after the lawsuit  
23 was filed within the following week or so about how you  
24 checked in for work each afternoon when you were working?

25 A. Yes. Previously we used to all be on the third

1 floor in the detail room, in the meeting room. There  
2 would be up to 60 officers. And now when we -- we meet  
3 outside. At first, we were just outside, and then we --  
4 we got to be distanced, you know, like -- on the floor on  
5 the ground; now we're distanced.

6 Q. Okay. And do you have detail where maybe a  
7 lieutenant or sergeant explains what's going on?

8 A. It's not too long. And it is a pretty stretched-out  
9 area, and we can -- we can barely hear, like, if they are  
10 down at the other end, you know, talking. Some sergeants  
11 we can hear louder than others. But we can't hear what's  
12 going on. So there is a lot of back and forth, okay,  
13 what's going on; what did they say?

14 Q. Now, you described some of the changes that happened  
15 in the week after the lawsuit was filed on April the 9th.  
16 Did anybody explain why those changes were being made?

17 A. No, they did not.

18 Q. Just -- or an explanation from the DSO regarding any  
19 of the changes?

20 A. No, I did not.

21 Q. Did your lieutenant or any of your sergeants provide  
22 any training instruction or explanation regarding  
23 COVID-19?

24 A. What they have told me all along -- you know,  
25 they'll say one thing one time and then another time

1 they'll say another thing. After the lawsuit was filed,  
2 the information was a lot better on how to do things more  
3 safely and more -- to keep myself protected and keep the  
4 inmates protected.

5 But up until then, the lawsuit, the information  
6 would be, okay, if you guys get sick, you are on your  
7 own, pretty much -- you know, you have to use all your  
8 sick time. And if we find out that you didn't have it,  
9 you are going to have to pay back the County or you are  
10 going to get fired.

11 So when we heard that, we were -- we -- we  
12 didn't know how to take that. And then you know, after  
13 the lawsuit, oh, you're fine, we're going to take care of  
14 you guys and -- you know, they more assured our fears.

15 Q. Okay. And the -- the promises of hazard pay, that  
16 sort of thing been realized?

17 A. It's now changed. They were promising us that it  
18 was going to be \$6 an hour hazard pay and a lot of us are  
19 concerned about that, because we will have to quarantine  
20 ourselves at some point 14 days. And now recently, the  
21 -- pay that we got, that might be \$75 that we might get a  
22 week.

23 Now when they said \$6 an hour, everyone signed  
24 up for the overtime because on any day, typically we are  
25 short for the next shift 18 to over 20 officers. So they

1 have to mandate people to work. Now with people working  
2 the overtime and now we're going to get more for the  
3 hazard pay, they all started to sign up, and then we  
4 didn't need the mandated overtime.

5 And then it changed. They said, oh, we're not  
6 going to do that and you might get \$75. So really hurt  
7 the moral.

8 Q. Have you received, Officer Lewis, any special  
9 training as a DSO on COVID-related matters?

10 A. No, I have not.

11 Q. Either before the lawsuit was filed or since?

12 A. Inconsistent information. I wouldn't say training.  
13 You know, do this, and then it will change the next week.  
14 Do that. So you don't know what's -- what it's going to  
15 really be.

16 Q. So before the lawsuit was filed, your lieutenant  
17 said don't wear masks; is that right?

18 A. Right.

19 Q. Because it might spook the detainees?

20 A. Yes. And then after that -- and then after that  
21 meeting, I saw a parole officer walking the hallways and  
22 he was all decked up. He had the -- you know, the mask  
23 on and he had everything. So that -- that threw me kind  
24 of for a loop.

25 Q. How about written instruction, did you receive any

1 instructions about COVID-19 PPE, social distancing, CDC  
2 guidelines, or anything like that from your employer?

3 A. No, I haven't. And usually when we do receive  
4 something we have to sign off on it.

5 Q. Okay. The Court and the lawyers have seen examples  
6 of CDC guidelines printed in color attached to  
7 declarations submitted by the defendants.

8 Did you or your pod receive anything colorful  
9 like that about -- from the CDC?

10 A. I have not.

11 Q. Have you received information from your employer  
12 about how to identify COVID-19 symptoms?

13 A. I have not.

14 Q. Do you have access to a thermometer in the pod?

15 A. I do not.

16 Q. Mr. Lewis, if no one gave you any training, either  
17 orally or in writing, on COVID-19, how do you know what  
18 to do during a pandemic, the worst one in the country?

19 A. I do not.

20 Q. Do you use your common sense?

21 A. I try to use as best I can and whatever I was able  
22 to research.

23 Q. When you come in when you are working, does anyone  
24 assess whether you or any of the other DSOs have COVID-19  
25 symptoms?

1 A. Recently that's started. It first started with --  
2 first there was a nurse doing it, second day it was a  
3 nurse doing it, and now it's the DSOs doing it. And the  
4 trouble with that is, if it's 40, 50 degrees and we're  
5 outside doing our detail, we can be out there for any  
6 amount of time.

7 And then we -- when we come in and it was 40  
8 degrees, we come in and we're reading as cold. So we're  
9 being told, okay, well, you have to wait there and then I  
10 guess you warm up and then you retest again.

11 Also, you could be out there and it could be 80  
12 or 90 degrees for 20 minutes, 30 minutes and you have  
13 your gear on, so when you go in, it's not going to be  
14 accurate. And so there is different thermometers.

15 Q. Does the checking consist of anything more than  
16 checking temperature?

17 A. That's it. They don't ask us any questions.

18 Q. Have you been tested for COVID-19?

19 A. I have not. I have been told that I cannot go for  
20 testing unless I show the signs and the symptoms. And  
21 recently I learned that's not true. And I'm going to get  
22 tested Thursday.

23 Q. Where are you going to go to get tested?

24 A. At the American Airlines center.

25 We were also told, if I may?



1 Q. Sure.

2 A. We were also told that if we get it, that we can't  
3 get tested again after.

4 Q. Your employer told you that you can't get a test  
5 unless you have symptoms?

6 A. Yes.

7 Q. I want to talk a little bit more about the -- about  
8 sanitation. We talked about the soap.

9 How about hand towels or wipes or Kleenex, are  
10 those available for the detainees?

11 A. They have their own hand towels, but there is no  
12 wipes. They don't have access to wipes.

13 Q. So is there a roll of brown paper that they can use?

14 A. They have a roll of brown paper and they'll -- paper  
15 towels, and they all use that one roll of brown paper  
16 towels.

17 THE COURT: Officer Lewis -- I'm sorry,  
18 Mr. Barnett.

19 When you're speaking of wipes, Officer Lewis,  
20 are you talking about disinfectant wipes?

21 THE WITNESS: Right.

22 THE COURT: And you said they don't have access  
23 to those. Could they buy them at a commissary or is the  
24 commissary still open? Can you talk to me about that?

25 THE WITNESS: Not that I'm aware of. And we've

1 had a lot of issues with the commissary, Judge. They  
2 have to have a wristband, and a lot of times it doesn't  
3 work or -- or it fades. And then also, there's been a  
4 lot of turnover or people that worked in commissary not  
5 wanting to come in and out of the pods.

6 THE COURT: Okay. So the -- if I am an inmate  
7 in a pod and let's say I want to get some disinfectant  
8 wipes, would I have to go through the commissary or the  
9 commissary brings them to me?

10 THE WITNESS: See, I'm unsure if they sell  
11 disinfectant wipes. I -- I have not seen an inmate with  
12 disinfectant wipes.

13 THE COURT: Okay.

14 THE WITNESS: Not the time I've been there.

15 THE COURT: What about for the staff, does the  
16 staff have access to disinfectant wipes?

17 THE WITNESS: Recently. After the lawsuit we  
18 got a huge thing in the pod recently for us.

19 THE COURT: Okay. What about hand sanitizer?

20 THE WITNESS: Hand sanitizer was not available.  
21 We recently bought these things, which I thought they  
22 were pens. And then as the lawsuit hit, we got a -- a  
23 big bottle and it's -- it's clear. It doesn't have any  
24 company label on it and it just says hand sanitizer. And  
25 when you spray it, it smells like a hundred percent

1 rubbing alcohol, Judge.

2 THE COURT: Okay. And that is for the staff,  
3 not for the inmates, right?

4 THE WITNESS: With that bottle that we recently  
5 got, the inmates can come up and ask us to spray their  
6 hands. And that is only recently, after the lawsuit,  
7 Judge.

8 THE COURT: And is there -- is that -- if I  
9 wanted -- if I'm an inmate and I want my hands cleaned,  
10 do I have to go to -- like, does every pod or cell have  
11 this, or do I have to go to some central location to get  
12 my hands cleaned and return somewhere else?

13 THE WITNESS: After the lawsuit, they can come  
14 up and ask me to spray their hands. Does that answer  
15 your question?

16 THE COURT: It does. And so it's not just one  
17 place in the jail where you have go wait in line to get  
18 your hands sprayed, right?

19 THE WITNESS: Right.

20 THE COURT: Okay.

21 THE WITNESS: It's a new thing so a lot of the  
22 inmates don't even know that. Like I was proactively  
23 letting them know, hey, if you want me to come and spray.

24 THE COURT: Okay. Well, what about washing  
25 hands? I mean, you have talked a little bit earlier

1 about this cell that had 60-some-odd people and you've  
2 got one sink and no liquid soap for the inmates.

3 Are you -- are you seeing inmates wash their  
4 hands frequently? And I guess I should give you -- like  
5 if you are on -- on duty for one day, do you see one  
6 person wash their hands more than once a day? I mean,  
7 are people constantly washing their hands? What are you  
8 seeing.

9 THE WITNESS: It has picked up a lot more  
10 recently.

11 THE COURT: Okay. And do you know if the  
12 inmates are provided at least bars of soap for free or if  
13 that costs or can you tell me anything about that, if you  
14 know?

15 THE WITNESS: The little thin bars of soap, they  
16 can come up and ask us for a bar of soap and we'll get it  
17 to them.

18 THE COURT: And it won't cost them anything?

19 THE WITNESS: No, it won't cost them anything.

20 THE COURT: Have you had anybody come up to you  
21 and ask you for disinfecting wipes? Have you had a  
22 request for that from anybody so far?

23 THE WITNESS: No, they have not.

24 THE COURT: Okay. Great, thank you.

25 THE WITNESS: Yeah.

1 Q. Officer Lewis, do inmates get gloves and masks to  
2 perform janitorial work?

3 A. Yes, they do.

4 Q. And what kind of gloves are they?

5 A. The inmate gloves, it's more of a clear, thinner  
6 material. And if we have extra rubber gloves, we'll give  
7 them some of the rubber gloves.

8 THE COURT: I'm sorry, Mr. Barnett, but the  
9 beginning of your question cut out. Would you mind  
10 repeating that, please?

11 Q. Do the inmates have masks now?

12 A. Yes. After the -- the lawsuit, there was a scurry  
13 of activity. And we had -- they had to go in the pods.  
14 And they'd give them the masks, and they had to sign off  
15 on it that they received them.

16 Q. And what kind of masks do they get? Are they like  
17 the ones that you showed us earlier?

18 A. Similar to the ones that I have.

19 Q. And how would you describe those? Are those  
20 reusable, are they cleanable, are they --

21 A. These are -- these are one-use masks.

22 Q. And if an inmate wants another one, how does that  
23 happen?

24 A. They have to request it from us and then we have to  
25 go and get one from the sergeant. So it's a process, as

1 I explained earlier.

2 Q. And when you do that, do you have to use your break  
3 time to go see the sergeant?

4 A. Yes. And I only have a 30-minute lunchtime.

5 Q. Okay. Thank you.

6 THE COURT: Mr. Barnett, I just want to make  
7 sure I understood that.

8 So if an inmate wants a replacement mask because  
9 his mask broke or because it's old or dirty or for  
10 whatever reason, you have to wait until you're on break  
11 to go do that; is that right?

12 THE WITNESS: Yes.

13 THE COURT: So you don't have any spare masks  
14 with you wherever you are at?

15 THE WITNESS: They are not stored at the desk,  
16 which would make it convenient.

17 THE COURT: Okay. Thank you.

18 Q. And what if an inmate is coughing a lot or sneezing  
19 a lot, can that inmate get another mask?

20 A. I'd have to go through the same process to get that  
21 mask.

22 Q. Okay. Now, when the masks were provided for the  
23 first time to the detainees, how did that take place?

24 A. They were just -- pretty hectic. And the masks  
25 were, I guess, brought down and we had to pull out all

1 the buff cards. And a buff card has the inmate  
2 information on it, their records, some of the medical  
3 things. So you have stacks of those. And they're -- you  
4 know, brought into the pods and the inmates would start  
5 to -- because they had to sign off on it, they'd start to  
6 look at their record and their little buff card and be  
7 like, what am I signing and why are all these things on  
8 my -- what's this thing about?

9           So it was just -- it was like, a lot of  
10 confusion.

11 Q. And who was it that handed the masks out?

12 A. One of the sergeants.

13           (Brief interruption.)

14           THE COURT: Please resume, Mr. Barnett. And I  
15 apologize for the interruption.

16           MR. BARNETT: Thank you, Your Honor.

17 Q. When the detainees got the masks for the first time  
18 after the lawsuit was filed, you said somebody came in  
19 and handed them out; is that right?

20 A. Yeah, the -- the sergeant brought down the masks to  
21 the floor and then floor officers were disbursed to the  
22 pods holding the buff cards to go hand it out and then --  
23 see if they have the inmate sign off on it, that they  
24 have received a mask.

25 Q. Okay. And the -- the people that were actually

1 doing the handing out after the sergeant brought the  
2 masks, did they do it in just one pod or did they do it  
3 in multiple pods?

4 A. In the whole -- all the pods on the floor.

5 Q. How about in the building, did they also give it to  
6 other floors?

7 A. I'm not aware of that.

8 Q. And what precautions did the people who were handing  
9 out the masks to the detainees take when they were  
10 handing them out to avoid exposure?

11 A. I'm not aware what precautions they took.

12 Q. Are DSOs reporting for work?

13 A. Some are not reporting to work. There was one that  
14 got the COVID and he's out -- he is out. And there is  
15 some of that fear to come to work.

16 As I left Saturday, there was a lady who was a  
17 DSO coming down, and she was going to have to go into a  
18 pod that was locked down and had the gentleman that was  
19 quarantined, and she said that she told them that she did  
20 not want to go into that pod, and she was very upset.

21 As I -- that's what I heard when I last left my  
22 shift Saturday.

23 Q. Are you working shorthanded at the jail?

24 A. Yes.

25 Q. How bad is it?



1 A. It's really bad. For the shift after mine, they can  
2 need anywhere from 15 to 23 people that they're going to  
3 mandate from overtime from our shift.

4 Q. How's morale?

5 A. Morale before COVID was pretty low. And after  
6 COVID, even lower.

7 Q. Why is that?

8 A. Short staffing. Huge, you know, responsibility.  
9 You know, the workload was tremendous. You know, the --  
10 they had the visitation and the family visitation and now  
11 it stopped.

12 So with the -- with the COVID, just people fear,  
13 and then not knowing and then inconsistency of management  
14 -- you know, saying one thing and then saying another  
15 thing. And also, fear if they are going to bring it home  
16 to their families.

17 Q. Officer Lewis, is your pod under lockdown now?

18 A. One of the pods that I worked in last week, because  
19 I float to the different pods, it was on lockdown.

20 When I -- when I walked in to go into the pod, I  
21 was not informed that I'm going to a quarantined pod. I  
22 go up to the -- you know, information desk and then do  
23 the shift change, and then I do the round and then I  
24 look -- in the single cell that is attached in the time  
25 out, and on the sheet it says, quarantine.

1 Q. That was your first notice that you were working in  
2 a pod that was on lockdown?

3 A. Yes.

4 Q. It was a sheet of paper. Where was the sheet of  
5 paper?

6 A. Yeah, on the time-out cell there's a sheet of paper  
7 that says our rounds that we're going to do, and it says  
8 the reason why that person is in time out. And this is  
9 the first time I saw it. It says, quarantine.

10 Q. Did you find out why your -- that pod was put under  
11 lockdown, quarantine?

12 A. Yeah. Later I found out that that's a --  
13 no-movement pod, and people are not supposed to be coming  
14 in and out. And the kitchen workers and the -- the  
15 kitchen officers came to my pod to get some more kitchen  
16 workers, which they usually don't get them from my pod,  
17 they would get them from C pod. But that was closed down  
18 because they had the trouble with the exposure.

19 So I told the -- the officers what was going on;  
20 that this pod was on -- they weren't informed either --  
21 this pod was on lockdown. And I told them to read that  
22 sheet in there. And the inmates and the officers in  
23 there, you know, they are wondering what's going on with  
24 it, and they see that guy in there.

25 So that guy was in there for three to four hours

1 and -- you know, trying to contact the nurse and trying  
2 to find out what's going on. And so he was eventually  
3 transferred.

4 And to clarify, I had to clarify something about  
5 the cleaning. I said, well, the inmates are to clean it.  
6 After this gentleman left, there was a -- a group that  
7 came in that were not inmates and they were there for  
8 like, two minutes, spraying a little bit around. And  
9 they left and the inmates were just watching and worried.

10 And while that guy was in the time-out cell, a  
11 nurse came down and had to perform wound care on one of  
12 the inmates, and the inmates expressed worry about having  
13 to do his wound care and that gentleman was in the  
14 time-out cell, not too far from him, under quarantine.

15 Q. Okay. So somebody who was put in the time-out cell  
16 because he was showing COVID symptoms, that's why the --  
17 the pod is under lockdown now?

18 A. Yes.

19 Q. Was there another instance of somebody showing  
20 symptoms in that pod?

21 A. Yes. There was several that came into that pod, and  
22 they came in from F pod, which was closed down. And they  
23 were also in that pod. And three of them, they were  
24 transferred out. And I was later informed about that,  
25 through the inmates, they said, yeah, all these people

1 came from -- came in from the F pod.

2 Q. Okay. Was there one that showed COVID signs,  
3 symptoms, who was put in a visitation booth?

4 A. Yes. This happened one of the times I was working  
5 at the control center. I come into my shift and three  
6 visitation booths over from me, there's a guy who is  
7 showing the symptoms and he is in that visitation booth  
8 that you showed as one of your exhibits.

9 And he was there waiting three hours. And I'm  
10 trying to figure out what's going on. I'm going -- is  
11 this guy going to have to go to the bathroom or eat or  
12 something. So I let some of the officers know, and he  
13 ended up going into the G pod, which is closed and using  
14 their time-out cell to be able to go to the restroom.

15 But he was sitting just in that little booth  
16 waiting for hours.

17 Q. Okay. Now waiting for what, a nurse to come?

18 A. To get transferred to the next place he was going to  
19 get sent, whether that's the infirmary or wherever it is.  
20 And he came out of his C pod and she didn't know what was  
21 going on either. And DSO over there -- and when she  
22 later found out what was going on and that he was  
23 exposed, like she flipped out.

24 Q. Okay. So you had -- were there two different  
25 detainees who were taken out of the same pod because they

1 had COVID symptoms?

2 A. It was from -- those two examples, one was from the  
3 F pod that came into my pod, and the other one, that  
4 other example was from the C pod. And that's the -- the  
5 kitchen pod where up to 50 inmates go to work. And they  
6 had -- they had exposure there. And these folks, they  
7 feed the whole -- a lot of the whole jail.

8 Q. So one of the -- the people who were showing the  
9 signs had been working in the kitchen?

10 A. Yes. The one that was in the visitation booth.

11 Q. Okay. And the pod that's currently under lockdown,  
12 which one is that, is that F?

13 A. F was closed. And I was in D -- I was in the D pod  
14 when I had the visitation -- when he was in the  
15 visitation booth.

16 Q. Okay.

17 A. And I -- that is on lockdown, no movement.

18 Q. Okay.

19 THE COURT: Mr. Barnett, I keep hearing somebody  
20 talking over your witness.

21 So if you'll give me a moment.

22 (Off-the-record discussion.)

23 THE COURT: Do you have any objection,  
24 Plaintiffs' Counsel, to releasing the witnesses  
25 Mr. Robinson, Mr. Segura, and Mr. Jones for today, and

1 instructing them not to have any conversation about this  
2 case until they testify before the Court?

3 MR. BARNETT: No objection by Plaintiffs, Your  
4 Honor.

5 THE COURT: Intervenors, is that all right with  
6 you?

7 MR. BIGGS: No objection.

8 THE COURT: Okay. Great. Defendants, if you'll  
9 instruct your witnesses they are free to go about their  
10 business for the rest of the day, and go back to the jail  
11 if they need to, back to Parkland, or wherever they need  
12 to be; just instruct them not to talk about this lawsuit  
13 until they give their testimony, please.

14 (Off-the-record discussion.)

15 THE COURT: Mr. Barnett, if you'll resume.

16 MR. BARNETT: Thank you, Your Honor.

17 Q. Officer Lewis, after the wipe-down took place and  
18 the -- the detainee who had the symptoms was removed, was  
19 the visitation booth cleaned that he had been in?

20 A. Yes. Briefly, for about two minutes. They just  
21 came in, and then they were quickly gone.

22 Q. How about the pod itself, where the guy had been up  
23 until then?

24 A. The pod wasn't cleaned.

25 Q. How long had he been in the pod?

1 A. He would have been in the pod for five to seven days  
2 before he got to the time-out cell.

3 Q. You mentioned that there is a lockdown in the pod,  
4 but do people still come and go, like the DSOs or nurses  
5 or people who deliver mail?

6 A. Yes, they still come out. And the kitchen staff,  
7 they tried to come in to get people out of the staff --  
8 out of the pod. They didn't know it was under  
9 quarantine.

10 Q. We heard a description of how we -- about how meals  
11 inside pod are done and the detainees line up --

12 (Reporter instruction.)

13 Q. We were talking about meals in the pod, and the  
14 description was that the detainees lined up in the pod --

15 A. Yeah.

16 Q. -- for meals. Does that still happen in your pod,  
17 your pod still --

18 A. They still line up. And it goes through the  
19 restroom area, and also to the showers where they're  
20 still lining up.

21 Q. And how far apart do they get when they're standing  
22 in line to get their tray?

23 A. They're pretty -- all close in because it's a small  
24 area.

25 Q. Okay. Did anybody tell you that you should be doing

1 social practicing or enforcing it? Did your employer  
2 tell you that?

3 A. No one told me.

4 Q. It is really practical in the South Tower pods to  
5 have social distancing?

6 A. The way it is set up in the South Tower pods, it is  
7 impossible to have social distancing.

8 THE COURT: Now why do you say that?

9 THE WITNESS: It's too many people in such a  
10 small area. And even if it's less people, it's still  
11 such a small area. You have got the bathrooms, you have  
12 got the toilets, you have got the sleeping area, you have  
13 got the tables where they all eat or play cards, it's --  
14 the open area you can't isolate.

15 THE COURT: Well, let's say hypothetically, if  
16 hypothetically I ordered the jail to maintain a 6-foot  
17 distance between inmates at all times, I saw how -- how  
18 squeezed together the bunk beds were, but let's say that  
19 I ordered them, if the bunk beds are all made together,  
20 if I ordered them to spread people out so that inmates  
21 were not sleeping within six feet of each other.

22 I know the jail -- I think one of the briefings  
23 said the jail held up to like 11,000 people or something  
24 around that. And you guys have something like 4,900.

25 So if we doubled the distance, would it be



1 possible then?

2 THE WITNESS: Judge, if it went from like, each  
3 pod from 64 inmates to down to 20, it would be a lot  
4 better way to control it. Especially with educating the  
5 guards, training, and also training the inmates. That  
6 would absolutely improve things.

7 THE COURT: Do you think if we did that, if we  
8 educated the guards on maintaining the social distance,  
9 and educated the inmates on keeping a social distance;  
10 and ordered people, you know, do not use a toilet within  
11 six feet of the next person, provided cleaning supplies,  
12 and the like, for free, do you think that that would  
13 create a -- a -- do you think that that would help as far  
14 as reducing the virus?

15 THE WITNESS: Absolutely, Judge. And also,  
16 right now there's just fear and uncertainty and there is  
17 just no direction.

18 THE COURT: Sure.

19 THE WITNESS: So providing that direction,  
20 absolutely.

21 THE COURT: Well, and when you were talking  
22 about cleaning things, one of the things on my list --  
23 and I may be skipping your order, Mr. Barnett, so I'm  
24 sorry if I'm messing up your flow -- but take your  
25 uniform, Officer Lewis, you know, if I -- when I visited

1 the jail, when I got home I had worn blue jeans and a  
2 button-down shirt and the first thing I did was throw  
3 them in the washer and wash them on hot.

4 Can you wash your uniforms, and how many do you  
5 have? If I'm concerned about the safety of the inmates  
6 and you.

7 THE WITNESS: We are issued four uniforms. If  
8 we were to get two more uniforms, that would absolutely  
9 help us a lot.

10 THE COURT: And right now, do uniforms cost you?

11 THE WITNESS: They do not cost us; we're issued  
12 that. But if they are misplaced or something happens and  
13 you know, you can't find it or it breaks, it is -- a real  
14 hassle to go and get a new uniform.

15 THE COURT: Well, and can you wash yours or do  
16 you have to dry-clean them?

17 THE WITNESS: Yes, you can -- you can wash them  
18 on delicate and then --

19 THE COURT: Okay.

20 THE WITNESS: -- also -- you know, air-dry it.

21 THE COURT: Okay. But you are issued four.

22 THE WITNESS: Yes.

23 THE COURT: And what's the process, if you --  
24 let's say you wanted to get an extra two, who do you have  
25 to go to? I mean, you kind of explained the hassle to

1 get a mask; what is it like to get a uniform?

2 THE WITNESS: To get a uniform you have to be  
3 off probation, in my situation, and I'd have to wait a  
4 year to be able to get another new uniform.

5 THE COURT: Okay. All right. Thank you.

6 Q. And Officer Lewis, talking about social distancing,  
7 when the -- when the detainees are sitting at those  
8 tables eating, they're not wearing masks; is that right?

9 A. They recently started wearing masks, but before that  
10 they weren't wearing masks.

11 Q. How can you eat and wear a mask?

12 A. Oh, when they are eating, yeah, you are right, they  
13 are not using masks.

14 Q. Okay. And how long do they have for meals, 30  
15 minutes, an hour, 20 minutes?

16 A. About 30 minutes.

17 Q. 30 minutes. Okay. So they're sitting there within  
18 six feet of each other?

19 A. Yes.

20 Q. Is that right?

21 A. Yes.

22 Q. With their masks off?

23 THE COURT: Mr. Barnett, I have another question  
24 for Officer Lewis related to meals.

25 Do you-all stagger meal times or does everyone

1 eat at the same time?

2 THE WITNESS: It can vary, depending on the  
3 kitchen, what time we eat. So with our floor, there are  
4 seven pods that would have to be fed. So they could  
5 start feeding anywhere from 5:00 or 6:00 or 7:00,  
6 depending on what was going on.

7 And what's interesting, after the lawsuit, is  
8 before we had the trays that were recycled and recycled  
9 and recycled. They were like, a plastic material. And  
10 then after that we started getting some of the disposable  
11 trays, Judge.

12 THE COURT: Okay.

13 THE WITNESS: Thank you for bringing that up.

14 THE COURT: You're welcome.

15 Q. Now Officer Lewis, is there a charge for detainees  
16 to get some kind of medical treatment or request medical  
17 treatment?

18 A. Yes, it's \$10.

19 Q. And where does that money come from?

20 A. They would have to pay, from the inmate they would  
21 have to pay when they fill out a medical kite.

22 Q. Do you know whether or not the charges are being  
23 waived now?

24 A. I do not. And I know a lots of inmates hesitate,  
25 even before COVID, to fill out a medical request because

1       there is a cost.

2       Q.    Have you received instructions -- go ahead, Your  
3       Honor.

4               THE COURT:   My understanding from my tour at the  
5       jail -- with the lawyers -- was that if the inmate  
6       doesn't have \$10, that the account will be debited so  
7       that you'll have a negative \$10 balance until somebody  
8       from the outside puts \$10 in.

9               Is that your understanding, Officer Lewis?

10              THE WITNESS:   I'm not sure how that works,  
11       but --

12              THE COURT:    Okay.

13              THE WITNESS:   -- I know they worry about that  
14       \$10.

15              THE COURT:    Okay.   Thank you.

16              MR. BARNETT:   Your Honor, one thing that I think  
17       the Court shed a minute ago about capacity of the jail, I  
18       thought I heard Your Honor say 11,000.   I think it's more  
19       like seven.

20              THE COURT:    Oh, is it?   Okay.

21              MR. BARNETT:   Okay.

22              THE COURT:    I appreciate you correcting that.  
23       Thank you.

24              MR. BARNETT:   I think that's -- that's bursting  
25       at the seams, 7,000.

1 THE COURT: Okay. And, Defendants, if you don't  
2 mind chiming in?

3 MR. STEPHENS: Judge, the capacity of the jail  
4 is 7,414, approximately.

5 THE COURT: And can you tell me why we're taking  
6 a -- kind of a -- 7,414, my understanding was we were  
7 down to about 4,900 people; is that about right?

8 MR. STEPHENS: I don't have today's number off  
9 the top of my head. I know when Chief Robinson did his  
10 declaration on the 16th, it was just below 5,000 --  
11 4,972. I know it is down today. I don't know by how  
12 much.

13 THE COURT: Okay. That is helpful. Okay.  
14 Thank you.

15 I apologize, Mr. Barnett. Please resume.

16 Q. I was asking -- I think I was asking whether you  
17 received instructions about waiving the \$10 charge?

18 A. I have not.

19 Q. Is there a nurse available at all times on your  
20 floor?

21 A. There is a -- a floor nurse and they're not always  
22 available. They -- they are dealing with different  
23 things with the diabetes, manning the clinic, the finger  
24 stick. And we used to have a RAT nurse all the time on  
25 our shift, and that would be the one that would handle

1 emergencies on the different floors.

2 But a lot of times now, there's -- they make an  
3 announcement over the floor, over the radio saying,  
4 tonight there is not going to be a RAT nurse, rely on  
5 your floor nurse. And usually the floor nurse is already  
6 overwhelmed with their responsibilities.

7 THE COURT: And what's a -- did you say RAT,  
8 R-A-T nurse?

9 THE WITNESS: Yeah, R-A-T nurse. It's just the  
10 one that kind of handles the emergencies over the four  
11 different floors.

12 THE COURT: Okay. So --

13 THE WITNESS: They have that all the time.  
14 Sorry to interrupt.

15 THE COURT: No, I'm sorry. I talked over you.

16 So Officer Lewis, during your shift, how many  
17 RAT -- like, emergency nurses are there, if you know?

18 THE WITNESS: One emergency nurse. And she  
19 would kind of be -- or he would be the point person that  
20 you would call up and say, I have a situation, what  
21 should I do. But we don't have that anymore. They just  
22 tell us to contact our floor nurse.

23 And when you contact the floor nurse, they  
24 could be off giving medication, they could be off doing a  
25 lot of different things, so you have to track them down

1 and there would be a long wait.

2 THE COURT: Okay. So would it be helpful if  
3 every floor had a RAT nurse? Is that -- what do you -- I  
4 mean, you are kind of in the trenches, what -- if you  
5 were me trying to make sure everybody stayed safe, what  
6 would you do as far as nurses? What do you think?

7 THE WITNESS: I think we would keep one  
8 dedicated nurse that handled the COVID crisis and let the  
9 other nurses go back to what they were doing originally.  
10 That would help a lot.

11 THE COURT: And do you mean just one for the --  
12 the jail itself or one for floor or what do you mean?

13 THE WITNESS: My tower, going back to having  
14 that one for the four floors, that would help a lot. And  
15 let the floor nurses manage what they were doing. It's  
16 really helpful if we can call up the RAT nurse and bounce  
17 it off of her first, or him.

18 THE COURT: Okay. Thank you, very helpful.

19 Q. So Officer Lewis, what effect does the difficulty of  
20 getting treatment and the lack of guidance have on  
21 detainees?

22 A. You can see them like -- the gentleman who I saw  
23 that was waiting for hours, you know, he was trying to,  
24 you know, talk with me and everything, and I was trying  
25 to see what was going on. It was just -- just kind of



1 feel, you know, that they have a sense of like, they  
2 don't know what's going on, they worry, you know. Where  
3 are we going to be sent next.

4 You know, kind of see that they feel close to  
5 death or just that whole presence around them. Seems you  
6 know, I see, close to death.

7 MR. BIGGS: Your Honor, objection. This is  
8 complete speculation by him on what inmates feel like.  
9 We ask to disregard the testimony.

10 MR. STEPHENS: Join the objection.

11 THE COURT: I'll sustain.

12 Q. Mr. Lewis, I have some questions about evidence that  
13 the defendants have submitted for the record. Okay?

14 A. Yes.

15 Q. I'm going to read you some statements and ask you  
16 whether you agree. Here is the first statement: All TVs  
17 throughout the jail also bear messages and banners on the  
18 inmate channel regarding COVID-19 prevention, precaution,  
19 and procedure.

20 Do you agree with that?

21 A. In the pods that I have been in, I do not agree with  
22 that.

23 Q. Why is that?

24 A. It's usually on, you know, like the Spanish channel  
25 or it's like on -- you know, one of those Spanish

1 channels or one of the other TVs is like, on sports or  
2 like, a movie. So it's not -- it's not the inmate --  
3 inmate channel.

4 Q. Can you remember in the last two or three weeks the  
5 inmates ever watching the inmate channel?

6 A. I cannot.

7 Q. Here is the next statement: Consistent with CDC  
8 guidelines, DCSO -- which is short for the sheriff's  
9 department, DCSO deputies and staff consistently impress  
10 upon inmates the need to practice social distancing.

11 Do you agree with that?

12 A. I do not agree with that.

13 Q. Have you ever seen deputies or staff impressing on  
14 inmates the need to practice social distancing?

15 A. I have not.

16 Q. Never, ever?

17 A. I have not.

18 Q. Quote, DCSO deputies enforce social distancing in  
19 common areas when deputies observe social distancing  
20 practices not being followed, closed quote.

21 Agree with that?

22 A. You are using the word, deputies. In my area, it's  
23 more we have the officers, the detention service  
24 officers, so that wouldn't be under something I would  
25 see.

1 Q. Have you ever seen a deputy enforce social  
2 distancing in a common area?

3 A. I don't see too many deputies, no.

4 Q. Have you seen DSOs enforcing social distancing in  
5 common areas?

6 A. I have not. I have not.

7 Q. Quote, Staff in high-risk areas are required to wear  
8 additional PPE, including N95 masks.

9 Do you agree with that?

10 A. I have not seen many N95 masks. I've seen a few,  
11 but I haven't seen many. But that's just after the  
12 lawsuit.

13 Q. Do you consider that now that your pod is in  
14 lockdown, that that's a high-risk area?

15 A. Yes. And that's just one of the pods that I went  
16 in.

17 Q. Do you have an N95 mask?

18 A. I do not.

19 Q. Quote, Currently the DCSO considers its supplies of  
20 face masks to be adequate, closed quote.

21 Do you agree or disagree?

22 A. I disagree.

23 Q. Why?

24 A. We had those masks and I couldn't get an N95 mask.  
25 I would have to go get it on my own.

1 Q. Quote, At any point an exposure to COVID-19 is  
2 suspected or confirmed at any part of the jail, inmates  
3 are removed from the pod or chain, closed quote.

4 Do you agree?

5 A. I disagree.

6 Q. Why is that?

7 A. Because there's a time period that they're just  
8 waiting.

9 Q. Do you have instructions on how to detect exposure  
10 to COVID-19 or symptoms?

11 A. I do not.

12 Q. Quote -- this is a long one -- Inmates may submit  
13 grievances both in writing, submit grievances  
14 electronically are available throughout the jail.

15 The sheriff certainly did not have a policy for  
16 refusing to accept grievances related to COVID-19 or any  
17 other issue.

18 The instructions to submit a grievance are  
19 posted and available throughout the jail.

20 Agree?

21 A. I disagree. We were never instructed to have the  
22 inmates do a -- a grievance on a COVID-19.

23 Q. Are there any pieces of paper that provide some  
24 instructions about submitting a grievance or request  
25 relating to COVID-19?

1 A. No, there is not.

2 Q. And finally, Mr. Lewis, can you tell Judge Brown why  
3 you have taken personal risks to testify today?

4 A. A lot of us, the DSOs, and also the inmates and also  
5 the community -- just helping in any way I can help to  
6 make things safer. I'm not trying to poke blame at  
7 anyone or undermine anyone. I'm just here to try to work  
8 together to get a solution.

9 THE COURT: Thank you for being here today. I  
10 appreciate you.

11 THE WITNESS: Thank you.

12 MR. BARNETT: Thank you, Officer.

13 I pass the witness, Your Honor.

14 THE COURT: All right. Let me take a ten-minute  
15 break and then we'll come back and -- and let both  
16 Defendants and Intervenors ask their questions.

17 So I show it's about 4:56. So why don't we come  
18 back about 5:10 and -- so the Court will be in recess for  
19 ten minutes.

20 (Brief recess.)

21 THE COURT: All right. Seeing all thumbs up --

22 MR. BARNETT: Your Honor?

23 THE COURT: Yes, Mr. Barnett.

24 MR. BARNETT: There was one point I was hoping  
25 we could clear up.

1 THE COURT: Oh, sure.

2 (Off-the-record discussion.)

3 THE COURT: Okay. Feel free, Mr. Barnett.

4 Q. When Judge Brown was asking you some questions about  
5 reducing the numbers in the jail, I understood your  
6 testimony to be that the jail could keep -- put  
7 distancing if there were 20 detainees in a pod; did I  
8 understand that right?

9 A. I think it would be a better chance of providing  
10 more safety and distancing.

11 Q. Okay.

12 A. It would be a --

13 Q. I'm sorry, go ahead?

14 A. If it was 20, if there was a 20 limit as opposed to  
15 the 64.

16 Q. It would be physically possible, theoretically  
17 possible, to keep 6-foot distancing if you reduced the  
18 population by two-thirds?

19 A. Yes. You'd move the beds, you'd have to have  
20 different tables, and you'd have to educate the guards  
21 and the inmates.

22 Q. Okay. And if we're extrapolating to the entire  
23 jail, and there are -- 5,000 in the jail, that would be a  
24 reduction from 5,000 to about 1700; does that sound right  
25 to you?

1 A. I know from the Kay Tower, I know that -- that area  
2 and that open set up, that's the area that I am in.

3 Q. Okay. But just take two-thirds of 5,000, you'd get  
4 down to about 1700; does that sound right?

5 A. Yes. But -- in the other locations they have  
6 different set ups.

7 Q. Right. Of course.

8 MR. BARNETT: Thank you, Your Honor. Pass the  
9 witness.

10 THE COURT: Sure. All right. We'll let  
11 Defendants go first and then Intervenors. I'll let you  
12 ask your questions.

13 MR. STEPHENS: Thank you, Your Honor. Ben  
14 Stephens for Defendants.

15 Before I start with Mr. Lewis, I did have  
16 updated jail population numbers for the Court.

17 THE COURT: Great, thank you.

18 MR. STEPHENS: The jail population currently is  
19 4,830.

20 THE COURT: Thank you.

21 CROSS-EXAMINATION

22 BY MR. STEPHENS:

23 Q. Mr. Lewis, my name is Ben Stephens. I'm an attorney  
24 for the defense in this case, that's Sheriff Marian Brown  
25 and Dallas County, Texas.

1           I noticed you are wearing your uniform, but you  
2 are not testifying today on behalf of the sheriff; you  
3 are testifying just for yourself, correct?

4     A.    Yes.

5     Q.    And you are testifying about what you have observed  
6 personally in the parts of the jail which you work?

7     A.    Yes.

8     Q.    And I want to step back to your background briefly.  
9 You are currently operating on a temporary correction  
10 officers' license; is that correct?

11    A.    Yes.

12    Q.    That means that you haven't been to the basic  
13 correction officers' academy to become licensed as a  
14 full-time correctional officer, correct?

15    A.    Correct, yes.

16    Q.    When would you go to academy?

17    A.    When I was originally hired, they said I was going  
18 to go to the academy soon, but due to staffing issues,  
19 they keep us in the pods. Just like I was supposed to --  
20 I was signed up for the deputy test, and that got put off  
21 as well.

22           So there is a lot of pressure to keep us --

23    Q.    Have you previously run for an elected office?

24    A.    Yes, I have.

25    Q.    And what office was that?



1 A. I previously ran for county clerk and I previously  
2 ran for Irving City Council.

3 Q. What was the outcome of those races?

4 A. I did not win, but I was able to bring up some  
5 issues.

6 Q. Have you stayed involved in politics in Dallas  
7 County?

8 A. Yes.

9 Q. And you have endorsed Chad Prda, who is Sheriff  
10 Brown's opponent, for the general elections in November,  
11 correct?

12 A. For this November, no. I became aware of Chad Prda  
13 from 2016.

14 Q. So you have endorsed Chad Prda previously?

15 A. I know him. I wouldn't know if it was an  
16 endorsement. But, you know, I -- I know he was running  
17 against Aaron Meek, I believe, at that time.

18 Q. Do you intend to support Mr. Prda again?

19 A. No, I do not. I haven't been involved at all in  
20 these races. And a lot -- since I became a sheriff, a  
21 DSO officer, I haven't really got involved.

22 There's a lot of things that happened with  
23 previous people that have been involved in politics that  
24 are involved in the sheriff's department, so I try to  
25 stay clear of that.

1 Q. I want to talk about where in the jail you work so  
2 that we're really clear on what parts of the jail you  
3 know about and what parts of the jail you don't know  
4 about.

5 So you work in the South Tower on the third  
6 floor; is that correct?

7 A. I -- I started on the third floor, and then I was  
8 shifted down to the first floor. And then for overtime,  
9 I do it on the third floor. And I have some experience  
10 doing the 817, the transportation, so that moved me over  
11 to a few of the different other floors.

12 Q. When --

13 A. -- to inmates.

14 Q. When was the last time you worked in a tower of the  
15 jail other than the South Tower?

16 A. I'm assigned to the South Tower. The only other  
17 towers I've seen is if I have transported and dropped  
18 them off. But that was just a few times that -- I'm  
19 assigned to do 817.

20 Q. Have you done one of those transfers in the last  
21 month?

22 A. I believe at the beginning of the month I was  
23 assigned to do it, and it was on an overnight shift. It  
24 was like, within three weeks ago or a month ago. But  
25 before the lawsuit.

1 Q. But you have not worked a regular shift anywhere  
2 other than the South Tower in the last two months?

3 A. Yes, I have never.

4 Q. The population in the South Tower is minimum  
5 security, correct?

6 A. We have a mix. We have got minimum, medium, we've  
7 had some dangerous people in there. We've had a mix of  
8 people. But it's originally for minimum.

9 Q. What do you mean by dangerous people?

10 A. Folks that have harmed, you know, a family member,  
11 that have harmed officers.

12 Q. How many pods are on your floor?

13 A. There's nine and there's seven of them open.

14 Q. And you testified that previously, the population in  
15 those pods was close to 64, but it's since dropped; is  
16 that correct?

17 A. Yeah, there's some that have up to 64. And then  
18 there's some that do not.

19 Q. Is it fair to say that H pod is the only pod of 64  
20 that you are familiar with?

21 A. Yes, that's definitely 64. And I might be --

22 Q. I'm sorry, I didn't hear you?

23 A. -- I -- also -- it's pretty high. I think maybe  
24 it's in the 50s.

25 Q. And is it correct that H pod is housed by trustees?

1 A. It is not true. It's not correct. The trustees  
2 are -- the trustees are A, B, C, D, and E. Those are the  
3 trustee pods.

4 Q. Okay. And can you explain to the Court what a  
5 trustee is, so we're all on the same page.

6 A. A trustee is an inmate who will go out some of the  
7 day within the jail and do some services in the kitchen,  
8 down in booking, or sanitation.

9 Q. You mentioned there were two pods that closed on  
10 your floor, and they were closed because someone who was  
11 housed in those pods previously was confirmed  
12 symptomatic; is that correct?

13 A. Yes. I -- I know that for sure with F pod. With G  
14 pod, they had the dogs in there and the inmates, and they  
15 have since closed G pod down.

16 Q. When a patient is confirmed symptomatic in a pod,  
17 are you familiar with the cleaning procedures that the  
18 jail does for that pod?

19 A. I'm not familiar.

20 Q. You don't know one way or another whether they bring  
21 in a private vendor or whether they have janitors clean  
22 it; you are not familiar.

23 A. I've seen -- on what I observed, I've seen one  
24 private vendor come in to one of the pods, A, and they  
25 were there for a good amount of time. And then I saw in

1 D pod, when that guy was in the time out, and after he  
2 left after four hours they went in there for two minutes  
3 and they were out.

4 Q. It was a private vendor that cleaned that D pod  
5 where they --

6 A. Yes, that was inmates.

7 Q. When was the last time you personally performed a  
8 shakedown of an inmate?

9 A. Of an inmate?

10 Q. Yes.

11 A. An inmate, when they come back and forth to work, I  
12 would say, you know, last week they come in and out, we  
13 would check them over in the visitation, check them over  
14 in the visitation booth.

15 In previous shakedowns, we brought them down to  
16 the hallway and we check them. And they have to get down  
17 to their boxers and they keep their boxers on and we  
18 check everything else.

19 Q. Are you aware that Chief Robinson suspended  
20 shakedowns until the end of April?

21 A. I was not aware of that.

22 Q. So if you were still performing shakedowns, you  
23 don't know whether that's permitted or not?

24 A. I was not aware of that. It was not only --

25 Q. You said there's been a slight reduction in the

1 frequency of your rounds in the pod. When did you notice  
2 that reduction occur?

3 A. That was about a month-and-a-half ago, two months  
4 ago. It went from 40, 44 minutes -- sorry. It went from  
5 less than 30-minute rounds to less than 45-minute rounds.

6 Q. And are you aware that the requirement that you  
7 conduct rounds on a regular basis is imposed by the  
8 State?

9 A. Yes, I'm aware of that.

10 Q. Do you know what the minimum number of rounds you  
11 could conduct and still be in compliance is?

12 A. No, I do not. All I know is that I have to do a  
13 round before 44 -- 45 minutes.

14 Q. And your shift is about eight hours, correct?

15 A. Yes.

16 Q. In those eight hours, how many of those hours do you  
17 spend in the pod?

18 A. When assigned to the pod, I'm in the pod all the  
19 time, except for my lunch, which is a half hour.

20 Q. Okay. And you testified that during your eight-hour  
21 shift, you consistently see inmates cleaning on three  
22 distinct occasions: When your shift starts, after  
23 dinnertime, and near when your shift ends; is that  
24 correct?

25 A. Yes.

1 Q. Are you aware of anything that keeps those inmates  
2 from cleaning more frequently if they wanted to?

3 A. Not that I'm aware of.

4 Q. Do you personally encourage inmates to clean the  
5 pod?

6 A. Personally, I do not personally.

7 Q. Why not?

8 A. Why not? Just something personally I don't -- I  
9 don't do. Like, I'll encourage for those three times, if  
10 they want to do some cleaning, we have an extra tray --  
11 there's a lot of them that will clean if they get an  
12 extra tray or extra snack.

13 Q. You are not going to stop an inmate from cleaning if  
14 you see them cleaning at a time other than those three  
15 occasions, correct?

16 A. I would not.

17 Q. You just don't go out of your way to actively  
18 encourage them to clean?

19 A. Outside of those three times, like the -- at the  
20 beginning and then the dinner and then after when we're  
21 closing down.

22 Q. Has an inmate ever asked you for cleaning supplies  
23 and you have denied that request?

24 A. If I didn't have it, I didn't have it for them to  
25 give. Sometimes we don't have some of the cleaning

1 supplies.

2 Q. So when you said -- I'm sorry?

3 A. If I have it, I will give it to them.

4 Q. Sure. And if you don't have it, you could get it  
5 from somewhere, correct?

6 A. Yes. And it would take a process to get it.

7 Q. Sure. And that process would be asking someone to  
8 go get the supplies and bring them to you, correct?

9 A. Yes. I'd have to call sanitation and see if they  
10 can come and get it. But usually sanitation is pretty  
11 hard to reach.

12 Q. And what's the process of communicating with  
13 sanitation, do you have a radio?

14 A. Yes.

15 Q. And so you radio sanitation and ask them for  
16 cleaning supplies?

17 A. Right.

18 Q. And you have that radio on you at all times?

19 A. Yes.

20 Q. You described two types of liquids that inmates use:  
21 a yellow liquid, and you think that may be some kind of  
22 antibacterial spray, and then a purple liquid that you  
23 described as being like a detergent; is that right?

24 A. Yeah. The yellow is a D5 -- DZ5 -- D5Z. It's a  
25 really strong, like, antibacterial. Very good for



1 killing a lot of things.

2 Q. Okay. And what do you know about the purple liquid?

3 A. I know it's more like a soap base. And --

4 Q. Okay.

5 A. -- I don't know that much about it.

6 Q. Sure. And you also testified that inmates have  
7 access to bleach if they ask you for it, correct?

8 A. If we have it. Previously, before the lawsuit, we  
9 didn't have a lot of bleach.

10 Q. Okay. Have you ever denied an inmate bleach if they  
11 asked for it?

12 A. If we didn't have it up there, in the control  
13 center.

14 Q. And if they -- if you didn't have it at the control  
15 center you would follow the same process you described;  
16 you would get it from the sanitation officer?

17 A. Calling sanitation is not a normal process that I do  
18 or others do.

19 Q. Describe the process for calling sanitation. Is it  
20 more complicated than radioing the specific person?

21 A. It's just -- it's just something that is not -- that  
22 is not done. It's not -- we're not instructed to contact  
23 sanitation to get cleaning supplies. It might change now  
24 after the lawsuit, but that's not something that we're  
25 instructed do.

1 Q. Do you need to be instructed to ask for cleaning  
2 supplies if an inmate is requesting them and you don't  
3 have it?

4 A. Do I need to be instructed? It's similarly if I'm  
5 at the control center and they call me for things,  
6 cleaning supplies. They don't call sanitation.

7 Q. You call sanitation for the inmate if the inmate  
8 needs cleaning supplies, correct?

9 A. If I am at the control center and a pod -- comes in,  
10 like, we don't tell them to go call sanitation. That's  
11 just not a regular process that we have -- that I've seen  
12 in the seven months that I've been there.

13 Q. But there is nothing keeping you from calling  
14 sanitation as many times as you want to ask for  
15 additional cleaning supplies, soap, or any other kind of  
16 material for the inmates, correct?

17 A. For -- soap, we would have in the control center  
18 with, like, the bars of soap and everything. But again,  
19 calling sanitation for these things is not something that  
20 we have done in the seven months that I've been there.  
21 And that was even before COVID.

22 Q. Sure. But there's nothing preventing you from doing  
23 it; it's just not done, in your opinion?

24 A. Right. It has not been done and we haven't been  
25 instructed to or trained to do that.

1 Q. If you notice that cleaning supplies are missing  
2 from a pod you are staffed in, do you ask for more  
3 cleaning supplies?

4 A. I do not ask for more cleaning supplies. Like, I  
5 can get some when I go out if I go out on my lunch or --

6 Q. But you --

7 A. -- the -- if I may?

8 Q. Yeah.

9 A. The yellows and the -- the pink, that's usually ours  
10 -- that's usually ours and that is not a problem.

11 Q. You testified that detainees had access to soap in  
12 two places: At the desk and -- your desk and at the sink  
13 that is in the pod.

14 But inmates also have their own soap, right?

15 A. If they ask for the soap, we've got bars of soap,  
16 yes. But they do have like, a shampoo, they will have a  
17 shampoo and soap for showering and stuff. But they would  
18 ask for like, a bar of soap and they could take that back  
19 to their -- to their bunk.

20 Q. Okay. So inmates are provided with bars of soap and  
21 they are provided with shampoo for the shower?

22 A. The shower one is -- they would probably get that on  
23 their commissary. I don't provide any of the shower one.  
24 But I see them with the shower -- the shower soap.

25 Q. But they don't have to get the bars of soap from the

1 commissary; that's something you get from --

2 A. Right. And soap -- and then I can get that soap  
3 from the control center, but that's not something I would  
4 call sanitation for.

5 Q. Okay. And just to be clear, there's a bar of soap  
6 at the sink, but there's nothing to stop an inmate from  
7 getting another bar of soap if they are not comfortable  
8 using the bar of soap that's already on the sink, right?

9 A. Right.

10 Q. Okay. And you talked about how you administer hand  
11 sanitizer to the inmates when they request it?

12 A. This is a recent thing after the lawsuit. We didn't  
13 have that to administer before.

14 Q. You had bars of soap before the lawsuit, right?

15 A. Yes.

16 Q. And now that you have hand sanitizer, you, I assume,  
17 would provide it to any inmate who requested it?

18 A. Absolutely, yes.

19 Q. If an inmate ever runs out of soap will you replace  
20 it for them?

21 A. Yes, the bars of soap, yes.

22 Q. And you testified that Mr. Barnett showed you some  
23 photos of some signs talking about COVID-19. And I -- I  
24 think you stated that you weren't familiar with those  
25 particular signs, but you had seen different signs on the

1 South Tower?

2 A. Out of those four, you know, set up in a smaller  
3 font, and it was off to the side of the desk that's in  
4 front of me. It's a small area, an area that is not  
5 visible to a lot of people.

6 Q. And you don't know one way or another what signage  
7 about COVID-19 is displayed in other parts of the jail  
8 where you don't work.

9 A. That's correct, sir.

10 Q. Do you have any reason to think that the only place  
11 in the jail with signs about COVID-19 that are posted is  
12 in the South Tower?

13 A. I do not believe that. I don't believe -- sorry,  
14 can you ask the question again?

15 Q. You don't think that the South Tower is the only  
16 place that COVID-19 signs are placed?

17 A. Right, yes.

18 Q. Is there anything stopping you from warning inmates  
19 about COVID-19 yourself?

20 A. Just the inconsistency of information before the  
21 lawsuit -- said one thing and after the lawsuit it's --  
22 it's another thing. And there's no training that I have  
23 received on the COVID, so I don't want to give out wrong  
24 information.

25 Q. Did you first become aware that COVID-19 was

1 dangerous when this lawsuit was filed?

2 A. Yes, I knew it was dangerous.

3 Q. Before the lawsuit was filed?

4 A. I knew it was dangerous, yes.

5 Q. Did you need to be told before the lawsuit was filed  
6 that social distancing was important?

7 A. No, I did not need to be told.

8 Q. You know that social distancing is important  
9 regardless of what you hear at work?

10 A. Yes. But there was -- before the lawsuit, there was  
11 a whole thing of not trying to spook the inmates.

12 Q. Sure. So you mentioned that. Who told you that;  
13 that you shouldn't wear masks because you shouldn't spook  
14 the inmates?

15 A. Lieutenant Sonya King.

16 Q. Okay. And when was that?

17 A. That was say, four -- four weeks ago, five weeks  
18 ago.

19 Q. So five weeks ago would be roughly the middle of  
20 March?

21 A. It was when parole was still coming to the jail.

22 Q. Do you remember when that was?

23 A. I think around four weeks ago, five weeks ago.

24 Q. Okay. Were you aware that the CDC until early April  
25 didn't recommend the use of masks to prevent the spread

1 of Coronavirus?

2 A. Yes, I was aware of that.

3 Q. And you are aware that that guidance has since  
4 changed and masks are now recommended for the general  
5 public?

6 A. Yes.

7 Q. Are you aware of the CDC's guidance on the use of  
8 masks in correctional facilities?

9 A. They want us to wear them. That's my awareness of  
10 it.

11 Q. Who do you mean by, us?

12 A. DSOs.

13 Q. Okay.

14 A. I mean, of -- of public.

15 Q. Do you know the CDC's current guidance on the use of  
16 masks for inmates?

17 A. No, I do not.

18 Q. And when you talked about the use of PPE by inmates  
19 and staff -- and by PPE I'm talking about masks  
20 specifically right here.

21 A. Yes.

22 Q. When you talk about the usage of masks, you are  
23 speaking only to what you have seen in the South Tower,  
24 correct?

25 A. Yes.

1 Q. And you don't know what masks are worn, for example,  
2 in the hospitals or in the jail hospital?

3 A. I do not.

4 Q. Do you know what kind of masks -- and you don't know  
5 what kind of masks are worn by medical professionals who  
6 are treating symptomatic inmates, I assume?

7 A. I do not know.

8 Q. I understand the mask you use currently, you said it  
9 sometimes smells bad after -- at the end of the day?

10 A. When we first got it -- it's -- it smells bad when  
11 we first got it.

12 Q. Does it still smell bad?

13 A. Not like -- it didn't smell like how it smelled when  
14 I first got it.

15 Q. Do you have any other complaint about the masks you  
16 are provided?

17 A. Yes. They are very -- they are very just thin --  
18 thin quality.

19 Q. Any other complaints?

20 A. And they break -- they break easy.

21 Q. Okay. So the masks' thin quality, break easily.

22 Have you requested new masks when your masks  
23 have broken?

24 A. Yes.

25 Q. And have you received new masks?



1 A. Yes.

2 Q. Have you ever been denied a mask?

3 A. No. I have had to wait, but I hadn't been denied.

4 Q. Who do you request masks from?

5 A. From the lieutenant.

6 Q. And the lieutenant provides you with a mask when you  
7 request it?

8 A. Yes.

9 Q. And if the mask the jail gives you is not to your  
10 liking you can always go get your own mask, right?

11 A. Yes.

12 Q. You could get an N95 if you wanted one; you just  
13 have to go out and hunt around for it?

14 A. I've tried. It's pretty hard to get them, but I'm  
15 still going to try to get some more.

16 Q. The inmates are provided masks?

17 A. Recently, yes.

18 Q. Are inmates getting -- get a mask whenever they want  
19 it?

20 A. No. It's a process to get a -- to get a mask. They  
21 have to first request it, and then we have to go and get  
22 one from a sergeant. It's usually a wait -- there is a  
23 wait time.

24 Q. Sure. And you described that process of getting  
25 masks. It sounds like it is -- it was a burden on you to

1 go get masks on your break. But you can request masks by  
2 radio at any time on your shift, correct?

3 A. That is not the process that we -- we've been  
4 instructed to request masks by radio.

5 Q. Have you been instructed not to request masks by  
6 radio?

7 A. We have not. But I never heard anyone over the  
8 radio saying that they needed a mask.

9 Q. Have you ever tried?

10 A. I have not tried. The radio is mostly used for  
11 emergency situations. They try to keep that line clear.

12 Q. You also mentioned your gloves. You said you are  
13 provided gloves but the gloves were sometimes too small  
14 for you?

15 A. Yes.

16 Q. I'm not going to make you try them on, but have you  
17 ever tried requesting larger gloves?

18 A. The gloves that we have at the control center --  
19 that is the gloves that we have, are -- are the ones that  
20 we have at the desk. I have not tried to request larger  
21 gloves.

22 Q. It's not part of your job responsibilities to  
23 diagnose inmates, is it?

24 A. No, it's not.

25 Q. You are not -- no part of your job responsibilities

1 included medical treatment of inmates?

2 A. No, it is not, it is not my responsibility.

3 Q. Parkland is responsible for the medical treatment of  
4 inmates?

5 A. Yes.

6 Q. Are you aware of the CDC's guidelines on when  
7 COVID-19 tests should be administered?

8 A. I'm not aware. What I am aware of, is that if you  
9 are showing symptoms, that is when you need to be tested,  
10 like the high fever, the coughs.

11 Q. Sure. And when you requested a test, were you  
12 showing symptoms?

13 A. No, I -- I didn't request a test. We were just told  
14 in detail that we can't get a test unless we're showing  
15 symptoms.

16 Q. I see. So you were never denied a test; you were  
17 just told you would be tested when you showed symptoms?

18 A. Yes.

19 Q. And did this apply to your job or did you understand  
20 that in your personal life you couldn't go get a test?

21 A. Going through my work, where it's more dangerous  
22 than Wuhan.

23 Q. Sure. But in your personal life, you could get a  
24 test from your personal doctor if you -- if your doctor  
25 wanted to give you one?

1 A. Right. But would I -- be covered? I'd rather go  
2 through my work, where I possibly contracted it. They  
3 said that -- it could lead to a whole other -- different  
4 problems.

5 Q. What's your basis for saying that the jail is more  
6 dangerous than Wuhan?

7 A. Just the research that I've been recently doing.

8 Q. Okay. And what did that research involve?

9 A. Talking about jails and prisons and how it's an area  
10 where just -- things fester and breed.

11 Q. And you've been researching this outside of work,  
12 correct?

13 A. Yes.

14 Q. So this -- you have come to an understanding of the  
15 risk of Coronavirus apart from what your employer has  
16 told you about?

17 A. Yes, recently yeah, after this lawsuit.

18 Q. And you didn't educate yourself about COVID-19 until  
19 after the lawsuit?

20 A. I have. But the information was -- was changing and  
21 they were saying different kinds of information that  
22 I'm --

23 Q. And it's fair to say that information about COVID-19  
24 is changing almost on a daily basis?

25 A. Yes.

1 Q. So measures and treatments that might be appropriate  
2 at one point in time may not be appropriate later or vice  
3 versa?

4 A. Yes.

5 Q. Have you ever known an inmate to be denied medical  
6 treatment if they submit a medical kite?

7 A. They -- I've just seen that they've had to wait.  
8 And what I try to tell them to do is put "emergency" on  
9 it. And this is all -- like, a lot of it, the pre-COVID  
10 thing. But I haven't had too many inmates come up to me  
11 after the COVID thing saying, hey, I think I have COVID.

12 Q. You haven't seen that?

13 A. No, not come up to me and say, hey, I think I have  
14 the symptoms. Nobody's come up to me and approached me  
15 and said that they're having symptoms. I haven't had  
16 that experience yet.

17 Q. I believe you testified that you know that some  
18 inmates have not requested medical treatment because they  
19 know they can't afford that \$10 charge; is that correct?

20 A. Yes. That was previously, before all the COVID  
21 thing.

22 Q. Are you aware of anyone who hasn't requested medical  
23 treatment since COVID, who didn't get it because they  
24 thought they were going to get charged?

25 A. I'm aware of that.

1 Q. And as for that charge assessed, you don't know  
2 where that money goes, right?

3 A. I do not know.

4 Q. You don't know who collects it?

5 A. I do not know who collects it.

6 Q. And you don't even know if that charge is still  
7 being collected after COVID?

8 A. I do not know that.

9 Q. I want to go -- some of these statements that he  
10 read you and he asked if you agreed or disagreed, I want  
11 to clarify some things you said about those statements.

12 Starting with, he read you a -- he read you a --  
13 the statement that talked about COVID-19 information  
14 that's displayed on the inmate channel. And you said you  
15 disagreed with that.

16 But to be clear, you don't disagree that the  
17 jail runs COVID-19 information on the inmate channel, you  
18 just said that the inmate channel is not always on TV.

19 A. Right. Especially during my shift.

20 Q. What's unusual about your shift that would cause an  
21 inmate to not watch the inmate channel?

22 A. They're more awake. You know -- and then they --  
23 you know -- sports, used to be the -- the live sports or  
24 Spanish TV. In one of the pods that -- if you shut off  
25 the TV, it will shut off forever. And I'll put that on

1 3. But that is when they are all racked up, and it's --  
2 the volume is down, and they wouldn't even see that.

3 Q. And especially since there are no live sports on  
4 anymore, do inmates watch other things like the news?

5 A. Yes. And they get a lot of information from the  
6 news.

7 Q. Sure. Information about COVID-19 and other things  
8 going on in the world?

9 A. Yeah, on COVID. And the -- the news is -- the  
10 information changes.

11 Q. And so do you think inmates are able to keep  
12 up-to-date with what is changing in the world with  
13 regards to COVID from the news shown in the pod?

14 A. Well, I think just like with me when I watch the  
15 news. It tells me one thing and then later it's telling  
16 me another thing. It creates confusion with everybody.

17 Q. You talked about the kites process. There are --  
18 there are three ways to make a kite, correct? It could  
19 be done on a kiosk, it could be done on paper, or an  
20 inmate could come to you and make a complaint, right?

21 A. Yes.

22 Q. You mentioned some issues that sometimes occur when  
23 lots of attorneys try to use the virtual visitation  
24 system, but it's correct that attorneys can still come to  
25 the jail and visit in person, correct?

1 A. Yes, they can. I haven't seen that a lot recently.  
2 But they will come. And they'd go all the way down,  
3 especially if they need documents signed and -- that  
4 traffic has slowed down a lot.

5 Q. And you -- do you think that attorneys are not going  
6 to the jails much because they're afraid of getting the  
7 virus?

8 A. Yeah. And also, they want to use the video  
9 conference. That is a good option for the people. And I  
10 think that they are also -- they're trying to get  
11 together to work out deals so they can, you know, reduce  
12 the population and work on this crisis.

13 Q. And to be clear, it is not just attorneys who can  
14 use the video visitations; anyone can use the video  
15 visitation, right?

16 A. The ones that are 12 and 13, those are mostly for  
17 the attorney visits. For the family visits, that is done  
18 in the -- in the pod.

19 Q. And the attorney visits are 12 and 13 because 12 and  
20 13 are isolated. You can shut the door and not be heard?

21 A. It is set up for the technology.

22 Q. But the family visits in the pods, they can just do  
23 those from the kiosks that is right there in the common  
24 area?

25 A. Yes. And that was made free after they stopped



1 inmate visitation.

2 Q. Okay. So now an attorney can -- or an inmate can  
3 talk with anyone by the video at no cost to them?

4 A. Yes.

5 Q. You -- Mr. Barnett read you a statement that  
6 sheriff's office employees impress upon inmates the  
7 importance of social distancing, and you disagreed with  
8 that statement.

9 What I want to know is, do you personally  
10 impress upon inmates the importance of social distancing?

11 A. I do not.

12 Q. Why not?

13 A. I wasn't trained to do so.

14 Q. What kind of training do you think you need to tell  
15 two people to stand six feet apart from each other?

16 A. It should be an order by a sergeant or a lieutenant.  
17 Because a lot of the information we've been getting is  
18 inconsistent, so I don't want to go out there and start  
19 doing things and then to say, who told you to do that.

20 Q. You -- have you been told not to do social  
21 distancing by anyone in the jail?

22 A. I have not.

23 Q. Do you think there is anyone conceivably employed by  
24 the jail would tell you not to do social distancing?

25 A. I do not think that they would not tell me.

1 Q. So that was a double negative and I'm not a big fan  
2 of those.

3 To be clear, do you think it is important to the  
4 jail that social distancing be done?

5 A. Yes.

6 Q. Do you think you'll begin telling inmates to do  
7 social distancing when you see them too close to each  
8 other?

9 A. Absolutely.

10 Q. Mr. Barnett read you a statement about staff in  
11 high-risk areas wearing N95 masks. And I don't recall  
12 whether you agreed or disagreed, but do you agree or  
13 disagree that staff in high-risk areas wear N95 masks?

14 A. I can speak to the area that -- what I witnessed  
15 when I had -- when they had the two inmates -- you know,  
16 one that was in the -- the time-out cell waiting to be  
17 transferred and the other one that was in visitation  
18 waiting to be transferred.

19 We -- we weren't -- we didn't have the correct  
20 protective equipment.

21 Q. Did you have masks?

22 A. We had masks, yeah.

23 Q. Did --

24 A. But we didn't have -- we had gloves, but we didn't  
25 have the overalls or the coveralls I see some of these --

1 the nurses wear.

2 Q. Sure. You didn't have a gown.

3 Do you know what is meant by high-risk areas of  
4 the jail in the statement Mr. Barnett read you?

5 A. I would see it as an area where it's locked down or  
6 quarantined or a person that has the symptoms.

7 Q. Okay. And in your floor when people become  
8 symptomatic, they're taken away, correct?

9 A. In the two -- two examples that I've given, they  
10 weren't -- there was a wait. And then we didn't even  
11 know what was going on, so we had to assess the situation  
12 and just go from there.

13 Q. So let's talk about those two situations. The --  
14 were both of those inmates eventually taken off your  
15 floor?

16 A. Yes.

17 Q. Okay. How long is -- do you mean by eventually?

18 A. Yes, I'd say anywhere between three and four hours.

19 Q. Who took them off the floor?

20 A. I don't know who took them, who transferred them.

21 Q. Okay. Do you know what the people who transferred  
22 them were wearing, in terms of PPE?

23 A. Yeah, I do not.

24 Q. Okay. Do you know --

25 A. I just remember turning around when I was in the pod

1 and then seeing them, that they were cleaning the pod.

2 Q. Okay. So the person was taken away and then the pod  
3 was cleaned?

4 A. The time-out cell, the small little cell that he was  
5 at, it was cleaned up after.

6 Q. And is that one of those instances of cleaning you  
7 mentioned that was done by a private vendor?

8 A. Yes.

9 Q. And you don't work at a jail hospital, correct?

10 A. I do not. I have sometimes in the clinic if they --  
11 if the nurse is going to work with someone sometimes I  
12 have to stand guard so that the nurse is not alone. And  
13 that happened recently.

14 Q. Okay. How recently?

15 A. I'd say within the last week and a half. The  
16 gentleman that had to do the wound care, at that time  
17 they did it in the nurse thing. The pod wasn't on  
18 lockdown so I had to sit and, you know, just watch  
19 because it was -- with the nurse and she didn't want to  
20 be alone so I had to stand and watch.

21 Q. Okay. Mr. Barnett read you a statement that said  
22 the jail currently has adequate mask supplies, and you  
23 disagreed; is that correct?

24 A. Yes.

25 Q. And you disagreed because you can't get an N95 mask?

1 A. Right. And previously, you know, there wasn't any  
2 masks.

3 Q. And --

4 A. Before the lawsuit, there wasn't any masks.

5 Q. Before the lawsuit, were symptomatic inmates  
6 required to wear masks?

7 A. From what you shared with me now.

8 Q. I want you to say what you know, yourself, whether  
9 before the lawsuit symptomatic inmates were provided  
10 masks.

11 A. I believe it was not -- oh, for symptomatic ones?

12 Q. Correct.

13 A. I'm not sure.

14 Q. Okay.

15 A. I'd say yes, that they have to wear them, are  
16 supposed to wear them.

17 Q. Before the lawsuit?

18 A. I'm not sure.

19 Q. You don't know one way or another whether  
20 symptomatic inmates were given masks or what they were  
21 supposed to wear?

22 A. I thought you were talking about for the guards, if  
23 we -- we needed masks before the lawsuit. That's what I  
24 thought you were talking about.

25 Q. Okay. Sure. Let's be clear.

1           Before the lawsuit you were supposed to wear a  
2 mask, right?

3 A.    Right. We didn't have masks before the lawsuits.

4 Q.    Okay. Mr. Barnett read you a statement that said  
5 that at any point if COVID-19 is suspected or confirmed,  
6 inmates are removed. We talked about this. I think you  
7 agree with that statement; it may not always be fast  
8 enough to your liking?

9 A.    Uh-huh.

10 Q.   And you mentioned, you have some medical training?

11 A.    I have a two-year degree as a clinical medical  
12 assistant.

13 Q.   But you are not -- you're not here to talk about  
14 what makes a person high risk for COVID-19?

15 A.    That's true, I'm not.

16 Q.   And I appreciate that you testified earlier that you  
17 just want to help and you just want a solution to this.

18           And the -- Mr. Barnett asked you whether it  
19 would be possible if you reduced population at the jail  
20 by two-thirds to accomplish social distancing. Did you  
21 agree with that or no?

22 A.    Yes. I -- that was from the Judge, she was asking,  
23 you know, about that, and I -- I was agreeing with that.  
24 If it was 20 inmates instead of 64, and then we had some  
25 consistent information that we can go on that would not

1 change too much -- and that's not blaming anybody -- yes,  
2 that could make big, big improvements.

3 Q. And when you talk about reducing the population of  
4 the jail, you are speaking only to what you have observed  
5 of how you work in the South Tower?

6 A. I'm speaking specifically only to the South Tower.  
7 That is the only thing I know; that is the only area I  
8 know.

9 Q. Because you don't have any knowledge of what the  
10 conditions are like in any other parts of the jail?

11 A. No, not to the extent that I know the South Tower.

12 Q. And you know, when you talk about the jail  
13 population and it's just to your knowledge of the South  
14 Tower being reduced by two-thirds, are you aware of the  
15 relief that the plaintiffs have asked for in this case?

16 A. I'm not aware what they're asking for.

17 Q. Okay. You are not aware that Plaintiffs have asked  
18 the Judge to order that people who are at high risk for  
19 COVID-19 be released from jail?

20 A. I think that I saw something like that in the news,  
21 but I didn't see that they wanted two-thirds reduced or  
22 anything.

23 Q. Do you think it is a good idea to release two-thirds  
24 of the people who are currently in the jail?

25 A. We'd definitely have to work out a way to do that.

1 Yeah, that would cause a lot of, you know, hardship. If  
2 it's folks with -- you know, that are nonviolent and  
3 they'd have to meet a certain criteria, not just -- you  
4 know, anyone that was violent or anything. Public safety  
5 absolutely has to be considered.

6 Q. Sure. And I know that --

7 A. There is no easy answer.

8 Q. And I certainly agree with that. And you are not  
9 saying today that you are supporting a release of persons  
10 accused of violent crimes from the Dallas County jail?

11 A. Right. They'd have to meet a certain criteria. And  
12 also, a place for these folks to go and they'd have to be  
13 quarantined up to 14 days.

14 Q. And where are you getting that 14 days from?

15 A. When someone's put into quarantine for -- just like  
16 if I go and get tested Thursday and it comes back  
17 positive, I have to get quarantined for 14 days. And  
18 that's what I heard. It may change between now and then.

19 But that is what -- but, yeah, there would be a  
20 way -- I was just using that example that if you are  
21 going to release people, you'd want to do it -- and I  
22 have seen reduction at the jail and that's been amazing.  
23 Because when you go into a pod where there were 64 and  
24 now it's like 40 or 30, it's night and day. It is -- it  
25 is a big difference.



1 Any reduction is a big difference.

2 Q. Yeah, so let's talk about that. You have noticed a  
3 reduction in the jail. You say it's night and day from  
4 what you have seen before. And that's happening right  
5 now, right?

6 A. Yes.

7 Q. And were you aware that Sheriff Brown has sent a  
8 letter to law enforcement agencies asking them to cite  
9 and release people as opposed to bringing them to the  
10 Dallas County jail?

11 A. Yes, because less people are coming in.

12 Q. And --

13 A. Before -- lots of people coming in and lots of  
14 people would be -- you know. And what I'm seeing now too  
15 is, folks that are supposed to go to Tarrant County or  
16 they're supposed to go to -- those places won't take  
17 people from Dallas County, so that is also something to  
18 consider.

19 Q. Okay.

20 A. I might be slowing it down for you guys -- or us.

21 Q. Yeah. So what do you mean by you guys when you just  
22 said that?

23 A. I said us, for us. It might be slowing down the  
24 process to have people leaving the jail. Because you  
25 know, Tarrant County won't take their holds, Texas

1 Department of Justice, they won't take them. So it's a  
2 very complicated issue.

3 Q. Sure. And do you have a sense whether there are a  
4 lot of people who are on holds like that in the jail  
5 right now?

6 A. Yeah, there is a good amount. Because they share  
7 that with me, that they're just in limbo, that they  
8 signed a deal and they're supposed to go somewhere and,  
9 you know, they're chain ready.

10 Q. Okay. And you -- you are around -- a lot of  
11 inmates. Do you have a sense of what those inmates were  
12 charged with? Of course I don't know what access you  
13 have.

14 A. I have access to see what they were charged with.

15 Q. Do you have a sense of whether most of the inmates  
16 you supervise on a daily basis are accused of felonies or  
17 accused of misdemeanors?

18 A. Well, it's the lower-level things on the first  
19 floor. When I do the overtime and I'm on the third floor  
20 it's more of the behavioral things like family violence,  
21 assault on people.

22 Q. Okay. And do you think Sheriff Brown's decision to  
23 ask law enforcement agencies to start citing and  
24 releasing more people was a good one?

25 A. Yes, to help reduce the population, yes.

1           MR. STEPHENS: That is all I have for Mr. Lewis.  
2 I'll pass the witness, unless the Judge has any questions  
3 she'd like to ask him.

4           THE COURT: I don't have any right now. Are  
5 there any other questions from other defense counsel  
6 before I ask Intervenors? Okay.

7           THE WITNESS: Is there anything -- a way I can  
8 clarify, Judge, anything?

9           THE COURT: Sure.

10          THE WITNESS: These shakedowns, is a shakedown  
11 when a new inmate comes in, and that's where you pat them  
12 down and everything. And then there is also a shakedown  
13 when you are in the pod and you have to check their area.

14          So I was wondering which one did they freeze?

15 Q. So you're talking about two things, right? You are  
16 talking about a -- a search that's done of the person  
17 when they are very first brought to jail, correct?

18 A. I'm talking about when they come on the floor and we  
19 pat them down. Because they have come over to our tower,  
20 so we have to check them. And we -- we check them, check  
21 them and everything.

22          So I was just -- were you talking about  
23 that, that was suspended or checking the bunks?

24 Q. No. So that is the search that is done when the  
25 inmate first comes to the floor right after being brought

1 to the jail; I'm talking about what you discussed with  
2 Mr. Barnett.

3 A. Which shakedown did they suspend?

4 Q. It's when you go into the tank.

5 A. Like when you are first coming off the floor. So if  
6 they come back from like, kitchen or booking we're not  
7 supposed to be checking them when they come back in?

8 Q. That's the search. I'm talking about what you  
9 talked about with Mr. Barnett, you went into quite a bit  
10 of detail about shakedowns and how often you do them.

11 A. Shakedowns are at the bunks. So you're saying those  
12 are suspended?

13 Q. Correct, that is what I'm talking about.

14 A. Those are still being done. Not just by me, but by  
15 everyone. Just I wanted to clarify, just because that  
16 word shakedown could be used two ways.

17 Q. Okay. Thank you for the clarification. I  
18 appreciate it. Lot of terminology floating around and it  
19 is helpful to define what we're talking about.

20 THE COURT: Very helpful to the Court. That was  
21 a good question. Thank you, Officer Lewis.

22 And thank you, Mr. Stephens, for the follow-up.

23 Intervenors, do you have any questions?

24 MR. BIGGS: Yes, quickly, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. BIGGS:

2 Q. Officer Lewis, can you hear me?

3 A. Yes, I can.

4 Q. If at any point I start speaking too quickly or my  
5 voice drops off, let me know. I'll try to slow down or  
6 speak up, all right?

7 A. Yes.

8 Q. All right. My name's Adam Biggs and I represent  
9 State Intervenors in this case, that is the State of  
10 Texas, the governor, as well as the attorney general.

11 I'm not going to try to duplicate a lot of the  
12 efforts, a lot of questions that were just asked. So I'm  
13 going to move a little quickly, okay?

14 A. Yes.

15 Q. You'd agree with me that the jail has indeed taken  
16 steps to protect inmates and guards in response to  
17 COVID-19, correct?

18 A. Yes.

19 Q. You'd agree with me that they have suspended  
20 in-person visitation, correct?

21 A. Yes.

22 Q. They've instituted temperature checks for guards,  
23 correct?

24 A. I would say those are flawed, with the temperature  
25 checks, because of what I mentioned earlier.

1 Q. Sure. I understand. And I listened to Mr. Barnett  
2 ask you questions about it. For the sake of this,  
3 temperature checks have been instituted for the guards,  
4 correct?

5 A. Yes.

6 Q. Guards are given gloves, correct?

7 A. Yes.

8 Q. Guards are given masks, correct?

9 A. Yes.

10 Q. In fact, guards are given two different types of  
11 masks, correct?

12 A. That is not correct.

13 Q. Well, you showed us two different types of masks,  
14 correct?

15 A. Right. But we're not, you know, given -- like these  
16 ones now were mostly, you know, getting -- that I've  
17 seen, you know, this was just like, a one-off thing. So  
18 I don't know if it is going to be a consistent thing.

19 Q. Sure. Let me ask you this: You have two types of  
20 masks in your possession currently, right?

21 A. Yes.

22 Q. And other guards have the same two masks, correct?

23 A. Yes.

24 Q. Inmates also have masks, correct?

25 A. Yes.

1 Q. There have been signs posted about COVID-19  
2 throughout the jail, correct?

3 A. In my area, I haven't seen it much.

4 Q. But you have seen some signs, correct?

5 A. Yes, in my area of the -- just a few.

6 Q. And you are aware about signs that may be posted  
7 elsewhere, correct?

8 A. Correct.

9 Q. You also agree with me that inmates have access to  
10 soap, right?

11 A. Yes.

12 Q. That soap is in their possession, it's handed out to  
13 them, correct?

14 A. Yes.

15 Q. There's also extra behind the desk, correct?

16 A. Yes.

17 Q. There is also a bar over at the sink, correct?

18 A. Yes.

19 Q. Are you aware of any study about the existence of  
20 COVID-19 on bars of soap?

21 A. I'm not aware of that.

22 Q. You'd agree with me that the sheriff, as mentioned  
23 earlier, has asked law enforcement to implement more  
24 cite-and-release policies, you are aware of that?

25 A. Yes.

1 Q. And you also agree with me that inmates are given  
2 cleaning supplies when they request them, correct?

3 A. Yes.

4 Q. Some even include bleach solutions, correct?

5 A. Yes.

6 Q. Inmates can get hand sanitizer from yourself or  
7 other guards at their request, right?

8 A. Yes.

9 Q. And you are not going to stop an inmate if they want  
10 to clean outside of those three designated times,  
11 correct?

12 A. Right.

13 Q. And are you aware of any other guard that would stop  
14 an inmate from cleaning when they aren't normally  
15 supposed to be?

16 A. Possibly. You know, some guards have different  
17 rules, I --

18 Q. But my question was, are you aware of any guards  
19 that have stopped individuals?

20 A. They -- they make their own rules with the pods.  
21 They could stop someone from cleaning. A lot of times,  
22 if I may, an inmate will want to be around, you know,  
23 saying he is cleaning because that gets him off the bunks  
24 and everything. And a guard could order them back.

25 And I have seen that. Like I have walked into a



1 pod and this gentleman is you know, supposed to be  
2 cleaning, but he is talking to his people. And the guard  
3 from previous --

4 Q. Sure, sure.

5 A. -- will stop them from cleaning.

6 Q. Sorry. My question relates more to COVID-19-related  
7 cleaning.

8 So you know, if someone today, like when you are  
9 at a shift, wanted to clean outside of those three  
10 designated periods, you are not going to stop them,  
11 correct?

12 A. I'm not.

13 Q. And you have not witnessed anybody stopping somebody  
14 from cleaning in response to this COVID-19 pandemic,  
15 correct?

16 A. Correct.

17 Q. And in fact, the jail is now using professional  
18 vendors to come in and clean, correct?

19 A. Yes.

20 Q. And in fact, they're even shutting down pods after  
21 there's instances where individuals may be symptomatic or  
22 confirmed in that pod, correct?

23 A. Yes.

24 Q. And you'd agree with me that's unusual in the jail  
25 setting to shut down an entire pod, correct?

1 A. Yes.

2 Q. You'd agree that is an extraordinary step, right?

3 A. Yes.

4 Q. So that's all I wanted to talk about right now.

5 But that list of things I just listed for you,  
6 you'd agree with me that those are reasonable steps in  
7 response to COVID-19, correct?

8 A. Yes.

9 Q. What beyond what I just named and Defense counsel  
10 asked you about would you have a jail do in response to  
11 COVID-19 besides that?

12 A. I think when I was speaking about the Judge and we  
13 were talking about sharing, looking at ways to reduce the  
14 population in a -- continue to do that in a safe way.  
15 And to you know, up the training.

16 And if folks have questions, you know, maybe  
17 there's a liaison that the DSOs, inmates, and others can  
18 go to outside of the sergeants and the lieutenants and it  
19 is not a way of -- anyone sees us breaking rank.

20 Q. Let me ask you about the reduction in population.  
21 You mentioned earlier that you saw something about  
22 violent inmates causing a public safety issue or  
23 something along those lines. Do you recall that?

24 A. If violent -- if they are let out, yeah, that's --  
25 that's a danger to the public.

1 Q. And in fact, you mentioned that a reduction in  
2 population would have to be done in a safe way, right?

3 A. Absolutely.

4 Q. And that safe way required this Judge to look at  
5 each individual by themselves and assess their criminal  
6 history, their behavior, as well as other characteristics  
7 in your view?

8 MR. BARNETT: Object; lack of foundation, calls  
9 for an expert conclusion.

10 (Brief pause.)

11 MR. BIGGS: Judge, I believe you are on mute,  
12 potentially.

13 THE COURT: I'm sorry. So you won't hear me  
14 typing. I -- note your objection for the record; I  
15 overrule it.

16 So please answer that, Officer Lewis.

17 A. So the 60 to 20, I used that as an example. When  
18 we -- when I was talking with the Judge.

19 So, yeah, you would have to consider the  
20 different circumstances that the inmates have.

21 Q. I guess that's the point I'm making. You'd agree  
22 with me that in order to safely reduce the population and  
23 not endanger public safety, you are going to have to look  
24 at the circumstances for each inmate, correct?

25 A. That should be considered.

1 Q. What date was this lawsuit filed?

2 A. I'd say now, I'd say around 10 or 11 days ago, a  
3 week and a half ago or something like that, two weeks.  
4 I'm not sure of the exact date.

5 Q. Okay. So you don't know the exact date the lawsuit  
6 was filed, correct?

7 A. Correct.

8 Q. So if I were to ask you specific dates when these  
9 particular responsive measures were put into place, would  
10 you be able to tell me the exact dates those went into  
11 effect?

12 A. I would not.

13 Q. Okay. How did you first learn that this lawsuit had  
14 been filed?

15 A. The news.

16 Q. Did you reach out to the plaintiffs' counsel in this  
17 case saying you wanted to testify?

18 A. To testify, no, I didn't reach out to testify.

19 Q. Well, then how did you end up testifying in this  
20 case?

21 A. I was subpoenaed to testify.

22 Q. Sure. But how did they know to send you a subpoena?

23 A. I reached out to say if there is any way people can  
24 get involved.

25 Q. Who did you reach out to?

1 A. To -- who did I reach out to? To this lady,  
2 Texas -- Diana, with the Texas Jail Project, and she had  
3 a referral for me.

4 Q. Was that via e-mail or telephone?

5 A. I believe it was Facebook Messenger.

6 Q. And you said it was with the Texas Jail Project; is  
7 that right?

8 A. Yeah, yeah, a lady by the name of Diana.

9 Q. What is the Texas Jail Project?

10 A. It's a organization that helps with the -- like with  
11 criminal justice and helping with the jails and  
12 overpopulation, I believe.

13 Q. Sure. You'd agree with me that is a special  
14 interest group that focuses on criminal justice reform,  
15 right?

16 A. Right.

17 Q. And you'd agree with me that that's a group that  
18 would be inclined to see the jail reduced by 60 percent,  
19 correct?

20 A. Yes.

21 Q. And that's the group that --

22 A. I wouldn't go 60 percent, but reduced.

23 Q. Okay. And you'd agree with me that that was the  
24 particular group that connected you to the plaintiffs in  
25 this case.

1                   Who did they tell you to speak to?

2     A.    I got referred to my attorney, John Eichman.

3     Q.    You got referred to your attorney?

4     A.    Yeah, I got -- I got referred to an attorney that  
5    could help me to get involved.

6     Q.    Okay. And so let me make this clear: I'm not  
7    asking what you discussed with your lawyer specifically.  
8    None of that.

9                   But was Mr. Eichman your lawyer prior to you  
10   volunteering to testify in this case?

11   A.    Was he retained as my lawyer?

12   Q.    Yeah, or was he your lawyer, was he working on your  
13   behalf before you reached out to a special interest group  
14   about testifying in this case?

15   A.    I first learned about him through my --

16   Q.    Through Diana, you said?

17   A.    Yeah. And she recommended Mr. Eichman. And then I  
18   retained him to be my attorney.

19   Q.    All right. One second, let me make sure I have  
20   everything.

21                   You'd agree with me that an inmate can drop a  
22   grievance by giving you, the guard, a piece of paper  
23   saying, here is my grievance, correct? That can still  
24   occur, right?

25   A.    Yes. And most of them are done through the kiosks.

1 Q. But it can also be done via writing on a piece of  
2 paper, right?

3 A. Yes.

4 Q. And for the medical kites, those can be done by  
5 writing on a piece of paper, correct?

6 A. Yes.

7 Q. And inmates have paper to draw up those kites,  
8 correct?

9 A. Yes, we'll give it to them.

10 Q. And is that your practice, you give them a piece of  
11 paper and pencils or pens whenever they ask for them?

12 A. Yeah, and we give them the -- the kite that's in a  
13 paper form.

14 Q. Okay. What about grievances, do you give them  
15 papers so they can write out grievances?

16 A. Yes. First we refer them to the kiosk. And if they  
17 don't know how to use that, then we -- we can give them a  
18 paper for the -- for one of the older ones.

19 Q. And the kiosk is still operating as of your last  
20 shift, correct?

21 A. Yes.

22 Q. No one's shut the kiosks down and said you can't use  
23 them anymore, right?

24 A. No, but there are times where the kiosk is broken or  
25 it is not working and it has to be reset.

1 Q. Okay. One last set of questions. I'm going to go  
2 back to how you got involved in this case just really  
3 briefly.

4 So you sent an e-mail or a Facebook message to  
5 Diana at the special interest group. What happens next?

6 A. She reached out to me and she told me that, here is  
7 an attorney that is interested in representing the  
8 guards' point of view.

9 Q. So she conveyed to you that there was an attorney  
10 looking for clients so they could come testify in this  
11 case; is that fair?

12 A. That was interested in representing the guards.

13 Q. Okay. And are you paying Mr. Eichman for his  
14 representation?

15 A. I am not.

16 Q. Okay. Do you know if someone else is paying him on  
17 your behalf?

18 A. I do not know this.

19 Q. And have you signed a retainer agreement with  
20 Mr. Eichman?

21 A. For money or --

22 Q. No, just a representation agreement?

23 A. I have a representation agreement, yes.

24 Q. Okay. Okay. And so after you get with Mr. Eichman,  
25 did you have any conversations with the plaintiffs'



1 lawyers about testifying today?

2 A. I've had a conversation with Barry.

3 Q. How many conversations with Barry have you had  
4 before testifying today?

5 A. I believe it was two conversations.

6 Q. You talked about what you were going to say today?

7 A. I shared my concerns, yeah, that I had for the jail,  
8 and --

9 Q. Uh-huh. Is there anything you were told not to  
10 mention today?

11 A. No, I wasn't told not to mention things.

12 Q. You'd agree with me that no one has told you that  
13 all the changes in response to COVID-19 were in response  
14 to the lawsuit, right?

15 A. No. I just -- that's what I saw. I saw the lawsuit  
16 and then I saw all the things that were starting to  
17 happen at the -- at the jail.

18 Q. So you just said you knew about the lawsuit from the  
19 news, you saw changes, and you just speculated that it  
20 was because of the lawsuit, right?

21 A. Right. And I would -- I thought if -- I thought it  
22 would be very important that the guards would have a say.  
23 Because, you know, you have a -- the inmates and then you  
24 have the -- the upper management, but there was no  
25 perspective from the guards.

1 Q. Uh-huh.

2 A. From what I read.

3 Q. You'd agree with me that upper management is in a  
4 better position to testify for swaying large-scale  
5 changes in the jail in response to COVID-19, correct?

6 A. Yes.

7 MR. BIGGS: I'll pass the witness, Your Honor.

8 THE COURT: Any redirect, Mr. Barnett?

9 MR. BARNETT: Yes, ma'am.

10 REDIRECT EXAMINATION

11 BY MR. BARNETT:

12 Q. Officer Lewis, you were asked about upper management  
13 in the police department. Is anybody, to your knowledge,  
14 in upper management of the sheriff's department, an  
15 expert in correctional medicine?

16 A. Not that I'm aware of.

17 Q. I think you testified in several different ways and  
18 in several -- about social distancing, whether you were  
19 trained to practice it or to instruct it to have other  
20 people practice it. Do you recall that testimony?

21 A. Yes.

22 Q. In your pod with 60 or so detainees in there, is --  
23 this is a raw human physical matter, can you have social  
24 distancing in that environment?

25 A. No.

1 Q. And I think when Judge Brown was asking you some  
2 questions, you offered I think you said 16 to 20 would be  
3 a number where that could happen, at least theoretically;  
4 is that correct?

5 A. Yes.

6 Q. So your view is that pods would need to be down to  
7 16 to 20 people for social distancing that is required in  
8 other environments is physically possible in the pods in  
9 the South Tower; is that right?

10 A. Yes.

11 Q. And are you aware that an important part of the  
12 relief that the plaintiffs are asking for in this case is  
13 to have an expert appointed by the Court to go inspect  
14 what the actual conditions are throughout the jail, not  
15 just in your parts of it that you testified earlier  
16 about; do you agree with that?

17 A. I was unaware of the relief that they were  
18 requesting.

19 Q. Counsel asked if you thought it would be a good idea  
20 for, I guess, upper management to weigh in on this.

21 Do you think it would be a good idea for an  
22 expert in correctional medicine to assist the Court in  
23 making the hard decisions that need to be made in order  
24 to save lives and protect health?

25 A. Yes.

1 MR. BARNETT: No further questions, Your Honor.

2 THE COURT: Does anyone have any objection to me  
3 releasing this witness not subject to recall, any  
4 objections from Defendants?

5 MR. STEPHENS: No, Your Honor.

6 THE COURT: Any objection from Intervenor?  
7 Mr. Biggs?

8 (Off-the-record discussion.)

9 MR. Eichman: There was I think a missing  
10 question created a moment ago by the Attorney General's  
11 questions about my involvement. My involvement in this  
12 matter --

13 THE COURT: If you could -- you don't have to --  
14 I understand, Mr. Eichman. I do want to hear this, sir,  
15 I do want you to clarify it. But I do want to wait until  
16 we have everyone here. So if you don't mind holding just  
17 a moment. I just want to make sure we have everyone here  
18 and give the opportunity to respond.

19 MR. Eichman: Thank you.

20 THE COURT: Sure.

21 MR. BIGGS: Judge, I think I fell off the call.  
22 I apologize.

23 THE COURT: That's okay. I just want to make  
24 sure that -- what was the last thing that you heard?

25 MR. BIGGS: I heard probably the first two

1 minutes of the redirect. Other than that, I apologize.  
2 I was trying to get on as fast as I could. I figured  
3 quicker to get on than to text Ms. Monk.

4 But I -- it was something about clinical  
5 medicine and upper management, something, that was the  
6 last thing I recall.

7 THE COURT: Okay. It was essentially -- and  
8 tell me, feel free to disagree if I'm not giving an  
9 accurate synopsis, but that this witness is only a lay  
10 witness and he is only testifying from his personal  
11 experience and that part of the reason he can't testify  
12 to medical specifics and in more clinical details is  
13 because there is an expert who's been hired to do just  
14 that later in their presentation.

15 Is that a fair synopsis?

16 MR. BARNETT: Yes, Your Honor.

17 THE COURT: All right. So that is what you  
18 missed.

19 MR. BIGGS: Not too worried about that, Your  
20 Honor. Thank you.

21 THE COURT: Okay.

22 Do you have any objections to me releasing  
23 Officer Lewis from his -- from -- from court, not subject  
24 to recall, so he can go about his duties?

25 MR. BIGGS: He is free to go as far as State

1 Intervenor are concerned, Your Honor.

2 THE COURT: Okay. Great. Mr. Lewis, thank you  
3 so much for being here today. The Court appreciates your  
4 testimony. It was very helpful. It took courage to do  
5 this and I appreciate you coming forward and -- and  
6 talking about what concerns you. So thank you for being  
7 here today.

8 Your attorney wanted to visit with us, so I'll  
9 give you an opportunity do that, sir.

10 MR. Eichman: Thank you, Your Honor.

11 Again, this is John Eichman and I'm representing  
12 Officer Lewis. And I'm doing so on a pro bono basis.  
13 Contrary to the implication that the Attorney General was  
14 attempting to create, I am not being compensated nor  
15 seeking compensation from anyone with respect to my  
16 involvement in this matter.

17 And as an officer of the court, I wanted the  
18 Court to be aware of that fact and to correct that  
19 misimpression, so I appreciate the opportunity to be able  
20 to do that, Your Honor.

21 THE COURT: Thank you. And I applaud you for  
22 taking on such an important pro bono case.

23 MR. BIGGS: Your Honor, may I be heard?

24 I want to apologize. That was not my -- that  
25 wasn't what I was trying to do, sir. I apologize. I was

1 trying to figure out exactly what was the situation, so  
2 again, I apologize for any sort of offense.

3 THE COURT: Okay. Thank you. I took no  
4 negative implications from the questioning or from the  
5 answering and applaud everyone here for taking a case of  
6 such importance to Texas and to the people who are  
7 incarcerated and their families.

8 I'm going to take this very seriously and do my  
9 very best to carve out a remedy that -- you know, if the  
10 hoops are jumped through and it's appropriate, the law  
11 requires it that will fit the situation. So thank you  
12 everybody for being here today.

13 I think now is a good time to break since we  
14 have no chance of wrapping up today. Would 9 o'clock  
15 start -- start for everyone? That be good? Give me a  
16 thumbs up if 9 o'clock works? Mr. Hill, all right, I see  
17 that, sounds like everybody's good.

18 So if you'll have your witnesses available we'll  
19 get this knocked out tomorrow. I'm going to try to get  
20 to a decision as quickly as I can. I know this is  
21 time-sensitive.

22 I saw some excellent advocacy here today and  
23 I've been honored to referee this. So thank you for  
24 being here today and for your attention and for your good  
25 questioning and good lawyering. And we will see you back

1 in court tomorrow at 9:00 a.m.

2 If any emergencies pop up that I need to be  
3 aware of, I'll ask you -- we'll take a couple of minutes  
4 before we go live tomorrow to talk about any concerns we  
5 need to address privately before we go online. So if  
6 there is anything I need to know of, just hold onto it  
7 and I'll ask you first thing in the morning. If any  
8 true, bona fide emergencies happen I need to be aware of,  
9 you've got Erica Monk's cell phone. She's -- she can  
10 reach out to me anytime.

11 So if there is a true life-or-death crisis I  
12 need to be aware of that -- that cannot wait until  
13 morning, then light her up and she'll get ahold of me.  
14 With that said, y'all be safe and we will see you  
15 tomorrow.

16 Court is in recess. Thank you again, Officer  
17 Lewis, for coming forward.

18 (Court in recess, 6:34 p.m.)  
19  
20  
21  
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23  
24  
25



1 I, BROOKE N. BARR, United States Court Reporter for  
2 the United States District Court in and for the Northern  
3 District of Texas, Dallas Division, hereby certify that  
4 the above and foregoing contains a true and correct  
5 transcription of all proceedings in the above-styled and  
6 -numbered cause.

7 WITNESS MY OFFICIAL HAND this the 27th day of April,  
8 2020.

9  
10  
11  
12 /S/ BROOKE N. BARR  
13 BROOKE N. BARR, CSR NO. 6521  
14 CSR Expiration Date: 12/31/21  
15 United States Court Reporter  
16 1100 Commerce Street  
17 Room 1376  
18 Dallas, Texas 75252  
19 (214) 753-2661  
20  
21  
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BROOKE N. BARR, CSR (214) 753-2661

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OSCAR SANCHEZ, et al, \* 3:20-CV-00832-E  
Plaintiffs, \*  
v. \* DALLAS, TEXAS  
SHERIFF MARIAN BROWN, et al, \*  
Defendants. \* APRIL 22, 2020

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TRANSCRIPT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER  
BEFORE THE HONORABLE ADA E. BROWN  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

COUNSEL FOR THE PLAINTIFFS:

MS. ANDREA WOODS  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2528  
awoods@aclu.org

MR. BARRY C. BARNETT  
SUSMAN GODFREY, LLP  
8115 Preston Road, Suite 575  
Dallas, Texas 75225  
(866) 754-1900  
bbarnett@susmangodfrey.com

MS. AMY B. FETTIG  
AMERICAN CIVIL LIBERTIES UNION  
NATIONAL PRISON PROJECT  
915 15th St. NW, 7th Floor  
Washington, DC 20010  
(202) 548-6608  
afettig@aclu.org

MR. HENDERSON HILL  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
201 W. Main St., Suite 402  
Durham, North Carolina 27701  
(919) 682-9563

COUNSEL FOR THE DEFENDANTS:

MS. KATHARINE D. DAVID  
MR. BEN STEPHENS  
MR. NICHOLAS DAVID STEPP  
HUSCH BLACKWELL, LLP  
600 Travis St., Suite 2350  
Houston, Texas 77002  
(713) 525-6258  
kate.david@huschblackwell.com  
ben.stephens@huschblackwell.com  
nick.stepp@huschblackwell.com

1 COUNSEL FOR THE INTERVENORS:

2 MR. ADAM ARTHUR BIGGS  
3 OFFICE OF THE TEXAS ATTORNEY GENERAL  
4 PO Box 12548  
5 Austin, Texas 78711  
6 (512) 320-2120  
7 adam.biggs@oag.texas.gov  
8  
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C H R O N O L O G I C A L   I N D E X

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1 (P R O C E E D I N G S)

2 THE COURT: The Court calls Cause Number  
3 3:20-CV-00832. We're on the record. This is Sanchez, et  
4 al, versus Dallas County Sheriff, et al.

5 And Plaintiffs' counsel, Mr. Barnett, you have  
6 the floor.

7 MR. BARNETT: Thank you, Your Honor. Good  
8 morning.

9 THE COURT: Good morning.

10 MR. BARNETT: I believe our next witness will be  
11 Dr. Cohen, and Amy Fettig will be presenting him.

12 (Off-the-record discussion.)

13 THE COURT: Ms. Fettig, I am ready when you are.

14 MS. FETTIG: Excellent. Good morning, Your  
15 Honor.

16 I'd like to call as the Plaintiffs' next witness  
17 Dr. Robert Cohen.

18 THE COURT: And before we start on the  
19 substance, I'm getting a little feedback. I want to make  
20 sure we get the sound right.

21 (Off-the-record discussion.)

22 THE COURT: If you don't mind just talking for a  
23 few seconds, tell me where you're from and we'll try  
24 that.

25 MS. FETTIG: I am from Washington, D.C. I'm

1 sitting in the District right now. And is the sound  
2 better?

3 THE COURT: It is. It's a little better, yes.

4 And, Dr. Cohen, do you mind introducing yourself  
5 and telling me where you are from so we can do a little  
6 sound check?

7 THE WITNESS: No, Judge, of course not.

8 I'm from New York City and I live in New York  
9 City and I'm in my apartment right now in Manhattan.

10 THE COURT: Great. Glad to have you here.

11 I think the sound check's good. Give me a  
12 thumbs-up if you can hear Dr. Cohen and Ms. Fetting.

13 And we're -- looks like we lost Ms. Davis [sic].  
14 I think she popped out for a moment. I'm sorry,  
15 Ms. Davis. So let's wait until she gets back. And as  
16 soon as she returns, I think we'll be ready to proceed.

17 (Off-the-record discussion.)

18 MR. STEPHENS: Your Honor, we can proceed.

19 THE COURT: Okay. Just for the record, I just  
20 want to make clear, this is Mr. Stephens, you -- you're  
21 comfortable proceeding without Ms. Davis?

22 MR. STEPHENS: She was getting a cup of coffee  
23 and will be back in front of her computer in ten seconds.

24 THE COURT: Great, sounds good. Well, in that  
25 case -- oh, here she is. All right, we've got everyone



1 here. I'll give her a moment.

2 All right. If everyone not speaking will mute.

3 And with that said, Ms. Fettig, please proceed.  
4 We've got everyone here.

5 MS. FETTIG: Yes, Your Honor. Plaintiffs would  
6 like to call Dr. Robert Cohen to the stand -- to -- as a  
7 witness.

8 THE COURT: Great. And, Mr. Cohen, if you will  
9 raise your hand remotely and be sworn by my court  
10 reporter, please.

11 ROBERT L. COHEN, M.D.,  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FETTIG:

15 Q. Good morning, Dr. Cohen. Could you just start by  
16 stating your full name for the court reporter?

17 A. Robert L. Cohen, C-o-h-e-n.

18 Q. And where are you calling in from?

19 A. New York City, New York.

20 Q. Dr. Cohen, can you first start by telling the Court  
21 about your training and licensure?

22 A. I attended Princeton University. I trained at Rush  
23 Medical College and got my M.D. there. And then I did a  
24 residency and chief residency at Cook County Hospital in  
25 internal medicine, and am board certified in internal

1 medicine.

2 Q. And, Dr. Cohen, can you tell us where you worked;  
3 give us a work history, please.

4 A. I worked as a doctor at Cook County Hospital after I  
5 finished my residency and chief residency, serving there  
6 for two years working in the intensive care unit as a  
7 general medicine attending. And also worked -- I did an  
8 epidemiology project involving the -- trying to  
9 understand the prevalence of epilepsy among men entering  
10 the Illinois Department of Correction from Chicago at the  
11 Joliet State Prison.

12 I then moved back to New York City to be, for a  
13 few months, the associate director and a physician --  
14 chief physician at one of jails on Rikers Island, where I  
15 took care of people; and then became the director of the  
16 Montefiore Rikers Island Health Services, which is a  
17 large -- which was a large system, about 500 people  
18 working for it, which provided medical and mental health  
19 services to the people working on Rike -- well, to all  
20 the jails on Rikers Island and at the Manhattan House of  
21 Detention.

22 Following five years on Rikers Island, went to  
23 work for the New York City Health & Hospitals  
24 Corporation, where I was the vice president for medical  
25 operations. I had responsibilities in that position for

1 medical staff. This is -- this is a -- Health &  
2 Hospitals is a large organization which runs 11 public  
3 hospitals in New York City, a number of nursing homes,  
4 and a large number of ambulatory care facilities.

5 I was the vice president of the medical  
6 operations; I was the chief physician for the public  
7 hospital system in New York. My responsibilities  
8 directly were over nursing, medical care, utilization  
9 review, quality assurance, prison health care, and  
10 whatever else came up during the day.

11 But following that, I -- I started a practice in  
12 general internal medicine and HIV medicine, and became  
13 the -- the director of the AIDS Center at St. Vincent's  
14 Hospital in New York City.

15 St. Vincent's no longer exists. It closed down  
16 about eight or nine years ago. But it was -- it was  
17 located in Greenwich Village in New York City, and was  
18 a -- was at -- the epicenter of the AIDS epidemic. And I  
19 was in charge of a very large AIDS program which provided  
20 comprehensive ambulatory and inpatient care for persons  
21 with AIDS.

22 I also maintained, up until three years ago, a  
23 private practice in general internal medicine, which --  
24 in which I took care of adults with general medical  
25 problems, and many people with HIV infection.

1           Those are the -- my work. And I worked as an  
2 expert in prison health care. I've been appointed by  
3 federal courts in New York, Connecticut, Ohio, Michigan,  
4 Florida to monitor medical care following court -- court  
5 settlements or court orders when medical care was at  
6 issue, constitutionality of medical care was at issue.

7 Q. And Dr. Cohen --

8 A. I was -- yes, go ahead.

9 Q. Go ahead. Go ahead.

10 A. I was going to say, and then I served for 17 years  
11 on the National Commission on Correctional Health Care,  
12 which is a national organization made up of about 30 or  
13 so organizations.

14           It includes the American Medical Association,  
15 the American Bar Association, the American Nurses  
16 Association, the American Psychiatry Association, the  
17 American Psychological Association; National Association  
18 of County Executives; the American Sheriffs' Association.  
19 Many other broad, national organizations of -- of  
20 doctors, nurses, psychologists, therapists, and  
21 correctional organizations.

22           It was -- it was a -- started in the '70s as an  
23 effort to develop standards and accreditation for jails  
24 and prisons around the country, in recognition of the  
25 serious problems that were -- that were common at that

1 time. And it was actually funded by the federal  
2 government initially; now it is -- it is an  
3 independent -- and has been for many years -- an  
4 independent organization, which develops standards and  
5 which accredits jails and prisons according to those  
6 standards.

7 Q. And, Dr. Cohen, I understand you're also a member of  
8 the New York City Board of Corrections. Could you tell  
9 us what that organization does and what your role is on  
10 it?

11 A. Yes. The New York City Board of Corrections is --  
12 was created by New York City. It's -- it is -- it is --  
13 it has a charter from the city -- New York City charter.  
14 It is a nine-member board. Three are appointed by the  
15 mayor, three are appointed by the judges of the First and  
16 Second Departments which cover New York City, although  
17 the mayor has -- has to agree with those appointments; so  
18 essentially the mayor appoints six members, and three  
19 members are appointed by the city council. The terms are  
20 staggered and they are six-year terms. I was appointed  
21 to the city council ten years ago.

22 The Board of Correction has -- has regulatory  
23 authority and they can (unintelligible) laws through the  
24 City Administrative Procedures Act. We -- if there is an  
25 issue that -- that is felt to require a law regarding the

1 jails in New York City, the Board can -- holds hearings.  
2 There's discussions with the Departments of Correction  
3 and any other city agencies that were involved. And then  
4 we -- we hold public hearings; we publish a draft rule.  
5 We then have discussions; and if the majority of the  
6 board votes, then that becomes law of New York.

7 Examples of the kind of laws or rules, or  
8 minimum standards, which is what they're -- which is what  
9 these laws are called, are -- we have minimum standards  
10 for medical care in the jails, minimum standards for  
11 mental health services for the jails.

12 Several years ago we passed a rule saying that  
13 solitary confinement for people under 22 was not allowed  
14 in the New York City jail. We also have rules on  
15 visiting, on recreation, on sanitation. And I'm very  
16 honored to be a member of that group.

17 Q. And in your role with the Board of Corrections, have  
18 you had any opportunity to learn or oversee what's  
19 happening in New York City jails around COVID-19?

20 A. Yes. The Board has been extremely concerned, as has  
21 every person in New York City, of course. But the Board  
22 because of its responsibility to oversee the jail.

23 So the Board has a staff of about 25; half of  
24 whom are monitors -- monitor staff who visit the jails  
25 each day. They have not been visiting the past several

1 weeks because the -- because of the COVID epidemic, in an  
2 attempt to keep as few people who are not absolutely  
3 critically necessary off of the -- off of the facility --  
4 the facility. Although, we do have video observation of  
5 the jail, and we do have daily contact with -- with the  
6 jail.

7 We are very concerned, as was the -- the  
8 Department of Corrections, as was the Correctional Health  
9 Services that -- that this epidemic would have -- have  
10 drastic consequences in the New York City jails.

11 And we -- we held a hearing as -- written in --  
12 early March we wrote a letter to the City, asking many  
13 questions about -- similar to the kind of questions the  
14 judge wrote, asking about what was going on in -- in  
15 Dallas County.

16 We held a board meeting and took testimony from  
17 the Department of Correction and the Correctional Health  
18 Services about what was going on, about what their plan  
19 for taking care of -- for addressing the epidemic that we  
20 knew was coming.

21 On March 17th, the Board of Correction, based  
22 upon what we had known had happened so far -- there was  
23 rapid spread of the virus within the New York City jails,  
24 despite efforts at -- despite the -- the very strong  
25 efforts and planning to try to minimize the spread of the

1 epidemic. And in 19 -- on March 17th, the Board of  
2 Correction unanimously wrote a -- sent a letter to the  
3 City, and to the other public agencies in New York,  
4 suggesting that this epidemic was a -- of a type that had  
5 not been seen before; that it required immediate and  
6 substantial action to decrease the population in the  
7 jails, or to allow the Department of Corrections and  
8 the -- and the Correctional Health Services the capacity  
9 to do the work that they had to do in this -- in what was  
10 going to be an extraordinary circumstance.

11           The next day, the chief of medical services at  
12 the jail, Dr. Ross MacDonald, issued a statement saying  
13 that there was a -- a storm coming and that -- that --  
14 that the jails were going to be -- it was going to crash  
15 into the jails and inundate them, and that it was  
16 critical to release as many people as possible so that  
17 they could do as much as possible to protect the people  
18 who would be there, and to protect themselves and -- and  
19 the staff.

20           The Board issued another letter a few days  
21 later. There -- it was not much activity that happened  
22 immediately after our letter of the 17th. We sent  
23 another letter four days later; which was directed  
24 specifically to the mayor, to the parole department, to  
25 the district attorneys of New York, to the Chief Judge



1 DiFiore of the state of New York, and asked, as we had  
2 asked before, for two groups -- two areas of -- of action  
3 by the City.

4 One was to take out the people who were going to  
5 be getting out very soon anyway, or were -- and those  
6 were, for example, people who were sentenced to short  
7 sentences by the City. There were also people who were  
8 on technical parole violations.

9 And the other group that we talked about was for  
10 people who were medically vulnerable to the virus, and  
11 that -- that we thought were going to -- it was very  
12 important to get this group of -- of men and women off of  
13 the island, because we knew, based upon the data that was  
14 available in New York City already; based upon the  
15 international data that was available, and confirmed by  
16 subsequent in -- over the past month, because it's been a  
17 month already since -- since that -- that this virus  
18 would have devastating consequences on people who were at  
19 high risk or -- but were medically vulnerable.

20 And that in order to let the jails -- allow the  
21 jails to try to function in this incredibly difficult  
22 situation, that getting people who were at risk for  
23 getting really sick within the jail, which would  
24 overwhelm the jail medical capacity, and the security  
25 capacity, moving them around, trying to find a place

1 that's safe; trying to meet all the quarantine  
2 requirements that the CDC and good medicine, you know,  
3 suggests that you do in a situation like this, that if we  
4 could get the people who were the -- who were going to  
5 get really sick out, that that -- that might make it  
6 possible for the medical staff to protect the -- as many  
7 lives as -- as possible.

8 And, in fact, that -- that happened,  
9 substantially. The City identified the most vulnerable,  
10 medically vulnerable, you know, people, and they worked  
11 with the Defense Bar and the district attorneys of New  
12 York City to get -- and the judges, to -- and the parole  
13 group as well, to get the medically-vulnerable people out  
14 of the -- out of the jail.

15 Not every single one was removed based upon the  
16 standard CDC and our -- and our recommendations, but  
17 many, many were. And there were about 1,500 people that  
18 were released.

19 Now, I just want to comment, I know that Dallas  
20 did similar work right away to get the people low -- who  
21 were considered to be low risk out, and also stopped  
22 getting people in. And I applaud, you know, the efforts  
23 that were done to do that. But getting the medically  
24 vulnerable out --

25 MR. BIGGS: Judge, can I object? This is just a

1 nonresponsive narrative. If we can get an answer --  
2 question and answer, this would make it easier to follow.

3 THE WITNESS: I'm sorry, I was just trying to be  
4 helpful.

5 MS. FETTIG: We can back up a little.

6 Q. Thank you for that testimony, Dr. Cohen.

7 I wanted to go back and -- you mentioned that  
8 you've been a federal court monitor; but have you also  
9 worked as an expert witness for federal courts?

10 A. Yes, I have. I have been -- in my role -- before  
11 I -- I testified in federal court in Connecticut; I've  
12 testified in federal court in New York State; I've  
13 testified in federal court in Mississippi; I have  
14 testified in federal court in Florida there as -- as an  
15 expert. I've testified in federal court in Ohio and in  
16 Kentucky. I've been -- I've been qualified as an expert  
17 in federal courts.

18 Q. And are you working on any other cases right now in  
19 the federal courts related to COVID-19?

20 A. Yes. I am working in a case in Cook County where  
21 I -- where I worked as a doctor in Cook County jail. I  
22 am working in a case in -- another case in Texas at the  
23 Pack Prison from T -- in TDC. I will be working in a  
24 case involving Maricopa County.

25 I am currently -- not specifically on -- on

1 COVID, although I have been advising and have had a  
2 special meeting with -- in San Luis Obispo County, where  
3 I'm a consultant to the Department of Justice.

4 And we did have a -- a special meeting with  
5 the -- with the SLO County and their medical staff a  
6 couple of weeks ago to discuss their management of  
7 COVID-19.

8 Also, I work as a consultant to the Department  
9 of Justice Hampton Roads in Virginia. And I will be  
10 consulting for them on the county jail's -- regional  
11 jail -- their jail's response to COVID-19.

12 Q. Thank you, Dr. Cohen.

13 MS. FETTIG: Your Honor, we would like to --  
14 Plaintiffs would like to proffer Dr. Robert Cohen as an  
15 expert in the field of correctional medical care under  
16 Rule 702 at this time.

17 Q. So, Dr. Cohen, can you just start by telling us --  
18 describe what COVID-19 is.

19 THE COURT: Hold on just a moment. I want to  
20 see if there's --

21 MR. BIGGS: Can we get a ruling on that?

22 THE COURT: -- yes, I'm sorry. Hang on just a  
23 moment; I had that on mute.

24 Any objection from Defendants as to this  
25 proffer?

1 MR. STEPHENS: Adam, go ahead.

2 MR. BIGGS: We would not object to him  
3 testifying generally on correctional medicine. However,  
4 we would object to any sort of testimony related directly  
5 to Dallas County jail.

6 His report is completely -- just doesn't have  
7 anything to do with Dallas County jail. There's no  
8 evidence he even stepped foot or analyzed anything  
9 occurring in Dallas County jail. But we would limit our  
10 objection to that extent, Your Honor.

11 THE COURT: And Defendants?

12 MR. STEPHENS: -- (unintelligible) qualified as  
13 an expert on Dallas County or its --

14 THE COURT: I'm sorry, Mr. Stephens, we're  
15 getting enough reverb that I think you need to say that  
16 again for the record.

17 MR. STEPHENS: I'm sorry, Your Honor.

18 Join that objection to the extent that they  
19 attempt to offer Dr. Cohen's testimony on Dallas County  
20 jail, its procedures or its efforts, specifically.

21 THE COURT: Well, I have read the motion to  
22 strike and overruled that. I'm going to allow him to  
23 testify.

24 I don't know that he needs to necessarily be  
25 deemed an expert in order to give the Court testimony;

1 but to whatever extent he needs to be deemed an expert,  
2 I'm going to allow him to testify as to -- to this case,  
3 and to give me his opinions. And you've preserved for  
4 appeal your objections to his qualifications.

5 So please proceed.

6 MS. FETTIG: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Q. So, Dr. Cohen, can you please tell us a little bit  
9 about what --

10 THE COURT: Ms. Fettig, if we could stop for  
11 just a moment. Let's do a sound check. I'm getting a  
12 lot of feedback.

13 (Off-the-record discussion.)

14 THE COURT: Please resume. Thank you,  
15 everybody. I appreciate your patience.

16 Q. Thank you, Dr. Cohen. Let's try this again.

17 Can you just tell the Court, generally, what is  
18 COVID-19?

19 A. COVID-19 is a -- is a syndrome which was first  
20 identified last year; that's why it is called COVID-19,  
21 from 2019. And it is caused by a Coronavirus, which is a  
22 kind of virus which infects people who are respiratory --  
23 usually through respiratory spread. Cough and nose  
24 droplets get into people's noses and their mouths and  
25 their eyes, and the virus multiplies in the -- somewhat

1 in the upper respiratory tract; more in the lower  
2 respiratory tract, and causes a series of syndromes. You  
3 can get a cold, you can get a sore throat, you can get a  
4 headache; you get fever.

5 And in the -- in the worse -- and you commonly  
6 develop pneumonia. And the pneumonia can be very, very  
7 severe. And in different -- and the pneumonia can lead  
8 to death.

9 There are other complications of the disease.  
10 We're still learning about it. It appears to have  
11 cardiac effect as well, and renal effect as well, kidney  
12 effect. Many people with the disease who are very, very  
13 sick develop renal failure and require dialysis. It's  
14 not clear exactly whether that's a direct effect of the  
15 virus or of the -- or what happens to the human body when  
16 it breaks down, secondary to loss of oxygen and other --  
17 other auto -- other inflammatory consequences of this  
18 particular virus.

19 So it has a wide spectrum of presentations, but  
20 it can be -- but it can be deadly.

21 Q. Dr. Cohen, is there a cure for COVID-19, or a  
22 vaccine?

23 A. At this time, there is no cure and there is no  
24 vaccine. There is no treatment.

25 Q. Okay. And who is at risk of catching COVID-19?

1 A. Everybody's at risk of catching COVID-19. This is  
2 a -- it's -- it is assumed that this -- at this point,  
3 that this is a new virus. That's why it is -- the term  
4 "novel" is attached to it all the time. Novel meaning  
5 that -- that humans have not been exposed to this virus  
6 before. And although I'm sure, like in any disease,  
7 there are some people who are just naturally immune,  
8 essentially everyone is at risk for -- for becoming  
9 infected with COVID-19.

10 Q. And you mentioned that it is a respiratory disease.  
11 Can you talk -- and that is how it spreads, can you talk  
12 a little bit more about what that means for the spread of  
13 COVID-19, being a respiratory disease?

14 A. Well, it means that when people are -- are -- that  
15 people who live -- who live and work in close contact  
16 with -- with large numbers of people are at -- are at  
17 risk for catching it if the virus exists in their  
18 community.

19 When people cough, the virus is -- is expelled  
20 in droplets, and the droplets can directly contact other  
21 people. And, you know, in certain -- in certain  
22 countries there are enormous rates of severe infection  
23 and death; other places there have not been -- it has not  
24 been so high.

25 But because people -- in areas where people are



1 densely -- work together closely; in large cities in  
2 particular, this virus -- or in nursing homes or in  
3 cruise -- on cruise ships or in jails, this virus can  
4 spread very, very rapidly, because it is respiratorily  
5 spread and the droplets infect people who are close to  
6 the person who coughed.

7 Q. And you have mentioned in your declaration that the  
8 virus has been found in fecal matter. What does that  
9 mean for transmission?

10 A. I think it is -- it is unclear at this point. There  
11 are a number of -- it does have a gastrointestinal  
12 component. There are some people who present with GI  
13 symptoms as the first -- this is not the most common, but  
14 there are people who present initially with  
15 gastrointestinal symptoms.

16 It has been identified in feces, viral  
17 particles. So there are -- some articles have expressed  
18 concern that there's -- it can be spread through a fecal  
19 or, you know, way -- you know, the way certain bacteria  
20 can be. I think it is not clear yet what the  
21 implications of that are, but I -- but we just have to  
22 be -- be careful that we don't -- we don't neglect modes  
23 of transmission that are not -- we're considering right  
24 now, if they turn out to be important.

25 Q. Could that mean that a virus could be transmitted

1 through toilet flushing?

2 A. Well, I don't know -- there is no data that it --

3 MR. BIGGS: Objection; calls for speculation.

4 A. I don't know.

5 THE COURT: Okay. When there is an objection,  
6 Dr. Cohen, please wait.

7 THE WITNESS: I'm sorry, Judge.

8 THE COURT: That's all right. Just -- this is a  
9 strange setup, so it's -- it is hard to remember, kind  
10 of, the rules of the road.

11 Yeah, please don't speculate. So if you don't  
12 know, it's -- it is okay to say you don't know, or that  
13 the science hasn't told us that. So I'll sustain that  
14 objection.

15 Q. Dr. Cohen, does COVID-19 have asymptomatic  
16 transmission?

17 A. Yes, it's -- there is a lot of asymptomatic  
18 transmission. And that may be one of the reasons why it  
19 is -- it is so hard to -- so hard to -- to control.

20 Clearly, 6.5 percent, or something, of people  
21 who are -- are transmitting the virus before they have  
22 any symptoms of it is present, and they're -- and they  
23 can -- they can transmit it.

24 So when we identify people at the point of  
25 symptoms, with fever and a cough, we're -- we're find --

1 we're missing lots of people who are transmitting the  
2 virus.

3 Q. And what measures do we know need to be taken to  
4 prevent COVID-19 spread?

5 A. The -- there are -- the traditional approaches to  
6 controlling an -- an epidemic, with respiratory spread,  
7 apply to COVID-19. And they are to identify the --  
8 identify people who have it, isolate them from others, do  
9 contact tracing of people they've been in contact with,  
10 and -- and to have them self-quarantine.

11 The other -- the other -- other things that have  
12 to be done here are to force a system of physical  
13 distancing. It seems that the -- that the droplets of  
14 respiratory -- the respiratory droplets containing the  
15 virus dramatically fall off beyond the distance of six  
16 feet.

17 So if people stay six feet away from each other,  
18 they are -- they are not going to get infected. But if  
19 they are closer than that, then the risk of infection  
20 increases substantially. And the more time and the  
21 closer people are together, that creates -- that creates  
22 rapid spread.

23 Other things that people can do to prevent the  
24 spread are to wear masks. Masks are (unintelligible)  
25 now --

1 THE COURT: I'm sorry, Dr. Cohen?

2 A. -- other people from getting infected.

3 MS. FETTIG: Dr. Cohen, we've lost you a bit.

4 THE COURT: Yeah. If you'd repeat that answer;  
5 we just lost -- it kind of blurred out.

6 A. Masks are another way of -- of containing the spread  
7 of the disease. They're particularly effective if  
8 someone has the disease that they won't cough on -- if  
9 they cough, it'll go into the mask and will not spread as  
10 widely as it would if they weren't wearing a mask.

11 The way to think about -- that is different than  
12 an N95, where you are trying to protect yourself from  
13 being infected. This is where you are trying to protect  
14 other people from being infected by you.

15 The best way to think about that, I think, is --  
16 is when you see a surgeon all dressed up in their outfits  
17 and their masks and their hats, these are -- all that is  
18 doing is not to protect them; it's for them to not  
19 contaminate the surgical field.

20 So, similarly, wearing a mask for the general  
21 population is for people who don't know they're infected  
22 to not be coughing onto other people and infecting --  
23 infecting them.

24 So social distancing, quarantine, and case  
25 finding, and -- and masks are the main ways to -- to

1 prevent the spread of the disease.

2 THE COURT: I've got a question for you,  
3 Dr. Cohen.

4 So talking about masks, just from what I've read  
5 several weeks ago when this virus first hit, it seems  
6 like N95 masks are rarely available, or at least in short  
7 supply, for medical personnel, and almost unavailable to  
8 the general public.

9 What are your thoughts on the effectiveness  
10 of -- of non-N95 masks in helping with the -- helping  
11 slow the transmission of the virus? Do you think that  
12 they're helpful, even if they're not N95?

13 THE WITNESS: I think they are very helpful, and  
14 I -- because they do -- they do block transfer -- they do  
15 block droplet spread from the person outside. They are  
16 not as effective as N95 if the person is in an area where  
17 there is a high concentration of COVID-19 virus; for  
18 example, in a -- in a hospital, in a -- in a -- in an  
19 area where COVID-19-positive people are cohorted: In a  
20 nursing home or in a -- in a jail. And in those areas,  
21 the N95 mask is what is recommended.

22 So for -- but for people who are in -- who are  
23 not taking care of people known to be COVID-19, or where  
24 there is a very, very high risk that that's what they're  
25 doing, the other kinds of masks are appropriate. And

1 that is the recommendation of the CDC, in terms of using  
2 N95 masks in all kinds of setting.

3 But yes, I wear a mask now when I go out  
4 briefly.

5 THE COURT: And one more question for you,  
6 Dr. Cohen.

7 And, Ms. Fettig, if you are going to cover this  
8 later, I don't want to interrupt your flow. But if you  
9 are not -- if this was not a question you were planning  
10 to ask later, I'd love to know from Dr. Cohen his  
11 thoughts on what -- appropriate protective gear in two  
12 categories: One, people who are treating COVID-19-  
13 positive people, people that we know have it, what the  
14 appropriate medical gear is, like, for staff members at  
15 the jail who are treating people we know have the virus.

16 And then my second part of the question is,  
17 what's appropriate protective gear for people -- for  
18 workers in the jail? Yesterday -- well, that's right,  
19 you're an expert, so you heard Officer Lewis testifying  
20 yesterday that they just got masks and gloves. What, in  
21 your opinion, is appropriate protective gear for, you  
22 know, just your average sheriff's deputy who is dealing  
23 with inmates?

24 Just I'd like to know, just to back up,  
25 appropriate gear for people working with positive people

1 and appropriate gear for the general population.

2 And again, Ms. Fettig, if you were going to  
3 cover that later, feel free. But just sometime during  
4 your direct I'd like to hear that. I think that would be  
5 helpful to the Court.

6 MS. FETTIG: Yeah, we can go ahead now and  
7 address that for the Court.

8 A. I -- I agree with the CDC, who has -- you know, who  
9 has had very explicit recommendations answering every one  
10 of the questions that you just asked, Judge. It's  
11 actually on Page 25 of their guidance for -- for PPE in  
12 the jails. And it advises people who are -- for the  
13 people who are staff and people who are incarcerated.  
14 And or -- and I can go through it.

15 You know, for people -- the staff, anybody  
16 having direct contact with asymptomatic -- with direct --  
17 with asymptomatic incarcerated detainees who's under  
18 quarantine has close contact to COVID-19, but not  
19 performing temperature checks or providing medical care,  
20 should wear face masks, eye protection, and gloves.

21 Staff reporting temperature checks need to have  
22 a face mask, eye protection, gloves, and a gown. Staff  
23 having direct contact with -- in transport, or offering  
24 medical care to confirmed or suspected COVID-19, should  
25 have a -- an N95.

1           The CDC, in their guidance, recognizes that N95s  
2 may not be available in the jail; but it is what they  
3 recommend should be used in that setting. And in  
4 addition, eye -- eye protection, gloves, and gowns for  
5 that group.

6           Staff present during a procedure on a confirmed  
7 or suspected COVID-19 case that may generate respiratory  
8 aerosols -- an example of that would be if you were  
9 giving someone a -- if someone had asthma and you were  
10 giving them a nebulizer treatment, it's thought that  
11 nebulizer treatments in someone who is infected may  
12 actually result in nebulization of air particles, which  
13 would put people at risk. They should also have N95 --  
14 they should definitely have N95 respirators, as well as  
15 eye protection, gloves, and gowns.

16           For just doing laundry, for staff, the  
17 recommendation is for gloves and -- for gloves and gowns.  
18 And for cleaning an area where a COVID-19 case has spent  
19 time, the -- it is gloves and gowns. And then depending  
20 upon what products are being used for, for cleaning up  
21 the area, the CDC recommends PPE, based upon those --  
22 those substances which you use to sterilize the room.

23           For persons living in the jail, face masks are  
24 recommended by the CDC -- I mean, this has changed a bit,  
25 because now the CDC recommends face masks for everybody.



1 And so I wouldn't reflect on this table, in terms of  
2 incarcerated or detained persons.

3 If they are working -- if they are doing work in  
4 an area where COVID-19 has spent time, and they're doing  
5 cleaning-up work, then, again, it's the same PPE as if it  
6 were a staff person doing that. Which would be gowns and  
7 gloves, and whatever PPE was necessary, based upon the --  
8 the chemicals that were being used to sterilize the room.

9 So N95s for people who are in close contact with  
10 infected people or -- or near procedures that are likely  
11 to generate aerosolized particles, and other masks in  
12 other settings.

13 THE COURT: Great. That was very helpful, thank  
14 you.

15 THE WITNESS: You're welcome.

16 Q. Thank you, Dr. Cohen.

17 (Off-the-record discussion.)

18 Q. Dr. Cohen, given what is known about COVID-19, are  
19 there special concerns that jails, in particular, or  
20 correctional institutions, will promote the spread of the  
21 virus?

22 A. Yes. I mean, what is -- there are things that --  
23 the things that are known are that it spreads rapidly in  
24 large groups where people are jammed together, as they  
25 are in jail. And there is the -- there is just the

1 reality of the experience in places like Chicago and New  
2 York where -- where the numbers of people who have -- who  
3 have COVID-19 has just increased dramatically and  
4 rapidly.

5           Yesterday there were 380 -- 367 people in New  
6 York City who were confirmed as COVID-19 who were in the  
7 jails. That doesn't include the people who might have  
8 been infected and left the jails. But 367 people who  
9 were known to have been infected with COVID-19. And --  
10 and very ominously, 816 correction officers have been  
11 infected as of yesterday, as well as 140 members of the  
12 medical staff.

13           These -- the rates in jails and -- in large  
14 jails -- the New York City jails currently have 4,000  
15 people in them. So it's -- so it's about -- they have  
16 4,000 people in them.

17           And so, yes, it spreads rapidly in a jail  
18 because people are packed together, because they --  
19 mainly because they are packed together. And even if you  
20 were -- even if you would -- and people are going in and  
21 out all the time also. Those are the two elements.  
22 There are a lot of people in a small area. And if the  
23 virus gets in, which it does; and it is -- and, you know,  
24 certainly jails -- those jails, similar to the Dallas  
25 County jail, it -- there are people entering the jail

1 each day who might be infected as well. There are lots  
2 of people entering the jail each day.

3 And as -- as you asked me earlier, people can be  
4 asymptomatic and be bringing the -- and be spreading the  
5 virus. And that does happen routinely.

6 So jails are a -- jails are a place where this  
7 virus spreads rapidly, and it affects people who live  
8 there, people who work there. And it also, of course,  
9 affects people who the people who live there or work  
10 there go home to when they finish their time in jail or  
11 when they finish their shift in the jail. So it has a  
12 direct -- a profound effect internally. And it does, if  
13 controlled, will spread outside.

14 Q. And, Dr. Cohen, speaking of the community, have  
15 there been any projections about jail outbreaks and the  
16 impact -- jail outbreaks of COVID-19 and the potential  
17 impact on communities around them?

18 A. Well, yeah, there is -- these are -- these are  
19 models, I think. I mean, if you have -- you know, a lot  
20 of people are getting infected at -- you know, a lot  
21 of -- I mean, almost 900 correction officers in New York  
22 City have been infected or -- and they go home to  
23 their -- to their -- to their families. So it clearly  
24 has a -- clearly has a substantial effect when you have  
25 this concentrated area. It is like a cruise ship or --

1 or a little bit less like a nursing home. But it's sort  
2 of -- it's much more like a cruise ship, where you have  
3 all of these people locked together. And then when  
4 they -- and it will come out. You know, and the volume  
5 of -- of the number of infected people is very large.  
6 And that can have an adverse effect on a community.

7 Q. Dr. Cohen, I know you are familiar with the CDC  
8 guidelines on COVID-19. Have -- have those guidelines  
9 identified any people who -- in particular, who are  
10 vulnerable to COVID-19?

11 A. Well, they -- people are vulnerable to the -- to the  
12 adverse effects of the viral infection. Is that the  
13 question you are asking me?

14 Q. Yes.

15 A. Not to -- I mean, everybody's at risk. But yes, I  
16 mean, the CDC has recognized, and this -- and they --  
17 they publish data on -- on this, that -- that there are  
18 groups of people who were at greater risk for  
19 hospitalization. And hospitalization is a -- is sort of  
20 a good way of thinking of the people who are medically  
21 vulnerable.

22 And those groups -- the CDC recognizes people  
23 with cardiac disease; it recognizes people with pulmonary  
24 disease; it recognizes people with chronic liver and  
25 kidney disease, heart disease, immunocompromised; people

1 who have had cancer; particularly people with diabetes  
2 and obesity. Recent data in the United States shows that  
3 obesity for a younger population is particularly  
4 profound.

5           It certainly can affect pregnant women. It can  
6 be transmitted to their -- to their -- you know, to their  
7 children. It's not clear if it is in utero or at the  
8 time of delivery, but that is another thing of concern.  
9 People with blood disorders.

10           And then the other -- and then the issue is  
11 at -- this is a -- a disease which kills people and  
12 causes severe respiratory compromise, based upon age,  
13 quite dramatically. And this data is still being  
14 collected, in terms of -- and the CDC recently published  
15 data on who ends up in the hospital by age.

16           And for people, you know, 0 to 4 was .3 percent;  
17 5 to 17, .1 percent; 18 to 49, 2.5 percent. But when you  
18 get to 50, it was 7.4 percent. And 65 to 74 is 12.2  
19 percent; 75 to 84, 15.8 percent; and over 85, 17 percent.

20           So people -- you know, people who are -- it is  
21 quite age-related. But the number of people who end up  
22 having -- who get hospitalized really begin to rise  
23 dramatically at age 50.

24 Q.   So let's talk --

25 A.   Excuse me?

1 Q. -- let's talk about that.

2 My understanding is that the CDC has  
3 recommended -- or has indicated that folks 65 and older  
4 are especially vulnerable to these mysterious COVID-19  
5 symptoms. You, in your declaration, set that age for the  
6 Dallas County jail at 50.

7 Why -- why do you think that the age should be  
8 lower than the CDC's 65?

9 A. For several reasons, Judge [sic].

10 The first was the recommendation of the New York  
11 City Department of Health, which specifically recommended  
12 age over 50 is a medically-vulnerable group, based upon  
13 their analysis of the data coming into New York City,  
14 which had a big -- unfortunately, a huge experience in  
15 this data.

16 And recently, the -- the CDC published data  
17 based upon a ten-state survey of who was hospitalized.  
18 And their data shows, as I just said, that 7.4 percent of  
19 people entering the hospitals are 50 and -- between 50  
20 and 64. So there's a lot of -- that's a large group.  
21 And -- and -- and, certainly, if they have any other --  
22 if they are 50 and have another medical problem, that  
23 would be even truer evidence.

24 But it is based upon the data that the CDC  
25 published, the recommendations of the New York City

1 Department of Health; which are based upon the New York  
2 City experience that -- and the reason to -- so that's  
3 the reason why, that these people are likely to get very  
4 sick within the -- within the jail and overwhelm the  
5 capacity of the jail to provide care to the rest of the  
6 thousands of people there.

7 Q. And, Dr. Cohen, for incarcerated people, are there  
8 special concerns around illness that's greater than  
9 the -- the general population that might inform you -- a  
10 lower age-related cutoff for incarcerated populations  
11 when it comes to COVID-19?

12 A. Well, generally there are some areas with increased  
13 rates of disease among people in jails who are  
14 incarcerated. But I think the -- this approach to the  
15 medically vulnerable takes that into account. So, I  
16 mean, it's saying, you know, if you have any of these  
17 conditions, you are at great risk; if you have more than  
18 one of these conditions, you are at greater risk. And  
19 that is what the data shows as well.

20 You know the -- the notion that people who  
21 are -- who have been in jail sort of age more quickly, I  
22 think, is -- is the clinical experience of people working  
23 within jails and -- and prisons. But the data is -- is  
24 even more powerful. And it is -- if you have these  
25 chronic diseases, and you are above a certain age, then

1 your risk of getting hospitalized is really high. And  
2 being hospitalized means you are really sick. And, you  
3 know, the death rates for people who are hospitalized are  
4 frightening at this point.

5 Q. And you mentioned that the CDC has recognized  
6 certain vulnerable conditions and enumerated them. In  
7 your declaration you identified a few more. And I  
8 believe they are hypertension, blood disorders, inherited  
9 metabolic disorders and a history of stroke.

10 Why would you include those in the medically  
11 vulnerable to COVID-19?

12 A. Well, I think I had seen some additional data even  
13 beyond what the CDC had said. And in the latest CDC  
14 data, hypertension is noted to be a significant condition  
15 for increased risk of hospitalization.

16 I, additionally, did not -- take epilepsy, for  
17 example. I don't think epilepsy -- it is not necessarily  
18 what I think; there is -- I'm not aware of any data that  
19 suggests that epilepsy does increase your risk of having  
20 serious complications or death from -- from COVID-19.

21 There is data suggesting that beyond diabetes,  
22 patients with thyroid disease are also at increased risk  
23 of hospitalization. And both of those, I extended that.

24 MR. BIGGS: Judge, may I be heard quickly?

25 THE COURT: Do you have an objection?



1           MR. BIGGS: Yes, Judge. The objection is, we  
2 asked for the underlying data that he considered. It was  
3 never provided to us. And now he is referring to data  
4 that seems to be even outside of his declaration.

5           So I -- my objection would be that this is  
6 impermissible at this point.

7           THE COURT: Okay. So your objection is that you  
8 haven't been provided with the underlying data?

9           MR. BIGGS: Yes, Your Honor. And the -- I  
10 haven't seen this data that he's referring to currently.  
11 So obviously the CDC information, I'm assuming, is, you  
12 know, publicly available somewhere; however, he is now  
13 referring to other sets of data, and I don't even know  
14 what sets of data we're talking about.

15           THE COURT: Okay. Ms. Fetting, if you could, as  
16 you are walking through his opinions, if you could give  
17 us the citations. And has -- what information has been  
18 provided to the other side?

19           I know I've got a declaration with some  
20 citations to it. We discussed in our conference call  
21 that, in advance of his testimony, Dr. Cohen's underlying  
22 data needed to be turned over to the other side, because  
23 he was citing things such as medical journals, for which,  
24 you know, non-medical people have difficulty getting  
25 access.

1           Have we provided -- have you provided the  
2           underlying articles to Opposing Counsel?

3           MS. FETTIG: Your Honor, we've provided all of  
4           the underlying articles in Dr. Cohen's declarations. If  
5           he refers to additional information, I mean -- but what  
6           we're learning about COVID-19 is evolving every single  
7           day. And certainly to the extent that new studies have  
8           become available, we -- we can produce those as well.

9           THE COURT: Okay. Well, if -- as you are  
10          walking through his -- his opinions, if you will kind of  
11          treat it like a -- like a -- a legal brief and cite to  
12          authority. Since he is subject to cross-examination, to  
13          be fair to the other side, if you are -- if you are  
14          citing to something that is -- actually, just to make  
15          things clear, as he is providing his opinions, if you  
16          will give us -- if he will cite to us from where his  
17          opinion comes, or what authority backs it up, then  
18          they'll be able to let the Court know if they've been  
19          provided with that underlying data. And if not, then  
20          before he's cross-examined, I'm going to want you to  
21          provide that to them so they have a fair opportunity to  
22          cross him and to review it.

23                 So as you walk through it, just have him cite  
24                 what his sources are, okay?

25                 MS. FETTIG: Okay. All right.

1 THE COURT: Okay. Great.

2 So I'll sustain that objection to the extent  
3 that I'm going to require him to give citations to his  
4 authority as he's walking through that, so that -- that  
5 if you haven't been tendered with anything, we can take  
6 care of it before you have an opportunity to  
7 cross-examine him.

8 Okay. Please proceed.

9 Q. All right. Well, I'm going to step back, then,  
10 Dr. Cohen, and ask you about the CDC recommending that  
11 hypertension be included.

12 A. Are you asking for the cite for that?

13 Q. Yeah.

14 A. It's the Morbidity and Mortality Weekly Report,  
15 April 17th, 2020.

16 THE COURT: And as we're walking through this,  
17 Defense Counsel, I'm going to assume that you have this  
18 information unless your flag or alert the Court that you  
19 don't. So please be diligent in letting me know if this  
20 is something -- you know, you are asserting that you  
21 don't have, let me know as we walk through it, okay?

22 MS. DAVID: Your Honor, this is Kate David. Ben  
23 Stephens has been kicked off, and he will be  
24 cross-examining this witness. So if we could give him a  
25 second to get back on, I'd appreciate it.

1           THE COURT: Of course. Absolutely. And I tell  
2 you what, now -- we've been going for about an hour. Why  
3 don't we take a ten-minute break, and that will give him  
4 time to get on and everybody to take a quick bathroom  
5 break.

6           So let's be in recess until 10:20. It is 10:09.

7           Hi there, Mr. Stephens. You didn't miss  
8 anything. We were going to take a ten-minute break, and  
9 then we'll come back.

10          And I was telling -- I think the only thing you  
11 may have missed, I asked Ms. Fetting, as Mr. Cohen -- I'm  
12 sorry, as Dr. Cohen is walking through his opinions, I've  
13 asked her to do this kind of like a legal brief and give  
14 me citations to authority, so that if there is  
15 anything -- this is -- she pointed out, fairly, that this  
16 is kind of an ever-evolving field. But I want to make  
17 sure that you-all are given fair opportunity to see the  
18 underlying data before you cross-examined Dr. Cohen.

19          MR. STEPHENS: We certainly appreciate the  
20 opportunity, Your Honor.

21          THE COURT: Sure. Trying to be fair to both  
22 sides. So she's going to do that. And then if there's  
23 some updated information he is considering, because this  
24 is an ever-evolving field -- I've been checking the CDC  
25 website yesterday, and every day they come out with new

1 information.

2 So if there's new information we need to look  
3 at, and if I need to give you a little time before you  
4 cross-examine him to do that, I'll certainly do that.

5 So, Defense Counsel and Intervenors, be on your  
6 game to let me know if there is something you don't have  
7 so I can give you an opportunity to look at it, because I  
8 will do that.

9 Let's take a ten-minute recess. We'll see you  
10 back at 10:20. Thanks, Counsel.

11 Off the record.

12 (Recess taken.)

13 Q. Dr. Cohen, you recently testified that you've looked  
14 at a study issued by the CDC on April 17th that  
15 identified hypertension as a -- a risk factor for medical  
16 vulnerability to COVID-19, but you identify hypertension  
17 as a risk factor to COVID-19 in your declaration and your  
18 supplemental declaration.

19 Did you base your decision on that April 17th  
20 study?

21 A. No, I -- those were -- I believe that those were  
22 part of our -- the chronic diseases that we were looking  
23 at in New York City. I did not base it on that; I would  
24 have referenced it, otherwise.

25 Q. And your opinions today are -- that you'll be

1     testifying to, are they informed by any new studies other  
2     than the ones that you have previously referenced in your  
3     declarations?

4     A.    No.

5     Q.    Okay.  All right.  Dr. Cohen, we've talked about  
6     individuals who are medically vulnerable to COVID-19.  
7     And you have read the declarations of Chief Robinson and  
8     Patrick Jones, correct?

9     A.    Yes.

10    Q.    Based on those declarations and the testimony you  
11    have heard in this hearing, as well as declarations  
12    regarding the experience of detainees and incarcerated  
13    people, I want to talk about your opinions about what's  
14    happening in the Dallas County jail.

15           In particular, let's start by addressing  
16    concerns you have about not medically-vulnerable folks in  
17    the Dallas County jail.  In your opinion, is Dallas  
18    County jail doing enough to protect the medically  
19    vulnerable?

20    A.    Based upon what I read, I did not identify -- did  
21    not see a particular effort to protect that group of  
22    people.  They were not among the cohorted populations  
23    identified in the -- in the -- in those statements.  And  
24    I am concerned, of course, about their -- the -- their  
25    high rate -- their high risk of developing serious

1 complications; pneumonia and death, should they become  
2 infected.

3 Q. What should the Dallas County jail be doing for  
4 medically-vulnerable patients?

5 A. If at all possible, they should be removing them  
6 from the -- from the jail. This virus spreads rapidly in  
7 the jail. And it is -- I can -- do not believe, as  
8 structured, that the -- there's a possibility of  
9 maintaining distant -- physical distancing, as  
10 recommended by the CDC.

11 The -- the pictures that I saw yesterday of  
12 the -- of that 64-person housing area identified a place  
13 where physical distancing was not possible. And --

14 Q. So -- so, Dr. Cohen, for the medically vulnerable,  
15 in particular, what should Dallas County jail be doing  
16 for them, other than release; which you have just talked  
17 about?

18 A. Well, they should be -- they should be monitoring  
19 them closely. I think they should -- you know, it's a --  
20 if at all possible, they should be placed in an area for  
21 people who are medically vulnerable. It -- they should  
22 all be tested right -- you know, immediately, to make  
23 sure that none of them are infected at this point. You  
24 don't want a cohort group of people where someone is --  
25 where one of them might be infected, because that will

1 just -- that would subvert the whole purpose of the -- of  
2 the project.

3 And then I would monitor --

4 THE COURT: I've got a question about that,  
5 Dr. Cohen, if I could stop you on that.

6 When you are talking about the people who should  
7 be tested, to whom are you referring: The inmates -- all  
8 of the inmates, all of the staff, or all of the above?

9 THE WITNESS: Well, in this case, I was talking  
10 about the medically-vulnerable inmates that they --  
11 that -- that it would be reasonable to put them together  
12 in an area where they could be protected from spread --  
13 from Coronavirus, if that's possible.

14 Then you'd want to test them all. Because if  
15 any of them were positive, you'd want to isolate them  
16 from any of the other people who are also medically  
17 vulnerable, because that would defeat the purpose of --  
18 of putting them together.

19 And then you'd have them together, and you would  
20 check their vital signs regularly, you'd check their  
21 temperatures a couple of times a day, and you'd just --  
22 you'd check in with them and see if they have any  
23 symptoms, and try to isolate them from the general  
24 population of the -- of the facility.

25 THE COURT: Thank you.



1 Q. Dr. Cohen, you read the Defendants' declarations.  
2 Do you think that they're cohorting and quarantining is  
3 adequate?

4 A. Well, you know, I think, generally, they are  
5 following the CDC guidelines. I don't know what they're  
6 actually -- they are saying that they are following the  
7 CDC guidelines. I don't know what they're doing,  
8 actually, because I haven't seen anything beyond those --  
9 those -- those few pages that were -- that were provided  
10 to me.

11 I think that the -- the quarantine process is  
12 extremely difficult to -- the intake quarantine process  
13 that they are describing is extremely difficult to  
14 maintain. I -- I don't understand, because it was not  
15 described within a -- I mean, if you quarantine everybody  
16 coming in for 14 days, and then -- I don't know how many  
17 people are coming in each day, but if they're -- some  
18 number, then you will have to have 14 separate areas  
19 where people will be quarantined for the 14 days. It  
20 becomes a very, very complex process, which is hard to do  
21 in any setting; and particularly hard to do in jails,  
22 because there are other factors which decide who  
23 people can -- you know, who can be housed -- housed with  
24 whom.

25 And then, additionally, the quarantine process,

1 as described, you know, by the CDC is every time someone  
2 turns out to be positive, and 6.5 percent of cases people  
3 will be asymptomatic, but still be positive when they  
4 would be -- when -- then you have to start all over for  
5 another 14 days with that group.

6 So it'll be extremely, extremely unlikely that a  
7 successful process of -- of quarantine will be  
8 established. And it is very likely that the disease will  
9 spread rapidly through the jail.

10 Q. And in your opinion, Dr. Cohen, when an incarcerated  
11 person reports symptoms that sound like COVID-19, how --  
12 when should medical staff respond, what's the appropriate  
13 response?

14 A. Well, people who are symptomatic for COVID-19 should  
15 be tested for COVID-19, and they should be immediately  
16 placed in a -- in a -- in an isolated situation with  
17 respiratory isolation -- you know, reverse isolation  
18 capacity, if those still exist within the jail. If they  
19 don't, then within a -- an isolation room which would not  
20 have the kind of respiratory exchanges that a reverse  
21 isolation room will have.

22 That's what should be done immediately.

23 Q. And in terms of the response of medical care, you  
24 heard yesterday about the medical kiting process at  
25 Dallas County jail.

1 A. The medical what?

2 Q. The medical kite process?

3 A. Yes.

4 Q. Is it appropriate to take two, three, four days to  
5 respond to a person who is reporting COVID-19 sign --  
6 symptoms?

7 A. No. I mean, you know, I think the jail should be  
8 carrying out fever checks very broadly in a time like  
9 this. So -- certainly for anybody who's thought to be  
10 medically at risk. But very widely -- if someone's  
11 complaining of a fever and a cough, then they have to be  
12 seen, they have to be seen that day.

13 Q. And do you believe that Dallas County is complying  
14 with the CDC COVID-positive treatment guidelines for  
15 detained and correctional populations, in terms of  
16 medical monitoring?

17 A. In the statements that I read, they described a  
18 once-daily monitoring of -- of temperature. And I  
19 believe CDC is recommending twice-daily monitoring of  
20 temperature.

21 THE COURT: Just so I'm clear, Dr. Cohen, is  
22 that for people who have -- that is not the general  
23 population; that is for people who have been in close  
24 contact with inmates who have tested positive, or for  
25 inmates who have COVID symptoms, right, they should get

1 tested twice a day?

2 THE WITNESS: That is right, Judge.

3 THE COURT: Great. Thank you.

4 Q. And, Dr. Cohen, going back to the -- the positive --  
5 the COVID-positive population, is it your understanding  
6 that those individuals should be placed in single cells?

7 A. Well, you know, the recommendation of the CDC is for  
8 persons who are -- you know, who are sicker than others,  
9 that they should be placed in a -- in a single-cell area.  
10 At a certain point, people who are COVID positive can be  
11 cohorted in non-single cells. But when they are sick,  
12 they should be in a single-cell setting. When they  
13 are -- when they are -- if they're not sick, if they are  
14 asymptomatic or they've recovered, then they could be at  
15 a -- or recovering, they could be in a cohorted  
16 environment.

17 Q. Uh-huh. Based on your reading of Defendants'  
18 declarations, are you aware of whether they have a plan  
19 on what to do when single cells run out for  
20 COVID-positive individuals?

21 A. No, I'm -- I didn't see anything, how they were  
22 going to cope with that.

23 Q. Should they have a plan?

24 A. Yes, they should have a plan.

25 Q. What would you recommend?

1 A. Well, it would be to house as many -- you know, to  
2 use single cells for isolation of people who are  
3 symptomatic while test results are pending, or who are  
4 COVID positive and require closer observation. And at a  
5 certain point, you could create a cohorted housing area.  
6 You'd have to have N95 masks for all of the security  
7 staff, certainly, of people with -- with COVID-19.

8 You -- but you would separate the symptomatic  
9 from the COVID-19 confirmed, as well, while you are  
10 waiting for test results.

11 THE COURT: Dr. Cohen, I have a question for  
12 you.

13 Let's say hypothetically that you and I are cell  
14 mates, or -- or that I have a bunk bed across from you.  
15 And that you test positive for the virus, and I've been  
16 in close contact with you. What treatment -- I'm pretty  
17 clear on -- from your testimony and from what I've read  
18 from the CDC what to do with you, but what is your  
19 recommendation as to how I should be treated if I'm in  
20 close contact with you and you have tested positive?  
21 What should be done to protect me and keep me safe?

22 THE WITNESS: Are you -- well, it should -- you  
23 know, if you have been in close contact with someone  
24 who's positive, you -- you know, if -- if it were me, you  
25 would set the quarantine, right, for 14 days.

1 THE COURT: Okay.

2 THE WITNESS: And not expose yourself to anybody  
3 else.

4 THE COURT: How far would you do that? So --  
5 so, like, right now, if the inmates are not maintaining a  
6 proper social distance, and let's say you become positive  
7 and all the attorneys on this call are in a pod with me,  
8 would you quarantine everyone who'd been in the pod all  
9 together for 14 days and test us twice a day, or test our  
10 -- check for symptoms twice a day?

11 THE WITNESS: The -- well --

12 THE COURT: Or just people who bunk next to --

13 THE WITNESS: -- I think it would depend upon  
14 how close -- if you were in a situation like you -- you  
15 know, in just a -- a two-person room, you would want  
16 to -- you'd want to test the other person. I mean, it  
17 is -- the CDC allows for quarantining of asymptomatic  
18 people who have been in some contact with someone  
19 positive without testing. And I -- I think that that  
20 does not allow the jail to figure out whether its program  
21 of management is working.

22 So there needs to be a vastly-increased use of  
23 testing in these -- in these settings, I believe.

24 THE COURT: Okay. Great, thank you. And is  
25 that called -- just so I understand the vernacular, when

1 I'm reading the CDC information, they talk about contact  
2 tracing. Is that what that is, where you are  
3 quarantining or dealing with people who have been in  
4 close contact with a positive person; is that what that  
5 means?

6 THE WITNESS: Well, quarantining, it doesn't  
7 mean -- yes, essentially it is. You are isolate -- you  
8 are trying to identify who has been in contact with  
9 someone who's positive, you test them and see if they are  
10 positive and then quarantine them. Or, in the absence of  
11 test capacity, you self-quarantine, or quarantine in a --  
12 in another set -- in another setting.

13 You know, the situation right now, for example,  
14 on -- on Rikers Island, which there are 4,000 persons, is  
15 that about over 2,000 of them are in this kind of  
16 quarantine status. They are asymptomatic, but they were  
17 exposed to someone who's positive.

18 Every day on Rikers Island there are more and  
19 more cases be -- you know, among the people living there,  
20 the people working there, from medical and from  
21 corrections.

22 So it -- it is the recommended approach right  
23 now, but we don't understand -- I don't think that --  
24 that people are collecting enough information to see  
25 whether or not this approach is the best way to -- to do

1 it.

2 So I would expand the testing available within  
3 the jails. Make sure people know what the -- what the  
4 actual spread of -- the actual epidemiology is; how many  
5 people are infected and don't know it. And also you'll  
6 be able to take the people who are asymptomatic and  
7 infected and remove them from general population.

8 THE COURT: Okay. Thank you. That is very  
9 helpful.

10 Q. Dr. Cohen, you previously testified that under the  
11 CDC guidelines COVID-positive people are supposed to be  
12 monitored twice daily. What does that monitoring  
13 involve?

14 A. It involves checking their temperature; it should  
15 involve checking their -- the oxygenation, the --  
16 their -- their -- it's called pulse ox. It is a little  
17 machine you put on -- maybe -- probably most people have  
18 experienced it at this point.

19 You put your finger into it; it measures the  
20 amount of oxygen that is getting into your -- into your  
21 arterial blood, and also measures your pulse. And then  
22 you would ask -- you would ask for symptoms as well.

23 I think, appropriately, some physical  
24 examination of the lungs would be -- would make sense in  
25 that situation.



1 Q. You have testified that some portion of  
2 COVID-19-positive people will need hospitalization. In  
3 your review of Defendants' declarations, are there --  
4 were there any plans for the -- the, perhaps, increased  
5 need for hospitalization coming out of the jail?

6 A. It is -- the plans only talked about that -- the  
7 hospitalization of people who were highly symptomatic on  
8 intake. I did not see anything else regarding plans for  
9 hospitalization of -- of people with COVID-19 who became  
10 too sick within the jail.

11 Q. And why is it important to -- for the Dallas County  
12 jail to have a plan for increased hospitalization?

13 A. Yeah, because people will be getting sick and  
14 require hospitalization. And I -- and putting people who  
15 are in jail in hospitals is not simple. I -- I -- I  
16 don't know if there is a -- if there is a special unit --  
17 I know Parkland provides the medical care for the jail.  
18 I don't know if it has -- if it has a prison unit. It --  
19 it might.

20 And that would have a certain number of beds,  
21 but certainly they will likely be exceeded -- if there is  
22 a prison unit at Parkland, they will have a certain  
23 number of beds; and it'll have a sally port and it'll be  
24 a secure unit. Whether it is there or not, it is likely  
25 that the number of people requiring hospitalization from

1 the jail will exceed that number. Or maybe there is  
2 no -- no unit. And then there will be security staff  
3 staying with all those people when they are in the  
4 hospital, and that will deplete the staff at the jail.

5 So -- you know, and additionally, I know that  
6 there are financial issues for a -- for a -- for a  
7 hospital to be able to cope with -- with prisoners --  
8 with prisoners, and that's really -- that's something  
9 which should be addressed.

10 And other states are trying to get Medicaid  
11 waivers to ensure that there will be adequate funding for  
12 the hospitals in that setting. And that's not a clinical  
13 issue --

14 MR. BIGGS: Judge, may I object?

15 MR. STEPHENS: Judge, may I be heard?

16 MR. BIGGS: Ben, go ahead.

17 THE COURT: What's your objection?

18 MR. STEPHENS: I'd like to object to the portion  
19 of his testimony speculating about the potential  
20 overcrowding for a facility he can't even confirm exists  
21 or not.

22 THE COURT: Okay. I will --

23 MR. BIGGS: I join that objection.

24 THE COURT: -- overrule your objection. But I  
25 note it for the record, and I expect to hear a lot about

1 that during cross-examination. I'm aware that this --  
2 that this gentleman has not been in the facility, and so  
3 that he is talking about a facility from -- based on what  
4 he read and not what he's seen. And I think that is  
5 absolutely proper fodder for cross. And in taking into  
6 account the weight to give his opinion, I'm certainly  
7 considering that he has not seen the actual facility.

8 I also know from your witness list that you are  
9 going to bring somebody -- two people from the facility,  
10 including a medical person, to clear up any  
11 misimpressions that this may give me.

12 So I note your objection for the record, and --  
13 and I will give appropriate weight to this, and wait and  
14 see until I hear everything else from the remaining  
15 testimony.

16 I do have a question for you, Dr. Cohen, myself.

17 In Plaintiffs' petition, some of the named  
18 plaintiffs have tested positive. And actually maybe I  
19 should ask -- well, let me ask Plaintiffs' counsel.

20 Now, you are not asking me to release the  
21 inmates who are positive, who have tested positive who  
22 are currently receiving care in the hospital, are you; or  
23 are you? I wasn't clear from your petition if that was a  
24 position you were taking. If you wanted me to release  
25 them to be cared for somewhere else or if you did not --

1 were not seeking the release of inmates who are currently  
2 positive and receiving medical treatment at the jail.

3 What is your position on that, if you could  
4 clarify that for me?

5 And then, Dr. Cohen, I may have some questions  
6 for you based on their answer.

7 MS. WOODS: Your Honor, this is Andrea Woods. I  
8 can take a shot at answering the Court's question.

9 THE COURT: Sure.

10 MS. WOODS: So Plaintiffs are seeking the  
11 release of people who are liable to be particularly  
12 vulnerable to serious illness. And so, that's subject,  
13 as we've noted in some of our materials, to the  
14 availability of a safe-release plan, a place where anyone  
15 could safely self-isolate at home. And we -- we've  
16 offered that a -- a public health expert could help  
17 inform the Court and the parties about other resources  
18 available in the community to make that possible.

19 So we -- we aren't excluding people from our  
20 request for release on the basis of being positive for  
21 COVID-19, but we recognize that there would have to be a  
22 discharge plan in place.

23 THE COURT: Well, because I'll tell you -- I  
24 appreciate you clarifying that.

25 And, Dr. Cohen, I'd like to hear from you on

1     that.  Because I have some real concerns about -- you  
2     know, if I release people who I know are positive, who  
3     are receiving treatment now in the jail -- and, of  
4     course, I know I'll hear more details when Defendants put  
5     on their case.  I get a sneak preview from looking at my  
6     witness list.  I know I'm going to hear from a -- an M.D.  
7     at the jail, I believe.

8                 Is that right, Defendants?  I think you are  
9     putting on a doctor, right?

10                MR. STEPHENS:  I believe Pat Jones is a  
11     administrator, but can speak to Parkland's processes and  
12     the treatment --

13                THE COURT:  So we don't have an M.D., but we can  
14     have somebody to inform me a little bit about the  
15     policies for treatment, right?

16                MR. STEPHENS:  That's correct, Your Honor.  The  
17     doctors are pretty busy, as you can imagine.

18                THE COURT:  I can imagine.

19                Okay.  I have concerns about releasing people I  
20     know are positive.  Let's say that they -- that they are  
21     receiving -- if I hear testimony that they are receiving  
22     appropriate treatment at the jail, I'm concerned about  
23     releasing them, people who I know are positive, even to  
24     go home to their families, with -- with as -- as volatile  
25     and easy to catch as this disease appears to be.

1           I mean, isn't the safest place for them to stay  
2 in jail if they are -- assuming that they're being  
3 treated appropriately, according to CDC guidelines, if  
4 they are getting appropriate medical care, should I let  
5 people out who are positive? Because I have some real  
6 concerns about that.

7           So can you speak to that for me?

8           MS. WOODS: Your Honor, I --

9           THE COURT: Oh, if you need to clarify before he  
10 answers, that is okay. Please do.

11          And then, Dr. Cohen, if you'll answer after she  
12 talks.

13          MS. WOODS: Thank you, Your Honor.

14          And just to -- briefly, there is evidence in the  
15 record, especially the declarant witnesses, that people  
16 who are positive for COVID-19 in the jail are not  
17 receiving treatment. They are in quarantine status in  
18 the jail, but not being treated at the hospital. So I  
19 would just offer that for the record.

20          THE COURT: Okay. And I will make a mental note  
21 of that to -- when I'm listening to testimony about that.  
22 And I hope that you will flag that, because that is a  
23 real concern of -- to the Court. If we've got people who  
24 are positive who are not getting CDC-recommended  
25 treatment, then that's -- that is of great concern.

1           But if -- if, hypothetically, Dr. Cohen, if as  
2 of tomorrow CDC-recommended guidelines are in place in  
3 the jail, and we've got people who are positive being  
4 appropriately medically treated, should I release them or  
5 should I keep them in jail to be treated?

6           THE WITNESS: Well, the -- the logic of removing  
7 people who are medically vulnerable is that if they --  
8 when they develop -- or if they develop COVID-19, the  
9 chances of their illness -- which can go over a period of  
10 two or three or four weeks -- can deteriorate rapidly,  
11 and then they would overwhelm the healthcare system of  
12 the -- of the jail.

13           So the fact that they are positive doesn't mean  
14 that they're going to be okay there. It just means that  
15 they're -- if they have -- if they are medically  
16 vulnerable and they are positive, then they are at risk  
17 of decompensating dramatically.

18           In New York City, when people who are  
19 symptomatic COVID-19 positive are released from the jail  
20 for -- because they are medically vulnerable, they are --  
21 if they do not have a place to go, a home, they are  
22 provided with a hotel room and social service support.

23           THE COURT: Well, and I'll tell you what my  
24 concern is, if -- you know, just going from general  
25 statistics -- and I'm just going to paint a broad brush

1 for all my inmates, knowing this doesn't apply to  
2 everyone. But for 4,900 people, I'm assuming lots and  
3 lots of them are not insured and -- especially in this  
4 pandemic, where, you know, we're having so much job loss,  
5 a lot of people aren't going to have insurance, and we've  
6 already kind of got a drain on our local poverty  
7 resources.

8           So one of my concerns is, if there is treatment  
9 available in the jail, and I -- I know that -- from the  
10 attorneys, what she said a few moments ago, that, you  
11 know, we have concerns that they are not being  
12 appropriately treated. But are -- assuming for this  
13 argument that they are, if they are receiving good care  
14 in the jail, if I release them to the community and --  
15 and they have to go to other hospitals for treatment, you  
16 know, general members of the -- of the community are  
17 using those resources, too.

18           So I -- I'm concerned about letting people out  
19 who I know are positive who have to fight for medical  
20 resources that general members of the community have.  
21 What do you think about that?

22           THE WITNESS: Well, I know in New York City,  
23 where this issue is of -- you know, where this is a --  
24 this is an actual issue, that when people are released,  
25 they are not just -- they are not released to the street.



1 They are released in concert with referrals to social  
2 service agencies, which arrange for medical care  
3 follow-up and for housing for them. And there are  
4 multiple agencies which are working on that. And that is  
5 what New York is -- that is how New York is addressing  
6 your concern.

7 I mean, I couldn't comment on whether the  
8 care -- I don't know what the care is like at Park -- in  
9 the jail relative to what it is like in the community.  
10 But I -- it's not likely to be a better place.

11 And it -- what is -- what is the reason to do  
12 this, is that you want to decompress the size of the jail  
13 to get the -- and by taking the medically-vulnerable  
14 people out, it is not just because they are medically --  
15 it is because if they get sick, they will overwhelm the  
16 resources there.

17 THE COURT: And here is my -- here is my next  
18 question for you.

19 So some of the named plaintiffs have got  
20 criminal convictions for crimes of violence. How do I  
21 balance, as the person who bears the unenviable task of  
22 balancing the concerns of people who are ill or may  
23 become ill with the concerns of public and their right to  
24 be safe? What do you -- you know, how do I factor in  
25 convictions -- and I'm not talking about accusations; I'm

1 talking about convictions for crimes of violence -- in  
2 determining who to stay in jail and who to let out?

3 I mean, if you have been dealing with Rikers,  
4 I'm sure this is an issue that you face. How do you --  
5 what is your balancing test for that?

6 THE WITNESS: Well, you know, it -- a lot  
7 depends upon the -- the availability of bail. I mean,  
8 I -- I assume we're talking from -- primarily about a --  
9 a pretrial detention group of people here, right? Some  
10 of them are probably sentenced to low-level things. And  
11 the ones you are talking about right now are pretrial  
12 detention, right? They're not --

13 THE COURT: Well --

14 THE WITNESS: -- is that right?

15 THE COURT: -- just to make clear, I'm not  
16 talking about -- when I am talking about crimes of  
17 violence, I've got several named plaintiffs who have got  
18 like a -- a agg -- there is someone being held for  
19 aggravated assault -- or someone who's got a conviction  
20 for aggravated robbery and, I think, an aggravated  
21 assault, serious bodily injury. Something along those  
22 lines, where we've got a felony conviction -- it is not  
23 accusation; it is a conviction. And so I'm concerned  
24 about -- you know, let's say this person has underlying  
25 health conditions. But I've also got to balance -- you

1 know, I can't -- I've got to have the concerns of the  
2 community as I'm balancing these medical issues that you  
3 are talking about.

4 And so, I guess my question for you is, if you  
5 are dealing -- if you have been dealing with release from  
6 Rikers Island, where -- I mean, I'm an old prosecutor. I  
7 remember Rikers is a tough place. You've got some tough  
8 folks there. What guidance did you give them on who to  
9 spring and who not to spring, based on criminal  
10 histories?

11 Because, you know, I don't care about somebody's  
12 traffic tickets or not wearing seat belts; but if you've  
13 got crimes of violence, I feel like in fairness, that is  
14 something I have to take into account when -- you know,  
15 I -- I've got to look at inmates' quality of care, but  
16 I've also got to consider the safety of the community.

17 So how do you factor that in when you are  
18 telling me who to release, is my question.

19 THE WITNESS: Right. I -- it's a -- it is a  
20 real question.

21 I -- what happened on -- in New York City is the  
22 following: Of the -- the City sentence, which are less  
23 than a year; and they are pretty much misdemeanors --  
24 some -- there are some domestic violence and sexual  
25 assault charges that fit into that category -- pretty

1 much everybody except for that group, except for the DV  
2 and sexual assault were released.

3 So that was a -- that was -- that's how that --  
4 and that category was under a thousand. But it is -- it  
5 was a substantial group, about 500 people, maybe 400 got  
6 released on that.

7 Then there was a group who were there for parole  
8 violations. And I -- I don't know if that -- if that is  
9 a category in Dallas County jail. And --

10 THE COURT: That does apply in this case.  
11 Several of the named plaintiffs have parole holds. And  
12 some of the parole holds, I'll have to go back and look  
13 at the NCIC information, but my recollection is that some  
14 of the parole holds are for violent offenses.

15 THE WITNESS: Yeah, so what happened with that  
16 population, was that there was a list provided by the  
17 parole department of people in the category of -- they  
18 were there because of parole violations -- I mean,  
19 technical parole violations.

20 But their -- the decision about letting them out  
21 involved not just them being released, but a -- a  
22 recommendation by the -- by the parole department to  
23 release people based upon a number of categories, which  
24 included their -- I think it's called a campus score. It  
25 is a risk measurement for violent -- I'm not recommending

1 this; I'm just telling you how it was done.

2 THE COURT: Sure.

3 THE WITNESS: And they were seriously mentally  
4 ill. I -- I don't know how you feel about that. I  
5 thought that was not a -- not -- I wouldn't have included  
6 that, if I were in this difficult judicial -- you know,  
7 judging kind of situation.

8 But that is the way the -- the parole department  
9 took their list of people who were eligible for release  
10 and then pruned it, based upon the -- some behavioral  
11 characteristics -- two behavioral characteristics, I  
12 guess: Chances of a violent experience, or the violent  
13 charges that they were -- had been originally convicted  
14 of, and this -- their state of their mental health.

15 For the people who were just pretrial detention  
16 and over 50, or seriously medically ill, which is this  
17 more complex group we're talking about right now, the --  
18 there was a -- there were a lot of patients discharged  
19 immediately through a joint --

20 MR. BIGGS: Judge?

21 THE COURT: Yes. Do you have an objection?

22 MR. BIGGS: Do you mind if we start over again?

23 No, it's not an objection. My screen froze at  
24 the beginning of that response about pretrial detainees.

25 If you could just start over again, I'd

1 appreciate it.

2 THE COURT: Oh, sure. Absolutely. Thank you  
3 for chiming in.

4 Yes, if you don't mind kind of backing up,  
5 Dr. Cohen, that would be great.

6 THE WITNESS: Yes.

7 For the pretrial detainees who did not fit into  
8 that technical parole or City sentence group, a process  
9 was developed which involved active effort by the medical  
10 services, by the Defense Bar in New York; primarily the  
11 public Defense Bar, and that is broken up into -- that is  
12 Legal Aid and Bronx Defenders and Neighborhood Defenders  
13 and Brooklyn Defenders, and the -- and the district  
14 attorneys, where they identified people who met these --  
15 these criteria of age and seriousness, and the medical  
16 staff reviewed their charts, on the request of their  
17 attorneys, medical staff on -- you know, in Rikers, or in  
18 the other jails where people are -- were housed, but it  
19 was in the Department of Corrections -- and individually  
20 evaluated their -- their claim -- their -- the DAs and  
21 the Defense lawyers and the -- and the medical staff,  
22 together, prepared a package, which a judge approved.  
23 That required the Defense -- that required the DA's  
24 approval.

25 But it -- but it did involve a joint effort,

1 which was quite intense; and I was very proud of New York  
2 City to have engaged in this. And that resulted in the  
3 release of hundreds of people as well.

4 At this point, there are people who -- who the  
5 Defense Bar thinks should be let out, because they meet  
6 the medical criteria, that the district attorneys do not  
7 think should be let out.

8 This is the -- I'm telling -- that is -- and  
9 those people are -- are -- are -- and in those cases, the  
10 medical staff -- the correctional staff is saying, we  
11 have a safe environment and we can take care of these  
12 people.

13 I hope that is responsive.

14 THE COURT: It is.

15 MS. WOODS: Your Honor, may I briefly --

16 THE COURT: Yeah, you can; I just want to chime  
17 in for just a second and then I'll let you talk.

18 That is very helpful, Dr. Cohen. I appreciate  
19 you being candid and forthcoming with the Court. And I  
20 just want to clarify, because I know we've got people  
21 listening.

22 When I said I don't care about seat belt  
23 violations, it's not -- I don't want to say I'm promoting  
24 lawlessness or anything here. I'm just saying, in a  
25 pandemic -- you know, I do care about people wearing

1 their seat belts and I do care about people not violating  
2 the law. But when deciding, you know, who needs to be  
3 released from jail with an epidemic like this, I think  
4 really low-level, nonviolent offenses I'm less concerned  
5 about than -- than, you know, aggravated assault with a  
6 deadly weapon.

7 And I'm glad that you brought up about domestic  
8 violence. Because I'll tell you, that's a particular  
9 concern I have is, if someone has -- even if it is a  
10 misdemeanor conviction for domestic violence, I'm  
11 concerned about sending an abuser back home in a pandemic  
12 to be at home with his victim. You know, I -- I don't  
13 want to release someone to go back to a situation where  
14 now he or she who's been victimized can't leave. So I'm  
15 glad you addressed that.

16 And yes, if you would chime in. I know you  
17 wanted to say something, Counsel.

18 MS. WOODS: Thank you, Your Honor.

19 Just to briefly mention that -- I know Dr. Cohen  
20 is testifying to the process that they undertook in New  
21 York, and Plaintiffs plan to cover in our closing  
22 argument in more detail, but we've -- we've offered a  
23 proposed -- a proposed idea, including an amended  
24 proposed order this morning, about a way that the Court,  
25 or perhaps a federal magistrate court might begin to



1 undertake that inquiry and balance the interest here.

2 Just -- we just wanted to flag that that's  
3 something we plan to cover, in terms of our proposal for  
4 this Court, in closing argument.

5 THE COURT: Okay. Thank you. That is very  
6 helpful.

7 And --

8 MS. DAVID: Your Honor, if I may chime in on  
9 that as well.

10 I think you're going to be given a lot of  
11 comfort when you hear about the efforts Dallas County is  
12 making. We've done everything that Dr. Cohen said New  
13 York is doing. And these individualized determinations  
14 are happening around the clock.

15 So we'll address that more in ours, but I think  
16 that you are going to feel a lot better when you hear  
17 more evidence on these issues.

18 THE COURT: Well, I know there are at least two  
19 sides to every story, sometimes three or four. And I  
20 know that I'm just hearing -- just now beginning to  
21 hear -- you know, the puzzle is just starting to come  
22 into play. So I promise you I will wait and see until I  
23 hear everything. And I know that Defense is obviously  
24 going to have a very different puzzle to -- different  
25 puzzle pieces to put together. So I will wait until I

1 hear everything to form my thoughts.

2 Okay. And with that said, is everybody okay?  
3 Can everybody hear me? Thumbs up, do a quick sound  
4 check.

5 Okay. Great. Dr. Cohen, Ms. Fetting, please  
6 feel free to proceed. And thank you for answering my  
7 questions.

8 Q. Dr. Cohen, let's move on to PPE and sanitation,  
9 under the CDC guidelines and adequate practice, in light  
10 of COVID-19.

11 Yesterday you heard Officer Lewis testify, and  
12 David Jones as formally incarcerated in the jail very  
13 recently; and you have read the declarations that the  
14 defendants submitted.

15 Do you have concerns still that PPE and  
16 sanitation at the Dallas County jail are inadequate to  
17 manage COVID-19?

18 A. Well, I do, as has been mentioned several times.  
19 And I'm the first to say I have not been in the jail.  
20 I've been in many, many, many jails, but I've not been in  
21 the Dallas County jail.

22 Everything is hard to do at a jail. And  
23 making -- and maintaining cleanliness in a jail is very  
24 hard. And in this -- in this moment, it is incredibly  
25 important.

1           So it is not -- I believe that it is possible to  
2 clean surfaces multiple times a day, with the appropriate  
3 virus agents, and to be able -- and to provide persons in  
4 the jail with -- with hand sanitizers and soap and -- and  
5 the things they need to keep their hands clean. And to  
6 clean -- for them to clean effective -- for the people  
7 who live in the jail, to effectively clean the surfaces  
8 that are theirs primarily, and make sure the -- that the  
9 bathrooms and the showers and the toilets and everything  
10 are cleaned frequently. It can't be done just because  
11 you say, we're going to do that.

12           This is a -- is a major process that has to be  
13 undertaken right now. And it is not going to be  
14 successful -- well, it is unlikely to be successful  
15 unless it is -- it is elevated to an extremely high  
16 priority.

17           And the way you do that in jail, based on my  
18 experience of working in these institutions for more than  
19 40 years, is you make it a priority and you develop a  
20 policy and a directive, and you monitor every housing  
21 area and make -- have it -- and have the person  
22 responsible for cleaning it check off that they have  
23 cleaned it, with their signature, three or four or  
24 whatever number of times a day.

25           That you -- that you audit the availability of

1 cleaning supplies and -- and the -- and the instruments  
2 required to clean with, of rags and mops and changing --  
3 and replacement mops. And this is not a responsibility  
4 of the person who's -- you know, this is a major  
5 responsibility of -- of the top leadership of the jail.

6           So I -- I think it -- if they do not -- if they  
7 have a policy that says, we are doing this in every  
8 housing area and every common area this number of times a  
9 day, and documenting that it is being done, documenting  
10 when they have shortages -- because they will have  
11 shortages -- and that it will not -- they will not be  
12 able to meet the CDC guidelines.

13           So --

14           THE COURT: Dr. Cohen, if I can chime in for  
15 just a moment. That brings up a thought.

16           When I heard testimony yesterday, I was  
17 concerned to hear lots of -- or not lots of, but both  
18 witnesses made reference to inmates cleaning their own  
19 cells. And I think in a pandemic, that's probably not  
20 all that problematic, as long as there is professional  
21 cleaning going on, too, to supplement whatever cleaning  
22 the inmates do.

23           When Defendants put on their case, I would like  
24 to hear what, if any, professional cleaning is done.  
25 Because I heard about inmates cleaning. That doesn't

1 necessarily mean professionals aren't also cleaning, but  
2 I'd like to hear about that.

3           So if you'll put that on your "do" list of  
4 things to talk about, thanks.

5 Q.   And, Dr. Cohen, yesterday you heard testimony about  
6 masks for staff, and the fact that they are using them  
7 for several days in a row.

8           Do you believe that that's adequate?

9 A.   No, it is not.   A paper mask should be replaced  
10 daily.   Cloth masks -- and that is what staff should get.  
11 Cloth masks for other people can be -- can be washed  
12 and -- until they are no longer useful.   But paper masks  
13 should be replaced daily.

14           And that can be done, but it is a big project.  
15 And it means that you have -- that there have to be  
16 thousands and thousands of masks available, and someone  
17 has to be tracking when they're getting low on -- on  
18 supplies; and someone is reporting each day on how many  
19 masks -- and this could be being done.

20           But I -- but these things don't happen just --  
21 without a very, very high-level commitment to assuring it  
22 in a situation in which there are limited numbers of  
23 masks available in this country.   So I don't know what  
24 the actual situation is in -- in the Dallas County jail,  
25 but certainly paper masks should be replaced on a daily

1 basis.

2 THE COURT: And if I might chime in, Ms. Fettig?  
3 I've got another question kind of along those lines.

4 Dr. Cohen, you -- you were privy to the  
5 testimony yesterday, and I was concerned when I heard  
6 about inmate laundry and inmate clothing not being  
7 changed frequently. And according to the declarations,  
8 you know, there -- there is a variety of days listed in  
9 the declarations, but kind of an ongoing theme in them is  
10 that clothing and bedding are not being washed frequently  
11 enough.

12 Do you have recommendations for the Court on how  
13 frequently bedding and jail outfits should be changed?

14 THE WITNESS: We -- I have to -- New York City  
15 has standards for -- for clothing and for bedding  
16 changes. I think it is twice a week, is the -- is the --  
17 is the changes that -- that our standards are. And they  
18 were based upon environmental experts making a  
19 recommendation on that.

20 The cleaning of -- so I think twice a week is  
21 the -- is the appropriate amount. But I'm not going --  
22 I'm going to have to check on that.

23 THE COURT: And, Defendants, in fairness, if  
24 they -- you may be about to present a witness who will  
25 testify about what the existing policy is. Please just

1 know that I would like to hear more about that than just  
2 what the inmates have said so far.

3 So I would like to hear -- that is important to  
4 me to hear about how often their laundry is being  
5 cleaned, how often their jumpsuits are being changed, and  
6 whether that has changed -- whatever the policy is,  
7 whether that has changed because of the pandemic, okay?

8 MR. STEPHENS: Yes, Your Honor.

9 Q. And, Dr. Cohen, just to -- going back to the issue  
10 of masks, at -- at this time, who should be wearing  
11 masks, and how often?

12 A. Well, I think everybody should be wearing masks all  
13 the time right now. I mean, we pointed out it's hard to  
14 wear a mask when you are eating. But everyone should be  
15 wearing masks when they are in -- when they are in  
16 contact with other people. If they -- you know, if they  
17 are in their cell by -- if they're in a single cell, they  
18 don't have to wear a mask.

19 And the kind of mask that should be -- that  
20 should be worn depends on the -- the situation, as I --  
21 as I reflected the CDC guidelines before. People at high  
22 risk of exposure to COVID-19 should be wearing an N95,  
23 and people who are -- people at low risk of exposure can  
24 be wearing disposable, daily-use paper masks.

25 Q. And, Dr. Cohen, under the CDC guidelines, has the

1 CDC prescribed certain sanitizers and cleaning materials  
2 that should be used for COVID-19?

3 A. They have made some recommendations on that, yes.

4 Q. To your knowledge, based on the declarations  
5 submitted by Defendants, is Dallas County jail following  
6 those recommendations?

7 A. I -- I can't really be sure about that, so I'm not  
8 going to be able to answer that question.

9 Q. Okay. Should they be following the CDC's guidelines  
10 on that?

11 A. They should be following the CDC guidelines, in  
12 terms of the frequency with which they clean stuff and  
13 utilize -- and the materials that they utilize. I can't  
14 tell whether they're doing it or not.

15 Q. Now, you heard Officer Lewis testify yesterday that  
16 he had received very little, to no, staff training about  
17 COVID-19. Does this comply with the CDC guidelines?

18 A. No, it does not. If I could speak more to this.

19 Staff -- staff training is -- is very important.  
20 I would just comment, you know, having someone in --  
21 be -- take on the job that he had to take on without  
22 going to a training academy was -- was a little shocking  
23 to me to hear -- to hear that yesterday. There's a  
24 lot -- there's a lot to know about when you -- there's a  
25 lot that people need to learn to be a correction officer.



1           But no, the training here is -- is very  
2 important. So people understand why they have to do the  
3 cleaning as frequently as they do, so they understand why  
4 they have to wear the masks, and what masks to wear at  
5 which times; and when to call -- when to call for help  
6 and when to assure that if the kite system fails, the --  
7 to get someone seen.

8           And the training about COVID-19 has to be given  
9 to both the -- the correction officers and to the -- to  
10 the people living there. And it really should be  
11 given -- and the CDC recommends this -- by medical  
12 personnel. This is not a -- this is not a do-one -- you  
13 know, a do-one/teach-one situation for the correctional  
14 staff.

15           This is a -- this -- these are complex and  
16 changing and very clinical matters, and people should be  
17 getting their information from clinicians, from health  
18 personnel, not from -- not from the correctional staff.  
19 It is not a criticism of the correctional staff; it is  
20 just not their expertise.

21           So the -- the -- there should be substantial  
22 training of the -- of the correction officers. There  
23 should be a curriculum and they -- it should be reviewed.  
24 They should know daily how many people are -- where they  
25 are living and where they are working, how many people

1 have been infected; how many tests are being done; how  
2 many people have been hospitalized.

3 And the -- and the -- and the people living in  
4 it needs -- need to have, in addition to -- to posters  
5 and banners on the television, a one-on-one -- it doesn't  
6 have to be one-on-one, but, you know, direct  
7 conversations around a fixed curriculum, with medical  
8 personnel, to help them understand their situation and  
9 what they can do to protect themselves. And that  
10 information is going to change over time, so it has to be  
11 reinforced. And when it is changed, it has to be  
12 modified to reflect it.

13 And, for example, at the beginning of the  
14 epidemic, you know, masks were not being recommended.  
15 And then, now, they are being recommended. And there  
16 needs to be an explanation as to why that changed, both  
17 to the correctional staff and to the -- and to the  
18 incarcerated population. And I don't -- I did not hear,  
19 from what I -- from the testimony yesterday, that that  
20 level of education was being provided.

21 Q. Okay. So, Dr. Cohen, reflecting on the CDC  
22 guidelines for cleaning and sanitation and PPP [sic], is  
23 it your opinion that the -- if the jail follows the  
24 cleaning and PPP CDC guidelines alone, that will be  
25 sufficient to stop the spread of COVID-19 in the jail?

1 A. If they follow the guidelines on PPE and cleaning,  
2 would that be sufficient; is that your question?

3 Q. Yes.

4 A. And my answer would be, no. It's too crowded. you  
5 can't have -- you can have 64 people in a -- in a housing  
6 area, living in four beds that are connected to each  
7 other, and sitting at tables where they are right next to  
8 each other; and lining up to get fed right next to each  
9 other; and moving through the halls, going into elevators  
10 right next to each other, but you are going to -- but  
11 you're going to spread the virus through that.

12 And so, if -- there has to be -- the key issue  
13 is -- so -- is physical distancing. That is the key  
14 to -- to controlling the spread of Coronavirus and  
15 COVID-19 sickness in the jail (unintelligible) --

16 THE COURT: Dr. Cohen, the last part was a  
17 little bit garbled; do you mind saying that last part  
18 again?

19 A. The last thing I said is that the -- the key to an  
20 effort to be controlled (unintelligible) --

21 THE COURT: Let's go off the record for a  
22 moment. We're having some technical problems.

23 (Off-the-record discussion.)

24 Q. So, Dr. Cohen, you were just testifying about social  
25 distancing. What is your understanding of the --

1 A. Yes.

2 Q. -- CDC guidelines around social distancing?

3 A. Right. And those are not being -- those are not  
4 being carried out in the jail, as far as I can tell, from  
5 the -- the descriptions of the -- of the witnesses  
6 yesterday. And I don't know how they could be, if -- you  
7 know, if people are in 64-bed, you know, housing areas.

8 Q. What types of plans should the Dallas County jail  
9 come up with, in terms of social distancing?

10 A. Well, they -- they should -- people should be -- if  
11 they are sleeping in a dormitory setting, they should  
12 be -- the beds should be six feet away from each other  
13 and the -- and meals should be staggered.

14 And people should sit at table -- they should be  
15 staggered to the point where they don't have to sit  
16 closer than six feet from -- from each other, and don't  
17 have to line up next to each other to get the -- to get  
18 their meals.

19 I mean, in New York, we see that all the time on  
20 the street right now, people going into the supermarket  
21 are lined up at six-foot intervals. And that's how it  
22 is -- that is how it is maintained.

23 So -- and, you know, you -- I don't think you --  
24 you -- I don't know how big the elevators are. If the  
25 place is dependent on elevators, then they have to be --

1 you know, people -- there should be -- not more than a  
2 couple of people in an elevator at a time. You are  
3 separated by a six-foot distance, or whatever -- however  
4 the size of the elevator is to allow -- allow for that.

5 And in single cell -- people should not be in  
6 double cells. And I think if they are, that would --  
7 that would be a dangerous situation. And at the same  
8 time, you know, you don't want everybody -- anyway, that  
9 is what would be required to -- you'd have to create a  
10 situation where it was physically possible to -- to  
11 separate people by six feet.

12 Q. And how about staff training, what should the staff  
13 be told; what should the Dallas County jail be doing with  
14 the staff?

15 A. Yeah, it's -- I -- they -- they need to explain to  
16 the staff that it is their responsibility to create  
17 situations where this is possible. I think primarily --  
18 as far as I know, and I -- and I've heard, everybody --  
19 you know, everybody in the jails is working very hard,  
20 and wants to achieve the same thing, to protect  
21 themselves and others from the spread of the epidemic.

22 So the officers will have the responsibility of  
23 maintain -- of creating a situation where people can  
24 separate themselves. So -- and they have to be  
25 instructed on how to do that. There will be times when

1 you'll have to -- they will have to tell someone, hold up  
2 there; you are too close.

3 I would hope, and imagine, that this would very,  
4 very, very, very rarely result in any kind of infraction  
5 type of situation. That's not the goal here. The goal  
6 here is to provide the opportunity for people to social  
7 distance themselves, with the support of the correctional  
8 staff.

9 MS. FETTIG: I wonder if we might bring up  
10 Plaintiff's Exhibit 6 so that Dr. Cohen can take a look  
11 at that.

12 THE COURT: Give us just a moment to pull that  
13 up.

14 (Off-the-record discussion.)

15 THE COURT: We will see you back in ten minutes,  
16 thank you.

17 Q. Before addressing this exhibit, Dr. Cohen, I -- I  
18 want you to speak to a concern that the Court actually  
19 raised; and that is having incarcerated people clean  
20 their own cells and be responsible for cleaning during  
21 the COVID-19 crisis.

22 What should be done to make sure that this is  
23 safe, and is it safe?

24 A. If they are cleaning -- effective cleaners should be  
25 used to clean up an area where someone with COVID-19 had

1     been staying for awhile. And that's something that --  
2     that should not be done by the -- by the staff.

3             If they are short -- the staff who does clean  
4     the -- the -- the incarcerated, detained people who do  
5     cleaning must be trained in -- in how to clean, and  
6     during this -- during this epidemic, what materials to  
7     use and how to apply them; what to mix together and what  
8     not to mix together. And this is not obvious. They have  
9     to be -- they have to be trained based upon the -- on the  
10    CDC guidelines.

11            The frequency of cleaning has to be -- has to be  
12    determined and recommended. And -- and people have to  
13    have materials which are adequate to clean the -- their  
14    own surfaces. So they -- they need to have things which  
15    are virucidal; for example, a little bleach solution  
16    should be provided to them.

17            I think also they should be able to clean their  
18    hands carefully by themselves, and hand sanitizer should  
19    be made available. The CDC recommends that, with respect  
20    to the security issues of the facility. But I think  
21    prisons are -- and jails are beginning to provide that to  
22    people.

23            THE COURT: And, Dr. Cohen, if you could scoot  
24    back just a little bit from the microphone. I'm getting  
25    a little bit of reverberation.

1 Thank you, sir.

2 Q. Thank you, Dr. Cohen.

3 So hopefully you see what has been entered into  
4 evidence as Plaintiff's Exhibit 6. Do you see that,  
5 Dr. Cohen?

6 A. I do.

7 Q. And do you recall the testimony yesterday of Officer  
8 Lewis and David Jones about the living conditions in this  
9 type of unit at Dallas County jail?

10 A. I do.

11 Q. Based on what you know and what you have heard, do  
12 you believe this type of living condition can adequately  
13 be socially distanced for medically-vulnerable people?

14 A. No. It would not be possible to social distance in  
15 this setting. I mean, people are packed in very, very,  
16 very, very tightly. And that is the structure of the  
17 place; that is the way it is designed, and it would not  
18 be possible to maintain anything approaching effective  
19 social distancing at this level of density.

20 Q. In order to prevent the spread of COVID-19 in the  
21 Dallas County jail environment like you see before you,  
22 what should be done?

23 A. You have to make sure that beds were separated by  
24 six feet. If they were bolted to the floor, then you  
25 have to not allow people to -- then you'd have to take



1 out of commission those that were less than six feet --  
2 six feet away. And that would cut down the population in  
3 half, or more. I don't know exactly what it is; but  
4 probably you'd have to -- you'd have to have 30 people or  
5 25 people or something in this area.

6           You'd have to stagger meals. You'd have to  
7 instruct everyone to not march next to each other, but to  
8 maintain separate distances -- maintain six-foot  
9 distances. And I think you -- I doubt that it would be  
10 possible to do this without decreasing the number of  
11 people in the -- in the jail.

12           I think that that's -- that is the main thing  
13 that needs to be done, to get the numbers down so you can  
14 maintain social distancing; and also get the  
15 medically-vulnerable people out so that they won't  
16 overwhelm the healthcare system when they get sick.

17           And they are going to get sick, because they're  
18 already getting sick right now in Dallas. I mean, the --  
19 the -- the reports from 4/21 show that there are 80  
20 positive tests, and -- of the inmates, and 19 positive  
21 tests of jailers; and 12 waiting for results. So it is  
22 going to spread.

23           And it should -- any action to decrease the  
24 number of people there, and to enforce spacing so -- you  
25 know, six-foot distancing is critical.

1 Q. Dr. Cohen, based on your professional experience,  
2 and what you know from the evidence that's been entered  
3 into this case, what, in your opinion, will happen if  
4 Dallas County jail's population is not reduced  
5 substantially during the COVID-19 pandemic?

6 A. The population of -- of people who are infected  
7 of -- the -- is going to increase. And that's going to  
8 be correction officers and -- and they may even -- they  
9 will increase -- they will increase at a faster rate,  
10 probably, than -- than the men and women inside.

11 And the number of -- the number of incarcerated  
12 people who have been infected will increase dramatically.  
13 And people will -- people who are medically vulnerable  
14 will get very sick and require hospitalization. And, you  
15 know, people who are medically vulnerable die from this  
16 disease.

17 Q. So, Dr. Cohen, do you believe that complying with  
18 the CDC guidelines for corrections and detentions --  
19 detention settings will be sufficient to stop the spread  
20 of COVID-19 in Dallas County jail?

21 A. Well, I think -- there's no -- there -- don't --  
22 they don't say -- they say, you know, do social  
23 distancing to the extent that you can. And that will  
24 work. So -- and they -- so I think that just -- if the  
25 department is not prepared to have -- maintain six-foot

1 distancing for everybody, and to -- then it is not going  
2 to be -- and -- which would require releasing -- to cut  
3 the population down to spread it out, then the CDC  
4 guidelines will not be sufficient to stop -- to control  
5 the spread within the jail.

6 Q. And you mentioned population reduction. Where would  
7 you start the population reduction in the Dallas County  
8 jail?

9 A. Well, you'd start with the medically-vulnerable  
10 population, because they are the ones who are going to  
11 have the greatest consequences. Those are the older and  
12 sick people. And then -- that would be the first group  
13 that I -- that I -- that I would get out, from a public  
14 health perspective.

15 Q. And could the Court handle that, in your expert  
16 opinion? Could they initiate a process that would  
17 effectively get those folks out?

18 MR. BIGGS: Objection; calls for --

19 A. I think it could -- it could get lots of them out --

20 MR. BIGGS: -- Your Honor?

21 MR. STEPHENS: Join the objection.

22 (Simultaneous conversation.)

23 THE COURT: Dr. Cohen, we've got an objection.

24 What -- what objections do you have, gentlemen?

25 MR. BIGGS: Well, I think they're -- she is

1 asking for a legal conclusion. And also, this is way  
2 outside of his -- what he's been qualified as an expert.

3 They're asking what do they believe you can do  
4 to expedite this process. I just think it is improper  
5 across the board.

6 THE COURT: All right. Overruled.

7 Q. You can testify, Dr. Cohen.

8 A. Can you ask -- rephrase the question again? I --

9 Q. Sure. Do you believe that the -- the federal court  
10 could oversee a process to get the medically vulnerable  
11 out of the Dallas County jail? And how would you suggest  
12 that the federal court do that?

13 A. Yeah, I think we can do -- we can do things in  
14 this -- in this moment that are hard. We can do things  
15 in this moment that we haven't done before.

16 I mean, the federal courts have been called on  
17 to -- to release people when situations of -- you know,  
18 were such that there were too many people in jails and  
19 prisons.

20 It happened in New York City when Judge Lasker  
21 released people. It's happened from the jails and it --  
22 so I -- yes, of course it could happen. And it is not  
23 going to be simple to do it, and -- but it -- but it --  
24 but it could be done, and it should be done.

25 Q. Dr. Cohen, you have heard that the population in the

1 jail has been somewhat reduced. Do you have any  
2 recommendations on -- on how low the population needs to  
3 get in order for it to be safe in -- during the pandemic?  
4 A. Well, you know, I -- and you could -- you could look  
5 at how many housing areas are -- I don't have an exact  
6 number for that. I -- you know, it would be based upon  
7 a -- how to get six-foot space in between all the -- all  
8 the beds. That would be -- and to -- and to rearrange  
9 and to arrange for activities like eating and  
10 large-muscle exercise as well.

11 The solution to this is not to place everybody  
12 in solitary confinement. You can't do that anyway at  
13 this jail, because there's so many dormitory areas. But  
14 you want people to be moving around some.

15 But I don't -- I don't know what the -- what the  
16 number is. It really depends on the configuration of  
17 the -- if a place like -- however many square feet there  
18 are in a place like this, you want to have the beds six  
19 feet apart and you want to have -- people to have the  
20 opportunity to -- to eat. And that would be -- that  
21 would probably be a substantial reduction. I'm sorry, I  
22 don't -- I can't come up with a number.

23 Q. Now, Dr. Cohen, you have reviewed the medically-  
24 vulnerable subclasses in this action. I understand you  
25 haven't had the opportunity to look at their medical

1 records, but you are aware of their identified medical  
2 issues.

3           Would you include them in the medically-  
4 vulnerable group of individuals who need to be considered  
5 for release?

6 A. Yes, I would.

7 Q. Now, Dr. Cohen, I want to ask you a little bit about  
8 what we know about COVID-19, and the directions we have  
9 been given to stop the spread.

10 A. Excuse me, can you -- I just -- in New York City, we  
11 recommended a 2,000 decrease from a population of  
12 5,500 -- 5,300, actually, when we made the  
13 recommendation. So just to clarify. That is what we  
14 thought they could do. But it really depends a lot on  
15 the configuration of the individual facility.

16 Q. So I understand that this is a fast-evolving  
17 situation with COVID-19. But we've known a number of  
18 things about the virus for awhile, haven't we, Dr. Cohen?

19 A. Yes, we have.

20 Q. For example, we have known that the -- that the  
21 virus can be transmitted through droplets; is that  
22 correct?

23 A. That is the primary way to spread it, yes.

24 Q. Okay. And we've known that congregate settings  
25 actually promote the spread of the virus, correct?

1 A. We have seen that in nursing homes, we've seen that  
2 in cruise ships, and we have seen that at gatherings,  
3 which resulted in substantial spread throughout  
4 communities.

5 Q. And how about symptoms? We've known about the  
6 symptoms of COVID-19 for awhile, haven't we?

7 A. Well, I think we know more than we knew initially.  
8 We -- we had hoped that we were dealing with a disease  
9 where -- where symptoms were -- developed very close to  
10 time of infectivity, but it turns out that people can be  
11 infected for many days before they have symptoms. So we  
12 have to be -- we have -- even have a greater concern when  
13 there are a large number of groups of people in confined  
14 spaces that -- that symptom screening and even  
15 temperature screening are not sufficient.

16 Q. So we've known about asymptomatic transmission for a  
17 couple months, correct?

18 A. Yes, we have.

19 Q. How about the need to quarantine, that -- that's  
20 been a recommendation for a long time, hasn't it?

21 A. It's -- yes, it has been a recommendation. It was  
22 certainly what was -- what was done in -- you know, the  
23 plan was to do that in early March in New York City. And  
24 self-quarantining has been the recommendation from the  
25 beginning of this epidemic.

1 Q. And how about social distancing, that's been a  
2 recommendation to stop the spread of COVID-19 for awhile,  
3 hasn't it?

4 A. It has.

5 Q. Based on everything we've known for quite awhile  
6 about transmission of the virus and how fast it spreads  
7 and how easily it spreads, in your opinion, has the  
8 Dallas County jail taken sufficient measures to actually  
9 stop the spread of the pandemic in its institution?

10 A. No, it has not.

11 MS. FETTIG: I'm going to pass the witness at  
12 this time, so I closed a little earlier than I expected.

13 THE COURT: Thank you so much.

14 And thank you for your testimony, Dr. Cohen.

15 Let's take a break here in just a moment.

16 Before we do, I want to check with Defense Counsel and  
17 Intervenors's Counsel.

18 Is there anything to which Dr. Cohen referred  
19 that you don't have copies of that you need for  
20 cross-examination?

21 MR. STEPHENS: Your Honor, Mr. Cohen went  
22 through some correspondence from the New York Board of  
23 Corrections, on which he serves the various New York  
24 government officials. I don't believe those  
25 correspondences have been provided to us.



1           THE COURT:   Ms. Fettig, is that something that  
2 you could e-mail them during the lunch hour?

3           MS. FETTIG:   I can consult with Dr. Cohen and  
4 see if those are public.

5           THE COURT:   Okay.   And I think we've got a  
6 protective order in place.   If the Court needs to  
7 enter -- I'll have to look back -- I looked at the scope  
8 of that, but it was two days ago.

9           So if we need to amend that protective order to  
10 keep confidential any communications, I'm certainly happy  
11 to entertain that, if the parties could reach an  
12 agreement, if that's necessary.

13           So -- but if he -- he did refer to that  
14 correspondence.   So if it is possible for them to see  
15 that so that they can talk to him about it, that would be  
16 helpful.

17           THE WITNESS:   And they can -- I'll forward them  
18 to Ms. Fettig.

19           THE COURT:   I'm sorry, let's go off the record  
20 so my court reporter doesn't have to take this down while  
21 we're working out mechanics.

22           (Lunch recess.)

23           THE COURT:   Back on the record.   This is the  
24 resumption of the Sanchez versus Dallas County Sheriff  
25 hearing.

1 I believe the witness has been passed for  
2 cross-examination. There is nothing the parties needed  
3 to take up in advance, so feel free to proceed.

4 CROSS-EXAMINATION

5 BY MR. STEPHENS:

6 Q. Dr. Cohen, my name is Ben Stephens. I'm the  
7 attorney for Dallas County and Sheriff Marian Brown in  
8 this case. I'm going to be asking you some questions on  
9 their behalf.

10 A. Okay.

11 Q. You are a doctor of internal medicine, correct?

12 A. Yes.

13 Q. Do you have any certification or licensing as an  
14 epidemiologist?

15 A. No.

16 Q. And, likewise, no certification or licensing in the  
17 field of infectious disease, generally?

18 A. That is right.

19 Q. I think you did mention that you have had some  
20 experience working with the HIV pandemic in New York; is  
21 that correct?

22 A. I was the director of the AIDS Center of  
23 St. Vincent's Hospital, which had more patients than any  
24 other hospital at some point. About 154 patients in the  
25 hospital some days.

1 Q. Are HIV and COVID-19 transmitted in similar ways, or  
2 are they transmitted differently?

3 A. As far as we know, they're transmitted differently.

4 Q. And COVID-19 is primarily transmitted through  
5 droplets that are generated when an infectious person  
6 sneezes or coughs; is that correct?

7 A. Yes.

8 Q. You're a member of the Board of Corrections in New  
9 York. And I believe you testified that that board  
10 established the minimum standards for jails in New York  
11 City; is that correct?

12 A. Yes.

13 Q. Is the Board of Corrections' jurisdiction limited  
14 just to New York City, or is it broader; is it a  
15 statewide agency?

16 A. New York City.

17 Q. And do you -- that entity has the authority to make  
18 laws, correct?

19 A. Yes.

20 Q. And those laws -- to be clear, those laws are  
21 different and more binding than the CDC guidelines that  
22 we have all been talking about; which are just that,  
23 guidelines, correct?

24 A. I -- yes.

25 Q. And the CDC guidelines don't have force of law that

1 you're aware of?

2 A. I'm not aware that they do. They might at some  
3 point during this pandemic, but right now I don't think  
4 they do.

5 Q. And Rikers Island is a New York City jail, and that  
6 is under the Board of Correction's jurisdiction, correct?

7 A. It's in -- Rikers Island is a group of jails  
8 located -- Rikers Island is an island; there are a number  
9 of jails located on that island.

10 Q. Okay. And the standard which the Board of  
11 Corrections promulgate are standards which apply to  
12 Rikers Island, correct?

13 A. Yes. And the other jails of New York City.

14 Q. Okay. More than just Rikers; all jails of New York  
15 City?

16 A. Yes. All city jails.

17 Q. Okay. And briefly I want to touch on some of the  
18 steps you mentioned that the Board of Corrections has  
19 taken with regards to COVID-19. And then, specifically,  
20 a letter of March 17th you referenced, where -- sent by  
21 the Board of Corrections to the City, urging the release  
22 of inmates who were susceptible to COVID-19. That  
23 letter -- I heard it correctly that that letter was sent  
24 on March 17th, correct?

25 A. Yes.

1 Q. And you have heard testimony from Officer Lewis  
2 yesterday, and you have reviewed the declaration of Chief  
3 Robinson, which describe efforts Sheriff Brown took on  
4 that same day, March 17th, to work with local law  
5 enforcement agencies to reduce the number of people being  
6 brought to the Dallas County jail?

7 A. Yes.

8 Q. Do you commend Sheriff Brown's efforts in sending  
9 that letter?

10 A. Yes.

11 Q. Do you believe -- I know you believe, and you would  
12 agree with me, that the -- reducing the number of people  
13 that come to jail in the first place is an appropriate  
14 step in mitigating the threat of COVID-19, correct?

15 A. Yes.

16 Q. When -- the materials your attorney sent us earlier  
17 this morning, the letters and the CDC report, you  
18 provided us with all the materials you relied on to form  
19 your opinions; is that correct?

20 A. Yes.

21 Q. You would agree with me that the public health  
22 community's opinion and consensus on COVID-19, it evolves  
23 on almost a daily basis, correct?

24 A. I'm sorry, devolves you said?

25 Q. Evolves. The understanding --

1 A. Yes.

2 Q. -- of the community, as regards to this virus,  
3 evolves continually?

4 A. Well, changes. I -- you know...

5 Q. Changes how?

6 A. It's subject to the -- the virus and its  
7 epidemiology and to politics.

8 Q. Is it fair to say that as we spend more time with  
9 this virus, we understand more about it; including its  
10 causes and effects?

11 A. I -- generally, as a doctor, you know, I believe  
12 that that would be the case. Right now we're -- we're --  
13 we're learning -- we've learned some things.

14 Q. And it's correct we currently have no cure?

15 A. Yes, unfortunately it is true.

16 Q. You mentioned -- you mentioned measures taken to, in  
17 the absence of a cure, at least prevent the spread of the  
18 virus. And you described how those measures are  
19 traditional measures as -- as you would apply to the  
20 spread of any respiratory disease. Did I hear that  
21 testimony correctly?

22 A. Yes.

23 Q. And those steps include common-sense things, like  
24 washing your hands, covering your mouth when you cough;  
25 just basic things we're all aware of to avoid spreading

1 disease?

2 A. That -- there are things we are aware of. I don't  
3 think we were aware of it the way we are now.

4 Q. Okay. I don't want to spend too much time on this,  
5 because you have testified about your criteria which you  
6 consider making a person especially vulnerable to the  
7 risk of the disease. And I want to clarify that by  
8 medically vulnerable, what you are specifically  
9 describing is at a higher risk, or a higher likelihood of  
10 being hospitalized upon contracting the virus; is that  
11 correct?

12 A. Yes.

13 Q. And I think you agree that you included in your  
14 declarations some criteria that makes a person medically  
15 vulnerable the CDC does not include; is that right?

16 A. Yes.

17 Q. So I'd like to just briefly go over those with you.

18 You agree with the CDC that a person with  
19 chronic lung disease is especially vulnerable to  
20 COVID-19?

21 A. Yes.

22 Q. Likewise, for someone who has serious heart  
23 conditions, chronic kidney or liver disease, diabetes, or  
24 someone who is immunocompromised?

25 A. Yes.

1 Q. The CDC does not currently recognize epilepsy, blood  
2 disorders, inherited metabolic disorders, history of  
3 stroke, or developmental disabilities as making someone  
4 medically vulnerable to COVID-19, correct?

5 A. I believe that's the case, although they have  
6 described some of those things as being high risk for  
7 hospitalization.

8 Q. Okay. But not COVID-19 specifically; just  
9 hospitalization in general?

10 A. No, with -- associated with COVID-19,  
11 hospitalization.

12 Q. Are you more -- or does the CDC consider you more  
13 likely to be hospitalized from COVID-19 if you have  
14 epilepsy?

15 A. No, not epilepsy.

16 Q. How about blood disorders?

17 A. Well, they list it as a -- as a risk factor in the  
18 article that I gave you.

19 Q. Which article is that?

20 A. The one that I sent out this afternoon. The one  
21 entitled, Population-based rates of laboratory-confirmed  
22 Coronavirus Disease, 2019: Associated hospitalizations  
23 are lacking in the United States.

24 Q. Let's talk about this -- this document briefly.

25 This is not a study, correct? This is



1 a newly-released report; am I right in saying that?

2 A. Well, you know, there -- lots of -- lots of what  
3 we're acting on, and basing our recommendations -- I  
4 mean, the -- the CDC and New York City and Texas and  
5 everyone are making their recommendations based upon data  
6 that is falling in right now.

7 Nobody's doing -- I mean, there are a couple of  
8 randomized-controlled trials of a few things, but  
9 basically this is retro -- this is epidemiologic data  
10 thrown into various systems. This was data collected by  
11 CDC for multiple states, where they analyzed  
12 hospitalizations and came out -- and identified which  
13 things were -- put people at higher risk of ending up in  
14 the hospital.

15 Q. Sure. And you have touched on something I want to  
16 address.

17 I think you'd agree with me that there are very  
18 few peer-reviewed, published studies conducted with the  
19 kind of rigor we usually associate with medical studies  
20 about COVID-19, correct?

21 A. Well, I -- you know, the rigor of -- there are very  
22 few controlled studies right now, because there are --  
23 it's very new -- yes, it's true; there are very few  
24 controlled studies.

25 That's -- epidemiology is -- sometimes has

1 controlled studies, some -- often it is based upon data  
2 that's collectable, rather than -- I mean, rather than  
3 being a study.

4 Q. And I think you'd agree with me that data and  
5 information about COVID-19 are at a premium, because we  
6 haven't been exposed to this virus very long, all things  
7 considered?

8 A. I don't know what you mean by "premium."

9 Q. You would agree with me that there's limited  
10 information, with more being gathered every day, about  
11 COVID-19?

12 A. There is more information being gathered,  
13 unfortunately because lots of people are getting sick and  
14 being hospitalized. And so now there's a -- now there is  
15 data beyond the -- the -- the Chinese experience,  
16 which -- from this country. That is -- this data is from  
17 the United States.

18 Q. Right. And this data looks like to be data from --  
19 or this report looks at data from 14 states over the  
20 month of March; is that right?

21 A. Yes.

22 Q. And on Page 2 of that document -- well, I printed it  
23 out, so it's Page 2 for me; I'm not sure how you are  
24 looking at it. But there is a table which shows the  
25 rates of hospitalization for COVID-19, and states that

1 the rates of hospitalization increased with age?

2 A. Yes.

3 Q. I -- I see that persons aged 50 to 64, and you have  
4 testified about this previously, are hospitalized at a  
5 rate of 7.4 percent. And that persons age 65 to 74 are  
6 hospitalized at a little less than twice that rate.

7 Am I reading that table correctly?

8 A. That's right.

9 Q. And this report looked at a group of 178 adult  
10 patients?

11 A. Let me find that.

12 No, it was a larger group than that.

13 (Reporter instruction.)

14 A. I mean, this -- it said -- I mean, there were 366  
15 who were age 18 to 49; 461 who were age 50 to 64; 643  
16 over 65. So that by itself is in the 1,500 range, and so  
17 it is in -- it was about 1,500-plus patients.

18 Q. Okay. Thank you for that clarification. I'm  
19 specifically looking at the sentence that reads: Among  
20 178 adult patients with data on underlying conditions, as  
21 of March 30th, 2020, 89.3 percent had one or more  
22 underlying conditions. And it then goes on to state  
23 those underlying conditions.

24 So this report looked at a large group of which  
25 a subset of 178 had data on underlying conditions, right?

1 A. Yes, I think that's right. And they -- and they  
2 looked at how many conditions you had and what your age  
3 were, and came up with your relative risk based on that,  
4 yes.

5 Q. Okay. And the most common underlying conditions  
6 that this study looked at were hypertension, obesity,  
7 chronic lung disease, diabetes mellitus, and  
8 cardiovascular disease; is that correct?

9 A. Yes, that is right.

10 Q. I noticed that obesity is not on your list of  
11 criteria and conditions which make a person medically  
12 vulnerable. Why is that?

13 A. I wasn't aware of that when I did it originally.  
14 The data on obesity has been quite dramatic. It was  
15 noted in here. It was just a report for New York City,  
16 which had a dramatic report on the -- the relationship of  
17 deaths related to obesity, even among younger patients.  
18 I wasn't aware of that. This is -- as you have  
19 described, this is data which is just coming out now.

20 Q. Were you aware that you had provided in your  
21 materials an earlier version of this same Morbidity and  
22 Mortality Weekly Report?

23 A. I'm not sure.

24 Q. And let me help you out. I believe that's your  
25 Exhibit V to your supplemental declaration.

1 A. I don't -- okay. I don't have that attached to my  
2 supplemental --

3 Q. Why don't we do this. Were you aware that in that  
4 report, which was published on April 8th, obesity is also  
5 listed as a condition which makes a person medically  
6 vulnerable to --

7 A. No, I realize it's -- I realize it is the same  
8 document.

9 Q. Excuse me?

10 A. No, I -- I realize it's the same document. I did  
11 not include obesity. I should have included obesity.  
12 And -- and it's now recognized in -- as an -- obesity,  
13 independent of diabetes, it's recognized as a separate  
14 issue here. It changed quickly with this virus.

15 Q. Okay. And you are -- you are aware of that now; you  
16 are aware that someone who has obesity is medically  
17 vulnerable for COVID-19?

18 A. Appears that they substantially -- they are, yes.

19 Q. Okay. Do you know how long the CDC's included  
20 obesity in its list of conditions?

21 A. No, I don't know that.

22 Q. Would you agree with me that your conditions, which  
23 you state make a person medically vulnerable for  
24 COVID-19, are not currently included in the CDC  
25 guidelines?

1 A. Basically they're just about the same, aren't they?

2 Q. Well, not epilepsy, correct?

3 A. Well, I'm -- epilepsy -- I mean, the -- the American  
4 Epilepsy Foundation says that epilepsy is not a -- is not  
5 associated with -- with morbidity or mortality with  
6 COVID-19. And I'm not familiar with other data saying  
7 that it is. So I don't think epilepsy should be  
8 included.

9 Q. Okay. What I'm really getting at is this: The CDC  
10 guidelines have their list and you have your list. Do  
11 you think it's unreasonable for Dallas County and the  
12 Dallas County sheriff to rely on the CDC's guidelines of  
13 what make a person medically vulnerable when you  
14 are assessing who is medically vulnerable in the jail?

15 A. I think you should look -- you should look at what  
16 the CDC says and you should look at data that's been  
17 developed since their initial discussion on it, and you  
18 will come to some process for -- you know, which I think,  
19 based on public health and clinical expertise. I know  
20 you have great doctors and epidemiologists there. It  
21 makes -- makes sense.

22 Q. Sure. I'm just trying to figure out what the  
23 minimum standard is for a detention officer and/or  
24 someone who runs a jail when they're trying to assess  
25 who's medically vulnerable in their jail. And I -- I --

1 A. I --

2 Q. -- I think you agree --

3 (Simultaneous conversation.)

4 A. -- detention officer function. I agree with you,  
5 that is beyond the scope of training, experience and  
6 knowledge of a -- of a correction officer. I mean,  
7 they -- you know, the Department of Corrections should be  
8 involved in the process, but you need to have public  
9 health and clinical experts involved in that process as  
10 well.

11 Q. And for someone who administers a jail, or who  
12 oversees a jail, like Sheriff Brown, do you think it's  
13 unreasonable of her to rely on what the CDC has said  
14 makes someone medically vulnerable to COVID-19?

15 A. I don't think this is a decision that a jail  
16 administrator should make. And I would be surprised  
17 that -- you know, that is what I think. This is -- this  
18 is -- the decision to figure out who's medically  
19 vulnerable is something that -- that a jail administrator  
20 does not -- wouldn't want to -- to decide.

21 Q. Who would typically make that determination?

22 A. Well, usually it would be -- you know, we don't have  
23 a lot of experience in this. It's -- it would be the --  
24 I -- in New York, as I described, it was a -- you know,  
25 it was the clinicians, based upon the -- based upon the

1 CDC and other recommendations, that came up with people  
2 who they thought were -- were at risk. And they  
3 identified that. And then it went through some process  
4 involving federal and state courts.

5 And the federal system are here if -- I mean, if  
6 the -- if --

7 Q. Well --

8 A. -- if it wanted to do it by itself, without court  
9 intervention, then I would think it would be done in  
10 strong concentration, with the clear recommendations of  
11 the skilled public health and clinical experts in -- at  
12 this time, based on the -- their knowledge of the  
13 epidemic in the end of May -- the end of April.

14 Q. So what I'm hearing you say is, medical people make  
15 medical assessments and relay that decision, or their --  
16 their medical opinions, to the people who administer the  
17 jail?

18 A. Well, you know, it is -- I don't know the law  
19 exactly in Dallas County. I assume that the -- I assume,  
20 based upon what I've read about in other systems, that  
21 the -- that the head of the jail has certain discretion  
22 in releasing certain kinds of people, based upon the  
23 charges that they were in for. And beyond that, would be  
24 a much -- would be a process that would go beyond the --  
25 the control of the head of the jail.



1 Q. And you are speculating about that, correct? You  
2 don't know how that works?

3 A. Well, I know that, you know, in -- I know there's a  
4 law in California that says, you know, that at certain  
5 levels of things, the -- the -- the sheriff has the right  
6 to do it, and other points they don't. And, similarly,  
7 in New York City, the mayor can do it.

8 So I -- and I -- you know, there are work  
9 release programs all over. I don't know exactly -- I  
10 don't know up in Dallas County who all -- I'm pretty sure  
11 that the -- that the head of corrections does not --  
12 cannot release anybody that they -- that they want to.

13 Now, I mean, if the place were being flooded and  
14 there was some total emergency, would they issue -- make  
15 some decisions about, you know, cutting -- you know,  
16 letting people out for -- yeah, because, I mean, there  
17 are all kinds of things that could happen, but -- I'm  
18 sorry, I hope I answered your question.

19 Q. I'm not sure you did, but I can move on.

20 I have a question about another area of your  
21 expand of the CDC criteria. And that is the low-end age  
22 for people who are considered medically vulnerable to  
23 COVID-19. Now, obviously you say that low-end estimate  
24 is 50 years old and up, and the CDC says 65.

25 Did I explain that correctly?

1 A. Yes.

2 Q. What does the WHO say, for example?

3 A. I -- I'm -- I can't -- I looked at it the other --  
4 they may say 60 or 65 also. Maybe 60.

5 Q. Okay.

6 A. But I can't remember. I'd have to look.

7 Q. Okay. And the judge asked for citations to your  
8 materials when you are talking about how you have formed  
9 your opinion. And I -- when, in your declaration, you  
10 explained this low-end age estimate of 50 years, you  
11 cited to an argument that's at Exhibit U of your  
12 supplemental materials.

13 Are you familiar with the article I'm talking  
14 about? It's an NPR article written by Maria Godoy?

15 A. Yes, yeah. Well, I'll cite to some other things,  
16 too, I mean, it -- if you'd like me to.

17 Q. Well, what else did you cite to that was provided to  
18 us in the materials upon which you base your opinion?

19 A. It was -- if I didn't mention, I -- by my deposition  
20 [sic], I should have.

21 In New York City, we examined the -- the people  
22 who were 50 years old and older in the city's jails. And  
23 there's an electronic -- I don't have access to it,  
24 but -- and when I ran the jail health program, I didn't  
25 have this level of medical -- electronic medical records

1 either.

2 But now there are electronic medical records in  
3 New York City's jails. And if you look at -- you know,  
4 if you look at -- and this is what the Correctional  
5 Health Services did.

6 If you look at the number of people, the people  
7 that -- people who are aged 50 in the New York City  
8 jails, you find that, on average, they had three or four  
9 medical problems and were taking seven to eight  
10 medications. So it was not a -- it was not a healthy  
11 population of -- of 50 year olds who were there in the --  
12 in New York City's jails. And that was -- and that was  
13 the recommendation of the Correctional Health Service as  
14 well.

15 Now, in terms of the way you look at this chart  
16 that, you -- you know, that you were -- just referred to,  
17 too, you can say that -- that 12.2, which is the -- which  
18 is the percent hospitalized over 65, is significant; or  
19 you could say, as I do, that 7.4 percent is significant.

20 I think that's a -- that's a very -- you know,  
21 relative to other populations, that is a lot of -- that's  
22 a big chance of people getting really sick. And it is a  
23 small percentage of the people in the jail.

24 So that's who you're dealing with. You are not  
25 dealing with a large population greater than 85 in the

1 jail, fortunately. You are -- you -- so you should make  
2 your rules regarding who you are actually dealing with.

3 And that's -- and to me, this -- this does --  
4 this rate of hospitalizations, and the previous data that  
5 have been -- that have come out showing the -- showing  
6 the -- the risk of death by age group, all suggested to  
7 me that 50 is -- is the way to do this.

8 I don't know why the -- the CDC picked 65. I  
9 don't know what -- you know, what level of death they  
10 were willing to tolerate or not tolerate to come up with  
11 65. But in a jail setting, I think 50 is a -- given the  
12 risk of -- of hospitalization for that age group, is a --  
13 is reasonable. And that's why the Board of Corrections  
14 supported it; that's why New York City Department of  
15 Health defined greater than 50 is high risk, and that is  
16 why I put it in my declaration.

17 Q. If I understood your answer correctly, you are  
18 saying that to determine the age of your population in  
19 the jail that's high risk, you need to have information  
20 about that jail population, right? Like how many people  
21 are in certain age groups; is that correct?

22 A. No. No, that is not what I said.

23 I said -- I said this is information that --  
24 that I know to be the case. That -- that there are  
25 recommendations about New York City Department of Health

1 to say that that is a high-risk group. That the -- that  
2 the population in New York City jails of that -- you  
3 know, who are above 50 have the characteristic -- sorry,  
4 I'm speaking too loud -- have the characteristics that  
5 I -- that I describe.

6 And the -- and it is -- it is arbitrary. You  
7 could have -- you know, you could have looked at 51; you  
8 could have said 64. But there -- there are a lot of  
9 people in the group over 50 that are at high risk. And  
10 that -- that is why I -- that is why -- you asked me why  
11 I recommended it; that is what I would do.

12 Q. Okay. But you don't have any information about the  
13 characteristics of the jail population in the Dallas  
14 County jail, correct?

15 A. I -- no, I -- I've read -- none of the materials  
16 that were provided to me described that population.

17 Q. You opined in your declaration that detained people  
18 have higher levels of health problems that make them  
19 older physiologically than they are chronologically. Do  
20 you recall that stand in your declaration?

21 A. Yes.

22 Q. And, specifically, you said that detained people  
23 tend to age physiologically about 10 to 15 years above  
24 their chronological age?

25 A. That is what my colleagues, who work in prison

1 health care, stressed to me, to understand how to care  
2 for older people in jails, yes.

3 Q. Okay. When your -- your citation in your  
4 declaration that supported that statement was to a 2012  
5 study authored by Brie Williams, in the American Journal  
6 of Public Health; and that is Exhibit C to your  
7 supplemental declaration?

8 A. Yes. I'm familiar with Dr. Williams and that  
9 article, yes.

10 Q. Okay. If you are familiar with this article, you  
11 are aware that this study discussed specifically post-  
12 adjudication, post-sentencing prisoners, not pretrial  
13 jail detainees, correct?

14 A. I would have to look at it again, but that's --  
15 if -- it could well be that.

16 Q. If that is what the article said, do you agree with  
17 me that prisoners are often in jail for longer than  
18 people -- let me strike that and let me rephrase it.

19 You would agree with me that prisoners are  
20 generally detained for substantially longer periods of  
21 time than pretrial jail detainees, correct?

22 A. Yes.

23 Q. And even for prisoners, that study emphasizes that  
24 the difference between physiological and chronological  
25 ages can be attributed to a number of factors?

1 A. Yes.

2 Q. So we're not exactly comparing apples to oranges  
3 when we're talking about pretrial jail inmates and  
4 post-sentencing prisoners, correct?

5 A. I think that, more or less, you are.

6 Q. How so?

7 A. I've just worked in jails and prisons for 40 years.  
8 People go -- churn through these systems one day after  
9 the next. That -- people who -- they come to jail and  
10 they leave jail; and they come to jail and they leave  
11 jail; they come to jail; they go to prison. They stay in  
12 prison; they come out of prison; they go to jail.

13 It is not a different population that we're  
14 talking about here.

15 Q. Would, for example, a nonviolent misdemeanor  
16 arrestee, who's been arrested for the first time in their  
17 life, have the same physiological issues as a long-time  
18 career criminal?

19 A. It depends how old they are. I don't know, probably  
20 not.

21 Q. Right, it is highly -- it would be highly fact-  
22 specific, right?

23 A. Sorry, I couldn't hear the question.

24 Q. I said it would be highly fact-specific, correct?

25 It would depend greatly on the circumstances relative to

1 those two people?

2 A. I mean, yes, anything around two people would be  
3 fact-specific. If you are asking me whether talking  
4 about people who -- who are in jail and people who are in  
5 prison, are they -- are they physiologically similar, I  
6 would say, generally, yes. I mean, but individually, I  
7 couldn't answer you without reviewing their individual  
8 statuses.

9 Q. Sure. And I appreciate that.

10 I'd like to turn to your discussion with the  
11 Dallas County jail. You talked about the Dallas County  
12 jail quite extensively with Ms. Fetting.

13 I think you -- I think you said this already,  
14 but you have never visited the Dallas County jail in  
15 person, correct?

16 A. That's correct.

17 Q. Have you ever been to Dallas?

18 A. Yes.

19 Q. On which occasions?

20 A. Once. I went to the American Public Health  
21 Association meeting in Dallas a number of years ago. I  
22 don't remember the year.

23 Q. Okay. And you were not aware of details of the  
24 healthcare system in Dallas County, like how many  
25 hospital beds there are in Dallas County?



1 A. No, I'm not aware -- I mean, I didn't look up -- I  
2 know how many hospital beds there are at Parkland; I  
3 don't know how many there are in the rest of the city --  
4 or the county, no.

5 Q. Okay. Is it fair to say that your knowledge of the  
6 Dallas County jail is based entirely on the declaration  
7 that you reviewed today in preparation for your  
8 testimony?

9 A. No. I mean, now -- it is based upon having been to  
10 jails all over this country over the past 40 years,  
11 having worked in jails in two large cities; and the --  
12 and the pictures and the testimony I heard yesterday.

13 Q. Sure. I -- and I appreciate that distinction. Let  
14 me be clear.

15 Your testimony about the Dallas County jail, and  
16 the conditions of the Dallas County jail, is based on the  
17 testimony you heard yesterday and the declarations you  
18 reviewed that were filed in this case?

19 A. Yes. That -- specifically for the Dallas County  
20 jail, yes.

21 Q. Yes. That's -- thank you, that's all I'm asking  
22 about.

23 You are aware from the testimony we heard  
24 yesterday that Sheriff Brown is requiring masks for all  
25 inmates and all officers, correct?

1 A. Yes.

2 Q. Do you think that's a good idea?

3 A. Yes.

4 Q. And you would agree with me that the CDC did not  
5 initially recommend masks for the general public to  
6 mitigate COVID-19, correct?

7 A. Yes.

8 Q. And you are aware that that guidance recently  
9 changed?

10 A. Yes.

11 Q. Do you know off the top of your head the date that  
12 that guidance changed?

13 A. No.

14 Q. You testified that the purpose of a mask is  
15 primarily to prevent transmission from a symptomatic mask  
16 wearer to someone else; is that right?

17 A. No, it -- it depends on the mask; that's what  
18 it's -- masks for the general population are to prevent  
19 transmission from someone to someone else. Masks in the  
20 presence of a high rate of COVID-19 virus particles or --  
21 around, is to protect the person.

22 Q. Okay. And --

23 A. And also, probably -- and this is not clear, and  
24 this -- you know, and you don't know this; and it is very  
25 hard to study, but probably masks -- I mean, there is a

1 chance that masks also protect you against COVID --  
2 against Coronavirus. That has not been studied. It's a  
3 difficult thing to study.

4 And, you know, studies of -- you know, of  
5 influenza, these simple masks, non-N95 masks, do protect  
6 against catching influenza. That's been shown in other  
7 studies.

8 So that's -- there is a possibility that they  
9 are also helpful at preventing someone from getting  
10 infected, but I -- but that is not clear at this point.

11 Q. Okay. Does the CDC currently recommend that  
12 asymptomatic correctional facility inmates receive masks?

13 A. No, I -- not on the March 23rd thing. I don't know  
14 if they changed their position on -- they haven't revised  
15 this for a month, so I -- you know, they might, based  
16 upon their -- the rest of their recommendations.

17 I would imagine if they -- when they come out  
18 with the next one, they will say that. But I -- but they  
19 haven't revised it since the 23rd of March, so I don't  
20 know what they think. I know what they said on March  
21 23rd.

22 Q. But you would agree with me that the CDC current  
23 correctional facility guidelines do not recommend the use  
24 of masks for asymptomatic inmates?

25 A. No, I wouldn't say that. I don't think that there

1 was an exclusion in the CDC recommendation that people  
2 living in congregate facilities where the rate of  
3 Coronavirus is -- of COVID-19 infection is higher than  
4 any other place, except for one of these cruise ships,  
5 should not wear masks.

6 Q. So you approve of Sheriff Brown's step to provide  
7 masks to all inmates, asymptomatic or otherwise, right?

8 A. Yes.

9 Q. And you testified that the CDC guidelines require  
10 that masks be replaced daily, but I just want to be clear  
11 that the CDC requires that masks be replaced daily only  
12 for confirmed or suspected COVID cases, correct?

13 A. I didn't say that the CDC said -- I said New -- I  
14 said that paper masks should be replaced daily. That is  
15 what I said. And that -- and that is the recommendation  
16 of most -- that is the New York State Department of  
17 Health recommendation. These things don't last for a  
18 long period of time. They should be replaced.

19 And if -- and in order for the sheriff to  
20 maintain adequate masks for her staff, and for the people  
21 that she's responsible for, there have to be a lot of  
22 masks and be replacing them regularly. And I -- I'm sure  
23 she's working on that. But you need to -- you need to  
24 have a large number of masks available. They will run  
25 out. They need to be in all the different places where

1 people will need them, and -- and I'm sure she -- I hope  
2 that -- you know, if she says that she is doing that,  
3 then that is great.

4 MS. WOODS: Excuse me. Sorry to interrupt. I  
5 just got a message that Ms. Fettig dropped off the call,  
6 so if we could just pause for a moment.

7 MR. STEPHENS: Sure.

8 MS. FETTIG: Hi, everyone. My line just cut  
9 out. I think I missed the last few moments before I  
10 rejoined.

11 Q. My question --

12 THE COURT: If you wouldn't mind repeating your  
13 last question and answer, that would be great.

14 Q. Sure. The CDC currently requires a mask be replaced  
15 daily only for confirmed or suspected COVID-19 cases,  
16 correct?

17 A. Those are -- I was not referencing the CDC in terms  
18 of -- and then, in this guidance, it doesn't say it's to  
19 be replaced daily. But masks -- paper masks should --  
20 what I said was that paper masks should be replaced  
21 daily.

22 Q. Thank you. Ms. Fettig asked you a number of  
23 questions about your opinions of the operations of the  
24 Dallas County jail which you have gleaned from the  
25 declarations of Pat Jones and Chief Robinson. One of

1 those questions was whether you believed that medically-  
2 vulnerable inmates should be cohorted. And I believe you  
3 agree that medically-vulnerable inmates should be  
4 cohorted together, correct?

5 A. Yes.

6 Q. And ideally, they should be placed in an area with  
7 other medically-vulnerable people?

8 A. I'm -- ask this -- I didn't understand the question.

9 You are saying cohorted -- that's just what I --  
10 that's -- I don't understand the second question.

11 Q. Like should be kept with like. Medically-vulnerable  
12 people should be grouped with medically-vulnerable  
13 people; that was your testimony?

14 A. They should cohort medically-vulnerable people. But  
15 it is a complicated thing to do, because you have to make  
16 sure that that group of people is not COVID-19 infected.  
17 And so you have to -- so I said that you'd have to test  
18 them all to --

19 Q. And you are not aware of --

20 A. -- or, you know, keep them in single cells -- you  
21 know, in a single-cell area; and as many as possible with  
22 a respiratory-isolation capacity.

23 Q. And you are not aware of whether that is being  
24 currently done or not, correct?

25 A. I don't know if it is being done.

1 Q. You don't know if inmates are being quarantined  
2 after intake, correct?

3 A. You have to -- I don't know what's being done. I  
4 know what was said in the declarations, so...

5 Q. Okay. You --

6 A. And there is a quarantine process that -- that you  
7 described. I mean, the CDC recommends a quarantine  
8 process; you talk about quarantining new inmates as well.

9 Q. And to be clear, you don't know if that quarantine  
10 process is being implemented currently in the Dallas  
11 County jail or not?

12 A. Well, I -- you know, I think you said that you  
13 are do -- you said you are doing it; I don't know if you  
14 are doing it.

15 I described the -- how difficult it is to do it  
16 without being -- without testing people when they come  
17 in. And the difficulty changes in a jail, where you have  
18 to separate each of these cohorts into a separate area.

19 Every group of -- every day, when people come  
20 in, they have to be separated from everybody else. And  
21 then they have to be kept in that area for 14 days. But  
22 on day two, another group of people is coming in, and  
23 they have to be cohorted together for 14 days. And then  
24 if any one of those people -- and so there will be 14  
25 separate groups that are being cohorted as new admissions

1 at all times. And if any one of those groups -- anybody  
2 in any of those groups becomes positive -- is found to  
3 become positive, which is likely to happen, then the  
4 cohort has to start -- it has to -- the intact cohort has  
5 to start again on day one.

6 It's a very complicated process. I don't know  
7 if you -- how you're doing it or if you are doing it. I  
8 was concerned about the spatial requirement of it, to do  
9 it right without -- without testing, because you --  
10 you -- it doesn't seem like there is a -- and I was  
11 concerned about that.

12 Q. If that process were being implemented currently,  
13 would you be satisfied that the process was compliant  
14 with the CDC guidelines for intake?

15 A. Yeah, I would -- it would be consistent with the CDC  
16 guidelines. I don't know that it would -- I think at  
17 this point, you'd probably have to test people coming  
18 into a jail, and isolate those who are positive. Because  
19 we know that it's -- you know, that it is transmitted  
20 asymptotically and we know that there's -- you know,  
21 there's -- social distancing is not happening in the  
22 jails. And -- and it would be -- make a lot more sense  
23 to test people when they enter the jail to find out if  
24 they're COVID positive or not.

25 Q. Okay.



1 MR. STEPHENS: Objection; nonresponsive.

2 A. And then they'd be isolated, and you wouldn't have  
3 to worry about the other people, and keep them in the  
4 quarantine. They -- and you'd be doing what you are  
5 trying to accomplish, rather than doing something because  
6 you can't do -- because you're not doing what you should  
7 be doing.

8 THE COURT: Okay. Did you have an objection?

9 MR. STEPHENS: Object to the answer as  
10 nonresponsive.

11 THE COURT: I'll overrule the objection.

12 Mr. Cohen, if you'll just try to answer the  
13 question that you are asked, that would be helpful.

14 THE WITNESS: Okay. I was trying to, but I  
15 will -- I will try to do it.

16 Q. Dr. Cohen, do you disagree with the CDC's current  
17 recommendation that only symptomatic inmates be  
18 administered tests?

19 A. Yes.

20 Q. What would your criteria be for Sheriff Brown to --  
21 or when to administer tests to inmates?

22 A. I would recommend, and -- but -- I would recommend  
23 that everybody entering the facilities be tested, so they  
24 would -- so the facilities could isolate them and not  
25 have them infect other people coming into the -- into the

1 jails. And doing that on day one, you know, would be --  
2 you are -- you are -- you say the -- the statements that  
3 your -- that your witnesses gave, say you have a one-day  
4 turnaround on testing. So in one day you would know  
5 who -- you could quarantine people for a day, and then if  
6 they were -- you know, everybody who is negative doesn't  
7 have to be quarantined anymore.

8 I would definitely include that as the group.  
9 And I would probably test people on leaving so they would  
10 know their status, so that people -- so they would know  
11 to self-quarantine when they left -- when they left the  
12 place.

13 Q. And you have no knowledge of Dallas County jail's  
14 testing capacity currently, correct?

15 A. I do not.

16 Q. Or the number of tests available in Dallas County,  
17 generally, currently, correct?

18 A. No, I do not. I -- no, I don't know that.

19 MR. STEPHENS: If I'm not asking you a question  
20 for awhile, it's just because I'm reviewing my notes. I  
21 apologize.

22 THE COURT: Take your time. No rush.

23 Q. Dr. Cohen, I'd like to speak briefly about the  
24 training that you think should be provided by the jail.  
25 The CDC currently has recommendations for training that

1 should be provided to correctional facility staff,  
2 correct?

3 A. Yes, they do.

4 Q. And that training involves ensuring that -- that  
5 hand hygiene is performed, correct?

6 A. Say that again, please?

7 Q. Does that training include ensuring that staff  
8 perform hand hygiene?

9 A. Yes.

10 Q. Does that training include recommending PPE for the  
11 tending individuals and staff?

12 A. Yes. It recommends training people about PPE, when  
13 it should be used; how to use it; how to put on your  
14 mask; how to take off your mask, things like that, yes.

15 Q. And you have no knowledge of whether inmates  
16 currently in the jail are unaware of how to put on masks,  
17 correct?

18 A. I -- all I know is -- I don't know the answer to  
19 that, no.

20 Q. You testified that Dallas County is -- I believe on  
21 more than one occasion, you said that Dallas County is  
22 generally following CDC guidelines. But at the end of  
23 your testimony, you also said that Dallas County has not  
24 taken sufficient steps to cope with the virus.

25 So I want to be clear about what is not being

1 done that you think should be done.

2 A. I think you have to maintain -- you have to create a  
3 situation in the jails that allows people to social  
4 distance. You need to --

5 MS. FETTIG: Sorry, I was trying to object and I  
6 was muted. So I apologize.

7 I object that this is a mischaracterization of  
8 Dr. Cohen's testimony. He has not said that -- that the  
9 Dallas County jail is generally following the CDC  
10 guidelines. He's pointed to several areas which they are  
11 not following the CDC guidelines.

12 THE COURT: Okay. I'll overrule your objection.

13 I'll let the parties know, when you hear me  
14 typing, I'm taking really good notes of everything that's  
15 being said. And certainly not as good as my court  
16 reporter's.

17 But I have a -- a really good memory, and recall  
18 his testimony on these points specifically. I've got the  
19 CDC guidelines in front of me, and so I'm taking notes as  
20 to where he departs from their recommendations and where  
21 he is consistent.

22 So I will overrule your objection, but I do  
23 note that -- I mean, I recall his testimony. So I -- I  
24 hope that will alleviate your concerns.

25 MS. FETTIG: Thank you, Your Honor.

1 A. Yeah, I -- they are not allowing for social  
2 distancing. Having dormitories -- having a dormitory,  
3 like the one that I -- that I saw, is a -- is an  
4 extremely -- is very likely to result in -- in  
5 significant transmission of the -- of the virus to staff  
6 and to -- and to people living there. And that's --  
7 that's -- and that is because there are too many people  
8 there to allow for social distancing.

9 The CDC guidelines don't -- you know, say that  
10 you should try to -- to do that. And maybe people are  
11 trying to do that, but it's not -- it is not -- they --  
12 that situation isn't even trying to do -- do social  
13 distancing. And I don't think it's easy to do social  
14 distancing, but it -- it is necessary. And it is part  
15 of -- it is part of the guidelines, and I -- I -- that  
16 was -- that was quite absent from it as well.

17 And, you know, in terms of the -- you know, the  
18 training of the staff, I don't know -- I don't know  
19 what's going on. I don't know that you are doing the  
20 training or not. So I -- it is hard for me to  
21 characterize your compliance with the -- with the -- with  
22 it, since I only got very little information out of the  
23 two depositions that I viewed and -- period.

24 Q. So let me run through a list of items just real  
25 quickly with you, and you just say to me "yes" or "no"

1 whether you believe that Dallas County jail is currently  
2 complying with the CDC guidelines with regards to the  
3 items on my list. Does that sound good?

4 A. No. But we'll do it anyway, I guess. Sure.

5 Q. Dallas County is currently providing masks to  
6 inmates; would you agree with that?

7 A. I don't know.

8 Q. You heard testimony that masks are currently being  
9 provided to inmates, correct?

10 A. They say that they're currently providing it. I  
11 don't know if they are providing it. I mean, I hope they  
12 are, but I don't -- you know, the inmate yesterday said  
13 that they were. I don't know what they are doing today.  
14 I hope they are.

15 Q. Okay. And you don't know whether masks are being  
16 provided; particularly N95 masks, to people in high-risk  
17 areas, correct?

18 A. I have no -- I -- I don't -- I know that's the CDC  
19 recommendation. I don't know what your policy is on  
20 that -- or I don't know what your practice is on that.

21 Q. Okay. And you heard evidence from Officer Lewis  
22 that there are signs about COVID-19 posted in his area of  
23 the jail, correct?

24 A. Yes.

25 Q. And you have no basis, one way or another, to opine

1 on what signage is put out -- is provided anywhere else  
2 in the jail, correct?

3 A. Correct.

4 Q. And you have heard testimony about Sheriff Brown's  
5 efforts to reduce the number of people that are being  
6 brought to the jail, correct?

7 A. Yes.

8 Q. And you heard Officer Lewis say that the jail  
9 population has, in fact, decreased, correct?

10 A. Yes.

11 Q. And you read the declaration of Chief Robinson,  
12 which talks about how the jail population has reduced by  
13 about a thousand people in recent weeks, correct?

14 A. Yes.

15 Q. And you have heard testimony from Officer Lewis  
16 about the soap and cleaning supplies that are provided to  
17 inmates, correct?

18 A. Yes.

19 Q. And you have no basis to conclude, one way or  
20 another, whether soap or cleaning supplies are not  
21 actually being provided to inmates, other than the  
22 testimony you have heard?

23 A. He said that soap was being provided. Cleaning  
24 supplies were provided when they were available.

25 Q. Okay.

1 A. And he didn't know what they were.

2 Q. And you don't know the current level of availability  
3 of cleaning supplies that are provided, correct?

4 A. No, I don't.

5 Q. So is it fair to say that the --

6 A. The CDC -- the CDC says, in their guidance, that  
7 maintaining proper -- you know, adequate levels of  
8 cleaning supplies is not a simple thing to do, and will  
9 require substantial effort by facilities.

10 Q. Okay. And that's in the CDC guidelines, right?  
11 Anyone who reads the CDC guidelines could know that?

12 A. I -- you know, it is in there. I -- it -- you could  
13 read it.

14 Q. So is it fair to say that your main point of issue  
15 with what the Dallas County jail is currently doing is  
16 that they are not releasing more people from jail?

17 A. They're not releasing the medically-vulnerable  
18 people, and there are too many people in the jail for  
19 them to provide physical distancing that is required to  
20 control the spread of the epidemic. Those are my --  
21 those are my two concerns, two main concerns.

22 You know, if I knew more about the jail, I might  
23 say that they're doing things well or that they're not  
24 doing things well. But that is what I -- here's what I  
25 know at this point.



1 I know that they can't -- they are not  
2 practicing social distancing, and not -- not even making  
3 an effort to do that, in the pictures and the areas that  
4 I saw. And that -- and that -- and that the  
5 medically-vulnerable people should be released, because  
6 they are likely to get sick and that will overwhelm  
7 the -- both the medical and the security staff, period.

8 Q. You have no current knowledge of the layout of the  
9 Dallas County jail, correct?

10 A. I have not seen -- other than the drawings that were  
11 done yesterday, I have not -- I mean, I've looked at  
12 pictures of the outside, but I don't see -- I haven't  
13 seen schematics or anything on the inside.

14 Q. So the only picture you have seen of the inside of  
15 the Dallas County jail was Plaintiff's Exhibit 6, which  
16 Ms. Fettig showed you earlier?

17 A. Well, yes -- well, all the pictures that were on  
18 that roll, yes.

19 Q. Do you know when any of those pictures were taken?

20 A. No.

21 Q. Do you know who took those pictures?

22 A. No.

23 Q. So you have opined, then, your opinion, Dallas  
24 County has to take steps to release people from jail in  
25 order to accommodate social distancing, correct?

1 A. Well, I think that's right, yes. Yeah, I think they  
2 have to release people to get the population down to the  
3 point where they can maintain social distancing, yes.

4 Q. And you described the process in New York City for  
5 how inmates were released from jail, and the jail  
6 population was lowered in Rikers Island, right?

7 A. Yes.

8 Q. So --

9 A. When you -- I'm sorry, what was the last part of the  
10 question? I described something, and I didn't -- I  
11 missed the second half of that, I'm sorry.

12 Q. Sure.

13 A. I spoke when you were still talking.

14 Q. Sure. You described how in New York, criminal  
15 justice stakeholders in New York City have worked to  
16 release the jail population, and I want to go over that  
17 with you.

18 A. Okay.

19 Q. You -- you stated that nonviolent, misdemeanor  
20 arrestees had been released from Rikers Island, correct?

21 A. I said -- no, I said that people serving city  
22 sentences of less than one year were -- you know, who --  
23 who did not have domestic violence or sexual -- I mean, I  
24 did not do the releasing. That is what the mayor said,  
25 that people who had less-than-a-year sentence, he had the

1 right to place them in work release status. That was the  
2 mechanism that was used. And he got out about 400 out of  
3 550, or so, of that -- of that group.

4 And I don't know what characterized the ones  
5 that he let out. I know that among the ones that he did  
6 not let out were people who had domestic violence  
7 charges.

8 Q. So domestic violence charges -- inmates with those  
9 charges are still in Rikers Island?

10 A. If they -- they're going to get out when -- they  
11 have sentences up to a year. So some of them are in and  
12 some of them are out, I don't know. But they were not  
13 released into work -- they were not placed in the work-  
14 release program, which got them out of jail a couple of  
15 weeks ago.

16 Q. You also mentioned that inmates held on technical  
17 parole violation have been released; is that correct?

18 A. Hundreds have. Not all of them, but yes, many --  
19 yeah, many have.

20 Q. Do you have any knowledge of whether inmates held on  
21 technical parole violations in Dallas County have been  
22 released from jail?

23 A. I don't.

24 Q. Do you have any knowledge of --

25 A. I don't remember -- I mean, I did read the

1 statements. I don't remember if that was part of it, I'm  
2 sorry. If they are -- I don't remember. They -- It  
3 could have been in the -- in the deposition, but I don't  
4 recall that; I'm sorry.

5 Q. Do you have any knowledge of whether low-level,  
6 low-risk offenders have been released from the Dallas  
7 County jail?

8 A. I believe they have. Some have, yes.

9 Q. If non-violent offenders have been released, if  
10 low-level, low-risk offenders have been released, and if  
11 technical parole violations have been released, who  
12 else -- what other category of offender do you think  
13 should be released from the Dallas County jail?

14 MS. FETTIG: I'm going to object to this line of  
15 questioning.

16 It is not within Dr. Cohen's actual expertise.  
17 He has been offered as a correctional medical care  
18 expert. He is not a -- an expert on the sentencing in  
19 Dallas County or any -- any of the criminal justice laws  
20 in the county.

21 THE COURT: Well, and I understand that he's not  
22 been proffered as an expert on that, but ultimately --  
23 you know, if I followed his opinions, this is going to  
24 certainly have criminal justice implications because it  
25 would result in the release of some of these people.

1           So I think it's fair questioning for cross, and  
2 I'm going to allow it.

3 A.   I think -- I -- I appreciate that releasing people  
4 is a complicated political and social process. And I --  
5 and I also -- and there are things that I know about New  
6 York that I don't know about -- about Texas.

7           I mean, if there are people being -- for  
8 example, if there are people who are being held on cash  
9 bail for -- that you could afford and I could afford, but  
10 they can't afford, that doesn't seem right. You know, I  
11 mean, that is a group that, you know, might -- maybe  
12 should be -- who are pretrial detainees and have not been  
13 sentenced to anything, that might be -- that might be a  
14 group that you would look at for possible release.

15 Q.   And --

16 A.   I'm not saying all of them; I'm just saying that --

17           THE COURT:   Sorry, gentlemen, stop, stop, stop  
18 for a moment.

19           You are talking over each other and it is  
20 getting blurry. So if you don't mind rewinding.

21           Nikki, let's have them -- if you will reask that  
22 question, and, Dr. Cohen, if you'll pause a moment before  
23 you answer, and then answer, that would be great. If  
24 you'll just give us a little second or two delay that  
25 would be helpful. I think technology's giving us some

1 issues here.

2 Thank you guys for being gracious.

3 MR. STEPHENS: Of course, Your Honor.

4 Q. Dr. Cohen, you don't know whether there are  
5 currently any inmates in the Dallas County jail who are  
6 being held on unaffordable bonds, correct?

7 A. I don't know. I don't know, right.

8 Q. And in New York, you described the process for  
9 inmates -- other than the City offenders, other than the  
10 technical parole violators, you described the process for  
11 them -- the release of the offenders, other than those  
12 falling into those categories, as being a release of sort  
13 of a joint effort by the Defense Bar, the district  
14 attorney, who worked with medical staff, to prepare a  
15 package of inmates, who submitted that package to a state  
16 court judge for approval. And I'm paraphrasing, but do I  
17 more or less describe that process correctly?

18 A. Yes.

19 Q. And you support this joint and voluntary process  
20 between the criminal justice stakeholders in New York  
21 City?

22 A. Yes.

23 Q. Do you hope it continues?

24 A. Yes.

25 Q. Have you -- have you reviewed the relief the

1 plaintiffs are asking for in this case?

2 A. No, I haven't.

3 Q. You haven't seen any proposed orders that the --

4 A. I must -- I haven't, so I don't -- I can't comment  
5 on it. I don't know -- I mean, I know there is one; but  
6 for whatever reason, the prep -- my preparation for the  
7 case did not include a review of that. So I'm --  
8 honestly, I don't know what it says.

9 Q. Okay. And to be clear, you don't have an opinion  
10 today on how many people should be released from the  
11 Dallas County jail because of your lack of familiarity  
12 with the layout and the population of the jail?

13 A. Yeah, I think it's a physical question. I mean,  
14 it -- I mean, how many people, how big is the space; what  
15 are the common spaces; what are -- what would it take  
16 to -- to allow for social -- allow for the required  
17 social distancing, and all of the other activities that  
18 have to take place. And quarantine and separation and  
19 things like that.

20 Yeah, I mean, it is a -- it is a physical -- the  
21 answer requires knowledge of the physical space.

22 Q. Okay. And in New York, you described that inmates  
23 who were released from jail are occasionally released to  
24 vacant hotel rooms; is that right?

25 A. If they were symptomatic, yes.

1 Q. Who paid for those hotel rooms?

2 A. Who paid for them? The City of New York.

3 Q. Okay. Was anyone ensuring that inmates maintained  
4 social distancing after they were released from the jail?

5 A. I don't -- I don't know -- I mean, there are -- I  
6 don't think anybody's been arrested for not maintaining  
7 social distancing in New York. Is that what you mean? I  
8 don't know what the question is.

9 Q. Is there anyone who is enforcing social distancing  
10 for inmates who are released from the jail after they're  
11 released?

12 A. I don't know. I mean, people were released with  
13 relationships to health care providers. They were  
14 provided with medication; they were provided with social  
15 networks and support. And that will -- and that was for  
16 the duration of their time when they were in the hotel.  
17 And with plans, I believe, to continue with --  
18 afterwards. But I was not involved in that process.  
19 That is what I heard from the providers of those  
20 services.

21 I don't know -- and I don't know that there is  
22 a -- you are asking me is there a person who stays with  
23 someone who is released to make sure that they stayed six  
24 feet away from other people?

25 Q. I think you answered my question. I -- these



1 inmates are subject to and supervised by a variety of  
2 social services?

3 A. Yes, that's right.

4 Q. Who pays for those social services?

5 A. The City of New York.

6 Q. Is it fair to say that much of your opinion on the  
7 steps that Dallas County should take has been informed by  
8 your experiences with the COVID-19 outbreak in Rikers  
9 Island?

10 A. Some of it has. Not -- not -- I don't know how to  
11 qualify it's most of it. I have a lot of experience with  
12 that. But I've also -- know about things that are -- you  
13 know, I know about the experience in other places as  
14 well.

15 I mean, but I have -- you know, you have asked  
16 me a lot of questions about New York, and I talk about  
17 New York. And so -- I know a lot about what happened in  
18 New York. It's a larger jail.

19 Q. So sticking with New York. It's a large urban jail  
20 like Dallas County. Their -- their jail populations are  
21 roughly similar, I believe you testified?

22 A. It's 3,999 yesterday in New York City. And you are  
23 48, I heard, 64-something yesterday.

24 Q. Okay. You --

25 A. So it's about -- you are about 20 to 25 percent more

1 than we are right now.

2 Q. Okay. And in that -- in the Rikers' jail  
3 population, currently over 800 correctional officers have  
4 tested positive, right?

5 A. And ten have died.

6 Q. Okay. And that is compared to 19 correctional  
7 officers who have tested positive in Dallas County?

8 A. I think that's right. 19, yes.

9 Q. Okay. And --

10 A. 19, yeah.

11 Q. -- and you testified previously that as of today,  
12 there are 365 -- 7 inmates in Rikers who have tested  
13 positive?

14 A. Yes.

15 Q. That is not including inmates who have previously  
16 tested positive and were subsequently released, right?

17 A. That is right.

18 Q. But as of today, there are 80 positive inmates in  
19 the Dallas County jail, you testified?

20 A. That is -- that is from TCJS, yes.

21 Q. Have you considered asking anyone in Dallas County  
22 how they've managed to control the spread of COVID to  
23 keep the numbers of cases on inmates and correctional  
24 officers so low compared to Rikers Island?

25 A. Well, I don't know if they have, and it really --

1 because I -- you know, the testing is done for various --  
2 testing -- I don't know how testing is done in the place.  
3 And I don't know how the officers get tested and who  
4 decides if they can be tested.

5 In New York City, officers can get tested if  
6 they want to get tested. They demanded that.  
7 Independent of symptoms.

8 It's very hard to figure -- to understand -- I  
9 mean, I've looked at the rate of deaths and cases in  
10 Dallas over the past month, and it is -- it is going --  
11 the curve is frightening. It is not out of control; it  
12 is just -- it is a dramatic increase in -- in Dallas over  
13 the past -- over the past month; and certainly over the  
14 past week.

15 So I -- I hope it's under control, but it  
16 doesn't look -- but I don't know. And I don't know --  
17 you know, you could be ahead of the -- you could be  
18 behind New York City in the epidemic. I -- I can't  
19 answer -- I really can't answer the question without  
20 knowing -- I can't answer the question. I don't know the  
21 answer.

22 Q. Are you aware, have there been any deaths from  
23 COVID-19 in the Dallas County jail?

24 A. No, I'm not. There -- no.

25 Q. There have not been any deaths or you are not aware?

1 A. I don't know if there -- you know, I'm not aware of  
2 it.

3 (Reporter instruction.)

4 Q. How many deaths have there been in Rikers Island  
5 from COVID-19?

6 A. Two.

7 Q. Is that inmates or staff or both?

8 A. Two inmates, ten staff.

9 Q. In light of the deaths at Rikers Island, and in  
10 light of the high numbers of inmates who have tested  
11 positive, and in light of the high numbers of officers  
12 who have tested positive, would you consider asking a  
13 federal court in New York to order the release of inmates  
14 from Rikers Island to slow down the spread of the virus?

15 A. I -- you mean, would I testify in such a case saying  
16 that it is a good idea to remove people? I might, you  
17 know, depend -- I mean, I think -- you know, their  
18 population is -- they have -- there is a lot of room on  
19 Rikers Island right now to -- to provide social  
20 distancing. I mean, I think the people who have -- you  
21 know, would I endorse the notion of removing  
22 medically-vulnerable people? Yes. With some process,  
23 yes.

24 Q. Would that -- should that process extend beyond what  
25 you have described, the joint efforts between defense

1 attorneys, prosecutors, judges, and medical providers?

2 A. Well, it would have to -- it would have to end with  
3 a success. You know, it is not -- it is not just a  
4 process. It would have to end with people getting out.  
5 And, you know -- and having enough space for people  
6 there, and removing the vulnerable people. That's what  
7 I think -- if the process got to that, that would be  
8 good.

9 Q. So you are not currently satisfied with the efforts  
10 of the Defense Bar, the District Attorney, medical  
11 providers, and state court judges to release inmates from  
12 Rikers Island?

13 A. I'm -- you know, I'm very happy that they've  
14 accomplished what they have. There's more to be done.

15 Q. Okay.

16 MR. STEPHENS: I'll pass the witness, Your  
17 Honor.

18 THE COURT: All right. Intervenors, do you have  
19 any questions?

20 MR. BIGGS: Yes, Judge.

21 CROSS-EXAMINATION

22 BY MR. BIGGS:

23 Q. Dr. Cohen, can you hear me okay?

24 A. Excuse me?

25 Q. Can you hear me okay?

1 A. Almost.

2 Q. Okay. I'll try it again.

3 Is that any better?

4 THE COURT: Let's go off the record for a moment  
5 and clear up the technical difficulties so the court  
6 reporter doesn't have to take this down.

7 (Off-the-record discussion.)

8 Q. All right, Dr. Cohen. The court reporter's going to  
9 hate you and I, because I speak very quickly myself. So  
10 we'll try not to step on each other too much.

11 Dr. Cohen, you mentioned obesity being something  
12 that could make an individual medically vulnerable. How  
13 obese does the inmate need to be to be considered  
14 medically vulnerable?

15 A. Well, the -- it seems to be associated with  
16 substantial obesity, with BMIs greater than 40. But I  
17 think BMIs greater than 35 are for the definition.

18 Q. Uh-huh. And so you would base it solely on BMIs, as  
19 far as you can tell?

20 A. I -- I mean, if someone had a BMI of 40, they would  
21 be -- they would be high risk, yes. They would -- just  
22 like -- they would be very high risk, it turns out, so.

23 Q. Do you know if the jail currently collects BMIs for  
24 all the inmates?

25 A. I assume they do.

1 Q. But if they don't, that would require us to, what,  
2 weigh every inmate?

3 A. I -- you know, I -- you know, it is standard  
4 procedure; and I'm sure that the Parkland medical staff  
5 will, you know, weigh and measure the height of people  
6 when they come into the facilities. It's basic vitals.

7 Q. But if that information is not readily available,  
8 we're going to have to figure that out, figure out who  
9 qualifies for the BMI, correct?

10 A. If you don't know, you'd have to know to decide  
11 whether you were going to do something based on -- yeah.

12 Q. And that would require individual assessment of each  
13 inmate that we didn't have information for, correct?

14 A. If you did not have the information on the -- on  
15 the -- on the inmates, you -- you know, you might be able  
16 to do a slight screen by sort of looking at people to see  
17 if they were skinny. But I -- you can -- hypothetically,  
18 if you didn't have the information, and wanted to have  
19 the information, then you would have to collect the  
20 information.

21 Q. Understood. And, Dr. Cohen, you mentioned on  
22 cross-examination that you believe everyone coming into  
23 the jail needs to be tested for COVID-19, correct?

24 A. I would think that would be the way to do it, yes.

25 Q. And you also stated on cross-examination that you

1 believed the way to do it is also to test everyone coming  
2 out of the jail, correct?

3 A. Yes.

4 Q. You were an expert witness in a case in Cook County,  
5 Illinois, correct?

6 A. Yes.

7 Q. And in that case, you signed a declaration, under  
8 penalty of perjury, laying out testimony like you have  
9 done today, correct?

10 A. Yes.

11 Q. In that declaration, isn't it true in that case you  
12 said, despite testing materials for COVID-19 is limited?

13 A. Yes.

14 Q. You have also testified previously under oath that  
15 there are numerous examples of doctors being unable to  
16 order tests for people who are actually experiencing  
17 symptoms, correct?

18 A. Yes.

19 Q. You have also mentioned that medical providers are  
20 hampered in their inability to readily access testing in  
21 the general public, correct?

22 A. I did say that.

23 Q. And, in fact, you mentioned that testing resources  
24 are so scarce that nationwide, rationalized tests is  
25 occurring even for people who are symptomatic, correct?



1 A. Yeah, I -- I just -- if I could just check on the  
2 date of that -- of that deposition. It was -- if you'd  
3 just let me do that, please. Because it was awhile ago,  
4 and I think there is a lot more testing -- that was  
5 the -- a problem at that point. I don't know if it's  
6 still the case. And -- there's been a lot of testing  
7 subsequently in --

8 Q. Well, how about I just tell you the date. It's -- I  
9 believe it is dated March 20th, 2020.

10 A. Right. It was a month -- it was about a month ago.  
11 There are still limitations. I don't know what the  
12 limitation is in Dallas. I hear different things from  
13 the government about whether testing materials are  
14 available or not.

15 New York State has a substantial amount for  
16 testing. I do not know what the Texas situation is. I  
17 didn't say that people -- that if there is no materials  
18 to test people, they shouldn't do it; I said what I think  
19 should be done.

20 Q. Sure. Well, you understand that Governor Cuomo was  
21 actually at the White House yesterday asking the  
22 president for more tests, correct?

23 A. I -- actually, I don't know that. I don't know -- I  
24 don't know follow -- didn't follow that.

25 Q. So -- but if that were the case, that would indicate

1 that New York may not have enough tests, right?

2 A. It might.

3 Q. And you don't actually know the situation about how  
4 many tests are available in Texas currently, correct?

5 A. That's right.

6 Q. Do you believe that tests should be diverted from  
7 health care workers, those over 65, or other medically-  
8 vulnerable people in the free world to test inmates?

9 A. No, I -- I -- no, I didn't say that, and I don't  
10 believe that. I -- I don't -- I'm not -- I don't think  
11 diverting -- I don't know what you mean by diverting,  
12 actually. Maybe you could explain the question to me  
13 better.

14 Q. Sure. Well, you understand the principle, assuming  
15 the judge orders us to test everybody going in and out of  
16 the jail, that the County officials would have to do  
17 that; you understand that, correct?

18 A. I mean, if they had material. If they didn't have  
19 material, they couldn't test.

20 Q. Okay. So I guess that's the point. If the tests  
21 don't exist to test each inmate when they come in and  
22 when they go out, that is an impossible requirement for  
23 the County to meet, correct?

24 A. If there were not tests available, it couldn't be  
25 met. If there were tests available, it could be met. It

1 would depend on -- you know, there may be substantial  
2 more availability next week than there is right now. I  
3 don't know the answer to that.

4 Q. And you'd agree with me that the local officials on  
5 state level, as well as county and city level, would have  
6 a better understanding of what resources testing are  
7 available than yourself, correct?

8 A. Yes.

9 Q. How much do tests cost for COVID-19?

10 A. I don't know. I'm sorry, I didn't mean to interrupt  
11 you.

12 I do not know the answer to that.

13 Q. Do you know who pays for COVID-19 tests for inmates?

14 A. I -- no.

15 Q. You mentioned on direct -- on cross that you have  
16 never stepped foot in the Dallas County jail, correct?

17 A. That is still true.

18 Q. And you have been shown several photographs by  
19 Plaintiffs' attorneys in this case showing a crowded pod  
20 in the jail, right?

21 A. Yes.

22 Q. And I believe your assessment of those pictures was  
23 that those dormitory conditions lead you to believe that  
24 social distancing is impossible in that environment,  
25 right?

1 A. I said impossible in that area.

2 Q. And you even said, I believe on cross, that based on  
3 those pictures, it appears to you that no one currently  
4 in Dallas County is practicing social distancing, right?

5 A. No, I said that that -- I said that social  
6 distancing was not being practiced, looking at those  
7 pictures, in that area.

8 Q. Okay. But you'd agree with me that you have no way  
9 to know whether or not social distancing is currently  
10 being practiced in the Dallas County jail, correct?

11 A. No, I -- I saw those pictures. If those pictures  
12 represent what's going on, then social distancing is not  
13 being practiced.

14 Q. You understand those photos are from several years  
15 ago, correct?

16 A. I -- I understand. But it is my understanding that  
17 that was -- that's -- if that -- basically, I'm seeing  
18 those things. If that is not what is happening, if --  
19 you know, I was told there are 64 people in the housing  
20 area. That was not -- and that's how many people were in  
21 that picture. So that's what I -- that is what I'm  
22 basing it on.

23 Q. Sure.

24 A. I mean, if --

25 Q. You're also aware --

1 A. -- different.

2 (Simultaneous conversation.)

3 Q. You also understand that -- so it sounds like you're  
4 basing --

5 THE COURT: Just a moment, Mr. Biggs. Just a  
6 moment. Stop for just a second.

7 You guys are talking over each other. So give  
8 each other a couple-second delay, please.

9 MR. BIGGS: Yes, Judge.

10 Q. So, Dr. Cohen, you'd agree with me that your opinion  
11 that you gave this Court today about social distancing is  
12 based on those photos that Plaintiffs' counsel showed  
13 you, correct?

14 A. It was based on -- and the fact that the -- the  
15 testimony that that housing area has 64 people in it.

16 Q. And you don't know how old that photo you were shown  
17 was, correct?

18 A. No. But I was told that there were 64 people living  
19 in that housing area today, which is the number of beds  
20 that are available there.

21 Q. And in forming your opinion and testimony today, did  
22 you realize that that photo was actually taken from  
23 YouTube?

24 A. I heard that yesterday.

25 Q. And you'd agree with me that it is not ideal for an

1 expert to base their testimony on the current conditions  
2 in jail -- in the Dallas County jail based on an image  
3 from YouTube that is years old, correct?

4 A. I didn't base my testimony on that.

5 Q. Then what did you base your testimony on, in terms  
6 of social distancing not occurring in Dallas County jail,  
7 if it wasn't from the photos or Mr. Lewis' testimony  
8 yesterday?

9 A. It was from Mr. Lewis' testimony, describing what --  
10 describing that dormitory area and how many people lived  
11 in it. And that is what it was based on.

12 Q. So if that photo that you were shown is inaccurate  
13 in reflecting what is currently happening in the jail,  
14 your opinion would be different, correct?

15 A. If they were not six -- if there was something that  
16 was completely different; if that were now a swimming  
17 pool, it would change my opinion. If it was -- if it was  
18 a two-decker, 64-dormitory-bed area, with the tables down  
19 there and the stairs, it wouldn't be different.

20 Q. All right. And so, if Mr. Lewis' testimony was not  
21 accurate, that would also change your opinion, correct?

22 A. Yeah. If his testimony was inaccurate, that would  
23 change my opinion.

24 Q. You also considered declarations written by the  
25 lawyers in this case that claim to summarize what the

1 inmate plaintiffs told them, correct?

2 A. Yes.

3 Q. You have no firsthand knowledge confirming what  
4 those inmates told those lawyers was accurate, correct?

5 A. Yes.

6 Q. And you made no effort whatsoever on your own behalf  
7 to ensure that the statements that those inmates gave to  
8 their lawyers were accurate, correct?

9 A. Yes.

10 Q. You didn't do anything, right?

11 A. What are you referring to?

12 Q. You didn't speak to the plaintiffs, did you?

13 A. No, I already answered that question. Is there  
14 something else you are asking me that I didn't do?

15 Q. You'd agree with me that if the inmates' statements  
16 that were siphoned through their lawyers were incorrect,  
17 that that would change your opinion about what is  
18 currently occurring in the Dallas County jail, correct?

19 A. What does "siphoned" mean in this sentence?

20 Q. How about this: If what the inmates told their  
21 lawyers to try to get themselves out of jail was untrue,  
22 that would change your opinion, correct?

23 A. It might.

24 Q. So if they lied to you, there is a possibility that  
25 it might not change your opinion; is that what you are

1     trying to tell me?

2     A.   No, I -- if everything that was said in all these  
3     things is not true, it would change my opinion.

4     Q.   So your opinion could stay the same if they just  
5     lied to you a little bit, right?

6     A.   No.  No, it wouldn't stay the same.

7     Q.   You read the declarations from jail officials about  
8     the steps that they've taken to combat COVID-19 as well,  
9     right?

10    A.   I did.

11    Q.   And you have made no effort whatsoever to confirm or  
12    disprove what those jail officials said, correct?

13    A.   Correct.  I didn't think I'd be able to talk to  
14    them.  But -- I mean, would I have been allowed to talk  
15    to them?

16    Q.   Have you asked the lawyers if you could speak to  
17    them?

18    A.   No, I didn't.  It's just -- I just thought I was not  
19    allowed to speak to defendants in a case.  I thought that  
20    was -- that is -- but maybe -- maybe you can in Texas.

21    Q.   So you'd agree with me that you have no firsthand  
22    knowledge of any of the measures that are occurring right  
23    now to combat COVID-19 in Dallas County jail, correct?

24    A.   I -- the only thing I have is the -- what was  
25    deposed -- what those statements said that I -- the



1 other -- everything else that I based my opinions on:  
2 The statements of the -- of the witnesses and of the  
3 plaintiffs and from what I heard yesterday. And that --  
4 that is all I know. I have not talked to any Dallas  
5 County officials, and I have not visited the jail.

6 Q. I mean, I think you answered my question. But you  
7 agree you have no firsthand knowledge about what's  
8 occurring, right?

9 A. If by firsthand you mean what I just said, then I  
10 agree that I did not visit the jail and I did not speak  
11 to these people.

12 Q. You have previously served as a monitor, an expert  
13 witness, in other federal cases, correct?

14 A. Yes.

15 Q. How many other cases are you currently serving as an  
16 expert witness in related to COVID-19?

17 A. Right now, in the case in Texas, the Pack Prison  
18 case --

19 Q. Uh-huh.

20 A. -- I've given a deposition. I've written a joint  
21 statement with others in the Chicago case. I think that  
22 one is over, as far as I know.

23 I gave a statement in a case in Brooklyn  
24 regarding a federal court jail. And I -- I may be -- I  
25 haven't done anything in -- but I've been asked to, and

1 have agreed to -- to assist as an expert in cases  
2 involving the Broward County jail and the Maricopa County  
3 jail.

4 Q. Are you being compensated for your testimony in any  
5 of those cases?

6 A. No. No, I'm not.

7 Q. Are you being paid for your testimony or preparation  
8 work in this case?

9 A. No, I'm not.

10 Q. Okay. Previously you have been a monitor in other  
11 cases involving correctional medicine, correct?

12 A. Yes.

13 Q. And you are paid for your work as a monitor,  
14 correct?

15 A. Yes.

16 Q. In fact, I found one declaration from 2013 saying  
17 your rate was \$300 an hour, or \$2,500 a day; does that  
18 sound right?

19 A. Yes.

20 Q. Okay. And is that your current rate for monitoring  
21 activities?

22 A. I'm not currently being paid for any monitoring  
23 activities.

24 Q. And are you aware -- or actually, have there been  
25 any discussions between you and the plaintiffs' attorneys

1 about you potentially being a monitor in this case with  
2 the Dallas County jail?

3 A. About me being a monitor, no.

4 Q. How about being the public health expert appointed  
5 by the Court to tell the Dallas County jail what steps  
6 they have to take?

7 A. I have not been asked to consider that position.

8 Q. Has there been any discussion about you taking that  
9 position at all?

10 A. I'm not aware -- no, I have not had any discussion  
11 about taking that position.

12 Q. Okay. You mentioned earlier that you reviewed  
13 the -- I'm just going to call it the medically-vulnerable  
14 list. You remember that, correct? You reviewed that?

15 A. Yes.

16 Q. Okay. And you -- you'd agree with me that there's  
17 well over 2,000 people on that list, correct?

18 MS. FETTIG: Object to --

19 A. No, I'm --

20 THE WITNESS: Oh, sorry.

21 A. -- I'm confused.

22 THE COURT: Let's hold on --

23 MS. FETTIG: I object; mischaracterizing the  
24 testimony.

25 THE COURT: Let's stop for just a second.

1 Everybody's kind of talking over each other.

2 Do you have an objection?

3 MS. FETTIG: Yes, mischaracterizing testimony.

4 I think Mr. Biggs is talking about a spreadsheet  
5 of vulnerable people, and Dr. Cohen was talking about the  
6 definition of vulnerable people.

7 THE COURT: Okay. Mr. Biggs?

8 THE WITNESS: Yeah, I didn't see a spreadsheet  
9 of 2,000 people.

10 Q. So you --

11 MR. BIGGS: I'll reask the question, Judge.  
12 We'll see if we can get to the bottom of it.

13 THE COURT: Okay. That would be great.

14 And then if you still need to object, Ms.  
15 Fettig, feel free to.

16 Q. So, Dr. Cohen, are you aware that, using the  
17 criteria you have laid out in this case, a spreadsheet of  
18 over 2,000 allegedly medically-vulnerable inmates has  
19 been compiled?

20 A. No.

21 Q. Okay. You'd agree with me that the release sought  
22 in this case would include medically-vulnerable  
23 individuals charged with serious crimes as well, correct?

24 A. I don't know.

25 Q. Would you agree with me that releasing someone

1 charged with murder could possibly pose a public safety  
2 risk?

3 A. It could be possible.

4 Q. Would you agree with me that it would be possible  
5 that releasing an accused rapist or someone accused of  
6 aggravated sexual assault would not be in the public  
7 interest?

8 A. It is possible.

9 Q. What about releasing arsonists or pedophiles, would  
10 that also not be in the public interest, potentially?

11 A. It is possible.

12 Q. If we were to be releasing these individuals that  
13 are medically vulnerable, how are we supposed to do it,  
14 in your opinion?

15 A. I think -- I'm not sure exactly how to do it. I  
16 would rely on the -- the clinical and epidemiologic  
17 resources of the -- of the county and the juridical parts  
18 of that; and the criminal justice coordinators and the  
19 attorneys for the accused, and the Court, to develop a  
20 process which makes sense to all of them --

21 Q. Okay. So you would --

22 A. -- releasing people, particularly the medically  
23 vulnerable.

24 Q. And I think you previously said it was politically  
25 complicated or a complicated political question about who

1 to release and who not to, correct?

2 A. I -- I don't remember exactly what I said on that.  
3 I said there are politics involved. I don't know if I  
4 said it was a -- it could be -- it certainly is something  
5 that would be -- raise people's -- that would -- people  
6 who are politically engaged would be -- would care about.

7 Q. Okay. And so you'd agree with me that local health  
8 officials are in a good position to determine who should  
9 be released from jail, correct?

10 A. I -- that is not what I said. Are you trying to --

11 Q. No, I'm just asking you what you --

12 A. -- based on -- I think it should be part of the  
13 process, that's what I said.

14 THE COURT: Let's pause for just a moment.

15 (Off-the-record discussion.)

16 Q. You'd agree with me that local health officials  
17 should be involved in deciding who is released,  
18 potentially, correct?

19 A. I think a system which involved local health  
20 officials would be -- would be -- would probably make  
21 sense. It could be local health officials; it could be  
22 the providers from Parkland who do it. I guess  
23 they're -- that is a public hospital, so I guess they're  
24 local health officials as well.

25 You know, I wouldn't -- I haven't designed this

1 program; but something like that, yes.

2 Q. You'd also agree that criminal justice officials  
3 should be involved in this process, correct?

4 A. Yes.

5 Q. You'd agree with me that local officials have a  
6 better understanding, especially in -- during a pandemic,  
7 of what type of inmate population the community can  
8 absorb or not absorb, correct?

9 A. I'm sorry, could you repeat the question, please?

10 Q. Yeah. It was probably a confusing question to begin  
11 with.

12 You'd agree with me that local officials on the  
13 ground will be in the best position to determine what  
14 type of inmate population resources during a pandemic --  
15 based on what resources are available during the pandemic  
16 that the community can absorb.

17 Does that make sense?

18 A. I don't know that I -- I don't know if it makes  
19 sense, and I -- and I don't think I agree with its --  
20 they may or they may not be. I don't know. It would  
21 depend upon the local officials. They obviously have the  
22 certain kind of power if they're elected. Their ability  
23 to make those decisions might or might not be -- might or  
24 might not be the best.

25 So I -- but they'd certainly be involved in it.

1 Q. Do you think you know better than local officials  
2 about how inmates should be released during a pandemic?

3 A. I -- I'm not -- I have not put myself up as the  
4 person to make that decision. I made recommendations in  
5 New York City about -- about the group of people who  
6 should be -- who we -- who should be considered for  
7 release, and I would -- you know, and -- I've done that  
8 here today and -- as well.

9 I -- I haven't said I am the person who's  
10 releasing them. I've not taken on that responsibility  
11 here. And no one's offered it to me.

12 Q. All right. So I'm going to ask a series of  
13 questions. They should be yes-or-no answers. If not,  
14 you can elaborate. But let's try to move it along.

15 So you'd agree, in determining whether we should  
16 release an inmate or not that is medically vulnerable,  
17 that you must consider their specific health  
18 circumstances, correct?

19 A. Their health circumstances?

20 Q. Yes.

21 A. If they -- but is -- are you saying if you're going  
22 to release someone medically vulnerable, you should  
23 consider their -- the things that make them medically  
24 vulnerable?

25 Q. Yes.



1 A. Yeah.

2 Q. You'd agree that you have to, in making a decision  
3 to release an individual, consider their criminal  
4 history, correct?

5 A. I -- I -- you know, I'm not sure about that. That  
6 may be the case in some crimes; that may not be the case  
7 in others. If someone is -- you know, in a jail in which  
8 someone has not been convicted of anything, that is  
9 more -- I'm not sure. Sometimes it should be; sometimes  
10 it shouldn't be.

11 Q. Should it be considered when somebody's accused of  
12 murder?

13 A. You know, I -- I am not -- I don't know what the  
14 categories are. I don't know -- you know, there's some  
15 people accused of murder who did not -- who are innocent  
16 of murder. I -- you know, someone can get -- if someone  
17 has access to bail, I think they should be able to -- and  
18 they could pay their way out, then they should also be  
19 considered for release this way. Or there are ways that  
20 you could use -- you know, I -- I don't know, there are  
21 considerations around the crime of murder that -- that I  
22 don't know enough about to -- to answer that question.

23 Q. What if someone's been accused of serial murder,  
24 should we consider their criminal history then?

25 A. I don't know. You know, I -- if they're accused of

1 serial murder, but they have not been -- I'm not going  
2 to -- I don't know.

3 Q. Okay. So there may be a situation where someone's  
4 accused of killing 13 elderly women, we shouldn't  
5 consider their criminal history, in your opinion?

6 A. You know, I think that if -- that that's a decision  
7 that -- shouldn't -- not be made by me as a doctor. I'm  
8 not -- I'm not -- you know, the Board of Correction, I  
9 can make recommendations regarding -- I did not make -- I  
10 made recommendations for people with -- with less than a  
11 year on their -- you know, on their sentence.

12 I -- and I -- and I recommended that -- that  
13 the -- the -- the district attorneys and the judges and  
14 the Defense Bar get together, and people who are -- who  
15 have other charges, and try to work something out if they  
16 can. And that process resulted in the release of about  
17 1,500 people. That included the technical parole  
18 violators.

19 Not everybody was released who fit in the  
20 categories of -- of any of those categories. But I  
21 didn't -- I personally was not involved in making any  
22 decisions about what crimes should or should not be. And  
23 I -- I don't feel that that is a -- is a judgment that I  
24 could make right now.

25 Q. Do you know in New York City if they notified the

1 victims --

2 A. I don't know.

3 Q. -- of these crimes before they let them go?

4 A. The victims of -- of -- for the -- I don't know the  
5 answer to that question. I -- I just don't know.

6 Q. Do you believe it's important --

7 A. Sorry.

8 Q. -- do you believe it is important, in your opinion,  
9 that we notify victims that the people who have  
10 victimized them may be getting out of jail in this  
11 process?

12 A. I think, generally, that's done. I think -- you  
13 know, I mean, this is for convicted -- for people who are  
14 convicted? I mean, they did not -- I mean, the DAs are  
15 involved in that process; that is their responsibility, I  
16 think.

17 Q. Well, you -- Dr. Cohen, you understand where we're  
18 at, that the DA and the judges, they have already had the  
19 collaborative process you described in Dallas County; you  
20 are aware of that, right?

21 A. I'm aware that some people have been released  
22 through that process, yes. And other --

23 Q. And you're --

24 A. -- and the other people have gone -- there have been  
25 a lot of -- a lot of decrease in population at the front

1 end, of people not being sent into the jails, is my  
2 understanding.

3 Q. And so you -- do you understand that we're at the  
4 point now where it is not about collaboration with local  
5 officials; it's about whether or not Judge Brown has to  
6 put an order out releasing these individuals, which is a  
7 tough job? You are aware we're at that state, right?

8 A. Yes.

9 Q. So you'd agree with me that your answers, talking  
10 about collaborative process to decide who to release,  
11 that is history, and it is not applicable to what we're  
12 talking about; you're aware of that, right?

13 A. No, I'm not.

14 MS. FETTIG: Objection, Your Honor. This is  
15 way -- this line of questioning is way outside the scope  
16 of -- I'm not sure if you can hear me.

17 THE COURT: I can hear you.

18 MS. FETTIG: This is way outside the scope of  
19 Dr. Cohen's proffered expertise in this case.

20 THE COURT: You know, I'll give a little  
21 latitude, Mr. Biggs. I get, kind of, the theme here.

22 He is not -- he is not going to be able to opine  
23 as to whether people with criminal histories should or  
24 shouldn't be released. And the Court's -- I get where  
25 you are going with that. And --

1 MR. BIGGS: Absolutely.

2 THE COURT: -- thankfully the defense counsel  
3 has provided me en camera the NCICs that I'm going  
4 through every night to get a feel for who is left in the  
5 jail. So I get where you are going.

6 MR. BIGGS: I'm going to move along, Judge.

7 THE COURT: So I will sustain it, and let's move  
8 on.

9 Q. Dr. Cohen, are you familiar with the crime rate  
10 currently in Dallas County?

11 A. No, I'm not.

12 Q. Are you familiar with the fact that Dallas County,  
13 over the last several years, has experienced a spike in  
14 violent crimes, including murder?

15 A. No, I'm not.

16 Q. Are you --

17 MS. FETTIG: Objection, again, Your Honor. This  
18 is not relevant to Dr. Cohen's testimony.

19 THE COURT: Okay. Mr. Biggs, I'll give you a  
20 little latitude, but I think we're kind of going down the  
21 same track.

22 I -- I'm -- I'm up on crime stats, and I get  
23 that he -- he's never -- he's been to Dallas once. He  
24 doesn't know what we do here; he doesn't know our crime  
25 rate; doesn't know our inmates. He's just opining

1 generally on jails.

2 MR. BIGGS: Well, Judge, if I could ask for some  
3 latitude. Can I ask him some questions about  
4 compassionate release in New York? Would that be a  
5 more --

6 THE COURT: I'll give you that latitude, and  
7 then let's move on to a new topic.

8 MR. BIGGS: Absolutely.

9 Q. Dr. Cohen, you're aware that the compassionate  
10 release in New York that you've been talking about today  
11 has resulted in recidivism by some of the individuals who  
12 have been released, right?

13 A. I -- yes, I am.

14 Q. And you're aware that as of late March, at least 50  
15 of the 1,500 inmates originally set free out of Rikers  
16 are back in jail?

17 A. I didn't know the number, but I know that there are  
18 some who have come back.

19 Q. Okay. For instance, one inmate who was let go out  
20 of Rikers, who was in there because he set his  
21 girlfriend's front door on fire and choked her mother,  
22 was recently re-arrested after he went back to the  
23 apartment and threatened to kill the whole family; you  
24 are aware of that, right?

25 A. Yes, I am.

1 Q. And you are also aware that another prisoner who was  
2 accused of assaulting a Department of Homeland Services  
3 officer was recently re-arrested for punching an agent  
4 from that same agency two days after his release, right?

5 A. I think I am familiar with that case as well, yes.

6 Q. And you are also aware that there was one individual  
7 being held on a 60-day sentence for theft at Rikers who  
8 got out and immediately burglarized a family grocery  
9 store, stealing over \$3,000, after he was released,  
10 correct?

11 A. I'm -- I -- I've only heard about two cases. I  
12 don't -- I don't -- I don't know anything more.

13 Q. Well, the last --

14 A. I -- I'm not familiar -- I am not tracking these  
15 cases.

16 Q. Sure. Well, let me just ask this last one. You  
17 might not be aware of it.

18 You are aware that there was an individual who  
19 was on parole for murder, who was released after a  
20 domestic violence charge, who was just arrested two days  
21 ago for trying to rob a bank in Union Square; you are  
22 aware of that, right?

23 A. No, I am not. But, you know...

24 Q. But you are aware that Police Commissioner Shea has  
25 said that compassionate release from Rikers has, quote,

1 gone too far, right?

2 A. Yes, I am.

3 THE COURT: Let's pause. Go off the record for  
4 just a moment.

5 And then, Mr. Biggs, I'll let you resume.

6 (Off-the-record discussion.)

7 Q. Dr. Cohen, you'd agree with me that inmates in the  
8 Dallas County jail are at a higher risk of having been  
9 exposed to COVID-19; that was your testimony, right?

10 A. Yes.

11 Q. And you're aware that there could potentially, at  
12 the end of this case, be a release of many of these  
13 individuals into a community at large, correct?

14 A. If they are released, they would be released, yes.

15 Q. Yes. And you'd agree with me that this release may  
16 occur without any requirement that inmates be tested  
17 before they are released, right?

18 A. I don't -- it could be. I mean, I'm recommending  
19 that there be testing prior to release.

20 Q. Would the release of thousands of people who have  
21 likely been exposed to COVID to a concentrated area; say,  
22 Dallas County, increase or decrease the risk of COVID  
23 exposure to other residents of Dallas County?

24 A. You know, I mean, there are -- there are -- it  
25 depends how many are infected. I don't know. You know,



1 I'm -- the sooner it was done, the less of an issue it  
2 will be. Because there will be less people infected;  
3 there will be less officers infected; there will be less  
4 deaths. If it takes a long time, it'll be a -- it could  
5 be a bit of a problem.

6 Q. Let me ask it this --

7 A. But I don't think -- I don't think you -- you know,  
8 I think you -- you don't -- I don't know the answer to  
9 that. And I -- I haven't seen it modeled exactly.

10 So I'm not sure what the relative volume of  
11 the -- you know, in certain communities it may matter; in  
12 certain communities it may not matter. Might be better  
13 for the officers to have fewer people; that they'll be at  
14 less risk if there are fewer people in the jail. You'd  
15 have to model a lot of things.

16 Q. So is it fair to say that it is possible that  
17 releasing inmates from the Dallas County jail could  
18 actually increase the risk of COVID exposure to other  
19 residents of Dallas County?

20 A. It would depend upon what the rate of current  
21 infection is. And I don't know that.

22 Q. So it is possible, correct?

23 A. I don't -- if the -- it is -- anything is possible.  
24 I don't know if it would happen, because I don't know  
25 what the rate of infection in the jail is right now. I

1 mean, if the only -- and so I just don't know.

2 Q. Sure. Let's go with this. You're an expert  
3 witness. Assume the following facts: We're going to  
4 release a thousand people tomorrow. We cannot test any  
5 of them because tests are not available.

6 Is it possible that that release of those  
7 thousand people could increase exposure in the Dallas  
8 County community, in your opinion?

9 MS. FETTIG: Objection; this calls for  
10 speculation.

11 MR. BIGGS: He's an expert witness, Your Honor.

12 THE COURT: Well, I'm going to allow -- I'm  
13 going to allow him some latitude. This is an expert  
14 witness, so I'll give some latitude.

15 You can ask that question. I don't know if he  
16 can answer it, but you can ask it.

17 A. Yeah, you know, I -- I don't -- you really would  
18 need to know what the infection rate in the jail is to be  
19 able to answer that question. I mean, the -- the number  
20 of -- of inmates who are -- have tested positive is 80  
21 out of 5,000 right now, that's -- you know, that's more  
22 than -- that is more than zero. But I don't know -- I  
23 don't know -- I just don't know what the rate is, in  
24 terms of how much it would be diluted by the population  
25 of -- of the -- I'm sorry, I can't answer it.

1 Q. Sure. You'd agree with me that releasing  
2 individuals that have been confirmed to their families  
3 could increase the risk to their family members of being  
4 infected, correct?

5 A. Well, it could or it could not. You know, if people  
6 practice social distancing and they wore masks, and they  
7 quarantined themselves, as we're doing; as my daughter  
8 did when she thought she was exposed, and stayed away  
9 from me for -- you know, for two weeks in her room, and  
10 we kept six feet apart from each other while we lived in  
11 the same space, and we didn't touch the same areas, then  
12 it wouldn't.

13 I mean, it requires a lot of all of us to get  
14 through this thing right now. But I don't think --  
15 nobody has an interest -- I mean, there are very few --  
16 you know, I don't know anybody who's got an interest in  
17 spreading this virus.

18 So a family would have to make their own  
19 decision about, you know, having someone come home to  
20 live with them. But if someone were positive and they  
21 were coming home, then it would be the same as anybody  
22 else who is positive and, you know, moving back, or  
23 getting positive and going home that day, like a  
24 correction officer.

25 Q. Yeah. Let me stop you there.

1           So again, the world we're talking about is a  
2 world where asymptomatic individuals can spread this,  
3 correct?

4     A.    Yes.

5     Q.    Okay.  So again, assuming there are no tests to be  
6 had as people walk out, that would assume that  
7 asymptomatic individuals that have this are being sent  
8 out to go back to their families.  In that scenario, is  
9 it possible, to a reasonable degree of medical certainty,  
10 that there could be an increased risk to those people's  
11 families, without even knowing the individual is positive  
12 for the COVID-19?

13    A.    I -- I actually do not understand the question.  
14 You -- I didn't -- you began talking about asymptomatic  
15 people, but I don't -- I know -- I really don't  
16 understand the -- are you saying is it possible for  
17 someone who is COVID positive to infect someone else?  
18    Yes.

19    Q.    Well, my point is, if you have an asymptomatic  
20 person and you release them from jail, and you don't know  
21 it, there is a possible risk they could infect the people  
22 they are going home to.  Is that a fair understanding of  
23 it?  Is that possible?

24    A.    Is it possible for an individual who's infected to  
25 infect someone else?

1 Q. An asymptomatic individual.

2 A. Is it possible for an asymptomatic person to infect  
3 someone else? Yes.

4 Q. So if we released an asymptomatic inmate to live  
5 with his 65-year-old mother, that would be putting that  
6 65-year-old mother at a risk of contracting COVID-19,  
7 correct?

8 A. If someone is infected with COVID-19 and they're --  
9 and they're placed next to someone who is not infected,  
10 and they don't practice social distancing, then they --  
11 then this disease can spread from one person to the next,  
12 yes.

13 Q. And that includes asymptomatic individuals who may  
14 not even know they have COVID-19, correct?

15 A. Yeah, I -- it is -- you know, and people in those  
16 situations should quarantine themselves for 14 days. If  
17 you have been in an area where you've been exposed, you  
18 should self-quarantine for 14 days. Something that is  
19 hard to do in a jail -- it is hard to do -- it's easier  
20 to do outside of a jail than in a jail.

21 Q. Well, and you'd agree with me that there is no way  
22 to make inmates that leave the jail quarantine for 14  
23 days, correct?

24 A. There is no way to make anybody quarantine for 14  
25 days.

1 Q. Exactly. And you'd also agree with me that even  
2 telling someone, hey, I'm letting you out of jail, but  
3 you have to quarantine for 14 days, is risky to rely on  
4 them to quarantine, especially when they've already  
5 displayed behavior that shows they are willing to break  
6 the law, right?

7 A. I don't -- I don't know that that's the case.

8 Q. Do you have any studies showing that individuals in  
9 New York City, when they were released, actually  
10 self-quarantined as they were instructed?

11 A. No.

12 Q. So we're supposed to just trust the inmates --

13 A. The social workers that I've talked to that -- that  
14 they have -- that the process has been going -- going  
15 quite well, and that people are quarantining. I haven't  
16 heard cases where people aren't, but...

17 Q. Well, short of what some people may be telling you,  
18 do you have any sort of empirical proof that people,  
19 indeed, are self-quarantining after being released from  
20 jail?

21 A. No.

22 Q. And you'd agree with me that if we released  
23 individuals from the Dallas County jail, we're just going  
24 to have to trust that they self-quarantine, right?

25 A. We have to trust everyone in a situation where

1 they've been exposed to self-quarantine. That is the --  
2 it's like the people who go in there and work every day.

3 Q. Uh-huh. How long does it normally take to get a  
4 COVID-19 test, in your experience?

5 A. Well, it's -- you're -- the -- the employees for the  
6 jail said it's a -- or, I guess, Parkland said it was a  
7 day --

8 Q. How long did it take -- how long would it take  
9 Dallas County to get thousands of test results back for  
10 prisoners they're intending to release?

11 A. I don't know the answer to that. I mean, it would  
12 probably take about a day per test. And depending on how  
13 many tests you did in a day, that's how long it would  
14 take.

15 THE COURT: Mr. Biggs and Dr. Cohen, the Court  
16 needs to take a recess. So let's take a break for ten  
17 minutes. If you'll make a note where you are.

18 And it is 2:45. Let's come back at 2:55. The  
19 Court will be in recess for ten minutes. Thank you,  
20 everybody.

21 (Recess taken.)

22 Q. Dr. Cohen, can you hear me?

23 A. Yes.

24 Q. Okay. So I just have a few more questions for you.

25 So we mentioned earlier the testimony you gave

1 in the Cook County case, the declaration being from March  
2 20th, 2020; you remember us talking about that, right?

3 A. Yes, I do.

4 Q. That was a statement that you gave, along with four  
5 other doctors, correct?

6 A. Yes. Three other -- three.

7 Q. I -- it's Dr. -- it's spelled P-u-i-s-i-s, Dr. --

8 A. Puisis and -- yeah, four other doctors.

9 THE COURT: Dr. Cohen, if you would, just  
10 remember to sit away a little bit. We're getting a lot  
11 of reverb.

12 THE WITNESS: Yes, Judge.

13 THE COURT: And, Mr. Biggs, if you could turn  
14 your volume down just a touch. You are a little bit  
15 loud.

16 MR. BIGGS: I'm happy to do that.

17 THE COURT: That's better.

18 And just one more reminder, the court reporter  
19 can only take you down one at the time. So if you'll  
20 delay your answer, Dr. Cohen, just by a second or two, if  
21 you'll try to remember that, that would be helpful.

22 And with that said, please proceed.

23 Q. Sure. Dr. Cohen, in this statement submitted just  
24 over a month ago, you and the four other doctors opined  
25 that inmates over 65 should be prioritized for release,



1 correct?

2 A. Yes.

3 Q. In that declaration, you made no mention of  
4 individuals 50 or above being released, correct?

5 A. Yes.

6 Q. And so you'd agree with me that the statement in  
7 that case contradicts the recommendation you are making  
8 in this case, correct?

9 A. No.

10 Q. But you would agree that less than -- or just over a  
11 month ago you were recommending 65 year olds be  
12 prioritized, but today you are recommending 50 year olds  
13 be prioritized, correct?

14 A. I recommended 50 year olds also at that time, but  
15 the other doctors in this group didn't -- wanted to go  
16 with 65, and I agreed to sign this declaration with them.  
17 And simultaneously, we had come out with a call for 50 in  
18 New York City.

19 So I sent different -- I said different things,  
20 but I -- they were not contradictory. One was a -- one  
21 said for 65, and I would support that. And I also would  
22 support 50.

23 Q. So the four other doctors who signed this  
24 declaration with you, they thought the number should be  
25 65, correct?

1 A. I don't remember exact -- I really don't remember.  
2 They had come up with the declaration before -- and had  
3 finished writing it before they asked me to join. And  
4 that's what they had. And they said, we're -- we're not  
5 changing it, so this is -- would you -- we'd like you to  
6 support it.

7 I mean, they might have changed it, but I  
8 didn't -- I did not ask them to change it. I did not  
9 think it -- I thought it should be 50 then. I said it  
10 should be 50 then, but I signed this declaration as well.  
11 If they could have gotten that over 65, that would have  
12 been a good thing as well.

13 Q. But you'd agree with me that the declaration you  
14 signed with these four other doctors does not say that 50  
15 year olds should be prioritized, correct?

16 A. It says what it says.

17 Q. Okay. Which is 65, right?

18 A. It says 65.

19 Q. Okay. So I have some questions about the broad  
20 categories that you have discussed in this case.

21 You'd agree with me that some of the categories  
22 are, indeed, broad, right, that makes somebody medically  
23 vulnerable in this case?

24 A. I'm sorry, I couldn't hear you.

25 Q. Sure. So you'd agree with me that Plaintiffs in

1 this case are using what I would consider broad  
2 categories to kind of collect medically-vulnerable  
3 individuals together; is that kind of a fair assessment,  
4 that it is a broad category?

5 A. I don't know what you mean by broad category.

6 Q. So let's go with this. It says that individuals  
7 with developmental disabilities are medically vulnerable;  
8 is that correct, Dr. Cohen?

9 Can you hear me, Doctor?

10 A. Yes, I can.

11 Q. Okay.

12 MR. BIGGS: Everybody else -- Judge, can you  
13 hear us?

14 THE COURT: Yes.

15 Q. Okay. You'd agree with me that within the  
16 medically-vulnerable group in this case are people with  
17 developmental disabilities, correct?

18 A. Yes.

19 Q. You would agree with me that the characterization of  
20 using the broad term "developmental disabilities" is  
21 going to collect a lot of different disorders and  
22 ailments, correct?

23 A. Yes, it could.

24 Q. For example, is ADHD a developmental disability?

25 A. No.

1 Q. So you wouldn't consider somebody with ADHD to be in  
2 that group of those that are developmentally disabled,  
3 right?

4 A. I don't know. They could be, but it is not part of  
5 the developmental disability, as I understand it.

6 Q. So what do you understand the category,  
7 developmental disabilities, to cover in this case?

8 A. People with cognitive capacities which don't allow  
9 them to perform some level of fundamental activities of  
10 daily living.

11 Q. Would a compulsive liar be underneath that umbrella?

12 A. I don't think so.

13 Q. What if somebody had a disability that, for some  
14 reason -- or mental illness, that caused them to steal,  
15 would that be under developmental disabilities, in your  
16 view?

17 A. No.

18 Q. What about an individual that had violent outbursts  
19 as a result of a mental illness, would that be under  
20 developmental disabilities, in your view?

21 A. No.

22 Q. Okay. So can you give me some examples of what you  
23 would consider to be under the umbrella of developmental  
24 disabilities, and how those particular disorders make  
25 somebody more susceptible to being injured by COVID-19?

1 A. Because they --

2 MS. FETTIG: Objection, Your Honor. This line  
3 of questioning appears to be about mental illness, which  
4 is not Dr. Cohen's expertise.

5 THE COURT: Okay. I'll overrule. I think it is  
6 proper for cross. He is asking -- he's opining as to  
7 people's developmental disability. So this is a little  
8 off track, but I think it is proper for cross. So I'll  
9 overrule you.

10 A. That would be people who, because of cognitive  
11 inability -- cognitive deficits, could not -- or cannot  
12 function independently. They're not people who have a --  
13 a serious mental illness.

14 Q. Okay. So you are aware that the CDC lists Attention  
15 Deficit disorder or Hyperactivity Disorder as a  
16 developmental disability, correct?

17 A. In the -- in the -- this group?

18 Q. Yeah. So again, talking about developmental  
19 disabilities and who falls in that bucket.

20 So if we're going by the CDC's definition, you  
21 are aware that they consider somebody with ADHD to be  
22 developmentally disabled, correct?

23 A. Actually, I'm not, so...

24 Q. Are you aware that the CDC considers somebody with  
25 Tourette's Syndrome to be developmentally disabled?

1 A. I'm not familiar with the CDC discussions of  
2 Tourette.

3 Q. Are you aware that the CDC considers Fetal Alcohol  
4 Spectrum disorders to be a developmental disability; are  
5 you aware of that?

6 A. I think people with Fetal Alcohol Syndrome can be  
7 developmentally disabled by that -- by that pathology.

8 Q. You understand that the CDC categorizes hearing loss  
9 as a developmental disability, correct?

10 A. No. I don't know that, no.

11 Q. So again, we're talking about developmentally-  
12 disabled people getting out of jail because of their  
13 susceptibility to COVID-19, potentially. Is it your  
14 testimony today that people with ADHD, hearing loss,  
15 Tourette's Syndrome, or Fetal Alcohol Syndrome wouldn't  
16 fall in that group?

17 A. I can -- some of them might or might not. I  
18 certainly did not include people with hearing loss as a  
19 group to -- that was included in the medically high-risk  
20 group, no.

21 Q. How are we supposed to figure out who should go in  
22 the developmentally-disabled group, in your medical  
23 opinion?

24 A. I gave the definition that I -- that I believe that  
25 was -- that was meant by developmentally disabled. I did

1 not think developmentally disabled meant hearing loss.

2 So someone with hearing loss -- I could be  
3 getting there, but I'm not -- but I don't think of myself  
4 as developmentally disabled because of hearing loss.

5 Q. What was your definition again for who should be in  
6 the bucket of developmentally disabled?

7 A. The people who, because of cognitive incapacity --  
8 cognitive -- because of a lack of cognitive capacity,  
9 require assistance in the activities of daily living.

10 Q. And so ADHD wouldn't qualify in your book?

11 A. Yes, I -- I don't include -- I don't understand that  
12 as being a developmental disability.

13 Q. So do you expect the Court to go with your  
14 definition that you just gave, or should we rely on the  
15 CDC's definition of who falls in each category, in your  
16 expert opinion? Which one do you think is better?

17 A. Well, if the CDC -- I think this probably would have  
18 to be worked out by the people involved in the process.  
19 But I certainly don't think that hearing loss was -- or  
20 ADHD were reasons to have -- were part of the  
21 developmental disabilities. So I would -- I would --  
22 that is what I think.

23 Q. Well, how could we tell who falls in this group?

24 A. I think -- I think there will be multiple -- I mean,  
25 I -- I -- I don't think that people think that hearing is

1 a developmental disability. I mean, some people are born  
2 with hearing losses, but people who have hearing losses  
3 are not developmentally disabled.

4 Q. No, I understand that. But my question is --

5 A. No, I don't know, but that's -- that is what you've  
6 been asking me.

7 Q. Sure, sure. Let me just make it simpler than that.

8 We're trying to determine -- Dallas County, if  
9 the judge goes with the plaintiffs, has to figure out who  
10 is in and who is out. How are they supposed to tell who  
11 fits in this squishy definition of developmental  
12 disability you just provided us? How are you supposed to  
13 tell -- you can't tell by looking at somebody, right?

14 A. No, you can't.

15 Q. So how are they supposed to determine who falls in  
16 the group or out of the group, in your expert opinion?

17 A. Well, I understand developmental disability. And if  
18 this is a problem, then it will -- it will have to be --  
19 it would have to be addressed by the judge as people who,  
20 through a series of psychological testing, are identified  
21 as developmentally disabled. Then -- that is -- that is  
22 what it is. It is not about hearing loss or Tourette's  
23 or Fetal Alcohol Syndrome --

24 Q. Sure. And -- so does that mean that the County may  
25 have to test individuals to figure out whether or not



1 they qualify as developmentally disabled to place them in  
2 the group?

3 A. I would -- I think they -- the counties are required  
4 to identify people who are developmental disabled who are  
5 in their custody and provide them with appropriate, you  
6 know, support and planning if they are in jail. And I  
7 assume that they've done that and would know these people  
8 already.

9 Q. Well, you are just speculating about that in Dallas  
10 County, correct?

11 A. Well, I'm -- it is good correctional practice, and  
12 I'm sure -- you know, and I hope that is what they are  
13 doing.

14 Q. All right. What about the developmental  
15 disabilities makes you somebody -- somebody more prone to  
16 COVID-19?

17 A. Well, their -- in terms of proneness, I think,  
18 because of their failure to understand how to protect  
19 themselves and how to protect others. I think that is  
20 the issue here.

21 Q. Sure. Well, let me ask this one. You -- I think  
22 you list hypertension as potentially being one of the  
23 categories of individuals we should prioritize for  
24 release; is that correct?

25 A. Yes.

1 Q. What about mild hypertension, is that a underlying  
2 condition for COVID-19?

3 MS. FETTIG: Objection, Your Honor. We don't  
4 have a definition of mild hypertension.

5 THE COURT: Okay. That -- I -- I don't know --  
6 I'll sustain that.

7 I mean, mild as to what you think and mild as to  
8 he thinks, that is like me asking if you think I have a  
9 pretty robe on. I mean, what you think is pretty and  
10 what I think is pretty -- so if you've got something  
11 concrete to ask him, do. But his characterization is not  
12 going to be helpful.

13 Q. Doctor, how do we rate hypertension in individuals?

14 A. Okay. That is not -- that is not -- the condition  
15 that you described is hypertension, not -- not -- it  
16 is -- it can be rated in different ways. It can be rated  
17 as mild or moderate or severe. It can be malignant.  
18 There are lots of ways to describe hypertension.

19 In this consideration, I think it's one of the  
20 risk factors.

21 Q. How can an individual --

22 A. It's changed over time. Greater than -- greater --  
23 you know, it changes over time, but it's 130/80 or it's  
24 140/90 and -- you know, and it -- and usually requiring  
25 treatment, but not necessarily. Usually requiring

1 treatment, but not always.

2 Q. And where are we supposed to get the information  
3 about individuals that have qualifying hypertension from?

4 A. From the medical records of the -- of the jail, from  
5 the clinic there.

6 Q. And you're aware that normally when someone comes  
7 in, they may get a health screening in the jail, correct?

8 A. I would hope so.

9 Q. Okay. And you'd also agree with me there's -- I  
10 mean, I've heard it called White Coat Syndrome. You  
11 know, you go to the doctor and your blood pressure is  
12 high. You have heard of that, right?

13 A. I have heard of it.

14 Q. Yeah. So, essentially, you'd agree with me it's in  
15 a stressful situation or something like that, your blood  
16 pressure can go up, correct?

17 A. No, I wouldn't agree with that. But some -- you  
18 know, but some people have differential blood pressure.  
19 People who have White Coat Hypertension generally have  
20 hypertension.

21 Q. You'd agree with me it's possible that somebody  
22 sitting in a jail who just got booked in for a serious  
23 violent crime, who's looking at going to prison for the  
24 rest of their life, may have elevated high blood  
25 pressure, correct?

1 A. And if they do, it could be checked again, you know,  
2 at a -- on another day to see where -- what it is. You  
3 don't make a diagnosis on one reading.

4 Q. Well --

5 A. But --

6 Q. -- so let's go back to that question.

7 So if on the initial reading that goes in the  
8 record is high, it would require the jail to figure out  
9 who's in the hypertension group to go back and do another  
10 reading of those individuals, correct?

11 A. I would -- no, I wouldn't require it. I would  
12 expect the -- the Parkland clinical staff, if they see  
13 someone who comes in and gets a screening blood pressure  
14 which is very elevated, would repeat it, because they  
15 wanted to provide minimally-adequate care to their  
16 patients.

17 Q. Is there such a thing as controlled hypertension?

18 A. It would be part of the routine medical -- minimum  
19 medical care that you provide to persons in jail.

20 Q. Is there such a thing as controlled hypertension,  
21 using medication?

22 A. Are you saying can you control hypertension with  
23 medication?

24 Q. Yeah.

25 A. That is what you -- you would want to lower the

1 blood pressure into a normal range, if you can, with  
2 medication.

3 Q. So my question is, with somebody who has  
4 hypertension; however, it is controlled by medication  
5 into a normal range, would they qualify to be prioritized  
6 for early release?

7 A. Yes.

8 Q. Are diseases that compromise the immune system an  
9 underlying condition for COVID?

10 A. Diseases which compromise the immune system place a  
11 person with COVID -- who gets COVID at high risk of  
12 hospitalization and death, yes.

13 Q. Yeah. What about sickle cell? What about sickle  
14 cell pushes somebody -- puts somebody to high risk?

15 A. I mean, I have reviewed that. There is not -- there  
16 is not data on it. It is -- you know, it is -- there is  
17 reason to think that they're -- that they would be,  
18 particularly because low oxygen levels will promote  
19 sickling. And so it seems like it may -- it probably is  
20 a high-risk situation.

21 Q. So again, without reviewing everybody's medical  
22 records, we're not going to know who has sickle cell,  
23 correct?

24 A. You are not going to know anything without reviewing  
25 their medical record.

1 Q. Which is going to require us to go one by one  
2 through each inmate, correct?

3 A. I don't know how the medical record is designed  
4 there. If it's an electronic medical record, which I  
5 think it probably is, you could call up people with --  
6 you could identify these diagnoses, and then the medical  
7 records would be pulled by that process.

8 Q. Okay. You mentioned in New York that individuals  
9 who were released, who had no place to go for the 14-day  
10 quarantine period, were provided social services by the  
11 City; is that correct?

12 A. People who were symptomatic, yes. And actually  
13 others who were released, yeah. People who were  
14 symptomatic were provided hotels; other people were  
15 provided with social service support. Some people --

16 Q. Okay. Are you aware in this case that the request  
17 is that housing and/or a public support plan, for any  
18 released class or subclass member who do not readily have  
19 a place to self-isolate for the CDC-recommended period of  
20 time, is being questioned?

21 A. Yeah, that makes sense.

22 Q. Okay. And so how many people did New York City  
23 provide social services to that were symptomatic?

24 A. I don't know the answer to that.

25 Q. And you'd agree with me that any released individual

1 is a broader group of people than symptomatic individuals  
2 currently, correct?

3 A. I'm sorry, I didn't understand the question.

4 Q. Sure. I'll ask it again.

5 So New York City only gave social services to  
6 those that were symptomatic correct?

7 A. I'm not sure about that. I know they gave hotels  
8 for people who were symptomatic; I'm not sure of the  
9 services provided for other people.

10 Q. Okay. How much did this cost New York?

11 A. I don't know.

12 Q. Are you aware that New York is currently at a huge  
13 budget deficit in the city and the state?

14 A. Yes.

15 Q. Are you aware that, in fact, Governor Cuomo  
16 forecasts that there is going to be a 20 percent budget  
17 cut for schools, hospitals, and local governments coming  
18 soon; are you aware of that?

19 A. Yes.

20 Q. So if we were -- if Dallas County and the State of  
21 Texas -- to provide hotel rooms for everybody who doesn't  
22 have a place to go, who pays for that?

23 MS. FETTIG: Objection, Your Honor. This is  
24 beyond the scope of Dr. Cohen's testimony. He is not a  
25 financial expert.

1           THE COURT: No, I understand that. But I think  
2 this is proper cross. I mean, he's asking the Court  
3 to -- I mean, he's part of your -- your request to  
4 release inmates, and I think it is a fair question to  
5 ask, you know, who pays for that.

6           So I think this is proper cross. I'm going to  
7 allow it.

8       A. Well, certainly for the -- as I mentioned before,  
9 the County should try to get a Medicaid waiver for people  
10 who are in prison right now who have medical problems and  
11 are being released.

12           And I think in terms of the -- the cost of -- of  
13 providing social services, and perhaps housing for people  
14 who are symptomatic or who could not quarantine, I do not  
15 know what the cost of that would be. I think there's  
16 a -- there is a discussion that has to be had among  
17 the -- you know, among the -- you know, the County and --  
18 and -- about what the costs of not, you know, providing  
19 support for people who are being released would be.

20           I -- I really don't know what the cost are. I  
21 mean, we have large numbers of people who are home --  
22 there are homeless shelters that people are released to  
23 in New York City who were not COVID positive. I think  
24 there is an interest in -- would be an interest in the  
25 county for people who they knew to be positive to provide



1       them a place to quarantine, if they didn't have that.  
2       That would be -- that would be a social benefit to the  
3       county.

4               And I -- and that -- I can't say more than that  
5       right now. I really don't know anything about the social  
6       services of --

7       Q.     Sure. Well --

8       A.     -- or what the -- what facilities are available in  
9       Dallas.

10      Q.     Well, let me stop you right there.

11              You made mention to Medicaid waiver. Would a  
12      Medicaid waiver pay for hotel rooms for class members who  
13      have no place to --

14      A.     I don't know if it would or not. Probably not. But  
15      it -- but you asked me about the cost of this thing, and  
16      I am sure I could make a positive contribution to the  
17      discussion of how to approach costs.

18      Q.     Totally understand. But my question now is about  
19      who is going to pay for the hotel rooms for the inmates.  
20      And Medicaid waivers -- the federal government's not  
21      going to pay for that, as far as you know, right?

22      A.     I don't know -- I don't know if the federal  
23      government would want to pay for that. No, I certainly  
24      don't know that.

25      Q.     And based on your counsel -- or of Plaintiffs'

1 counsel's objection, I'm assuming you don't have any  
2 knowledge about financial circumstances in Texas  
3 currently, do you?

4 A. I do not.

5 Q. And you don't actually know how funds are  
6 appropriated in the state of Texas, correct?

7 A. I'm not -- I'm not familiar with the -- with the  
8 Texas --

9 Q. You don't know how local governments get --

10 A. -- I don't know if that -- how Texas --

11 THE COURT: Stop, stop, stop for just a second.  
12 You are starting to talk all over each other.

13 So, Dr. Cohen, if you'll wait until he finishes  
14 his question, wait a couple of seconds to answer, that  
15 would be helpful. Because the court reporter's got to  
16 take it down, so -- I know we get -- this is something  
17 everyone clearly feels passionately about, which is part  
18 of what makes it an interesting and important case. But  
19 just slow down just a little bit, okay?

20 THE WITNESS: Yeah.

21 A. So I --

22 Q. So you don't know how local governments would get  
23 the funding, or where they would get it from, to pay for  
24 hotel rooms for the released inmates, right?

25 A. I do not know where they would get the funding from.

1 Q. But you support giving hotel rooms to individuals  
2 paid for by the county, correct?

3 A. I thought it was a very good idea to be able to --  
4 yes, I thought it was a good thing to do.

5 Q. And assuming -- you've only been here once, I'm  
6 assuming you are not a taxpayer of Dallas County?

7 A. I'm not a taxpayer in Dallas County.

8 MR. BIGGS: Pass the witness, Judge.

9 THE COURT: Okay. Redirect, please.

10 MS. FETTIG: Yeah, just a few questions, Your  
11 Honor.

12 THE COURT: Sure.

13 REDIRECT EXAMINATION

14 BY MS. FETTIG:

15 Q. Dr. Cohen, just to clarify, your testimony today  
16 about the inadequacies of Dallas County jail's response  
17 to COVID-19, that's based on the testimony that you heard  
18 from Officer Lewis yesterday, correct?

19 A. Yes.

20 Q. And David Jones, the formerly-incarcerated person in  
21 Dallas County jail, correct?

22 A. Yes, yes, yes.

23 Q. Okay. As well as the declarations of Plaintiffs'  
24 counsel regarding reports from people who are currently  
25 incarcerated at the Dallas County jail, correct?

1 A. Yes.

2 Q. Do you have any reason to believe that any of that  
3 testimony or declarations are false in any way?

4 A. No.

5 Q. And, Dr. Cohen, isn't it the case, you also based  
6 your testimony today on the declaration of Frederick  
7 Robinson as well as Patrick Jones?

8 A. Yes. Yes, I did. And Patrick Robinson stated  
9 that -- that although it's difficult to enforce social  
10 distancing --

11 MR. BIGGS: Judge, I'm going to object as  
12 nonresponsive. It was a yes-or-no question.

13 THE COURT: Okay. Well, it's direct, so, I  
14 mean, we can do that; we can make him say yes and then  
15 follow up. So I'll sustain it. But I give a little more  
16 latitude on direct than I do on cross on answering.

17 MS. FETTIG: Thank you, Your Honor.

18 Q. So, Dr. Cohen, in terms of your findings -- well,  
19 let me back up.

20 During yesterday's hearing, you also saw  
21 pictures of the Dallas County jail during the testimony  
22 of David Jones, which were the YouTube pictures, correct?

23 A. Yes.

24 Q. And you also saw, during the testimony of Officer  
25 Lewis, additional pictures that were actually taken by

1 the county?

2 A. Yes.

3 Q. So in your opinions around Dallas County's failure  
4 to implement adequate social distancing, did you take  
5 into account the declarations of the defendants  
6 themselves?

7 A. Yes.

8 Q. In what way?

9 A. That the -- that the -- the -- the defendants'  
10 statements said that they were -- they worked -- that  
11 they were enforcing social distancing to the extent  
12 possible. And looking at the -- at the organization of  
13 that -- of that room, and of the population that was  
14 housed in that housing area; as well as the pictures of  
15 the -- of the people congregating in the arraignment  
16 there, that social distancing was not being practiced to  
17 the -- was not happening.

18 Q. And, Dr. Cohen, when you looked at those photos, did  
19 you also take into account the organization and  
20 architecture of the unit?

21 A. Yes, I did.

22 Q. Would that be -- would organization and architecture  
23 of the unit; specifically the dormitories, be relevant to  
24 social distancing plans?

25 A. Yes. If you don't have the space to social

1 distance, you can't social distance. And if the beds are  
2 bound together, and then separated by less than six feet;  
3 and they are all filled up, then you don't have social  
4 distancing.

5 Q. Did Defendants' declarations take into account  
6 anything like the dorms or the architectural structure in  
7 any way for social distancing?

8 A. There was no discussion of that in their deposition,  
9 in their statements.

10 Q. Should they be taking that into account?

11 A. Well, they have to take it into account. If they're  
12 having a -- a -- a commitment to adequate social  
13 distancing, then they have to have a commitment to -- to  
14 not having people sleeping right next to each other, or  
15 having to eat at tables with two other -- three other  
16 people who are just a foot or two away from them.

17 So that has -- that has to be taken into  
18 account, their plan for social distancing.

19 Q. And, Dr. Cohen, Defense Counsel has talked a lot  
20 about how to identify medically-vulnerable people. In  
21 your experience, would jails be able to make those  
22 identifications in the medical records that they  
23 routinely keep?

24 A. Yes.

25 Q. And Defense Counsel also mentioned a spreadsheet of

1 2,000 vulnerable -- medically-vulnerable people that --  
2 that the jail has already identified. I know you haven't  
3 seen this. But the fact that they can generate such a  
4 spreadsheet, what does that tell you about their medical  
5 system?

6 A. That they have the capacity to identify people  
7 with -- with the medical problems identified as being --  
8 making someone medically vulnerable.

9 Q. And would you agree, Dr. Cohen, that in addition  
10 to -- should release orders be before the Court, should  
11 there be a consideration, in addition to medical  
12 vulnerability, alleged public safety issues with  
13 individuals?

14 A. Yes.

15 MS. FETTIG: I have no further questions for  
16 this witness. Thank you.

17 Thank you, Dr. Cohen. I know it's been a long  
18 day.

19 THE WITNESS: You're welcome.

20 THE COURT: Any questions, any follow-up  
21 questions from Defendants or Intervenors?

22 MR. STEPHENS: None from me, Your Honor.

23 MR. BIGGS: As much as I'd like to, I'm going to  
24 go ahead and pass as well, Judge.

25 THE COURT: Well, I'll bet you are Dr. Cohen's

1 new friend, because I'll bet he is tired of talking.

2 Dr. Cohen, you have been very, very helpful for  
3 the Court. I really appreciate you taking this on. I  
4 noticed during your testimony that you mentioned that you  
5 are not being paid for your services. You are clearly  
6 doing this just to help humanity.

7 And so as the person who ultimately will have to  
8 make the decision in this case, I want to let you know  
9 your testimony has been very, very helpful, and I really  
10 appreciate your public service. Thank you for doing  
11 this.

12 THE WITNESS: Thank you very much, Judge. I'm  
13 honored to be here in your court.

14 THE COURT: Well, you are very helpful, and I'm  
15 glad -- if you ever come to Texas, we'll get you some  
16 barbecue.

17 All right. With that said, is everybody okay?

18 (Off-the-record discussion.)

19 THE COURT: Why don't we just be at ease and --  
20 that's a good way to put it, sort of a semi-break. And  
21 we'll need to do a sound check, we know from experience.

22 Nikki, let's go off the record for a few  
23 minutes.

24 (Recess taken.)

25 WYKIVIA BAILEY,



1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HILL:

4 Q. Mrs. Bailey, can you introduce yourself to the  
5 Court, tell the judge your name and where you live?

6 A. Yes. My name is Wykivia Bailey, I live in Garland  
7 Texas.

8 Q. And for the court reporter, can you spell your first  
9 name, please?

10 A. My first name is spelled W-y-k-i-v, as in Victor,  
11 i-a. My last name is Bailey, B-a-i-l-e-y.

12 THE COURT: And, Mr. Hill, if I can cheat.

13 I read your declaration, Mrs. Bailey, and was  
14 interested to see that you worked at the Texas DPS. I  
15 used to be a commissioner for the DPS. What do you do  
16 there?

17 THE WITNESS: I'm a driver's license specialist.

18 THE COURT: Oh, that is hard work.

19 THE WITNESS: It is.

20 THE COURT: That's hard work, because those are  
21 some unhappy people and some long lines.

22 THE WITNESS: Right.

23 THE COURT: Sorry to interrupt, Mr. Hill. I  
24 just had to chime in.

25 MR. HILL: No, no, not at all.

1 Q. Mrs. Bailey, are you a native of Dallas County?

2 A. I am.

3 Q. And where did you go to high school, ma'am?

4 A. I went to Lincoln High School.

5 THE COURT: Mr. Hill, I think you are on mute.

6 I can't hear you. I heard you ask what school she went  
7 to and I heard her response. And then I saw your mouth  
8 move, but I couldn't hear you.

9 Q. Okay. Would you describe your employment history  
10 after high school?

11 A. Yes. Well, I started at Walmart my junior year in  
12 high school. I worked there up until about 2012. And I  
13 was employed with Nissan Financial up until February of  
14 this year, when I started with the Texas DPS.

15 Q. Okay. And, Mrs. Bailey, when did you first become  
16 aware of the dangers of the pandemic?

17 A. It was in February.

18 Q. How did you become aware of those dangers?

19 A. Well, my job was basically making us aware, and we  
20 started to see it on the news.

21 THE COURT: And, Mr. Hill, if I could interrupt  
22 for just a moment.

23 Mrs. Bailey, one of the strange things about our  
24 software here, there's just a tiny bit of time delay  
25 between when he asks the question and when we hear it,

1 and when you start to answer and when we hear it.

2 So I know this is unusual, because it is not  
3 what you do in everyday conversation, where you can hear  
4 right away, but if you would try to pause just a second  
5 or two before you give an answer, I think that'll give us  
6 time to catch up. I know that's a strange thing to ask,  
7 but that will help everybody hear better.

8 Thank you, Mr. Hill.

9 MR. HILL: Yes, ma'am.

10 Q. Mrs. Bailey, tell us who lives at home with you?

11 A. It's myself, my husband, and our three children,  
12 ages 14, 7, and 8.

13 THE COURT: And that is perfect, Mrs. Bailey.  
14 Thank you. That helped us hear.

15 Q. Tell us, in the family, in the household, are there  
16 folks, are there people there who are medically  
17 vulnerable, especially vulnerable to the virus?

18 A. There is. My husband is a Type 2 diabetic and my  
19 daughter is asthmatic.

20 Q. Can you tell us what practices you employ at home to  
21 protect the family, both generally and then with respect  
22 to the virus?

23 A. Yes, sir. Basically when -- I was the only person  
24 leaving our home. Whenever I would go to the grocery  
25 store or anything like that, I would undress in our

1 garage and I would immediately put our clothes -- or my  
2 clothes in the washer, and then shower. Our washer is  
3 located in the garage.

4 Q. Okay. And I think it is an assumption in your  
5 answer that you are sheltering at home and the family is  
6 sheltering at home; is that correct?

7 A. Correct.

8 Q. How is your husband employed?

9 A. I didn't catch it.

10 Q. Is your husband employed?

11 A. He is.

12 Q. How --

13 A. I didn't catch it. It is breaking up.

14 Q. Is your husband employed outside the home?

15 A. He is employed. He was employed up until maybe the  
16 end of -- mid to end of February.

17 Q. And what kind of work was he doing?

18 THE COURT: Can you repeat that, Mr. Hill? I  
19 heard what kind of work, and then it dropped off.

20 Q. What kind of work was he doing, Mrs. Bailey?

21 A. Yes, he works for a moving company. Him and a  
22 friend of his, they have two trucks and they help  
23 different companies move.

24 Q. Okay. And did that work come to a stall with the  
25 pandemic?

1 A. It did.

2 Q. Trying to get a sense of how your conduct has  
3 changed as a result of the pandemic. Tell us about the  
4 kids' activities, tell us about the family activities.

5 A. My youngest kids, they attend school in Dallas.  
6 They haven't been in school since the first week of  
7 March. Same for our daughter, who attends school in  
8 Mesquite. So they've been completely in the house since  
9 the first week of March.

10 Q. And does the family attend church?

11 A. We do.

12 Q. And where?

13 A. We attend Full Table of Fellowship in Garland,  
14 Texas.

15 Q. And has that routine changed as a result of the  
16 pandemic?

17 A. It has. We've been having Sunday service over  
18 phone.

19 Q. Do you know what the term PPE or personal protective  
20 equipment means?

21 A. I do.

22 Q. Are those things that you or your family use within  
23 the home?

24 A. Correct. We use masks as well as gloves, and shoe  
25 coverings.

1 Q. You said that your husband is a Type 2 diabetic. Is  
2 he under a doctor's care?

3 A. He is.

4 Q. And is he compliant with that care, with those  
5 instructions?

6 A. He is.

7 Q. Are you familiar with what he does to keep his  
8 diabetes under control?

9 A. It's basically watching what he eats. We've been  
10 trying to do weight loss, but overall it's watching what  
11 he eats.

12 Q. Is he insulin dependent?

13 A. He is. He takes insulin five times a day.

14 Q. Is checking his blood sugar a regular, daily  
15 routine?

16 A. It is. Five times a day.

17 Q. And is the insulin dosage consistent or is that  
18 something that varies with the blood sugar?

19 A. It varies, depending on what his blood sugar level  
20 is.

21 Q. Have you been involved in assisting your husband --

22 (Brief interruption.)

23 THE COURT: Nikki, let's go off the record.

24 (Off-the-record discussion.)

25 THE COURT: Please proceed.

1 Q. Mrs. Bailey, I wanted to ask you about what role you  
2 play in assisting your husband to monitor his health  
3 condition, his maintenance of his diabetic concern.

4 A. Right. Well, I'm responsible for the food that he  
5 eats. So I make sure, you know, he's not eating anything  
6 off his diet. His insulin is basically on a -- a time  
7 period, so he has a set time to when he actually takes  
8 his insulin.

9 So he does that pretty well; it is the food  
10 thing that I basically have to take control over.

11 Q. Do you -- are there days when his blood sugar  
12 elevates to a level that you're concerned about, or  
13 raises concerns?

14 A. Only if he's not eating. So if he -- say if he  
15 decides to eat McDonald's, or something like that, it  
16 elevates sometimes. But typically it is 120 to 130 on  
17 the daily, unless he's done something wrong.

18 Q. You recall that on April 7th of this year your  
19 husband was arrested; is that correct?

20 A. He was arrested on April 6th.

21 Q. I'm sorry. April 5th. Did it take --

22 A. 6th.

23 Q. -- some time for him to get to the Dallas County  
24 jail?

25 A. It did.

1 Q. Okay. When did he get to the Dallas County jail?

2 A. He got there about 6:00 p.m. that night.

3 Q. On the 5th, April 5th?

4 A. On the 6th, Monday the 6th.

5 Q. Okay. Had you been called by either the police or  
6 sheriff deputies regarding his health situation?

7 A. I was.

8 Q. Can you tell us about that call?

9 A. I was contacted by Detective Pam. She told me that  
10 my husband's sugar was over 600 and he was feeling weak,  
11 and he needed his insulin. So she asked me to bring the  
12 insulin and the needles to the police headquarters.

13 Q. Okay. And did you do that?

14 A. I did.

15 Q. When did you next talk with your husband?

16 A. What was it, Mr. Hill?

17 Q. When did you next talk with your husband after he  
18 was arrested?

19 A. The next time I talked to him was about 9:00 p.m.  
20 that night.

21 Q. And where was he when you talked with him?

22 A. He was in the Dallas County jail in intake.

23 Q. How many times did you talk with him then?

24 A. That night, about three times.

25 Q. During those three calls, was he always still at



1 intake?

2 A. I didn't catch it.

3 Q. I'm sorry, ma'am.

4 During those three telephone conversations with  
5 your husband, was he still at the intake part of the  
6 jail?

7 A. He was.

8 Q. Did you make any observations during that call about  
9 the conditions in that room, and whether they gave you  
10 concern?

11 A. They did. I heard other people that were on the  
12 phone, they were coughing.

13 Q. And why did that raise a concern?

14 A. Because we had already knew about the COVID  
15 situation in the jail, and I knew that my husband is a  
16 diabetic. So he is more prone to catching it.

17 Q. Did he raise any concerns that he had with you?

18 A. Not at that time.

19 Q. Did you give him any advice?

20 A. I did.

21 Q. And what did you tell him?

22 A. I told him to put his face into his shirt.

23 Q. And why did you tell him to do that?

24 A. To make a mask.

25 Q. Did you talk with your husband when he was taken to

1 a housing unit within the jail?

2 A. I did. That would have been Tuesday morning.

3 Q. And did you hear or make any observations during  
4 that call that gave you any concern?

5 A. I did.

6 Q. Tell us, what gave you concerns?

7 A. It was several people coughing in the background.

8 Q. How did your husband feel about that situation?

9 A. He was upset. He wanted me to call someone to have  
10 him moved.

11 Q. Did he give you the name or direction as to who you  
12 might call?

13 A. He didn't. I contacted the jail and they  
14 transferred me to Officer Rodriguez.

15 MS. DAVID: Your Honor, this is Kate David for  
16 the Defense. We're objecting as to all of this -- all of  
17 this testimony. It's all hearsay.

18 THE COURT: Okay. Well, Mr. Hill, can you tell  
19 me how that's not offered -- being offered for the truth  
20 of the matter asserted? It's certainly an out-of-court  
21 statement, but --

22 MR. HILL: It is an out-of -- I'm sorry.

23 THE COURT: Go ahead.

24 MR. HILL: It is out of court. It is related to  
25 a medical condition; one that this witness was

1 particularly concerned about.

2           So not only do we have clear indications of  
3 accuracy and credibility because of the health status,  
4 but it clearly had an impact on the witness' state of  
5 mind and -- you know, which gives further evidence of  
6 credibility.

7           This is actually the best evidence we have  
8 available for Mr. Bailey's condition during these hours  
9 and during these days.

10           THE COURT: Well, I note your objection for the  
11 record. I will -- I'm going to allow unusual latitude in  
12 this case, because it is being tried to the Court. I've  
13 read all the declarations. You know, if we had a jury  
14 trial, I would be really worried about hearsay coming in.  
15 But it is just me, so I'm less concerned about that.

16           I also want to bend over backwards to make sure  
17 that Plaintiffs are getting an opportunity to put their  
18 case forward, just as I'll do for Defendants. But  
19 because -- you know, you are not really -- it is not  
20 really practical to bring in Mr. Bailey himself. My  
21 understanding is, from the record, that he has tested  
22 positive for COVID-19.

23           Is that right, Mr. Hill?

24           MR. HILL: Yes, Your Honor.

25           THE COURT: Okay. So the Court would not have

1 allowed him to testify had he wanted to.

2 So I will -- I will give you some leeway on  
3 bringing in out-of-court statements.

4 I note your concerns, though. Traditionally  
5 this certainly would be hearsay. But I think because of  
6 the special circumstances in this case, Mr. Bailey could  
7 not come into court and testify to this himself. I think  
8 it would have been medical information that he could have  
9 testified to -- a then-existing medical condition, or a  
10 condition reported for the purposes of diagnosis.

11 So I think had Mr. Bailey himself come in, it  
12 would have been admissible. Because he can't come in, I  
13 think, in fairness, the Court should allow Mrs. Bailey to  
14 testify to it. So under those circumstances, I will  
15 allow it in. But I note your objection.

16 And, Intervenor, I assume you would have a  
17 similar objection?

18 MR. BIGGS: Yeah, we join the objection, Your  
19 Honor, subject to --

20 THE COURT: I understand, I understand. And  
21 you-all preserved your point for appeal. But I think  
22 under these special circumstances with the COVID  
23 crisis -- you know, if I won't allow somebody to be a  
24 witness, then I kind of have to let their family members  
25 who can be their proxy. So I will allow it in.

1 Q. Mrs. Bailey, how many times did you talk with your  
2 husband that first day on -- that Tuesday?

3 A. Oh, we talked every 30 minutes. So I would say over  
4 20 times.

5 Q. And are these calls free?

6 A. They are not.

7 Q. What is the cost for these calls?

8 A. I think they are like (unintelligible).

9 Q. And how would you --

10 (Reporter clarification.)

11 THE WITNESS: He asked the amount of the call,  
12 and it is about \$3.20 per call.

13 Q. During these telephone calls, did your concern for  
14 your husband's health moderate or did they get even more  
15 serious?

16 A. It was more serious starting Tuesday.

17 Q. And describe what changed.

18 A. My husband, the person that he slept next to, he  
19 said that he was coughing and he was running a fever.

20 Q. Was your husband seeking any care or attention from  
21 medical staff for this situation?

22 A. He did. He stopped them within the time period  
23 about 15 times.

24 Q. During what time period?

25 A. The time period from when he was admitted to the

1 infirmary.

2 Q. What was the response to these 15 efforts?

3 A. They told him to go back.

4 Q. Go back to his unit?

5 A. Go back to his pod, is what they call it.

6 Q. Did you have efforts -- you said that you reached  
7 out to an Officer Rodriguez. What did you ask of Officer  
8 Rodriguez?

9 A. I asked her if she could have my husband moved,  
10 because the person that he was sleeping next to was  
11 sweating, running fevers, and coughing. And I told her  
12 that he was a diabetic and I didn't want him exposed to  
13 any people with COVID symptoms.

14 Q. And was he moved (unintelligible) --

15 THE COURT: Mr. Hill, there was really bad echo  
16 on my end on that question. Would you mind re-asking  
17 that.

18 MR. HILL: Yes, Your Honor.

19 Q. Was your husband moved that Tuesday?

20 THE COURT: Mr. Hill --

21 A. He was not.

22 THE COURT: -- oh, I'm sorry, Mrs. Bailey. I  
23 didn't mean to talk over you.

24 (Off-the-record discussion.)

25 THE COURT: Thank you. I apologize for

1 interrupting.

2 MR. HILL: No, Your Honor. Absolutely.

3 Q. On that next Wednesday, did you talk with your  
4 husband?

5 A. Yes.

6 Q. And were you still concerned about his health  
7 condition?

8 A. I was. At that point, he had started coughing.

9 Q. Your husband had started coughing?

10 A. He did.

11 Q. Did you understand from your husband what treatment  
12 he was getting for his diabetes condition?

13 A. Well, at that point he hadn't received anything. He  
14 was told that they did not have his type of insulin and  
15 they had to order it from Parkland.

16 Q. So in terms of his daily routine of five insulin  
17 doses a day, was he getting zero insulin a day?

18 A. Right. Up until Thursday.

19 Q. Did you notice any change in your husband's physical  
20 condition, either by report or from what you could hear?

21 A. No, I could hear he was sick. He started coughing,  
22 and it was like he had ran ten flights of stairs and was  
23 trying to talk to me. He was having a hard time  
24 breathing as of Wednesday.

25 Q. Did you continue to make efforts to talk with people

1 at -- with staff at the jail?

2 A. I did. I called at least 15 to 20 times a day,  
3 speaking to Rodriguez, Mays, Tina Hill, several people.

4 Q. So when you mention Rodriguez, is that Detention --  
5 now I'm forgetting --

6 A. I believe she is a detention officer.

7 Q. Officer Carmelita Rodriguez?

8 A. Correct.

9 Q. And Officer Mays; is that right?

10 A. Correct.

11 Q. And who is the third person?

12 A. It's Tina Hill. She's over -- she's the medical  
13 administrator.

14 Q. Did you actually talk with Ms. Hill?

15 A. Tina Hill is the medical administrator.

16 Q. Yes, ma'am. And did you speak with her?

17 A. I did.

18 Q. Were you able to talk with her?

19 A. I was.

20 Q. And what did she tell you?

21 MS. DAVID: Your Honor?

22 THE COURT: Yes.

23 MS. DAVID: This is Kate David. I just wanted  
24 to get a running objection for the record to all of this  
25 testimony, please.



1 THE COURT: Okay. I'll grant you a running  
2 objection.

3 Intervenors, do you wish to join?

4 MR. BIGGS: Yes, Judge.

5 THE COURT: Okay. And just for the Fifth  
6 Circuit, the reason I'm allowing in hearsay testimony;  
7 just to kind of piggyback on what I said earlier is, I'm  
8 not allowing -- I would not allow a Coronavirus-positive  
9 person to come into this courtroom and testify. And I  
10 wouldn't allow him to be out of the jail so that we could  
11 have him be part of this hearing.

12 So my understanding is that jail restrictions  
13 are limited to lawyers. So because of the virus, I'm  
14 allowing some hearsay testimony I would not ordinarily  
15 allow, just in the Court's equitable function.

16 MS. DAVID: Your Honor, Mr. Bailey is not in  
17 jail.

18 MR. HILL: And if I may? I may have taken the  
19 lead on this, Your Honor.

20 The good news that we're about to deliver  
21 through the course of this testimony is Mr. Bailey was  
22 released on Monday evening.

23 THE COURT: Oh, I thought Mr. Bailey was  
24 incarcerated, I'm sorry.

25 MR. HILL: Up until Monday evening.

1 THE COURT: Okay.

2 MR. HILL: The good news that we're going to  
3 deliver is the form in which he is self-quarantining at  
4 home, and what efforts the family has made to safely  
5 self-quarantine.

6 THE COURT: Okay. Well, now, so -- but he is  
7 available where he could testify, then?

8 MR. HILL: Well, it would disrupt all of the  
9 self-quarantining operations and the cleaning and  
10 processing of the spaces that are available at the home.

11 THE COURT: Well, let me ask you this --

12 THE WITNESS: May I see something?

13 THE COURT: Yeah, in just a moment, Mrs. Bailey.  
14 Hang on just a moment. And I do want to hear from you,  
15 too.

16 Mr. Hill, if you would ask, just for -- I mean,  
17 the -- the guise under which I'm allowing hearsay  
18 testimony in is because I -- I thought from the  
19 declaration he was still in custody. If Mrs. -- if you  
20 could ask Mrs. Bailey, I mean, is he talking on the phone  
21 to anyone? Because if he is, then he could join us  
22 remotely, too.

23 So I think that is a fair question, if I'm --  
24 and I appreciate you -- you clarifying the situation. I  
25 thought he was incarcerated. So --

1 MS. WOODS: Your Honor --

2 THE COURT: -- actually it would probably be  
3 easiest if I just asked.

4 Mrs. Bailey, while he is at home, is your  
5 husband on the telephone at all?

6 THE WITNESS: He is not. My husband is not able  
7 to stand up on his own. He is not able to speak without  
8 losing his breath.

9 THE COURT: Okay. Okay. And is that connected  
10 to the COVID?

11 THE WITNESS: It is connected to the COVID.

12 THE COURT: So is he bedridden? I mean, can you  
13 tell me a little more about his -- his -- his physical  
14 abilities right now?

15 THE WITNESS: He is. The only time that he is  
16 up -- and sometimes he can't even make it to the  
17 restroom. I have to bring something for him to urinate  
18 in. But he cannot stand up on his own without holding  
19 something. He can't -- when I'm speaking to him, he is  
20 gasping, like, for air. The only time it kind of calms  
21 down is when I give him hot tea. It kind of soothes his  
22 throat and he's able to speak better. But as far as just  
23 holding a conversation like you and I, he can't do it.

24 THE COURT: Okay. All right. Well, I  
25 appreciate you, Mrs. Bailey, for making that clear.

1           And I will hear from the attorneys, if you'd  
2 like to follow up.

3           I think -- still considering the Court's, kind  
4 of, emergency situations here, I'm going to relax the --  
5 you know, we're not in a jury trial. I'm going to relax  
6 the hearsay rule.

7           I will note your objection for the record, and  
8 clarify that Mr. Bailey is not incarcerated anymore. But  
9 it sounds like, from what Mrs. Bailey has said under  
10 oath, he is in no condition to be able to talk to this  
11 Court and tell me his own medical condition.

12           So in fairness, this Court -- and I will  
13 allow -- I see Intervenors about to say something. I  
14 will allow you to join in that objection for the record,  
15 and --

16           MR. BIGGS: May I clarify one point, Judge?

17           THE COURT: Sure.

18           MR. BIGGS: So I would also indicate -- I  
19 believe he is -- correct me if I'm wrong, Mr. Hill -- I  
20 believe Mr. Bailey is a plaintiff in this case, a  
21 Petitioner in this case. So if he's been released, his  
22 claim is moot. And I don't know how any of this is  
23 relevant to the overall inquiry of this Court right now  
24 about the current conditions in the jail.

25           So we would just ask the testimony at least be

1 limited to what's happening in the jail as opposed to  
2 anything going -- why -- about his experience, generally.

3 MR. HILL: Your Honor, he is a Plaintiff, Ideare  
4 Bailey is a Plaintiff. And I think his status in the  
5 case will be a matter for the Court to take up at the  
6 appropriate time.

7 He was a member -- he was held at the jail until  
8 Monday evening, just on the eve of this testimony. So  
9 the experiences of Mr. Bailey and Mrs. Bailey's contact  
10 with him at the jail are especially relevant to the  
11 matters the Court is considering. Especially looking at  
12 the gap, if you want to call it, between the release of  
13 David Jones on April 3rd and the release of Mr. Bailey on  
14 April 16th.

15 THE COURT: Since the -- the issue is the  
16 condition of the jails, and since Mrs. Bailey, through  
17 her communications with her husband, is able to give  
18 testimony to the Court to kind of illuminate her  
19 experiences; which I certainly understand Defense is  
20 going to contest that and have a different portrait to  
21 paint, I do think, in fairness, she should be allowed to  
22 testify. And I think her testimony will be helpful to  
23 the Court to understand, at least from an inmate and  
24 their family's position, what the conditions were like.

25 Understanding you guys are going to have a

1 different position, and you-all can have a running  
2 objection for the appellate court. And I'll note that --  
3 I see Defendants kind of nodding. I'll let that be your  
4 running objection as to hearsay.

5 Intervenor, do you wish to join in on that?

6 MR. BIGGS: Yes, Judge, we join.

7 And one particular clarification. So we -- I  
8 understand the Court's going to try to rule quickly, and  
9 that is the reason I bring this up. We're not going to  
10 have time to get a motion to dismiss for mootness grounds  
11 on file before this Court rules.

12 THE COURT: I understand.

13 MR. BIGGS: So we would just -- if the Court  
14 would consider a mootness argument. They want  
15 prospective relief; they want release; the case is moot.  
16 I believe that also should preserve it for record  
17 purposes, Judge.

18 THE COURT: I think it does.

19 And, Plaintiffs' Counsel, are you-all -- I mean,  
20 we could brief this up if we had to. But if he's been  
21 released, it sounds moot to me.

22 Are you-all taking the position -- I think his  
23 testimony -- I think her testimony, Mrs. Bailey's  
24 testimony, is still illustrative of the conditions at  
25 issue for other potential class members and other named

1 plaintiffs who are still incarcerated. So I think it's  
2 still helpful testimony, and relevant, and I want to hear  
3 it. But as far as it being -- there being a case for  
4 Mr. Bailey, if he's been released, it sounds like he  
5 should be no longer a named plaintiff in the lawsuit.

6 Do you-all agree?

7 MR. HILL: We ask that the Court not make that  
8 ruling at this juncture. I think at the close of the  
9 evidence would be an appropriate time.

10 Things transpired awfully quickly with the  
11 release of Mr. Bailey on Monday evening. I'm thinking  
12 that we may not insist or require briefing on it, but I  
13 do think it would be helpful for us to have consultation  
14 prior to the Court ruling on this motion. But I think  
15 that should happen at the close of evidence.

16 THE COURT: Okay. Well, at the close of  
17 evidence -- I appreciate you bringing up the issue of  
18 mootness, because I think that may be relevant for the  
19 Court to consider. But I'll wait and give you-all an  
20 opportunity, since this is probably the first -- the  
21 issue of mootness has been raised, it would be -- I do  
22 want to rule on this -- I mean, I think -- you know, I  
23 think this is -- if there is ever an emergency situation,  
24 this is it.

25 And so I don't want to sit on this. I've been

1 working on my thoughts as I'm hearing testimony. And it  
2 changes, of course, as I hear testimony; and it won't be  
3 final until I hear it all. But if at the end of  
4 testimony Plaintiffs' Counsel could all put their heads  
5 together to let me know your position as to mootness for  
6 him, for this particular plaintiff, that would be  
7 helpful. But I'll wait --

8 MR. STEPP: Your Honor, this is Nicholas Stepp  
9 for the defendants. I would just note for the record  
10 that Defendants join in Intervenor's motion.

11 The Court has to have subject matter  
12 jurisdiction at all phases. There's been a judicial  
13 admission that Mr. Bailey has no standing to bring this  
14 lawsuit, and he should be dismissed immediately.

15 THE COURT: Okay. All right. Well, I will -- I  
16 intend to not require briefing on this, and hopefully we  
17 can get some agreement. But I'll give Plaintiffs'  
18 counsel a chance to put their heads together. I know --  
19 I'm guessing, from having been a litigator not too long  
20 ago, that you-all have been all about getting your case  
21 ready for presentation to this Court. So I want to give  
22 you a chance to get together and see if you can agree.

23 How about this: If the parties can't agree  
24 amongst themselves at the close of testimony, or shortly  
25 thereafter, that there -- that this is an issue, then the



1 Court will take it up and make an appropriate ruling.  
2 But if it's something you guys can reach an agreement on,  
3 that would be awesome. I really -- the less paperwork  
4 you guys have thrown in front of me, the quicker I can  
5 get a decision out to you. But I'll do whatever --  
6 whatever you make me do. Be happy to do it.

7 Does that sound reasonable?

8 MR. HILL: Yes, it does, Your Honor.

9 THE COURT: Okay. All right. Well, thank you  
10 for bringing that up.

11 Everyone's objection -- all the defendants'  
12 objections and Defendants' -- Defendants' and  
13 Intervenors' objection -- I'm sorry, I'm misspeaking.

14 Defendant -- it's an -- Intervenors's objection  
15 to hearsay is overruled, because I believe, looking at  
16 this equitably, it is not practical for Mr. Bailey to  
17 give testimony himself.

18 And if you would, though, Mr. Hill, since he has  
19 been released, if we could reduce her testimony to focus  
20 on just the jail conditions. It does sound like -- I  
21 mean, I don't want to -- to say I'm -- look like I'm not  
22 open-minded. But it sounds like if he's been released,  
23 as far as conditions relating to him, specifically -- I'm  
24 interested in hearing about his treatment in the jail,  
25 but if we could kind of keep this on fast-track, I think

1 her -- her evidence is helpful to the Court to show the  
2 evidence -- what the jail conditions were like while he  
3 was there.

4 So if you can keep it narrowed to that, I  
5 think -- I think that would be appropriate.

6 Q. Mrs. Bailey, were you concerned about what treatment  
7 your husband was getting for his diabetes during that  
8 week?

9 A. I was.

10 Q. When was the first time he received insulin?

11 A. It was on Thursday.

12 Q. And was it -- do you know whether or not his blood  
13 sugar was -- was tested and recorded?

14 A. His blood sugar was not tested.

15 Q. Were you able to talk with your husband on Saturday?

16 A. I was not.

17 Q. Why not?

18 A. He had been moved to infirmary.

19 Q. Do you know whether on the move to the infirmary he  
20 received treatment for his diabetes?

21 A. He did not.

22 Q. Do you know what, if any, treatment he received at  
23 the infirmary?

24 A. He didn't receive any treatment that Saturday, nor  
25 that Sunday. He started receiving treatment on Monday

1 when he was tested for COVID.

2 Q. Mrs. Bailey, your husband was arrested on what  
3 charge, if you know?

4 A. It was theft of an ATM.

5 Q. And was -- what was his bond condition?

6 A. His -- he had a \$100,000 bond and he had a hold for  
7 ELN.

8 Q. Did there come a time that you learned that your  
9 husband tested positive for COVID?

10 A. It was. I learned that on Tuesday.

11 Q. And when you found out that he tested positive, what  
12 did you do in an effort to secure his release?

13 A. I hired an attorney for a bond reduction and I  
14 immediately posted the bond on Wednesday.

15 Q. And how did you raise the funds to post that bond?

16 A. I sold my wedding ring and some items we had in our  
17 home.

18 Q. And what was the total amount of money you had to  
19 raise?

20 A. \$6,500.

21 Q. Were you -- after you posted the bond for your  
22 husband, was Mr. Bailey released?

23 A. He was not.

24 Q. Why not?

25 A. I found out on the Thursday that they were not going

1 to touch him because he was COVID positive. And they  
2 were refusing to put the electric monitor on him.

3 Q. How did you find that out?

4 A. I contacted Ms. Truckful in Pretrial Release  
5 Services.

6 Q. And what did she tell you?

7 A. She told me that they were not going to touch him,  
8 and if my husband had not been out committing crime, he  
9 would not have been placed in the Dallas County jail to  
10 get COVID.

11 Q. Did that seem a satisfactory response to you?

12 A. It was not.

13 Q. What did you do in response?

14 A. I explained to her that my husband is a diabetic and  
15 he could die. She told me that they have doctors, they  
16 have nurses; and if anything happens, they would ship him  
17 to Parkland.

18 I then requested her supervisor, and she gave me  
19 the contact information for Duane Steel. She advised me  
20 that he wasn't going to do anything, because he was aware  
21 of my husband's condition.

22 Q. Did you attempt to talk with Mr. Steel?

23 A. I did. I contacted him over 60 times and I left  
24 about 30 voicemails. He returned my call on Monday  
25 evening, and he basically told me that he had reached out

1 to Judge Thompson and that he had denied the request for  
2 my husband to be released due to my husband's criminal  
3 history.

4 I let him vent. And when he was done, I  
5 explained to him, well, that is not true. Because I just  
6 left a meeting with Mr. Thompson, as well as District  
7 Attorney John Creuzot, and they agreed to release my  
8 husband.

9 So he basically lied to me. And he told me that  
10 he had been reaching out to the judge, without even  
11 knowing that the judge had already agreed to release my  
12 husband and my husband was already being processed out.

13 Q. Mrs. Bailey, during this two-week period that your  
14 husband was at the Dallas County jail, do you know which  
15 different housing units at the jail he was at?

16 A. He was in intake. He was moved to South Tower,  
17 fifth floor. And once he was moved from there, he was  
18 moved to the North Tower basement.

19 Q. And so, do you know that the South Tower, the pod  
20 that you described, did your husband tell you that there  
21 were 64 men in that pod?

22 A. He did.

23 Q. And did he describe the number of people that were  
24 at the booking station, the (unintelligible).

25 A. It cut out a little bit.

1 Q. I'm sorry?

2 A. I didn't catch it.

3 Q. Did he describe the number of men that were held in  
4 that book-in or arraignment center?

5 A. It was over 30 in intake. And he said over 60 in  
6 the South Tower.

7 Q. The treatment that he -- you said he was at North  
8 Tower in the basement; is that right?

9 A. Correct.

10 Q. Is that what they told you was the infirmary?

11 A. Correct.

12 Q. Did they describe what treatment he got at the  
13 infirmary?

14 A. They did not. She basically, when I spoke to Tina  
15 Hill, she told me that they were going to give him  
16 something to stabilize his fever; which was two Tylenols  
17 a day.

18 Q. Did they tell you what his blood sugar was?

19 A. They did not.

20 Q. At this point, Mrs. Bailey, I think I want to ask  
21 you just a series of questions so you can inform the  
22 Court about what you have done to keep your family safe  
23 as your husband was returned.

24 Where are your kids today?

25 A. They are with my mother.

1 Q. And has your husband been with your children since  
2 his release?

3 A. He has not.

4 Q. And describe what efforts you are taking to keep  
5 yourself safe and to keep him in quarantine?

6 A. My husband is in my craft room where I do my  
7 crafting. So I fixed it up for him, in our craft room.

8 He -- basically that's where he is 24 hours a  
9 day. I bring him food; I make sure he is taking his  
10 insulin. Our kids -- not sure if y'all can see it or  
11 not, but they draw things like this for him since they  
12 can't see him. They draw him notes, and I'll take  
13 pictures of it and show it to him.

14 But he's in my craft room for now. He's going  
15 to be there for about three to six weeks.

16 Q. Mrs. Bailey, when was the last time your husband was  
17 seen by a doctor before he went to the -- before his  
18 arrest and before he entered the Dallas County jail?

19 A. It was on that Friday, the 3rd, April 3rd.

20 Q. And were you present for that examination?

21 A. I was.

22 Q. And what was his health condition at that time?

23 A. He was completely fine. He had didn't have any  
24 COVID symptoms; he didn't have any fever; his blood sugar  
25 was normal.

1 Q. Were you examined that day as well?

2 A. I was.

3 Q. And what was your -- what was the state of your  
4 health?

5 A. I was normal. In order to enter into Presbyterian  
6 Hospital, they were basically testing everyone as far as  
7 fevers, if you've had any coughs or anything like that,  
8 and we both were normal.

9 Q. Thank you, Mrs. Bailey. I'm sure we all wish you  
10 well.

11 MR. HILL: Your Honor, I would pass the witness.

12 THE COURT: Thank you, Mr. Hill.

13 Mrs. Bailey, I'm sure you have seen court on TV.  
14 This is like a virtual version of that. So the lawyer  
15 for the people who filed the lawsuit; Mr. Hill is one of  
16 them, got to ask you questions. And so now the attorneys  
17 for the county and for the sheriff get an opportunity to  
18 ask you questions now, too.

19 So if you would just be as helpful to them as  
20 you have been to him, it'll all go very smoothly. Thank  
21 you for being here today.

22 And Defense Counsel will get to ask you  
23 questions and then the Governor's office, I've allowed  
24 to -- the Governor's office, the Attorney General's  
25 office, and the State, I've also allowed to join in the



1 lawsuit.

2 So they're going to question you separately, so  
3 you will get kind of two rounds of questions. And then  
4 your attorney will get to ask you some questions and then  
5 you'll be done. So you are almost finished.

6 Counsel for Defendant, please proceed.

7 MS. DAVID: Thank you, Your Honor. And I'll try  
8 to be brief.

9 CROSS-EXAMINATION

10 BY MS. DAVID:

11 Q. Mrs. Bailey, my name is Kate David, and I represent  
12 Dallas County and the Dallas County Sheriff's Department.  
13 Thank you for being here today. We appreciate your time.  
14 I just have a few questions.

15 You talked about the fact that your husband lost  
16 his employment towards the end of February, but that you  
17 are employed with Texas -- with the DPS; is that correct?

18 A. I am.

19 Q. And have you -- or were you going to work the two  
20 weeks before your husband was arrested on April 6th?

21 A. I was not.

22 Q. Were you working from home the two weeks before  
23 April 6th?

24 A. Right. I've been working from home since mid  
25 February.

1 Q. Okay. And for what reasons would you leave the home  
2 in those two weeks before April 6th? I know you  
3 mentioned the grocery store; would you leave the home for  
4 any other purposes?

5 A. No, just the grocery store and -- which to get his  
6 insulin, which is also in the grocery store; which is  
7 Walmart.

8 Q. Okay. And what about your husband, did he leave the  
9 home anytime during the two weeks before April 6th?

10 A. He did not. Just prior -- on the third, when he had  
11 the doctor's appointment.

12 Q. So the only time he left the home on the two weeks  
13 before April 6th was to go to the doctor at Presbyterian  
14 Hospital; is that accurate?

15 A. Correct.

16 Q. Okay. And did anyone enter your home, other than  
17 you, your husband, and your three kids the two weeks  
18 before April 6th?

19 A. They did not.

20 Q. And did your -- have your three children left the  
21 home in the two weeks before April 6th?

22 A. They have not.

23 Q. And you talked about the fact that you have masks  
24 and gloves. How long have you had masks and gloves?

25 A. We keep masks and gloves due to my daughter. During

1 flu season, and things like that, she's real prone to  
2 getting the flu. So we always have masks and gloves.

3 Q. And so do you wear masks and gloves around the home?

4 A. No, only when we leave.

5 Q. Okay. So you testified that your husband was  
6 arrested on April 6th at your home; is that correct?

7 A. Correct.

8 Q. And were you there when he was arrested?

9 A. I was not.

10 Q. Where were you at the time?

11 A. I was at work. I had to get some things from my  
12 desk.

13 Q. Oh, okay. So you did occasionally go into the  
14 office during this time period?

15 A. It is not an office. It was from Nissan. So I had  
16 some things to pick up from Nissan Financial.

17 Q. What is -- what is Nissan Financial; is that where  
18 you work or is that somewhere else?

19 A. Right. I was working for Nissan Financial up until  
20 February. So I had some things to pick up that Monday  
21 morning from the office, from security.

22 Q. From your former employer?

23 A. Correct.

24 Q. Okay. And from what -- at what times were you out  
25 of the home on April 6th picking things up?

1 A. April 6th, I left the home at about 7:30. And I  
2 made it back a little bit before 9:00, when the officer  
3 called me.

4 Q. Okay. And the officer who called you was not at the  
5 Dallas County jail; is that correct, he was at another  
6 police station?

7 A. He was with the Dallas County jail.

8 Q. Okay. Your -- your declaration says that you  
9 brought insulin and needles to the police station on  
10 Lamar downtown; is that correct?

11 A. That is after he was arrested. The officer that  
12 called me to come to my home -- my husband was home with  
13 the children. So when he was arrested, the Dallas police  
14 officer called me to come home with the kids, because he  
15 was being arrested.

16 Q. I understand.

17 A. And then once -- once he was arrested and took down  
18 to Lamar, they contacted me for his insulin and needles.

19 Q. Got it. Perfect.

20 And then -- I believe you testified that he was  
21 then booked into the Dallas County jail at 6:00 p.m. on  
22 Monday, April 6th; is that correct?

23 A. Correct.

24 Q. Okay. And then it's -- you testified that you spoke  
25 with him frequently the next day on April 7th; is that

1 correct?

2 A. Correct.

3 Q. And then you also spoke to him on Wednesday, April  
4 8th. Did you speak to him frequently that day as well,  
5 ma'am?

6 A. I did. Not as much, because that is when his cough  
7 started and he was having trouble breathing.

8 Q. Okay. So -- so is it your testimony that he began  
9 showing symptoms on Wednesday, April 8th?

10 A. Correct.

11 Q. Okay. And you believe that those symptoms were as a  
12 result of exposure on Tuesday, April 7th; is that  
13 correct? Is that the coughing neighbor?

14 A. That would have been exposure on Monday night. He  
15 made it with a neighbor Monday night after he was  
16 arraigned.

17 Q. So you believe the earliest he could have been  
18 exposed is on April 6th, the evening of April 6th?

19 A. Correct.

20 Q. And you believe he began showing symptoms on  
21 Wednesday, April 8th; is that correct?

22 A. Correct, yes, ma'am.

23 Q. And do you remember what time you were talking to  
24 him that you believe he was showing symptoms, or did he  
25 tell you when he started to feel ill and show symptoms?

1 A. He called, it was maybe 1:00 that evening, 1 o'clock  
2 that evening, because he hadn't called all morning.

3 Q. So 1 o'clock -- do you mean 1:00 p.m., right after  
4 lunch 1:00 p.m.?

5 A. Correct, on Wednesday.

6 Q. Okay. And then it sounds like you spoke to him  
7 on -- just about on a daily basis. And I think on  
8 Saturday you did not. And then on Wednesday -- I mean,  
9 I'm sorry, on Monday, April 13th is when you learned that  
10 he had tested positive for the Coronavirus; is that  
11 accurate?

12 A. I learned on Tuesday that he tested positive on  
13 Monday, yes, ma'am.

14 Q. Got it. Thank you for that clarification.

15 Let me just look at my notes.

16 Did anyone tell you who typically installs the  
17 ELM device on the folks who are being released with that  
18 condition?

19 A. Well, no, he's been with -- on an ELM before, so I  
20 knew who to contact.

21 Q. Okay. So you know who the vendor is and how that  
22 all works?

23 A. Correct.

24 Q. Okay. And I think you talked a little bit about his  
25 criminal history. Do you have any more detail; do you

1 know what he's been convicted of, ma'am, in the past?

2 A. I don't, I don't.

3 Q. Okay. Were you -- were the two of you married when  
4 he was arrested and convicted in the past?

5 A. No, that was 2008. We weren't married then.

6 Q. Okay. When did you get married, ma'am?

7 A. In 2014.

8 Q. Okay. And I think you testified that your husband  
9 is in your craft room; is that accurate, ma'am?

10 A. He is.

11 Q. Okay. And what kind of medical care is he receiving  
12 post release?

13 A. Well, I've been giving him Tylenol four to five  
14 times a day, just depending on whether or not he has  
15 fever. And we've been trying out the Theraflu Extreme  
16 Max for, like, the congestion in his chest. And I make  
17 sure he gets his insulin five times a day.

18 Q. Do you have any home health care aides coming to the  
19 house, ma'am?

20 A. I don't. But I'm a certified medical assistant.

21 Q. And have you spoken to his physician or has he seen  
22 his physician since he's been home?

23 A. I've spoken to the physician. He wants to wait  
24 until he's clear of COVID. He did give us the option to  
25 do like a video chat. But like I stated, my husband is

1 having a hard time holding just a regular conversation.  
2 So we haven't been able to do that yet. I was hoping to  
3 get that done later in the week.

4 Q. Okay. And then I think you testified that someone  
5 you spoke with in the jail talked to you about the fact  
6 that doctors and nurses -- once your husband had been  
7 tested positive for COVID, that doctors and nurses were  
8 attending to his medical needs; is that accurate?

9 A. No, she told me that doctors and nurses, if  
10 something went wrong, they would ship him to Parkland.

11 Q. And where was he housed once he was -- once he was  
12 diagnosed with COVID?

13 A. He was then moved -- after five days of me  
14 complaining to Dallas County that my husband was in a pod  
15 with a guy that's coughing and sweating, it took them  
16 five days to even test him for fever the first time. And  
17 his fever was 106 when they did. And I am assuming that  
18 probably scared them, so they immediately moved him  
19 Friday night. Which is why I didn't talk to him all day  
20 Saturday, until late Sunday.

21 Q. And then, do you know once he actually tested  
22 positive on Monday for COVID, do you know if he was moved  
23 at that point?

24 A. He was not moved.

25 Q. So was he at that point in a -- in the infirmary; is



1     that your understanding?

2     A.    Right.    The North Tower basement.

3     Q.    Okay.   And have you been to the infirmary in the  
4     Dallas County jail?

5     A.    I have not.

6     Q.    Okay.   Oh, just one quick thing.

7                 You talked about when you guys went to the --  
8     the hospital on April 3rd you were screened for COVID.  
9     Can you tell us what that screening looked like?  What  
10    they did --

11    A.    They just -- right.  When you go into the hospital  
12    and they have to give you a sticker saying you haven't  
13    been out of the country, and they check your fever just  
14    to make sure you haven't had a fever or anything like  
15    that.

16    Q.    Okay.   Okay.   So the same questions that the -- that  
17    the jail asked your husband when he was admitted?

18    A.    He wasn't asked any questions in reference to COVID.

19    Q.    Was he asked any medical questions at all?

20    A.    He was asked if he wanted to commit suicide.

21    Q.    That was the only question that he was asked?

22    A.    Correct, ma'am.

23    Q.    And was his fever taken, his temperature taken?

24    A.    His fever was not taken until that Friday night when  
25    he was moved.  That was the first and only time that his

1 fever [sic] was taken.

2 Q. That is what he told you?

3 A. That is what Tina Hill told me.

4 MS. DAVID: Okay. I have no further testimony.  
5 Thank you -- I mean -- sorry, not testimony, questions.  
6 Sorry, long day.

7 THE COURT: I knew what you meant.

8 All right. Mrs. Bailey, we're almost done.  
9 Intervenors now get a chance to ask you some questions,  
10 too.

11 Mr. Biggs.

12 CROSS-EXAMINATION

13 BY MR. BIGGS:

14 Q. My name's Adam Biggs. I represent the State  
15 officials in this case. If at any point during our  
16 conversation I start speaking too quickly or I break up,  
17 just give us a signal and we'll correct that, okay?

18 A. Okay.

19 Q. You mentioned during your testimony, under  
20 questioning from Mr. Hill, that you hired a lawyer to get  
21 your husband a bond reduction; is that correct?

22 A. It is.

23 Q. When approximately did you hire a lawyer for the  
24 bond reduction?

25 A. That was on Tuesday, the 14th.

1 Q. And -- the 14th. And how quickly after you hired  
2 that lawyer did your husband have a bond or bail-  
3 reduction hearing, as far as you know?

4 A. It happened the same day.

5 Q. Okay. And you mentioned DA Creuzot earlier. Can  
6 you explain what -- were you actually with him? It  
7 sounded like you were at a meeting with him.

8 A. Correct. Basically, I told myself that Monday  
9 morning, when my husband wasn't released almost a week  
10 after me posting a bond, I was going to sit at the Dallas  
11 County courtroom and wait to speak to the judge.

12 When I did get down to the courtroom, the judge  
13 was there, my attorney was there, and Mr. John Creuzot.  
14 Mr. Creuzot was actually the one that pushed this issue  
15 for my husband to be released, since he was held six  
16 days.

17 They were trying to figure out a way how to get  
18 him to sign the stipulations of his release. And he did  
19 come up with that. Because they didn't want my husband  
20 to sign anything and to give it back to them and them  
21 possibly getting COVID. So basically that was that.

22 Q. All right. So -- that's impressive, by the way,  
23 that you were able to get the elected DA down there.

24 A. Right.

25 Q. Let me -- would you agree with the statement that,

1 at least the DA's office is trying to get individuals out  
2 of the Dallas County jail, in your experience?

3 A. Incorrect.

4 Q. Okay. So you think DA Creuzot was trying to keep  
5 your husband in the jail?

6 A. I don't think he was trying to keep. But let's say  
7 if there is other inmates with family members that is not  
8 willing to sit at the courtroom six hours, or not willing  
9 to sell things that they owned. Had I not gone down  
10 there, my husband would still be in the jail with a  
11 fully-posted bond waiting to be released.

12 Q. You said that the bond hearing -- was there actually  
13 a bond reduction hearing or did the parties agree to his  
14 release?

15 A. Right. It wasn't a hearing or anything. I'm not  
16 sure how that part of it worked. I think the lawyer just  
17 goes to the judge and proposes, you know, a -- a bond  
18 reduction. And I -- and the judge said yes, so -- and  
19 then he's released. I'm not sure how that works.

20 Q. But from your perspective, the actual retaining the  
21 bond reduction was not difficult. And I understand that  
22 you had -- the actual release may have been difficult,  
23 but the actual bond reduction, in your experience, was  
24 not difficult to obtain, correct?

25 A. Correct, it wasn't.

1 MR. BIGGS: Thank you, ma'am.

2 Pass the witness.

3 THE COURT: Okay. Mr. Hill, any follow-up  
4 questions?

5 MR. HILL: Thank you, Your Honor. No follow-up  
6 questions.

7 Thank you, Mrs. Bailey.

8 THE COURT: Okay. I propose -- let's go off the  
9 record for a moment.

10 (Off-the-record discussion.)

11 (Court in recess, 4:48 p.m.)

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1 I, BROOKE N. BARR, United States Court Reporter for  
2 the United States District Court in and for the Northern  
3 District of Texas, Dallas Division, hereby certify that  
4 the above and foregoing contains a true and correct  
5 transcription of all proceedings in the above-styled and  
6 -numbered cause.

7 WITNESS MY OFFICIAL HAND this the 27th day of April,  
8 2020.

9  
10  
11  
12 /S/ BROOKE N. BARR  
13 BROOKE N. BARR, CSR NO. 6521  
14 CSR Expiration Date: 12/31/21  
15 United States Court Reporter  
16 1100 Commerce Street  
17 Room 1376  
18 Dallas, Texas 75252  
19 (214) 753-2661  
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# EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OSCAR SANCHEZ, et al, \* 3:20-CV-00832-E  
Plaintiffs, \*  
v. \* DALLAS, TEXAS  
SHERIFF MARIAN BROWN, et al, \*  
Defendants. \* APRIL 23, 2020

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TRANSCRIPT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER  
BEFORE THE HONORABLE ADA E. BROWN  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

COUNSEL FOR THE PLAINTIFFS:

MS. ANDREA WOODS  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2528  
awoods@aclu.org

MR. BARRY C. BARNETT  
SUSMAN GODFREY, LLP  
8115 Preston Road, Suite 575  
Dallas, Texas 75225  
(866) 754-1900  
bbarnett@susmangodfrey.com

MS. AMY B. FETTIG  
AMERICAN CIVIL LIBERTIES UNION  
NATIONAL PRISON PROJECT  
915 15th St. NW, 7th Floor  
Washington, DC 20010  
(202) 548-6608  
afettig@aclu.org

MR. HENDERSON HILL  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
201 W. Main St., Suite 402  
Durham, North Carolina 27701  
(919) 682-9563

COUNSEL FOR THE DEFENDANTS:

MS. KATHARINE D. DAVID  
MR. BEN STEPHENS  
MR. NICHOLAS DAVID STEPP  
HUSCH BLACKWELL, LLP  
600 Travis St., Suite 2350  
Houston, Texas 77002  
(713) 525-6258  
kate.david@huschblackwell.com  
ben.stephens@huschblackwell.com  
nick.stepp@huschblackwell.com

1 COUNSEL FOR THE INTERVENORS:

2 MR. ADAM ARTHUR BIGGS  
3 OFFICE OF THE TEXAS ATTORNEY GENERAL  
4 PO Box 12548  
5 Austin, Texas 78711  
6 (512) 320-2120  
7 adam.biggs@oag.texas.gov  
8  
9  
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11  
12  
13  
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\* \* \* \* \*

1 (P R O C E E D I N G S)

2 THE COURT: This is -- just for the record, this  
3 is Plaintiffs' counsel -- and we are on the record in the  
4 Sanchez case.

5 MS. WOODS: Good morning, Your Honor.

6 THE COURT: Just give me one more second. Just  
7 let me read the cause number so we're all on the same  
8 page, Cause Number 3:20-CV-00832, Oscar Sanchez, et al,  
9 v. Dallas County Sheriff, et al.

10 And Plaintiffs' counsel, we're on the record.  
11 You may proceed.

12 MS. WOODS: Good morning, Your Honor. Thank  
13 you. Andrea Woods for the plaintiffs.

14 Before we get started, I did want to briefly  
15 note for the Court before Plaintiffs rest our case, we  
16 heard reports last night consistent in multiple reports  
17 from different men in the North Tower of the Dallas  
18 County jail. We were able to speak with some of them and  
19 hear their reports.

20 The -- the -- the evidence that we have heard is  
21 that a man in their tank was recently rushed, body  
22 slammed, put into a choke hold, and punched after he and  
23 the other men in his cell asked for cleaning supplies,  
24 new masks, and for their cell, their multi-person cell to  
25 be cleaned after sick detainees were moved from it.

1           So we've submitted for the Court a declaration  
2 and photographic evidence we were able to gather last  
3 night. It illustrates -- you know, not only goes to the  
4 Court's evaluation, but also it provides evidence about  
5 real practices in the jail, including around social  
6 distancing and PPE.

7           So we recognize that this is obviously a very  
8 new piece of evidence adding to the record, but we just  
9 became aware of it and wanted to be sure that it was  
10 before the Court and that -- that we were able to get  
11 that in the record.

12           THE COURT: Okay. And is Ms. Fly -- I see it is  
13 her declaration, is Ms. Fly somebody who is going to -- I  
14 mean, she is not on your witness list; obviously this is  
15 new information. Is she somebody who's going to come  
16 forward and talk or is it just her declaration and  
17 attachments that you want the Court to consider?

18           MS. WOODS: We are asking the Court to consider  
19 this declaration evidence along with similar lines as --  
20 as the way that we've been able to get witness statements  
21 from our clients. So I mean, we're happy to -- if the  
22 Court wants to hear from these people, certainly other  
23 arrangements would have to be made to enable them to  
24 testify.

25           But we're trying do this under the circumstances

1 in the way that we can.

2 THE COURT: Okay. Defendants and Intervenor,  
3 let's start with Defendants. What is your position on  
4 this? I mean, this is just filed -- I mean, what -- what  
5 say you?

6 MS. DAVID: Your Honor, I haven't even received  
7 it, so it is hard to respond. We're going to object, I'm  
8 sure, based on hearsay. But I -- I would love to see it  
9 before we object. I don't know if the State has seen it.

10 THE COURT: Okay. I think -- what I've got in  
11 front of me is Document Number 79. Is that -- is that  
12 the document to which you were referring, Plaintiffs'  
13 counsel?

14 MS. WOODS: I believe so, Your Honor. Yes, it  
15 is.

16 THE COURT: Okay.

17 MS. WOODS: It was filed.

18 THE COURT: All right. Well, how about this:  
19 Why don't I let you rest subject to -- since I -- the --  
20 the only critical issue right now is whether you intended  
21 to present any additional live testimony. So why don't I  
22 carve out that you are timely -- well, at least timely  
23 for appellate purpose, timely putting forth this  
24 evidence, give them an opportunity in fairness to look at  
25 it so that they can lodge whatever objections they want.

1           The Court will not read it for review until we  
2 have determined whether or not it's going to be in  
3 evidence. I've got it printed out, but I haven't gone  
4 through it yet.

5           And -- and then once they've had an opportunity  
6 to look at it, then I'll -- I'll determine whether it is  
7 or isn't going to be considered by the Court. And then  
8 we can go ahead and move forward if you don't have  
9 anymore live testimony.

10           So are you comfortable closing subject to the  
11 admissibility of that evidence?

12           MR. BARNETT: Your Honor, this is Barry Barnett.

13           THE COURT: Okay.

14           MR. BARNETT: I have a question. Counsel for  
15 the defendants have said that the three declarants that  
16 they've submitted declarations for a couple days ago are  
17 available to answer questions. And I heard the Court ask  
18 the defendants whether they were going to present  
19 evidence on a number of different things.

20           And if in fact Deputy Chief Robinson, in  
21 particular, is going to be called to testify, then we can  
22 wait to cross him when that happens, or if he's simply  
23 going to be presented then we can cross him at that  
24 point.

25           But if they're not going to call him and make



1 him available we would call him adverse before we rest.

2 THE COURT: Okay. All right. That's a fair  
3 question.

4 So Defendants, I assumed that these are live  
5 witnesses. On my list I've got Frederick Robinson, Jeff  
6 Segura, S-E-G-U-R-A, and Patrick Jones. And I assume  
7 they're all going to be called live as far as video; is  
8 that right?

9 MS. DAVID: Your Honor, we are calling chief  
10 Robinson, who I think the plaintiffs are the most  
11 interested in. We were not planning to call Jeff Segura  
12 unless you had additional questions about the process for  
13 electronic monitoring beyond the affidavits. And we are  
14 calling Pat Jones from Parkland.

15 THE COURT: Okay. Great.

16 So, Mr. Barnett, in light of that, do you want  
17 to wait and see if you can take this up on cross? I  
18 don't want to cut your legs out from under you because I  
19 know everything's moving fast here. These are kind of  
20 extraordinary circumstances, but I've got to give them a  
21 chance to look at it so they can make intelligent  
22 objections.

23 And so I'm just trying to carve out kind of a  
24 fair way to deal with this. I thought maybe if what we  
25 did was take it up at another time, if I -- if I just

1 kind of put it to the side and let you-all see if what  
2 your positions are. And then assuming that it is  
3 admissible to the Court we'll review it then and look at  
4 it.

5 Do you want to wait and see what happens on  
6 cross and then determine if you want to reurge it?

7 MR. BARNETT: Your Honor, I think the --  
8 probably the best thing to do is just go ahead and call  
9 Chief Robinson adverse.

10 THE COURT: Okay.

11 MR. BARNETT: And we need some time to look at  
12 the material that we just submitted; I do want to ask him  
13 about it.

14 THE COURT: Okay. Okay. Is -- is Chief  
15 Robinson -- understand -- no problem, Mr. Barnett. Is  
16 Chief Robinson -- can you hear me?

17 MS. DAVID: It looked like Ben was trying to  
18 talk, but I couldn't -- I was telling you we couldn't  
19 hear him.

20 THE COURT: Okay. Mr. Stephens, did you -- oh,  
21 I can't hear you, Mr. Stephens.

22 (Off-the-record discussion.)

23 THE COURT: So we're discussing what to do about  
24 the supplemental declaration of Amy Fly, Document 79  
25 filed I think this morning sometime. The defense counsel

1 has not had time to adequately review it, and so  
2 Plaintiffs' counsel is going to call an adverse witness  
3 who was already listed as a witness for Defendants. So  
4 it's not a new witness who wasn't notified by all the  
5 parties; we're just calling him adverse.

6 So can -- do you know if you -- Ms. David, do  
7 you know where Mr. Robinson is? Is he somewhere we can  
8 get him and get him ready to testify?

9 MS. DAVID: Yes, Your Honor. He is in our  
10 office.

11 THE COURT: Okay. I assume that he hasn't had a  
12 chance to look at Ms. Fly's supplemental declaration; is  
13 that right?

14 MS. DAVID: That is -- that is accurate.

15 THE COURT: Got you. Okay.

16 So Mr. Barnett, if you want to cross-examine  
17 Mr. Robinson on the declaration, we probably ought to  
18 have Ms. David print it out and give it to him so he can  
19 look over it.

20 MR. BARNETT: I do, Your Honor. And I can wait  
21 to ask him about it until later. We could go -- start  
22 with his cross and then take that up later in the cross.

23 THE COURT: Okay. That'd be fine. Why don't  
24 you plan to do that. Why -- if everybody is comfortable  
25 with that, I know we're -- we could -- we could go ahead

1 and start with his testimony. And I guess at whatever  
2 point you want to dig into that, we could just take a  
3 break and give him time to review it and then come back  
4 and question him on it. And that'll give everybody a  
5 chance to look at it.

6 Does that sound fair to everybody? Thumbs up if  
7 you approve.

8 (Gesturing to the Court.)

9 THE COURT: Okay. Sounds like a plan.

10 MR. BIGGS: Judge, pardon me. This is Adam  
11 Biggs. So I just want to make sure we have an  
12 opportunity still to object to this declaration before  
13 it's used for anything. Just as long as we can carve out  
14 that time before it begins, I would appreciate it, Judge.

15 THE COURT: Yeah, and that is my intention.  
16 Just so we're clear, is before we question him on the  
17 declaration, I want to give him a chance to look at it,  
18 give the parties a chance to look at it so everybody can  
19 make intelligent objections.

20 So appreciate you clarifying that so that my  
21 instructions are clear. But that's my intention, is that  
22 we can talk to him about other matters, but before we  
23 question him on this particular declaration or this new  
24 incident, that the new allegations that Ms. Woods brought  
25 up this morning, that we give him time to review it, give

1 the lawyers time to review it, so we can all be on the  
2 same page.

3 Can we all play ball with those rules this  
4 morning?

5 Okay. With that said, so is it your intention,  
6 Mr. Barnett, you want to call him as a witness; is that  
7 right, and just not get into that particular area at this  
8 time?

9 MR. BARNETT: Yes, Your Honor. We wanted to  
10 give a -- have a chance to look at it and for Counsel to  
11 make any objections they want to make before I ask him.

12 THE COURT: Sounds good. Oh, I'm sorry. I  
13 stepped on your toes and cut you off on that last part.

14 MR. BARNETT: We're good.

15 THE COURT: Okay. Sounds good. Well, I  
16 apologize.

17 So I will find that -- let me for -- because I  
18 know everybody's concerned about this going upstairs.  
19 For purposes of a timely objection, Defendants and  
20 Intervenors have made a timely objection to the  
21 supplemental declaration of Amy Fly, Document 79.

22 And just remind me, if you would, Counsel from  
23 both sides before we wander into that, that we're going  
24 to take that back up.

25 So with that said, Plaintiffs' counsel has not

1 rested its case. So do you call Mr. Robinson to the  
2 stand?

3 MR. BARNETT: Yes, Your Honor. We call Deputy  
4 Chief Frederick Robinson.

5 THE COURT: Ms. David, if you would get the  
6 witness.

7 MS. DAVID: I will get the witness. And I guess  
8 I'm a little confused, is he going to have time to look  
9 at the declaration before --

10 THE COURT: We're not going to get into the  
11 substance of declaration until we take a break. So --  
12 and -- so what we're going to do, he's going to question  
13 him on general jail matters and policies. We are not  
14 going to get into this new incident that they've alleged  
15 in Document 77 [sic] until you have had time, Intervenor  
16 have had time -- you as the counsel have had time,  
17 Mr. Biggs has had time, and your witness has had time to  
18 fairly review it.

19 So we're just going to hold that in abeyance  
20 until you have a chance to take a break. And in  
21 fairness, I don't want anybody to feel ambushed on this.  
22 You know, we've taken our time and done this carefully,  
23 so I will give you adequate time to look at it, look at  
24 it with your -- your witness, get your objections  
25 together, and for appellate purposes your objections will

1 be timely. We're just kind of putting off so we can keep  
2 proceeding. But I will give you a chance to really look  
3 at it.

4 MS. DAVID: Okay. Thank you, Your Honor. Let  
5 me go get him.

6 THE COURT: You're welcome.

7 (Brief pause.)

8 THE COURT: Let's go off the record.

9 (Off-the-record discussion.)

10 FREDERICK ROBINSON,

11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BARNETT:

14 Q. Thank you for your service to the Dallas County  
15 community.

16 A. Yes, sir.

17 THE COURT: If everyone else not speaking would  
18 mute.

19 (Off-the-record discussion.)

20 Q. Chief Robinson, you are the representative of Dallas  
21 County for purposes of this hearing; is that right?

22 A. Yes, I am.

23 Q. And have you been able to listen to the testimony  
24 and see the testimony that's presented to Judge Brown up  
25 until now?

1 A. Yes, I have.

2 Q. Did you hear Judge Brown's admonitions about not  
3 penalizing Officer Emmanuel Lewis for complying with the  
4 Court's subpoena?

5 A. Absolutely.

6 Q. And have you instructed Officer Lewis' supervisors  
7 that they are not to penalize him in any way for  
8 complying with the subpoena?

9 A. Absolutely.

10 Q. Who did you give that instruction to?

11 A. I gave it to our assistant chief, Chief Hartgraves.

12 Q. I'd like to ask you some questions about your  
13 declaration in this case, which was submitted on April  
14 15th, 2020, six days -- seven days ago. Do you recall  
15 submitting that declaration?

16 A. I do.

17 MR. BARNETT: Your Honor, I'd like to get it up  
18 on the screen so everybody can see it, including the  
19 chief.

20 THE COURT: All right. Give us just a moment to  
21 pull that up. Which document is that? We'll just pull  
22 it right up.

23 MR. BARNETT: I believe it is attached to the  
24 response to the TRO application.

25 THE COURT: Okay. Let me get my TRO. And I've



1 got it here.

2 If someone beats me to it and knows which  
3 exhibit number it is.

4 (Off-the-record discussion.)

5 THE COURT: Okay. Thank you.

6 MR. BARNETT: May I proceed, Your Honor?

7 THE COURT: You may proceed.

8 MR. BARNETT: We'd like to mark that as  
9 Plaintiffs' Exhibit 11 for identification; I think that's  
10 the right exhibit number.

11 Q. Chief Robinson, do you recognize the first page of  
12 Exhibit 11 as your declaration?

13 A. I do, sir.

14 Q. Were you the one that drafted the declaration?

15 A. My attorneys drafted the declaration, but yes, I  
16 signed it.

17 Q. When did you receive the first draft? You signed it  
18 on April the 15th.

19 A. I can't remember that exact date.

20 Q. How much time did you spend on it?

21 A. I don't know. Quite a bit of time, though.

22 Q. Let's look at Page 6 of the declaration, please.

23 Are we there?

24 THE COURT: Can everyone see that? I see Page 6  
25 on my screen, but let's make sure everyone else does.

1 Thumbs up if you see it.

2 Okay. I think everybody sees it. I'm sorry, I  
3 stepped on your toes.

4 MR. BARNETT: I don't see it, Your Honor.

5 THE COURT: You don't see it?

6 MR. BARNETT: I don't, but that's okay. I know  
7 what it looks like.

8 THE COURT: Oh, no, no -- that -- we want  
9 everybody -- if you can't see it, probably other people  
10 can't too. So let's get it straight. Let's go off the  
11 record for just a second.

12 (Off-the-record discussion.)

13 Q. Chief Robinson, is that your signature down at the  
14 bottom right-hand corner of this page of the declaration?

15 A. Yes.

16 Q. And it looks like in the upper right part above your  
17 signature there's some kind of a scribble. Do you see  
18 that?

19 A. Yes.

20 Q. What is that?

21 A. That's my Badge Number.

22 Q. Okay. Thank you.

23 Let's look at Paragraph 3.

24 Okay. We're on Paragraph 3. I notice,  
25 Chief Robinson, that Paragraph 3, in the last line you

1 define the novel Coronavirus as COVID-19. Do you see  
2 that?

3 A. Yes.

4 Q. Is it your understanding that the novel Coronavirus  
5 and COVID-19 are the same thing?

6 A. I'm sorry, I didn't understand you.

7 Q. Sure. Is it your understanding that the novel  
8 Coronavirus and COVID-19 are the same thing?

9 A. Yes.

10 Q. And in Paragraph 4, you say the facts in the  
11 declaration are, quote, Drawn from information, closed  
12 quote, you have received from others; is that right?

13 A. I'm sorry, I lost the -- the declaration, I don't  
14 see it.

15 Oh, there we go.

16 Q. Do you see Paragraph 4 there?

17 A. Yes.

18 Q. You say, The facts set forth in this declaration are  
19 drawn from information I have received in my work, and it  
20 goes on from there; is that right?

21 A. Yes, yes.

22 Q. So the information that's reflected here is  
23 information that other people gave you?

24 A. I don't understand the question.

25 Q. Sure. Many declarations say, I have personal

1 knowledge of X, Y, and Z. This one says that the  
2 information that you are setting forth in your  
3 declaration are drawn from information that you got from  
4 others.

5 I just want to make sure that I'm reading that  
6 correctly.

7 A. Yes, you are reading it correctly.

8 Q. Okay. So other people reporting to you maybe gave  
9 you information?

10 A. When you say other people, who are you referring?

11 Q. Well, the people that you had in mind when you  
12 signed this declaration saying that you drew the facts  
13 from information you received from other people or other  
14 sources?

15 A. Yes.

16 Q. Okay. So you are not saying, Chief Robinson, that  
17 you have personal knowledge of the information in your  
18 declaration?

19 A. I have personal knowledge of the information in the  
20 declaration. I am the chief deputy of a very large  
21 organization and I get information from assistant chiefs,  
22 from captains, from lieutenants, and that's how I get my  
23 information. But yes, I have knowledge in those terms.

24 Q. Okay. You are basing -- what you say in the  
25 declaration on what others have told you since you are

1 the boss?

2 A. That's correct.

3 Q. Is that -- thank you.

4 Does your declaration identify any people -- who  
5 provided the information in the declaration?

6 A. I'm sorry, you went out. I didn't hear your  
7 question.

8 Q. Sure. Does your declaration identify any of the  
9 people who provided information that is included in your  
10 declaration?

11 A. No.

12 Q. Let's look at Paragraph 6, please. The declaration  
13 says in Paragraph 6 that as of April 15, 42 inmates had  
14 tested positive for COVID-19; is that right?

15 A. That's correct.

16 Q. Are you familiar with the daily reports of the Texas  
17 Commission on Jail Standards on COVID-19 in the county  
18 jails around the state?

19 A. Yes, I am.

20 Q. We need to pull up a report from -- that we got last  
21 night.

22 THE COURT: Okay.

23 Q. Do you review those reports, Chief Robinson?

24 A. No, I don't. I send in the reports that pertains to  
25 the Dallas County Sheriff's Department.

1 Q. Okay. But if I were able to put up on the screen  
2 the latest report, you'd be able to recognize it because  
3 you have seen them before?

4 A. Yes.

5 Q. Okay.

6 THE COURT: Mr. Barnett, if you know -- I'm  
7 sorry to interrupt you, but if you know that you are  
8 going to want to show that to him, if you'll e-mail that  
9 to Ms. Monk we'll go ahead and get it ready.

10 Sorry to interrupt you.

11 MR. BARNETT: That's all right. Let me do that,  
12 Your Honor. I should have done that before. I apologize  
13 for not doing it.

14 THE COURT: No, that's okay. We're all figuring  
15 out how to do this.

16 (Off-the-record discussion.)

17 THE COURT: Mr. Barnett, you may proceed.

18 MR. BARNETT: Thank you, Your Honor.

19 We'd like to mark that as Plaintiffs' Exhibit  
20 12.

21 THE COURT: Okay. This will be Plaintiffs' 12.

22 Q. Chief Robinson, do you recognize 12 as the format of  
23 the reports of the Texas Commission on Jail Standards,  
24 COVID-19 publishes daily?

25 A. Yes.

1 MR. BARNETT: Your Honor, we'd offer Exhibit 12.

2 THE COURT: Any objection?

3 Chief Robinson, they are offering that into  
4 evidence. So if you'll hang tight for just a minute,  
5 I'll rule whether it is in or out.

6 Defendants, do you have any objections to  
7 Plaintiffs' 12?

8 MR. STEPHENS: Your Honor, the objection as to  
9 any information not pertaining to Dallas County. There's  
10 been no foundation laid for who provided it and there's  
11 not even been, I believe, a foundation laid for the  
12 Dallas County.

13 THE COURT: Okay. So your objection is lack of  
14 foundation.

15 Intervenors, do you have any other objection?

16 MR. BIGGS: We just join the objection, Judge.

17 THE COURT: All right. Joining the objection as  
18 to authentication. So Mr. Barnett -- I mean, I'm sorry,  
19 I misstated that -- to lack of foundation. And if you  
20 would walk through this with a little more detail with  
21 the chief, then maybe reoffer it.

22 MR. BARNETT: Okay. Your Honor, it may be that  
23 we prove it up through another witness. We just got  
24 this, so.

25 THE COURT: Okay.

1           MR. BARNETT: It may not be that important. But  
2 the foundation so far is that the chief recognizes this  
3 as a report supplied by the TCJS. And it would be a  
4 business record and it would be admissible under a  
5 hearsay exception. We offer that it is a government  
6 record and it's by the State of Texas, which is now a  
7 party.

8           And to the extent that Dallas County is a  
9 subdivision of the State, then this should be also an  
10 admission binding of them.

11          THE COURT: Okay. What is your response to  
12 that, Defendants? That is right, the State has joined  
13 this. And I -- is that a seal up top there I'm seeing,  
14 seal of the State of Texas?

15          MR. BARNETT: That's what it looks like to me,  
16 Your Honor.

17          THE COURT: Okay. So what is your response to  
18 his -- what is your response to his reply to your  
19 objection?

20          MR. STEPHENS: Your Honor, except that this is a  
21 State of Texas document, obviously Sheriff Robinson can't  
22 speak to it. As to the extent it is any other business  
23 record of any entity, there's been no foundation laid for  
24 that either.

25          THE COURT: Okay. Intervenors?



1           MR. BIGGS: We would echo that. First and  
2 foremost, this is a component agency of the State.  
3 There's been no predicate from an actual officer. If you  
4 look at the Federal Rules, it requires a seal and then an  
5 attestation of someone who can attest that it is a true  
6 and accurate copy to the ex -- can you hear me?

7           THE COURT: I can hear you, yes.

8           MR. BIGGS: Okay. To the extent -- I mean, if  
9 you want to limit this to Dallas County in some way,  
10 shape, or form instead of the whole state. I mean, I  
11 just don't see how the whole state is relevant beyond the  
12 general principles and issues with authentication.

13           If they want to call a witness that actually  
14 placed the seal on this. Because we prepare these all  
15 the time, these sort of documents under seal. And this  
16 is -- I mean, pretty far from what the federal courts  
17 normally accept. I understand this is a TRO posture,  
18 Judge.

19           THE COURT: Okay. All right. Mr. Barnett, do  
20 you want to see if you can lay another foundation or try  
21 it with another witness? But I don't think you are there  
22 as far as business record.

23           MR. BARNETT: Okay. Yeah. I mean, if Your  
24 Honor would permit us to prove it up, as far as the  
25 authentication issue, and that's -- of the State of Texas

1       --

2               THE COURT:   What I'm hearing from -- that -- I  
3   assumed that it was a -- had turned into a hearsay  
4   objection; is that right?  I mean, what -- you tell me,  
5   Defendants, what is your objection?

6               Because at first it was foundation and then you  
7   were talking about it not being a business record, so I  
8   assume you were objecting to hearsay then.  So what is  
9   your -- let's get on the same page as to what the  
10   objection is.

11              So it's lack of foundation, which sounds like  
12   authentication stuff.  Is that your only objection?  What  
13   is your objection and then we'll let Mr. Barnett respond.

14              MR. STEPHENS:  I believe there is a hearsay  
15   objection, Your Honor, from me.

16              THE COURT:  Okay.  So an authentication, a  
17   hearsay.  Intervenors, do you join in that, do you have a  
18   direct objection, what is your posture?

19              MR. BIGGS:  We join the objection.  I think to  
20   the extent it is foundation it is a -- nobody's laid the  
21   predicate for the hearsay exception properly.

22              THE COURT:  Okay.  So no -- so all right.  So  
23   I'll overrule it as to authentication.  So Mr. Barnett,  
24   if you'll just address the hearsay issue, I think you are  
25   there as far as authentication.

1           MR. BARNETT: Okay. Well, I think maybe so we  
2 can just proceed, if the Court would permit it  
3 conditional on our feelings that the -- whether this is,  
4 in fact, a record of the State of Texas, then --

5           THE COURT: Okay. I'll give you a conditional  
6 admission, sounds good. And then I'll give you a final  
7 ruling. I mean, there's not a jury in the box so I'm  
8 fine with that.

9           And Defendants, Intervenors, your objection is  
10 preserved and I'll give you a final ruling on that as we  
11 proceed.

12           So please proceed, Mr. Barnett.

13           MR. BARNETT: If we could look at Page 3,  
14 Exhibit 12.

15           THE COURT: Can everybody see Page 3?

16           MR. STEPHENS: I can see Page 3, but I think  
17 Mr. Barnett is gone.

18           THE COURT: Oh, has he been kicked off?

19           Mr. Barnett?

20           (Off-the-record discussion.)

21           THE COURT: Mr. Barnett, you may proceed.

22           MR. BARNETT: Thank you, Your Honor.

23 Q. We're looking at Page 3 of Exhibit 12. You'll see  
24 that as of April 22nd, yesterday, there were 105 inmates  
25 in the Dallas County jail who tested positive for

1 COVID-19. Do you see that?

2 A. Yes.

3 Q. And that compares to 42 that you attested to in your  
4 declaration that was done a week before that.

5 A. Yes.

6 Q. And if you'll check my math, that's exactly a 250  
7 percent increase in one week; is that right?

8 A. I'm sorry, I didn't hear you.

9 Q. Yeah. From 42 to 105 is a 250 percent increase in  
10 one week; is that right?

11 A. It -- if that's your math. I -- I -- that's -- you  
12 know, I guess I don't know.

13 Q. Okay. Do you know what exponential means?

14 A. Yes.

15 Q. It means becoming more and more rapid, right?

16 A. Yes.

17 Q. That's what's happening in the Dallas County jail,  
18 correct?

19 MR. BIGGS: Objection. This -- this witness has  
20 not been -- this is not a public health expert, Judge. I  
21 think it's an improper question.

22 MR. STEPHENS: Join the objection.

23 THE COURT: Okay. It's noted for the record.  
24 It's overruled.

25 And I'm going to go ahead and rather than do the

1 conditional admission, I'm going to go ahead and let this  
2 in as an opposing party statement, so I'm going to let it  
3 in.

4 And for the record, while we're breaking, this  
5 is -- you -- Mr. Barnett, you -- you identified  
6 Plaintiffs' 11, the declaration of Chief Robinson, but  
7 you didn't admit it. I just want to make sure you didn't  
8 skip admission if you wanted that in the record.

9 MR. BARNETT: No, I'm not going to sponsor it,  
10 Your Honor. So I'm not going to ask that it be admitted.

11 THE COURT: Understood. Okay. Well, I'm going  
12 to let in 12. So please proceed.

13 MR. BARNETT: Thank you.

14 Q. Chief Robinson, you just testified that you  
15 understand exponential means becoming more and more  
16 rapid, right?

17 A. Correct.

18 Q. And my question to you, not as a -- a correctional  
19 medicine expert or a public health expert or any kind of  
20 expert, just is it factually true that infections of  
21 inmates in the Dallas County jail are becoming more and  
22 more rapid?

23 A. They're going up.

24 Q. So you would agree, yes, it's exponential growth?

25 A. I wouldn't use that terminology. I would say it's

1 going up.

2 Q. Why wouldn't you use that terminology, sir?

3 A. It's just not the terminology I would use. I would  
4 just say it's going up. Exponential can mean a lot of  
5 things. It could mean, you know, two times as much,  
6 three times as much, four times as much.

7 I would just say it's going up.

8 Q. Well, the -- the thing that I really want to make  
9 sure I understand is, you agree with me that the growth  
10 and infections of inmates in the Dallas County jail are  
11 becoming more and more rapid. Do you agree with that?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: And while you are there, for just a  
15 second for the appellate record, I know there was a  
16 hearsay objection, I think this comes in a couple of  
17 different ways.

18 I think it's Defendants' own statement, I think  
19 it is a public record, and a statement in a periodical  
20 under 803(18). So I just wanted to narrate that for the  
21 record.

22 Please proceed.

23 MR. BARNETT: Thank you, Your Honor.

24 Q. Chief Robinson, have you compared how Dallas County  
25 was doing relative to other counties in protecting jail

1 detainees by quarantining or isolating them?

2 A. No.

3 Q. If we look on the second page of Exhibit 12, this is  
4 from our friends in San Antonio, Bexar County.

5 A. Yes.

6 Q. And you can see there that there's a listing for a  
7 number of inmates who had positive tests and the number  
8 of quarantine inmates. Do you see that?

9 A. Yes.

10 Q. And there, the number of positive tests is 33 and  
11 the number of quarantined inmates is 1,456. Do you see  
12 that?

13 A. Yes.

14 Q. So the ratio is 33 to 1,456. I'll represent to you  
15 that that's 0.023; does that sound about right to you? I  
16 know it is hard to calculate that, but will you accept  
17 that representation?

18 A. Sure, yes.

19 Q. If we could look at how our friends in Houston are  
20 doing. That's Harris County, of course.

21 Are we there?

22 A. Yes.

23 Q. The ratio there between positive tests of inmates  
24 and the ones that have been quarantined or isolated is  
25 200 -- I'm sorry, 94 to 2,134; is that right?

1 A. That's correct.

2 Q. And I'll represent to you that that is 0.044. Do  
3 you accept that representation?

4 A. Yes.

5 Q. And then if we look on the first page, we've got  
6 statewide stats. And the number there is 265 to 4,362;  
7 is that right?

8 A. That's correct.

9 Q. And that's a -- I'll represent to you that it's a  
10 0.061 ratio. Do you accept that representation?

11 A. Yes.

12 Q. And then if we look again at the Dallas statistics,  
13 the ratio as of yesterday was 105 to 474. Do you see  
14 that?

15 A. Yes.

16 Q. So the ratio there is 0.221. Do you accept that  
17 representation, please?

18 A. Sure.

19 Q. So that's the -- the Dallas number in comparison of  
20 the inmates who tested positive to the number that had  
21 been quarantined to protect them is -- in Dallas the  
22 ratio there is almost ten times as few -- I'm sorry, as  
23 many?

24 A. I don't know.

25 Q. So point -- just eyeballing it, 0.221 is about 10



1 times 0.023?

2 A. I'm -- I don't know. I --

3 Q. Okay. And it's five times Harris. Will you accept  
4 that, my math, I mean?

5 A. I -- I don't know. I hadn't looked at the numbers.

6 Q. Okay. Will you accept my representation that the  
7 ratio statewide of positive testing inmates relative to  
8 the number of people who are protected in quarantine or  
9 isolation is 3.6 times?

10 A. No, I -- yeah. I don't -- I hadn't looked at the  
11 numbers or analyzed them. That would be your  
12 representation, but I hadn't analyzed them.

13 Q. Do you know why Dallas, the ratio of inmates that it  
14 is protecting by putting in an isolation and quarantine  
15 is so much lower than it is in the peer counties and  
16 statewide?

17 A. No.

18 Q. Just to be clear, Chief, the top person within the  
19 Dallas County Sheriff's Department over the Dallas County  
20 jail, is that the sheriff herself; is that right?

21 A. That is correct.

22 Q. Have you checked statistics by the Texas Commission  
23 on Jail Standards on relative performance of reducing  
24 jail populations in other large Texas counties?

25 A. No, I have not.

1 Q. Are you aware that in March, Harris County reduced  
2 its jail population by 13.2 percent?

3 A. No, I'm not.

4 Q. Are you aware that Tarrant County reduced its jail  
5 population by 17.2 percent?

6 A. No, I'm not.

7 Q. Are you aware that Bexar County reduced its jail  
8 population by 23.9 percent in March?

9 A. No.

10 Q. How about Dallas County, are you aware that in March  
11 Dallas County reduced its population by 8.1 percent?

12 A. I don't -- I don't know the numbers. I just know  
13 it's gone down.

14 Q. So the -- just comparing the statistics, the 8.1  
15 percent is about -- is a reduction that's about a third  
16 of what Bexar County has been able to do; is that right?

17 A. I have -- I'm not sure.

18 Q. It's about half of what Tarrant County has done; is  
19 that right?

20 A. I'm not sure, I hadn't looked at the numbers.

21 Q. It's about 62 percent of what Harris County did in  
22 March of -- as far as reducing its jail population; is  
23 that right?

24 A. I'm not sure.

25 Q. Do you accept my representations that those are

1 accurate reflections of what the ratios are?

2 A. They may be yours, but I'm not -- I hadn't looked at  
3 your numbers and I don't know if they're accurate or not.

4 Q. Right. Do you think, sir, that the head of the  
5 Dallas County jail and the authorized representative of  
6 Dallas County and the Dallas County Sheriff that you  
7 should know what your relative performance is to other  
8 jails in peer counties?

9 MR. STEPHENS: Objection, your Honor. Other  
10 jails aren't relevant to the performance of the Dallas  
11 County jail.

12 THE COURT: Okay. Intervenors, do you have an  
13 objection other than relevance?

14 MR. BIGGS: I would also object. This witness  
15 is not a 30(b)(6) witness, as far as I can tell. I  
16 thought he was a fact witness. So any allegation that  
17 he's binding the agency I think would also be a  
18 misstatement of the law, Judge.

19 MR. BARNETT: May I speak, Judge?

20 THE COURT: You may respond.

21 MR. BARNETT: The only reason Chief Robinson was  
22 excluded from the Rule is because Counsel represented  
23 that he was the authorized representative of Dallas  
24 County and the sheriff, and therefore they're saying that  
25 (unintelligible).

1 THE COURT: Can you say that again, Mr. Barnett?  
2 I -- I had problems hearing you.

3 MR. BIGGS: I'll withdraw the objection, based  
4 on that representation.

5 I apologize, Mr. Barnett.

6 THE COURT: Objection has been withdrawn. And,  
7 Defendants, do you persist in your objection?

8 MR. STEPHENS: Our objection is not based on the  
9 agent status of Chief Robinson, but on the relevance of  
10 statistics on other jails.

11 THE COURT: Okay. Well, I'll overrule as to  
12 relevance.

13 You may proceed, Mr. Barnett.

14 MR. BARNETT: Thank you, Your Honor.

15 Q. Paragraph 6 of your declaration, Exhibit 11 also  
16 says the jail had -- are you there, sir?

17 A. No.

18 THE COURT: Give us just a --

19 MR. BARNETT: I didn't give you time to --

20 THE COURT: I'm sorry. That is our fault, our  
21 system is slow. If you'll give us just a moment, thank  
22 you. Should come up here momentarily.

23 What page did you need, Mr. Barnett?

24 MR. BARNETT: It is Paragraph 6. I think --

25 THE COURT: Okay.

1 MR. BARNETT: -- it's probably --

2 THE COURT: Off the record for just a moment.

3 (Off-the-record discussion.)

4 THE COURT: You may proceed.

5 MR. BARNETT: Thank you.

6 Q. Chief Robinson, in Paragraph 6 of your declaration,  
7 Exhibit 11, you also say that jail has, quote, Current  
8 zero deaths related to COVID-19, closed quote. Do you  
9 see that?

10 A. Yes.

11 Q. Has there been deaths inside the jail whether  
12 confirmed as to related to COVID-19 or not?

13 A. Restate your question, please, sir.

14 Q. Right. Has anybody who's a detainee in the Dallas  
15 County jail died in the last few weeks?

16 A. Yes.

17 Q. How many?

18 A. One.

19 Q. So was that person tested for COVID-19 postmortem or  
20 premortem?

21 A. I -- I'm not sure. I'm --

22 Q. Okay. That information should be available to you.  
23 Could you find out and let us know?

24 A. I can try to find out. But I -- you know, we -- we  
25 hadn't looked -- the guy who passed away, it was not part

1 of quarantine or he was not presumed to be positive by  
2 the doctors at the time, so.

3 Q. All right. Paragraph 6 also says that most of the  
4 detainees as of April 15th -- and you give the numbers  
5 4,105 out of 4,967, quote, Are detained pursuant to new  
6 felony charges, closed quote; is that right?

7 A. Where are you getting your numbers from? Because I  
8 can't see it.

9 Q. I think it's Paragraph 6, but let me make sure.

10 A. Okay. Now restate your question.

11 Q. Sure. In Paragraph 6 of your declaration,  
12 Exhibit 11, you say that most of the detainees as of a  
13 week ago, April 15th, 4,105 out of 4,967, quote, Are  
14 detained pursuant to new felony charges; is that right?

15 A. That's correct.

16 Q. Can you tell Judge Brown how many of the 4,105 are  
17 violent felony charges?

18 A. No, I can't tell you that.

19 Q. Is that information available to you, as the head of  
20 detention?

21 A. The information is available to me in terms of their  
22 charges, but it would have to be an analysis run to see  
23 if they are aggravated offenses or -- or not. But I'm  
24 not sure.

25 Q. Okay. But that is information that y'all keep in --

1 it's just a matter of tabulating it and giving it to  
2 Judge Brown, right?

3 A. Yes.

4 Q. Okay. Do you know how many of the 4,105 who are  
5 currently charged with a felony, having been convicted of  
6 those charges, are people who have previously been  
7 convicted of a felony?

8 A. No, I don't know that information.

9 Q. But that would be available to you, and if Judge  
10 Brown thought it was relevant to fashioning appropriate  
11 relief, then that could be provided to her quickly; is  
12 that true?

13 A. Yes.

14 Q. Okay. And of the people who are currently charged  
15 with a felony and have been previously convicted of a  
16 felony, do you know how many of those there are in the  
17 4,105?

18 A. No, I do not.

19 Q. And again, if Judge Brown deemed that information  
20 relevant, you could provide it to her pretty fast, right?

21 A. Yes.

22 Q. Officer Lewis, whose testimony you saw testify that  
23 from what he's seen, the Dallas County jail is working  
24 shorthanded. Do you agree with that?

25 A. No. Officer Lewis has been here seven months. He

1 has no way of knowing what the population is, he doesn't  
2 know what the staffing is, he has no idea of why we work  
3 the way we work.

4 I wouldn't depend on his testimony to be  
5 accurate in terms of the staffing.

6 MR. BARNETT: Your Honor, I object to the answer  
7 as nonresponsive after, "no."

8 THE COURT: Okay. Sustained.

9 Q. If Judge Brown wanted to know about staffing levels  
10 including overtime, how many people aren't showing up,  
11 how many people are going on sick leave, you could  
12 provide that information to the Judge too, right?

13 A. Sure would.

14 Q. And you -- let's go to Paragraph 8 of your  
15 declaration.

16 Should be on the same page. Are you with me?

17 A. Yes, sir.

18 Q. So Paragraph 8 of your declaration attached as  
19 operating procedures for management of infectious  
20 disease; is that right?

21 A. Yes.

22 Q. And where are those operating procedures kept?

23 A. They're kept in my office.

24 Q. Is there some sort of a manual that they go in?

25 A. No. Our -- we have a -- a -- a manual that refers



1 to how we book people in. A lot of the guidance or a lot  
2 of the procedures are day-to-day, what pertains to the  
3 day may not pertain to tomorrow, so a lot of our guidance  
4 are not written down. If the sheriff tells us to do  
5 something, that's policy. But we don't necessarily write  
6 it down because it could change tomorrow. We give those  
7 directives to our commanders for them to carry out.

8 MR. BARNETT: Your Honor, I object to that  
9 answer as being nonresponsive to the question about where  
10 the procedures are kept.

11 THE COURT: Sustained.

12 Q. So Chief Robinson, you say that operating procedures  
13 are kept in your office. Does anybody else have access  
14 to them?

15 A. Yes, they do.

16 Q. Who else has access to them on a -- on a --

17 A. Commander.

18 Q. The commander?

19 A. The commanders, the chiefs, everybody has access to  
20 them.

21 Q. Everybody including DSOs?

22 A. Their supervisors, I'm pretty sure. I don't know  
23 what they are looking at, but if their supervisors have  
24 access to them, then they should.

25 Q. And by access do you mean they could come ask you

1 whether they could see your copy, or do they have some  
2 sort of -- since it's not a manual how would they have  
3 access to it if they ask you to look at your copy?

4 A. I'm sorry, I didn't understand your question.

5 Q. Sure. You said that commanders and maybe  
6 supervisors of ranking DSOs would have access to the  
7 operating procedures?

8 A. Yes.

9 Q. And I'm trying to understand how physically they  
10 would have access to it. Would they need to ask you to  
11 look at your copy?

12 A. Absolutely not. They -- our operating procedures  
13 are posted online. They are also -- you know, the  
14 commander of each division has -- have an operating copy.  
15 So if they need a copy, anybody can see them.

16 Q. Okay. Thank you.

17 And could you just confirm for us,  
18 Chief Robinson, that the operating procedures that you  
19 attached to Exhibit A to your declaration were last  
20 updated in 2010?

21 A. I don't know, I can't see it.

22 Q. If we could look at Exhibit A, the declaration.

23 THE COURT: Give us just a moment. Thanks for  
24 your patience.

25 (Off-the-record discussion.)

1           THE COURT: Back on the record. Please proceed,  
2 Mr. Barnett. Thank you again for your patience.

3 Q. So Chief Robinson, we're looking at Exhibit A to  
4 your declaration, the declaration that was marked for  
5 identification as Plaintiffs' Exhibit 11.

6           Can you confirm at the bottom of each page on  
7 Exhibit 11, the operating procedures, say that the date  
8 is December 30th, 2010?

9 A. Yes.

10 Q. So that's the last time that the operating  
11 procedures for infectious disease have been at least  
12 formally updated by the Dallas County jail?

13 A. Yes.

14 Q. Also in Paragraph 8 of your declaration, if we could  
15 go back to that.

16           So Paragraph 8 refers to the CDC's interim  
17 guidance on management of COVID-19 in correctional and  
18 detention facilities and you attach a copy of the CDC  
19 guidance indicative in B; is that right?

20 A. That's right.

21 Q. And just so we're clear, the CDC is the Centers on  
22 Disease Control and Prevention; it's a federal agency, is  
23 that right?

24 A. Yes.

25 Q. And in Paragraph 8 of your declaration you say,

1 quote, Beginning in February 2020, the DCSO -- and DCSO  
2 means the sheriff's department and the sheriff's office,  
3 began implementing processes and procedures in addition  
4 to its standard operating procedures to comply with the  
5 evolving CDC interim guidance; is that correct?

6 A. That's correct.

7 Q. So the -- the Dallas County and -- have been aware  
8 of the CDC interim guidance since at least February 2020;  
9 is that right?

10 A. That's correct.

11 Q. Are you sure about that date?

12 A. As far as I can tell.

13 Q. When you are reviewing the declaration drafted  
14 review, did you check that date?

15 A. I did not check that date, no.

16 Q. So was the date something that counsel put in there?

17 A. Yes.

18 Q. Let's look at Exhibit B, that's the interim  
19 guidance. And just the first page is what we're looking  
20 at.

21 THE COURT: What page are we looking at?

22 MR. BARNETT: It's the first page of Exhibit B,  
23 the exhibit --

24 THE COURT: Okay.

25 Q. There we go. Are you with me, Chief?

1 A. Yes, sir.

2 Q. There is kind of a banner up at the top of this  
3 first page of Exhibit B, and then there's some smaller  
4 writing below that. Could you read that first sentence  
5 for the record, please?

6 A. The interim guidance is based on what is currently  
7 known about the transmission and severity of the  
8 Coronavirus disease 2019, COVID-19, as of March 23rd,  
9 2020.

10 Q. Does that refresh your recollection about when the  
11 interim guidance was first posted and available?

12 A. Yes, sir.

13 Q. So when you said -- or counsel said February 2020,  
14 that's just not right; is that true?

15 A. I -- yes, I -- I would say so.

16 Q. Can you tell us why your declaration pushes the date  
17 Dallas County started following a written plan for  
18 dealing with COVID-19 so far back, more than three weeks?

19 A. I'm not sure. But I -- I know we put guidelines in  
20 place for COVID prior to March 23rd, so that may be why  
21 the discrepancy.

22 MR. BARNETT: Your Honor, I object as  
23 nonresponsive after, "I don't know."

24 Your Honor, did you hear my objection?

25 THE COURT: I'm so sorry. I was on mute. Sorry

1 about that.

2 I sustain your objection.

3 MR. BARNETT: Thank you, Your Honor.

4 Q. Other than the operating procedures last updated at  
5 the end of 2010 and the CDC interim guidance, was there a  
6 written plan mandated for COVID-19 in the Dallas County  
7 jail?

8 A. Yes.

9 Q. And did you attach it to your declaration so we  
10 could see it and Judge Brown could see it?

11 A. I'm not sure.

12 Q. Where is the written plan?

13 A. In the sheriff's department we have a written plan  
14 at -- in our database and of course, in our guidance.

15 Q. So is it a single document that has the written plan  
16 in one place?

17 A. I wouldn't say it's a single document. What I would  
18 say is, you know, our plan -- do you want me to continue  
19 to answer or do you just want a yes-or-no answer?

20 Q. Well, it's probably better if I just ask you  
21 questions and then you give answers just to that  
22 question. Is that okay with you?

23 A. Sure, sure.

24 Q. Okay. So you said the written plan is not a single  
25 document; is that right?

1 A. That's correct.

2 Q. Is it several documents that are in different  
3 places?

4 A. They're not in different places, but we have several  
5 plans.

6 Q. Okay. Several plans.

7 And where are they kept, on the -- the computer  
8 system, is that what the Dallas County jail uses?

9 A. Yes, we have plan -- yes.

10 THE COURT: Mr. Barnett, if I could chime in for  
11 just a moment.

12 So that you know, Chief Robinson, you -- you  
13 will have an opportunity to explain more fully. I know  
14 he is asking you kind of, yes-or-no questions and you  
15 feel like you have more to say. I understand that.

16 THE WITNESS: Okay.

17 THE COURT: So the way it will work is, he will  
18 ask you lots of yes-or-no questions that kind of have  
19 short answers, but your attorneys for your side will have  
20 an opportunity afterwards to follow back up and you will  
21 be able to give more fleshed-out answers.

22 So I'm waiting until I hear everything that you  
23 say before I make up my mind about what you say, just so  
24 you know.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: Okay.

2 THE WITNESS: Thank you. Sorry.

3 THE COURT: That's okay. In ordinary  
4 conversation people get to follow up; court's just a  
5 little different. So all right.

6 Thank you, Mr. Barnett.

7 MR. BARNETT: Thank you, Your Honor.

8 Q. Chief Robinson, we were talking about the written  
9 plan for managing COVID-19 in the Dallas County jail.  
10 And you said it's not a single written plan, but a number  
11 of different plans?

12 A. Yes.

13 Q. Is that right? Okay.

14 A. Yes.

15 Q. And has the Dallas County jail or the sheriff's  
16 department adopted that written plan in some formal way?

17 A. No.

18 Q. So who prepared this written plan or the different  
19 plans, if there is more than one?

20 A. Well, it's prepared by the sheriff's department and  
21 one is prepared by Parkland.

22 Q. One is prepared by Parkland. Okay.

23 That is the hospital?

24 A. Yes.

25 Q. Okay. And does the written plan or one of the



1 written plans for managing COVID-19 in the Dallas County  
2 jail adopt the CDC interim guidance as rules of the road  
3 for dealing with COVID-19 in the jail?

4 A. I'm not sure about your question. I'm not sure.

5 Q. Let me ask it again so -- make sure we're  
6 communicating.

7 Has Dallas County or the sheriff's department  
8 adopted the CDC interim guidance as the rules for -- as  
9 part of the rules for dealing with COVID-19 in the Dallas  
10 County jail?

11 A. Do you mean written?

12 Q. Written, oral, have you adopted that as rules that  
13 you are going to comply with?

14 A. Yes.

15 Q. Thank you.

16 And that's policy for Dallas County and the  
17 sheriff's department complying with the CDC interim  
18 guidance?

19 A. Not sure I'm --

20 Q. Is that true?

21 A. -- when you mean policy, kind of expound on that for  
22 me, what do you --

23 Q. Sure. Policy, it means that people in the -- the  
24 department, sheriff's office, jail are required to abide  
25 by the rules.

1 A. Yes.

2 Q. Okay. Thank you.

3 In Paragraph 9 it says, quote, It is difficult  
4 to enforce social distancing as recommended by the CDC  
5 throughout all areas of the jail.

6 Did I read that correctly, sir?

7 A. Yes.

8 Q. Are there parts of the jail where it's not just  
9 difficult, but impossible to enforce social distancing as  
10 recommended by the CDC?

11 A. No.

12 Q. Did you agree with Officer Lewis that social  
13 distancing is impossible in the pods in the South Tower  
14 where he works with the current numbers of detainees they  
15 contain?

16 A. No.

17 Q. So you think it's possible to have 60 or 62 inmates  
18 at least 6 feet apart at all times in the pods that  
19 Mr. Lewis, Officer Lewis works in; is that your  
20 testimony?

21 A. Yes, sir.

22 Q. So you don't agree with Officer Lewis that social  
23 distancing needs to be -- is possible, physically  
24 possible if the numbers are -- only if the numbers are  
25 lower; you disagree with that?

1 A. I disagree.

2 Q. And how would that work when they sleep if the --  
3 you have to put in new bunk beds or give people sleeping  
4 bags, how would that work?

5 A. What -- what context are you asking the question?  
6 I'm -- are you asking --

7 Q. Sure?

8 A. -- about social distancing -- what are you asking?

9 Q. Yeah, right. I understood you to say,  
10 Chief Robinson, that you think that even with 60 inmates  
11 in a pod in the South Tower they could be kept at least 6  
12 feet apart at all times, 24 hours a day. That is what I  
13 understood you to say.

14 And I'm just trying to get -- an idea of how  
15 that would physically happen. Does that help?

16 A. No. I -- I didn't say at all times, because inmates  
17 do not -- they do what they want to do. So if they want  
18 to stay 6 feet, yes, they can.

19 Q. Okay. But even -- we saw yesterday, and I hope you  
20 are able to see the pictures inside the pods in the South  
21 Tower. Some of them came off of a YouTube video and some  
22 of them were supplied by your lawyers.

23 Were you able to see those illustrations of the  
24 pods in the South Tower?

25 A. Yes, sir.

1 Q. So what I'm trying to understand, just as a matter  
2 of example, is for sleeping purposes, how would you have  
3 60 inmates in one of those pods sleeping in a way that  
4 they were 6 feet apart during the several hours when  
5 they're trying to sleep? How would you do that?

6 A. Well, what I would do is, you could have one sleep  
7 at the top, one sleep at the bottom so their face --  
8 faces are 6 feet apart. Also, you could provide them  
9 masks so that it will mitigate any transfer of droplets.

10 Q. Okay. So could you answer my question? How could  
11 you keep all 60 of them 6 feet apart at all times when  
12 they're sleeping?

13 A. Like I said, I think we could put one at the head  
14 and one at the -- at the -- at the foot and let them  
15 sleep that way and their heads are 6 feet apart.

16 Q. But you saw that some of the bunk beds are kind of  
17 latched together, tied together; you are familiar with  
18 that?

19 A. Yes, sir.

20 Q. There's not six-feet distance between the people on  
21 the -- the lower bunk bed when they're tied together like  
22 that, right?

23 A. No.

24 Q. You don't know?

25 A. No, they're not.

1 Q. They're not. Okay. So how could you keep them 6  
2 feet apart while they're sleeping if they're not 6 feet  
3 apart simply because the bunk beds are tied together  
4 closer than 6 feet?

5 A. Well, if you put one inmate, his head at the top and  
6 one head at the bottom of the bunk, then their heads  
7 would be 6 feet apart.

8 Q. Oh, okay. So the social distancing you have in mind  
9 is head-to-foot, right?

10 A. In that instance, yes.

11 Q. Okay. Thank you.

12 And then from -- you -- I -- all of the bunk  
13 beds you'd have them sleep head-to-foot, that's -- is  
14 that what you would do?

15 A. Yes.

16 Q. Okay. Thank you.

17 And have -- have you instructed people like  
18 Officer Lewis to do that before now?

19 A. We've instructed -- oh, actually, no, we have not  
20 instructed them to do that.

21 Q. Okay. And that's true throughout the jail, you have  
22 not instructed people to have the detainees sleep  
23 head-to-foot; is that true?

24 A. That's true.

25 Q. And Chief Robinson, you are aware that the CDC

1 interim guidance doesn't have an exception to social  
2 distancing for when it's inconvenient in a jail  
3 environment; are you aware of that?

4 A. No.

5 Q. So you think there is an exception?

6 A. Well, if I'm not mistaken, the -- they have one  
7 exception that says that if they are not able to social  
8 distance they can wear a mask.

9 Q. Okay. But we're going to have a break later, if I  
10 could get you during the break to look at Exhibit B,  
11 which you provided. When you come back, if you could  
12 point us to where that is in the interim guidance I'll be  
13 grateful.

14 Will you do that for us?

15 A. Sure.

16 Q. Great. Now, in Paragraph 10, you say, quote, Staff  
17 posted -- the page --

18 (Reporter instruction.)

19 Q. In Paragraph 10, you say that the sheriff office,  
20 quote, Staff posted a single-page flier with CDC  
21 guidance, closed quote, related to COVID-19, quote,  
22 throughout the jail, closed quote; is that right?

23 A. Yes.

24 Q. And you base that statement on what somebody else  
25 told you; is that right?

1 A. No.

2 Q. You have gone throughout the jail and confirmed  
3 personally that that flier is posted throughout the jail?

4 A. Yes.

5 Q. You did?

6 A. Yes.

7 Q. So you went into every pod; is that right?

8 A. No, I didn't go into every pod. It says throughout  
9 the jail, but I went through out the jail and I saw the  
10 flier posted.

11 Q. So you saw the flier in the hallways at the jail; is  
12 that your testimony?

13 A. Not in the hallways, there is no need to have them  
14 in the hallways.

15 Q. So where were they?

16 A. They're posted in the areas for officers to see and  
17 for inmates to see.

18 Q. So if they're not in the pods, and you didn't go in  
19 the pods, how would the inmates see them?

20 A. They are in the pods.

21 Q. Oh. I thought you said you didn't go to the pods.

22 A. No.

23 Q. Did you to the pods?

24 A. I'm misunderstanding your question.

25 Are you asking me, did I go into the pods to see

1 if the fliers are in there?

2 Q. Yes, I did ask that.

3 A. Yes, I did go. But in every single pod, no.

4 Q. Okay. So you went to one pod or two pods?

5 A. I don't know how many. But I went to several.

6 Q. Okay. And you did the same thing in the South  
7 Tower -- I'm sorry, the North Tower and West Tower?

8 A. Yes.

9 Q. And so I guess you disagree with Officer Lewis that  
10 the flier's not posted in the pods he works in, you --

11 A. Yes, I disagree.

12 Q. -- you contradict him on that point?

13 A. Yes, I do.

14 Q. And did you ask somebody at the jail to go look in  
15 his pods and see whether or not that -- that poster had  
16 been there?

17 A. I saw -- I actually saw in that pod myself.

18 Q. You did? You saw the poster in there?

19 A. Yes.

20 Q. And where was it posted?

21 A. It's posted on the column.

22 Q. On the column. And did you get a photograph of  
23 that?

24 A. Do I have a photograph of it, no.

25 Q. Have you seen a photograph of it?



1 A. Have I seen a photograph of it?

2 Q. Sure.

3 A. No, I -- I've saw it for myself. I went in there.

4 Q. Okay. Well, did you bring the -- a photograph with  
5 you or can your counsel give it to us so that we can see  
6 it and Judge Brown could see it?

7 A. I didn't bring a photograph. I said I went into the  
8 pod and I saw it for myself.

9 Q. Okay. Thank you.

10 Now Exhibit C to your declaration, if we could  
11 look at that, Exhibit 11. Do you see it there, sir?

12 A. Not yet.

13 Q. Not yet. Scrolling, there we go. Exhibit C.

14 And Exhibit C, that is the poster that was put  
15 in the jail; is that right?

16 A. That poster is in the jail. But it's -- we have  
17 written notices as well. That particular notice is for  
18 law enforcement personnel. The one we put in the tanks  
19 are for inmates and they may be written on a flier.

20 Q. Now Chief Robinson, your declaration says Exhibit C  
21 is what was posted throughout the jail, right?

22 A. I -- I guess, if that's what it says. This is  
23 throughout the jail, yes, they are throughout the jail.  
24 But it doesn't mean they're in every pod.

25 Q. Well, it's your declaration, sir. When you signed

1 that declaration under oath, you were telling Judge Brown  
2 that Exhibit C was posted throughout the jail.

3 A. That's correct.

4 Q. And then you said it was not posted -- or that it  
5 was posted in --

6 (Reporter instruction.)

7 Q. I just want to make sure I understand what you are  
8 telling Judge Brown. In your declaration you said  
9 Exhibit C is what was posted throughout the jail, right?

10 A. That's correct.

11 Q. And I asked you whether you disagreed with Officer  
12 Lewis that Exhibit C was not posted in his pods. Do you  
13 remember that?

14 A. Okay. I misunderstood your question. Now, that  
15 particular flier may not be posted in his pod, but the  
16 actual flier regarding instructions are posted in his  
17 pod.

18 MR. BARNETT: Object to the answer as  
19 nonresponsive after, "it may not be in the pod."

20 THE COURT: Sustained.

21 Q. Sir, do you agree with Officer Lewis that this  
22 poster, Exhibit C, was not posted in his pods, the ones  
23 that he works in; do you agree with that?

24 A. I would agree with that. I would agree that --  
25 well, I would agree with that.

1 Q. Thank you. And just looking at the poster itself,  
2 it says -- it's entitled, What Law Enforcement Personnel  
3 Need to Know About Coronavirus Disease 2019 COVID-19, in  
4 parentheses; is that right?

5 A. That's correct.

6 Q. And this isn't specific to a correctional situation  
7 or detention situation, right?

8 A. That's correct.

9 Q. It's for all law enforcement personnel, including  
10 the great many who don't work in a jail environment,  
11 right?

12 A. That's correct.

13 Q. Does this poster say anything about wearing masks?

14 A. I can't see it. It's kind of blurry.

15 Q. Okay. Well, we can look at it. I don't think we  
16 need to go through it now. I'll represent to you that I  
17 couldn't see anything that says anything about masks.

18 And then can you see that there are a couple of  
19 places that look like they're those URL links that you  
20 can click on to go to a page on the internet?

21 Do you see those blue kind of, link-looking  
22 things?

23 A. Yes.

24 Q. So what this actually is, is something that somebody  
25 could look at online. It's not some kind of a poster

1 that the CDC said needed to put up or should put up so  
2 that people can see it. It's a web page; is that right?

3 A. That's correct.

4 Q. Is there a reason why you or your lawyers chose this  
5 to show to Judge Brown to support your contention that  
6 you've done a good job of posting information about  
7 COVID-19 around the jail; is there a reason why you chose  
8 a web page to support that contention?

9 MR. STEPHENS: Objection, Your Honor. That is  
10 privileged and was a compound question.

11 THE COURT: Okay. I'll -- I'll sustain it as to  
12 privilege.

13 MR. BARNETT: Thank you, Your Honor.

14 Q. Is there a counterpart of Exhibit C that's in  
15 Spanish for people who read Spanish, but not English?

16 A. I'm not sure.

17 Q. And the information that you did verify for yourself  
18 is posted in Officer Lewis' pods, is that in Spanish?

19 A. I'm not sure.

20 Q. Is it true that there's a nontrivial number of  
21 detainees in the Dallas County jail who don't read or  
22 speak English, but do speak and read Spanish?

23 A. I'm not sure. I'm --

24 Q. Are there people under your care who don't speak  
25 English, but do speak Spanish; you are unaware of that,

1 sir?

2 A. At this moment, I'm not aware of who in our jail of  
3 4,000 speaks Spanish. I'm not sure.

4 Q. As the person who's in charge of the jail --

5 A. Yes.

6 Q. -- do you think it would be helpful in performing  
7 your duties if you knew whether or not some of those  
8 people can't speak English, but can speak Spanish?

9 A. Sure.

10 Q. Can you tell Judge Brown why you don't know whether  
11 you have people whose lives you are responsible for, can  
12 you tell Judge Brown why you don't know that?

13 A. Well, the reason why I don't know that --

14 MR. STEPHENS: Your Honor, this line of  
15 questioning is getting outside the pleadings.

16 THE COURT: I'll overrule.

17 Q. You can answer, sir.

18 A. The reason why I don't know that is because inmates  
19 come in and out of the Dallas County jail all the time.  
20 It -- who may not speak Spanish may be gone now, I don't  
21 know. You are asking me questions about every single  
22 inmate in the Dallas County jail, and I'm not sure  
23 right -- at this moment.

24 Q. Do you -- does the jail keep track of people who are  
25 of Hispanic origin when they get booked in?

1 A. Yes.

2 Q. So you could look up on the computer probably and  
3 find out which ones are of Hispanic origin, right?

4 A. Yes.

5 Q. And you also at the -- the booking find out whether  
6 they can speak English, right, that is something that you  
7 keep a record of?

8 A. Yes.

9 Q. And you could find out and tell Judge Brown pretty  
10 quickly what percentage of people currently among the  
11 almost 5,000 detainees are people who can't speak  
12 English, but can speak Spanish, right?

13 A. I don't think we keep that on our computer system  
14 whether they speak English or not.

15 Q. Okay. Well, could you find that out also, sir?

16 A. I am not sure. I would have to find out.

17 Q. Okay. Fair enough.

18 And Paragraph 11 of your declaration, messages  
19 on the inmate channel. Do you know how often or rarely  
20 inmates watch the inmate channel?

21 A. No.

22 Q. Have you ever watched the inmate channel?

23 A. Yes.

24 Q. When's the last time you watched it?

25 A. I don't remember.

1 Q. Is there ever a time when the inmates are required  
2 to watch the inmate channel?

3 A. No.

4 Q. Are any of the messages that you mention in your  
5 declaration that are on the inmate channel, are any of  
6 them in Spanish?

7 A. I'm not sure.

8 Q. In Paragraph 12 of your declaration, it says, quote,  
9 Deputies and staff consistently impress upon inmates the  
10 need to practice social distancing; is that right?

11 A. Yes.

12 Q. So assuming that's so, that would apply only where  
13 social distancing is physically possible; is that right?

14 A. No.

15 Q. It would also apply where physically social  
16 distancing is impossible; is that what you are saying?

17 A. I've never said it was impossible. You said that.

18 Q. Okay. Sir, if I understand you correctly,  
19 Chief Robinson, your view is there's no place in the jail  
20 where it's physically impossible to practice social  
21 distancing; is that your testimony?

22 A. I believe that, yes, I agree with that.

23 Q. Is that -- that doesn't matter how many inmates are  
24 in a pod, even if it's got 62 people or 64 people, right?

25 A. Yes.

1 Q. Has the sheriff's department provided written  
2 instructions to each member of the rank and file of jail  
3 staff about social distancing? And please note that I  
4 asked whether you provided written instruction.

5 A. I'm sorry, I didn't hear your question.

6 Q. Sure. Has the sheriff's department provided written  
7 instructions to each member of the rank and file jail  
8 staff about social distancing?

9 A. Yes, we have provided written instructions.

10 Q. And what form did that take, a handout or a poster  
11 or what?

12 A. A handout.

13 Q. And when was that handed out?

14 A. I don't remember.

15 Q. Is there a reason you didn't attach that to your  
16 declaration?

17 A. No.

18 Q. And can you tell us what it says?

19 A. Not right offhand, no.

20 Q. How many pages is it?

21 A. It's one. It's the --

22 Q. Can you remember the date that it was handed out to  
23 the DSOs?

24 A. No.

25 Q. Was it in March or April?



1 A. I honestly can't remember the date.

2 Q. This lawsuit was filed the afternoon of April 9th,  
3 that's a Thursday. Were the written instructions  
4 provided after the lawsuit was filed?

5 A. Again, I don't remember when they were sent out.

6 Q. Do you remember learning about the lawsuit on the  
7 9th?

8 A. Do I remember? Are you asking do I remember?

9 Q. Yes, sir.

10 A. No, I didn't know a lawsuit was filed until later.

11 Q. There was a news article in the Dallas Morning News  
12 about it, the evening of the 9th. Do you remember that?

13 A. No, I do not.

14 Q. So when's the first time you can recall being aware  
15 that a lawsuit had been filed against your boss, the  
16 sheriff, and Dallas County and the Dallas County jail?

17 A. I can't remember. I just know our attorney gave us  
18 the information. I don't remember --

19 Q. I -- yeah, don't tell us what your lawyer said,  
20 please. Thank you.

21 So before you talked with Counsel, you were  
22 unaware that a lawsuit had been filed?

23 A. No.

24 Q. You were aware?

25 A. I was not aware.

1 Q. And how long after April the 9th did you become  
2 aware of a lawsuit?

3 A. I don't remember the date.

4 Q. Was it a week later, a day later?

5 A. I -- I don't remember the date. I'm sorry, I don't  
6 remember.

7 Q. And did the filing of the lawsuit have anything to  
8 do with the decisions to provide written instructions to  
9 DSOs about social distancing?

10 A. No.

11 Q. In Paragraph 12, you say that, quote, Deputies  
12 enforce social distancing in common areas, closed quote.

13 Did I read that correctly?

14 A. Yes.

15 Q. And in the sentence, unlike some of the other ones,  
16 you talked only about deputies, not about staff or DSOs.  
17 Can you identify who deputies are?

18 A. I'm sorry, you -- you faded out. I didn't hear the  
19 question.

20 Q. Sure. In this paragraph, Paragraph 12, you -- you  
21 use the word deputies instead of deputies and staff,  
22 which is -- how you do it in some other sentences.

23 Can you identify for the Court who deputies are?

24 A. Deputies are our deputy sheriffs that work with the  
25 sheriff's department.

1 Q. Okay. And how many deputy sheriffs work in the  
2 Dallas County jail?

3 A. I'm not sure of the number, but we do have some.

4 Q. Is it more than ten?

5 A. Yes.

6 Q. More than 20?

7 A. I guess somewhere around there.

8 Q. And then DSOs, how many DSOs are there?

9 A. Approximately 1,300.

10 Q. 1,300. So you have got -- do the deputies supervise  
11 the 1,300?

12 A. No -- well, actually, actually, we -- our sergeants  
13 in some areas are deputy sergeants.

14 Q. Okay. So --

15 THE COURT: Mr. Barnett, just to interrupt for a  
16 moment. The Court would like to take a quick ten-minute  
17 break. So let's be in recess. It is 11:02, let's come  
18 back, how about 11:15, that is about 13 minutes.

19 MR. BARNETT: Your Honor, if I could request  
20 that during the break -- well, never mind.

21 THE COURT: I'm happy to note your request, what  
22 would you -- it's okay. What would you like?

23 MR. BARNETT: Well, I was --

24 THE COURT: If you want him to review something,  
25 I'm happy to give him a little longer if you want to do

1 that. We need a break anyway.

2 MR. BARNETT: I was thinking that if counsel  
3 wanted to show him the declaration that we submitted,  
4 this might be a good time do it. But I --

5 THE COURT: Okay. Let's go off the record.

6 (Off-the-record discussion.)

7 THE COURT: Please proceed.

8 MR. BARNETT: Thank you.

9 Q. Chief Robinson, we're back from our break. Do you  
10 realize you are still under oath?

11 A. Yes, sir.

12 Q. Okay. And we just left off before the break, I  
13 think it is Paragraph 11 or 12.

14 A. Yeah.

15 Q. Paragraph 12 we were talking about deputies  
16 enforcing social distancing. Do you remember that?

17 A. Yes, sir.

18 Q. And you said you think there may be about 20  
19 deputies and about 1,300 DSOs?

20 A. That's correct.

21 Q. And in Paragraph 12 you say that deputies that  
22 enforce social distancing, but you didn't say that DSOs  
23 do; is that correct?

24 A. No.

25 Q. In Paragraph 12 you said deputies, not deputies and

1 DSOs or staff, right?

2 A. Yes, that's correct.

3 Q. Okay. Thank you.

4 MR. BARNETT: And in the interest of time, Your  
5 Honor, there are 37 paragraphs of the declaration. I'm  
6 going to move to something else.

7 THE COURT: Make a mental note if you need to  
8 come back to that later in your examination, I'll make a  
9 little note in my notes too.

10 MR. BARNETT: Thank you, Your Honor.

11 Q. Chief Robinson, we heard cross-examination of Dr.  
12 Robert Cohen, expert in corrections medicine, who is  
13 testifying pro bono. You were here for that; is that  
14 right?

15 A. Yes, sir.

16 Q. And counsel for Intervenor did a cross-examination,  
17 he was asking questions to the effect that detainees who  
18 seek to be released from the jail because they're  
19 especially vulnerable to infection and death from  
20 COVID-19 should be held in the jail indefinitely until  
21 Dallas County obtains enough tests for COVID-19. Do you  
22 recall that cross-examination?

23 MR. BIGGS: Judge, I'm going to object. I don't  
24 think that was my statement at all.

25 THE COURT: Okay. Well, so -- so what -- are

1 you objecting that it misrepresents what you said?

2 MR. BIGGS: Yes, Judge. I think first and  
3 foremost it misrepresents the testimony from Dr. Cohen  
4 and the statement of counsel. I've never once said that  
5 everyone should be held indefinitely until this number of  
6 tests. I was just pointing out the absurdity of his  
7 requirement of everyone being tested going in and coming  
8 out, Judge.

9 THE COURT: Okay. Well, if you'll rephrase your  
10 question.

11 And Mr. Barnett, if you don't mind me chiming in  
12 for a minute, you used the term pro bono. You probably  
13 know this, Chief Robinson, but just in an abundance of  
14 caution, that is kind of a word that lawyers throw around  
15 and it's just Latin for -- just a fancy word for free.  
16 So the -- the -- Dr. Cohen was not charging for his  
17 services. You probably knew that, but I just wanted to  
18 make sure we were all on the same page.

19 So Mr. Barnett, if you'll rephrase your question  
20 and reask it, the Court would be grateful.

21 Q. Sure. Okay. Thank you.

22 Do you recall the Judge -- or the examination by  
23 Mr. Biggs, since he's now spoken up, to the effect that  
24 should people be released from jail before they get  
25 testing for COVID-19; do you recall that line of

1 questioning?

2 A. Yes.

3 Q. And did you infer from what Mr. Biggs was saying  
4 that he thinks people should stay in the jail until tests  
5 are available; do you remember that?

6 MR. BIGGS: Objection to relevance, Judge, what  
7 he thinks I said.

8 THE COURT: Okay. I hear your objection.

9 MR. STEPHENS: I join that objection.

10 THE COURT: Your relevance objection is  
11 overruled.

12 You may answer, Chief.

13 A. Restate the question, please.

14 Q. Sure. When the attorney was asking whether people  
15 should be released from jail before they were tested for  
16 COVID-19, did you infer he was suggesting that they  
17 should be held until those tests become available?

18 A. No, I don't.

19 Q. You didn't infer that? Okay.

20 Do you believe that the deputy chief in charge  
21 of detention services at Dallas County has an obligation  
22 to provide for adequate health and safety of the people  
23 in the custody of the jail?

24 A. Yes.

25 Q. Let's look now at one of the declarations that is in

1 opposition to your TRO. First is the declaration of Jeff  
2 Segura. If we could pull that up.

3 THE COURT: Okay. Give me just a moment and  
4 we'll pull it up.

5 I'm sorry, which one was that, Mr. Barnett?

6 MR. BARNETT: It is declaration of Jeff Segura.  
7 It is filed Document 34, dash, three.

8 THE COURT: Okay. Great, we will pull it up.  
9 Thank you, sir.

10 (Off-the-record discussion.)

11 Q. Okay. Thank you, let's scroll down Paragraph 5.

12 And while we're doing that, Chief Robinson, do  
13 you know Mr. Segura, he's the -- he says in his  
14 declaration that he's the pretrial services manager of  
15 Dallas County?

16 A. Yes, sir.

17 Q. Do you know him and have you worked with him?

18 A. Yes.

19 Q. Mr. Segura says in Paragraph 9 that he's, quote,  
20 Been informed that the Court has requested information on  
21 the availability of alternatives to incarceration. And  
22 then in parentheses, he says, e.g., leg monitors, GPS  
23 location devices, and then closed quote; is that right?

24 A. Yes.

25 Q. Okay.



1           MR. BARNETT: And Your Honor, just so the record  
2 is clear, we probably ought to mark this as the next  
3 exhibit. I think maybe it's 13.

4           THE COURT: It's so marked.

5 Q. My first question, Chief, is whether there are  
6 alternatives to incarceration other than leg monitors and  
7 GPS location devices?

8 A. I -- restate your question again. I didn't hear you  
9 well.

10 Q. Yeah. Are -- are there alternatives to  
11 incarceration other than letting people out, but making  
12 them wear leg monitors and GPS location devices, are  
13 there other ways to keep track of them, for example, that  
14 are actually used by Dallas County?

15 A. I'm not sure.

16 Q. For example, telephonic check-ins, is that in your  
17 list of things that -- how to keep track of people rather  
18 than having them in jail?

19 A. I'm not sure.

20 Q. How about text message reminders, have you ever  
21 heard of that being a way to keep track of people charged  
22 with crimes?

23 A. I'm not sure.

24 Q. How about to make -- requiring them to make reports  
25 to treatment providers, is that a method that Dallas

1 County uses?

2 A. I'm not sure.

3 Q. And how about housing people in, say, a -- a hotel  
4 or a motel? I've heard that being done. Dr. Cohen may  
5 have talked about that.

6 Is that an alternative to keeping people inside  
7 the -- the jail itself?

8 A. I'm not sure. I'm -- have no knowledge of that.

9 Q. Okay. Do you -- as the head person in Dallas County  
10 for the jail, can you tell us what is the cost of  
11 incarcerating a person in the Dallas County jail?

12 A. Yes. It's approximately \$75 a day.

13 Q. That's the all-in expense of all the money that's  
14 expended on the jail to keep somebody in prison who is in  
15 jail, \$75?

16 A. Approximately, yes.

17 Q. And how is that number calculated?

18 A. I'm not sure.

19 Q. Where did -- where did that number come from?

20 A. That's the number that's being calculated -- I'm  
21 pretty sure, by our budget or somebody like that, but I'm  
22 not sure.

23 Q. Does that take into account like, capital  
24 expenditures and other expenses relating to the jail or  
25 is it just the marginal additional cost?

1 A. I'm not sure.

2 Q. Okay. Who -- who would know that answer to that  
3 question?

4 A. More than likely our budget department.

5 Q. Okay. Well, my second question has to do -- or set  
6 of questions about Mr. Segura -- has to do with the total  
7 number of devices, which Mr. Segura says there are 39  
8 available ones.

9 A. Uh-huh.

10 Q. But then he says there are 480 persons who are  
11 subject to wearing the devices. Does that mean there are  
12 more than 39 devices in total that the Dallas -- the  
13 Dallas County has?

14 A. I don't work over there, so I -- I'm not sure what  
15 they have.

16 Q. Okay. Well, maybe Segura can enlighten us.

17 The other declaration is by Patrick Jones, who  
18 identifies himself as vice president of correctional  
19 services at Dallas County hospital district. His  
20 declaration was 34, dash, 2.

21 If we could pull that up.

22 (Brief pause.)

23 THE COURT: Is that what you needed,  
24 Mr. Barnett, 34.2?

25 MR. BARNETT: Yes.

1 Q. Okay. In Paragraph 2 -- oh, I'm sorry, do you know  
2 Mr. Jones?

3 A. Yes, sir.

4 Q. And does he office in the jail complex?

5 A. Yes.

6 Q. And he's the vice president of correctional services  
7 with the Dallas County hospital district; is that right?

8 A. That's correct.

9 Q. And like you, Mr. Jones, in this Paragraph 2,  
10 defines COVID-19 as, quote, The novel Coronavirus, closed  
11 quote; is that right?

12 A. Yes.

13 Q. Earlier we heard counsel for Defendants answer a  
14 question by Judge Brown about whether any Parkland  
15 doctors would testify. And Counsel said he imagined  
16 they're busy.

17 Did you hear that testimony?

18 A. Yes.

19 Q. And Judge Brown asking that question, do you  
20 remember that?

21 A. Yes, sir.

22 Q. Are they too busy to submit a declaration?

23 A. I can't answer that.

24 MR. STEPHENS: Your Honor, calls for speculation  
25 -- the state of our public healthcare workers.

1           THE COURT: All right. He's answered it. I'll  
2 sustain your objection. He doesn't know.

3 Q. In looking now at Paragraph 11 of Mr. Jones'  
4 declaration, it is on the next page, down towards the  
5 bottom -- I'm sorry, it is at the top. No, it is down at  
6 the bottom, sorry. Looking at the wrong thing.

7           Are you there, Chief?

8 A. Yes, sir.

9 Q. He says, quote, Parkland is also working with an  
10 infectious disease specialist, Dr. Nijhawan of UTSW, that  
11 is in parentheses. He was working with Dallas County's  
12 infectious disease specialist at Parkland's own  
13 infectious disease specialist to identify, recommend, and  
14 assist with the implementation of practices for managing  
15 the COVID-19 pandemic.

16           Did I read that correctly?

17 A. Yes.

18 Q. And do you believe UTSW refers to UT Southwestern  
19 Medical School here in Dallas?

20 A. Yes.

21 Q. And do you know Dr. Nijhawan?

22 A. No.

23 Q. Have you heard her name before?

24 A. No.

25 Q. Has anybody other than Counsel explained to you

1 whether she's too busy to sign a declaration?

2 A. Not that I know of.

3 Q. So you have not talked with Dr. Nijhawan, the  
4 infectious disease specialist that's working with  
5 Parkland, about the COVID-19 outbreak in the jail; is  
6 that right?

7 A. That's correct.

8 Q. Can you tell Judge Brown why Mr. Jones mentioned her  
9 in his declaration?

10 MR. BIGGS: Objection; calls for speculation.

11 MR. STEPHENS: Join the objection.

12 THE COURT: I think your objection is premature.  
13 Let's see if he knows. You assume he's going to  
14 speculate it. If he says he doesn't know, then I'll  
15 sustain your objection, but if he does know, he can  
16 answer.

17 A. No, I don't know.

18 THE COURT: Okay. I'll sustain your objection.

19 MR. BARNETT: Your Honor, I'd like to spend a  
20 little time talking about the relief that the plaintiffs  
21 are asking you to award.

22 Q. Chief Robinson, will that be okay that I ask you a  
23 few questions about that?

24 A. Yes.

25 MR. BARNETT: And what I'd like to pull up --

1 can you give me just a minute, Your Honor?

2 THE COURT: Of course, take your time. Off the  
3 record for a moment.

4 (Brief pause.)

5 MR. BARNETT: All right. I'm ready, Your Honor.

6 THE COURT: Back on the record.

7 Mr. Barnett, you may proceed when you are ready.

8 MR. BARNETT: Thank you.

9 Q. What I'd like to look at in the Dropbox folder that  
10 we sent before the hearing started, I guess Sunday, maybe  
11 Monday, it's Item 2 in Folder 9.

12 THE COURT: Give us just a moment to get that  
13 and we'll pull it up.

14 Did your say Item 2, is it the letter?

15 MR. BARNETT: It is Item 2, it is the letter.

16 THE COURT: We'll pull it right up.

17 MR. BARNETT: Item 2 in Folder 9.

18 THE COURT: Thank you for your patience.

19 (Off-the-record discussion.)

20 Q. I think we've marked -- marked this as Exhibit 14?

21 THE COURT: Exhibit 14.

22 Q. Chief Robinson, this appears to be a letter dated  
23 March 25, 2020 addressed to Sheriff Marian Brown and  
24 several other Dallas County officials.

25 You've seen this letter before, correct?

1 A. No, I have not.

2 Q. If you look down at the bottom, scroll down at the  
3 bottom.

4 I can't tell if we have or not.

5 THE COURT: What are you looking for and I'll  
6 make sure. I see a doctor's name printed and the  
7 signature on the page above; is that what you were  
8 looking for?

9 MR. BARNETT: I think it is the signature  
10 that --

11 THE COURT: I think that's it. And then the --  
12 scroll up just a little further.

13 Is that what you want, just the signature?

14 MR. BARNETT: The signature and then the name  
15 too.

16 THE COURT: It is on the bottom of that page,  
17 you will get kind of, two pages.

18 MR. BARNETT: Yeah, that would be great.

19 THE COURT: All right.

20 MR. BARNETT: And I'm going to refresh.

21 THE COURT: Don't forget to mute your mic.

22 MS. DAVID: Your Honor, this is Kate David and I  
23 would like to represent to the Court as an officer of the  
24 court that this letter was e-mailed to me from  
25 Plaintiffs' counsel and it was never sent to the parties



1 that claimed that it says it was sent to as of two weeks  
2 ago when I asked them about it.

3 So I don't think Dallas County has seen this  
4 letter.

5 THE COURT: Let's go off the record just for a  
6 minute so I can read it.

7 (Off-the-record discussion.)

8 THE COURT: What I have before me is -- has this  
9 been marked yet for identification? You are not moving  
10 it into evidence at this point, but just to mark it so we  
11 can discuss it for the record, for the appellate record.  
12 This is going to be Plaintiffs' 14.

13 We are discussing on March 25th, 2020 letter  
14 from -- a medical doctor named Ank, A-N-K,  
15 N-I-J-H-A-W-A-N, Nijhawan, that was purportedly sent to  
16 Sheriff Marian Brown, Dallas County judges, which I'm  
17 assuming would be the County court judges, Dallas County  
18 Commissioners, and criminal district court judges, so it  
19 would be both misdemeanor court judges and district court  
20 judges.

21 And the content of which deals with the outbreak  
22 of the COVID crisis. And again, this is dated March  
23 25th, 2020. And it is -- it is recommending -- scroll  
24 down, it looks like it is discussing the potential  
25 release of inmates because of social distancing concerns.

1           And I'll just read a sentence: If we don't  
2 reduce the population in the Dallas County jail  
3 substantially and in very short order, we risk  
4 contributing to an already-expanding outbreak.

5           All right. And so Plaintiffs' counsel has shown  
6 this to Chief Robinson, who's -- and Defense Counsel has  
7 objected. And again, you will refresh my recollection,  
8 we can talk about this for a minute, but if you asked  
9 Chief Robinson if he's ever seen this?

10           MR. BARNETT: I did. He said he hasn't.

11           THE COURT: So he's not seen it. Defense  
12 Counsel, what is your objection for the record or  
13 objections for the record?

14           MS. DAVID: I -- Your Honor, first objection is  
15 to the authenticity of the document. Assuming -- if you  
16 overrule that, then we're going to rely on deliberative  
17 process privilege.

18           THE COURT: Okay. You'll have to give the Court  
19 a refresher on that. I've heard of that, but I've tried  
20 a lot of cases; that's never been an issue before me.

21           MS. DAVID: So the deliberative process  
22 privilege protects the government's ability to give  
23 candid advice and to make good decisions, and it would  
24 cover this document, assuming it was actually sent to  
25 anyone in Dallas County, which again, we have no idea.

1           THE COURT:   Okay.   And so what -- where can I  
2 find the deliberative process privilege?

3           MS. DAVID:   It's in case law, Your Honor, but we  
4 can get you a case.

5           THE COURT:   Okay.   If you get me a case  
6 outlining the elements.   Because it looks like this was  
7 sent to -- it is not public but this is not a -- doesn't  
8 appear to me to be a private correspondence.

9           So just going with the Court's understanding of  
10 general concept of privilege, this was not sent like,  
11 from a doctor to a county attorney talking about this  
12 case.   This is something sent out to -- scroll back up if  
13 you would -- I see you forming your mouth, Defense  
14 Counsel.   Let me say what I want to say and then I'll get  
15 your thoughts and I'll go back to you too.   I'll hear  
16 from everybody.   And Intervenor, I'll tag you in this  
17 too.

18           So it's talking about, Dear Esteemed Colleagues.  
19 And again, it is to Sheriff Marian Brown, Dallas County  
20 Judges -- so this is sent to nothing but elected  
21 officials.   This doesn't appear to me to be a private  
22 communication.

23           Can you pull up a case?

24           MS. DAVID:   Yeah, we're pulling it up now, Your  
25 Honor.

1           But the deliberative process privilege, my  
2 understanding, is much broader than just communications  
3 with an attorney. But we are pulling up a decision on  
4 that. And -- and again, that all assumes that it's even  
5 authentic, which we have no idea.

6           THE COURT: Okay. Right. And -- assuming that  
7 you know, authentication is a small hurdle, so assuming  
8 -- but assuming that somehow they could get past that.  
9 I'm interested in this privilege. And --

10          MS. DAVID: So --

11          THE COURT: Here is a question, too: Are you  
12 the holder? And -- and if this is written by Dr. N, I'll  
13 call her -- you know, can you assert privilege on her  
14 behalf? Is she is a county employee?

15          MS. DAVID: She --

16          THE COURT: Does she have standing?

17          MS. DAVID: My understanding is that she is an  
18 agent.

19                But let me -- I'll read this case to you. This  
20 is from 532 U.S. 1, Department of the Interior v.  
21 Klamath Water Users. And it says, Work product protects  
22 the law. Okay. While deliberative process covers  
23 documents reflecting advisory opinions, recommendations,  
24 and deliberations comprising part of a process by which  
25 governmental decisions and policies are formulated.

1           The deliberative process --

2           THE COURT:   Okay.   Let me stop for just a moment  
3   so my court reporter doesn't have to take this all down  
4   and then we'll go back on the record.

5           (Off-the-record discussion.)

6           THE COURT:   What is the -- what is the position  
7   of -- of -- going back to this exhibit.   There's been an  
8   objection lodged by Defendants for authentication and  
9   hearsay.   And Intervenor, do you join in that objection?

10          MR. BIGGS:   We do join in that objection, Your  
11   Honor.   But for record purposes, may I please expound?  
12   We have a -- a slightly more expansive prejudice argument  
13   we'd like to make.

14          THE COURT:   All right.

15          MR. BIGGS:   So Judge, this will become clear  
16   when we discuss the declaration filed, I believe, last  
17   night or this morning by Ms. Fly.   This case has been  
18   litigated almost by surprise by the plaintiffs who  
19   continue to file things.

20          And we've been trying to respond the best we  
21   possibly can and formulate fully-formed arguments for  
22   this Court in responses, but we are just prejudiced by  
23   the continuing and ever changing --

24          THE COURT:   Okay.   Let me stop you there for  
25   just a minute, Mr. Biggs.   Here is what I want to hear

1 about, I want to hear about your objection to this  
2 exhibit. I don't want to hear a tirade about how you  
3 think this case has been tried. I appreciate that. But  
4 that is neither here nor there at this point. So if they  
5 bring up something else that you don't like, you can  
6 object to that too.

7 What is your objection to this exhibit, please?

8 MR. BIGGS: We join the objection to the  
9 defendants, Your Honor.

10 THE COURT: Do you have anything you want to add  
11 to it? I'm not trying to cut your legs out from under  
12 you. I understand you've got a job to do, so do you have  
13 any objection to add other than authentication and  
14 hearsay?

15 MR. BIGGS: I think it would be unfair surprise  
16 as well, Your Honor.

17 THE COURT: Okay. Fair enough. All right. So  
18 Mr. Barnett, they've objected to authentication, hearsay,  
19 they've asserted this deliberative process privilege.

20 Are you standing by that too, Ms. David?

21 MS. DAVID: Yes, Your Honor.

22 THE COURT: Okay. Thank you. And what is your  
23 response -- I don't see how you can authenticate this  
24 because they are fighting you on it. So what do you want  
25 to do? Because I'm going to have to sustain it as to

1 authentication. The witness doesn't recognize it. You  
2 can't tell me where it came from. Doesn't have any seal  
3 on it, so I don't -- I don't know that I -- that there is  
4 anything I can do other than sustain that.

5 MS. WOODS: Your Honor, I'm sorry to interrupt.  
6 But we did just locate a link where this document is -- I  
7 believe is available online, and we can share that with  
8 the Court and the parties right now.

9 THE COURT: Okay. Is it linked to the Dallas  
10 County website or it's publicly available.

11 MS. WOODS: It's in -- it looks like it's an  
12 Oxford Academic link that attaches the correspondence.  
13 I haven't had a chance to fully digest it; I wanted to  
14 get it into the Court and the parties' hands.

15 THE COURT: I don't know that an Oxford link is  
16 going to get you anywhere with authentication. If it  
17 were linked to the Dallas County website, I think you  
18 would have a leg to stand on.

19 But I'm going to have to sustain it as to  
20 authentication. You-all can certainly move to add a  
21 witness if you think it is really important or you could  
22 try to -- you know, I don't want to give you strategy.  
23 You guys know how to play the game. So you can try to  
24 get it in through another witness if you want to.

25 But I'm going to sustain it as to authentication

1 at this time and then if you want to try something else,  
2 I'll take it up at that time. But I'll sustain it as to  
3 authentication.

4 MR. BARNETT: All right. Thank you, Your Honor.

5 A couple of things I wanted to mention before --  
6 on April the 5th, on a Sunday, I sent Dr. Nijhawan an  
7 e-mail noting that she had sent the letter and I attached  
8 a copy of it.

9 I apologize for an intrusion on a Sunday, I  
10 explained I'm a private lawyer with my law firm, and that  
11 I'm writing because I am working on a pro bono basis to  
12 help people who work at or are detained in the Dallas  
13 County jail to avoid being infected of the novel  
14 Coronavirus that causes COVID-19.

15 It is my belief that the effort will at the same  
16 time help protect the community's limited public health  
17 resources from being overwhelmed by an impending surge in  
18 COVID-19 infections originating at the jail.

19 Your name has come to my attention as a result  
20 of an admirably public letter that you wrote to Dallas  
21 County officials on March 25th, 2020. I've attached a  
22 copy of the letter for your reference. I will be  
23 grateful for an opportunity to speak with you about your  
24 relevant expertise, knowledge, and concerns about the  
25 workers in the Dallas County jail and the potential



1 impacts of not testing and reducing the jail population  
2 in ways consistent with public safety.

3 Your voice could make a crucial difference in  
4 discussions with public officials and potentially the  
5 Court. Please let me know if you are available to talk  
6 by phone. Thank you for taking positive action on this  
7 pressing issue of public health. I hope to hear from you  
8 soon. Truly yours, and I -- included my phone number.

9 And I sent the e-mail, which I will forward to  
10 the Court and to the other parties too, to Dr. Nijhawan's  
11 e-mail address at UT Southwestern. This was April the  
12 5th.

13 I did not hear back from Dr. Nijhawan. And then  
14 the next thing I heard -- or saw was that the defendants  
15 had filed a declaration that said that she was working  
16 with them. So I didn't think it would be appropriate  
17 to -- to try to contact her again.

18 And I -- so that's the context for this letter.  
19 It has been produced to the other side and they've been  
20 aware of it, certainly able to look at it and formulate  
21 an objection to its being used.

22 And since this doctor is working for them and  
23 since Mr. -- Mr. Jones is specifically -- and has called  
24 the Court's attention to her in this declaration, they  
25 certainly could have asked her whether this was an

1 authentic letter. And therefore, I -- I would like an  
2 opportunity to ask her whether it is an authentic copy of  
3 her letter or not.

4 THE COURT: Okay. Well, I'm going to -- I'm  
5 going to sustain the authentication objection at this  
6 time. If you want to move to call her as a witness, I'll  
7 take that up separately. But I don't think you are going  
8 to get it in. Preserve it for appeal.

9 MS. WOODS: Your Honor, very briefly, I last --  
10 last interjection on this point.

11 THE COURT: Sure.

12 MS. WOODS: I did mention earlier that we have  
13 co-counsel who's not in a speaking role. I believe our  
14 colleague, Elizabeth Rossi, could support the  
15 authentication because she directly received an  
16 attachment of this letter from the doctor herself. And  
17 so if we could -- we would be happy to bring Ms. Rossi  
18 in.

19 But I just wanted to say that for the record as  
20 well.

21 THE COURT: Well, that could -- that may get you  
22 through the authentication hurdle. I think you still  
23 have a hearsay hurdle if she is not on your witness list.  
24 So I'll tell you what, let me look at it over lunch. I  
25 know we've got a hearsay objection, a deliberative

1 process privilege objection. And let me look at -- I'll  
2 give you -- I know the Court is not supposed to give  
3 advisory rulings, but I'll look at it and see if I think  
4 you guys can get through the hearsay without her, because  
5 I'm not sure you could.

6 MR. BARNETT: Two things.

7 THE COURT: Yes.

8 MR. BARNETT: The defense has claimed her as  
9 their agent, so whatever she says is an admission by  
10 them, that's number one. And number two, that would be a  
11 hearsay objection and it would warrant only the -- if we  
12 were offering it for the truth of the matter asserted.

13 THE COURT: Okay.

14 MR. BARNETT: I think we're offering it for a  
15 different reason, such as that they were on notice from  
16 recommendation or something that they should be doing  
17 since -- being different to their obligation it would be  
18 relevant to that. And that's not hearsay.

19 THE COURT: Okay. So let me hear from  
20 Defendants and Intervenor.

21 Defendant, they're saying they had some  
22 independent -- that it's not the content of the letter,  
23 just assuming -- that they get through authentication,  
24 they had somebody who actually got this from the doctor  
25 or had communication with the doctor with this attached.

1 Let's say they jump the small huddle of authentication.  
2 You-all have lodged these hearsay objections. And  
3 they're saying that just them -- you receiving it or --  
4 or just -- just its creation has some kind of relevance,  
5 as in giving you notice has some legal significance.

6 So that it's not the -- the contents, they're  
7 not offered for the truth of the matter asserted, but  
8 almost like an effect on a listener kind of thing.

9 MS. DAVID: Your Honor --

10 THE COURT: What is your response?

11 MS. DAVID: So a few things. Number one, I was  
12 thinking off the cuff when you were -- you and I were  
13 conversing and I think what I said is maybe an agent.  
14 I'm not at all characterizing her as an agent with that  
15 legal significance that he is attaching.

16 My understanding is he is working as a  
17 contractor, I believe, with Parkland. Parkland is a  
18 governmental agency, and that is why I believe that the  
19 deliberative process privilege applies.

20 THE COURT: Okay.

21 MS. DAVID: As to authentication, we're happy if  
22 you want to look at this over lunch to give you some more  
23 information on that. But my understanding is, even if  
24 the doctor e-mailed it to someone who then testifies that  
25 she receives it, that would not overcome authentication,

1 but we -- are happy to get you more information on that  
2 as well, if that is a concern.

3 THE COURT: Okay. Let me ask you this,  
4 Mr. Barnett, Intervenor -- well, before I do that,  
5 Intervenor, I've kind of cut you out of the action.

6 What is your position, do you have -- what  
7 they've got?

8 MR. BIGGS: We'll just ride along with Dallas  
9 County on this one, Judge.

10 THE COURT: All right. Thank you.

11 So, Mr. Barnett, here is what we've got here.  
12 I'm going to have to -- I guess I could look at -- and  
13 see if you could get through the authentication hurdle.

14 Are you going to try to get this in with Jones  
15 or -- do you need this for this witness? I don't want to  
16 mess up what you are doing with your case, you are in  
17 charge of your case.

18 MR. BARNETT: Right. I'm -- I wanted to ask him  
19 about it whether it is admitted or not.

20 THE COURT: Okay.

21 MR. BARNETT: It makes statements that the Court  
22 should know whether the guy in charge of the jail agrees  
23 with or not. So --

24 THE COURT: Well --

25 MR. BARNETT: -- even if it is not admitted it

1 is something that I could use to cross-examine him about.

2 THE COURT: So how would we find out,  
3 Defendants, whether -- if you'll scroll down, Dr. N works  
4 for Parkland? And it is Parkland that is doing the  
5 health services in the jail, right?

6 MS. DAVID: Yes, Your Honor. I believe Pat  
7 Jones would have the answer to that question.

8 THE COURT: Is Pat Jones available where you can  
9 ask Pat Jones if he knows if she works for Parkland?

10 MS. DAVID: He's at the hospital, but I can call  
11 him.

12 THE COURT: Okay.

13 MS. DAVID: But he will be here whenever -- I  
14 mean, we're planning on calling him as a witness. He'll  
15 be here. Do you want me to have him come over now?

16 THE COURT: No, I don't think we need him to  
17 physically come over. I am mindful of -- of that we are  
18 in a pandemic and they need him as long as they can have  
19 him there.

20 I'm just trying to figure out how to  
21 short-circuit this so I can get you guys a ruling and we  
22 can move on.

23 They want this in. So let me pause you there.

24 Back to you, Mr. Barnett. Dealing with the  
25 issue of authentication, who is this lawyer? I'm

1 thinking about going back to evidence in my mind here.  
2 If -- so you have got a lawyer -- let's go off the record  
3 for a second.

4 (Off-the-record discussion.)

5 THE COURT: We've got before us Plaintiffs' 14.  
6 We've got Defense objections to authenticity,  
7 deliberative process privilege, and hearsay generally.

8 Was there any objection that I missed?

9 MS. DAVID: No, Your Honor.

10 THE COURT: Okay.

11 MS. DAVID: I'm sorry, I didn't mean to speak  
12 for the State. I think they also objected on unfair  
13 surprise, I believe.

14 MR. BIGGS: That is correct, Judge.

15 THE COURT: Okay. Unfair surprise.

16 So Mr. Barnett, if you'll address those.

17 MR. BARNETT: Okay. Right. Well, unfair  
18 surprise, they can't be a surprise; this has been in  
19 their possession for days. This is the first time  
20 they've raised any objection to it.

21 THE COURT: And where was it? Was it filed?  
22 You will have to refresh me. How did they know about  
23 this document?

24 MR. BARNETT: I believe so. It's in the -- it's  
25 in the link that we sent to the Dropbox that has all the

1 exhibits that we were wanting to put in the record for  
2 the TRO hearing.

3 THE COURT: Okay.

4 MR. BARNETT: And that was done at least a  
5 couple of days ago. And Your Honor --

6 THE COURT: I'm sorry, go ahead.

7 MR. BARNETT: And I believe Your Honor said,  
8 look, if y'all want to object to something, you need to  
9 object. I want to know what's in or what's out before I  
10 make my ruling. I remember that.

11 So they've had it for awhile. And second,  
12 Mr. Jones put Dr. Nijhawan directly in issue by  
13 specifically calling her out in Paragraph 11 of his  
14 declaration to suggest that they're doing a great job  
15 because they hired this really great specialist.

16 Well, it turns out this really great specialist  
17 must have been telling them all along, you guys are nuts.  
18 This is a terrible situation, you need to change all  
19 kinds of things at the jail or people are going to die.  
20 That's the core of this case. So they put her before the  
21 Court; not us.

22 So unfair surprise, I don't -- I don't mean to  
23 be snippy, but I respectfully disagree with the -- any  
24 notion that they can possibly be surprised that their own  
25 contractor or agent -- I heard agent of -- is somebody



1     that they're surprised about.

2             As far as hearsay is concerned, it's not hearsay  
3     for at least two purposes. One purpose is, to show that  
4     the County and the sheriff were on notice that specific  
5     kinds of steps needed to be made in order to protect the  
6     health and safety of detainees at the Dallas County jail.  
7     So that's not proof of the truth of the matter asserted;  
8     that's notice.

9             And the second thing as far as hearsay is  
10    concerned, I also want to ask this witness on cross  
11    whether he agrees with the statements in the letter.  
12    Whether they're from Dr. Nijhawan or not, the Court is  
13    entitled to know whether he denies that any of that  
14    material is actually true.

15            For example -- and that would be pertinent to  
16    the Court's ruling on whether the County even today is  
17    being deliberately indifferent because of -- they're  
18    sticking their head in the sand about things that are  
19    just true and have been proven to be true and that  
20    they've known about for a long time. So that's not a  
21    hearsay use of it.

22            And to the extent it's for the truth of the  
23    matter asserted, I -- I did hear Counsel say that  
24    Dr. Nijhawan is an agent of the County. She certainly  
25    works for them. I -- I'm sorry, Mr. Jones pointing out

1 that she works for them. And so anything that she says  
2 on the core subject of this proceeding is -- is certainly  
3 something that could be attributed appropriately and the  
4 Court could take into account that either as hearsay or  
5 an exception to the hearsay because it's inherently  
6 reliable.

7 And furthermore, this is an expedited proceeding  
8 and as the Court has pointed out previously, the Rules of  
9 Evidence don't strictly apply. And this is the heart of  
10 the case and it really should be considered.

11 THE COURT: Okay. Thank you.

12 So I'm going to overrule the hearsay objection.  
13 I'm going to overrule the unfair surprise objection.

14 And as to authentication, I think we should take  
15 a lunch break and if you-all still want to move to admit  
16 this, you need to -- to forward the -- the e-mail chain  
17 to the lawyers. And then I'll rule on that -- the  
18 authentication issue after they've seen it so they can  
19 look at it.

20 So if you will forward the e-mail chain to  
21 Defense Counsel and Intervenors, then we will take it up  
22 after lunch. I vote we have a lunch break.

23 MR. BIGGS: And Judge --

24 MR. BARNETT: Your Honor, may I -- one other  
25 thing.

1           THE COURT: Yes. And hang on just a moment,  
2 Mr. Barnett. I hear Intervenor. Yes, sir?

3           MR. BIGGS: Yes, Judge. Just to clarify, we  
4 would request the entire e-mail chain, not just the one  
5 transmitting the letter.

6           THE COURT: Okay. As long -- I'm assuming  
7 there's no privilege there -- well, there wouldn't be  
8 because they -- she is not -- you are not representing  
9 her. So, yeah, if you'll forward the e-mail chain to  
10 Defense Counsel and Intervenor over lunch.

11           And, Defense Counsel and Intervenor, please  
12 remind me when we get back from lunch break, I will let  
13 you lodge objections based on whatever is on that e-mail  
14 chain. I have not yet ruled on the authentication  
15 objection so that you-all can have time to look at that  
16 and if it's appropriate, to make your objections.

17           But it looks like this is going to have legal  
18 significance other than the content. So for example, it  
19 says in the paragraph that I'm looking at, In addition,  
20 two to 300 inmates enter and leave the Dallas County jail  
21 on a daily basis.

22           What I'm hearing from Plaintiffs' counsel is,  
23 whether that -- that is or is not true, whether in fact  
24 200 to 300 inmates enter or leave the Dallas County jail,  
25 it's the ACLU's position that this letter has legal

1 significance whether or not that fact is true. Just so  
2 -- to show notice by its very sending; is that right,  
3 Mr. Barnett?

4 MR. BARNETT: Yes, Your Honor.

5 THE COURT: Okay. All right. So all right. So  
6 hearsay is out. Unfair surprise is out. I'll rule on  
7 authentication after you-all -- yes, ma'am?

8 MS. DAVID: I was just going to ask if we could  
9 also have -- all of the lawyers' correspondence. For  
10 example, Mr. Barnett read in an e-mail that we have not  
11 seen either. We would appreciate to see that as well.

12 THE COURT: If you wouldn't mind?

13 MR. BARNETT: I'll be glad to forward that.

14 THE COURT: Thank you, Mr. Barnett. If you  
15 forward that. And then I'll take up objections after  
16 lunch. And if you would, since -- since we are at 12:30,  
17 I think it is a good time for a lunch break. Let's go  
18 off the record for now.

19 (Off-the-record discussion.)

20 MR. BARNETT: Your Honor has the discretion to  
21 conditionally admit this exhibit conditioned on  
22 authentication. So we -- we don't have to delay  
23 everything until everything is just perfect. We're  
24 probably going to solve the authentication issue over  
25 lunch, once we come back. But I just wanted the Court to

1 be aware that that's in your authority.

2 THE COURT: Sure. That is a good reminder.

3 Let me ask you this: Is now a good breaking  
4 point if I conditionally admit it? And I've done it  
5 before on -- when authentication is the issue. If you  
6 are representing to the Court if you have got somebody  
7 who can show they got it, then, yeah, we can do that.

8 Would that allow you to continue questioning  
9 and -- when do you feel like you would need a break to  
10 head into the area where he needs time, where  
11 Chief Robinson needs time to look at everything?

12 MR. BARNETT: Yeah. Well, I -- I mean, I can  
13 continue now and walk him through the -- the letter.  
14 That is what I would be doing now. So I -- if -- if it  
15 would be a good time to break, since we haven't started?

16 THE COURT: Okay. Okay. Why don't we go ahead  
17 and do that. Let's break for lunch. That will give --  
18 and especially if you are going to ask Chief Brown if he  
19 agrees with this or not, let's give him a chance to look  
20 at it. If you will forward those e-mails.

21 Let's get back together at 1:30, and then we'll  
22 take up the objections to this letter. If over the lunch  
23 break, Defense Counsel and Intervenors, if you will talk  
24 to the chief and look at the -- the other evidence, the  
25 declaration, that would be great.

1           Anything else we need to take up before we have  
2           our lunch break?

3           MR. BARNETT: Just one thing, Your Honor. I  
4           would request that since there's a vigorous objection to  
5           the witness seeing this letter or testifying about it,  
6           that he not be shown it over the lunch break.

7           THE COURT: Okay. All right. All right. I  
8           think that's fair. So I'll sustain that. So don't show  
9           that to him. We'll take it back up, and then if he  
10          has -- yes, go ahead.

11          MS. DAVID: I just wanted to be clear that it's  
12          been on his screen this entire time. I don't want you to  
13          think that we showed it to him. It has been up for the  
14          whole time we've been talking about it. So we're --  
15          happy not to show it to him again, but this isn't --

16          THE COURT: Okay. That's fair enough. But  
17          yeah, if you'll not go into it with any details, since  
18          it's -- we're not sure it's coming in, then that would be  
19          great. Okay.

20          Well, thank you everybody for your patience.  
21          I'm sorry I snapped at you. We're all tired.

22          And Ms. David, I'm sorry, I know you're trying  
23          to advocate for your client and I -- I got your tail a  
24          little bit there. I know you are doing the best you can  
25          in a pandemic, too. And that you are trying to get your

1 witnesses here and that they have other places to be. So  
2 I will try to keep this on track as best I can. I don't  
3 want to get onto you for being a good advocate. You're  
4 doing a good job.

5           You guys are all doing a good job and I know  
6 we're all kind of hanging in the best we can. So I  
7 apologize for getting onto you. You are doing well.

8           MS. DAVID: That's okay. I'm happy for anyone  
9 to yell at me; it's part of my job.

10          THE COURT: Well --

11          MS. DAVID: I get it at home; it's totally fine.

12          THE COURT: Well, I think everybody is doing  
13 some really good advocacy.

14          Chief, I appreciate you being here. I know  
15 you've got responsibilities. We all do. And thank you-  
16 all for your patience and your grace. And I apologize  
17 for my shortcomings.

18          So let's have a good lunch and come back  
19 refreshed and we'll see you at 1:30. Court is in recess.  
20 Thank you.

21          (Recess taken.)

22          THE COURT: We're back on the record in the  
23 Sanchez case. And we were going to take up over lunch --  
24 we were going to have Chief Robinson look at some  
25 documents.

1           Chief Robinson, have you and -- and the  
2 attorneys for the defendants had a -- a chance to visit  
3 over lunch?

4           THE WITNESS: Yes, Your Honor.

5           THE COURT: Okay. And have you -- I want to be  
6 fair, have you had a chance to take a look at --  
7 actually, no. I'm sorry, you haven't had a chance to  
8 take a look at that document, you probably looked at the  
9 other document.

10           So hang on, Chief Robinson, let me get my  
11 thoughts together. I don't need to hear from you yet.

12           Let me hear from Ms. David.

13           Ms. David, did you have a chance to take a look  
14 at the document that's at issue, the letter?

15           MS. DAVID: Your Honor, I think my e-mail must  
16 be doing some strange things. I received one e-mail from  
17 today; is that what you are talking about that -- that  
18 Ms. Rossi sent to the doctor or are you talking about --

19           THE COURT: Yes. That's all I'm talking about  
20 right now, is the -- the e-mail chain -- should be the  
21 e-mail chain from the doctor to Ms. Rossi. And it -- the  
22 e-mail chain that was forwarded to us. Did you get that  
23 and have a chance to look at that?

24           MR. DAVID: I reviewed the e-mail from today. I  
25 didn't receive the chain that they read into the record



1 earlier, but that might be my e-mail issues. I don't  
2 know. Ben, did you receive the e-mail chain?

3 MR. STEPHENS: Your Honor, we received an e-mail  
4 correspondence from today which purports to be between  
5 Dr. Nijhawan and Ms. Rossi. We did not receive the  
6 e-mail we asked for from March in which Dr. Nijhawan  
7 originally sent the letter to Ms. Rossi.

8 THE COURT: Okay. So let's go off the record  
9 for a minute and we'll go back once we get all sorted  
10 out.

11 (Off-the-record discussion.)

12 THE COURT: I assume you are Ms. Rossi; is that  
13 right?

14 MS. ROSSI: Yes. Good afternoon, Your Honor.  
15 How are you?

16 THE COURT: Good afternoon. Thank you for  
17 coming. So are you Elizabeth Rossi at  
18 CivilRightsCorps.org -- your e-mail is  
19 Elizabeth@CivilRightsCorps.org?

20 MS. ROSSI: That is correct, Your Honor.

21 THE COURT: Okay. Great. And I see an e-mail  
22 chain that was e-mailed to me, it looks like the 23rd,  
23 today, at noon, from you to the doctor, where she  
24 confirms, at 1:34, that she wrote, Hi, Elizabeth. Yes, I  
25 wrote this letter and sent it by e-mail on March 25th to

1 the following e-mail addresses. And then it lists a  
2 Dallas County commissioner,  
3 CartriceeWashington@DallasCounty.org. Do you know who  
4 that was? You may not know, I don't know who that is.

5 MS. ROSSI: Yeah -- so I -- I have been  
6 observing the hearings. And obviously, as this situation  
7 came up, I sent an e-mail to Dr. Nijhawan just asking her  
8 to confirm that -- and I attached the letter that's at  
9 issue and part of the -- the -- the testimony here to  
10 confirm that it was, in fact, a letter that she had  
11 written. And then I asked her to confirm whether -- and  
12 to whom she had sent the letter.

13 You can see that e-mail, which I sent at 12  
14 noon. She responded -- Commissioner Garcia, Commissioner  
15 Koch, and Commissioner Daniel are all Dallas County  
16 commissioners. And Ms. Washington is a -- I believe an  
17 office manager for Commissioner Price, which I know only  
18 from having Googled the name.

19 THE COURT: Okay.

20 MS. ROSSI: And of course, it's  
21 SheriffMedia@DallasCounty.org. And I have no other  
22 insight who might receive an e-mail at that particular  
23 e-mail address. But yes, I sent the e-mail at the bottom  
24 and I received the e-mail at the top of the chain.

25 THE COURT: Do you have the e-mail that you

1 originally got from the doctor? Because this is today.

2 MS. ROSSI: I do, Your Honor.

3 THE COURT: Okay. You have got that.

4 MS. ROSSI: I do have that, Your Honor. The  
5 reason that I have provided this chain is because the --  
6 the e-mail chain from March involves other people who are  
7 not parties and not counsel and unrelated to this  
8 litigation.

9 We were connected to Dr. Nijhawan through other  
10 physicians. And so because it's accomplished the  
11 authentication purposes, it doesn't seem necessary to  
12 provide that other e-mail chain. However, of course, I  
13 defer to you.

14 THE COURT: Okay. Well, so she confirms and  
15 signs that she wrote this and sent it on this day to the  
16 county commissioners and Sheriff Media, which I'm -- I'll  
17 ask you, Defendants and Intervenors, your position on  
18 this.

19 But it appears to be connected in some way to  
20 the Dallas County sheriff. So thank you, Ms. Rossi.

21 Let me hear from Defendants. In light of this  
22 e-mail chain, I know it is not the original e-mail chain,  
23 but Dr. N is confirming that she wrote this letter and  
24 sent it by e-mail March 25th to the following e-mail  
25 addresses to one, two, three Dallas County commissioners

1 whose names I recognize, two Dallas County names I don't  
2 recognize, and to SheriffMedia@DallasCounty.org.

3 So do you still persist in your authentication  
4 objection, Defendants?

5 MR. STEPHENS: Yes, Your Honor. This e-mail is  
6 itself hearsay subject to no exception. It certainly  
7 doesn't serve to confirm that any of these individuals  
8 ever actually received the correspondence.

9 And since I understand Plaintiffs' argument to  
10 be that these -- that this letter is provided for notice,  
11 not for the truth, I think it's essential to confirm that  
12 the individuals who sent it -- actually received it.

13 THE COURT: All right. Intervenors, what is  
14 your objection?

15 Mr. Biggs, are you there? Mr. Biggs?

16 Let's wait just a minute.

17 (Off-the-record discussion.)

18 THE COURT: Are you joining their objection?  
19 They are objecting to the authentication.

20 MR. BIGGS: Yes, Judge. And we have one further  
21 point we'd like to make.

22 THE COURT: Sure.

23 MR. BIGGS: The reason we requested the original  
24 correspondence that the Civil Rights Corps is not willing  
25 to turn over, is because it speaks to the credibility of

1 this document. We're not going to be able to  
2 cross-examine the author of.

3 This letter contains quite a few things the  
4 plaintiffs in this case have been advocating, and I  
5 believe we are entitled to at least see where this came  
6 from, if it's not privileged, if they were encouraging  
7 this doctor to write this and have that entered in the  
8 record, Judge.

9 THE COURT: Okay. And Defendants, yes, I'm  
10 sorry, did you reurge your hearsay objection too? I'm  
11 sorry, Mr. Stephens.

12 MR. STEPHENS: We did reurge that hearsay  
13 objection. And I also did want to clarify for the Court  
14 who Dr. Nijhawan is and our understanding of her  
15 relationship to the parties in this case.

16 THE COURT: All right.

17 MR. STEPHENS: Dr. Nijhawan is an employee of  
18 the UT Southwestern. She is not an employee of Parkland.  
19 She is not an employee of Dallas County.

20 She provides services to Parkland under a much  
21 broader master services agreement, which defines many  
22 aspects of those entities and relationships. But she  
23 does not contract with or work for any of the parties to  
24 this case.

25 THE COURT: Okay. So what does she do with

1 Parkland? I'm confused. Is she a doctor at Parkland?

2 MR. STEPHENS: No. My understanding is she is  
3 a -- research doctor, primarily. And in that capacity  
4 for UT Southwestern, works with Parkland as Parkland  
5 needs her expertise.

6 THE COURT: Okay. Can we pull back up -- and  
7 I'll hear from everybody on this before I make a  
8 decision, but I'd like to see the document itself again.  
9 If we could pull that back up.

10 Because I know I've seen in this e-mail chain  
11 that she talks about being a private citizen, but I  
12 thought it was done under the letterhead of UT  
13 Southwestern.

14 Okay. There is no letterhead. I thought there  
15 was letterhead, but there isn't. Let's scroll down.

16 She doesn't mention where she works.

17 MR. BIGGS: And Judge, I don't mean to  
18 interrupt, but I believe in the e-mail correspondence  
19 we've seen as well she says she was not speaking on  
20 behalf of the university or Parkland.

21 THE COURT: Yes. I see that. Okay.

22 Okay. Well, Ms. Rossi --

23 MS. ROSSI: Yes, Your Honor.

24 THE COURT: So she wrote this letter sent by  
25 e-mail March 25th. Give me just a minute. I'm looking

1 at this.

2           Okay. Well, authentication is a small hurdle.  
3 And there has to be some evidence that it is what they  
4 say it is. And I think this -- I know Defense Counsel,  
5 you would like to see the original correspondence, but  
6 all they've got to do is be able to authenticate this  
7 document. And I think this Thursday, April 23rd, 2020  
8 e-mail gets them there as far as authentication.

9           She says, yes, I wrote this letter and sent it  
10 by e-mail to these e-mail addresses. So she's owning  
11 that she's the author. She's making clear that, I did  
12 check with my employer, UT Southwestern, before sending  
13 this. And I note that I wrote it as a private citizen  
14 and physician and it doesn't represent the views of the  
15 University of Parkland.

16           So this is just a private individual writing,  
17 she owns that she is the author, so I will overrule your  
18 authentication objection.

19           As to hearsay, you know, they claim that this  
20 gave the County notice, but she wrote this as a private  
21 citizen.

22           So I guess, Mr. Barnett, I want to talk to you  
23 about that. If she is just an ordinary person and not a  
24 party to this lawsuit, then I don't know that this has  
25 any independent legal effect to get you over hearsay.

1 MR. BARNETT: It's an admission -- well, if we  
2 were offering it for hearsay, as for the truth of the  
3 matter asserted -- which we are, by the way, but leave  
4 that to one side for just a minute.

5 THE COURT: Okay.

6 MR. BARNETT: If it gives the County notice of  
7 conditions at the jail by somebody --

8 THE COURT: It would have to be for -- okay.  
9 Let's go off the record for a second.

10 (Off-the-record discussion.)

11 THE COURT: I've got defense objection to  
12 hearsay and authentication. I overruled the  
13 authentication objection. I think their Thursday, April  
14 23rd, 2020 at 1:34 e-mail from Ms. Elizabeth Rossi to  
15 Dr. N clears the small authentication hurdle, because in  
16 the -- in the e-mail, Dr. Nijhawan confirms that she  
17 wrote the letter and e-mailed it out on March 25th. So I  
18 think authentication is not an issue.

19 Hearsay is an issue. And what I've heard you  
20 say, Mr. Barnett, is that this falls within the residual  
21 exception; is that right?

22 MR. BARNETT: That's one of the several points  
23 that I would make, Your Honor.

24 THE COURT: Okay. What other -- I'm looking at  
25 -- so let's knock these out. I'm looking at the residual



1 exception in my rule book, and I think that that's got to  
2 be -- okay. So one of the requirements is, It's more  
3 probative on the point for which it is offered than any  
4 other evidence that the proponent can obtain through  
5 reasonable efforts.

6 And I know that -- we're in the middle of a  
7 COVID crisis, but I think -- you know, I think in order  
8 for this to get in, there'd have to be some reason you  
9 couldn't call the doctor herself. And she is available,  
10 she is responding to e-mails, so I don't think the  
11 residual exception is going to get you there. So I am  
12 going to overrule you on the residual exception.

13 Do you have any hearsay exceptions that you want  
14 to argue?

15 MR. BARNETT: Okay. Yes, it is not hearsay  
16 because we're not offering it for the truth of the matter  
17 asserted.

18 THE COURT: Okay. And so what are you using, if  
19 it is not for the truth?

20 MR. BARNETT: That the County was aware that  
21 there was a crisis in the jail.

22 THE COURT: Okay. But wouldn't that -- so -- so  
23 just for a second, for them to have notice of that,  
24 though, then what she says in there is she is talking  
25 about the inmates in detailing that. That information

1 would have to be true to put them on notice.

2 So -- so that would be for the truth of the  
3 matter asserted.

4 MR. BARNETT: Okay. Well, it is true. It's  
5 been proven to the Court that it is true. Dr. Cohen has  
6 testified about it. Dr. -- Officer Lewis testified about  
7 it. The multiple declarations that have been submitted  
8 and are part of the TRO record for purposes of this  
9 proceeding all support that information. So it is true.

10 THE COURT: Right. But you are offering it for  
11 the truth, is my point. That in order for it -- it is  
12 not going to have any independent legal effect from a  
13 private citizen, so you are going -- the information  
14 would have to be true for it to be relevant to this case.

15 I mean, because otherwise, a nurse sending --  
16 sorry, a doctor sending a letter to the County, unless  
17 the contents of it really matter, it does nothing. It  
18 doesn't give them any notice. So it would have to be for  
19 the truth of the matter asserted.

20 MR. BARNETT: See, that is where we're not  
21 communicating, I think, Your Honor.

22 THE COURT: Okay.

23 MR. BARNETT: It is not offered for the truth of  
24 the matter asserted and to show some kind of notice of  
25 something.

1 THE COURT: Right.

2 MR. BARNETT: You don't have to prove that it  
3 was true to show that it gave notice.

4 THE COURT: Okay. So you are saying the  
5 contents don't -- I see where you are going, okay.

6 MR. BARNETT: If we were offering it for -- if  
7 it were hearsay and not being offered for purpose that  
8 makes it not hearsay or excluded from the hearsay rule,  
9 then that --

10 THE COURT: I see what you are saying.

11 MR. BARNETT: -- we'd have to prove that it was  
12 true -- or -- that you couldn't take it as -- as -- in  
13 evidence that it is true.

14 THE COURT: Okay. So you are saying whether  
15 what she said is true or not, the fact that she said it  
16 is putting them on notice.

17 MR. BARNETT: Absolutely. And that's -- that  
18 means it is -- it fits within the hearsay rule, which is  
19 not -- it is not subject to the hearsay rule at all.

20 THE COURT: Okay. All right. So I -- I think  
21 we are on the same page now.

22 So Defendants, what is your response to that,  
23 and then I will give you a ruling and we'll move on.

24 MR. STEPHENS: Your Honor, I'm -- I'm confused  
25 by the argument that a letter from a private citizen can

1 provide notice. I understand Mr. Barnett to be saying  
2 that the letter should have significance and have been  
3 something that Dallas County should have paid even more  
4 attention to because it came from a doctor who provides  
5 Dallas County with advice.

6 But Dr. Nijhawan acknowledged about an hour ago  
7 that the document was sent in her private capacity. She  
8 apparently intended to be sending it in her private  
9 capacity when she sent it in the first place. She  
10 reemphasized today that it was in her capacity as a  
11 private citizen.

12 And as Your Honor noted, this particular  
13 correspondence from a private citizen has no legal effect  
14 to provide Dallas County with notice any more than other  
15 communication from any private citizen, leaving aside the  
16 issue of whether this document was actually received.

17 It's -- I understand that they are offering this  
18 document as evidence that Dallas County was on notice.  
19 Receipt of the communication, which is supposed to have  
20 been part of that notice, is obviously -- obviously  
21 crucial. And there's still no nonhearsay evidence that  
22 this document was ever actually received by the intended  
23 recipients.

24 THE COURT: Okay. And Intervenors, do you join  
25 in that objection or do you have anything to add?

1           MR. BIGGS: Yes, Judge. The one thing I would  
2 add would be first, if it is not true, it's an irrelevant  
3 document. And second, if -- if they are offering it  
4 truly for the fact that it was sent, the reason why it  
5 was sent, as in if this doctor was encouraged by  
6 Plaintiffs' lawyers in this case to send it, is  
7 completely probative and has to be let in.

8           I mean, we're getting close to due process  
9 violations at this point. We have to have that in as  
10 well if the Court is inclined to let it in.

11          THE COURT: Okay. I'm going to keep it out.  
12 I'm going to sustain the hearsay objection. You can try  
13 it again with a different witness or bring the doctor in  
14 yourself, but I'm going to sustain the hearsay objection.

15          MR. BARNETT: Your Honor, can we subpoena her?  
16 We'll get it out right away.

17          THE COURT: Sure.

18          MR. BARNETT: Okay. I ask somebody to do that.

19          Your Honor, I've got -- the other purpose for  
20 looking at the -- the letter is to talk with the chief  
21 about it.

22          THE COURT: Okay.

23          MR. BARNETT: Ask him about his views on what  
24 should and should not be done at the jail.

25          THE COURT: I think that you can cross-examine

1 him on his views about what should and shouldn't be done  
2 in the jail without getting into the letter, because the  
3 letter is out.

4 But certainly, he's -- I mean, he has intimate  
5 knowledge of the jail and its policies, and so I think  
6 you can accomplish your task. He's certainly aware of --  
7 just from what I've heard so far, of what's going on with  
8 the COVID crisis. He's at the helm, so I think you can  
9 ask him everything you want to know without the letter.

10 MR. BARNETT: Thank you, Your Honor.

11 MR. BIGGS: Judge, may I object before we go  
12 back to the witness?

13 THE COURT: Yes.

14 MR. BIGGS: If they are going to subpoena the  
15 doctor, we -- I mean, we don't have the benefit of  
16 discovery. We need the underlying e-mails for Ms. Rossi  
17 to be able to prepare to discuss with this doctor. So we  
18 would ask this Court to order them to produce those to us  
19 as quickly as possible so we can prepare to have a -- a  
20 good examination of this doctor to explain why in the  
21 world this letter was sent and what form it was.

22 They've already indicated the e-mails are not  
23 privileged because it had other individuals on there that  
24 aren't lawyers.

25 MR. STEPHENS: And Defendants will join in that

1 request and I'll note that they did represent before the  
2 break that they would be providing those March e-mails.

3 THE COURT: Okay. And so before we proceed into  
4 going back to our testimony with the chief, if we've  
5 got -- is Ms. Rossi still here? If we can put her on the  
6 camera for a moment.

7 MS. ROSSI: Yes, Your Honor.

8 THE COURT: I understand that you don't want to  
9 unnecessarily involve people who are not parties to this  
10 litigation. We do have a protective order in this case,  
11 though.

12 And parties, give me a thumbs-up if this covers  
13 things like this. I haven't looked at it in a week, but  
14 does it cover communications like this, where we don't --

15 MR. STEPHENS: It's hard to say without seeing  
16 the communications, Your Honor. I would have to think --  
17 you know, it's a pretty standard protective order.

18 THE COURT: Why don't you -- Ms. Rossi, if  
19 you-all would forward that e-mail chain to Ms. Monk.

20 Oh, I think she dropped off. Oh, boy.

21 (Off-the-record discussion.)

22 THE COURT: So we're talking about this e-mail  
23 chain. I know there are other people involved that are  
24 not parties. But if it's not privileged, is there a  
25 reason why you can't produce it? I could see if there is

1 some privilege, if there is some attorney, or some work  
2 product, but if that is not the case, then -- I don't  
3 know if you were on the line, but it looks like you-all  
4 are going to subpoena this doctor to come. And so that  
5 means that the other side is going to get an opportunity  
6 to cross-examine her.

7 And so if there's -- relevant communications  
8 about the circumstances surrounding the letter, I think  
9 it is only fair to let the other side see that so they  
10 can cross-examine her on it if there is anything there.  
11 If there is nothing there, then you know, it doesn't  
12 matter.

13 But if you have got privileged communications, I  
14 think it would be appropriate for you to redact them. Or  
15 if there's work product relating to, you know, getting  
16 this case ready for litigation, I understand that. But  
17 if it is just ordinary back and forth between lawyers, I  
18 think they get to see it.

19 So if you will take a look at the e-mail chain,  
20 let me know if you are going to assert privilege or work  
21 product, and if not, I need to turn it over to them so  
22 they can prepare to cross her, okay?

23 MS. ROSSI: Yes, Your Honor. The -- the reason  
24 we're withholding it was because the objection was  
25 authentication and we had satisfied that with the e-mails



1 today. But I understand Your Honor's point to the extent  
2 they want to cross-examine her. So if I could have a  
3 moment to review for work product.

4 THE COURT: Sure.

5 MS. ROSSI: That would be great. Thank you.

6 THE COURT: Absolutely, absolutely. And I'll  
7 give you-all time to lodge your objections at the  
8 appropriate time, but I will sustain the hearsay  
9 objection as to this witness. And what I've done is told  
10 Mr. Barnett that he is free to ask him -- you know, this  
11 is the sheriff at the helm in a pandemic, so I think he's  
12 going to know everything you want --

13 MR. BIGGS: Judge?

14 THE COURT: -- that were in the contents of  
15 this.

16 Yes, Mr. Biggs?

17 MR. BIGGS: We would also request all the  
18 attachments, as well, to the e-mail chain.

19 THE COURT: Okay. Unless -- unless the  
20 attachments are privileged, if you'll send those too.

21 MS. ROSSI: Yes, Your Honor.

22 THE COURT: Or work product.

23 Thank you. I appreciate you. Thank you, guys.

24 With that said, Mr. Barnett, I think we're ready  
25 to resume your examination.

1 Chief, can you hear me okay, Chief?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Thank you for your patience. I  
4 think we're ready to roll.

5 Mr. Barnett, you may resume.

6 MR. BARNETT: Thank you, Your Honor. I would  
7 like an opportunity to visit with you further about what  
8 the law is on whether this is hearsay or not. This says  
9 that -- that non -- that showing notice is a non-hearsay  
10 purpose, and so the hearsay rule doesn't apply at all.

11 But I will move on, and I'll -- I'll try to do  
12 it in such a way that, if I'm able to persuade the Court  
13 the other way --

14 THE COURT: If you have got a -- if you have got  
15 a case that's helpful. I was just doing a quick read of  
16 the Federal Rules of Evidence, but if you've got a case  
17 that drills down more, I'm happy to entertain it. You  
18 know, I -- I -- I do the best I can on the fly, but I  
19 don't always get it right. So if you have got something  
20 to the contrary, give me a cite and I'll take a look.

21 MR. BARNETT: Okay. I'll send you something  
22 that is from 19 -- I'm sorry, 2015, 2016. It is the  
23 advisory committee on evidence rules. It is -- the  
24 Honorable William K. Sessions.

25 THE COURT: Okay. Great. If you'll send that

1 to Erica Monk, I'll look at that while you are  
2 questioning the witness.

3 And being human, I -- occasionally make errors.  
4 The Court will admit it and own it. And if I got it  
5 wrong I'll change my ruling.

6 MR. BARNETT: I'll send the whole thing. It's  
7 probably not going to be obvious which part is relevant,  
8 but I'll mention that it is under the section called,  
9 Proposed Amendment to Rule 83 -- 803(16), and 16 is in  
10 paren. And it talks about the nonhearsay purpose of  
11 notice.

12 THE COURT: Okay. Great. I will take a look at  
13 it and -- take a look at it as soon as you send it.

14 MR. BARNETT: Yes, Your Honor. Let me get that  
15 on the wires right away, Your Honor.

16 (Brief recess.)

17 Q. Chief, I was just talking to Judge Brown about some  
18 document issues. Are you ready to continue?

19 A. Yes, sir.

20 Q. Okay. Great. Now we talked earlier about how many  
21 people currently in the jail are there for nonviolent  
22 offenses. Do you -- do you remember that?

23 A. Yes, sir.

24 Q. And you said you couldn't tell how many of the 4,100  
25 out of the 4,900 or so were in for nonviolent offenses;

1 is that right?

2 A. Yes, sir.

3 Q. And I guess over the break you were probably too  
4 busy to get that information so we'd have it this  
5 afternoon; is that right, you don't have that with you?

6 A. That is nothing that's readily available.

7 Q. Okay. And you'd agree that people charged with  
8 nonviolent offenses are, as a rule, of less concern for  
9 future acts of violence than ones who are charged with  
10 violent offenses?

11 A. I'm sorry, I --

12 Q. Go ahead, go ahead, sir.

13 A. I said no.

14 Q. You don't agree with that, you think people who are  
15 charged with nonviolent offenses are just as much of a  
16 concern for the future acts of violence?

17 A. They could be.

18 Q. They could be. But this is -- this is talking about  
19 as a rule. Your understanding as head of detention,  
20 people who are charged with nonviolent offenses are of  
21 less concern for future acts of violence than ones who  
22 are charged with violent offenses?

23 A. It's all about criminal history.

24 Q. Okay. I -- but --

25 A. You have to look at the criminal history. I -- just

1 because someone commits a -- a nonviolent offense doesn't  
2 mean their criminal history doesn't have violent  
3 offenses.

4 Q. Okay. Fair enough. Why don't we make the -- we'll  
5 simplify the hypothetical that we're talking about so  
6 that we don't have to worry about that.

7 Everything else being equal, somebody who is  
8 charged with a nonviolent offense is, as a rule, of less  
9 concern for a possible future act of violence than  
10 somebody who is charged with a violent offense,  
11 everything else being equal; is that right?

12 A. I'm not sure.

13 Q. What would you need to know in order make a judgment  
14 about that, Chief?

15 A. You -- you are inferring behavior, so I wouldn't  
16 know, you know, their history, I wouldn't know anything  
17 except for, you know, that the charge that they have at  
18 hand. But if they had a history or they could have a  
19 nonviolent offense, but they could easily commit a  
20 violent offense.

21 Q. Okay. I hear you. But you are -- you are fighting  
22 me on the question.

23 I want you to accept that it's true that there's  
24 exactly the same -- there are two people who are exactly  
25 the same. The only difference is that one is charged

1 with a nonviolent offense and the other one is charged  
2 with a violent offense. Are you with me so far?

3 A. Yes, sir.

4 Q. Do you agree that the person charged with the  
5 nonviolent offense, as a rule, is of less concern for  
6 possible future acts of violence?

7 MR. STEPHENS: Objection.

8 MR. BIGGS: I'll object as well. This is  
9 improper hypothetical for a lay witness, Your Honor,  
10 which calls for speculation.

11 THE COURT: Overruled.

12 Q. You can answer.

13 I'm sorry, sir?

14 A. True.

15 Q. True. Okay.

16 Is it true that Dallas County is trying to  
17 prioritize inmates who are older to see whether or not  
18 they can be released -- to public safely?

19 A. I'm sorry, I didn't hear you well. Say that again?

20 Q. Yeah. Is it true that Dallas County is trying to  
21 prioritize inmates who are older -- we can talk about  
22 what that means in a minute -- for possible release from  
23 the jail in a way that's consistent with public safety?

24 A. That's kind of a difficult question, but -- I don't  
25 know about prioritizing. I think we are more leaning

1 toward people who are ill more than people who are old.

2 Q. All right. So but -- all right. So do you think  
3 that somebody who is older -- and again, people who are  
4 exactly the same, except one is older and the other one  
5 is younger. But the inmate who is older is of greater  
6 consideration for possible release due to concern about  
7 infection with COVID-19?

8 THE COURT: Mr. Barnett, I think you'll need to  
9 reask that. I got cut off on this end.

10 MR. BARNETT: Okay. I will do it again.

11 Q. Do you believe, as the head of Dallas County jail,  
12 that it's appropriate for the County to give  
13 consideration to inmates' age when deciding whether or  
14 not they should be considered for release from the jail,  
15 early release from the jail, because older people, other  
16 things being equal, are more susceptible to infection  
17 than -- and potentially death, from COVID-19?

18 A. I just want to get your question right. You are  
19 saying that people who are older would be prior -- more  
20 prioritized for getting out if they are older and sick,  
21 as opposed to older and sick and young is what you are  
22 asking?

23 Q. I'm asking if you have two people who are exactly  
24 the same except one was older and one was younger, 20  
25 years' difference, one was 60 and one was 40, and there

1 is no other differences between them except those two  
2 things. The one who is 60 is one that you would  
3 prioritize for consideration for release from the jail,  
4 right?

5 A. I'm not sure.

6 Q. Okay. And would you -- your priority to preexisting  
7 conditions like cancer or diabetes or lung disease, heart  
8 disease?

9 A. Well, I -- those are physician questions. I -- I  
10 wouldn't -- wouldn't know.

11 Q. Okay. Have you talked to the physicians about their  
12 recommendations regarding prioritizing inmates for  
13 release?

14 A. No, I have not.

15 Q. Is that because you just don't think that's your  
16 job?

17 A. No. They will give me their recommendation as to  
18 what they believe and who should get out or they would  
19 present it to the sheriff.

20 Q. Okay. So it is something that is important for you  
21 to know?

22 A. I'm sorry, I --

23 Q. It is important for you to know what the doctors are  
24 recommending about prioritizing inmates for release, do  
25 you agree with that?



1 A. I agree.

2 Q. Okay. Do you think that the Dallas County jail  
3 poses a real immediate danger to the health of the  
4 community outside the jail?

5 A. I'm sorry, I didn't hear you. Did you say did --  
6 was the jail itself a -- pose a threat?

7 Q. Yeah. Does it --

8 A. I'm sorry.

9 Q. -- does the Dallas County jail pose a threat to the  
10 health community outside of the jail because people come  
11 and go and can spread COVID-19 from the jail into the  
12 community, particularly including guards' and deputies'  
13 families?

14 A. No more than a regular community.

15 Q. Okay. So you would agree that it affects the entire  
16 community, not just families -- right?

17 A. What -- if I can expound?

18 What I'm saying is, that the people come to the  
19 jail from the community.

20 Q. Right. Okay.

21 A. Right.

22 Q. We were talking specifically about their family  
23 members. I understood you to be talking about them as  
24 well as other members of the community, if they came in  
25 contact. Do you understand what I'm asking you?

1 A. I disagree.

2 Q. Okay. You disagree that people coming and going  
3 from the jail pose a danger to the health of the  
4 community?

5 A. In what respect?

6 Q. That they can spread COVID-19 from the well over a  
7 hundred people who have already tested positive in light  
8 of the fact that you don't have enough tests to determine  
9 all the people who have been exposed, and the fact that  
10 you didn't test, apparently, the one person who died from  
11 COVID-19?

12 A. No, I disagree.

13 Q. Okay. Are you aware that the COVID-19 epidemic can  
14 spread quickly within the jail?

15 A. Yes.

16 Q. And it has spread quickly within the jail, right?

17 A. It has spread, yes, it has.

18 Q. And you cannot tell Judge Brown that people in the  
19 jail, either released from the jail or guards or people  
20 that visited, you can't tell Judge Brown that they have  
21 not taken COVID-19 out into the larger community; is that  
22 right?

23 A. I think -- could you ask that again? Because I --  
24 you kind of broke up, say that again.

25 Q. Sure. Okay. Let's do it this way. You, as the

1 head of the Dallas County jail, are not able to tell  
2 Judge Brown that the jail has not been a source of the  
3 spread of COVID-19 outside of the jail. Do you  
4 understand that?

5 A. I understand the question. But are you saying that  
6 the jail is a source of the spread outside?

7 Q. Yes.

8 A. Is that what you are saying?

9 Q. Yes, I'm asking whether you can tell Judge Brown  
10 that that hasn't happened?

11 A. No, I can't tell her that, no.

12 Q. Okay. Thank you.

13 Do you agree that people housed in the Dallas  
14 County jail are older and more likely to suffer from poor  
15 physical health and illness as compared with the general  
16 public?

17 A. I don't have any knowledge of that.

18 Q. Are you aware that over half of the people currently  
19 housed in the Dallas County jail have chronic medical  
20 conditions?

21 A. I don't know the numbers, but I know we have several  
22 inmates that are -- have chronic illnesses, yes.

23 Q. And you are aware that chronic medical conditions  
24 can make people unusually susceptible to infections with  
25 the Coronavirus?

1 A. Yes.

2 Q. I'd like to spend a little time with -- the  
3 plaintiffs are asking Judge Brown to award. Would that  
4 be okay?

5 A. Yes.

6 Q. I'd like to look at Plaintiffs' Exhibit 15. This is  
7 the order that was submitted I think a day or so ago.

8 MR. BARNETT: I'm not sure what docket entry it  
9 is, Your Honor, but it should be an amended order.

10 THE COURT: Okay.

11 MR. BARNETT: Maybe somebody could identify it  
12 for me since I don't have that handy.

13 THE COURT: Okay. Are you referring to an  
14 electronic order?

15 MR. BARNETT: Yes. It was submitted I guess --  
16 I guess it's a Word document of --

17 THE COURT: All right. And what do we think is  
18 in this, just so we can find it?

19 MR. BARNETT: It is called an amended order and  
20 it's what we're asking the Court to do.

21 THE COURT: Okay. I think this was just filed,  
22 yes, the amended TRO. It's like the last third or fourth  
23 -- I looked at that this morning, maybe third or fourth  
24 up from the bottom.

25 MR. BIGGS: It's 72.

1 THE COURT: I'm sorry?

2 MR. BIGGS: I believe it is 72.

3 THE COURT: Yes, thank you.

4 While she's pulling that up, I looked at what  
5 you sent me and I -- I'm going to stick with my ruling.  
6 You'll preserve it for appeal, but I want to notate for  
7 the record what you sent me, and it was talking about how  
8 under 803(16), evidence can be admitted as party opponent  
9 statements for -- or for non -- the non-hearsay purpose  
10 of notice.

11 And, you know, I think -- if you can show me  
12 that somebody absolutely received it, I think maybe you  
13 could get there on that. This is -- this doctor who  
14 wrote this is not a party; she wrote it as a private  
15 citizen.

16 So I'm going to stand by my ruling, but I want  
17 to narrate for the record, in fairness, in case you  
18 appeal me on it.

19 MR. BARNETT: Thank you, Your Honor. And I hope  
20 that's not the last time I can ask you about it, because  
21 I did that in about five seconds.

22 THE COURT: That's all right. That's all right.  
23 Hey.

24 MR. BARNETT: All right. We're pulling up the  
25 order, I think?

1           THE COURT: I think we've got it. Can you see  
2 it? Can everybody see? Give me a thumbs-up that you can  
3 see it.

4           Go ahead, Mr. Barnett.

5           MR. BARNETT: Can we scroll down to Paragraph 2.

6           THE COURT: Sure.

7           Do you need us to get any bigger or is that  
8 okay?

9           MR. BARNETT: That's good. Thank you, Your  
10 Honor.

11 Q. Chief Robinson, my question is, you see that the --  
12 there, that's a request for a list of current detainees  
13 which fit in different categories. Has Dallas County  
14 already provided much of that information to the Court?

15 A. I can't see the list. But -- okay.

16           Yes, sir, I think they have.

17 Q. Okay. Thank you.

18           THE COURT: And between questions there,  
19 Mr. Barnett.

20           Chief, nobody -- nobody wants to play gotcha.  
21 So if there is something you can't see or that you need  
22 to look at, I know it's not like real court where -- or  
23 not real court, this is real court -- not like old-  
24 fashioned court where you can take your time and look at  
25 something. So you -- you know, don't get in a hurry if

1 you need to look at something before you answer, or have  
2 them pinch it and make it bigger. Let us know, okay?

3 THE WITNESS: Yes, ma'am, thank you.

4 Q. If we could look down to Paragraph 3 on Page 2, I  
5 think.

6 Can you see there that Paragraph 3 is asking for  
7 the release of the detainees who are, quote, Awaiting  
8 transfer to a treatment facility.

9 Do you see that?

10 A. Yes, sir.

11 Q. Is that a readily identifiable group in the 4,900 or  
12 so who are in the jail currently?

13 A. Yes, sir.

14 Q. Do you think you could provide a list of people in  
15 that category within 24 hours if we needed to?

16 A. Yes, sir.

17 Q. Okay. And in the -- the intake, and maybe while you  
18 are keeping people in the jail, have you identified and  
19 have a record of people that you consider risks for  
20 violent --

21 A. I'm sorry, I didn't understand the question. Are  
22 you asking me in central intake have we identified  
23 inmates who have a risk of violence; is that what you are  
24 asking me?

25 Q. Yes. Do you have a -- do you classify people that

1 you take in based on some assessment of violence or  
2 violent tendencies?

3 A. Yes, sir.

4 Q. And how is that recorded?

5 A. They are classified prior to them getting a -- an  
6 assignment, you know, to a housing location. So they are  
7 assessed. And part of that assessment is their criminal  
8 history and the violence.

9 Q. Okay. And that information is readily available to  
10 you?

11 A. Yes, sir.

12 Q. For all of the detainees?

13 A. Yes, sir.

14 Q. Okay. And as the representative of Dallas County,  
15 can you tell us whether Dallas County opposes being  
16 ordered to comply with the public health protocols  
17 attached to your declaration as Exhibit B?

18 MR. STEPHENS: Objection; he's not a  
19 representative of Dallas County.

20 THE COURT: Well, isn't he your official  
21 representative? I guess he is a representative of the  
22 sheriff's office, is that --

23 MR. STEPHENS: He is here on behalf of the  
24 sheriff's office; that is correct.

25 THE COURT: Do you want to rephrase your



1 question, Mr. Barnett?

2 MR. BARNETT: Sure.

3 Q. As the authorized representative of the Dallas  
4 County Sheriff's Office and the chief deputy in that  
5 office, tell us whether or not the sheriff's office  
6 opposes being ordered to comply with the public health  
7 protocols attached to your declaration in Exhibit B in  
8 the Dallas County jail?

9 A. Am I supposed to be looking at -- I see four, but  
10 the -- to answer your question, any order that we are  
11 ordered to do we are not opposed to following the order.

12 Q. Well, do you oppose entry of an order that the  
13 Dallas County Sheriff's Office comply with the public  
14 health protocols in the Dallas County jail according to  
15 the protocols attached in your declaration as Exhibit B?

16 A. Yes.

17 Q. You do oppose that?

18 A. Yes.

19 Q. It's your official policy to comply with it, but  
20 you're opposed to being ordered to comply?

21 A. Yes.

22 Q. Does the Dallas County Sheriff's Department oppose  
23 being ordered to manage the jail, such as social  
24 distancing of 6 feet or more as physically possible and  
25 is diligently maintained?

1 A. Restate that again, I didn't hear the last part of  
2 it.

3 Q. Right. Does Dallas County Sheriff's Office oppose  
4 being ordered to manage the Dallas County jail, such as  
5 social distancing of 6 feet or more as physically  
6 possible and is diligently maintained?

7 A. Yes.

8 Q. And does Dallas County Sheriff's Office or  
9 department oppose employment of a qualified public health  
10 expert to assist the Court with a plan for additional  
11 measures to protect health and lives of detainees in the  
12 Dallas County jail?

13 A. Yes.

14 Q. And Chief Robinson, have you read declarations that  
15 have been submitted to the Court in support of the TRO  
16 application and in the record for purposes of the TRO  
17 application, have you read any of those declarations?

18 A. Yes.

19 Q. Which ones have you read?

20 A. I read them all.

21 Q. And did you take any action as a result of reading  
22 all of those declarations?

23 A. Well, we continue to take actions. So some of the  
24 actions have already been taken.

25 Q. So can you think of any action that you have taken

1 as a result of reading the declarations that are in the  
2 record?

3 A. No.

4 Q. Not a single thing?

5 A. I don't think so. Not by reading the -- the  
6 declaration, no -- or not because of the declaration,  
7 rather.

8 Q. And do you understand who's bringing this case?

9 A. Yes.

10 Q. Who do you understand is bringing this case?

11 A. To my understanding, it is complainants or  
12 plaintiffs out in the jail.

13 Q. Okay. Do you -- can you tell us the names of some  
14 of those people?

15 A. I know Mr. Sanchez, and I can't remember the other  
16 guys, but I remember a few of them. But I just can't  
17 recall their names right offhand.

18 Q. But you never -- do you remember Mr. Sanchez's first  
19 name?

20 A. I think his name is Oscar.

21 Q. There you go.

22 Now Chief, if a loved one needed to inform you  
23 of an emergency situation in the Dallas County jail with  
24 a detainee, could they call your office and get through  
25 to a person who answers the phone 24 hours a day?

1 A. No.

2 Q. Is your office phone number (214) 653-2902?

3 A. Yes.

4 Q. And how is that phone answered?

5 A. It answers to my office and my secretary.

6 Q. What times of day is that answered by a person?

7 A. Between the hours of 8:00 a.m. and 2:30 -- I mean --  
8 I'm sorry, 8:00 a.m. and 4:30 p.m.

9 Q. Is there a published e-mail address where people can  
10 send inquiries to -- that'll come to your attention  
11 directly or your assistant?

12 A. No. We -- I think we go through the regular shift  
13 department e-mail. And once they go through that regular  
14 e-mail they will send them to me.

15 MR. BARNETT: All right. Thank you,  
16 Chief Robinson.

17 Nothing further, pass the witness.

18 THE COURT: All right. Chief, do you need a  
19 break or are you okay?

20 THE WITNESS: No, Your Honor. I am okay.

21 THE COURT: All right. Sounds good. Everybody  
22 else give me a thumbs-up if you are ready to proceed.  
23 Make sure we don't need a stretch break. Okay.

24 Mr. Stepp, I didn't get a thumbs-up. Are you  
25 good?

1 All right. Ms. David, feel free to proceed.

2 MR. STEPHENS: I'll be proceeding, Your Honor.

3 THE COURT: Sorry. You don't look anything like  
4 Ms. David.

5 MR. STEPHENS: Yeah, fortunately for all of us.

6 CROSS-EXAMINATION

7 BY MR. STEPHENS:

8 Q. Chief Robinson, we dove right into your testimony  
9 today, so I'm going to take several steps back and have  
10 you give the Court some context, who you are, and why you  
11 are here today.

12 Can you explain to the Court what the  
13 responsibilities of your job are?

14 A. I am the chief deputy over operations -- and I run  
15 the daily operations of the Dallas County jail.

16 Q. So you have been in the jail every day?

17 (Off-the-record discussion.)

18 Q. Chief, do you work in the jail every day?

19 A. Yes, I do.

20 Q. How many years have you been working in the Dallas  
21 County jail?

22 A. I've been with the sheriff's office for 27 years.

23 Q. And is your testimony today based both on personal  
24 knowledge of the jail, because you are there on a daily  
25 basis, and on your 27 years of experience?

1 A. Yes, sir.

2 Q. I'd like you to briefly walk the Court through the  
3 timeline of an inmate's life cycle in the prison.

4 Officer Lewis touched on many aspects of this, but I'd  
5 like to give some context to what Officer Lewis did not  
6 describe.

7 When --

8 MR. STEPHENS: Actually, Judge, could I have Ms.  
9 Monk pull up the PDF of photographs of Plaintiffs'  
10 Exhibit 10 or portions of which are Plaintiffs' Exhibit  
11 10?

12 THE COURT: Sure. Give us just a moment and  
13 we'd be happy to do that.

14 (Brief pause.)

15 Q. So in this first photograph, which is Page 1, what  
16 are we looking at here?

17 A. This is the Dallas County Sheriff's Department sally  
18 port.

19 Q. And what happens in the sally port?

20 A. This is where officers enter to bring inmates to  
21 book them into the Dallas County jail.

22 Q. Do all inmates that are in the Dallas County jail  
23 come in through the sally port?

24 A. Currently, yes, but not all the time. Usually if --  
25 maybe some may enter at the front door, but now that

1 COVID is occurring, they all come through the sally port.

2 Q. Okay.

3 MR. STEPHENS: Can we go to Page 2 of the PDF.

4 Q. And Chief Robinson, what are we looking at here?

5 A. This is the entrance into the vestibule that takes  
6 you into the ground floor of the Dallas County jail.

7 Q. And what are those blue lines on the floor that you  
8 see in the photograph?

9 A. Yes, sir. Those blue lines are 6 feet apart, they  
10 are for inmates when they come inside the Dallas County  
11 jail to have social distancing while they are being  
12 assessed and searched for weapons.

13 Q. And while we're on the topic, which law enforcement  
14 agencies bring most arrestees to the Dallas County jail  
15 generally speaking?

16 A. Dallas Police Department.

17 Q. And other inmates are brought by other local law  
18 enforcement agencies?

19 A. That is correct. Irving, Addison, of course all of  
20 the county police departments bring their inmates who are  
21 charged with class B and above.

22 Q. Roughly what percentage of the inmates who are  
23 brought to the Dallas County jail are brought by the  
24 sheriff's department?

25 A. Very few percent, probably about 2 percent.

1 Q. What happens in this room we're looking at after the  
2 inmate enters?

3 A. Once they enter into this room, they are searched.  
4 But prior to searching, the first question that is asked  
5 is, have they been out of the country, have they been in  
6 touch with anybody who had COVID-19, and also do they  
7 have any symptoms of COVID-19. And their temperature  
8 will be taken before they are approached.

9 Q. What happens if an inmate either says that they have  
10 been out of the country, if they answer yes to any of  
11 those questions, or if they show symptoms?

12 MR. BARNETT: Your Honor, I was muted. I  
13 object. This is hearsay and a foundation hasn't been  
14 laid for personal knowledge.

15 MR. STEPHENS: Your Honor, you may be on mute.

16 THE COURT: Thank you. No wonder nobody knows  
17 my ruling. I'll overrule it as to hearsay and sustain it  
18 as to foundation.

19 So if you will ask him some foundational  
20 questions about how, if he knows this.

21 Q. Are you familiar with the procedures that your  
22 officers administer to inmates when they are booked into  
23 the jail?

24 A. Yes, I am.

25 Q. And do those procedures include asking a list of



1 questions that you just explained to the Court?

2 A. Yes, they do.

3 MR. BARNETT: Same objection so far, Your Honor.  
4 But maybe he'll fix it up.

5 THE COURT: All right. I'll overrule.

6 Q. And could you explain again, as we got sidetracked,  
7 what those questions are that the officer asks to  
8 arriving inmates?

9 MR. BARNETT: Your Honor, I object. This is  
10 hearsay. Foundation hasn't been laid that he has  
11 personal knowledge of what people actually do. He may  
12 have knowledge of what they're supposed to do, but it has  
13 not been established that he knows that they actually do  
14 it.

15 THE COURT: All right. I will sustain it.

16 If you can go back and clarify that, please.

17 MR. STEPHENS: Sure.

18 Q. Are you aware of the policies which officers at  
19 intake are supposed to follow when inmates arrive at the  
20 jail?

21 A. Yes.

22 Q. And do those policies which officers are supposed to  
23 follow include asking this list of questions?

24 A. Yes.

25 Q. And what was that list of questions again?

1 A. Well, they are -- have they been out of the country,  
2 have they -- do they have any symptoms of the COVID-19,  
3 which include fever, cough, and et cetera. Also, they  
4 will have their temperature taken.

5 Q. Do you know where this list of questions came from,  
6 who authored it?

7 A. Yes.

8 Q. And who was that?

9 A. I did.

10 Q. Okay. And if an inmate answers yes to that they've  
11 been out of the country or inmate is displaying symptoms  
12 or otherwise does not pass this screening test, where  
13 does that inmate go?

14 A. Walking --

15 MR. BARNETT: To be clear that he's not  
16 testifying about what this actually happens, but that  
17 this is the policy.

18 THE COURT: Would you specify, Mr. Stephens, I'm  
19 not clear from the question whether this is the what  
20 happens or the policy either. So if you would just  
21 clarify that and reask your question, that would help the  
22 Court.

23 Q. Chief Robinson, when I ask you questions about what  
24 happens at this part of the intake process, do you  
25 understand that I'm asking you questions about what your

1 officers are supposed to do?

2 A. Yes, sir.

3 Q. Okay.

4 THE COURT: And just so I'm clear, I'm asking a  
5 follow-up question too. As in, this is your official  
6 policy that you are testifying to, right?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. Great. Just want to make  
9 sure we're on the same page. Thank you, sir.

10 Q. Where are inmates who display symptoms or state that  
11 they've been out of the country or answer yes to one of  
12 your questions, where are they placed?

13 A. Walking inside that door that you are looking at, to  
14 the right is a holdover. That holdover is open and the  
15 inmate who answers affirmatively to any of our questions  
16 are placed in that holdover.

17 (Brief interruption.)

18 Q. Chief, I believe the last question I asked you was,  
19 what is the purpose of placing inmates in the holdover?

20 A. Inmates are placed in that holdover as a precaution  
21 so that the person, if they have any of the symptoms,  
22 they do not spread them. They are separated from the  
23 officers and then a nurse from Parkland is called to the  
24 floor.

25 Q. Do you know where the nurse is supposed to take the

1 inmate after holdover?

2 A. Yes, sir.

3 Q. Where is that?

4 A. They will come back and ask a series of follow-up  
5 questions regarding their health, and if confirmed that  
6 they think they are a candidate for COVID virus, that  
7 person is immediately taken up to the third floor of the  
8 Dallas County jail immediately, which is directly above  
9 where we were, where that picture is.

10 THE COURT: And if I could interrupt,  
11 Mr. Stephens.

12 I think the reverberation is coming from the  
13 chief's microphone.

14 Chief, could we try -- it's kind of echoing when  
15 you talk. Can we try scooting you back just a little bit  
16 and see if that helps.

17 (Off-the-record discussion.)

18 Q. Chief, for inmates who are taken by a nurse to the  
19 third floor, what do your policies dictate that inmates  
20 are taken next?

21 A. That person will be taken to our first floor, which  
22 is where our regular booking process occurs.

23 Q. Can you describe the regular booking process as it  
24 is supposed to be administered?

25 A. Yes, sir. They are brought to the floor and they

1 are searched again at one shakedown desk. After that,  
2 they are taken directly to -- approximately 3 feet away,  
3 the nurse's station, where they will have an assessment  
4 by our Parkland nurses.

5 Q. As -- has an inmate, according to your policies,  
6 already been provided with a mask by this point?

7 A. Yes. Whenever an inmate comes into that sally port  
8 they are masked at that point.

9 Q. So an inmate, according to your policy, is masked in  
10 the sally port door and then taken up to the regular  
11 intake area, correct?

12 A. Correct.

13 Q. And can we go to Page 4 of the jail photos PDF.

14 THE COURT: We're still having some transmission  
15 problems from the chief's mic. So if you'll give us a  
16 little grace here for just a second.

17 David, if you are on, or IT, if you can give us  
18 any tips for how to -- we're getting a lot of echo when  
19 the chief talks and the court reporter's having trouble  
20 taking it down.

21 (Off-the-record discussion.)

22 THE COURT: Feel free to proceed.

23 MR. STEPHENS: Thank you, Judge.

24 Q. Chief, the photo we were looking at on the screen,  
25 is this a -- is this a photo of the intake area?

1 A. Yes, sir.

2 Q. Does anything else happen in the intake area other  
3 than what you just described?

4 A. Yes, sir. We have also a, I guess, a unit in there  
5 from pretrial section. They come in and they do a  
6 financial affidavit and they also do a risk assessment of  
7 every inmate that comes in the Dallas County jail.

8 Q. And following the financial affidavit and the risk  
9 assessment, is the inmate arraigned?

10 A. Yes. After they are -- formally booked into the  
11 jail, they are taken before a judge and are arraigned.

12 Q. Have you observed the increase in the amount of  
13 arraignments in recent weeks?

14 A. Yes, we have.

15 Q. If at any point an inmate in intake begins to  
16 display symptoms that you associate with COVID-19, like  
17 coughing or shortness of breath, what would we -- what  
18 would be done, per your policies, for that inmate?

19 A. Immediately, that person would be taken to the third  
20 floor and the nurses will do an assessment on that.

21 (Off-the-record discussion.)

22 THE COURT: All right. Thank you-all so much  
23 for being gracious about our technical difficulties. I  
24 think, Mr. Stephens, we're ready to proceed. Thank you  
25 again.

1 MR. STEPHENS: Thank you.

2 Q. And Chief Robinson, you touched on this with  
3 Mr. Barnett on a classification system for inmates. And  
4 he was asking, I believe, in the context of wondering if  
5 you can determine which inmates are charged with violent  
6 crimes or not.

7 Can you explain for the Court more about the  
8 purpose of that classification and when it takes place?

9 A. Yes. Per jail standards, every inmate has to come  
10 to the Dallas County jail to be classified. And in that  
11 classification, they determine if that inmate is minimum,  
12 medium, or maximum in their classification. And that's  
13 how we house our inmates.

14 Q. So that classification system pertains to where an  
15 inmate is housed, and not -- necessarily their charging  
16 document or something that goes to the court; is that  
17 correct?

18 A. That's correct.

19 THE COURT: Mr. Stephens, I've got a question.  
20 To follow up, I'm going through my list of questions that  
21 I gave both sides and --

22 MR. STEPHENS: Please feel free to jump in.

23 THE COURT: All right. Great.

24 Chief, when you were talking about the screening  
25 questions, it was clear that you were asking those of

1 inmates.

2 One of my concerns is about law enforcement  
3 personnel who are coming in. Do you know if we're asking  
4 questions of them too or if it's just the inmates? And  
5 do we ask it -- I think we ask it of visitors. I think I  
6 read that in the briefing, but I just wanted to confirm.

7 THE WITNESS: We only take the temperatures of  
8 the officers who come in.

9 THE COURT: You take the temperatures, okay.  
10 You don't ask the screening questions, but you do take  
11 their temperatures and you do the -- the full screening  
12 questions for the inmates.

13 THE WITNESS: That's correct.

14 THE COURT: Okay. And what about I -- I read  
15 about -- and stop me, Mr. Stephens, if this was something  
16 you were going to cover, but I -- I think that I read in  
17 your briefing that there are no visitors allowed in the  
18 jail other than maybe attorneys under certain  
19 circumstances or are there just no visitors at all?

20 THE WITNESS: We do not allow visitors, only  
21 attorneys.

22 THE COURT: Only attorneys. And are attorneys  
23 asked the screening questions and temperature taken too?

24 THE WITNESS: They -- their temperature is  
25 taken. But we don't screen them because they don't go



1 into the secure area of the Dallas County jail.

2 THE COURT: Got you. Okay. And is that the  
3 same with law enforcement, the reason you don't ask them  
4 the screening questions is they -- they -- I know when I  
5 visited the jail I saw them at the sally port dropping  
6 off the inmates, but I didn't know if they get any  
7 further than that once they drop off -- you know, for  
8 example, if it is a -- a -- a John Doe being arrested for  
9 DWI and a Carrollton officer brings them in, if the  
10 Carrollton officer goes any further than the sally port  
11 to drop off the inmate.

12 Because what I saw had your -- your staff  
13 searching the inmate and it looked like the -- the jail  
14 -- the Carrollton jail officer was just transporting them  
15 and then left; is that right?

16 THE WITNESS: That may have been correct for --  
17 because it may have been a transport officer. But they  
18 do go inside the secure areas to the booking process.

19 THE COURT: Okay. And -- but they're not asked  
20 the questions; you do take their temperature, though.

21 THE WITNESS: No, ma'am, their temperature is  
22 taken.

23 THE COURT: Just their temperature. Thank you.

24 Please proceed, Mr. Stephens, and I'll interject  
25 when I've got questions.

1 Q. And Chief, you take the temperature of everyone who  
2 enters the jail, right?

3 A. That's correct.

4 Q. And what's -- what's -- at what level of temperature  
5 do you deny access to the jail?

6 A. 100.4.

7 Q. And is that across the board?

8 A. Yes.

9 Q. So following the classification system which you  
10 just described, what happens next for an inmate who's now  
11 been arraigned and classified, where do they go?

12 A. They are taken -- if they have medical problems,  
13 they are taken to what is called our medical assessment  
14 program, the location which is on the second floor of  
15 Kays, and they are assessed medically. If not, they are  
16 taken to their actual housing location.

17 Q. And I'd like to talk, we heard some testimony from  
18 Officer Lewis about one typical housing location.

19 MR. STEPHENS: And could we go to Page 5 of the  
20 jail photos PDF.

21 THE COURT: Sure.

22 Q. And Chief, can you describe what we're looking at  
23 here?

24 A. Yes. That is a pod inside of our South Tower jail,  
25 which is also referred to as Kays jail.

1 Q. Why is this particular pod empty?

2 A. Originally, that pod had an inmate that was  
3 positive, so we removed all the inmates, put the ones who  
4 were positive in isolation, and the ones who were not we  
5 put them in quarantine. And that area is then sanitized  
6 by an outside vendor.

7 THE COURT: And Mr. Stephens, if I can chime in.  
8 I've got two questions about that.

9 How long do you quarantine, Chief, the people  
10 who have been in contact with a positive inmate?

11 THE WITNESS: Well, usually we quarantine them  
12 14 days. But if they are quarantined with another group  
13 of inmates and another inmate come -- comes into -- well,  
14 becomes positive, then that 14 days starts over again.

15 THE COURT: Okay. So you extend it. Okay.

16 THE WITNESS: Yes.

17 THE COURT: One more question, Chief. With the  
18 cleaners, the outside cleaners coming in, do you do that  
19 anytime someone tests positive for the virus, do you come  
20 and have them -- are they disinfecting according to like,  
21 CDC recommendations, if you know?

22 THE WITNESS: Yes, they do.

23 THE COURT: Okay. And that's not inmates  
24 cleaning it themselves, it's professional cleaners when  
25 somebody tests positive?

1 THE WITNESS: Yes, ma'am, absolutely.

2 THE COURT: Okay. Great, thank you.

3 Q. And Chief, while we're on the topic, let's talk  
4 about the inmate cleaning and what parts of the jail  
5 inmates are actually responsible for cleaning.

6 When an inmate, for example, do inmates clean a  
7 tank like the one shown on the screen right now?

8 A. Yes. They -- they clean their own living areas.

9 Q. And is that true across the board for all cells in  
10 the jail?

11 A. Yes, yes.

12 MR. BARNETT: Your Honor, I'm sorry to jump in,  
13 but I just want to be sure that we're talking about what  
14 the policy is and that the chief is not saying that this  
15 is actually done.

16 THE COURT: Okay. Let's clarify that. Chief,  
17 if you will -- Mr. Stephens -- actually, the Court needs  
18 to take a ten-minute break, so if you-all will make a  
19 mental note. Let's come back in ten minutes.

20 IT is going to jump in and help us with some  
21 technology issues, so I'll probably be still sitting  
22 here. But it is 3:16, let's come back at how about --  
23 3:26, that is kind of a weird number, but 3:25-ish.

24 (Recess taken.)

25 Q. Chief, I want to take a step back to the very

1 beginning of my questions with you and ask you to explain  
2 to the Court how frequently you are in the Dallas County  
3 jail personally.

4 A. I work from 8:00 a.m. to 4:30 p.m. and sometimes  
5 later. But I work Monday through Fridays. I'm in the  
6 jail and out of the jail through weekends sometimes. But  
7 usually 8:00 to 4:30.

8 Q. And your testimony today is based both on your  
9 knowledge of the jail's policies and on what you  
10 personally see happening in the jail during the times you  
11 are at the jail yourself?

12 A. That's correct.

13 Q. Let's go back to the picture that's on the screen.  
14 There have been some questions raised through our time of  
15 testimony about the bunks in the jail.

16 Are there obstacles to taking bunks out of a  
17 tank like the one up on the screen?

18 A. Yes, there are. The bunks are bolted to the floor,  
19 of course. And we -- when you build a jail, of course  
20 you have to go through the Texas Commission of Jail  
21 Standards to build a jail. And however many bunks you  
22 put in there, that's how many they have record as to how  
23 many you have in that particular pod.

24 Q. If you were to reduce the number of beds in a pod  
25 like the one on your screen, you -- would you need to get

1 permission from the Texas Commission on Jail Standards?

2 A. Yes, sir.

3 Q. As for inmates, when inmates arrive in the tank are  
4 they given bedding equipment like a pillow and a blanket?

5 A. Yes, sir, and a mattress.

6 Q. And inmates make up their own beds; is that your  
7 understanding?

8 A. Yes, sir.

9 Q. Could inmates make up their bed however they wanted?

10 A. Yes, sir.

11 Q. They could put their head at one end or the other if  
12 they wanted to do that?

13 A. Yes, sir.

14 Q. We heard some testimony from Officer Lewis about a  
15 kiosk that is in a tank like the one that's up on your  
16 screen. Can you tell the Court a little more about that  
17 kiosk and the functions that it serves?

18 A. Well, the kiosk has several functions. First  
19 function that it has is -- is an avenue to do video  
20 visiting. That means the inmates can make a video call  
21 to their loved ones. For right now, that cost is free.  
22 Also, they can make phone calls on that kiosk.

23 As well, they can send out kites, grievances,  
24 medical kites, and they -- if I'm not mistaken, I think  
25 they also can -- a few other things I can't think of

1 right now. But there is a few other things that they can  
2 do as well.

3 Q. You mentioned grievances. Are there other areas  
4 where an inmate can submit a grievance other than through  
5 the kiosk?

6 A. Yes. They can also do paper grievances as well, as  
7 well as just contact the officer and let the officer know  
8 what their problems are.

9 Q. Do inmates frequently make grievances?

10 A. Yes, sir.

11 Q. You testified to Mr. Barnett that social distancing  
12 is not impossible in the jail. Are there areas of the  
13 jail where social distancing is easier to enforce than  
14 others?

15 A. Yes.

16 Q. What are some of those areas?

17 A. Well, we have -- every jail is different. We have  
18 in particular one jail, which is the West Tower jail, you  
19 have eight-man cells in those -- in that jail. So it's  
20 easy to separate inmates, you know, through social  
21 distancing.

22 The North Tower, which is actually a bigger  
23 jail, it's easier to social distance there as well.

24 Q. Would it be possible to force inmates to social  
25 distance if you took away their freedom of movement?

1 A. No.

2 THE COURT: Can you follow up on that, what do  
3 you mean?

4 Q. My question, Chief, is we've heard some testimony  
5 about how it is difficult to enforce social distancing.  
6 I think you acknowledged that social distancing is easier  
7 in some places than it is easier in others?

8 A. Right.

9 Q. There is theoretically enough room in this tank for  
10 every inmate to be 6 feet apart from each other at all  
11 times; is that right?

12 A. That's correct.

13 Q. But if you are going to allow inmates to move  
14 around, is it your experience that inmates tend to  
15 congregate together?

16 A. Absolutely.

17 Q. And so the only way to keep inmates 6 feet apart at  
18 all times would be to essentially lock them in place and  
19 take away their freedom of movement?

20 A. That's correct.

21 MR. BARNETT: Your Honor, I have an objection to  
22 leading, but since we're getting into something that may  
23 need leading objections, I just wanted to let you know  
24 that I may object on that ground.

25 THE COURT: All right. Thank you.



1 Q. You mentioned that every jail is different. And I  
2 would like to pull up your declaration. And --

3 THE COURT: Just a moment. Declaration.

4 Q. And I would like to go to Page 11 of your  
5 declaration.

6 I'm sorry, not Page 11 of your declaration, Page  
7 11 of Exhibit B to your declaration, which is the CDC  
8 guidelines. And that is page -- that is Page 25.

9 And I'm going to read part of this declaration  
10 -- or part of this guidance from the CDC.

11 CDC recommends that the jail correctional  
12 facilities implement social distancing strategies to  
13 increase physical space of the incarcerated, slash,  
14 detained persons, paren, ideally 6 feet between all  
15 individuals regardless of the presence of symptoms.

16 Strategies will need to be tailored to the  
17 individual's space in the facility and the needs of the  
18 population and staff.

19 Not all strategies will be feasible in all  
20 facilities.

21 Did I read that correctly?

22 A. Yes, sir.

23 Q. Is this what you mean when you say that every jail  
24 is different and so social distancing strategies need to  
25 be tailored to the jail's different areas?

1 MR. BARNETT: Object; leading.

2 A. Yes, sir.

3 THE COURT: Ask open-ended questions, please.

4 MR. STEPHENS: Sure.

5 Q. Chief Robinson, what are some of the strategies that  
6 Sheriff Brown has implemented to enact social distancing  
7 in the jail?

8 A. Oh, I'm sorry. She has actually had inmates -- we  
9 reduced the amount of inmates in some of the jails. We  
10 also put out our -- our signs stating how to social  
11 distance and also, we provide masks to every inmate.

12 Q. Have you restricted recreation in the tanks?

13 A. Yes, we have.

14 Q. Have you asked your officers to enforce social  
15 distancing when they're moving inmates between parts of  
16 the jail?

17 A. Yes, we have.

18 MR. BARNETT: Object; leading.

19 THE COURT: Okay. Sustained.

20 Ask him open-ended questions, not yes-or-no  
21 questions.

22 Q. What kind of strategies do you ask your officers to  
23 observe when they're moving inmates between parts of the  
24 jail?

25 A. We ask our officers to make sure that when we're

1 moving inmates that at least they social distance those  
2 inmates, whether they are taking them to the visitation  
3 group or to court.

4 Q. What kind of steps has the sheriff taken to limit  
5 group activities in the jail?

6 A. Well, what she has done is, the first thing is she  
7 sent out a letter to the local --

8 MR. BARNETT: Your Honor, I object; lack of  
9 foundation as to what the sheriff has done as opposed to  
10 what the witness has done.

11 THE COURT: Okay. Mr. Stephens, if you --

12 MR. STEPHENS: I can rephrase that, Your Honor.

13 THE COURT: Okay. Thank you.

14 Q. What has the sheriff had you do to limit group  
15 activities within the jail?

16 A. The first thing that she had me do was to -- we sent  
17 out e-mails to all of the officers letting them know how  
18 to social distance. We sent out the CDC guidelines to  
19 them as well.

20 Also, we had to limit visitation. Also, we have  
21 come up with ideas of strategies related to electronic  
22 visitation for attorneys, also for parole, so that they  
23 can continue their process.

24 And also, we have reached out to local law  
25 enforcement agencies so that they will use discretion so

1 that they don't bring inmates unnecessarily or through  
2 their discretion they won't bring inmates that are  
3 nonviolent. They can use a cite and release statute so  
4 that they won't have to bring inmates into the Dallas  
5 County jail as much.

6 Q. I'll come back, Your Honor.

7 MR. BARNETT: I object to the narrative  
8 response. It's nonresponsive. The question was what the  
9 sheriff asked you to do and the witness answered we have  
10 done this and we have done that.

11 It is nonresponsive to the question, and it's  
12 not based on -- the foundation has not been laid.

13 THE COURT: Okay. What is lacking in the  
14 foundation?

15 MR. BARNETT: The foundation was what other  
16 people -- who the other people are. We did this, what  
17 did the other -- how do you know that other people did  
18 it, who was it that did those things.

19 THE COURT: Okay. I'll overrule. I'll let you  
20 ask him that when you examine him again.

21 Q. You mentioned that you had sent e-mails and CDC  
22 guidelines to officers. Do you know when that happened?

23 A. I think it was on March 16th.

24 Q. I want to touch on the parole. You mentioned that  
25 parole hearings were being done electronically. Can you

1 elaborate on that?

2 MR. BARNETT: Your Honor, what was the date that  
3 the -- that the guidelines went out, March 16th?

4 THE WITNESS: Yes, sir.

5 MR. BARNETT: Okay. Thank you. Sorry to  
6 interrupt.

7 Q. Can you elaborate for the Court on how parole  
8 hearings are being done electronically to your  
9 understanding?

10 A. We had set up laptops in the South Tower so that  
11 inmates can talk virtually to their parole officer. And  
12 also, if they have witnesses, they can also have a  
13 virtual conversation through Zoom.

14 Q. And when did the sheriff require you to provide  
15 masks for all inmates?

16 A. I'm trying to remember the exact date. I'd have to  
17 look at my records. I can't remember the exact date.

18 Q. Let me ask it this way: It's been the case for how  
19 long that masks have been provided to symptomatic inmates  
20 in the jail?

21 A. Since the very first day that we started the  
22 process.

23 Q. And --

24 A. Which is way back in February.

25 Q. And more recently, masks have been provided to all

1 inmates?

2 A. That's correct.

3 Q. What kind of personal protective equipment do  
4 officers who work with the infected COVID-19 infected  
5 inmates wear?

6 A. They have a N95 mask, they have face shields, and  
7 recently we have acquired goggles as well. And we also  
8 have gowns.

9 THE COURT: Sorry, just to make sure I'm clear,  
10 who is wearing this?

11 Q. Chief, which officers were provided with the PPE you  
12 just described?

13 A. These are the officers who work directly with  
14 inmates who are infected by the COVID-19 virus.

15 THE COURT: Okay. And my read I was reading  
16 yesterday, CDC information that the parties have provided  
17 to me, and it sounds like that is the recommended  
18 equipment. That is consistent with I think what  
19 Dr. Cohen said about people being around positive  
20 inmates, people working with positive inmates should have  
21 N95 masks.

22 And so you said they also have the face shield;  
23 is that right?

24 THE WITNESS: That's correct.

25 THE COURT: So they've got the CDC-requested or

1 CDC-recommended PPE, sounds like?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay. Thank you.

4 Q. Were Dallas County Sheriff's Office personnel ever  
5 provided with training on how to wear PPE?

6 A. Yes, they have been.

7 Q. Can you describe what that training involved?

8 A. We received a training video from Parkland's medical  
9 director training our officers how to put on and wear the  
10 personal protective equipment.

11 Q. There have been some questions from the Court and  
12 parties about the laundry process for inmates.

13 Is laundry something you supervise directly?

14 A. Yes.

15 Q. Can you describe to the best of your understanding  
16 how laundry is handled for inmates currently?

17 A. Currently, and probably for awhile, we have a  
18 rotation of how inmates are changed out on their laundry.  
19 More recently, the sheriff had decided to make sure that  
20 inmates who are positive be changed out every other day.  
21 And inmates in quarantine are changed out I believe every  
22 five days.

23 THE COURT: What about regular inmates who are  
24 neither positive nor quarantined?

25 THE WITNESS: They are changed out once a week.

1 THE COURT: Okay. Thank you.

2 Q. And does the Texas Commission on Jail Standards have  
3 a set of guidelines for how laundry is done in the Dallas  
4 County jail?

5 A. Yes, they do.

6 Q. And are you confident that the laundry process meets  
7 or exceeds those standards?

8 A. Absolutely.

9 THE COURT: And I've got one more question for  
10 you. Chief, when you talk about laundry, does that  
11 include laundering the inmates' uniforms? How often are  
12 those changed out, if you know?

13 Because I'm thinking of laundry as being bedding  
14 but it may in your definition include the clothing too.

15 THE WITNESS: Yes, ma'am. The laundry -- and  
16 when we're talking about COVID, we are talking about  
17 everything there.

18 THE COURT: Everything.

19 THE WITNESS: Their bedding, along with, of  
20 course, their -- their jumpers.

21 THE COURT: Right. Thank you, Chief.

22 Q. You described the process that has been implemented  
23 to help Parole conduct the electronic hearings. Can you  
24 talk a little bit about what the sheriff's office has  
25 done to help the district court judges and county court



1 at law judges conduct bail hearings during this time?

2 THE COURT: And Mr. Stephens, I hate to  
3 interrupt you. I've got one more question about laundry  
4 that I'm looking on my list. If I could go back for just  
5 a moment with the chief.

6 I've got one follow-up question for you, Chief.  
7 Does it cost inmates anything to have their laundry done  
8 or is that -- that's -- or is there no charge?

9 THE WITNESS: There is no charge, Your Honor.

10 THE COURT: All right. Thank you, Chief.

11 MR. STEPHENS: And Judge, you do not need to  
12 apologize to me if you want to ask the chief a question  
13 directly. I'm happy to have you do it. I hope we get  
14 all your questions, but I may not. So if I don't get  
15 one, please ask it yourself.

16 THE COURT: Will do.

17 Q. Please talk a little bit about the processes that  
18 have been implemented to help the district courts and the  
19 county court at law judges facilitate hearings during  
20 COVID-19.

21 A. Currently, the process for actually interviewing  
22 inmates, inmates would have to go over to the -- to the  
23 actual courts and see the judges. Right now, they are  
24 currently coming up with a electronic means of holding  
25 those actual hearings.

1           The way we facilitate PR bonds and any kind of  
2 paperwork that needs to be signed, we have developed a  
3 portal so that those bonds and those -- that paperwork  
4 can flow through an electronic means and go straight over  
5 to the jail. Those -- those documents can be signed  
6 without movement of the inmates and then those documents  
7 are taken back to our release desk.

8       Q.   And have you done and has the sheriff's department  
9 and/or you personally been supported by the Courts and by  
10 your staff in this process?

11       A.   Absolutely. We have gotten support from, of course,  
12 our county commissioners, specifically Commissioner  
13 Price, who is always in our jail. He's making sure we  
14 get what we need. And of course, the other  
15 commissioners, Commissioner Daniel, who also chairs our  
16 jail sanitation meetings.

17           We get tremendous support from our  
18 commissioners.

19           And, of course, our judges as well.

20       Q.   Do you believe that the district attorney has been a  
21 cooperative participant in helping the criminal justice  
22 stakeholders deal with COVID-19?

23       A.   Absolutely. The DA has every day dropped charges --  
24 or not dropped charges, but they have come up with ways  
25 to ensure that inmates who are charged with drug

1 offenses, their charges are on hold until the results  
2 from the analyses come back so that way inmates can get  
3 out of jail until their analyses are returned.

4 THE COURT: Chief, I'm old enough to remember  
5 the whole fake drug scandal 15, 20 years ago. And I  
6 remember when we had people pleading guilty to pool  
7 chalk, so I think -- that -- that y'all are not letting  
8 people plead until you have got the drug tests.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: I remember those old days.

11 THE WITNESS: Yes.

12 Q. I would like to introduce a -- an unwieldy exhibit  
13 as Defendants' -- I believe we're on 3. It is a  
14 spreadsheet that we sent to the Court and sent to the  
15 plaintiffs marked Dal Co Sanchez 1.

16 THE COURT: Give us just a moment to pull that  
17 up.

18 (Off-the-record discussion.)

19 Q. Chief Robinson, what is the spreadsheet that I've  
20 pulled up -- or that the Court has kindly pulled up for  
21 us that you see on your screen?

22 A. I'm sorry, I'm trying to --

23 THE COURT: Take your time.

24 A. That is, of course, our inmates who have been  
25 incarcerated in Dallas County jail.

1 Q. And is it your understanding that this exhibit  
2 reflects data about the Dallas County jail population as  
3 of 5:00 p.m. on Friday, April 17th?

4 A. Yes.

5 Q. And is this data something that, to the best of your  
6 knowledge, Dallas County keeps in the regular course of  
7 its business?

8 A. Yes, sir.

9 Q. And do you understand that the Court and the parties  
10 have -- and the plaintiffs have requested information  
11 about who is in the Dallas County jail, and this is the  
12 document that was created to respond to those questions?

13 A. Yes, sir.

14 MR. STEPHENS: Your Honor, I'd offer Defendants'  
15 Exhibit 3, I believe we are.

16 THE COURT: Any objection from Plaintiffs?

17 MR. BARNETT: We would like to see the  
18 underlying data before it is admitted into evidence.  
19 We'd like to understand the process by which it was put  
20 together.

21 And I can't see it on the screen, either, which  
22 makes things just a little more difficult.

23 THE COURT: Okay. You can't see the  
24 spreadsheet?

25 MR. BARNETT: I cannot see the spreadsheet.

1 THE COURT: Okay. Do you see anything on your  
2 screen?

3 MR. BARNETT: I see -- refreshing, I'll do it  
4 again.

5 THE COURT: Please refresh. I see it on my end.  
6 And I see an offense description. It's like a summary of  
7 documents. But I'll --

8 MR. BARNETT: I still can't see it. I  
9 apologize, maybe one of my colleagues can send me a copy  
10 of it to me by e-mail and I can --

11 THE COURT: Let's go off the record for a  
12 moment.

13 (Off-the-record discussion.)

14 THE COURT: Okay. So your objection -- you can  
15 see it now, you want to see the underlying -- so is it  
16 a -- a hearsay or are you -- give me --

17 MR. BARNETT: This is a summary, Your Honor.  
18 And with a summary, we're entitled to the data which is  
19 used to create the summary. We don't have it -- and it  
20 may have been according to the fact that Your Honor  
21 requested it.

22 It is a summary. And I thought -- it's okay  
23 with me and -- of course, it's not up to me. But I'll --  
24 some of the information Defendant has. But it shouldn't  
25 be accepted as evidence of what it purports to show

1 without illustrating what kind of data is available.

2 MR. STEPHENS: Your Honor, I don't -- I don't  
3 really know what that objection is. But I am surprised  
4 that there is any objection at all, since this is what  
5 the plaintiffs asked for. And it was provided to them  
6 some days ago.

7 And I don't know what is meant by underlying  
8 data. We do have the declaration of Charlene Randolph  
9 (phonetic), which we've provided to the plaintiffs. And  
10 we can get Ms. Randolph on the phone if you would like to  
11 hear how she prepared this document.

12 THE COURT: Okay. Well, I'll note --

13 MR. BIGGS: Judge, may I be heard as well?

14 THE COURT: Sure.

15 MR. BIGGS: Well, I mean, if you're overruling,  
16 the objection doesn't matter.

17 THE COURT: Yeah, I was about to --

18 MR. BIGGS: That's --

19 THE COURT: -- I note your objection for the  
20 record, but I'll overrule it.

21 Q. Chief Robinson, this document has about 38,000 rows,  
22 I believe, so I'm not going to ask you very many specific  
23 questions about it. But I do want to ask whether you are  
24 generally aware of the makeup of the population in the  
25 Dallas County jail as a result of your role?

1 A. Yes, sir.

2 Q. Roughly speaking, what's the makeup in terms of  
3 felonies, misdemeanors, or other inmates who are  
4 currently held in the Dallas County jail?

5 A. There are approximately 65 percent felonies in the  
6 Dallas County jail. Misdemeanors add to about 3 percent,  
7 and inmates that are ready to be released from the Dallas  
8 County jail add up to about 32 percent.

9 Q. Can you explain what you mean by inmates who are  
10 ready to be released from the Dallas County jail?

11 A. Well, we have inmates who are ready to go to TDC, we  
12 have inmates who are in line to be transferred to a  
13 special program, such as Wilmer. And also inmates who  
14 are ready to be conditionally released to other agencies.

15 Q. Would inmates who are waiting for a parole hearing  
16 be included in that category?

17 A. Absolutely.

18 Q. Do you -- do you hope that those inmates will be  
19 released more expeditiously now that the parole hearings  
20 are conducted electronically?

21 A. Yes, sir, we are working hard to try to move that  
22 along as fast as we can.

23 Q. And it's your understanding that the reason inmates  
24 in this category can't be -- what -- what pushback --  
25 strike all this, I'm going to start this question over.

1           The reason these inmates are currently in jail,  
2           is it something Sheriff Brown can control?

3           A.    No, sir.

4           MR. BARNETT:  Objection to leading, Your Honor.

5           THE COURT:  Sustained.

6           Q.    You testified that there are about 65 percent  
7           felonies in the Dallas County jail; is that correct?

8           A.    That's correct.

9           Q.    Is that your understanding of the data as of the  
10          date this spreadsheet was created, which was April 17th?

11          A.    Yes, sir.

12          MR. BARNETT:  Object; leading.

13          MR. STEPHENS:  I can rephrase the question, Your  
14          Honor.

15          THE COURT:  Thank you.

16          Q.    I'll come back to that.

17                How many, to your knowledge, class C arrestees  
18          are held in the Dallas County jail -- and by class C, I  
19          mean, class C misdemeanors?

20          A.    Zero.

21          Q.    And why is that?

22          A.    Because we, or the sheriff, has decided that we will  
23          no longer hold class C inmates because of we want to  
24          reduce the population inside of the jail.

25          Q.    And what is the reason that they were holding class



1 C inmates previously?

2 A. Well, we have a contract with Dallas Police  
3 Department to hold their class Cs. And a lot of times,  
4 inmates have class C holds once they adjudicate their  
5 other charges. So we hold them until they see a judge  
6 for the class C charges.

7 Q. When did the policy of no longer holding those class  
8 C inmates, when was that policy implemented?

9 A. I don't know the exact date. But I want to say it  
10 was -- I think it was in March, don't know the exact  
11 date.

12 Q. Are tests for COVID-19 administered by Dallas County  
13 Sheriff's Office employees or officers?

14 A. No, sir.

15 MR. BARNETT: Object; leading.

16 THE COURT: Sustained. Ask open-ended  
17 questions.

18 Q. Who administers tests for inmates in the Dallas  
19 County jail?

20 A. Parkland, Parkland health does.

21 Q. Who diagnoses inmates for COVID-19 in the Dallas  
22 County jail?

23 A. Parkland does.

24 THE COURT: Chief, I've got a question about  
25 that. I know I've been reading before this lawsuit was

1 filed, when the virus was just kind of really hitting in  
2 April, I was reading about there being a shortage of  
3 tests kind of generally in Texas. And how in Dallas, for  
4 example, where I live in Dallas County, they had I think  
5 250 tests available for ordinary citizens and you had to  
6 go to the American Airlines Center, be there early.

7 Do you know how many tests you-all at the jail  
8 have available and are you guys experiencing a shortage  
9 too or --

10 THE WITNESS: No, we do not have a shortage. We  
11 are, of course, priority as it pertains to the county  
12 health department. So we actually get to test however  
13 many inmates that they deem necessary according to their  
14 protocols.

15 THE COURT: Okay. Thank you.

16 Q. Let's talk about what happens when an inmate begins  
17 to display symptoms. If an inmate is observed to display  
18 the symptoms associated with COVID-19, coughing or  
19 shortness of breath, what -- what policy applies to that  
20 situation?

21 A. Well, actually Parkland is called. Once -- and it  
22 depends on exactly you know, the context as to who sees  
23 it and when, but Parkland is actually called and they  
24 immediately put masks on the inmates and start  
25 questioning the inmate as to their symptoms.

1           But the first thing that happens is they are  
2 masked. But now recently, everybody is masked, so a lot  
3 of times the inmates have problems, they will get on the  
4 kiosk and send a message to the nurse saying hey, I  
5 have -- I think I have COVID or I may have symptoms.

6           So they'll send it through the actual kiosk or  
7 they may send a kite out saying, hey, I think I may have  
8 symptoms. Or they just simply make us -- tell the  
9 officer to call the nurse to the floor.

10           THE COURT: And here is a question for the  
11 lawyers and you may know this too, Chief. I know there's  
12 been some inconsistencies as to -- as to when masks  
13 became the -- the thing that we were all supposed to do.

14           And it seems like it's a recent innovation. I  
15 don't remember what day it was, but I remember at the  
16 beginning of this crisis the CDC was not recommending it  
17 for the general population. And then I find it a -- a  
18 blackout.

19           But it seems like now that is the protocol, and  
20 I don't remember what day that happened. Does anybody  
21 happen to recall, just so I can -- because it's so --  
22 what I'm trying to do is, looking at the story with what  
23 we knew when we knew it.

24           And so, you know, now we can look back and say,  
25 well, everybody should have had masks, but two weeks ago

1 I don't think that was what we were doing.

2 So I just want to make sure I'm being fair as to  
3 what the CDC was recommending when. Does anybody  
4 remember when masks were recommended to the general  
5 public? I don't remember what day it was.

6 MR. STEPHENS: Judge, I believe it was April 3rd  
7 that the guidance from the CDC for the general  
8 population, not talking about jail specifically, but the  
9 general population.

10 THE COURT: Sure, just general population.

11 MR. STEPHENS: The instruction became masks are  
12 now good and you should wear them.

13 THE COURT: Because my recollection was, people  
14 dealing with -- you know, when the chief talked earlier  
15 about people who were dealing with people we know are  
16 COVID positive, they always had different rules for them.

17 But just for us going to the grocery store, it  
18 seemed like that just recently kind of became the thing.  
19 And I don't remember when it was. So we think April  
20 3rd-ish, April 4th? I'm trying to create a timeline of  
21 what we knew when.

22 MR. STEPHENS: Your Honor, that's my --

23 MR. BARNETT: May I say something?

24 THE COURT: You may, please.

25 MR. BARNETT: Thank you. The CDC entered

1 guidance that does talk about masks and PPE and --  
2 environment to the Court that we're talking about does  
3 say that you should be wearing masks.

4 THE COURT: And does it say that for inmates?  
5 Does that say that for inmates -- I'll go back and look  
6 -- or for staff? Because I knew it was clear for staff  
7 dealing with people we knew were positive, but I didn't  
8 remember that being a recommendation for just your  
9 average inmate, wearing a mask.

10 MR. STEPHENS: We can pull up that guidance on  
11 Page 39 of Chief Robinson's declaration.

12 THE COURT: Great, that would be great.

13 Do you have that? Let's pull that up. That  
14 would be helpful.

15 I just -- I don't want to be judging history  
16 with today's eyes when it seems like in the last month  
17 everything has changed. So.

18 THE WITNESS: Absolutely, Judge. In the  
19 beginning we were told that asymptomatic inmates did not  
20 have to wear masks, or officers. So that changed.

21 THE COURT: Okay.

22 So a face mask -- and so this was -- so  
23 according to this chart, if I'm reading it right, for  
24 incarcerated, detained persons who are confirmed or  
25 suspected, then they're not even recommending an N95

1 mask, but a -- just a face mask.

2 THE WITNESS: That's correct.

3 THE COURT: Okay. And so at the time this  
4 chart's done, they're not recommending incarcerated or  
5 detained people who are doing food, even from a COVID  
6 case or case contact. Just gloves and a gown.

7 So I guess this is -- this really is changing.  
8 Okay. That's helpful to get some perspective on what we  
9 knew when. Thank you.

10 Q. And Chief, just to be clear, what PPE does staff --  
11 in laundry or food wear?

12 A. They currently wear face masks and they currently  
13 wear gowns.

14 Q. Okay.

15 THE COURT: And we do have N95 masks, if I heard  
16 you right, I have taken notes here -- for people who are  
17 dealing -- for workers who are dealing with positive  
18 COVID people, right, we've got the N95s for them?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right. Thank you.

21 Q. Chief Robinson, does the Dallas County Sheriff's  
22 Office have enough masks to continue the policy of  
23 providing masks for all the inmates?

24 A. Yes, we do.

25 THE COURT: And when you say, provide masks, one

1 of the things that you probably heard Dr. Cohen talk  
2 about was that for these disposable masks that are not  
3 your N95s, he was recommending that those be changed out  
4 I believe daily. I'll have to look back at my notes, but  
5 I think that is what he said.

6 Is that possible with your current supplies or  
7 is that feasible?

8 THE WITNESS: That's not currently our policy.  
9 We usually change them out every couple of days. But  
10 we -- we have sufficient amount of surgical masks for our  
11 employees to wear, but we change them out pretty  
12 frequently.

13 THE COURT: Okay. Thank you Mr. Stephens.

14 MR. STEPHENS: Thank you, Your Honor.

15 Q. Chief, can you describe the cleaning supplies in a  
16 little more detail that you provide the inmates to clean  
17 their cells?

18 A. Yes. We have items from a vendor that we have been  
19 using for quite some time that was vetted by the jail  
20 commission -- or approved by the jail commission and  
21 vetted by Parkland, to clean and also clean the -- to be  
22 effective against the COVID-19 virus.

23 Q. And do you have enough cleaning supplies to continue  
24 to provide cleaning supplies to inmates on a regular  
25 basis?

1 A. Yes, sir.

2 Q. Going back to the hypothetical inmate who begins to  
3 display symptoms in a tank. I think you said, and  
4 correct me if I'm wrong, I think you said that a nurse  
5 was called and a nurse performs a -- some assessment.

6 What happens after that?

7 A. If that inmate shows to have signs or symptoms of  
8 the COVID virus, that person will be immediately removed  
9 and placed in quarantine and tested.

10 MR. BARNETT: Your Honor, I hate to keep jumping  
11 in on this, but the way the questions are phrased it is  
12 not what the policy is; the question is what happens.  
13 And the witness does not have knowledge about what  
14 actually happens.

15 Q. Chief Robinson, do you have actual knowledge of --  
16 have you personally observed this happening with  
17 symptomatic inmates?

18 A. Yes, I have.

19 Q. Where is --

20 THE COURT: Mr. Stephens, let me rule on the  
21 objection.

22 I'll overrule it as to that. It would be  
23 helpful, Chief, if -- I'm not clear sometimes whether you  
24 are talking about what you observed or what the official  
25 policy is. And one of the things that I'm going to have



1 to determine is what your official policy is.

2 And so Mr. Stephens, as you are walking through  
3 these, it would be helpful if you would separate what is  
4 his personal experience from what is his policy. And  
5 they may be one in the same or may not be, but if you'll  
6 make it clear, that would be helpful.

7 And I think that is kind of the heart of  
8 Counsel's objection too. It's not clear what he's  
9 seeing, what his deputies are seeing, or what is the  
10 policy which we're talking about.

11 MR. STEPHENS: Thank you, Judge.

12 THE COURT: Sure.

13 Q. Chief Robinson, describe the process as you  
14 understand it and as your policies dictate -- let me  
15 start over. Trying to be careful for Mr. Barnett here.

16 Describe what the policies require after an  
17 inmate is -- or after a symptomatic inmate is removed  
18 from the tank.

19 A. That inmate is -- first of all, all of them are  
20 masked anyway. So the inmate is removed from that tank  
21 and he is placed in isolation quarantine.

22 Q. Okay. Is it the policy to keep symptomatic inmates  
23 isolated with other symptomatic inmates?

24 A. Yes.

25 MR. BARNETT: Object; leading.

1 Q. What is the policy -- I can rephrase your --

2 THE COURT: Yes, please do, open-ended  
3 questions, please.

4 Q. What does the policy require for how symptomatic  
5 inmates are to be kept in quarantine?

6 A. Our policy currently is, we take symptomatic inmates  
7 and house them with symptomatic inmates and usually in  
8 single cells.

9 Q. And can you elaborate on, usually in single cells?

10 A. Well, right now we have what is called a  
11 convalescent tank. These are inmates who have -- who  
12 were tested positive. They are now over their symptoms  
13 and it's been probably three weeks. So those inmates are  
14 removed from single cell and placed in the same tank  
15 until they test negative.

16 (Brief pause.)

17 MR. STEPHENS: I apologize, Judge, I'm reviewing  
18 my notes.

19 THE COURT: No, take your time.

20 Q. What policies exist to minimize mixing inmates in  
21 housing areas?

22 A. What policies exist to minimize mixing inmates?

23 Q. Correct.

24 A. For COVID or just regular?

25 Q. Let's start with COVID.

1 A. Okay. Our policy currently is, inmates who are in  
2 quarantine, of course we keep them quarantined together  
3 and usually -- and I probably have to let Pat Jones speak  
4 to it more closely, but we try to quarantine those guys  
5 with each other.

6 And -- and in -- at the same time we want to  
7 quarantine them -- you know, the inmates at the same time  
8 they became symptomatic. I should say, or if somebody  
9 was pulled from that tank that was symptomatic. So that  
10 way they stay together.

11 For people who are positive, it's the same  
12 thing. We want to keep those inmates together. In  
13 usually, eight-man tanks so that if they become to a  
14 point where they need to be moved, they can be moved  
15 together.

16 Q. Pat Jones will speak to this as well, but can you  
17 describe for the Judge your understanding of the medical  
18 facilities inside the jail, your impression.

19 A. Yes, sir. Currently we have a hospital inside of  
20 our -- our jail. And I -- one of the witnesses stated  
21 that it was -- that her husband was in the basement of  
22 the North Tower. Well, that basement is actually a  
23 hospital.

24 And inside that hospital, of course we have  
25 negative pressure cells. We also have beds for inmates

1 who are acute and then we have beds for inmates who are  
2 what is called subacute.

3 We have -- also areas that -- down there for  
4 inmates who have mental problems and other medical  
5 problems.

6 Q. What is the jail's policy for dealing with staff who  
7 test positive for COVID-19?

8 A. If a staff member tests -- actually, when they  
9 become -- complain of any type of symptoms, that they are  
10 sent home and they are sent home for 14 days, or until  
11 they see a -- a doctor. And then once they see a doctor  
12 they follow up on the order of that doctor.

13 Q. You mentioned earlier that some of the county  
14 commissioners have been involved in this crisis. Can you  
15 elaborate on the involvement of Dallas County and the  
16 county commissioners in dealing with COVID-19.

17 MR. BARNETT: Your Honor, object to open-ended  
18 question about what other people are doing. There is no  
19 foundation for that. And the relevance of what  
20 commissioners may be doing is out there. So I object on  
21 relevance, as well as lack of foundation.

22 MR. STEPHENS: I can rephrase the question, but  
23 I think quite clearly the -- the acts of county  
24 commissioners who are essentially in this lawsuit because  
25 Dallas County has been sued are obviously relevant.

1           THE COURT: So if you'll rephrase the question.  
2 I'll overrule you as to relevance, but if you'll rephrase  
3 the question to establish what knowledge, if any, he has,  
4 that would be helpful.

5           MR. STEPHENS: Certainly.

6 Q. What have you observed in terms of county  
7 commissioner involvement dealing with COVID-19?

8 A. Well, the county commissioners have been tremendous  
9 in this. They --

10           MR. BARNETT: Your Honor, I object to this  
11 narrative response. It is an open-ended question about  
12 what did he observe. And the first part of the answer  
13 was, they've been tremendous. So the question was, what  
14 has he observed.

15           THE COURT: Okay. I will sustain it as to that.  
16 So if you'll talk about what he observed.

17           MR. BARNETT: Thank you.

18 Q. Okay.

19 A. The county commissioners provided us funds to buy  
20 equipment, to buy materials. They also have visited the  
21 facility to make sure that we have what we need. They  
22 have made us a priority, in terms of fighting the COVID  
23 virus. And we have, you know, meetings, which is called  
24 our jail (unintelligible) meetings, every other Monday so  
25 that they can stay abreast of jail population and, of

1 course, the COVID virus.

2 Q. And what about -- what has been your involvement  
3 specifically with Commissioner Price during this crisis?

4 A. Well, Commissioner Price calls me just about every  
5 day to get an update as to what is going on and to ask  
6 what we need.

7 MR. BARNETT: Your Honor, as to this speech  
8 elicited by a question that says, what has been your  
9 involvement, too open-ended and invites a speech.

10 THE COURT: Okay. If you'll break that up into  
11 smaller questions, that would be good. Thank you.

12 Q. Does Commissioner Price communicate with you about  
13 how the jail is handling COVID-19?

14 MR. BARNETT: Object; leading.

15 THE COURT: I'm going to give him -- to his  
16 questions, because otherwise we're going to get a lack of  
17 foundation. If I don't have him say that he established  
18 this conversation, then you will object there is no  
19 foundation. So I'm going to allow it.

20 And then -- but then before you get into the  
21 depth, don't lead your witness through the meat. You can  
22 establish that a conversation existed and then ask  
23 open-ended questions.

24 I'll give him some latitude. Overruled.

25 MR. STEPHENS: Thank you, Your Honor.

1 A. Yes.

2 Q. Yes?

3 And what have your conversations with  
4 Commissioner Price consisted of?

5 A. They consist of asking what we need and is there any  
6 way that the Commissioner's Court can help us.

7 Q. Does Commissioner Price talk to you sometimes?

8 A. He talks to me on the weekly, and almost daily basis  
9 if -- whether it's on a phone call or he is at the jail.

10 Q. Does Commissioner Price --

11 MR. BARNETT: Object; nonresponsive to the  
12 leading question.

13 THE COURT: Overruled.

14 Q. Are you aware that Commissioner Price visits the  
15 jail?

16 A. He visits the jail --

17 THE COURT: I'm sorry, you are talking over each  
18 other. Is there an objection?

19 MR. BARNETT: Yeah, the objection is that  
20 Counsel is leading this witness.

21 THE COURT: Okay. Well, he is talking about his  
22 visits to the jail; is that right?

23 MR. STEPHENS: All I've done is ask if  
24 Chief Robinson is aware that Commissioner Price visits  
25 the jail.

1           THE COURT: I'm trying to figure out, is this a  
2           foundational question or is this your real question?  
3           Because I'm giving you a little latitude to ask about the  
4           existence of something before you talk -- you know if I  
5           ask you do you have a car and then I ask you about the  
6           car, that is okay.

7           If you are just going to ask him just a leading  
8           question, I'll sustain the objection. It is technically  
9           a leading question.

10          MR. STEPHENS: A leading question obviously  
11          presupposes one correct answer. And I'm just asking  
12          whether he is aware of whether Commissioner Price visits  
13          the jail.

14          THE COURT: It is a leading question because the  
15          answer to that can only be yes or no. So a nonleading  
16          question is a who, what, when, or why, how. It is a  
17          leading question.

18          My question is, is it a foundational question  
19          because I'll give you some latitude on that. But if the  
20          end game is to get him to answer yes or no, then I'm  
21          going to sustain his objection.

22          So I'm just trying to go -- are we going down  
23          the line of questioning where we're going to talk about  
24          your car? Because in that case, I will let you ask him  
25          does the car exist. If you just want to get him to say



1 that Commissioner Price is doing these things frequently,  
2 if that is the end game, then I'm going to sustain to  
3 leading.

4 So where are we going with this?

5 MR. STEPHENS: I can cut this line of  
6 questioning off. I think we've --

7 THE COURT: I'm not trying to keep you -- from  
8 doing your job. I just -- you know, he is technically  
9 correct that it is leading, so I have to sustain it. I'm  
10 willing to give you some latitude if this is an important  
11 area. Not trying to get you to not do what you are  
12 supposed to do. I just want to get you to follow the  
13 rules. So you tell me.

14 MR. STEPHENS: Sure. Yes, Your Honor, I do  
15 think the involvement of the ruling body of Dallas County  
16 in the jail is important, so I -- I will go on.

17 THE COURT: Okay. Let me rule, then. So I will  
18 overrule your objection, I will give him some latitude,  
19 but you are asking lots of leading questions, which is  
20 why you are getting lots of leading objections.

21 So if you will ask -- I am giving the latitude  
22 to establish, for example, if your topic is a car, do --  
23 Chief, do you have a car? Yes. Then you need to ask  
24 who, what, when, or why about the car.

25 Stop if you'll stop asking the leading

1 questions, he will stop objecting.

2 MR. STEPHENS: I think I can -- solve the  
3 problem.

4 MR. BARNETT: May I say what my real objection  
5 is?

6 THE COURT: Sure.

7 MR. BARNETT: He is trying to get Commissioner  
8 Price to testify through this witness.

9 THE COURT: Okay. Well --

10 MR. STEPHENS: I'm not -- I can rephrase my  
11 question.

12 THE COURT: Just as a reminder, you know, it --  
13 since this is essentially a bench trial, when it was your  
14 turn, Mr. Barnett, in fairness, you know, I let your  
15 witness testify because her husband was ill and so I gave  
16 you kind of some relaxed rules. And so in fairness, I  
17 kind of have to do the same thing for them.

18 Now, I know you had some extenuating  
19 circumstances, but I'm kind of generally relaxing the  
20 rules for both sides. And so I feel like in fairness, I  
21 can only -- you know, I have to give them latitude too  
22 since I gave you some.

23 So I'll overrule you. But don't lead your  
24 witness. I think we're all on the same page. Keep doing  
25 your job.

1 MR. BARNETT: Thank you, Your Honor.

2 Q. Tell us how the Dallas County commissioners have  
3 been involved in the jail during COVID-19.

4 A. Well, specifically, Commissioner Price shows up at  
5 the jail on a daily basis. He also gives me calls. We  
6 also have a jail sanitation meeting every other Monday,  
7 along with Commissioner Daniel.

8 And also, they make sure we have what we need  
9 when they make their visits.

10 Q. Do you feel supported by the county commissioners?

11 A. Yes, sir.

12 MR. STEPHENS: Your Honor, I do have a couple of  
13 items I'd like to introduce as exhibits through  
14 Chief Robinson, but I am not personally set up to do  
15 that. Can we take a five-minute, ten-minute break so  
16 that I can get set up to do that --

17 THE COURT: Sure.

18 MR. STEPHENS: -- with the chief.

19 THE COURT: Let's take ten. It is 4:42. Come  
20 back at 4:52. Thank you. Off the record.

21 (Recess taken.)

22 THE COURT: Let's continue.

23 Q. I'd like to introduce Defendants' Exhibit 5, which  
24 is an e-mail, which I sent currently just now.

25 THE COURT: Well, I think 4 would have been -- 4

1 you didn't admit. It was another spreadsheet that I got.  
2 You want to skip and go to 5?

3 MR. STEPHENS: Are you talking about the  
4 Parkland spreadsheet?

5 (Off-the-record discussion.)

6 THE COURT: This is 5.

7 MR. STEPHENS: What I'm about to put up is  
8 Exhibit 4.

9 (Off-the-record discussion.)

10 Q. Chief Robinson, are you familiar with this document  
11 that I've marked as Defendants' Exhibit 4?

12 A. Yes, sir.

13 Q. Okay. And what is this document?

14 A. This is the document that Sheriff Brown ordered to  
15 be sent to every staff member and every officer in the  
16 sheriff's department.

17 MR. STEPHENS: Could you scroll down so the page  
18 is right in the middle of the screen?

19 Q. Sheriff Brown -- or I'm sorry, Chief Robinson, when  
20 was this e-mail sent?

21 A. This e-mail was sent April -- I mean, March 16th, I  
22 think it was.

23 Q. Okay. And what did this e-mail contain?

24 A. It contained the COVID-19 guidelines for law  
25 enforcement.

1 Q. And did it attach some documents?

2 (Off-the-record discussion.)

3 Q. Chief Robinson, who was this e-mail sent to?

4 A. It was sent to every member of the Dallas County  
5 Sheriff's Department.

6 Q. Now, the e-mail that I'm looking at is from Raul  
7 Reyna, and it was sent to just about six e-mail  
8 addresses.

9 Who are those people?

10 A. Those people are people who are in a special group  
11 and they are not on the regular e-mails.

12 Q. Okay. Now, this document has some attachments. I'd  
13 like to talk to you about those attachments.

14 Can we go down to Page 3.

15 What is this attachment to the e-mail, can you  
16 describe what this is?

17 A. Okay. It is the -- it says, What law enforcement  
18 personnel need to know about the Coronavirus disease,  
19 COVID-19.

20 Q. Is there a date on this document?

21 A. March 4th.

22 MR. STEPHENS: Your Honor, I offer this as  
23 Defendants' Exhibit 4.

24 THE COURT: Any objection from Plaintiffs?

25 (Off-the-record discussion.)

1 THE COURT: He just pulled up this document and  
2 wanted to let you look at it and see if you had any  
3 objection.

4 MR. BARNETT: No objection.

5 THE COURT: Admitted.

6 Let me ask just for form sake. I'm assuming,  
7 but let me double-check that. Any objection, Intervenor?

8 MR. BIGGS: Thank you for asking, no objection,  
9 Judge.

10 THE COURT: All right. It's in.

11 MR. BARNETT: One more question about this  
12 document. I'm sorry.

13 The only question I have is, I see it is dated  
14 March 4th. From my thought it was attached to an e-mail  
15 dated today. Is there testimony that it was sent earlier  
16 than today?

17 MR. BIGGS: Yes. Erica, can you go up again to  
18 the kind of lower half of the first page.

19 MR. BARNETT: Okay.

20 Q. Sheriff Brown, is your testimony -- excuse me, when  
21 was this e-mail originally sent to the sheriff at  
22 DallasCounty.org e-mail address?

23 A. Okay. I'm sorry. The original e-mail was sent to  
24 her, I think, on March 4th. But she sent it to all of  
25 the employees of Dallas County Sheriff's Department March

1 16th.

2 Q. Is the sheriff at DallasCounty.org e-mail address,  
3 is that Sheriff Brown's e-mail address?

4 A. No. That is the e-mail address that encompasses  
5 everybody's e-mail address in the Dallas County Sheriff's  
6 Department except for the five names that you see on  
7 there, that is why they have to be added.

8 Q. Okay. Chief, I'd like to take a step back to  
9 earlier in your testimony and ask you, how are the judges  
10 currently conducting bail review hearings?

11 A. By video.

12 Q. Has the sheriff done everything she can to  
13 facilitate that process?

14 A. Absolutely.

15 MR. BARNETT: Object; leading.

16 THE COURT: Sustained.

17 Q. What has that sheriff done to help facilitate that  
18 process?

19 A. She -- she's the one who authorized the videos to be  
20 set up and for the courts -- for the documents to flow to  
21 be signed by inmates and returned back to the courts.

22 THE COURT: Chief, one of the -- one of the  
23 questions I have -- and if you don't know this, that is  
24 okay. Do you know if all of the criminal courts are  
25 doing remote hearings or if any of them had just kind of

1     suspended business, misdemeanor or felony?  If you know,  
2     and if you don't, that's okay.

3             THE WITNESS:  I -- I don't know, Judge, if all  
4     of them are doing it, but I think they are.  The portals  
5     have been set up, especially in bail review hearings.  I  
6     think they all are doing those.  But they are continuing  
7     to work on the IT infrastructure for you know, other  
8     hearings as well.

9             THE COURT:  Well, and here is a question, a  
10    follow-up question for you, Chief, that you may know.

11            Are you running transport vans of inmates to  
12    Frank -- or has that stopped, because -- typically going  
13    there or just doing this by video.

14            THE WITNESS:  Well, they're doing this by video.  
15    Our jails are hooked underground to our courts.  So we  
16    don't have to transport anybody by van.

17            THE COURT:  Do you know if you are still taking  
18    jail chains over to courts?

19            THE WITNESS:  We do, but very few.

20            THE COURT:  Very few jail chains.

21            MR. BIGGS:  This is Adam Biggs.  I am -- staff  
22    attorney for the district court judges, so I'm available  
23    at the end of testimony, obviously, to answer any further  
24    questions about district court judges specifically.

25            THE COURT:  Okay.  Great, thank you.  Appreciate



1     that.

2                 Thank you, Chief. And feel free to continue  
3 your direct and I'll chime in if I have questions.

4     Q. Chief, do you know approximately how many inmates on  
5 the Dallas County -- in the Dallas County jail are  
6 charged with nonviolent, non-DWI misdemeanor offenses  
7 subject to no holds on any given day?

8     A. Yes, sir.

9     Q. Can you approximate that number for the Court?

10    A. I -- do you mean nonviolent -- I mean, felony  
11 charges?

12    Q. I'm talking about nonviolent, non-DWI misdemeanor  
13 offenses.

14    A. Yes, sir, yeah.

15    Q. Who aren't subject to any other holds from any other  
16 agencies.

17    A. It is typically between 5 and 20 on most days,  
18 sometimes a little more, or a little less.

19                 THE COURT: 5 to 20 percent or 5 to 20.

20                 THE WITNESS: No, 5 to 20 people.

21                 THE COURT: People. Oh, in the -- in the whole  
22 jail or --

23                 THE WITNESS: Yes.

24                 THE COURT: Oh, really?

25                 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: And you may get up to 65 in there,  
3 but with the work the judges are doing to get them out,  
4 they usually get out pretty quickly.

5 THE COURT: I did a cursory look of the en  
6 camera information provided to me just to see, get kind  
7 of a feel, and it looked like a -- certainly not  
8 everybody, I think I found one person who had violent  
9 crimes, but a lot of the NCICs I looked at, we had people  
10 with parole holds for agg assaults or burg habs, what I  
11 would call kind of more serious felonies, so.

12 THE WITNESS: Yes, ma'am.

13 Q. Chief Robinson, do you know what the jail population  
14 is today?

15 A. Yes, sir.

16 Q. And what is that number?

17 A. I -- it is 4,829.

18 Q. Chief, as --

19 MR. BIGGS: Sorry I dropped out, I apologize.

20 THE COURT: Did you miss anything Mr. Biggs, do  
21 we need to go back?

22 MR. BIGGS: Just the number again.

23 THE COURT: Sure. Absolutely.

24 Say that again.

25 THE WITNESS: The jail population is 4,829.

1 Q. Chief, as the man in charge of the jail, is there  
2 anything more you could do to keep inmates safe from  
3 COVID-19?

4 A. With our current infrastructure and our current  
5 conditions, no.

6 Q. What about in a perfect world? In a perfect world,  
7 what more can you do to keep inmates safe from COVID-19?

8 A. Well, in a perfect world, I think we would need to  
9 have a new jail that has multiple single cells in it, and  
10 that would take care of our problems.

11 MR. STEPHENS: Judge, unless you have questions  
12 that you feel have not been answered on your list, I'm  
13 happy to let Chief Robinson answer those now; otherwise,  
14 I have no more direct.

15 THE COURT: Let me take a quick look.

16 So we heard some testimony about the inmates  
17 only being provided -- the inmates only being provided  
18 little slivers of little tiny hotel soaps and how they --  
19 get three or four of them a week and that's all they get.  
20 And that if they want to buy body wash or big bar soap,  
21 like big, put-in-your-hand bar soap, that that costs.  
22 And I heard a little bit about the commissary system not  
23 working.

24 Can you talk to me about the availability of  
25 soap to inmates and whether it costs and how available it

1 is.

2 THE WITNESS: Yes, ma'am. We have a tremendous  
3 amount of soap. The bars may be small and they get four  
4 bars at one time. But they have the ability to obtain  
5 bars of soap anytime they need them.

6 THE COURT: Does it cost them or is it free?

7 THE WITNESS: No, ma'am. It does not cost them  
8 anything.

9 THE COURT: Okay. So it is free right now.  
10 Okay.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: What about when I toured the jail,  
13 one of the things I heard -- and the lawyers were with  
14 me, one of the things I heard was that the inmates had to  
15 have \$10 in their account to see a nurse. And there was  
16 some discussion while I was there that the attorneys were  
17 talking about how both sides were still discussing  
18 whether there was going to be a waiver on that during the  
19 pandemic.

20 Do you know -- and may not know and that's okay  
21 if you don't, if it still costs to see a nurse or if you  
22 guys have set that aside for right now?

23 THE WITNESS: Well, it does not cost inmates  
24 anytime to be treated for COVID-19. But I think that  
25 they do have a cost if they have any other ailment. But

1 if they don't have it, then they're seen anyway. The --  
2 the -- the actual visit with the nurse and the doctor,  
3 everybody will get seen. And if they do have a cost,  
4 that cost is added later, if they have it.

5 THE COURT: Okay. Well, I know that the -- the  
6 defense is putting up medical people, so I'll ask them  
7 that. I know they'll know more detail.

8 Thank you for clarifying the questions on the  
9 soap, appreciate you.

10 THE WITNESS: Yes, ma'am.

11 MR. STEPHENS: I do have a housekeeping matter  
12 before you are done with your questions.

13 THE COURT: Sure, please.

14 Q. I wanted to make sure I had -- I had offered the  
15 photos we discussed, Chief Robinson, to be admitted. I  
16 think -- I think someone already may have been admitted  
17 by Officer Lewis, but I wanted to offer and admit the  
18 ones we discussed with the chief specifically.

19 THE COURT: Do we know what number are those?

20 MR. STEPHENS: That is pages -- it is Page 1, 2,  
21 4, and 5 of the jail photos PDF. And I know Plaintiffs'  
22 counsel will provide the page numbers of the photos  
23 Officer Lewis talked about.

24 MR. BARNETT: No objection, Your Honor.

25 THE COURT: No objection, and is that Exhibit 5,

1 Defense 5?

2 MR. BARNETT: I think it is --

3 MR. STEPHENS: Sorry, I was muted, that's  
4 correct.

5 THE COURT: It may be a duplicate exhibit. I  
6 just said Plaintiffs offered it too. I'll mark it as  
7 your own exhibit with those pictures, so that's  
8 Defense 5.

9 There would be no objection from Plaintiff; I  
10 assume Intervenors have no objection?

11 MR. BIGGS: No objection.

12 THE COURT: All right. Admitted.

13 MR. STEPHENS: Judge, I'll pass the witness.

14 THE COURT: All right.

15 MR. BARNETT: May I proceed, Your Honor?

16 THE COURT: Let me ask, Intervenors, do you have  
17 any questions of this witness?

18 MR. BIGGS: I actually have one question, but  
19 let me -- I have to get back in my notes really quickly.  
20 If I could have just one minute, Judge.

21 THE COURT: Sure. Absolutely.

22 CROSS-EXAMINATION

23 BY MR. BIGGS:

24 Q. Captain, can you hear me okay? I hopefully have  
25 only one question for you.

1           You were asked a lot of questions about -- by  
2 the plaintiffs' counsel about the efforts that the  
3 sheriff or your office have taken to reduce the current  
4 population. Do you remember that?

5 A. Yes, sir.

6 Q. Are you aware that the ACLU of Texas in April put  
7 out a press release applauding the sheriff's efforts?

8 A. No, I was not.

9           MR. BIGGS: Pass the witness.

10          THE COURT: All right. Thank you.

11          Mr. Barnett, your witness.

12                       REDIRECT EXAMINATION

13 BY MR. BARNETT:

14 Q. Chief Robinson, I want to make sure we're clear on  
15 some basic facts. There are three towers at the jail,  
16 north, south, and west, right?

17 A. That's correct.

18 Q. And the North Tower, there are 188 single cells?

19 A. I have to get my notes, but I think that is correct.

20 Q. And the rest of them are either sand -- seven person  
21 cells or some may be four; is that right?

22 A. Are you talking about the -- the North Tower or  
23 other single cells in the other areas?

24 Q. The North Tower, the rest of the cell, aside from  
25 the single ones, the 188 ones, are either seven-man cells

1 or four-man; is that right?

2 A. No. We have 24-man cells as well.

3 Q. Okay. Great.

4 And then the West Tower has 132 tanks and 25  
5 single cells; is that right?

6 A. That's correct.

7 Q. And then the South Tower has 36 pods, each with 64  
8 beds; is that right?

9 A. Yes.

10 Q. Okay. So in the -- the whole complex, there are 213  
11 single cells; is that right?

12 A. I don't know if you counted the ones in Gill  
13 Hernandez Hospital as well.

14 Q. Okay. Other than in the hospital, there are 213  
15 single cells in all three towers?

16 A. That's correct.

17 Q. Okay. Great. Thank you.

18 And you said that people suspected of infection  
19 may get tested -- who makes an assessment of whether  
20 they're suspected or not?

21 A. Parkland nurses, the doctors.

22 Q. But how does that happen? Doesn't somebody in the  
23 -- in the tank or the jail make a call to the Parkland  
24 people?

25 A. It depends. It could be a kite sent out, it could



1 be a -- a -- a kiosk request, or it could be officers  
2 calling on the radio for nurses to come to the floor.

3 Q. Okay. Thank you.

4 And you mentioned the hospital, is that also  
5 called the infirmary?

6 A. Yes, sir.

7 Q. Are there any ventilators in the infirmary?

8 A. Yes.

9 Q. How many?

10 A. I'm sorry, did you say ventilators?

11 Q. Yes, sir.

12 A. Oh, I'm not sure of ventilators. That is going to  
13 be a Parkland question. I'm not sure. I thought you  
14 were referring to negative pressure, I'm sorry.

15 Q. Like -- and you talked about a number of different  
16 policies. I had asked you earlier do you have any  
17 written policies. And I wasn't sure whether the policies  
18 you were talking about are written down somewhere or are  
19 they oral.

20 Can you tell us whether they're oral or written?

21 A. Well, the -- as it pertains to COVID, is what you  
22 are referring?

23 Q. Well, you testified -- your counsel asked you  
24 questions about policy this and policy that, and you said  
25 yes, policy. Are all of the policies that you have

1 testified about written down somewhere?

2 A. No, sir, not all of them. They are not.

3 Q. Okay. And the ones that are written down, can they  
4 be provided to the Court?

5 A. Yes, sir.

6 Q. Do you know why they haven't been?

7 A. No, I'm not sure.

8 Q. Okay. Thank you.

9 And Counsel asked you to authenticate an e-mail  
10 that was sent in March, maybe March 16th of 2020. Do you  
11 remember that?

12 A. Yes, sir.

13 Q. And it looked like there were a number of  
14 attachments sent out about COVID; is that right?

15 A. Yes, sir.

16 Q. Aside from that e-mail, have there been other  
17 e-mails sent about what staff members should do and may  
18 or may not be available to them?

19 A. I've sent out multiple e-mails pertaining to  
20 instructions regarding COVID. And I'm pretty sure  
21 supervisors have as well. But I -- I don't have what  
22 supervisors have sent out.

23 Q. Right. And has there been training specifically on  
24 COVID for the DSOs, the 1,300 DSOs?

25 A. Well, we have produced a video actually by Parkland

1 actually instructing officers how to put on the PPEs and  
2 the other equipment pertaining to COVID.

3 Q. Right.

4 And was that provided to the Court, the video?

5 A. No, it has not been, not that I know of, no.

6 Q. And when was it provided -- when was it first  
7 available?

8 A. I'd have to look into my -- into my e-mails and see  
9 when it was provided.

10 Q. Okay. And earlier we had talked about looking at  
11 the declaration about the incident that occurred last  
12 night, that was reported last night.

13 MR. BARNETT: And Your Honor, I'd like to talk  
14 about that now.

15 THE COURT: Sure. So before we take that up  
16 with too much detail, I've looked at the declaration and  
17 it looks like it is a -- an allegation involving some  
18 physical violence.

19 (Off-the-record discussion.)

20 MR. BARNETT: Nothing further Your Honor.

21 THE COURT: Chief, thank you so much. You have  
22 been a great part of today. We appreciate your service  
23 to the County. These are crazy times and I know you are  
24 doing the best you can to try to keep everyone safe, so  
25 thank you, appreciate you. Thank you for being here

1 today.

2 Any objection to me releasing this witness not  
3 subject to recall, any objection from Plaintiffs?

4 MR. BARNETT: No objection, Your Honor.

5 THE COURT: All right. You are -- you are out,  
6 Chief. Thank you again.

7 (Witness excused.)

8 THE COURT: Neither side had any objection to me  
9 excusing the chief not subject to recall. And so he has  
10 been excused. And I've now asked Defendant to call his  
11 next witness.

12 And before you do that, Intervenor, do you have  
13 any separate witnesses you need to call aside from the  
14 Defense witnesses, just to make sure I've got my roster  
15 right?

16 MR. BIGGS: Judge, we will not be calling any  
17 live witnesses; we will just be relying on the  
18 declaration submitted with the papers.

19 THE COURT: Okay. Sounds good.

20 So call your next live witness or affidavit  
21 witness, Defendants.

22 MR. BARNETT: Your Honor, I think we're still on  
23 the plaintiffs' case.

24 THE COURT: I'm sorry. And I forgot I promised  
25 that doctor we would get her.

1 MR. BARNETT: We got --

2 THE COURT: I'm getting tired.

3 MR. BARNETT: Yeah.

4 THE COURT: Off the record until we get her.

5 (Off-the-record discussion.)

6 ANK NIJHAWAN, M.D.,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARNETT:

10 Q. Please state your name for the record.

11 A. My name is Ank Nijhawan.

12 Q. And, Dr. Nijhawan, my name is Barry Barnett. I'm a  
13 lawyer with Susman Godfrey. It's a private law firm.

14 Have you and I spoke before?

15 A. We have not.

16 Q. Did you get an e-mail from me a couple weeks ago  
17 asking you to contact me about a letter that I understood  
18 you had written?

19 A. I did get an e-mail from you, yes.

20 Q. And did you respond to that?

21 A. I don't believe I did. I think was too busy to  
22 respond to it.

23 Q. Okay. Understood.

24 Could you tell the Court what your education is,  
25 please?

1 A. My education. So I have a bachelor's degree from  
2 Princeton University, graduated in '96. I have a medical  
3 degree from UT Southwestern. I have a master's in public  
4 health from the Harvard School of Public Health, and then  
5 I also have a master's in science also from UT  
6 Southwestern.

7 Q. Okay. And how long have you lived in the Dallas  
8 area?

9 A. I -- I have lived here twice. This time around I've  
10 lived here for the last eight years.

11 Q. And do you work at UT Southwestern now?

12 A. I do.

13 Q. What is your position at UT Southwestern?

14 A. I'm an associate professor.

15 Q. Okay. And do you have privileges at the hospitals  
16 in this area?

17 A. I do, yes, at UT -- at Clemens Hospital, the  
18 university hospital, and at Parkland.

19 Q. Okay. And do you practice medicine?

20 A. I do. Yeah. So I'm an infectious diseases doctor  
21 and I provide clinical care, mostly at Parkland.

22 Q. Okay. Thank you.

23 Do you have experience working in jails or  
24 prisons?

25 A. I do. Yeah. I've worked in the jail and prison

1 setting since 2007.

2 Q. And have you experience specifically in the Dallas  
3 County jail?

4 A. Yes, I work at the Dallas County jail.

5 Q. And do you have a title at the Dallas County jail?

6 A. That's a good question. I don't know that I have a  
7 formal title. But I am the -- the lead infectious  
8 diseases physician here.

9 Q. And how long have you been in that position at the  
10 Dallas County jail?

11 A. So I have been working here since 2012. I took on  
12 a -- probably a -- mostly very part-time, like one  
13 morning a week for years. And now I'm here a little bit  
14 more, about 25 percent of my time at the jail.

15 Q. Okay. And does Dallas County compensate you or UT  
16 Southwestern for your time?

17 A. Yes. So the -- the healthcare is done by Parkland,  
18 so Parkland pays UT Southwestern. I'm employed by UT  
19 Southwestern.

20 Q. Okay. Thank you. And I wanted to walk you a little  
21 bit through how we came to this spot today.

22 A. Okay.

23 Q. You were introduced to a gentleman,  
24 Alec Karakatsanis -- I'm going to say it wrong, do you  
25 know who I'm talking about --

1 A. Yes.

2 Q. -- with Ms. Rossi. You were introduced by somebody  
3 else in the medical community?

4 A. Correct.

5 Q. Do you remember what Mr. K, we'll call him, asked  
6 you to do?

7 A. He had asked -- so he -- we were introduced by  
8 Dr. Meyer (phonetic), and they wondered if I was  
9 interested in writing a letter regarding -- you know,  
10 encouraging the release of inmates.

11 Q. And you wrote a letter, did you?

12 A. I did, yes.

13 Q. Okay. Were you able to organize colleagues to sign  
14 onto that letter?

15 A. I didn't organize colleagues to sign onto it. I  
16 wrote it on my own.

17 Q. Okay. Can we pull up the -- I think it's  
18 Exhibit 14, which is the letter.

19 THE COURT: Okay. Pulling that up now.

20 (Off-the-record discussion.)

21 MR. BIGGS: Judge, I think you said doctor. I  
22 don't believe Mr. Karakatsanis is a doctor, I believe he  
23 is a lawyer.

24 THE COURT: Thank you for clarifying that.

25 MR. BARNETT: And we've got up on the screen



1 Exhibit 14. Is that the letter that you wrote?

2 A. I actually -- I can't see the letter currently. I  
3 saw it the first time around --

4 THE COURT: Okay.

5 A. -- the letter that I wrote.

6 THE COURT: Try again.

7 (Off-the-record discussion.)

8 THE COURT: Back on the record.

9 Q. Doctor, is Exhibit 14 up on the screen, is that the  
10 letter that you sent on March 25, 2020?

11 A. It is, yes.

12 Q. And it looks like you electronically attached your  
13 signature to it. Is -- is that your signature down at  
14 the bottom?

15 A. It is.

16 Q. And you sent that to several people, several  
17 officials and assistants at Dallas County; is that right?

18 A. I did, correct.

19 Q. And one of them was Sheriff Media at  
20 DallasCounty.org?

21 A. Correct.

22 Q. And then a couple others were either commissioners  
23 or assistants for the commissioners?

24 A. Yes.

25 Q. Okay. And was it your intent to send this by

1 sending it to Sheriff Media at DallasCounty.org to  
2 Sheriff Marian Brown?

3 A. It was, yes.

4 Q. Did you get a response from anybody --

5 A. I didn't.

6 Q. -- that you sent the letter to?

7 A. I didn't.

8 Q. What I'd like you to do, quickly, since we're at the  
9 end of the day and I -- if you would look through the  
10 letter and tell the Court whether it still reflects your  
11 views?

12 A. Yeah, it still reflects my views. I can currently  
13 only see the top half of it, but I'm familiar with the  
14 letter. But yes, it does.

15 Q. And I'm not going to read all of it, but I wanted to  
16 read a couple of things just to be sure we're talking  
17 about the same thing.

18 I believe you start by saying, As an infectious  
19 disease doctor, I strongly encourage you to consider  
20 releasing defendants in the Dallas County jail who are  
21 charged with nonviolent offenses.

22 Did I read that correctly?

23 A. Yes.

24 Q. And you -- you still urge the defendants of Dallas  
25 County jail and the sheriff to release those people who

1 are charged with nonviolent offenses?

2 A. I do.

3 Q. And then you also say it is important to prioritize  
4 inmates who are older, and in parentheses you said over  
5 50 years of age, or have preexisting conditions such as  
6 cancer, diabetes, lung disease, such as asthma or chronic  
7 obstructive pulmonary disease, in parentheses, heart  
8 disease or HIV.

9 Do you still have that view specifically?

10 A. Yes.

11 Q. And I notice that you say over 50 years of age, not  
12 65 years of age.

13 A. It's -- there's not -- I can't say that there's  
14 specific data to -- to say that -- we just know that  
15 older patients are at higher risk for complications of  
16 COVID.

17 Patients in the jail I think of as being  
18 biologically a bit older than their age, just because  
19 they have had sort of a tough life and often history of  
20 substance use, other things, and multiple medical issues.  
21 So it just was an estimate.

22 Q. Okay. Thank you. Another statement that you made  
23 in the letter is, Even a limited outbreak of COVID-19 in  
24 the Dallas County jail has the potential to overwhelm our  
25 already overburdened hospital system and will directly

1 impact security staff and healthcare staff at the jail.

2 Is that still your view?

3 A. Yes. I mean, I think we have more information now;  
4 it's one month later. But I -- I do think that that has  
5 that potential to overwhelm our hospital system.

6 Q. And I guess, Doctor, you are aware of how many  
7 confirmed instances of COVID-19 there are among the  
8 inmates in the jail. We heard testimony earlier that  
9 there were 42 on April 15th. And as of yesterday, there  
10 were over a hundred, I think 105. That is about a -- a  
11 250 percent increase.

12 Does that sound right to you?

13 A. Yes.

14 Q. Is that -- is -- is the -- that's an accurate note  
15 reflection of the number of people who do have COVID-19  
16 in the jail; is the rate of infection increasing  
17 exponentially?

18 A. I -- I don't know that I would say exponentially.  
19 It is increasing a lot more in the last week or two than  
20 it was prior to that.

21 Q. Do you have a -- an understanding of where the peak  
22 is going to be?

23 A. That's a difficult question. I don't know that  
24 anybody knows the -- the answer to that. But we continue  
25 to have new cases at the jail currently. I don't know if

1 we have hit the peak.

2 Q. Okay. Do you think that we hit the peak now, as of  
3 today?

4 A. Probably not. Not yet, I would think.

5 Q. Okay. All right. Thank you.

6 And you say further down, skipping some of these  
7 things for time reasons, Of the 5,000-plus persons  
8 incarcerated at the Dallas County jail, over half have  
9 chronic medical conditions.

10 Is that your experience?

11 A. Yes.

12 Q. Today?

13 A. Yep.

14 Q. And you say to make matters worse, social distancing  
15 is nearly impossible in a jail setting for people who are  
16 housed in a relatively small space or relatively small  
17 spaces with up to 60 people at a time.

18 Does that continue to be your view?

19 A. Yes.

20 Q. And finally you say, If you do not reduce the  
21 population in the Dallas County jail substantially and in  
22 very short order, you risk attributing to an already-  
23 expanding outbreak and compromising the health of --  
24 incarcerated individuals, jail healthcare providers, and  
25 security staff in the Dallas community at large.

1 Does that also reflect your opinion?

2 A. It does.

3 MR. BARNETT: Nothing further, Your Honor. Pass  
4 the witness.

5 THE COURT: All right. Defendants?

6 MR. BIGGS: I have --

7 MR. STEPHENS: I'll reserve my questions for  
8 after Mr. Biggs.

9 THE COURT: All right. Mr. Biggs, you can ask  
10 questions first.

11 MR. BIGGS: I think I've been volunteered -- so  
12 I'll try.

13 MR. STEPHENS: That is exactly right.

14 MR. BIGGS: Ms. Monk, can we please get the  
15 e-mail chain marked as State's Intervenor 1 put on the  
16 screen, please.

17 MR. BARNETT: Your Honor, if I didn't offer 14,  
18 I'd like to offer it now.

19 THE COURT: Any objection?

20 MR. BIGGS: No objection.

21 MR. STEPHENS: No objection.

22 THE COURT: 14 is admitted. No objections.

23 MR. BIGGS: Perfect.

24 CROSS-EXAMINATION

25 BY MR. BIGGS:

1 Q. Doctor, can you hear me okay?

2 A. I can.

3 Q. Okay. And can you see the -- the exhibit on the  
4 screen as well?

5 A. No, I cannot.

6 THE COURT: Okay. Off the record.

7 (Brief pause.)

8 THE COURT: On the record.

9 Q. All right. Doctor, my name is Adam Biggs. I  
10 represent the State of Texas, the Governor, as well as  
11 the Attorney General in this particular case.

12 If at any point during this you can't hear me or  
13 I'm speaking too quickly or you can't see an exhibit,  
14 please let me know and we'll go back and fix it, okay?

15 A. Okay.

16 Q. Okay. All right. Doctor, in front of you is what's  
17 been marked as State's Intervenor Exhibit Number 1 for  
18 identification purposes.

19 MR. BIGGS: Ms. Monk, if you could slowly scroll  
20 through that to show her the whole exhibit, I'd  
21 appreciate that.

22 THE WITNESS: I'm still just seeing the top  
23 half, I don't see it moving.

24 THE COURT: Still not seeing it moving, Doctor?

25 THE WITNESS: I just see the first four lines

1 ending with, Medically-vulnerable individuals.

2 (Brief pause.)

3 THE COURT: Please proceed.

4 Q. All right. Doctor, Ms. Monk is going to scroll  
5 through and I just want to see if you recognize this  
6 document?

7 A. Yes, I do.

8 Q. Okay. And what do you recognize this document as?

9 A. This is an e-mail exchange with Alec.

10 Q. Was this an e-mail you received?

11 A. Yes.

12 Q. Was this an e-mail chain discussing the letter  
13 that's just been admitted into evidence between you and  
14 Alec?

15 A. Yes.

16 Q. And Alec is Mr. -- I'm going to butcher his last  
17 name, Mr. Karakatsanis, I believe is somehow close to how  
18 you say it. That is who you are talking about, correct?

19 A. Yes.

20 MR. BIGGS: Your Honor, at this time we move  
21 State's Exhibit -- or State Intervenors' Exhibit Number 1  
22 into evidence.

23 MR. BARNETT: No objection.

24 THE COURT: Admitted. And I assume Defendants  
25 have no objection to it, but for form, just in case.



1 MR. STEPHENS: Correct.

2 THE COURT: All right. Admitted.

3 MR. BIGGS: All right. If we could scroll down  
4 to Page 7 of 8, Ms. Monk. I'd really appreciate that.

5 Q. And Doctor, while she's doing that, before you  
6 received this e-mail chain did you know who Alec was?

7 A. No.

8 Q. And as you sit here today, do you know who Alec is?

9 A. I -- I mean, I have not met him in person, just  
10 through e-mail. As I see here, founder and executive  
11 director of Civil Rights Corp.

12 Q. Do you know what Civil Rights Corp is?

13 A. Not specifically, not beyond what's written here.

14 Q. And do you see that middle sentence where it says,  
15 They are currently working, do you see that line?

16 A. They are currently working on securing the mass  
17 release from detention of individuals in Houston, yeah.

18 Q. Yes. And the remainder of that line is, And are  
19 looking into the possibility of filing litigation as a  
20 part of that effort.

21 A. Right.

22 Q. And so as you sit here today, do you understand Mr.  
23 Karakatsanis' I guess, goal in sending this e-mail is to  
24 secure a mass release from detention for individuals in  
25 Houston?

1 A. Yes.

2 Q. Okay. And when you received this e-mail, were you  
3 aware that Mr. Karakatsanis was also seeking to release  
4 those charged with violent offenses?

5 A. We didn't talk specifically about who he was seeking  
6 to release.

7 Q. Would it have mattered to you?

8 A. I think -- I don't think I'm the person to decide  
9 that, yeah.

10 Q. Totally understand you are not the judge.

11 But my question is, in your decision to write  
12 the letter, would the fact that he was trying to release  
13 violent offenders have impacted your decision if you  
14 would have known that?

15 A. I don't think so. I think -- I really am trying to  
16 focus on the public health and medical impact.

17 Q. Okay. And you agree with me that Mr. Karakatsanis  
18 reached out to you asking you to write the letter that's  
19 been admitted that you have just seen, correct?

20 A. Yeah, he encouraged me to write it.

21 Q. And he also, in fact, in his e-mail chain, provided  
22 you with templates from other doctors that had written  
23 letters, correct?

24 A. He did.

25 Q. And one of those doctors was a doctor from Harris

1 Health System. Does that sound familiar?

2 A. Yes.

3 Q. And that's Dr. Porsa. Does that sound correct?

4 A. Yes.

5 Q. And you remember seeing a copy of that document,  
6 correct?

7 A. I did.

8 Q. From Mr. Karakatsanis, correct?

9 A. Yes.

10 MR. BIGGS: Ms. Monk, can I please have  
11 Exhibit 2 pulled up, please.

12 Q. Doctor, is this the letter from Dr. Porsa that Mr.  
13 Karakatsanis provided to you before you wrote your  
14 letter?

15 A. I think so. It looks like the one that I saw.

16 Q. And I'll represent to you this was provided to me by  
17 a lawyer who works for Mr. Karakatsanis as an attachment.

18 A. Okay. Okay. Yeah, it looks like it.

19 Q. Okay. And so you used this letter as background in  
20 writing your letter, correct?

21 A. Yes.

22 Q. And in fact, you borrowed heavily from some of the  
23 phraseology and some of the content in this letter in  
24 drafting your letter, correct?

25 A. Yes.

1 Q. In fact, there's portions of this letter that Mr.  
2 Karakatsanis provided to you that you copied and pasted  
3 into your letter, correct?

4 A. Yes.

5 Q. Okay. And would you have written this letter if Mr.  
6 Karakatsanis had not reached out and asked you to?

7 A. That's a good question. I -- you know, I think --  
8 I'm not sure if I would have written it right at that  
9 moment. But I -- I believe I would have written  
10 something similar.

11 I think we're in sort of an unprecedented time.  
12 And although it's -- you know, I'm not typically writing  
13 letters to our county commissioners, I think I would have  
14 been motivated to write something similar, maybe not --  
15 you know, not exactly this, but yes.

16 Q. But you would agree with me that Mr. Karakatsanis'  
17 request is what prompted you to write the letter when you  
18 did, correct?

19 A. At that time, yes.

20 MR. BIGGS: Your Honor, at this time we move  
21 State Intervenor's 2 into evidence.

22 MR. BARNETT: No objection.

23 MR. STEPHENS: No objection.

24 THE COURT: Admitted.

25 MR. BIGGS: Ms. Monk, can you please pull up

1 State Intervenor's Exhibit 4.

2 And, Judge, for record purposes, we skipped  
3 over 3 because 3 has already been admitted, and that is  
4 the doctor's letter. So there is no Exhibit 3 from State  
5 Intervenor's.

6 THE COURT: Great. Thank you for clarifying so  
7 we don't spend an hour figuring out where it went.

8 MR. BIGGS: My paralegal thanks you; she would  
9 be the one trying to track it down.

10 THE COURT: That's right.

11 Q. Doctor, can you see Exhibit 4?

12 A. Yeah.

13 Q. And I'll represent to you that Exhibit 4 is a  
14 comparison between your letter, which has been admitted  
15 into evidence, and exhibit -- State Intervenor's  
16 Exhibit 2, which is Dr. Porsa's letter.

17 Can you review that and tell me if that seems  
18 correct to you? The red or orange portions being the  
19 portions that are the same between the two letters.

20 A. Yes, that looks like -- those look like my edits.

21 Q. And so -- and if there is any discrepancy between  
22 the two, we can just compare the two letters and that  
23 will tell --

24 A. Correct.

25 Q. -- the Court all it needs to know, correct?

1 A. Yes.

2 Q. Okay.

3 MR. BIGGS: Your Honor, move State Intervenors'  
4 Exhibit Number 4 into evidence as well.

5 MR. BARNETT: No objection.

6 MR. STEPHENS: Same.

7 THE COURT: That was no objection, right?

8 MR. STEPHENS: You are correct, Your Honor.

9 THE COURT: All right. It's in.

10 Q. So looking at State Intervenors' Exhibit 4, it is  
11 hard to stop saying State's exhibits, I apologize. But  
12 Exhibit 4, it appears that you changed Dr. Porsa's  
13 recommendation of 65 years or older to 50 years of age.

14 Is that correct?

15 A. Yeah, I did.

16 Q. And you mentioned earlier when Mr. Barnett was  
17 asking you questions that there's not really any data  
18 saying 50 is a better number than 65, correct?

19 A. There certainly wasn't at that time.

20 Q. Okay. And you'd agree with me that this is a  
21 rapidly changing environment we're living in currently  
22 for medical science, right?

23 A. Yes.

24 Q. New information is coming in every hour, every day,  
25 that is changing the way folks are responding, correct?

1 A. Yes.

2 Q. Would you also agree with me that in our current  
3 situation, our unprecedented situation, that not -- one  
4 person doesn't have all the answers?

5 A. Yes.

6 Q. Would you also agree with me it is prudent for  
7 decision makers to consider a wide variety of opinions in  
8 making an ultimate decision in terms of policy and  
9 responding to COVID-19?

10 A. Sure.

11 Q. So would you agree with me that your number, years  
12 of age, or over is your opinion, but it is one of many  
13 opinions, some of which are that it's 65; that's a  
14 relevant number, correct?

15 A. Yes, that's an opinion.

16 Q. And in fact, that is the CDC's opinion currently,  
17 correct?

18 A. I'd have to look at the CDC website to see what  
19 their cutoff is for what they consider older adults, if  
20 that is 60 or 65. I don't want to misspeak or  
21 mischaracterize that.

22 Q. Totally fine. But again, the bigger point being  
23 experts can differ about what the appropriate number is,  
24 including the federal government, correct?

25 A. Sure.

1 Q. And you also agree with me that this letter again  
2 also speaks of releasing nonviolent people charged with  
3 nonviolent offenses, correct?

4 A. That's what I wrote, yes.

5 Q. So this letter in your opinion shouldn't be applied  
6 to those held on violent offenses?

7 A. I mean, I think this -- this letter should be  
8 applied by the -- the judges and the court system in, you  
9 know, according to their rules. I -- I really am, in  
10 this letter, giving my medical opinion.

11 I don't think I'm -- I'm the person to judge who  
12 gets released based on their types of offenses. I'm  
13 merely trying to give more of an opinion on the medical  
14 side and the public health side.

15 Q. Got it. I should have talked about this earlier.

16 You wrote this letter in your personal capacity,  
17 not as a doctor --

18 A. I did, I did, I did. As a physician, but yeah, as a  
19 private citizen.

20 Q. As a fellow government employee I understand why you  
21 are so eager to say that, I get it.

22 So you wrote it as a private physician, not as a  
23 UT Southwestern or Parkland employee or agent or whatever  
24 you are, correct?

25 A. That is right, that is right.



1 Q. And you mentioned that -- judges, is that because in  
2 your view, who is released should be left to those who  
3 are involved with the criminal justice system and making  
4 those decisions?

5 A. Yeah. I can give you my medical opinion on who I  
6 think needs to be released, particularly in the setting  
7 of this pandemic who I think would be high risk for  
8 having complications. But I -- I -- typically don't know  
9 anybody's charges, why they're in the jail. And -- and I  
10 frankly prefer not to. So I don't feel like I'm -- would  
11 give an opinion on that.

12 Q. So I guess my question would be, you wouldn't be  
13 proposing just a mass release of everyone in the jail,  
14 right?

15 A. No. No.

16 Q. Why not?

17 A. You know, that -- I think probably there are people  
18 in the jail that -- that need to be in the jail. I think  
19 there's a lot of people in the jail that maybe don't need  
20 to be in the jail. And so I -- I think the jail's there  
21 for a reason.

22 But I -- what I've seen in other states, in New  
23 York and California, they reduced their correctional  
24 health population by 50 percent in a setting of COVID.  
25 And I think that, you know, that is a really important

1 public health step.

2           So am I saying really, decrease it by a hundred  
3 percent, no. But I think -- I think decrease it by a  
4 really substantial number so that we can actually enforce  
5 some social distancing and keep people safe. From a  
6 medical standpoint, that is what I would encourage.

7 Q. So it sounds like, and correct me if I'm wrong, your  
8 position is you can give your input, but it is going to  
9 require criminal justice stakeholders to look at each  
10 individual person to decide who they're going to release;  
11 is that fair?

12 A. Yeah. I -- I would say it's up to the legal system  
13 to determine who's, from a legal standpoint, appropriate  
14 to be released. That -- that really is not my -- my area  
15 of expertise. I can say who I think medically would need  
16 to be released.

17 Q. Doctor, thank you very much.

18           MR. BIGGS: I will pass the witness, Judge.

19           THE COURT: Okay. I'm assuming Defendants don't  
20 have any questions; is that right? I mean --

21           MR. STEPHENS: I do, Your Honor. I won't take  
22 long.

23           THE COURT: No problem.

24           MR. STEPHENS: It's the e-mail chain with --  
25 e-mail chain with Mr. Karakatsanis.

1 THE COURT: No problem.

2 CROSS-EXAMINATION

3 BY MR. STEPHENS:

4 Q. Doctor, my name is Ben Stephens. I represent Dallas  
5 County and Sheriff Marian Brown in this case. I won't  
6 take long, but I do have just a couple of questions for  
7 you.

8 A. Okay.

9 Q. On the third page of this PDF.

10 (Off-the-record discussion.)

11 MR. STEPHENS: Ms. Monk, could you scroll down  
12 to Page 3 of this PDF.

13 Q. Doctor, on March 23rd, you sent Alec an e-mail that  
14 says, Alec, thanks for your e-mail --and please correct  
15 me if I'm not reading this correctly. But in the body of  
16 the e-mail you say, I am currently working with our  
17 medical director on creating a list of high-risk patients  
18 that I think need to be released.

19 Could you tell me a little more about a list?

20 A. Sure. So I mean, it's -- it's like a -- a  
21 spreadsheet where we went through looking at different  
22 patients and what -- how -- the number of medical issues  
23 that they had. So I -- I can't remember specifically  
24 each one.

25 But it listed chronic pulmonary disease, chronic

1 lung disease, we have HIV, cancer, maybe renal disease.  
2 Just several chronic illnesses that we felt would put  
3 people at higher risk for becoming sick from COVID. And  
4 so then we tried to rank different patients based on that  
5 information.

6 Q. And did you know -- well, let me rephrase.

7 Who asked you to prepare this list?

8 A. So I wasn't asked to prepare it, but I was asked to  
9 give my feedback on it.

10 So our medical director is Diane Urey, she is  
11 our intramedical director. And so she is the one who  
12 asked my opinion on it and to give some input as to  
13 who -- how would I prioritize this list.

14 Q. Did you know why you were being asked to provide a  
15 list?

16 A. Yeah, yeah. I -- or the impression I got was to  
17 help determine so if people were eligible for release,  
18 this would be my -- this would be my list of priority  
19 patients.

20 Q. Okay. So -- so you -- so this is a list that was  
21 something you created for -- that you helped to create  
22 for use by the legal system in determining who, if  
23 determined to be eligible for release, should become the  
24 first to get out based on the medical conditions?

25 A. Yeah, or who we thought was highest risk for

1 becoming severely ill from COVID.

2 Q. Do you know who this list was provided to?

3 A. That, I don't know. We'd have to ask the medical  
4 director. I assume the sheriff's department, but I don't  
5 know specifically who.

6 Q. And when did you -- I gather that was March 23rd you  
7 were working on this list. Do you know when the list was  
8 finalized?

9 A. I don't. I -- I'm not sure when that list was  
10 finalized. My -- basically my work with the list was  
11 this large Excel spreadsheet to help determine to  
12 prioritize. And it wasn't anything fancy, it was sort of  
13 a count. So the more medical problems you had, you were  
14 prioritized higher.

15 But I don't know when -- and so I gave that back  
16 to the medical director and said this is how I would  
17 approach it.

18 And that -- it was that week, because that sort  
19 of -- that was a very memorable week for us. A lot of  
20 things changed in terms of COVID. But I don't know when  
21 -- that is when I sent it back to her. I don't know what  
22 happened to it since then.

23 Q. Sure. Thank you for that. Did you ask any of your  
24 colleagues to sign onto your letter?

25 A. I didn't, I didn't. I -- I quite frankly just

1 didn't have time.

2 Q. How did you come across the e-mail address,  
3 SheriffMedia@DallasCounty.org?

4 A. So I actually -- I struggled when I wrote this  
5 letter, I wanted to send it out.

6 Q. Right.

7 A. And I -- I just Googled addresses. And in fact, I  
8 asked Alec, do you have -- do you know who I could send  
9 it to, the addresses of the people? And nobody had  
10 those. So I just looked online and found e-mails for  
11 the -- the sheriff. That was the only e-mail I could  
12 find to send to anybody. And then to the county  
13 commissioners.

14 Q. Great. Thank you. I'm going to just ask you a list  
15 of questions and ask you if you agree with me or not, and  
16 feel free to say you don't.

17 A. Okay.

18 Q. Would you agree with me that thoughtful and  
19 deliberate planning for COVID-19 mitigation in jail is  
20 imperative?

21 A. Yes.

22 Q. Would you agree with me that currently there is no  
23 cure?

24 A. Yes.

25 Q. And would you agree with me that sort of the best we

1 can do right now is try to contain and prevent the spread  
2 of COVID-19?

3 A. Yes.

4 Q. Would you agree with me that Dallas County should  
5 provide -- and the Dallas County Sheriff's Office should  
6 provide soap to the inmates in the jail?

7 A. Yes.

8 Q. Would you agree that the jail should provide masks  
9 to every inmate?

10 A. Yes.

11 Q. Would you agree with me that every inmate should  
12 exercise good personal hygiene while they are in  
13 detention?

14 A. Yeah.

15 Q. Would you agree with me that jail staff should  
16 attempt to enforce social distancing in the areas of the  
17 jail where that is feasible?

18 A. That's a tough one, it is really hard to do.

19 Q. Sure.

20 A. But yeah, as much as possible, we should encourage  
21 social distancing.

22 Q. Would you agree with me that where it is possible  
23 for inmates, inmates should try to exercise social  
24 distancing?

25 A. Yeah. Again, I think it's really challenging when

1     you have people in a small space.

2     Q.    Would you agree with me that officers in a jail  
3     should wear masks?

4     A.    Yes.

5     Q.    Would you agree with me that officers who work with  
6     inmates who have tested positive for COVID-19 should wear  
7     additional PPE like face masks and gowns?

8     A.    Yeah.

9     Q.    Would you agree with me that copays should be  
10    suspended for medical visits for inmates?

11    A.    Yes.

12    Q.    Are you aware of whether that's actually been done?

13    A.    You know, that's a good question.  I believe it has.  
14    But I -- I don't make that decision.  I'm not sure.  But  
15    I'm pretty sure it has.

16    Q.    Sure.  And would you agree with me that  
17    communication fees for inmates should be waived, like  
18    fees to use video visitation or the fees to use the  
19    phone?

20    A.    Yes, particularly when visitation, in-person  
21    visitation is restricted.

22    Q.    Sure.  And do you have any knowledge of whether  
23    that's been done?

24    A.    I believe it has.  I know that there is no in-person  
25    visitation allowed.  As far as I know, video visitation,



1 I think those fees have been waived. But again, I don't  
2 know the specifics, but I believe so.

3 Q. Would you agree with me that law enforcement during  
4 this time of pandemic should be encouraged to issue  
5 citations for low-level offenses instead of making  
6 arrests?

7 A. Yes -- so you mean like to not bring people to the  
8 jail?

9 Q. Exactly.

10 A. Yes.

11 Q. And would you agree with me that jail authorities  
12 should cooperate with other criminal justice agencies to  
13 facilitate getting people out of the jail?

14 A. Yes.

15 Q. One last question. I'm going to ask you a  
16 hypothetical. If you don't understand the hypothetical,  
17 just tell me.

18 An inmate tests positive for COVID-19 while in  
19 the jail; receives treatment under your care at the jail.  
20 But after a few days, this inmate makes bond and is  
21 released and is released home and is quarantined in a  
22 room in his house. And this inmate can't even speak to  
23 his personal doctor because his symptoms are so severe.

24 Do you think the quality of that inmate's  
25 medical care increased after he was released from the

1 jail?

2 A. Okay. So maybe you need to clarify. Is this  
3 someone who's medically stable at the time that they're  
4 released?

5 Q. Correct.

6 A. And then they go home and quarantine at home as they  
7 ought to, and then they become medically unstable?

8 Q. Their symptoms remain the same. I'm not sure  
9 exactly how you are defining medically stable or  
10 unstable.

11 A. Okay.

12 Q. Assume the -- symptomatic the same level --

13 A. Yeah, so I think -- I mean, I think we have a  
14 responsibility from the jail medical side when we release  
15 people, if people need further -- you know, additional  
16 ongoing medical care, then I would send them to the  
17 hospital rather than home.

18 And so you know, but if somebody is -- just  
19 because they have COVID-19 they don't need to go to the  
20 hospital. Obviously, we can take care of them here in  
21 the jail, they can take care of themselves at home.

22 But if they were to get -- you know, we do  
23 provide discharge instructions when they are released  
24 from the jail, in fact, different ones for different  
25 scenarios, if you were exposed versus if you have

1 COVID-19. And instructions to you know, go to the  
2 hospital or call your doctor if such symptoms get worse.

3 But if you are saying that in this scenario the  
4 patient is the same when they get home as when they were  
5 in the jail, you know, honestly anyone in the jail who is  
6 even moderately sick would be going to the hospital. So  
7 you're talking about someone who is mildly ill, and  
8 someone who is mildly ill should be safe to go home and  
9 stay there.

10 Q. Okay.

11 A. Does that answer the question?

12 Q. You answered my question perfectly. Thank you.

13 MR. STEPHENS: And I have no more questions.

14 THE COURT: Plaintiffs' counsel, do you have any  
15 follow-up questions?

16 MR. BARNETT: Just a couple.

17 REDIRECT EXAMINATION

18 BY MR. BARNETT:

19 Q. You talked about a priority list?

20 A. Yes.

21 Q. Do you recall, Doctor, approximately how many people  
22 were on that list?

23 A. A lot. Like over -- I would say about 2,200 people.  
24 So when I saw the list was around that -- you know, the  
25 time of this e-mail. So March 23rd or around that time.

1           So I -- I can't remember how many people were in  
2 the jail at that time, but it was -- I remember it being  
3 sort of close to half, but it was over 2,000.

4 Q.   And was any part of the list about what crimes they  
5 had been charged with or --

6 A.   No, no, no. This is a list of medical -- just  
7 medical issues.

8 Q.   And Doctor, do you know how many people were  
9 actually released?

10 A.   I don't. I don't. I don't know if anybody has been  
11 released based on that list. But I also don't know that  
12 anyone would tell me that, so, no.

13 Q.   And from working at the jail, do you know whether or  
14 not the County was aware of a priority list?

15 A.   That's a -- I don't know the answer to that. I  
16 think that's probably a -- a question for the -- the  
17 medical director who had asked me to kind of look over  
18 it. I don't know what happened to it after I sent it  
19 back.

20 Q.   Okay.

21           MR. BARNETT: Thank you very much, Doctor.  
22 We're really thankful for you being here.

23           THE COURT: Doctor, thank you so much for  
24 parachuting in.

25           (Off-the-record discussion.)

1 THE COURT: So you are excused from Court.

2 I'm going to ask Plaintiffs if they rest their  
3 case.

4 MR. BARNETT: I want to make sure that all the  
5 stuff that we put in the record and think is in the  
6 record --

7 THE COURT: Sure.

8 MR. BARNETT: -- actually is in the record.

9 THE COURT: That is a good idea, double-check.

10 MR. BARNETT: We've got a list of declarations,  
11 and I can send them to verify or -- or could read them  
12 off. But some of them are, you know, lawyers, some of  
13 them are from individuals, couple of them are from the  
14 experts, Dr. Cohen and Dr. Lofgren -- he is the one who  
15 does the projections of what the curves are going to be  
16 like.

17 THE COURT: I've got your whole exhibit  
18 notebook.

19 MR. BARNETT: Okay. Well, subject to all of  
20 those being in the record, Your Honor, we rest. I would  
21 like to verify by sending a list maybe to Erica and  
22 opposing counsel.

23 THE COURT: Sure. Just to do housekeeping.

24 Why don't you rest as to your live witnesses; is  
25 that good?

1 MR. BARNETT: Yes, that is great. Thank you,  
2 Your Honor.

3 THE COURT: Then if we need to reopen the record  
4 for you to do some housekeeping, tomorrow I'm happy to do  
5 that. But as far as presentation of physical evidence,  
6 you are done with that.

7 MR. BARNETT: Okay.

8 THE COURT: Is that right?

9 MR. BARNETT: I think that's right -- sign from  
10 my colleagues.

11 MS. WOODS: Yes, Your Honor, as long as subject  
12 to being sure that our materials that we have submitted  
13 are in the record, that is our concern. But otherwise,  
14 yes.

15 THE COURT: Great. I know you want to keep  
16 everything in for record purposes. Sounds good.

17 Well, as far as witnesses, you have rested your  
18 case.

19 Defendants, now is a great breaking point.

20 It's Plaintiffs' burden, so that -- that was the  
21 long haul. I expect probably -- I can't see any reason  
22 we won't wrap this up tomorrow, just from looking at the  
23 list that you-all have given me. We've gone through  
24 Chief, and I -- I have written down that -- with Segura,  
25 you're just relying on his declaration, right?

1           MR. STEPHENS: Unless the Court has questions  
2 for him.

3           THE COURT: I don't. We'll look through the  
4 declarations and they are all helpful for kind of getting  
5 the puzzle together. But I don't think I've got any  
6 questions where I need to talk to Mr. Segura live.

7           I do have some questions for Mr. Jones, but  
8 there are no surprises. Just the questions -- you know,  
9 kind of the last piece of the puzzle to understand  
10 everything going on and sort of what's going on at the  
11 hospital medically. And I'm -- I know he will illuminate  
12 the Court as to that.

13           So Defendants, if you'll be ready to do your  
14 opening; Intervenor, if you'd like to give an opening.  
15 You're welcome to do it separately, together, however you  
16 want to do that. And then look forward to hearing from  
17 Mr. Jones and hopefully we can get it all closed up by  
18 like, lunchtime and you-all can go on with your lives.

19           (Court in recess, 6:41 p.m.)  
20  
21  
22  
23  
24  
25

1 I, BROOKE N. BARR, United States Court Reporter for  
2 the United States District Court in and for the Northern  
3 District of Texas, Dallas Division, hereby certify that  
4 the above and foregoing contains a true and correct  
5 transcription of all proceedings in the above-styled and  
6 -numbered cause.

7 WITNESS MY OFFICIAL HAND this the 28th day of April,  
8 2020.

9

10

11

12

/S/ BROOKE N. BARR

13

BROOKE N. BARR, CSR NO. 6521

14

CSR Expiration Date: 12/31/21

United States Court Reporter

1100 Commerce Street

Room 1376

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Dallas, Texas 75252

(214) 753-2661

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# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OSCAR SANCHEZ, et al,                   \*     3:20-CV-00832-E  
Plaintiffs,                               \*  
v.   \*  
SHERIFF MARIAN BROWN, et al,         \*     DALLAS, TEXAS  
Defendants.                               \*  
APRIL 24, 2020

\*\*\*\*\*

TRANSCRIPT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER  
BEFORE THE HONORABLE ADA E. BROWN  
UNITED STATES DISTRICT JUDGE

\*\*\*\*\*

BROOKE N. BARR, CSR     (214) 753-2661

A P P E A R A N C E S

COUNSEL FOR THE PLAINTIFFS:

MS. ANDREA WOODS  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2528  
awoods@aclu.org

MR. BARRY C. BARNETT  
SUSMAN GODFREY, LLP  
8115 Preston Road, Suite 575  
Dallas, Texas 75225  
(866) 754-1900  
bbarnett@susmangodfrey.com

MS. AMY B. FETTIG  
AMERICAN CIVIL LIBERTIES UNION  
NATIONAL PRISON PROJECT  
915 15th St. NW, 7th Floor  
Washington, DC 20010  
(202) 548-6608  
afettig@aclu.org

MR. HENDERSON HILL  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
201 W. Main St., Suite 402  
Durham, North Carolina 27701  
(919) 682-9563

COUNSEL FOR THE DEFENDANTS:

MS. KATHARINE D. DAVID  
MR. BEN STEPHENS  
MR. NICHOLAS DAVID STEPP  
HUSCH BLACKWELL, LLP  
600 Travis St., Suite 2350  
Houston, Texas 77002  
(713) 525-6258  
kate.david@huschblackwell.com  
ben.stephens@huschblackwell.com  
nick.stepp@huschblackwell.com

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1 COUNSEL FOR THE INTERVENORS:

2 MR. ADAM ARTHUR BIGGS  
3 OFFICE OF THE TEXAS ATTORNEY GENERAL  
4 PO Box 12548  
5 Austin, Texas 78711  
6 (512) 320-2120  
7 adam.biggs@oag.texas.gov  
8  
9  
10  
11  
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**DEFENDANT:**

NO.	DESCRIPTION	OFFERED/ADMITTED
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NO.	DESCRIPTION	OFFERED/ADMITTED
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\* \* \* \* \*

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1 (P R O C E E D I N G S)

2 THE COURT: This is Cause Number 3:20-CV-00832.

3 We're in the last day of our hearing. This is Oscar  
4 Sanchez, et al, versus Dallas County Sheriff, et al.

5 We are resuming our hearing from yesterday.

6 We're going to take up a couple of housekeeping matters.

7 Both sides rely on declarations. And so I just  
8 wanted to clarify, since we're going to be putting  
9 together the appellate record, is there anything --  
10 Plaintiffs, I'll start with you; and then we'll ask  
11 Defendants and Intervenor, too, is there anything that  
12 you want withdrawn that you do not want considered by the  
13 appellate court? I just want us to all be on the same  
14 page as to what this record actually is.

15 MR. BARNETT: No, Your Honor. All the  
16 declarations that we've submitted, and other evidence in  
17 connection with the record so far, we would like to be in  
18 the appellate record.

19 THE COURT: Okay. Defendants, is there anything  
20 that you want withdrawn?

21 MR. STEPHENS: No, Your Honor.

22 MS. DAVID: We'd like all of our exhibits  
23 entered into the record and all of our declarations as  
24 well, thank you.

25 THE COURT: Okay. And, Intervenor, Mr. Biggs,

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1 anything you want withdrawn?

2 MR. BIGGS: Nothing withdrawn, Judge. We would  
3 incorporate our decs for the TRO as well as the motion to  
4 intervene. They overlap, so.

5 THE COURT: Yes. Okay.

6 MR. BIGGS: Yeah. We --

7 THE COURT: And I'll consider -- oh, I'm sorry.  
8 I didn't mean to step on your toes, Mr. Biggs. Please  
9 continue.

10 MR. BIGGS: One point of clarification. Are the  
11 plaintiffs withdrawing the declaration that they walked  
12 back yesterday? The one about the -- the fight, or  
13 whatever else it was?

14 THE COURT: Yes.

15 I thought, Mr. Barnett, that you wanted that  
16 excluded from consideration so that we didn't have to let  
17 them brief it up and respond; is that --

18 MR. BARNETT: Well, I -- I don't want it  
19 excluded from the record, Your Honor --

20 THE COURT: From the appellate record. Okay.

21 Well, in the body of -- I can tell you guys,  
22 from the body of information that I'm going to consider,  
23 in fairness, because Defendants didn't get to have an  
24 opportunity to be heard on that, that is not something I  
25 plan to consider in deciding the merits of this case.

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1 Does anybody have any objection to that? It  
2 will be part of the appellate record. But when I get my  
3 arms around what I'm looking at, in fairness, because of  
4 the -- because it was filed the same day when it was  
5 proposed to be used for evidence, it will be part of the  
6 appellate record that will be considered; but just to be  
7 clear, I think, in fairness, the Court should not  
8 consider it in making its decision.

9 Do you have any objection to that, Mr. Barnett?

10 MR. BARNETT: I'm going to defer to Ms. Woods on  
11 that particular question, Your Honor.

12 MS. WOODS: No, Your Honor. That -- that  
13 arrangement sounds fine, thank you.

14 THE COURT: Okay. Sounds good. So it will show  
15 that it was filed and it will be part of the appellate  
16 court record; but because I didn't give Defendants an  
17 opportunity, because of time, so we can get this decision  
18 made, to -- to respond and do their due diligence, I will  
19 not consider that.

20 I had printed it out, but I set it aside  
21 yesterday when we had an objection. So I will not read  
22 or consider that in making my decision. I will consider  
23 the rest of the record, everybody's declarations,  
24 everything else.

25 And just for the record, Nikki, that was

1 Ms. Fry's supplemental declaration, filed yesterday,  
2 April 23rd. And it's ECF Document Number 79.

3 So with the exception of Document Number 79,  
4 we're all on the same page that everything else is  
5 included. And Number 79 is included for the appellate  
6 record, but not for the purposes that I need for making a  
7 determination in this case.

8 Is that right, Plaintiff?

9 MR. BARNETT: Yes, Your Honor.

10 MS. WOODS: Yes, Your Honor.

11 THE COURT: Okay. Great.

12 Defendants, you don't have anything you want  
13 withdrawn?

14 Intervenors, you don't have anything you want  
15 withdrawn; is that correct?

16 (Gesturing.)

17 THE COURT: Okay. Got thumbs up. So that we're  
18 all on the same page on that.

19 Actually, let me get a verbal yes so the Court  
20 of Appeals doesn't kick me.

21 MS. DAVID: Yes, Your Honor.

22 THE COURT: Okay. And that was Ms. Davis --

23 MR. BIGGS: And this is Adam Biggs. Yes, Your  
24 Honor.

25 THE COURT: And I owe you an apology. I have

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1 been calling you Ms. Davis and it's Ms. David. And so  
2 I'm going to make myself a sticky note. So I apologize  
3 if I -- I'm going to call you Mrs. D so I stop messing it  
4 up.

5 MS. DAVID: Your Honor, you are not alone on  
6 that. Every time I make a restaurant reservation I have  
7 to explain that my name is not David. It is a very  
8 difficult last name. It's my husband's fault, and he  
9 suffers for it. So it's not at all your fault.

10 THE COURT: Well, I mean no discourtesy to you.

11 MS. DAVID: No.

12 THE COURT: Intervenors, Mr. Biggs, you -- we  
13 are on the same page on the appellate record; everything  
14 except the supplemental declaration, Document 79, right?

15 MR. BIGGS: Correct, Judge.

16 THE COURT: Okay. Sounds good.

17 All right. So with that said, I think we're  
18 ready to jump back into the matters.

19 IT, if you are listening, I think we're ready to  
20 go on air, for any -- any members of the public who wish  
21 to listen to court proceedings, if we're not already. We  
22 may already be.

23 MR. STEPP: Your Honor?

24 THE COURT: Yes, sir.

25 MR. STEPP: I'm sorry, may I bring up one other

1 housekeeping matter?

2 THE COURT: Of course you can. Of course you  
3 can.

4 MR. STEPP: Plaintiff suggested they would  
5 follow up about Mr. Bailey's case, which is moot and  
6 should be dismissed. I'm wondering if we have an update  
7 on that?

8 THE COURT: Yes. So what Plaintiff -- I  
9 appreciate you bringing that up, sir.

10 What is your position, Plaintiffs? I looked  
11 back at your pleadings, and they seem to deal only with  
12 the incarceration of inmates. Are you withdrawing him as  
13 a -- as a party?

14 MS. WOODS: Your Honor, we're not, because it's  
15 actually not -- Mr. Bailey's request for injunctive  
16 relief on behalf of inherently transitory class is not  
17 moot. There is a well-established exception to mootness  
18 for cases precisely like this involving pretrial  
19 detainees, as the Supreme Court noted in *Gerstein V.*  
20 *Pugh*.

21 So we -- while Mr. Bailey no longer has a habeas  
22 petition pending before this Court, his request for  
23 injunctive relief on behalf of a class is not moot.

24 THE COURT: Okay. So -- all right, all right.

25 Defendants, do you have any response to that?

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1           MR. STEPP: My response would be, Your Honor,  
2 that every named plaintiff who punitively represents a  
3 class must maintain standing at all times. And his claim  
4 is moot, because the only relief they request is  
5 prospective injunctive relief.

6           MS. WOODS: And if I may briefly respond, Your  
7 Honor.

8           THE COURT: Sure.

9           MS. WOODS: That's -- that's conflating standing  
10 and mootness doctrines. And standing is established at  
11 the time that Mr. Bailey became a named plaintiff in this  
12 case. And he undeniably had standing at that time.

13          THE COURT: Okay. Intervenors, I'll --

14          MR. STEPP: Well --

15          THE COURT: Oh, I'm sorry. Go ahead, Mr. Stepp.

16          MR. STEPP: Mootness is a component of standing,  
17 Your Honor.

18          THE COURT: Okay. If you will send me that  
19 case, I'll take a look at it. I will hold in abeyance my  
20 ruling on that until I look at the case that they are  
21 citing, and I'll make a decision on that here shortly.

22          So I find that -- that your -- that it's all  
23 timely for appellate purposes. But if you-all will give  
24 me a few minutes to take a look at this case they're  
25 talking about, I'll pull the trigger on it.

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1           Mr. Biggs, do you have any other position?

2           MR. BIGGS: I think the biggest thing would be  
3 that -- the writ. I mean, even setting aside the 1983  
4 prospective injunctive relief, the writ should be  
5 dismissed for Mr. Bailey for sure, because he is no  
6 longer in custody.

7           And I also was hoping to get clarification. Was  
8 he in custody when the amended complaint was filed?  
9 Because that is what I -- that is what the critical --

10          MS. WOODS: Yes.

11          MR. BIGGS: -- Mr. Hill is nodding and said yes.  
12 So we will stand on the writ being dismissed as moot.

13          THE COURT: And, Plaintiffs, just to clarify,  
14 what is your position as to dismissal of the writ?

15          MS. WOODS: Well, I just -- I acknowledge that  
16 his writ is moot, Your Honor. He was in custody when the  
17 amended complaint was filed, and he was released Monday  
18 night, Your Honor, right before this hearing began.

19          THE COURT: Okay. Okay. Well, if you'll send  
20 Ms. Monk that case I'll take a look at it, and then I'll  
21 make a further ruling.

22          Any other housekeeping matters we need to take  
23 up?

24          (No response.)

25          THE COURT: Okay. All right. So when we

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1 concluded yesterday, Plaintiffs had rested subject to  
2 housekeeping. So, Plaintiffs, I think you're finished.

3 And, Defendants, do you wish to make an opening?

4 MR. STEPP: Your Honor, we wish to move the  
5 Court for a judgment denying the motion for temporary  
6 retraining order, preliminary injunction, and petition  
7 for writ of habeas corpus. Plaintiffs have no likelihood  
8 of success on the merits of their claim. One way we can  
9 look at that is by considering Document 72, which is  
10 their proposed order.

11 As you know, the Valentine opinion says there is  
12 no precedent that the Eighth Amendment, or by extension,  
13 the Fourteenth Amendment requires more than what the CDC  
14 recommends.

15 If you look at Paragraphs 3 and 4 of Plaintiffs'  
16 proposed relief, those all entail release -- mass release  
17 from incarceration. That is more than the CDC has  
18 recommended. That is farther than the Valentine order  
19 went. And there's simply no support in the law for that  
20 kind of relief on these facts.

21 Paragraph 2 of their proposed order feeds  
22 directly into Paragraphs 3 and 4. And so that can be  
23 struck as well, because it serves no purpose absent  
24 Paragraphs 3 and 4.

25 Paragraphs 5 and 7 of Plaintiffs' proposed order

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1 track almost verbatim Judge Ellison's order in the  
2 Valentine case. Many of these measures go beyond CDC  
3 recommendations. And on the fortunes that coincide with  
4 CDC recommendations, Defendant Exhibit 4 demonstrates  
5 widespread dissemination of CDC guidance in the Dallas  
6 County Sheriff's Office.

7 On March 16th, the sheriff and Dallas County  
8 have implemented several rounds of protective measures  
9 informed by CDC guidance. You can see that in the  
10 testimony of Chief Robinson, and in his declaration;  
11 which is Document Number 34-1.

12 There are COVID-19 signs posted in the jail, as  
13 Officer Lewis acknowledged. Inmates have masks, soap,  
14 screening, quarantine/isolation procedures; social  
15 distancing; in-person visits have been suspended; virtual  
16 visits have -- are available. The evidence is that the  
17 Dallas County Sheriff's policy is currently to do all  
18 these items informed by CDC guidance.

19 And as the Court knows, Valentine instructs that  
20 the Eleventh Amendment prohibits a federal court from  
21 ordering state governments to follow their own policies.  
22 That concept originates in the case of Pennhurst State  
23 School and Hospital versus Halderman. So then we have  
24 no -- no more Paragraphs 5 and 7 of Plaintiffs' proposed  
25 order.

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1 Paragraphs 8 and 9 of Plaintiffs' proposed  
2 relief called for additional measures, but beyond the  
3 ones I've already suggested, and well beyond Valentine.  
4 So those are not going to survive appellate scrutiny  
5 either, and shouldn't be -- because Plaintiffs have no  
6 likelihood of success of achieving those remedies.

7 So far we've struck Paragraphs 2, 3, 4, 5, 7, 8,  
8 and 9, because Plaintiffs have no likelihood of success  
9 relating to those remedies. That leaves Paragraphs 1, 6,  
10 and 10.

11 Paragraph 6 says that Dallas County may release  
12 inmates consistent with state law. Pennhurst, under the  
13 Eleventh Amendment, prohibits an injunction that states  
14 may follow state law, or must follow state law. The  
15 Tenth Amendment would also prohibit such an injunction.

16 Paragraph 10 calls for creating an amorphous  
17 list of inmates -- a list of inmates based on amorphous  
18 criteria, rather, that are much broader than the CDC  
19 guidelines. Dr. Cohen admitted that his criteria in the  
20 50 years or older is broader than the CDC guidelines.  
21 Dr. Nijhawan admitted that 50 years or older was not  
22 supported by any scientific data at the time she wrote  
23 the order. She did not testify about new data or any CDC  
24 guideline that would support that.

25 For his part, Dr. Cohen wasn't able to explain

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1 why he didn't understand the concept, "developmental  
2 disabilities," and how his concept is different from the  
3 CDC guidance.

4           The other problem with Paragraph 10, Your Honor,  
5 is that it would make this federal court a state  
6 magistrate. And this goes to the heart of what  
7 Defendants have been saying from the beginning. There's  
8 a constellation of principles that prohibit federal  
9 courts from becoming -- federal district courts from  
10 becoming appellate courts or stay proceedings from state  
11 courts. And I want to go into proceedings -- or  
12 proceedings that have resulted in judgment.

13           That would be the Younger abstention doctrine,  
14 Your Honor, the Feldman doctrine, the Tenth Amendment;  
15 the exhaustion requirement for Section 2241 habeas  
16 claims, as well as the exhaustion requirements in the  
17 Prison Litigation Reform Act.

18           It is hard to imagine a topic, Your Honor, where  
19 a state had a stronger interest than enforcing its state  
20 laws, regulations, and rules than it does when it comes  
21 to the administration of that state's correctional  
22 facilities. So Plaintiffs would have no likelihood of  
23 success of achieving a remedy anything like Paragraph 10  
24 of their proposed order.

25           Having just stunted all the others, Paragraph 1

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1 conditionally certifies a class. Well, as I've said,  
2 Plaintiffs have no likelihood of success on the blanket  
3 claims of their proposed relief. And 23(b)(2), which is  
4 the class provision they move under, doesn't support the  
5 kind of individualized determination where this Court  
6 would decide the conditions under which individual  
7 detainees or inmates would be held, presumably, to  
8 conditions of their release. That's just not available.  
9 Further, a class certification, when there is no further  
10 relief -- a conditional class certification when there is  
11 no further relief just serves no purpose.

12         It is not just that Plaintiffs have no  
13 likelihood of success on obtaining the relief specified  
14 in their proposed order, Judge. They have no likelihood  
15 of success in obtaining any relief because they have not  
16 met the objective component of deliberate indifference.  
17 There is no evidence that considering all the protective  
18 measures implemented by the sheriff and Dallas County  
19 there remains an objectively intolerable risk of harm.

20         Second, Plaintiffs cannot meet the subjective  
21 component of deliberate indifference. They cannot show  
22 and have not shown that the sheriff or Dallas County is  
23 subjectively aware that protective measures are  
24 inadequate and deliberately choose to disregard the risk.

25         Plaintiffs also have not shown irreparable harm.

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1 For the same reasons the Fifth Circuit explained in  
2 Valentine, Defendants would suffer irreparable harm, as  
3 well as Intervenor, from the issuance of an injunction  
4 from this Court. Public interest strongly favors the  
5 denying of the requested injunction and writ of habeas  
6 corpus.

7           The last thing I know that this Court -- I  
8 suspect the last thing this Court wants to do is  
9 hamstring the Sheriff's Office in responding to the  
10 COVID-19 outbreak. The Sheriff's Office and Dallas  
11 County have made repeated adjustments, informed by  
12 evolving CDC guidelines. And preventing Dallas County or  
13 the Dallas County Sheriff from making continued changes  
14 in the implementation of their protective measures  
15 wouldn't serve anyone.

16           We do not want to force, as a prudential matter,  
17 the Dallas County Sheriff's Office to come to court or  
18 face contempt before they have to order masks from a new  
19 supplier or a new brand of soap. That's not a proper use  
20 of an injunction from a federal court.

21           Because Plaintiffs have not met their burden for  
22 the issuance of a temporary restraining order, preliminary  
23 injunction, or writ of habeas corpus, their application  
24 should be denied at this time.

25           Thank you, Your Honor.

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1 THE COURT: And thank you for good argument.  
2 And I'll have some follow-up questions -- or comments  
3 before I -- I get your reply, Mr. Barnett.

4 Intervenor, do you have any different thoughts  
5 or can you join in Defendants'? Mr. Biggs?

6 MR. STEPP: We may have lost Mr. Biggs.

7 THE COURT: Let's go off the record for a  
8 moment.

9 (Recess taken.)

10 THE COURT: Okay. Back on the record. Do you  
11 have any -- any additional thoughts to add?

12 MR. BIGGS: I think I would prefer to wait until  
13 close, if necessary. But, I mean, we agree with the --  
14 the sheriff and the County's argument on these particular  
15 points, specifically the -- the class pieces; that  
16 there's just not class relief available in this posture.  
17 And this Court, unless you certify class; which we're a  
18 mile away from, can't give class relief. Otherwise, we  
19 would adopt the arguments.

20 THE COURT: Sounds good. Well, I would  
21 certainly hear closing arguments from both sides on the  
22 appropriateness of the relief requested when all the  
23 evidence is in from Defendants, Intervenor, and  
24 Plaintiffs. So I'll hear separate closing arguments.  
25 But just as to his motion now, do you have any arguments

1 to add?

2 MR. BIGGS: No, Judge.

3 THE COURT: Okay. Mr. Barnett, I -- I -- the  
4 Court does have concerns about setting up kind of a  
5 Mother-May-I system in a pandemic, where I set up a -- an  
6 umbrella where the jail and the sheriff have to come to  
7 me to ask me if they can act.

8 I mean, I'm thinking about the evidence that  
9 I've heard so far, and just -- just from the -- the --  
10 take the chief's testimony yesterday, where he -- he  
11 pulls up this spreadsheet and -- or, I'm sorry, the CDC  
12 document. I don't remember -- I'll have to look back at  
13 my notes at what date it is.

14 You know, two weeks ago no one in -- nobody in  
15 Dallas, at least, was wearing masks. Now I go to the  
16 grocery store and everybody's wearing masks.

17 And so this is ever evolving, and the CDC's  
18 recommendations are -- are changing as rapidly as our  
19 thoughts are about dealing with this virus, that has no  
20 cure and we have no -- and that we're just really  
21 starting to understand. And I'm concerned about  
22 hampering the County's efforts to prevent it.

23 What I don't want to set up is a system where  
24 they have to come hat in hand every time there's -- there  
25 is a change, and having this threat of contempt if they

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1 don't do so.

2           So I understand your request for injunctive  
3 relief, but I do have concerns about that. I share the  
4 concerns that were kind of raised in the Valentine court  
5 about setting up a system in a pandemic, where they have  
6 to come to me to ask my permission to follow  
7 recommendations or to implement changes. I -- I'm  
8 concerned about setting up that -- that side road in a  
9 pandemic, where I want them to be able to respond  
10 quickly.

11           So I know we'll address this more fully during  
12 closing; but if you'll respond to his motion, and keep in  
13 mind the Court's concerns, that would be helpful.

14           MS. WOODS: Your Honor, I'm not sure if Mr.  
15 Barnett is responding or if I am. But I'm happy to,  
16 unless Mr. Barnett wants to jump in.

17           THE COURT: Ms. Woods, You have the floor.

18           Mr. Barnett, you are muted.

19           MR. BARNETT: I may have an observation or two.  
20 But Ms. Woods is the boss, and so she's going to address  
21 those issues.

22           THE COURT: All right. We'll let Ms. Woods have  
23 the floor, and then if you'd like to chime in, we'll do  
24 that.

25           Ms. Woods.

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1 MS. WOODS: Thank you, Your Honor.

2 So as a sort of preliminary matter, in  
3 Plaintiffs' research, we couldn't find any case where  
4 Rule 52(a) applies to motions for a temporary restraining  
5 order. So a motion along these lines is not permitted at  
6 this stage. Also, the Rule 52 requires such a motion to  
7 be supported by findings in fact and conclusion of law  
8 that haven't been submitted before the Court.

9 But to turn more, you know, squarely to the --  
10 the arguments about Plaintiffs' likelihood of success on  
11 the merits, I fear that the legal issues have been  
12 misrepresented a bit to the Court. Plaintiffs in this  
13 case bring three constitutional claims; only one of which  
14 was at issue in the Valentine case.

15 And there are significant reasons that this case  
16 is not the Valentine case; that the record is different  
17 in the most important ways involving social distancing  
18 and the housing of detainees, and the kinds of written  
19 policies that are actually available in the Dallas County  
20 jail as compared to the Pack Unit in Valentine.

21 So first, just to really emphasize that this  
22 case raises constitutional claims under the Fourteenth  
23 Amendment, two stand-alone claims not addressed by  
24 Valentine, not at issue in Valentine, because Valentine  
25 didn't have preadjudication class members, which actually

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1 constitute the majority of detainees in the Dallas County  
2 jail. And because Plaintiffs in this action bring these  
3 two separate Fourteenth Amendment claims, they have a  
4 great likelihood of success on the merits. First to the  
5 Fourteenth Amendment analog, to the Eighth Amendment  
6 prohibition on cruel and unusual punishment.

7 Preadjudication detainees need only show that  
8 the conditions of their incarceration present an  
9 objectively serious risk to their health and well-being.  
10 This should not be a controversial finding for the Court.

11 The Court has heard considerable public health  
12 and medical evidence, and there's been a discussion for  
13 the past four days that we are in the midst of the  
14 greatest public health crisis of any of our lifetimes.  
15 So to even submit that being incarcerated in the Dallas  
16 County jail, while a disease of this nature is spreading,  
17 to submit that that is not an objective threat to the  
18 well-being of Plaintiffs in this action is not a credible  
19 argument.

20 Second, the plaintiffs -- the preadjudication  
21 plaintiffs have a complete stand-alone claim, unrelated  
22 to the Eighth Amendment, centered on their right to be  
23 free from punishment before the -- the charge they are  
24 accused of has been adjudicated, or the parole violation  
25 they're accused of committing has been heard.

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1           This claim, again, was not touched at all by the  
2 Valentine case, yet it requires the Court to evaluate  
3 whether the conditions of incarceration in the Dallas  
4 County jail, under the current circumstances, are  
5 excessive in relation to the Government's interest in  
6 pretrial detention. Which is primarily the Government's  
7 interest in preventing flight.

8           We'd submit that that is another finding the  
9 Plaintiffs have great likelihood of success on the merits  
10 for. Because again, the conditions of their confinement  
11 pose grave risk to their health and well-being, as has  
12 not been seriously disputed or rebutted.

13           Plaintiffs are housed in dormitory-style pods of  
14 40 to 64 people in the Dallas County jail, where social  
15 distancing is impossible; where Chief Robinson has  
16 suggested that wearing a mask is a substitute for social  
17 distancing. And alternatively, they're housed in  
18 multi-person cells of six, seven, or eight people. Which  
19 again, Chief Robinson's testimony suggested that he  
20 believes being housed in an eight-person cell amounts to  
21 social distancing. That is not what the CDC guidelines  
22 say, and that is not what public health says.

23           So people who are confined under those  
24 circumstances, their -- the threat to their well-being is  
25 excessive in relation to the Government's interest in a

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1 pretrial -- or preadjudication detainees in confinement.  
2 And the number of courts who evaluated that due process  
3 claim; which again, Valentine did not, have found that  
4 under this outbreak and this crisis, that that is a  
5 finding that is satisfied and well-met.

6 Plaintiffs also plan to, in closing, march  
7 through the considerable and important, fundamentally-  
8 different evidentiary record before this Court, after  
9 what the Court has acknowledged is likely the longest  
10 record, that the most detailed, long-standing evidentiary  
11 hearing the country has had to date on one of these cases  
12 dealing with the COVID-19 crisis.

13 Plaintiffs have established considerable  
14 evidence to show not only the objective prong of the  
15 deliberate indifference test, but also the subjective  
16 prong. The fact that Dallas County officials were aware  
17 of this risk, something they do not dispute; but also  
18 that they have disregarded this risk.

19 They've disregarded it by taking too long to  
20 adopt protocols, by failing to institute actual written  
21 policies that can be identified for the Court and the  
22 parties; by acknowledging that policies are not in  
23 writing; by failing to enact policies that staff  
24 understand and can implement; by failing to supply  
25 detainees with the information they need to be -- to stay

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1 safe. By failing to provide adequate sanitation; by  
2 failing to provide adequate PPE; and centrally, by not  
3 exploring -- not even exploring the options available to  
4 them to make social distancing a reality. By suggesting  
5 that, instead, the only way to social distance is to  
6 physically restrain people in the Dallas County jail.

7           Plaintiffs have evidence in the record of the  
8 deliberate indifference Dallas County officials have  
9 shown in the face of this crisis. And we have presented  
10 a record that shows that the CDC guidelines, the relevant  
11 CDC guidelines that the Valentine case was exploring, are  
12 not being adhered to and were not, in fact, the same  
13 guidelines that Chief Robinson even sent to his staff or  
14 posted in the jail. So we -- we have a considerable  
15 record, considerable capacity to show a likelihood of the  
16 success of our constitutional claims.

17           And I -- I plan to discuss these other questions  
18 in a lot more detail, Your Honor, but I do want to flag  
19 again that the relief being sought here is different than  
20 the relief being sought in the Valentine case. The  
21 Valentine case did not involve a habeas petition in any  
22 form. And Plaintiffs plan to walk the Court very  
23 carefully through the contours of this habeas petition,  
24 the reasons it's appropriate for the Court to consider,  
25 and the reasons why it's appropriate on a classwide

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1 basis. Which federal courts have continued to adopt  
2 classwide habeas relief, including under these  
3 circumstances.

4 Plaintiffs have also requested the Court appoint  
5 a public health expert who could go to the jail, provide  
6 the Court and the parties with the best possible  
7 information about what's really going on in the Dallas  
8 County jail. This adversarial process has highlighted  
9 the difficulty of getting accurate information in an  
10 expedient way. And the CDC guidelines themselves support  
11 a facility-specific plan that it considers for the  
12 realities of what's feasible and what can be implemented,  
13 while also considering the CDC's core recommendation that  
14 social distancing be considered a cornerstone of any --  
15 of any institution addressing this crisis.

16 The Valentine plaintiffs did not seek such a  
17 public health expert plan; they did not seek the kind of  
18 reporting of who's medically vulnerable in the jail, to  
19 my knowledge. And Plaintiffs' request for such a public  
20 health expert is on all floors with what the CDC  
21 recommends, and it is entirely appropriate in this case.

22 Your Honor, I -- the last thing I'll say is that  
23 the notion that Plaintiffs have not met their burden to  
24 show irreparable harm is similarly unbelievable, in light  
25 of the record before the Court, the realities of this

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1 disease; the -- the fact that it's been known for months  
2 that congregate environments are the place where the  
3 threat of Coronavirus is the most serious; the fact that  
4 it's been known for months that this virus is transmitted  
5 via droplets and contact with high-touched surfaces.

6 Plaintiffs stand to face serious illness,  
7 painful illness, and death. The notion that they haven't  
8 established a likelihood of irreparable harm, just  
9 because to sufficiently address the risk to Plaintiffs  
10 will require significant action by their custodians, is  
11 completely incredible.

12 Your Honor, the plaintiffs understand the  
13 concern about the -- the Mother-May-I arrangement. And  
14 that's part of why Plaintiffs seek a public health expert  
15 who can really facilitate, provide the Court with the  
16 best information in a way that addresses what's really  
17 going on in the jail.

18 And the truth is, Your Honor, that if the -- if  
19 the custody of the Plaintiffs in this action violates  
20 their rights, as we believe we have ample evidence to  
21 show that it does, then it's entirely appropriate for the  
22 plaintiffs to turn to this Court and seek relief and seek  
23 redress, because that's what is necessary under these  
24 very dire circumstances and this very dire violation of  
25 their rights.

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1           So Plaintiffs respectfully submit that we have  
2 met our burden to show likelihood of success on the  
3 merits, and we look forward to an opportunity to walk  
4 through, in more detail, the reasons the relief sought  
5 today is appropriate.

6           THE COURT: All right. And I apologize,  
7 Mr. Biggs. I think I skipped you. So let's go back to  
8 you. Sorry about that. I -- I have to remind myself  
9 that we've got Defendants and Intervenors.

10           So, sorry to get you out of order. But if you  
11 have got anything to add, please feel free to do so. And  
12 then the Court will --

13           MR. BIGGS: Yes, Judge, I'm not going to cover  
14 treaded ground.

15           The two things I want to make sure the Court is  
16 completely aware of, in the Fifth Circuit, until there is  
17 a class certified, you cannot give them classwide relief.  
18 And on this record, you cannot certify a class. Their  
19 own relief prevents you from certifying a class. So  
20 everything they want, essentially it's just -- it just  
21 can't happen.

22           The Fifth Circuit is very clear you can't hand-  
23 waive the Rule 23. They are going to tell you that you  
24 can preliminarily certify a class, and they're going to  
25 point to Fourth Circuit and Ninth Circuit cases for that.

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1 It's not the case in Fifth Circuit. Fifth Circuit --  
2 March, last month, Judge Duncan said, until the class is  
3 certified, the claims of the putative class members are  
4 not before this Court, and that it's going to have a  
5 narrowing problem.

6 Also I want to highlight the Mother-May-I aspect  
7 of an order, and just point this Court to three  
8 mandamuses -- mandamus applications granted from my  
9 office for -- or requested by my office from the Fifth  
10 Circuit in situations where federal judges have come in  
11 and started second-guessing and kind of doing what you  
12 are talking about, where you lock state officials into a  
13 position and then almost micromanage this disaster  
14 response. In Re: Abbott 1, In Re: Abbott 2, now the  
15 Valentine. We also have gone to court of -- the Supreme  
16 Court of Texas and got a writ granted.

17 Jacobson V. Massachusetts, from 1905, the  
18 Supreme Court said that state interests are apex, and it  
19 is not the position of courts -- and as this Court has  
20 probably seen, this is a hard question that courts are  
21 not necessarily equipped for, in terms of managing  
22 disasters. State officials need flexibility.

23 And if you look at those writ opinions from the  
24 last three weeks, plus Jacobson and all the other case  
25 law, it clearly shows that as long as Dallas County is

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1 trying, and they're trying hard; which it is clear they  
2 are, that this Court needs to show some deference to  
3 them. And it is incredibly important. And we keep going  
4 to the Fifth Circuit, because judges keep ignoring that;  
5 and we keep getting mandamus relief.

6 And so, we just implore the Court, before you  
7 grant any relief for the plaintiffs, we -- you take a  
8 very hard look at those writ opinions as well as Jacobson  
9 and the underlying case law, Judge.

10 THE COURT: All right. Thank you.

11 And, Mr. Barnett, I wanted to make sure -- you  
12 said that you might want to chime in after Ms. Woods. I  
13 want to make sure if you want to be heard, you have an  
14 opportunity.

15 MR. BARNETT: Your Honor, I -- I do, Your Honor.

16 And I -- I don't think this is a Mother-May-I  
17 kind of a case. I think we're -- the -- the biggest  
18 concern is that Dallas County, after months, doesn't have  
19 a policy, doesn't have a written policy.

20 You had the chief come in yesterday, and I asked  
21 him -- because I didn't know how he was going to answer  
22 it -- is the CDC interim guidance the policy of Dallas  
23 County. And he kind of hesitated and he said, yes.

24 Well, where is that written? Can you show it to  
25 us? He couldn't. And he actually couldn't tell us where

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1 the policy was. He said it's in a bunch of different  
2 places.

3 So they don't actually have a policy; they  
4 certainly don't have a written policy. And it is not a  
5 Mother-May-I situation when you tell them, okay, well,  
6 have a policy and show me what it is. And importantly,  
7 prove that you are not disregarding it.

8 So I think that's the -- that's the critical  
9 issue. And as far as the record in this case as opposed  
10 to the Valentine case, in this case we have a list of  
11 people provided to Dallas County over a month ago that  
12 said, as a medical matter, there are 2,200 people who  
13 should be considered for release in order of priority.

14 So there's undisputed evidence. And I've  
15 understood Dallas County to provide Your Honor a copy of  
16 that list today; I have not seen it yet, where their  
17 expert, on this very topic, in the jail, had sent them a  
18 list. And as far as we know, they have ignored it. That  
19 was not in the Valentine record.

20 So those are my observations. And the last  
21 thing I'll say on the class certification is, you really  
22 haven't talked about that. I have a lot to talk about  
23 that. I -- I know an awful lot about class actions. I  
24 argued a Supreme Court case on class certification. So  
25 I'll be delighted to talk about that a little bit later.

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1 But since this is a motion to dismiss, not a motion to  
2 deny the class certification, then I'll defer that until  
3 later.

4 Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 Thank you, everyone, for excellent argument.  
7 I'm going to deny your motion at this time, but it is  
8 preserved for appeal. Thank you.

9 MR. STEPP: Thank you, Your Honor.

10 THE COURT: Okay. Is everyone ready to jump  
11 into the defendants' case? Thumbs up if everybody can  
12 hear and everybody is ready to go.

13 (Off-the-record discussion.)

14 THE COURT: Thank you, everybody, for your  
15 patience and your goodwill over these last couple of days  
16 in our epic hearing.

17 And, Defendants, please make your opening.

18 And actually, before you start, because I don't  
19 want to interrupt you, Intervenors, are you planning to  
20 make a separate opening? You are welcome to; I just want  
21 to make sure I know what to expect.

22 MR. BIGGS: Judge, I'll reserve just for oral  
23 argument at the end. I don't think I'm going to have any  
24 questions for the witness either, so I'll probably sit  
25 quietly.

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1 THE COURT: Okay. Sounds good. Well, chime in  
2 if you -- I'll ask you -- or try to remember to ask you  
3 at the end of every witness if you have questions. If  
4 you do, and I forget you for some reason, because I will  
5 forget sometimes there's Intervenor, feel free to chime  
6 in; you are not being rude, okay?

7 MR. BIGGS: Absolutely, Judge.

8 THE COURT: Thank you. Ms. David, and not  
9 Davis, David, I look forward to your opening, and you may  
10 proceed when you are ready.

11 MS. DAVID: Thank you, Your Honor. And good  
12 morning again.

13 THE COURT: Good morning.

14 MS. DAVID: So a lot of our evidence has -- the  
15 Court has already heard because of the way that  
16 Chief Robinson was presented. So this is going to be a  
17 little bit of a different kind of opening, because I'm  
18 going to refer to some of the things you have already  
19 seen, in addition to the things that you will hear about  
20 today -- well, and in addition to the fact that we have  
21 submitted declarations, like the plaintiffs; and I  
22 believe Intervenor have done as well. So there is some  
23 evidence in the record.

24 So I just want to start by saying our clients --  
25 and we represent both Sheriff Marian Brown and Dallas

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1 County -- have been working tirelessly to respond to this  
2 unprecedented, terrible, awful situation. And no one --  
3 none of them -- none of the lawyers on this case would  
4 ever make light of this situation.

5 We agree with a lot of the things that  
6 Plaintiffs' witnesses have said: This is scary, it's  
7 difficult, it's ever changing; the guidance is confusing;  
8 the news is confusing. We're not arguing that any of  
9 that is not true.

10 But what we are arguing is that the elected  
11 officials of Dallas County, and the people that they have  
12 appointed to the Parkland board of managers, and the  
13 people that they have hired to run the jail and to take  
14 care of the sick inmates are doing an absolutely  
15 outstanding job.

16 They have very, very difficult jobs. It is not  
17 as easy. And I know, Your Honor, that you took a visit  
18 to the jail, which we applaud. That -- that was a  
19 remarkable thing for you to do, and something that a lot  
20 of judges would not have done. So, you know, thank  
21 you --

22 THE COURT: Thank you for that.

23 MS. DAVID: -- personally, and on behalf of my  
24 clients, for taking that amazing step.

25 We have also spent time in the jail as recently

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1 as Monday. And I know that I got a little passionate  
2 yesterday, and again I apologize for that, but part of  
3 that is because we have seen how incredibly hard these  
4 people are working. And so, you know, I know -- I know  
5 it is just now our turn, but I just wanted to point that  
6 out.

7 And I think everyone would agree that, across  
8 the nation, some of our most intelligent and informed  
9 experts, across the nation -- and I will include, you  
10 know, Dr. Cohen in someone who is trying to do this  
11 work -- they disagree. There is not widespread agreement  
12 on the best things to do. And that's not unexpected in  
13 any wide-scale disaster, but in particular in a disaster  
14 like this, that no one has ever seen the likes of, very  
15 smart people are going to disagree on the best things to  
16 do. And we acknowledge that as well.

17 But to imply that the sheriff is not only not  
18 taking reasonable measures, but that she is deliberately  
19 indifferent to what is happening in her jail, is  
20 offensive. And she is working every day, along with  
21 Chief Robinson, who I just have to respond to the  
22 mischaracterization of his testimony, who said over and  
23 over again yesterday that we're following CDC guidance  
24 and doing everything we can.

25 They're not deliberately indifferent. They --

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1 they are -- they care as much about this, or more, than  
2 anyone in the room. And again, I'm acknowledging that  
3 Plaintiffs' witnesses care a lot about this, and  
4 Plaintiffs' counsel care a lot about this. And I know  
5 the Court does, too. I'm not disagreeing with any of  
6 that. But to say that the sheriff and her people, and  
7 Parkland and the Commissioner's Court and our elected  
8 judges and District Attorney aren't doing anything is  
9 offensive. They're working day and night.

10 And what the evidence has shown, and what the  
11 evidence will show, is that they are doing everything  
12 that the CDC mandates. And there's been a lot of talk  
13 about social distancing. And the CDC acknowledges not  
14 everything (unintelligible) at every jail. That  
15 is unfortunate.

16 That is also true in front yards that I see and  
17 in grocery stores. When you are dealing with human  
18 beings, they have certain human instincts. And I,  
19 myself, have found that I have a really hard time, when I  
20 see someone, not going up and shaking their hand and not  
21 giving them a hug. It's hard. Because we want that  
22 human interaction. That is a uniquely human feature.

23 And we could give -- we could put 20 inmates or  
24 people in a huge room, a huge room, with their beds faced  
25 20 feet apart, and those people are still going to

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1 gravitate towards one another. They are still -- you are  
2 still going to have groups of people who are going to  
3 talk to each other, who are going to want to eat  
4 together, who are going to want and need some times --  
5 for their own mental health and well-being, need those  
6 human interactions.

7           And the relief that Plaintiffs seek, I don't  
8 think is going to solve that problem. You are -- you are  
9 not going to release people and they're going to go to a  
10 pristine, you know, completely sanitary, sanitized area  
11 where they are a hundred percent safe and so is everyone  
12 else. That is not the world. I wish it was, but it is  
13 not the world. And frankly, I don't know that people  
14 would be happy if that was the world.

15           But putting that aside, the relief that they are  
16 seeking is not going to solve the COVID problem, and --  
17 and to pretend otherwise is, frankly, not -- not very  
18 believable. So I wish there was a sure-fire solution,  
19 but there's not.

20           On the policies, Chief Robinson has talked about  
21 policies. There's evidence in the record of  
22 communications that, contrary to Officer Lewis'  
23 testimony, went out to everyone. The Parkland guidance  
24 that you are going to hear about today, there were videos  
25 on how to do things the right way. Everyone has been

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1 educated. There was testimony from one of Plaintiffs'  
2 own witnesses that the news is on all the time; that  
3 inmates are cautioning each other, hey, don't cough on  
4 me. There's lots of testimony about inmates requesting  
5 soap or cleaning supplies. There's lots of testimony  
6 that those are readily available.

7 I understand the -- Officer Lewis' frustrations,  
8 because I, myself, have similar frustrations. I mean,  
9 he -- he didn't -- he doesn't like the masks that the  
10 sheriff is providing. He doesn't like the way the hand  
11 sanitizer smells. I can't tell you how many people I  
12 know who would love to have a hand sanitizer that has too  
13 much alcohol in it, because they can't find any hand  
14 sanitizer. And I would love, you know, if everyone had  
15 masks the way that everyone in the Dallas County jail has  
16 masks. But right now, that's not feasible. So  
17 everyone -- the evidence has shown and will show Dallas  
18 County's complying with CDC guidelines.

19 Dallas County is giving free and appropriate PPE  
20 to everyone in the jail, to all of the staff. There's  
21 free, appropriate cleaning supplies and soap available to  
22 everyone. You know, back to the -- the hand sanitizer,  
23 you know, that -- I think that was mentioned in the  
24 Valentine case, and I -- I can't recall if Chief Robinson  
25 mentioned it. But, you know, it has alcohol in it. And

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1 unfortunately, there are some incarcerated people who,  
2 you know, will misuse that. So that is something that,  
3 while it's guidance for -- the guidance in our world is  
4 different than in the jail world. That's the reason that  
5 that is not recommended by the CDC. But as Officer Lewis  
6 testified, that doesn't mean that the officers aren't  
7 doing what they can to provide that when people ask for  
8 it.

9           So what it kind of gets down to, and I'm glad  
10 Ms. Woods mentioned this, because I think it is an  
11 important point to highlight for the Court, is that  
12 Plaintiffs are seeking much, much more here than they  
13 sought in Valentine. That is true. And that what this  
14 case really comes down to is, you know, let's get  
15 everybody out of jail.

16           And I think what the evidence, you know, already  
17 had shown, and will continue to show is, that most people  
18 who live in this space -- like Officer Lewis, and the  
19 good doctor who testified yesterday, whose name I do not  
20 want to slaughter, but she was great -- what people agree  
21 to is, while yes, of course we want to do whatever we can  
22 to prevent COVID-19, the judges and the judiciary and the  
23 district attorney and the defense attorneys, that --  
24 that's the place -- the state court judiciary system is  
25 the place to balance all of this, and to make sure we're

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1 releasing the people who should be released, but not the  
2 people who are going to create a great risk and -- and --  
3 to the community and the victims, and maybe even  
4 themselves, frankly.

5           And as to release, what the evidence has shown,  
6 and will shown -- will show, is that the -- the judges,  
7 District Attorney Creuzot, Lynn Richardson, who -- I  
8 don't know if her name has been mentioned, but she is  
9 Dallas County's public defender. And talk about somebody  
10 who's doing God's work, she is a phenomenal person.

11           The defense lawyers across this city and county  
12 of Dallas, they have been working together since this  
13 started to try to evaluate and get the right people out.  
14 And frankly, what Plaintiffs are suggesting is insulting  
15 to all of them as well.

16           And contrary to what Mr. Barnett said, this  
17 high-risk Parkland list has been used. Everyone has been  
18 looking at this list. People are trying every single  
19 day. These judges are looking at the -- at their  
20 population and their cases, where someone is in the jail,  
21 and trying to figure out, what can I do for the people  
22 who can be safely released.

23           And even Plaintiffs' expert -- I'm sorry, not  
24 exert, Plaintiffs' witness, Mrs. Bailey, talked about the  
25 fact that she -- she made a call and she got the district

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1 attorney, the district attorney of one of the largest  
2 counties in the entire United States, and one of our most  
3 respected district court judges, to sit down with her and  
4 say, what can we do to fix this? This is not deliberate  
5 indifference. This is people that are public servants  
6 who are going above and beyond.

7         And that is what is happening -- that is one  
8 example of what is happening every single day, and that  
9 all of the witnesses have agreed to. And what that has  
10 meant is that the jail population, which on March 9th was  
11 5,987 people, was reduced to 5,995 [sic] people as of the  
12 day this lawsuit was filed. What does that tell you?

13         Does that tell you that the lawsuit is the  
14 reason people are getting out, or does that tell you that  
15 these people were working their tails off long before  
16 that? They were getting people out.

17         And here is even better news: As of today, we  
18 are down to 4,820 people in the Dallas County jail. And  
19 as Your Honor has pointed out repeatedly, and as no one  
20 will disagree, that's a lot of people. That is a lot of  
21 people. But there is a lot of people in Dallas County.

22         And what I think you're seeing already, from  
23 looking at the criminal history, what the evidence and  
24 the record shows is, that by and large, those folks are  
25 not the low-risk shoplifters, marijuana users. That's

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1 not what we're talking about, Your Honor. And to suggest  
2 otherwise is just not credible.

3 The incredible overwhelming majority of those  
4 people are accused of dangerous violent crimes, and the  
5 majority of them have violent criminal histories. They  
6 have been convicted of and they are accused of violent  
7 crimes.

8 And there are also people in the jail, and the  
9 evidence shows this, that are waiting for transfer to  
10 other places where they should be. There are people who  
11 are waiting on transfers to prison; there are people who  
12 are waiting on transfers to mental health facilities,  
13 because there is just not enough room, Your Honor. And  
14 the sheriff is doing her job to take care of those people  
15 until they can be sent to where they need to go.

16 And one other thing that I want to correct is --  
17 and I know Your Honor knows this, probably better than  
18 anybody in this room, because you -- you have done your  
19 time at all levels of the state judiciary, and thank you  
20 for that -- contrary to Plaintiffs' contention, district  
21 judges and county court at law judges, when they are  
22 making this release decision, they are bound by Texas law  
23 to consider the safety of the community, and thank  
24 goodness they are. Because one of the jobs that all of  
25 these officials have is to protect all of Dallas County's

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1 citizens.

2 Yes, they need to take care of the people in the  
3 jail, but they also have to take care of you, Your Honor;  
4 they have to take care of the children and the elderly  
5 and everybody else who lives in Dallas County. And so  
6 they can't just turn a blind eye and say, look, I know  
7 this person is medically vulnerable, but he's also a  
8 serial killer; he's also accused of raping eight women.  
9 They can't ignore that. And nor would we want them to.

10 So finally, the evidence shows there's no need  
11 for a monitor. As Your Honor has pointed out, if you put  
12 a monitor in place, we're going to be dealing with a  
13 slower, less-responsive system at the very time when  
14 response time and when reaction -- being able to react to  
15 everything is so very important.

16 And there is no magic expert. I know we all  
17 would be so thrilled if there was a person that we could  
18 go to and say, what's the right thing to do, what is the  
19 right policy; and they could tell us, and we would know  
20 if we put that in place, no one else would get sick, no  
21 one else would die, and we would love that.

22 But Plaintiffs' own expert testified about all  
23 of the things he has done in New York, they don't have a  
24 perfect system. They -- they -- they're not there. I  
25 would challenge the plaintiffs -- and that's not a fair

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1 challenge, because it doesn't exist -- to find someone  
2 with can give advice on better things to do than what the  
3 Dallas County jail is trying to do every day. They are  
4 doing this work.

5           And the data shows that they are doing a great  
6 job. The data shows that the judges, the district  
7 attorney, the public defenders, all of the state  
8 judiciary system in Dallas County is getting those right  
9 people out of jail, and they are trying to have those  
10 hearings as fast as humanly possible. And safely.  
11 They're doing the same thing Your Honor is doing here.  
12 They're having these virtual hearings, with all of the  
13 same hiccups, that I have to tell you. I mean,  
14 technology is hard, but we're all learning and we're all  
15 getting better at it.

16           So just in summary, we hope that at the end of  
17 the case you will agree with us, and you will feel  
18 comfortable knowing that, while nothing is perfect, our  
19 clients are doing far more, far more than making  
20 reasonable efforts. That they are doing an outstanding  
21 job. That they are taking care of the people in Dallas  
22 County, and doing what they were elected to do. And I am  
23 so proud to represent them.

24           Thank you, Your Honor.

25           THE COURT: Thank you. All right. Let's go off

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1 the record for just a moment.

2 (Off-the-record discussion.)

3 THE COURT: Let's take a ten-minute break.

4 (Recess taken.)

5 THE COURT: We are on the record.

6 I'm asking about Plaintiffs' Exhibit Number 10  
7 that was marked. There's no objection from Defendants;  
8 is that correct?

9 MR. STEPHENS: Yes, Your Honor.

10 THE COURT: Okay. Great. No objection from  
11 Defendants.

12 No objection from Intervenors; is that correct?

13 MR. BIGGS: Correct, Judge.

14 THE COURT: Okay. So Plaintiffs' Exhibit 10 in  
15 its entirety is in. Thank you guys.

16 Off the record.

17 (Recess taken.)

18 THE COURT: So, Mr. Stephens, are you taking  
19 this witness?

20 MR. STEPHENS: I am, Your Honor.

21 Defendants call Pat Jones.

22 THE COURT: Okay. Mr. Jones, my court reporter  
23 will swear you in.

24 (Witness sworn.)

25 THE COURT: One question before we jump in. I'm

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1 just making sure I'm keeping my notes straight.

2           So are you representing all defendants and  
3 Ms. David is representing all defendants, both sheriff  
4 and the County --

5           MR. STEPHENS: That's correct.

6           THE COURT: -- jointly representing both? Okay.

7           MR. STEPHENS: And Mr. Stepp as well.

8           THE COURT: Mr. Stepp as well. That's right.

9           Thank you, you may proceed.

10                    PATRICK JONES,

11 having been first duly sworn, testified as follows:

12                    DIRECT EXAMINATION

13 BY MR. STEPHENS:

14 Q. Mr. Jones, can you state your name for the record?

15 A. Patrick Jones.

16 Q. And can you give the Court some detail about your  
17 background?

18 A. So my background is I hold a master's in health  
19 administration and a -- so I am -- serve as the vice  
20 president for Correctional Health Services for Parkland  
21 Health and Hospital System, assigned to the Dallas County  
22 jail.

23 Q. How long have you held your current position?

24 A. I've been in this position since 2012.

25 Q. Do you work primarily in the Dallas County jail?

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1 A. Yes, I do.

2 Q. How frequently are you, yourself, personally in the  
3 jail?

4 A. I'm in there full time. So on an everyday basis.

5 MR. STEPHENS: I'm going to ask Ms. Monk to pull  
6 up a exhibit I previously sent her, Defendants'  
7 Exhibit 6.

8 (Off-the-record discussion.)

9 THE COURT: You may proceed.

10 Q. Mr. Jones, can you give the Court sort of the  
11 30,000-foot description of the medical facilities inside  
12 the Dallas County jail?

13 A. Yes, I can. Starting with the picture that we're  
14 seeing, this is a primary care clinic. This was a --  
15 part of a project we called the VinMod (phonetic) that  
16 opened in 2015.

17 This particular clinic where you are looking,  
18 what you see there in front of you is a nurse's station,  
19 to the right is a series of examination rooms where a  
20 provider and/or nursing staff would examine the patients.

21 Also included in that area is a lab, processing  
22 area; then also there's a -- a psych consultation room  
23 there, and also X-ray facilities, along with a dental --  
24 two-chair dental area as well.

25 Go ahead.

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1 Q. Go ahead, please. Just finish your answer.

2 A. So this -- of course, this is where we would see  
3 people for primary care issues, in this area here. I  
4 think there are -- I saw some other pictures. May see  
5 seating areas and type of thing.

6 But this is one series of clinics that we use  
7 here at the Dallas County jail.

8 Q. And Parkland has other -- does Parkland have other  
9 medical facilities outside of the Dallas County jail?

10 A. Yes, yes. Parkland is the county hospital district  
11 here in Dallas. So we operate both the hospital system  
12 here, and a series of primary care clinics and school-  
13 based clinics as well.

14 MR. STEPHENS: And, Ms. Monk, can you go to the  
15 next page of the PDF?

16 A. So that is a close-up of one of the exam rooms that  
17 was shown a moment ago, off in the curve. And so this is  
18 just one of those rooms in detail.

19 MR. STEPHENS: And, Ms. Monk, can you go to the  
20 next page of the PDF?

21 Q. Is this another one of those exam rooms?

22 A. Yes, it is.

23 MR. STEPHENS: And, Ms. Monk, could you go to  
24 the next page?

25 A. Okay. So from that first picture that we were

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1 standing, if you were -- you know, the viewer was looking  
2 at the nurse's station, to the back of the -- right in  
3 that previous picture was the seating area for where the  
4 arrestees and inmates are brought to await their turn to  
5 be seen by one of the clinicians.

6 MR. STEPHENS: Ms. Monk, can you go all the way  
7 back to the top of the PDF, the very first photo.

8 Q. And, Mr. Jones, what are we looking at here?

9 A. Okay. So this is our negative pressure area. So  
10 the -- you are looking down the corridor here. Beyond  
11 this door is a series of 28 negative air pressure rooms  
12 here in the Dallas County jail that are -- we can keep  
13 people that are -- that are appropriate for airborne  
14 isolation.

15 THE COURT: And, Mr. Stephens, if I could ask  
16 you, your witness speaks kind of fast. If you don't mind  
17 if -- there is a little blur on my mind. If you don't  
18 mind slowing it down just a little slower than normal  
19 speaking speed, that would be helpful to the Court. I  
20 appreciate it.

21 (Off-the-record discussion.)

22 THE COURT: Please proceed.

23 Q. Mr. Jones, what kind of inmates are held in the  
24 negative pressure rooms typically?

25 A. So typically anybody that -- typically anybody that

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1 we suspect having an airborne issue, such as TB, anything  
2 like that that is -- either they're suspected and/or they  
3 actually have the disease itself, is kept in there.

4 We may take other individuals who are a little  
5 sicker and they cannot be out in the -- in the general  
6 population of our infirmary. They may be in there as  
7 well.

8 Q. What about COVID-19-positive inmates?

9 A. Yes, they -- they house in that area.

10 Q. If you have a sense, and only if you have a sense,  
11 of other jail medical facilities around the country,  
12 how -- or around the state, how would you say this  
13 facility compares?

14 A. I would say that this facility would compare  
15 against -- well within any other facility that any other  
16 jail in the United States has. It is one of the better  
17 facilities in the United States.

18 Q. How are Parkland's medical staff trained to deal  
19 with COVID-19?

20 A. So medical staff are trained by their licensure.  
21 They are trained to deal with infectious disease. We  
22 take those -- they take those concepts and apply them  
23 to -- to the situation.

24 Q. Okay. How has Parkland assisted in training jail  
25 staff on how to deal with COVID-19?

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1 A. So Parkland has given information on how to protect  
2 yourself that is produced by CDC guidelines. So we've  
3 done that. And met with the administration, also  
4 speaking to them on -- on these concepts.

5 Q. When would you say this process started?

6 A. This process started in, I guess, late February,  
7 early March.

8 Q. And do you recall any of those specific jail  
9 administrators you met with?

10 A. Yes. I -- we met with -- pretty much the sheriff's  
11 chief staff, and their building commanders as well.

12 Q. Does Parkland continue to meet with jail staff and  
13 discuss COVID-19?

14 A. Parkland does continue to meet with jail staff and  
15 discuss this.

16 Q. Only if you know, are you familiar with the  
17 screening questions that are asked of inmates at intake?

18 A. I am familiar with the screening process.

19 Q. Can you talk about the questions, specifically, to  
20 the extent you know what those questions are?

21 A. Okay. We can do that.

22 Q. So what are the questions that are asked of inmates?

23 A. Okay. Yeah. Okay.

24 Specifically they are -- you know, before a  
25 question is asked, a temperature is taken. As an inmate

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1 or an arrestee approaches the jail, before they enter the  
2 jail, there at the sally port, they are -- a temperature  
3 is taken. And then, of course, the screening questions  
4 about whether or not they have shortness of breath and a  
5 cough are also asked at that moment.

6 Q. What is the plan --

7 MR. BARNETT: You Honor, I -- we would object on  
8 foundation grounds. But can we just clarify that that's  
9 his understanding of the practice or the policy, but not  
10 that it actually happened?

11 THE COURT: Okay. If you can clarify,  
12 Mr. Stephens, if you are talking about the policy or  
13 whether that is what happens.

14 Q. And, Mr. Jones, are you describing the policy for  
15 what is supposed to be done when an inmate arrives in  
16 intake?

17 A. Yes, I am describing that, describing the forum that  
18 is used to screen the individuals.

19 Q. What is the policy for determining when an inmate  
20 should be tested for COVID-19?

21 A. So the policy is that's arrived at through a  
22 clinical algorithm that is administered by our nursing  
23 and our provider staff.

24 Q. How is that algorithm determined?

25 A. I'm sorry, could you repeat the question?

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1 Q. How is that algorithm determined, or where does the  
2 algorithm come from?

3 A. So the algorithm comes from our infection prevention  
4 department, based at Parkland Health and Hospital System,  
5 through our infection prevention department. They are in  
6 coordination with both the CDC in Atlanta and also the  
7 Dallas County Health Department.

8 Q. Do you know, or can you give the Court a rough  
9 estimate of how many COVID-19 tests Parkland has at its  
10 disposal?

11 A. That, I don't know the answer to that. Talking  
12 about Parkland Health and Hospital System or the jail?

13 Q. Well, let's start with Parkland Health and Hospital  
14 System.

15 A. The number they have on hand, I do not know that  
16 answer.

17 Q. And how about the jail?

18 A. The jail, at this moment, we have about six days'  
19 tests on hand, assuming we're currently using about 25  
20 tests per day.

21 Q. In your opinion, would there be enough tests on hand  
22 to, on any given day, test everyone who enters or exits  
23 the jail?

24 A. At this point, no, there's not enough tests to do  
25 that.

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1 Q. What would it take --

2 THE COURT: Mr. Stephens, if I could chime in  
3 for a minute.

4 MR. STEPHENS: Anytime, Your Honor.

5 THE COURT: Along those lines, sir, I know I've  
6 read about -- just in the -- in the Dallas news, you  
7 know, three or four weeks ago, how hard it is for normal  
8 citizens to get tests.

9 Are you-all limited as to how many you get? I  
10 mean, you know, part of what I want to know is, I -- I  
11 certainly don't even want to potentially order you to do  
12 something you couldn't comply with. Is -- how many tests  
13 could you get? How hard are they for the jail to get?

14 THE WITNESS: It's very hard, Your Honor.  
15 The -- the tests -- what we find is there's a couple of  
16 issues when we seek tests. Some companies may be able to  
17 provide the raw material, but they can't provide a good  
18 turnaround time for test results. You may be looking at  
19 several days past a week.

20 The -- in our case, we utilize the county health  
21 department. And what they -- what we find there is, they  
22 are at testing capacity. So they may be -- be able to  
23 give us actual test kits, but they don't have the  
24 capacity to provide the extra testing, since they are  
25 also providing the testing here in the community.

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1           THE COURT: And just one more follow-up question  
2 for you. So when we have someone who is experiencing --  
3 in the jail, right now, like today, experiencing what you  
4 think are COVID-19 symptoms -- and I'm assuming you'll  
5 tell me how many symptoms there have to be in order for  
6 somebody to get the test. So like, would a cough be  
7 enough, or is it a cough plus a temperature?

8           I'd like to hear that, when you get a chance,  
9 Mr. Stephens.

10           But for whatever that answer is, do you have  
11 enough tests to test those people who you feel exhibit  
12 enough symptoms that -- that it merits a test, do you  
13 have enough for that?

14           THE WITNESS: Yes. The -- the -- the question  
15 about do we have the number of tests for people  
16 exhibiting symptoms, we absolutely have that. And I feel  
17 very comfortable with the number of tests that we have,  
18 and the supply chain that we have in place to obtain more  
19 tests as needed.

20           THE COURT: And just so the Court will  
21 understand, how many symptoms do you have to exhibit  
22 before -- because I wasn't real clear on that even as a  
23 private citizen how -- what -- you know, is it a fever  
24 and a cough; how many symptoms do you have to have in  
25 order to merit getting a test, since I know they are

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1 limited in number?

2 THE WITNESS: Right. So -- so typically you'd  
3 like to see all three. However, the clinicians within  
4 the jail are free to make that determination. They're  
5 free to exercise their clinical judgment, if somebody  
6 doesn't fit all of the criteria, and move forward with  
7 that.

8 THE COURT: So they are not necessarily  
9 excluded; it's -- okay. All right. That is helpful,  
10 thank you.

11 THE WITNESS: Okay.

12 Q. Mr. Jones, what's the Parkland policy on charging  
13 inmates for COVID-19 tests?

14 A. So specifically for COVID-19 tests, we do not  
15 charge. It is not our intention to charge inmates for  
16 that.

17 THE COURT: And I've got a follow-up question  
18 along those lines.

19 Let's say I'm not getting a COVID test, per se,  
20 but that I'm an inmate and I've developed a fever and a  
21 cough, and I want to be seen by a nurse because I have  
22 concerns I might have COVID. Is there a charge right now  
23 for that? Not the test itself, but just to kind of be  
24 diagnosed for underlying symptoms?

25 THE WITNESS: So that -- that -- that could go a

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1 couple of different ways.

2           If the -- if the inmate, you know, is in -- I'm  
3 just going to assume that the inmate is in a housing  
4 situation and they have submitted a request to be seen by  
5 health personnel. So that is -- there is a slang term  
6 for one of those requests; it is called a kite.

7           THE COURT: We've heard a lot about kites in  
8 this lawsuit, yes.

9           THE WITNESS: Okay. Thank you. And so the --  
10 if they submit a kite, then the nurse who receives the  
11 kite then see -- they -- they evaluate it; they assess  
12 it. And when they see the inmate that comes down for  
13 that interaction, if they believe it was for COVID-19,  
14 they will not charge the inmate. If there was some other  
15 issue going on, they -- they may charge the individual  
16 that charge.

17           If it comes to light later on that the person  
18 did have COVID-19, and they were indeed charged,  
19 certainly all they have to do is either submit another  
20 sick call -- another kite explaining what the situation  
21 was, and/or a grievance, and we'll be happy to refund  
22 that money.

23           THE COURT: Okay. Thank you. And I'll tell  
24 you -- actually, I said thank you, but just a -- a  
25 follow-up comment.

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1           Because one of my concerns is I want to  
2   incentivize inmates, if they are closely confined, to  
3   speak up if they think they have symptoms. And so  
4   I'm heartened to hear that you are not charging for that  
5   right now, or at least you are setting up a policy where  
6   you are not charging for that.

7           THE WITNESS: Okay. I'm sorry, was that a --

8           THE COURT: No, I'm sorry. That wasn't even a  
9   question; that was just kind of a statement.

10          THE WITNESS: Okay. Thank you.

11   Q. Let's talk, Mr. Jones, a little more about what  
12   happens when it becomes necessary for a nurse to attend  
13   to someone in the cell who's showing symptoms. Can you  
14   describe that process?

15   A. So if they are called to the cell, what -- they go  
16   there. If they understand that they're -- if they  
17   understand that the person is -- is exhibiting symptoms,  
18   then they go. And they are dressed in their PPE to speak  
19   with the individual.

20           If they then think that the person is indeed  
21   exhibiting symptoms that need to be followed up on, they  
22   will have the individual removed to a more isolated -- if  
23   they are not already in an isolated space away from  
24   others, then they will move them to an area that fits  
25   that description.

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1           The provider will then come and then continue  
2 with that screening process, and use their algorithms.  
3 And then if they arrive at the conclusion that the person  
4 needs to have a test, they will then perform the test.

5           THE COURT: And I've got a follow-up question  
6 for you on that.

7           How have you trained your medical staff to  
8 detect COVID symptoms? What training have you given  
9 them?

10          THE WITNESS: So -- so they -- our medical  
11 director has gone over with them. They -- they've gone  
12 over the symptoms as described by the CDC. And so they  
13 are operating under those guidelines.

14          THE COURT: Okay. Thank you.

15 Q. And if at the conclusion of this process you just  
16 described it's confirmed that the inmate was COVID  
17 positive, what happens then?

18 A. If the individual is COVID positive -- well, before  
19 you even get the results, the person would be removed  
20 from the population and then placed in an area where there  
21 are similar individuals housed. If they were indeed  
22 positive, then they would --

23 Q. Mr. Jones, what do you mean by similar individuals?  
24 When you say housed with --

25 A. Okay. So there are individuals who, when we suspect

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1 they are COVID, we call them PUI, persons under  
2 investigation. And so they would be put in an area where  
3 there are other PUIs in that area, until we can get the  
4 test results back. In that case, you are really trying  
5 to single cell them, or keep them away from others,  
6 because they are in an unknown state. And so you do not  
7 want to mix that population.

8 Q. How long are persons -- correct me if my terminology  
9 is wrong, but how long are persons held as a PUI, how  
10 long does that investigation process continue?

11 A. So that -- that is a -- that ends once we get a test  
12 result back. Our general experience with test results  
13 has been very, very favorable with the health department.  
14 They typically -- we typically experience about a one-day  
15 turnaround on receiving those test results.

16 Q. Okay. So let's take a couple of steps back. You  
17 are -- were discussing this hypothetical inmate who has  
18 been removed and has now received his test results back  
19 and the inmate is positive, what happens after that?

20 A. Well, okay, so once the test comes back positive and  
21 we know the person is confirmed COVID, then it really  
22 depends on their clinical presentation at that point on  
23 what happens with them. If they are, you know -- they  
24 may be anywhere from very mild to asymptomatic symptoms,  
25 then they are placed in an area with -- with like

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1 individuals. If it's somebody who is sicker in nature,  
2 then we will move them to our infirmary area, where we  
3 can keep a better eye on them. So that way if their  
4 health condition starts to deteriorate at all, then we  
5 will immediately move them to the hospital, or to a  
6 higher level of care than what we can offer at the jail.

7 Q. Can you explain a little more and give Parkland  
8 perspective about the medical kite process?

9 A. So the medical kite process is -- basically it is --  
10 it is a way for any inmate in the jail to request care;  
11 be that medical care, dental care, mental health  
12 services, any of those types of things.

13 The kites are submitted on a kiosk system. So  
14 they go, they log in, they -- there's a big red cross on  
15 the screen, they hit that. They can then type in  
16 whatever the issue is. That then is connected to -- our  
17 nursing staff have access to that. They will triage  
18 those requests a couple of times a day. And then we'll  
19 typically see them either same day or the next day after  
20 they submit that request.

21 THE COURT: And, sir, I heard testimony -- of  
22 course you weren't here, but I heard testimony that for  
23 people who maybe are not so internet savvy or older, or  
24 just, you know, whatever the issue is, that you can still  
25 submit written kite requests; is that your understanding?

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1           THE WITNESS: Only in certain areas of the jail.  
2 They -- they can submit written requests, and certainly  
3 we keep all of the infrastructure as a downtime  
4 procedur. But the vast majority of requests received  
5 now are electronic.

6           THE COURT: If you have an inmate who -- like  
7 I'm thinking of my grandmother. She thinks the internet  
8 is evil. So she just will not get online. I'm  
9 concerned -- I want to make sure that if you had an  
10 inmate who needed to send a kite, that they are able -- I  
11 mean, what would I do if I'm not internet savvy or not  
12 comfortable with the internet, how would I request  
13 medical care if I'm not going to use the kiosk; what do  
14 you have in place for that?

15           THE WITNESS: There is a couple of ways to do  
16 that. And certainly you are not just limited to just a  
17 kiosk.

18           You can -- the nurses pass medications a couple  
19 times a day in all of the areas. And so, certainly, a  
20 verbal approach could be used for somebody like that.  
21 The -- also -- they could also ask the officer. That --  
22 that is another way. And we will respond to those  
23 requests.

24           Just playing along with this example, if it was  
25 an older individual that probably was frail and elderly,

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1 we would also communicate that with security and they  
2 would be housed in an area more conducive to those  
3 individuals. Which would be -- we would probably be  
4 seeing more conditions to be seeing them on a regular  
5 basis anyway. Because the -- the other thing that we  
6 have not spoken about is how people access care on their  
7 way into the jail. And so those issues would have been  
8 identified through that process.

9 THE COURT: Okay. So I'm glad to hear that  
10 there are multiple opportunities other than using a  
11 kiosk. So you still could take an old-fashioned request  
12 of just a nurse or a -- a jail worker to get a -- a  
13 medical request in?

14 THE WITNESS: Yes. Absolutely.

15 THE COURT: Okay. Thank you.

16 Q. And what's the Parkland policy on how medical staff  
17 should respond when they receive a verbal request for  
18 medical care from an inmate?

19 A. So we respond as needed. If -- you know, if it's a  
20 routine request during a med pass, then we can just make  
21 an appointment, if it's just a routine situation.  
22 Obviously, if it's an urgent situation, then we'll  
23 respond immediately.

24 Q. And if you can, can you describe what the medical  
25 treatment plan is for inmates who test positive for

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1 COVID-19?

2 A. That sounds like a more clinical situation. What --  
3 if you would expand that statement a little bit, I --

4 Q. Can you describe, just to your knowledge, what  
5 happens to people who are being held, for example, in a  
6 negative pressure room and have tested positive for  
7 COVID-19, what kind of care are they receiving on a daily  
8 basis?

9 A. Sure. Okay. So for those individuals who are, you  
10 know, asymptomatic to mild symptoms, they are seen twice  
11 daily by our nursing staff. So they'll go and see them  
12 twice daily. Our provider staff will go and examine them  
13 once per day. And so those are for our mild and  
14 asymptomatic individuals.

15 If somebody is then progressing in their  
16 symptoms and they are becoming worse, then we will  
17 obviously ramp up our care, get them to an area where our  
18 care is increased. And if they need to be transferred to  
19 the hospital, we will make sure that happens immediately.

20 THE COURT: Mr. Stephens, I'd like to ask a  
21 question to jump back just a moment. I'm looking back at  
22 Plaintiffs' relief. And one of the things they are  
23 talking about or one of the claims that is pending before  
24 the Court is, unconstitutional conditions of confinement.

25 And so your witness said something about when I

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1 gave the example of my grandmother who is elderly, about  
2 them being segregated or separated. What -- if we could  
3 go back a minute, I've got a question about that.

4           How do -- how do you house people like my  
5 grandmother who is elderly? Are they in with the general  
6 population; what can you tell the Court about that?

7           THE WITNESS: So our recommendation from a  
8 medical standpoint is, as people come in, we identify  
9 certain factors. If the person had certain disabilities,  
10 we would note those disabilities and communicate to  
11 classification. Other physical conditions that maybe  
12 would necessitate further care.

13           You know, maybe the person came in on dialysis  
14 or they are a dialysis patient. Things of that nature,  
15 we capture all of that and give that to security to put  
16 into their classification plan. And then they -- we can  
17 make sure the person gets housed appropriately.

18           THE COURT: Okay. Thank you.

19 Q. Can I ask you to describe the sort of, the treatment  
20 plan for inmates who test positive for COVID-19, what  
21 about a similar policy for how staff who test positive  
22 for COVID-19 are treated?

23 A. So staff that are exposed, what happens there, is we  
24 take the person out and we refer them to our own internal  
25 occupational health service. They then go through the

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1 algorithm that they have prescribed and then determine  
2 whether or not the person is fit to return to work or  
3 not.

4 If they are not fit to return to work, they are  
5 furloughed until such time that they can be returned.

6 THE COURT: And I've got a question about that.  
7 So if I'm furloughed, am I -- am I not being paid?

8 THE WITNESS: No, you are paid at that point.  
9 They I'll go through -- they'll make a determination  
10 whether it was a workplace exposure or not. Certainly if  
11 it was a workplace exposure then the person gets paid.

12 THE COURT: Okay. Thank you.

13 Q. Do you know how many staff have tested positive for  
14 COVID-19 in the Dallas County jail to this point?

15 A. I know that Parkland -- I know within Parkland, we  
16 have furloughed nine individuals, seven of them have  
17 returned to work and two of them remain out.

18 THE COURT: And Mr. Stephens, I don't want to  
19 interrupt your flow if you are going to get to this, but  
20 one of the things I'm interested in, if hypothetically  
21 I'm in a jail cell with Mr. B and Mr. C and I test COVID  
22 positive, I'm interested to know what quarantining and  
23 medical care we give to B and C.

24 We -- I feel like we -- I've heard about the  
25 care that -- that A gets, but I'm interested in what we

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1 do with B and C; do we quarantine them, do we send them  
2 back to the general population? So if he's already going  
3 to address that later in your outline, I'm interested to  
4 know the answer to that.

5 (Brief interruption.)

6 THE COURT: Make sure everyone's muted except  
7 for the witness and Mr. Stephens. Okay.

8 Q. Mr. Jones, did you understand the Court's  
9 hypothetical that she just said?

10 A. Yes, I believe I do. So I can go ahead and answer  
11 it if you'd like.

12 Q. Go ahead.

13 A. Okay. All right. So in this situation, obviously  
14 the person who has tested positive for COVID is removed.  
15 The remaining two individuals are now -- that have been  
16 in the same pod as the other individual, they are now put  
17 on a PUM status, so person under monitoring is what that  
18 means.

19 And so we place those individuals on a 14-day  
20 monitoring status. Basically it's a quarantine status.  
21 And if the -- if the present cell that they're in or the  
22 present tank that they are in is conducive for that, then  
23 those individuals just remain housed together in their  
24 shared area.

25 And what will happen there, is for 14 days our

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1 nursing staff will go and visit with these individuals  
2 and they'll monitor for signs and symptoms of COVID. If  
3 after 14 days no one has developed the disease, then the  
4 monitoring period is ended and they're returned -- they  
5 will be free to move about in the population.

6 If during the course of those 14 days, either B  
7 or C were to then become -- were to become a COVID  
8 positive individual, they then would then be removed from  
9 that area and the remaining individuals would then be --  
10 they would still remain. However, their 14-day  
11 monitoring period would be -- would begin anew after that  
12 diagnosis, that new diagnosis.

13 THE COURT: Okay. One more follow-up question  
14 on that. I think I understand your answer.

15 So if B and C become PUMs, right, after they  
16 have contact with me. And the PUMs, I just want to make  
17 sure the PUMs are not housed with general healthy  
18 populations not exhibiting COVID symptoms. They are  
19 housed with other PUMs, right?

20 THE WITNESS: Correct. And frankly, the --  
21 those particular PUMs, we would -- we keep them together.  
22 They -- since they have begun their own 14-day period, we  
23 want to make sure we don't mix those individuals.  
24 Because once we do that, then we lose -- we lose control  
25 over who they've been exposed to, and we want to keep

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1   them actually separated from other PUMs, if at all  
2   possible.

3           THE COURT:   I think I understand.   So just so  
4   we're on the same page.   So if A, B, and C and I'm A, if  
5   Ada Brown tests positive and B and C are my bunk mates or  
6   they have close contact with me, B and C now become PUMs  
7   and they're quarantine with a clock that starts and  
8   doesn't end for 14 days, right?

9           THE WITNESS:   That is correct.

10          THE COURT:   Okay.   And so you don't mix B and C  
11   with let's say, D and E, because that would mess up their  
12   14-day clock?

13          THE WITNESS:

14          THE COURT:   Okay.   And so we -- we isolate just  
15   these PUMs for this incident, so we keep them together  
16   and don't expose them to other people with different  
17   clocks.

18          THE WITNESS:   That's correct.

19          THE COURT:   Okay.

20          THE WITNESS:   We don't want to mix our monitored  
21   populations.

22          THE COURT:   Okay.   Well, what is the  
23   circumstance you -- I'm not real clear, then, if we're  
24   segregating B and C from me and they are PUMs, when does  
25   -- you said something about someone else coming in

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1 entering that equation and starting the clock over. When  
2 does that happen?

3 THE WITNESS: Okay. So if we were to mix B and  
4 C with -- I think if we just use E and F, so we have --  
5 let's say we have two different populations. These -- B  
6 and C are on day 10 of their 14-day -- their 14-day  
7 period. Then we mix in E and F. And F -- and they are  
8 on day three. And then on the next day, F becomes  
9 positive. Well, then what has happened is, everyone in  
10 that tank is now reset. So those individuals who are  
11 nearing their 14-day time period will be very upset that  
12 people who are only on day 3 when they entered the tank  
13 messed up their count.

14 So we don't want to mix up those populations.  
15 We want to let people who are -- who are cohorting  
16 together finish out their cohort and be done with their  
17 time.

18 THE COURT: Okay. Thank you, that's very  
19 helpful.

20 Q. Mr. Jones, this hypothetical assumed a group of  
21 three inmates. Is this same process followed whether  
22 it's a group of 3 inmates or 64 inmates?

23 A. It's the same process.

24 Q. What is the policy from your perspective, from the  
25 Parkland perspective, for what is done when an inmate is

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1 released from the jail who is COVID positive?

2 A. Okay. So when an inmate releases from the jail who  
3 is COVID positive, they are giving -- they are given an  
4 assessment by the nurse, assuming the person has low-to-  
5 mild symptoms anyway, therefore they were at the jail.  
6 On their way out the door, they will be assessed by a  
7 nurse.

8 Number one, they will be assessed whether or not  
9 they need inpatient care or not. If they do need  
10 inpatient care we will arrange for that to occur at that  
11 moment in time.

12 If they're not in need of inpatient care and are  
13 freely released, then they will be given instructions as  
14 prepared by the Dallas County Health Department on signs  
15 and symptoms of it, or being informed that they are  
16 indeed positive for this, numbers to contact if they need  
17 to if their symptoms should worsen.

18 Q. I believe another question that's been floating  
19 around is, what kind of ventilation systems are used in  
20 various parts of the jail. Is that something you can  
21 speak to?

22 A. Very rudimentary I can speak to them. I can't get  
23 into the specifics of HVAC. But I do know that  
24 general -- I know the sheriff's department has deployed  
25 HEPA filtration, portable HEPA filtration units

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1 throughout the jail. Of course, in the negative air  
2 pressure areas it is a negative pressure air flow, so air  
3 of course in those areas would flow to the outside and  
4 not be recirculated within the building.

5 MR. STEPHENS: If I could ask Ms. Monk to pull  
6 up Defendant's Exhibit 7.

7 Q. Can you see that on your screen, Mr. Jones?

8 A. I can.

9 Q. Can everyone else see it?

10 THE COURT: Mr. Barnett, can you see it, can you  
11 give me a thumbs-up?

12 MR. BARNETT: I'm still seeing the door, Your  
13 Honor. Let me refresh, though.

14 THE COURT: Let's go off the record for a moment  
15 until we get this set.

16 (Off-the-record discussion.)

17 THE COURT: Okay. Please proceed.

18 Q. Mr. Jones, are you familiar with this document?

19 A. Yes, I am.

20 Q. What are we looking at here?

21 A. I'm sorry, could you repeat that, what are we  
22 looking at here?

23 Q. What are we looking at, what is this document?

24 A. Okay. So on March 25th, we -- we, Parkland, we  
25 generated a list. We combed our electronic medical

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1 record system looking for people with comorbidities that  
2 are associated with poor outcome with a COVID infection.  
3 We generated a list.

4           And what you see here is a list of names and  
5 you'll see a series of numbers out to the right. And  
6 when we first generated the list, we had the actual  
7 diagnoses of the issues the individuals had. And so  
8 our -- our intent was to inform the judiciary that these  
9 individuals are at higher risk of poor outcome due to  
10 COVID infections.

11           So what we did is, we removed the diagnoses, and  
12 so each one of those numbers there basically is a tick  
13 mark for a comorbid condition. And so you will see if  
14 it's just a singular condition, it's a one. If there is  
15 a couple of other conditions under a -- certain  
16 diagnoses, that's why you will see higher numbers.

17           And out to the far right you will see a total, a  
18 summation of the numbers. This list was sorted by that  
19 far right column there for the summations. And anything  
20 with three or higher was highlighted. And that was just  
21 an attempt to direct the Court to more serious cases if  
22 they could re -- you know, if they could review the case  
23 and then possibly let the individual out based on a --  
24 maybe a possible low-level crime.

25           That was obviously not our call to make. We

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1 just wanted to give everybody the information.

2 Q. And what kind of criteria, if you know, were used to  
3 determine the comorbidities which are reflected in this  
4 document as the numbers?

5 A. So that was based on clinical indications that were  
6 known to the clinical community at the time. So our  
7 medical director asked for those to be included -- to be  
8 included. And that's how that was arrived at.

9 MR. STEPHENS: Your Honor, I would offer  
10 Defendants' Exhibit 6 -- I'm sorry, this is  
11 Defendants' 7.

12 THE COURT: Defendants' 7, any objection from  
13 Plaintiffs?

14 MR. BARNETT: No objection, Your Honor.

15 THE COURT: All right. It will be admitted.

16 And Intervenors, just for form's sake, I assume  
17 you do not have an objection; is that correct?

18 MR. BIGGS: We don't have an objection. I want  
19 to clarify, this -- we're not going to publicly file this  
20 one, right? With all the names and --

21 THE COURT: I don't think any of this is  
22 publicly filed.

23 MR. STEPHENS: Correct. None of this is  
24 publicly available. It's all subject to our HIPAA  
25 protective order.

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1 THE COURT: This is admitted and this is  
2 Defendant's Number 7.

3 Just so we're clear, 6 was not admitted.

4 MR. STEPHENS: Yeah, I realized that as we were  
5 discussing, and at this time I would offer 6, which is  
6 the photos Mr. Jones discussed earlier of the Gill  
7 Hernandez Medical Facility. The PDF I sent Ms. Monk is  
8 overinclusive. I'm offering inclusively the photos  
9 Mr. Jones discussed.

10 THE COURT: And just so we're clear on what  
11 those were, it's 1 through 6.

12 Any objection to Defense Exhibit 6?

13 MR. BARNETT: No objection, Your Honor.

14 THE COURT: All right. Those are both admitted.  
15 You may proceed.

16 Q. Did you recently prepare another list of medically  
17 vulnerable inmates for use in this litigation?

18 A. We did.

19 MR. STEPHENS: Ms. Monk, can you pull up  
20 Defendants' Exhibit 8.

21 I'll likewise note that this document, like the  
22 previous document, is subject to the agreed HIPAA  
23 protective order that's been entered by the Court.

24 THE COURT: So noted for the record.

25 Mr. Stephens, if I could interrupt you, I'm

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1   sorry, for just a moment.  Mr. Barnett, can you give me a  
2   thumbs-up that you can see that or say something  
3   verbally?  You are not on my screen.  I want to make sure  
4   you can see it.

5           (Off-the-record discussion.)

6           THE COURT:  You may proceed.

7   Q.  Mr. Jones, do you recognize this document as the  
8   list you prepared for this litigation?

9   A.  Yes, I do.

10  Q.  And can you tell us about this document?

11  A.  So we were asked to produce this document -- this  
12  time, being inclusive of actual diagnosis.  So again, we  
13  prepared -- we prepared the document again using the same  
14  methodology.  So you'll see the actual X boxes for --  
15  each diagnosis that the individual has, and again a total  
16  out to the right for the number of comorbidities that are  
17  existing for each individual.

18  Q.  And were the criteria used to create this list, the  
19  diagnostic criteria, were they broader or narrower than  
20  the criteria used to create the previous list, if you  
21  know?

22  A.  I -- they appear -- they appear a little broader.  
23  But they -- they're -- but they may have been captured in  
24  a more -- but they appear a little broader.  But they may  
25  have been captured under the other one under a broader

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1 definition of diagnosis. But this one appears broader.

2 Q. Okay. And when is this list current as of?

3 A. I believe this list was current as of a week ago  
4 today. Today is Friday, correct, the 24th? So this was  
5 the list as of a week ago today.

6 MR. STEPHENS: Your Honor, I would offer  
7 Defendant's Exhibit 8.

8 THE COURT: Any objection from Plaintiffs?

9 MR. BARNETT: No objection.

10 THE COURT: All right. Intervenors, any  
11 objection?

12 MR. BIGGS: No objection.

13 THE COURT: All right. It's admitted.

14 Q. Mr. Jones, what have you observed the condition of  
15 the jail to be in the last month?

16 A. The condition of the jail? Specifically what --  
17 what type of conditions would you --

18 Q. Describe your general impression of the -- of the  
19 jail in the last month as it has reacted to the COVID-19  
20 crisis.

21 A. So the condition has been -- certainly heightened  
22 awareness would be an understatement. Given when  
23 everything started, certainly we had our screening  
24 measures in place -- well, since January. Once we --  
25 since probably about March 25th when we became aware of

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1 our very first COVID patient, certainly the -- the  
2 awareness, the -- by both the clinical staff and the --  
3 the detention staff has become much more aware.

4 The reality of this -- of this situation has  
5 become apparent to all. So there's a lot more attention  
6 to detail with how we conduct our -- ourselves within the  
7 jail and in the hallways, being mindful of social  
8 spacing, being mindful of wearing PPE where appropriate.

9 It's -- it -- the -- the cleanliness of the jail  
10 -- I mean, it was a clean jail anyway, but it is even  
11 cleaner now. So those type of things are happening.

12 The intakes are greatly reduced, so I think the  
13 community is also aware, the community inputs that affect  
14 our jail. So we can tell there's a -- a heightened sense  
15 of awareness throughout the arresting agencies that  
16 typically send people to our facility.

17 So that's the general condition of the place.

18 Q. Would you say that to the best of your knowledge,  
19 Parkland and the jail staff are doing their best to  
20 comply with the CDC's recommendations?

21 A. Yes, I would definitely say that.

22 Q. Can you elaborate?

23 MR. BARNETT: Your Honor, I'm sorry, I object to  
24 the leading.

25 THE COURT: I'll sustain. Ask open-ended

1 questions.

2 Q. What efforts have you observed the jail staff take  
3 to respond to this crisis that's consistent with the CDC  
4 guidelines?

5 A. So the jail staff has -- we, Parkland, have asked  
6 for specific things to happen within the jail. The first  
7 thing that we asked was that screening occur there at the  
8 sally port as people entered the jail facility itself.  
9 And screening does occur there now. A plan was put in  
10 place to -- to accommodate that screening.

11 We, Parkland, further asked for a -- an area to  
12 place people who became positive in that screening during  
13 the intake process. Security formulated a plan to  
14 accommodate that. So as people were booked in, they went  
15 through the booking process, which includes appearing  
16 before the magistrate, you know, the fingerprinting, all  
17 of that. They made adjustments for that process so there  
18 would be a low physical contact process.

19 Recommendations also came out that all employees  
20 should be screened as they entered into the jail facility  
21 and that has occurred. PPE has also been recommended to  
22 be worn by all within the facility, and the sheriff's  
23 department has implemented measures that all persons  
24 entering the facility shall have -- shall be -- shall  
25 wear PPE as they move about the facility.

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1           The -- I'm trying to think where I left off  
2 here.

3 Q.   That was helpful. I --

4 A.   Okay.

5 Q.   -- I also wanted to ask you for information about --  
6 just tell the Court about the infectious disease  
7 specialists that Parkland -- the specialists that you  
8 work with and Parkland works with.

9 A.   Okay. So the infectious disease specialist that we  
10 are utilizing right now is Dr. Ank Nijhawan.  
11 Dr. Nijhawan has worked within the jail for several  
12 years. Basically, she has worked as a specialist  
13 provider for our HIV population, and then this year she  
14 expanded her services from HIV to also include our TB  
15 population here at the jail.

16           So she was fair -- she's been fair -- fairly  
17 familiar with our -- with our patients and our facility  
18 as she's been practicing there several years. As this  
19 crisis evolved here in the United States, she offered her  
20 services to be with us full-time.

21           She has been, also, consult with an infectious  
22 disease doctor at Parkland, Dr. Carolee Estelle, and they  
23 are both in contact with Dr. Wendy Chung at the Dallas  
24 County Health Department, and she functions in that role  
25 as their director of epidemiology.

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1 Q. What kind of oversight is Parkland subject to? And  
2 tell me if that question doesn't make sense.

3 A. It does not make sense. What would you like to  
4 know?

5 Q. What's the executive board of Parkland look like and  
6 who are its members, if you know?

7 A. The executive board? So -- so the Parkland is  
8 subject to a board of managers. The board of managers is  
9 appointed by the county commissioners here in Dallas.  
10 Then, of course, from there it's a typical corporate  
11 sub -- organizational chain.

12 Q. What level of engagement have you seen on the  
13 Parkland board during the COVID-19 crisis?

14 A. The Parkland board, I -- personally, I would be  
15 probably the wrong person to ask about this. I've not  
16 seen a board member, but I -- neither would I -- would  
17 that be expected of me in my role.

18 Certainly I can speak to the CEO, the CNO, CMO,  
19 all those individuals, and highly, highly, highly  
20 engaged, highly engaged by all members of Parkland, no  
21 matter what the role.

22 So I would assume that the board is highly  
23 engaged with that -- with that C suite.

24 MR. STEPHENS: And I -- I have no more questions  
25 for Mr. Jones at this time. I'll pass the witness.

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1 THE COURT: Off the record for a moment.

2 (Brief recess.)

3 THE COURT: Mr. Barnett, you may proceed.

4 CROSS-EXAMINATION

5 BY MR. BARNETT:

6 Q. Mr. Jones, good afternoon. You and I have not had  
7 the pleasure of meeting before -- at least I have not had  
8 the pleasure of meeting you; is that right?

9 A. That's correct.

10 Q. I have some questions that -- to start with that are  
11 notes from the testimony that you just gave. Then I've  
12 got some other questions that I wrote down before you  
13 started testifying. But I wanted to get to the ones I  
14 had notes about since those are at the top of mind and  
15 maybe of most interest of the Court; is that okay with  
16 you?

17 A. Yes, it is.

18 Q. You were asked about training that Parkland provided  
19 to the jail. I think I understood that -- you to say  
20 that. There was some kind of training, maybe a -- a  
21 film; is that right?

22 A. So yeah, we met with the sheriff's command staff and  
23 we went over the signs and the symptoms of COVID with  
24 them.

25 Q. Okay. Well, this is what I wrote down of your

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1 testimony, that you gave instruction on, quote, On how to  
2 protect yourself, closed quote.

3 Do you remember giving that testimony?

4 A. Yeah, correct.

5 Q. And that was in late February or early March?

6 A. That is correct.

7 Q. And we had heard about some kind of a film that was  
8 provided to the jail by Parkland. And was that to give  
9 staff people information about how to protect themselves?

10 A. Okay. I'm not familiar with a film.

11 Q. Okay. But the training that you were talking about  
12 earlier was about how to protect the staff?

13 A. Correct.

14 Q. Thank you.

15 A. We went over those guidelines with the command  
16 staff, yes.

17 Q. Okay. Great. And then you mentioned an algorithm  
18 that Parkland people use to assess people that come to  
19 your attention as potentially infected; is that right?

20 A. For the screening process, for screening for people  
21 that are -- yeah, that's correct.

22 Q. Right. So they have to come to your attention  
23 because somebody brought them to your attention; is that  
24 right?

25 A. That is correct for initially, yes.

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1 Q. So somebody who is asymptomatic, for example, is  
2 unlikely to be brought to your attention?  
3 A. That -- yeah, asymptomatic people would be unlikely  
4 to be brought to our attention.  
5 Q. And all -- I think I heard that you don't have a  
6 medical degree or --  
7 A. That is correct.  
8 Q. So --  
9 A. I do not hold a medical degree.  
10 Q. Your job is as an administrator?  
11 A. That is correct.  
12 Q. So you are not a doctor or a -- a medically trained  
13 executive, right?  
14 A. That is correct.  
15 Q. Do you know, though, from your work that a number of  
16 people in the population generally are asymptomatic,  
17 notwithstanding the fact that they do have COVID-19?  
18 A. I do not know that number. I know there's concern  
19 about that number in the community.  
20 Q. You do know that it's a nontrivial number, a  
21 nontrivial percentage, right?  
22 A. Yes, we know that at this point, yes.  
23 Q. And it's a real problem with this particular virus,  
24 because people can be shedding like all get out, but they  
25 have no indication that they're sick, right?

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1 A. The literature says that people that are  
2 asymptomatic can be shedding the virus.

3 Q. Right. And even if somebody isn't asymptomatic?

4 A. Isn't asymptomatic --

5 Q. They -- if somebody has fatigue or somebody has a  
6 sore throat or somebody has a little congestion, that  
7 wouldn't necessarily come to your attention or the people  
8 working with you, wouldn't come to their attention,  
9 right?

10 A. As an administrator, no, somebody wouldn't -- with  
11 those symptoms would not necessarily come to my  
12 attention, no.

13 Q. And they wouldn't necessarily come to the attention  
14 of anybody affiliated with -- with Parkland, including  
15 the floor nurse, right?

16 A. If the person chose not to say anything, no, they  
17 would not come to the attention of anybody.

18 Q. Okay. Thank you.

19 You mentioned that you have 150 tests on hand --  
20 I just did the math, you said you have 25 a day and you  
21 have 6 days worth, so that totals 150?

22 A. That's close to what the estimation is, yes.

23 Q. And I heard you say that it's, quote, Very hard,  
24 closed quote, either to get tests or to get them  
25 processed. I wasn't sure which it was, may be both.

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1 What was your -- what did you intend to say about that?

2 A. As far as getting tests, we -- we have the tests  
3 that we -- we have the number of tests that we need to  
4 perform the needed testing on a daily basis. We're not  
5 short of tests. We're able to test individuals as -- as  
6 we need to test them.

7 What I talked about was, as we looked at the  
8 supply chain, you know, some -- some companies have raw  
9 material available but they don't have testing turnaround  
10 times that are conducive for us, and others may have  
11 testing turnaround time but they don't have materials to  
12 sustain that testing.

13 Q. Okay. I -- I'm -- I don't think you answered my  
14 question. It was about what your previous testimony was.  
15 You said it's very hard to do something, and I thought it  
16 was to get tests.

17 Is it easy to get tests or is it hard?

18 A. It's easy to get tests, the tests that we need.

19 Q. Okay. So is it very hard to get them processed?

20 A. No, they get -- all of our tests get processed.

21 Q. Okay. So tell us what it was that was very hard  
22 that you were testifying about.

23 A. I'm not aware -- I don't recall that part of my  
24 testimony.

25 Q. Oh. Okay. And I noticed in Paragraph 2 of your

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1 declaration, you define novel Coronavirus as COVID-19.

2 Do you remember doing that in your declaration?

3 A. I don't have my declaration in front of me, but I  
4 probably did that.

5 Q. Yeah. Are they the same thing?

6 A. I don't know the answer to that question. But I  
7 assume that they are --

8 Q. So isn't it accurate --

9 A. There are -- different Coronaviruses out there, I do  
10 know that, COVID-19 being a novel Coronavirus.

11 Q. So isn't it the case that novel Coronavirus is the  
12 virus and COVID-19 is the disease it causes, did you know  
13 that?

14 A. I don't know the answer to that question.

15 Q. Let's see. You said something about detainees not  
16 having to pay for tests.

17 Do they know that?

18 A. I'm sorry, they don't have to pay for what?

19 Q. Pay for a COVID-19 test.

20 A. No, they do not have to pay for that test.

21 Q. Right, you said that. But what I want to know is,  
22 do the 4,900 souls that are in the jail know that?

23 A. They know that at this point in time --

24 Q. How do they know that?

25 A. I'm sorry?

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1 Q. Did you tell them? Did you tell them?

2 A. That information has been posted in the -- in the  
3 dorms in the cells, the tanks.

4 Q. Okay. So you have seen that?

5 A. Yes.

6 THE COURT: Do me a favor and slow down your  
7 pace just a little tiny bit, if you will have just a  
8 little delay, sir, in answering the question and give him  
9 just a second to answer. We're kind of running into each  
10 other just because of technology. It's not anything you  
11 gentlemen are doing wrong. If you will just do that, I  
12 would appreciate it.

13 THE REPORTER: Thank you, Judge.

14 MR. BARNETT: Okay. Great.

15 Q. And Mr. Jones, is that information posted in  
16 Spanish?

17 A. Not to my knowledge, no it's not.

18 Q. And you said something about nurses coming to check  
19 people?

20 A. Yes, I did.

21 Q. Do you keep track of response times for your nurses?

22 A. Yes, we do.

23 Q. And have you compiled those?

24 A. Response times? Yes, we have compiled response  
25 times before, yes.

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1 Q. And have the response times increased in the last,  
2 say, month or so?

3 A. We've not -- we have not compared our response times  
4 in the last month to the overall response times compared  
5 in the past.

6 Q. Do you have response times for nurses checking on  
7 COVID-19 requests?

8 A. Specifically COVID-19, no, we do not.

9 Q. Okay. Thank you.

10 And you know that on April 15th of this year,  
11 the Dallas County jail had 42 detainees who had tested  
12 positive for COVID-19, you know that, as the vice  
13 president there?

14 A. That may have been the number on that day, that  
15 specific date. I do not know. But that sounds very  
16 close to what we have.

17 Q. Do you know -- as of April the 22nd, two days ago,  
18 that number had grown to 105?

19 A. Correct.

20 Q. And since you probably took math you can do this  
21 better than I can; that's a 250 percent increase in a  
22 week; is that right?

23 A. Going from -- I'm sorry, what was the beginning  
24 number again on April the 15th?

25 Q. 42.

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1 A. 42. Okay. So it's a -- it is a large increase,  
2 yes.

3 Q. Yep. Yes, it's two-and-a-half times, right?

4 A. Approximately, yes.

5 Q. And then yesterday there were even more detainees  
6 who tested positive in the jail?

7 A. That's correct.

8 Q. And you expect that today you are going to have more  
9 detainees who test positive, right?

10 A. Yes, I do. I expect that.

11 Q. So Mr. Jones, the rate of infection of detainees  
12 with COVID-19 in the Dallas County jail is still  
13 increasing?

14 A. Yes, it is.

15 Q. And I think I read somewhere, but I want to confirm  
16 it with you, that the first detainee in the jail who  
17 tested positive had been in the Dallas County jail since  
18 December of 2019; is that right?

19 A. That is correct.

20 Q. And that was discovered on March the 25th of 2020, I  
21 believe you said earlier?

22 A. That is correct.

23 Q. So up until that time, would -- COVID-19 -- the  
24 people in the jail had been exposed for at least January,  
25 February, and until March 23rd to somebody who had COVID,

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1 right?

2 A. No, not necessarily. I would not go back and say  
3 that person had been exposing people for the time period  
4 you just stated.

5 Q. So do you think he got it from somebody else in the  
6 jail?

7 A. He obviously contracted it while he was in the jail.

8 Q. Okay. So the person that he got it from had been in  
9 the jail even before he was?

10 A. Not necessarily.

11 Q. Oh, so he could have been exposed in the jail by  
12 somebody else?

13 A. That's correct.

14 Q. Did y'all do a trace to figure out who it was that  
15 exposed him?

16 A. We were unable to determine who it was -- who the --  
17 who exposed him.

18 Q. And what -- what tower had he been housed in?

19 A. He was housed in the Kays Tower.

20 Q. So that's the one with the -- the 64-person pods in  
21 it?

22 A. That is correct.

23 Q. How many pods had he been in?

24 A. He had been in two pods. But the pod that he was  
25 in, he'd been in for quite a long time.

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1 Q. Okay. So did y'all check all the people who had  
2 been in and out of the pods while he was in there?

3 A. We went back for the time that he would have been  
4 exposed and checked everybody, yes.

5 Q. Did you quarantine them while you were checking  
6 them?

7 A. We did.

8 Q. So how many people was -- were quarantined for that  
9 purpose?

10 A. For that purpose, there was 64 out of the tank, and  
11 I'm trying to remember -- there was one other person who  
12 had transferred to a different tank.

13 Q. Okay. And while you are quarantining these folks  
14 who you suspect may have been exposed and some may have  
15 COVID-19, they're stuck there, right, all 64 of them are  
16 there mingling with other people who may have been  
17 exposed, even though they had not been; is that right?

18 A. All 64 people were originally in the tank. So yes,  
19 they were commingling with one another as they had been.

20 Q. Right. So if somebody didn't have COVID-19 by the  
21 time the quarantine started, it's much more likely that  
22 they would have it at the end of that process if  
23 somebody, one of 64 had COVID-19; is that right?

24 A. The -- yes. As well -- as long as they are in that  
25 tank, if somebody has COVID-19 then it would stand to

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1 reason that they could contract COVID-19 from another  
2 individual.

3 Q. Right. And the fact that there's so many people who  
4 may not be exposed to and don't have COVID-19 in this  
5 quarantine situation, that -- it is a function of the  
6 fact that y'all house people in 64-person pods, right?

7 A. I'm not following -- I don't understand the  
8 question.

9 Q. Sure. The fact that 64 people, once one person  
10 is -- is the suspect for COVID-19, one person who's been  
11 in that tank -- or I'm sorry, that pod -- the reason  
12 there is 64 people who have to wait 14 days, or however  
13 many days it is, potentially being exposed to somebody  
14 who has it when they don't, that's just a function of the  
15 fact that y'all have -- y'all keep people in 64-person  
16 pods, right?

17 A. Correct, that's correct.

18 Q. If you had single cells or you used smaller cells to  
19 house just one person, you wouldn't have to do that,  
20 right?

21 A. That's correct.

22 Q. And if there were fewer people in the jail you  
23 wouldn't have to do that either, right?

24 A. Depends on the housing situation, not the number of  
25 people.

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1 Q. Right. But if you have fewer people in the jail,  
2 then there would be less of a problem of having to crowd  
3 64 people together maybe, right?

4 A. There would be more space, there would be more tanks  
5 to spread them out, yes.

6 Q. Okay. Thank you.

7 Does Parkland test guards who want to be tested  
8 for COVID-19?

9 A. Not -- no, we do not.

10 Q. So if one of the 1,300 DSOs went to Parkland and  
11 said, hey, I'm a little worried, I've had some fatigue,  
12 my wife's worried, my husband is worried, my kids are  
13 worried; can you test me so I'll know, your answer would  
14 have to be, no?

15 A. Our function in the jail is to provide treatment to  
16 the inmates, not the staff.

17 Q. Okay. So your answer to my question is, your answer  
18 would be, no, to those guards?

19 A. That's correct.

20 Q. Okay. I had a question about where the -- the  
21 people who had tested positive, the detainees who have  
22 tested positive, where are they currently being housed?

23 A. The detainees that have tested positive?

24 Q. Yes, sir.

25 A. I'm sorry, so they are housed in a couple of

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1 different areas. They are housed on a couple of floors  
2 in the West Tower, they are housed there. They are also  
3 housed -- the ones that are more ill, are housed in our  
4 negative pressure area in the infirmary.

5 Q. And how many of the ones that are in the infirmary?

6 A. I don't recall the number off the top of my head.

7 Q. More than 20?

8 A. It would be probably be less than ten.

9 Q. Okay. Thank you.

10 And then the folks in the West Tower, how many  
11 are they?

12 A. So right now there are 100 -- as of this morning,  
13 were 127 individuals that were positive for COVID-19. So  
14 that would leave about the remainder there in the West  
15 Tower.

16 Q. So 127, that sounds like in the last few days, if I  
17 remember the -- in the last few days; is that right?

18 A. I'm sorry, you broke up.

19 Q. Yeah. We had talked earlier about the -- there were  
20 105 on the 22nd of April.

21 A. Okay.

22 Q. And I think you just told -- that there were 127?

23 A. That's correct.

24 Q. So there's an additional 22 just in the last two  
25 days?

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1 A. That's correct.

2 Q. And again, math is not my strong suit, but it sounds  
3 like the infection rate is accelerating; is that true?

4 A. We need to determine that. The -- so of the 127  
5 that I'm speaking about, 72 of them are in a convalescent  
6 state. So that -- meaning that they've had the  
7 infection, they've recovered from the infection, and so  
8 now they are -- they're symptom and fever free for  
9 greater than 72 hours.

10 However, what our -- what our medical  
11 professionals have found is that even after that state  
12 they will still test positive, so we have them  
13 sequestered in another area of the jail.

14 Q. Do you remember my question, sir?

15 A. What -- would you repeat it?

16 Q. You cannot remember my question?

17 A. You asked several questions.

18 Q. Yeah. I asked you if the rate of infection of  
19 inmates is accelerating?

20 A. And I -- you would have to determine that.

21 Q. Okay. Thank you.

22 MR. BARNETT: Your Honor, I move to -- I object  
23 to the lengthy nonresponsive answer previously.

24 THE COURT: Sustained.

25 Q. Moving on. I'm on the second page of my notes,

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1 Mr. Jones.

2           You talked about a kiosk and kites. And we  
3 heard testimony -- I don't think you heard it from  
4 Officer Lewis -- that the kiosks sometimes don't work.  
5 Were you aware of that fact?

6 A. If they do not work, then -- yes, that's a distinct  
7 possibility they may not work.

8 Q. Right. And do you know how often they don't work or  
9 how many of them are broken at any given time?

10 A. I do not.

11 Q. And if -- do you know whether they're in constant  
12 use and hard to get time on because of the demand for  
13 them?

14 A. I don't know. I know they have rules about the time  
15 that can be spent on them, but I don't know the current  
16 demand schedule of the machines.

17 Q. Okay. Thank you.

18           And is -- are they in Spanish, are the  
19 instructions on the kiosk in Spanish?

20 A. I believe they are.

21 Q. So that's available. And is there any training  
22 available to somebody who's not familiar -- the Court  
23 gave an example of her grandmother, a thing -- as a  
24 potential example to think of.

25           Is there training, to your knowledge, available

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1 for people who aren't necessarily tech literate to be  
2 able to use the kiosks?

3 A. I don't know the answer to that question.

4 Q. Okay. Thank you.

5 And you were talking about an assessment that  
6 y'all make of health when people come into the jail. And  
7 I had the impression that Parkland had some role in  
8 deciding where detainees actually go, but is that the  
9 case? Isn't it the jail that decides where to put  
10 people, not Parkland?

11 A. That is correct. The -- the -- it is the -- the job  
12 of the sheriff's department to determine where people go.  
13 We will certainly give them input so they can --

14 Q. Right.

15 A. -- make a more informed decision.

16 Q. But if they reject your advice, then you probably  
17 don't even hear about that, that just happens, right?

18 A. Depending on -- for the most part, yes, unless it's  
19 a -- unless there is a situation that we're highly  
20 concerned about.

21 Q. Okay. I hear you. That's fair enough.

22 And in part of your testimony I heard you  
23 describing what happens, that's at least how I construed  
24 it. But you -- although you are in the jail on a daily  
25 basis, you are not walking the floors on a daily basis,

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1 are you?

2 A. The rounds, no, not on a daily basis, no, I am not.

3 Q. So -- not necessarily what happens.

4 THE COURT: Mr. Barnett, you cut -- would you  
5 mind repeating that question? I missed part of that.

6 Thank you.

7 Q. So --

8 MR. BARNETT: Yes, Your Honor.

9 Q. So Mr. Jones, what you described was what's supposed  
10 to happen, not necessarily what actually happens?

11 A. As far as people coming into the jail and being  
12 assessed?

13 Q. Yeah. And all the other things that you talked  
14 about that happen in the jail, you are talking about  
15 what's supposed to happen?

16 A. That's correct -- no, those things happen that I  
17 described.

18 Q. For example, you described the intake process, and  
19 --

20 A. Yes.

21 Q. -- my guess is that you don't stand down in the  
22 sally port every day and make sure everybody does what  
23 you described to the Court?

24 A. No, I do not.

25 Q. So when you were describing things like that, you

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1 were talking about what you understand happens or you  
2 think is supposed to happen, right?

3 A. So no, those things happen. We have staff that  
4 verify that they do happen. So I'm very confident saying  
5 that they do happen.

6 Q. Okay. Well, I guess we can assess whether you have  
7 personal knowledge of that or not.

8 MR. BIGGS: Object to the sidebar comment,  
9 Judge.

10 MR. STEPHENS: Now would be the time for that  
11 assessment.

12 THE COURT: Okay. Well, I'll sustain as to  
13 sidebar. I am listening and -- and noting what he does  
14 and doesn't have personal knowledge of.

15 MR. BARNETT: Thank you, Your Honor.

16 Q. Mr. Jones, you agree that the only effective way to  
17 prevent spread of COVID-19 is through social distancing?

18 A. Social distancing is certainly a -- a part of a  
19 broader plan to prevent the spread of COVID-19. There  
20 are other things that are done to prevent the spread of  
21 it.

22 Q. If you had social distancing and nothing else,  
23 COVID-19 would not be spreading, right?

24 A. No, that's not -- that's not correct. COVID-19 can  
25 spread even when social distancing occurs.

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1 Q. If people don't have contact with each other and  
2 they don't mingle with the same surfaces and they don't  
3 breathe the same air and they're apart from each other,  
4 COVID-19 will not spread, correct?

5 A. To my knowledge, that sounds correct.

6 Q. Do you agree that the only effective way to prevent  
7 spread of COVID-19 is through social distancing?

8 A. Well, social distancing is defined as, you know,  
9 being within 6 feet for 10 seconds -- you know, staying  
10 apart, you know, taken to its definition.

11 If you are stating that people need to be  
12 single-celled and apart from one another, then that's a  
13 different situation.

14 Q. Can you answer my question: You agree that the only  
15 effective way to prevent the spread of COVID-19 is  
16 through social distancing.

17 MR. BIGGS: Objection; asked and answered.

18 THE COURT: Overruled.

19 A. No, I --

20 THE COURT: I'm sorry, if you'll hold on just a  
21 moment, sorry. We've got multiple parties here.

22 Are there any other additional objections from  
23 Defendant other than asked and answered?

24 MR. STEPHENS: I join the objection and I  
25 understand the Court's ruling.



1 THE COURT: All right.

2 Q. And your answer, sir, is, no, you think that there  
3 is some other way than social distancing effectively to  
4 prevent the spread of COVID-19?

5 A. That's not what I was answering, no. You asked --  
6 you asked me if I thought social distancing was the only  
7 effective way to prevent spread of COVID-19. And I do  
8 not agree that that is the only effective way to stop the  
9 spread of COVID-19.

10 Q. Okay. Well, can you tell us, give us an example of  
11 something that doesn't involve social distancing, keeping  
12 people apart, that is an effective way to prevent the  
13 spread of COVID-19?

14 A. The proper use of PPE is an effective way to stop  
15 the spread of COVID-19.

16 Q. But isn't that an example of social distancing?

17 A. It's the use of -- personal protective equipment.

18 Q. Right. To put a barrier between you and somebody  
19 else, right?

20 A. That's a physical barrier that you wear, and yes,  
21 it's a barrier that is -- that is created; it is not the  
22 definition of social distancing.

23 Q. Okay. So you -- PPE. And I guess, let's see if you  
24 have another example, can you give us another example  
25 that you think is not social distancing that would be an

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1 effective way to prevent the spread of COVID-19?

2 A. Washing one's hands is an effective way to stop  
3 that.

4 Q. Okay. Anything else?

5 A. The cleaning of surfaces is another effective way to  
6 stop the spread of COVID-19.

7 Q. Okay. What else?

8 A. Covering your cough, when you cough, is another  
9 effective way to stop the spread of COVID-19.

10 Q. Okay. Anything else?

11 A. That's all I recall at this time.

12 Q. Okay. Thank you.

13 Do you agree that social distancing is a  
14 cornerstone of reducing transmission of COVID-19 in the  
15 Dallas County jail?

16 A. It is a cornerstone of preventing the spread of  
17 COVID-19, yes, it is.

18 Q. Okay. And you have pretty good support for that,  
19 according to the CDC's interim guidance, which describes  
20 social distancing as a cornerstone of reducing  
21 transmission of COVID-19?

22 A. So yes, it is -- the CDC recommends social  
23 distancing, that's correct.

24 Q. Right. Do you know what a cornerstone is?

25 A. That would be the stone on which another building is

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1 built, would be my understanding of it, the one that is  
2 laid first.

3 Q. Right. It's an essential part of a foundation,  
4 correct?

5 A. Correct.

6 Q. And if you don't have the cornerstone or you don't  
7 have it in there right, the whole edifice is going to  
8 collapse, right?

9 A. According to the example, yes.

10 Q. You are aware that the CDC interim guidance says  
11 that both good hygiene practices and social distancing  
12 are critical in preventing further transmission?

13 A. That's correct.

14 Q. And critical, the term that the CDC people use,  
15 means indispensable?

16 A. Correct.

17 Q. In paragraph -- give me a second.

18           You talked about PUMs in your testimony, persons  
19 under monitoring; is that right?

20 A. PUMs, yes, that's correct.

21 Q. PUMs. And if they have the misfortune of being in  
22 one of the pods, they're not going to be isolated with  
23 one or two or three or seven people; they're going to be  
24 isolated with however many people are in that pod, right?

25 A. That depends. A 60 -- we're -- the -- the people

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1 are in the Kays Tower in the 64-man tanks, they were  
2 moved to a different part of the jail so they could be  
3 monitored.

4 Q. Are you aware that Officer Lewis testified that his  
5 pod, at least one of them that has 60 people in it, is  
6 locked down right now, because of COVID-19?

7 A. I was not aware of his testimony, no.

8 Q. Does it surprise you to hear that there's a --  
9 instead of being in the West Tower or in the infirmary,  
10 people who are under monitoring are locked down in  
11 Officer Lewis' pod?

12 A. So right now -- no, that does not surprise me  
13 because people are locked down in the Kays Tower. The  
14 sheriff implemented a new intake plan this week. Kays  
15 Tower is being used for that. And so pods are locked  
16 down with people that are under monitoring as they enter  
17 the jail.

18 Q. Okay. And are you including in that number, I think  
19 you said something like 200 people are in quarantine,  
20 does that include the people who are locked down in the  
21 pods?

22 A. Correct --

23 Q. Okay --

24 A. -- nice to know, are you talking about the people  
25 that are just coming in after intake?

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1 Q. No, no. The people who, like in Officer Lewis' pod,  
2 are locked down in the South Tower. Did you include  
3 those in that 200 number?

4 A. Yes, everyone is -- anybody that's in the -- that  
5 number of PUMs is included.

6 Q. Okay. Thank you.

7 And you mentioned something about negative cells  
8 or negative pressure cells?

9 A. Negative air pressure cells, correct.

10 Q. Okay. And you said that -- would those particular  
11 spaces, the air doesn't go through the regular AC -- HVAC  
12 system, the air-conditioning system, it's taken straight  
13 to the outside; is that right?

14 A. That is correct, that is what I stated.

15 Q. So I -- I gathered from that, that outside of those  
16 negative pressure cells, air that's in one place is  
17 recirculated throughout the jail or throughout the tower;  
18 is that right?

19 A. Correct, air outside of the negative air pressure  
20 cells in those areas is recirculated.

21 Q. So air that's -- that's wafting through Mr. Lewis'  
22 pods will be recirculated through a pod that's supposedly  
23 not affected at all by -- COVID, right?

24 A. That is correct.

25 Q. Thank you. And then Exhibit 7 we looked at, that's

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1 the yellow one.

2 MR. BARNETT: And Your Honor, I think that's the  
3 one we used as an example to show that our system was  
4 working.

5 THE COURT: Do you want that pulled up,  
6 Mr. Barnett?

7 MR. BARNETT: I don't think so, Your Honor.  
8 I'm -- I don't think what I'm going to ask him is going  
9 to matter what it looks like.

10 Q. But you do remember Exhibit 7, you testified about  
11 it?

12 A. Was that the list?

13 Q. Yeah. That was the -- the first list.

14 A. Okay. Yes, I recall that.

15 Q. And I think you said that it has a date of March  
16 25th?

17 A. Correct.

18 Q. Is that correct?

19 And why do you remember that date, why do you  
20 know that date?

21 A. That's the -- that is the first date that we became  
22 aware that we had a positive case in the jail of  
23 COVID-19.

24 Q. Okay. So did you scramble to get this list together  
25 on the same day or was it something that was already in

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1 process or what's the story there?

2 A. So on that date, we -- our medical director decided  
3 that we needed to communicate a list of individuals that  
4 would be more at risk to COVID-19 to people who could  
5 maybe review the case and see if they needed to stay  
6 within the jail.

7 Q. Okay. So you were able to scramble and put it  
8 together in one day?

9 A. Yes, we were able to -- to compile that list in a  
10 day.

11 Q. And who put that list together?

12 A. So our programmer put that list together.

13 Q. And how did they know how to populate the -- the  
14 fields that identify -- I think you called it  
15 comorbidities --

16 A. Correct --

17 Q. -- to COVID-19?

18 A. So --

19 Q. How did they know to do that?

20 A. So -- okay. So the programmer consulted with our  
21 medical director and Dr. Nijhawan on how to -- on the  
22 fields to include to compile that list.

23 Q. Okay. Great. And there -- I think there are 2,208  
24 people on that list; does that sound right to you?

25 A. That sounds close. I don't know the exact number.

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1 Q. So not quite half of the people that were in the  
2 jail at that time?

3 A. Correct. If I -- if that was not half the number,  
4 that sounds about right.

5 Q. Okay. Just to address something else that -- that  
6 came up previously, and I think it was in Counsel's  
7 opening statement earlier.

8 In April of 2019 -- I'm sorry, today -- what's  
9 the population of the jail today of detainees?

10 A. Are you asking me today what the population of the  
11 jail is today?

12 Q. Yes, sir.

13 A. I believe it is about 4,800.

14 Q. 4,800. Do you recall what it was a year ago?

15 A. Do I recall what it was a year ago? No, I do not.

16 Q. Do you -- are you aware that the population of the  
17 jail tends to increase at year-end, then it falls off  
18 January, February, March, April?

19 A. Correct. The -- yeah, the -- the jail does have  
20 cyclical -- cyclical populations, that's correct.

21 Q. Okay. So to the extent the jail has fewer people  
22 now than it did in, say, December, January, February,  
23 that's expected, right?

24 A. No, not -- hold on. Let me recall for a moment.

25 In my experience, the top months as with regard

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1 to population do occur in the winter, and you generally  
2 see a -- a large uptick beginning in March going through  
3 October.

4 Q. Okay. So thank you for that.

5 Counsel for the defendants and for the  
6 intervenors have graciously stipulated that in April of  
7 2019, the population of detainees in the Dallas County  
8 jail was 4,735.

9 A. Okay.

10 Q. Do you accept that number?

11 A. If that's what they testify to, then yes, I'll  
12 accept that number.

13 Q. Okay. They'll speak up if they -- if what I'm  
14 saying is not right.

15 And currently, I think you said that the  
16 population is 4,833, right?

17 A. 4,800, yes.

18 Q. Okay. Okay. So the population this year is  
19 actually higher than it was last year in April, right?

20 A. That would stand to reason, yes, that's correct.

21 Q. Okay. Thank you. And let's talk about Exhibit 7  
22 again. This is the yellow spreadsheet with 2,200 or so  
23 names on it.

24 Do the lawyers for people in the jail get this  
25 list?

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1 A. No, they do not.

2 Q. Do they know how their clients are classified?

3 A. Classified medically?

4 Q. Yeah. Whether they're recommended to go to the top  
5 of the list for release, do they know that?

6 A. No. They -- that information is not shared with  
7 their attorneys.

8 Q. And it's not shared with them either, right?

9 A. No, it is not. They being the patients, correct?

10 Q. Right. You know, the people that you are reporting  
11 on have no idea that you put together this list, right?

12 A. They do not.

13 Q. And the only people who get to see it I guess are  
14 the people affiliated with the County and maybe a judge;  
15 is that right or -- yeah?

16 A. That's correct. The -- the intended audience is --  
17 are the judges presiding over those cases.

18 Q. Okay. And can you tell the Court how many people on  
19 that March 25th, 2020 list have been released?

20 A. I do not know the answer to that question.

21 Q. And do you understand that the list represents the  
22 best medical judgment of Parkland about medically  
23 vulnerable people in the jail?

24 A. So yes, that's -- that was our intent to give that  
25 information, yes.

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1 Q. And that list was prepared, at least in part, by  
2 Dr. N -- we'll just call her that. Do you know who I'm  
3 talking about?

4 A. Yes, Dr. Nijhawan.

5 Q. Yeah. We'll call her Dr. N so I don't mess it up.  
6 Is that okay, Dr. N?

7 A. I'm okay with that.

8 Q. Great. And so was she the one who put together the  
9 list or told the -- the programmer what fields to fill  
10 out?

11 A. So Dianne Urey and Dr. Nijhawan worked to speak as  
12 to the criteria of the list. Dianne Urey was the person  
13 who actually reviewed the list at the end and approved  
14 it.

15 Q. Okay. Thank you.

16 And Exhibit 8 is a -- another list. And that's  
17 dated May -- I'm sorry, April 17th, 2020; is that right?

18 A. Yes, that's correct.

19 Q. And that list was put together why?

20 A. It was at the request of the plaintiffs, I believe.

21 Q. Okay. And I think you said earlier that March 25th  
22 was the first COVID-19 patient which tested positive.  
23 And we saw the other day that the -- the sheriff -- to  
24 different people on the staff of the sheriff's  
25 department.

1 THE COURT: Mr. Barnett, you cut out. If you  
2 don't mind repeating that, please. There was a lag.

3 MR. BARNETT: Okay.

4 Q. So that was on March the 25th. And we heard  
5 testimony that on March the 20 -- on March the 16th -- I  
6 think that's right. There was information sent to people  
7 on the jail -- I'm sorry, yeah, the staff.

8 Were you involved in the decision on what to  
9 send to the people on the jail staff?

10 A. I was not.

11 Q. Do you know whether or not the March 23rd, 2020  
12 interim guidance by the CDC has ever been sent to people  
13 on the jail staff?

14 A. I do not know that.

15 Q. Okay. Thank you.

16 And that's -- those are my notes. And now I'm  
17 going to switch back to my outline.

18 So we had talked about on Page 8 of the interim  
19 guidance by the CDC both good hygiene practices and  
20 social -- distancing are critical in preventing further  
21 transmission; you agreed with that.

22 And I think I asked you if critical means  
23 indispensable, and I think you said yes, but correct me  
24 if I'm wrong?

25 A. That's correct.

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1 Q. Okay. Thank you. And then Paragraph 11 of your  
2 declaration, you talk about Dr. N, you describe her as an  
3 infectious disease specialist who is working with the  
4 County; is that right?

5 A. That's correct.

6 Q. And although she's at UT Southwestern, she's working  
7 for Parkland with -- on kind of on a loan from UT  
8 Southwestern; is that right?

9 A. She's included in the medical service agreement that  
10 Parkland has with UT Southwestern, and she's currently  
11 working in an expanded role at the jail.

12 Q. Does she have a title at the jail?

13 A. No, she does not.

14 Q. Okay. And I -- Parkland pays UT Southwestern for  
15 her time; is that right?

16 A. That is correct.

17 Q. And is she working full-time or just part-time now  
18 for the jail?

19 A. At this point in time she's working full-time.

20 Q. And describe for us her role there, please.

21 A. The role now?

22 Q. Yes.

23 A. Okay. Yeah, so her role is, she is there helping us  
24 to coordinate the efforts of dealing with this COVID-19  
25 population and dealing with the infectious disease parts

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1 of this.

2 Q. Okay. Thank you.

3 You're aware that Dr. N wrote a letter on March  
4 25th of 2020 to Sheriff Brown and other Dallas County  
5 officials?

6 A. I am -- I am aware of a letter, yes.

7 Q. And when did you become aware of that letter?

8 A. I became aware of that letter yesterday.

9 Q. Okay. And was it in connection with this case that  
10 you became aware of it? And I don't want to get into  
11 what lawyers may have told you.

12 A. No, no, it was not.

13 Q. Well, how did you find out about it then?

14 A. So I -- Dr. Nijhawan told me about it. She said she  
15 had written a letter earlier.

16 Q. Right. And have you seen the letter?

17 A. I have not.

18 MR. BARNETT: Can we pull it up on the screen?

19 And I think, Your Honor, I may need to do some  
20 housekeeping on this. I think I called it Exhibit 14.

21 THE COURT: Okay. My assistant has stepped out  
22 for just a moment, so if you'll give me just 60 seconds.

23 (Off-the-record discussion.)

24 THE COURT: You may proceed.

25 Q. Mr. Jones, you heard about this letter yesterday?

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1 A. Yeah, yes, I did.  
2 Q. Did you read it?  
3 A. No, I have not seen this letter.  
4 Q. Will you take a moment to read it now?  
5 A. Yes, yes, I can.  
6 Q. And what I'd like you to do is, as you go through  
7 it, see if there's anything that you disagree with.  
8 (Witness complies.)  
9 A. Okay. Yes, I have finished reading the letter.  
10 Q. Okay. Thank you.  
11 Is there anything in Dr. N's letter to Sheriff  
12 Brown and others that you disagree with?  
13 A. No, I don't disagree with it.  
14 Q. One of the things that she says is that social  
15 distancing is nearly impossible in a jail setting. Do  
16 you see that?  
17 A. I see that.  
18 Q. Do you agree that failure to implement effective  
19 social distancing would present a risk that detainees  
20 will become infected with COVID-19?  
21 A. Yes, if you didn't social distance then infection  
22 rates can -- can move higher, that's correct.  
23 Q. And you would agree that that risk is substantial?  
24 A. Yes.  
25 Q. And becoming infected with COVID-19 is serious harm

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1 to the person who contracts the disease, especially if  
2 the person is medically vulnerable?

3 A. That the odds of it causing serious harm are greatly  
4 increased, yes.

5 Q. And if you contract the disease, the likelihood that  
6 it's going to be a serious case of the disease is worse  
7 if the person is medically vulnerable?

8 A. That's correct, the risk factors are higher, that is  
9 correct.

10 Q. So the people who are at risk of serious harm if  
11 they catch COVID-19 would include all those people on  
12 the -- the list that were marked as Exhibit 7 and 8, the  
13 2,200 or so people; is that right?

14 A. They are the people that are at risk, higher risk.

15 Q. Higher risk. And the risk of becoming infected --  
16 and becoming infected with COVID-19 would be serious harm  
17 to those folks, right?

18 A. Yeah, that would be the risk, that there -- serious  
19 harm could come to them, that's correct.

20 Q. Right. And by serious harm we're talking about a  
21 bad case of COVID-19 and possibly even death, right?

22 A. That's correct, a case that would have the person  
23 have to be hospitalized and/or -- and/or death, yes,  
24 that's correct.

25 Q. And COVID-19 is a disease that is many times more

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1 likely to be fatal than a flu disease or a flu; is that  
2 right?

3 A. To my knowledge, that's correct.

4 MR. STEPHENS: I just have to object that  
5 Mr. Jones is not a doctor. Anything -- all conclusions  
6 that a doctor would offer.

7 THE COURT: Okay. I'll note your objection.  
8 Intervenors, do you join that?

9 MR. BIGGS: Yes.

10 THE COURT: All right. I'll overrule, but in  
11 fairness, I mean, I'm keeping track of him and I wrote  
12 down details of his CV and I'm aware he's not an M.D.

13 MR. BARNETT: Thank you, Your Honor.

14 Q. Because you were not watching the proceedings up  
15 until now, you may not know that the DSO, Officer Lewis,  
16 and the Deputy Chief Robinson gave testimony, I think,  
17 that the DSOs have not been given specific training by  
18 Dallas County or the sheriff's department to implement  
19 social distancing beyond sending an e-mail and posting  
20 signs in some places.

21 Are you aware that that's what they testified to  
22 or do you accept my representation that that's the case?

23 MR. STEPHENS: Your Honor, I would object to  
24 Counsel's characterization of Officer Lewis' testimony as  
25 it applies to anyone or anything beyond his own personal

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1 knowledge.

2 THE COURT: Okay. I'll overrule your objection,  
3 but I note your concern. And, Intervenor, I assume you  
4 join in that objection?

5 MR. BIGGS: Yes, Judge.

6 THE COURT: All right.

7 Q. So do you accept my representation, Mr. Jones, that  
8 that's the testimony that those two gentlemen gave?

9 A. I have to -- I don't have reason to believe you  
10 would mislead me.

11 Q. Okay. Thank you.

12 Do you have any reason to think that the Dallas  
13 County and the sheriff's department actually did give  
14 specific training to DSOs on implementing social  
15 distancing beyond sending an e-mail and posting signs?

16 A. I don't have any -- any knowledge of -- of them  
17 doing that training.

18 Q. Okay. You would agree that it would be important  
19 for the DSOs to have training specific to social  
20 distancing in the age of COVID-19 in order to effectively  
21 implement social distancing, right?

22 A. So training is important for social distancing.

23 Q. Right. Okay. And are you aware that -- let me ask  
24 you a different question.

25 Do you believe that it would be important not

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1 just for the DSOs to get training specific to social  
2 distancing, but also detainees?

3 A. The guidelines that are -- the training is posted.  
4 The training that is given to the general public is also  
5 given to the detainees. So the -- the guidelines about  
6 social distancing are posted.

7 Q. Okay. If they read it they'll see some kind of a  
8 summary statement, right?

9 A. If they read it. I -- I don't know if they will  
10 read it or not.

11 Q. Yeah. If they can read it, since it is not in  
12 Spanish, right?

13 A. Correct.

14 Q. And if they can read at all, since not everybody's  
15 literate?

16 A. That's correct, not everybody is literate.

17 Q. Okay. And it would be important to have in-person  
18 training, right? Where you're -- like you are in a  
19 classroom and you are -- the way we teach our kids. We  
20 don't count on them to read the book and to know the  
21 material, we teach them, right?

22 A. We do teach them -- we do teach our kids. My  
23 understanding is, the inmates have access to news  
24 sources, specifically TV, that type of thing. So the --  
25 the PSAs that play in those areas, as well.

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1 MR. BARNETT: Object to that answer as  
2 nonresponsive.

3 THE COURT: Sustained.

4 MR. BARNETT: Thank you, Your Honor.

5 Q. Mr. Jones, are you familiar with the term or the  
6 word "feasible"?

7 A. Feasible?

8 Q. Feasible?

9 A. Yes.

10 Q. Counsel has used it a couple of times, Counsel for  
11 the defendants. And one of the times was I think a quote  
12 from CDC interim guidance. And I'm going to quote that  
13 for you: Not all strategies will be feasible in all  
14 facilities.

15 Do you understand feasible to mean capable of  
16 being done?

17 A. I would take that interpretation.

18 Q. Okay. So is -- one of the things that Dr. N  
19 recommended as a way to protect detainees is to release  
20 nonviolent offenders. Do you remember that from her  
21 letter, Exhibit 14?

22 A. I do remember that.

23 Q. I think you said that you agree with that?

24 A. I -- I do agree with that.

25 Q. Okay. And you agree with that as a medical matter,

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1 although you are not a medical guy, you are the  
2 administrator for the provider of medical care in the  
3 jail, right?

4 A. Right.

5 Q. So we talked about feasible as meaning capable of  
6 being done. Is the relief -- Dallas County jail capable  
7 of being done?

8 THE COURT: Mr. Barnett, you blurred on that  
9 last question. If you wouldn't mind reasking that?  
10 Thank you.

11 MR. BARNETT: Sure.

12 Q. Is release of nonviolent offenders from the Dallas  
13 County jail capable of being done?

14 A. Yes, it's capable of being done.

15 Q. I may have asked you this earlier, and I apologize  
16 because I don't remember your answer if I did.

17 How many on the list of 22 or so -- 2,200 or so  
18 on Exhibit 7 and 8 have been released? I think you said  
19 you don't know --

20 A. No, I don't know the answer to that question.

21 Q. Okay. Yeah. Do you think we could get an answer  
22 pretty quickly to that? Is that information available to  
23 you?

24 A. That information -- a report could be written, I'm  
25 sure. I don't know how fast it could be produced.

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1 Q. Okay. Is Dr. N qualified as an expert regarding  
2 COVID-19 outbreak in the Dallas County jail?

3 MR. STEPHENS: Objection, Your Honor. That is a  
4 legal conclusion.

5 THE COURT: Overruled.

6 Do you join the objection, Intervenors?

7 MR. BIGGS: Yes, Judge.

8 THE COURT: All right.

9 A. So yeah, as an infectious disease physician I would  
10 expect her to be the best -- the best expert we can find  
11 at this point in time, as she is working in collaboration  
12 with the director of epidemiology at the Dallas County  
13 Health Department and with our infection prevention lead  
14 at Parkland Health and Hospital System.

15 Q. Thank you. Is there anybody on the planet more  
16 qualified than Dr. N regarding the COVID-19 outbreak in  
17 the Dallas County jail?

18 MR. STEPHENS: Same objection, Your Honor.

19 MR. BIGGS: I would also say calls for  
20 speculation, Judge.

21 THE COURT: I will sustain it.

22 MR. STEPHENS: Join the objection.

23 THE COURT: As to speculation, yeah. I don't  
24 know how he can know if she is most qualified on the  
25 planet. You can ask him if he knows -- how far he knows,

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1 but...

2 Q. Okay. Yeah, I'll ask that.

3 Are you aware of anybody on the planet who is  
4 more qualified than Dr. N to be an expert regarding the  
5 COVID-19 outbreak in the Dallas County jail and what to  
6 do about it?

7 A. So I would think that the director of epidemiology  
8 would be maybe a more qualified expert than Dr. N.

9 Q. Okay. And do you have that person's name for us,  
10 please?

11 A. Dr. Wendy Chung.

12 Q. Okay. Anybody else?

13 A. Not to my knowledge.

14 Q. Okay. Thank you.

15 Have you ever seen a written policy of Dallas  
16 County for addressing COVID-19 pandemic as it affects the  
17 Dallas County jail?

18 A. Not titled COVID-19.

19 Q. Have you seen some kind of an operations guidance  
20 that was last updated in December of 2010; is that what  
21 you have seen?

22 A. No. We have an overarching infection prevention  
23 policy at the Dallas County jail that takes into account  
24 these types of diseases.

25 Q. Okay. And is that a Parkland document or a jail

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1 document?

2 A. That would be a Parkland document.

3 Q. Okay. And who's responsible for implementing that  
4 policy?

5 A. So the leadership team there at the jail, the  
6 medical leadership team.

7 Q. Okay. And that policy is not specific to COVID-19;  
8 is that right?

9 A. It is not specific to COVID-19.

10 Q. And it has not been updated specifically to address  
11 COVID-19; is that right?

12 A. That is correct.

13 Q. Is there any other document that could be described  
14 that is a written policy of Dallas County --

15 MR. BARNETT: I'm going to back up, Your Honor  
16 because what -- what Mr. Jones just told me is not a  
17 policy of Dallas County; it's a Parkland policy.

18 Q. Have you ever seen a written policy of Dallas County  
19 addressing the COVID-19 pandemic as it affects the Dallas  
20 County jail?

21 A. No, I have not.

22 Q. Is there one, to your knowledge, a written policy?

23 A. A policy by the Dallas County jail, no. Not that  
24 I'm aware of that is specifically labeled and addresses  
25 COVID-19.

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1 Q. And as the institution that is responsible for  
2 attending to the medical needs of detainees and staff --  
3 or detainees, do you think it would be important for you,  
4 Parkland, to know what the Dallas County policy is?

5 A. So yes, it is important for us to know -- understand  
6 what that policy is.

7 Q. Okay. Thank you.

8 Are you aware of how Dallas County jail compares  
9 with peer counties elsewhere in the state regarding the  
10 ratio between people testing positive and how many people  
11 are quarantined?

12 A. I am not familiar with those ratios with our sister  
13 counties, no.

14 Q. Okay. And do you think that ratio tells you  
15 something about how much care a particular jail is -- is  
16 taking with its detainee population?

17 A. No, I -- I don't, actually. I think that's --  
18 indicative of the care that's being rendered.

19 Q. Tell us why you don't think that.

20 A. I know we have a very aggressive testing method at  
21 the jail. We're very interested in knowing. So it  
22 doesn't surprise me that if compared to other systems  
23 around the state I have a higher -- higher incident. I  
24 would actually expect that.

25 Q. A higher incident relative to the people who are

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1    quarantined, right?

2    A.   No, a higher incident compared to other jails.

3    Q.   Okay.  We're not understanding one another.

4    A.   Okay.

5    Q.   The question wasn't how aggressively you test, the  
6    question is how good a job does the jail do in  
7    quarantining people.  Do you understand the -- the  
8    difference?

9    A.   I understood you to ask -- I guess I'm not  
10   understanding your question, no, I'm not.  If you  
11   wouldn't mind repeating it I'd be happy to answer it.

12   Q.   I'll try it again.  I'm sure it's me, because again,  
13   I'm -- I'm no good at math so I shouldn't even be trying  
14   this.

15                The ratio between positive tests of detainees  
16   and quarantined inmates.

17   A.   Okay.

18   Q.   And the question for you is, do you think that ratio  
19   tells you anything about how well the jail is performing  
20   in protecting the detainees?

21   A.   I see.  Okay.

22                Yes, it's important.

23   Q.   Okay.  So I'll just represent to you, I think this  
24   is in the record, that in March of this year, Bexar  
25   County did almost 10 times as well as Dallas County did

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1 in that ratio. Does that surprise you?

2 A. I don't know their numbers. I -- I guess I would  
3 like to understand what ratio we're actually speaking  
4 about. What -- what Bexar County -- you are just talking  
5 about the number of people that have tested positive for  
6 COVID-19 and then the number who are under monitoring  
7 compared to their population?

8 Q. Right. And let me give you a little bit more  
9 background.

10 These statistics come from -- on a monthly  
11 basis, from the Texas Commission on Jail Standards. Are  
12 you familiar with that?

13 A. Yes, I am familiar with them.

14 Q. State agency. And you know that they collect data  
15 about jails state-wide?

16 A. Yes, yes, I am aware of that.

17 Q. So those numbers came from them. And in Bexar  
18 County, the -- the number for -- from March 1 to April 1,  
19 the ratio is 33 to 1,456. So you have almost 1,500  
20 people in quarantine in San Antonio.

21 And in Dallas, you have 105 that are detained,  
22 but only 474 who are in quarantine. And that is about --  
23 that is almost a 10 times difference.

24 A. Okay. Well, my understanding too is COVID arrived  
25 at San Antonio prior to it arriving in Dallas. I would

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1 like to know when those numbers were taken.

2 I do know that as of this morning, we have 684  
3 people under a monitoring status. So it is -- it is  
4 growing, it is important. And we do know that the -- the  
5 virus has entered the systems at different points in  
6 time.

7 THE COURT: And sir, would you repeat that  
8 number that you gave, that are in the monitoring system.

9 THE WITNESS: Judge, are you speaking to me?

10 THE COURT: Yes, I'm sorry.

11 THE WITNESS: 684.

12 THE COURT: And how many COVID positives do we  
13 have?

14 THE WITNESS: 127.

15 THE COURT: Thank you.

16 Q. Just to finish this out -- thank you for that  
17 explanation, Mr. Jones. Just to finish this out, the  
18 numbers in Harris County for the same thing, the ratio is  
19 94 to 2,134, and that is approximately 5 times better  
20 than Dallas County as of April 1.

21 But this -- is -- do you consider the Harris  
22 County jail to be a pretty good comparator with the  
23 Dallas County jail?

24 A. Actually, I do not. I think our health systems are  
25 very different.

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1 Q. Okay. Okay. Fair enough. Thank you. And  
2 finally -- actually, I need to correct what I said  
3 earlier.

4 The numbers we were talking about in the ratio,  
5 those are all dated April 22nd, 2020. What I'm about to  
6 talk about is the one that's for March.

7 Are you aware that in March, Dallas County was  
8 behind its peers in Harris, Tarrant, and Bexar County in  
9 reducing the detainee population in its county jail?

10 A. Okay. I was not aware of that.

11 Q. And the numbers for Harris are 13.2; for Tarrant,  
12 17.2 reduction; Bexar, 23.9 percent; and Dallas County,  
13 8.1 percent.

14 You just weren't aware of -- that they were  
15 doing a lot better than we are in reducing the  
16 population?

17 A. I'm not aware of the numbers that you just quoted,  
18 no, I'm not.

19 Q. Okay. But you are -- you are aware that other  
20 counties are doing better than Dallas County in reducing  
21 jail population, right?

22 A. According to that definition, it -- by the  
23 definition you just gave me it sounds like they're doing  
24 better.

25 Q. Okay. Thank you.

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1 MR. BARNETT: Nothing further, Mr. Jones. Thank  
2 you.

3 Pass the witness.

4 THE COURT: All right. And just as a matter of  
5 forum, Mr. Biggs, do you have any questions for this  
6 witness?

7 MR. BIGGS: No, I don't, Judge.

8 THE COURT: All right. And I'm sorry, you kind  
9 of blurred there. If you'd say it again for the record.  
10 Sorry, you kind of went in and out.

11 MR. BIGGS: No questions, Judge.

12 THE COURT: Great, thank you.

13 All right. Redirect, Mr. Stephens.

14 Let's pause for just a moment.

15 (Brief pause.)

16 THE COURT: Mr. Stephens, your witness.

17 MR. STEPHENS: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. STEPHENS:

20 Q. Mr. Jones, let's start where you just finished up  
21 with Mr. Barnett. He raised earlier in his examination  
22 of you something I want to clarify.

23 What's the number of inmates currently in the  
24 jail who are designated as COVID positive?

25 A. 127.

1 Q. What number of those inmates are currently in a  
2 convalescent state?

3 A. 72.

4 Q. Can you explain what convalescent state means?

5 A. So that is the -- the individuals that they re --  
6 they were diagnosed with COVID-19, they have recovered,  
7 they are fever free for greater than three days, and  
8 symptom free for greater than three days.

9 Q. How many inmates are currently designated PUM in the  
10 Dallas County jail?

11 A. 684.

12 Q. Mr. Barnett did some math with you; I'm going to do  
13 the same. 127 positive inmates, minus 72 inmates in a  
14 convalescent state, is how many inmates not in a  
15 convalescent state?

16 A. Well, a little fuzzy, but --

17 Q. I'll represent to you it's 55 people.

18 A. Okay.

19 Q. Or 55 inmates not in a convalescent state.

20 If you apply the number of persons currently  
21 in -- under monitoring, PUMs, and you look at the number  
22 of people who are not in a convalescent state and use  
23 that to determine our ratio, that brings the ratio down  
24 pretty significantly, correct?

25 A. Actually, it -- I believe it increases the ratio.

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1 Q. Okay. I may not be using the term "ratio"  
2 correctly. I guess my point is, Mr. Barnett used a  
3 number, 127, that includes inmates who are convalescing;  
4 is that right?

5 A. That's correct.

6 Q. So if you look at the number of inmates who are not  
7 convalescing, and compare that to the number of persons  
8 under monitoring, the disparity is greater, correct?

9 A. There is a greater disparity, yes.

10 THE COURT: So I've got a question. Just so I'm  
11 clear on my numbers, so of the 127 COVID positives, 72 of  
12 that 127 are convalescing; is that right?

13 THE WITNESS: That's correct.

14 THE COURT: Okay. Great, thank you.

15 Q. And 684 PUMs against a denominator of 27 active  
16 cases would be a ratio of 0.034?

17 A. Okay.

18 Q. Did that sound more in line with some of the numbers  
19 Mr. Barnett gave you from other counties?

20 A. I -- you know, I really -- I know our numbers. I'm  
21 not -- you know, the other counties, I can't speak to  
22 their information.

23 Q. Okay. Can you elaborate for the Court on the  
24 differences you perceive between the Harris County  
25 healthcare -- jail healthcare system and the Dallas

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1 County jail healthcare system?

2 A. So my understanding is, their healthcare system is  
3 under DOJ review and we are not.

4 Q. What does DOJ review involve?

5 A. It involves their system -- basically, they are in  
6 violation of civil right violations that they are working  
7 through. The last I heard, they still had DOJ monitors  
8 in effect there. I don't know if that is still the case,  
9 but that's my understanding.

10 Q. And that's not currently the case in Dallas County?

11 A. That is not the case in Dallas County.

12 Q. Mr. Barnett asked you some questions about effective  
13 ways of preventing the spread of COVID-19. And you  
14 listed off some things for him like proper use of PPE,  
15 washing hands, cleaning surfaces, and social distancing.

16 Are those items you listed consistent with what  
17 the CDC guidelines recommend?

18 A. Yes, they are.

19 Q. I believe Mr. Barnett implied that PPE is itself a  
20 form of social distancing as a barrier, physical barrier,  
21 between one person and another. And if you accept that  
22 definition, isn't it the case that social distancing by a  
23 physical barrier is being performed by almost everyone in  
24 the Dallas County jail?

25 A. If that were the definition, then yes, people would

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1 be social distancing in the Dallas County jail.

2 MR. BARNETT: Your Honor, I object to the  
3 leading.

4 THE COURT: Okay. I'll sustain.

5 Q. Let's discuss the policies pertaining to COVID-19  
6 prevention in Dallas County. Where do the Dallas County  
7 jail's healthcare policies come from?

8 A. The healthcare policy -- the policies that we  
9 operate with have been Parkland Health and Hospital  
10 System.

11 Q. So Parkland's policies are the jail's policies?

12 A. The jail abides by the policies. They are our  
13 policies; the jail has their own. They -- they defer to  
14 us for medical decisions.

15 Q. Okay. And -- and is handling COVID-19 a medical  
16 decision?

17 A. It's a shared decision, frankly. It is the medical  
18 aspects of it. We communicate information to the  
19 sheriff's department and we collaborate and work together  
20 to develop strategies to slow the spread.

21 MR. BARNETT: Your Honor, I tried to get in an  
22 objection; leading. And the answer was a narrative, so  
23 it was also nonresponsive to the leading question.

24 THE COURT: Okay. I'll sustain. Break it up.

25 Q. How are Parkland's policies communicated to the

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1 jail?

2 A. They are online, so they -- they may review our  
3 policies.

4 Q. And how are the jail's policies communicated back to  
5 Parkland?

6 A. They're published and so we can go and read them.

7 Q. What other forms of written policies do policies  
8 take for Parkland?

9 A. I'm sorry, could you explain that question?

10 Q. Would it be possible for Parkland to hypothetically  
11 have policies that don't always take the form of written  
12 documents?

13 MR. BARNETT: Object; leading --

14 A. That would be our practices.

15 THE COURT: Hold on for just a minute before you  
16 answer that.

17 I'll sustain.

18 Q. Parkland's -- what kind of efforts does Parkland  
19 take to deal with COVID-19 that aren't -- aren't  
20 publishing policies on the web?

21 A. Okay. So what Parkland -- what we have done is,  
22 we've made several recommendations to the Dallas  
23 Sheriff's Department to change procedure, change  
24 practice. The sheriff's department has accepted many of  
25 those -- of those suggestions and worked to implement

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1 them.

2 Q. What kind of policies does the jail communicate to  
3 you, other than those published on the internet?

4 A. I'm sorry, can you give an example that would help  
5 me out on that question.

6 Q. I guess my point is, the sheriff makes decisions or  
7 the jail makes decisions that may not always be published  
8 on the internet, right?

9 A. That's correct.

10 MR. BARNETT: Object to the leading.

11 Q. Does the sheriff make decisions and enact policies  
12 that aren't reflected on the internet?

13 A. That's correct, the sheriff will make decisions that  
14 are not published on the internet.

15 Q. What are some examples of those?

16 A. The decision to screen inmates for temperature as  
17 they enter the jail would not be published on the  
18 internet, to my knowledge.

19 Q. Okay. Could there be others that aren't published  
20 -- or might there be others that are not published on the  
21 internet that you are not aware of?

22 A. There could be, yes.

23 Q. Who -- so I want to be clear. Who makes the medical  
24 policies that are followed in the Dallas County jail?

25 A. The -- the Parkland Health and Hospital System,

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1 Parkland, we do.

2 Q. Do you know why Dallas reports more positives than  
3 other large jails?

4 A. I don't know why. I just know that we have a very  
5 aggressive testing method in the jail and we -- we do  
6 want to know what's there and intervene with -- as soon  
7 as possible.

8 Q. Do you know how that testing policy compares to  
9 other counties in the state?

10 A. I do not. I don't know what the other counties are  
11 doing.

12 Q. Can you -- I think you mentioned earlier, in both my  
13 questioning of you and Mr. Barnett's, Parkland's  
14 infectious disease policy. Can you elaborate on that?

15 A. On the infectious disease policy?

16 Q. Yes.

17 A. Yes. So we -- so we operate in coordination with  
18 the infection prevention department at Parkland Health  
19 and Hospital -- Parkland Hospital. So our -- our policy  
20 is we -- we have policies regarding different types of  
21 infectious diseases, whether they are airborne, droplet,  
22 those types of processes. And then we have a measure  
23 that we take we have to do to (unintelligible) with those  
24 disease process.

25 (Reporter instruction.)

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1 A. So our policies are developed in coordination with  
2 the infection prevention group at Parkland Hospital. And  
3 so they deal with different types of diseases, whether  
4 they be airborne, droplet spread, that type of situation.  
5 That was the -- the policy I was referring to.

6 Q. Can you elaborate on -- can you elaborate on how  
7 testing impacts numbers in comparison to a county that  
8 has access to less testing?

9 A. So yeah. So my point has been, with more aggressive  
10 testing we have access to the tests that we need. The  
11 more testing that you do, the higher the number of  
12 incidents you will find -- is the thought behind that.

13 And so -- so we are aggressive in our testing  
14 and so we -- we have found a high incidence of -- of this  
15 disease in our jail population.

16 THE COURT: That brings up an interesting point  
17 I'm thinking of. It would kind of create a disincentive  
18 to test if you get beat about in the news for having lots  
19 of positive tests.

20 THE WITNESS: Well, it -- yeah, that would be a  
21 thought, but that's not where we're thinking.

22 I think we are under an obligation and our  
23 responsibility is to not -- is to put that aside and do  
24 the right thing for the people that are under our care  
25 and seek that out so we can render the care.

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1 Q. Are you satisfied with the level of testing that's  
2 currently being performed?

3 A. I would like to expand it, from a nonclinical  
4 standpoint. I -- I think we would -- it would be better  
5 if we could expand it a way to know exactly who has it.  
6 That's -- so I would like to expand our testing once  
7 we're able to do so in a meaningful manner.

8 Q. Okay. You mentioned a medical leadership team at  
9 the jail. Who is part of that team?

10 A. So that would be our medical director, our nursing  
11 director, myself, our mental health medical director, and  
12 our pharmacy director.

13 Q. Okay. Do they all work in the jail?

14 A. They do.

15 Q. Is Dr. N, who's been mentioned, part of that team?

16 A. She is not part of that team.

17 Q. Couple more points I wanted to cover.

18 What kind of options were available for medical  
19 staff who have to deal with an inmate who can't speak  
20 English?

21 A. So we use a device called ALVIN. It's a language  
22 assistance device. We can translate any language in the  
23 world through that device.

24 THE COURT: I missed the very end of that, that  
25 was kind of blurred. If you don't mind -- something,

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1 language in the world.

2 THE WITNESS: Yes. I believe, to my knowledge,  
3 it translates every known language in the world.

4 THE COURT: Okay. Thank you.

5 Q. I want to go back to -- I want to go back to March  
6 25th, which is the date that the first COVID positive  
7 case was discovered in the jail, and talk about what you  
8 observed the reaction to that to be.

9 Can you recount what happened on that day to the  
10 Court?

11 A. On that date, I remember it was big news for us to  
12 receive that report that somebody was positive within the  
13 jail. It -- everybody took it very seriously.

14 We met with the sheriff and her command staff  
15 that morning to discuss that. And we immediately began  
16 the process of the contact tracing so we'd understand who  
17 all was at risk and began that process and communicated  
18 that to the sheriff's department and we started the  
19 process of getting -- getting those individuals and  
20 moving them to another area of the jail, since it had  
21 come out of Kays.

22 Q. Do you know how that person came to the attention of  
23 medical staff?

24 A. Yes. That person actually had a different issue not  
25 related to COVID-19. That person wound up being

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1 hospitalized on the evening of the 24th -- 23rd or 24th,  
2 on or about the evening of the 24th. A test was  
3 conducted at the hospital and the result was --

4 (Brief interruption.)

5 THE COURT: Please proceed.

6 Q. Mr. Jones, before we stopped I think we were talking  
7 about the first inmate who tested positive in the Dallas  
8 County jail. How did that person come to the attention  
9 of Parkland medical staff?

10 A. So that person was at the hospital. The hospital  
11 conducted a test there. They were -- he was determined  
12 to be positive and they communicated that result to us at  
13 the Dallas County jail.

14 Q. And what happened to the people who were housed with  
15 that inmate?

16 A. So this individual was transferred to other areas  
17 within the Dallas County jail. They were moved from that  
18 tank and placed in those areas. They were segregated  
19 from the general population and they started their 14-day  
20 monitoring plan.

21 Q. Was that plan for those inmates administered  
22 consistently with the plan you testified about previously  
23 for PUMs?

24 A. That's correct. We developed a plan to move people  
25 from different locations of the jail and have them

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1 isolated so they could be quarantined from the rest of  
2 the jail.

3 Q. How, if at all, do the CDC guidelines inform  
4 Parkland's health policies?

5 A. So we -- obviously, we want to practice all the  
6 recommendations by CDC guidelines. So therefore, we do  
7 have a plan to isolate the inmates from other areas, from  
8 other inmates to stop the spread. We do provide them  
9 with PPE. They are provided with materials to clean  
10 their areas with.

11 Q. Was that an exhaustive list of all the ways that the  
12 CDC guidelines were complied with or were those some  
13 examples?

14 A. Those were some examples.

15 Q. In your opinion, as the healthcare administrator for  
16 the jail, do you think the sheriff and Dallas County are  
17 ignoring the threat of COVID-19?

18 A. I do not think that they are ignoring the threat of  
19 COVID-19.

20 Q. In your opinion, do you believe the sheriff and the  
21 County are taking reasonable measures to prevent the  
22 spread of COVID-19?

23 MR. BARNETT: Object; leading.

24 THE COURT: Sustained.

25 MR. STEPHENS: I have no further questions, Your

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1 Honor.

2 THE COURT: Okay. Does anyone have any  
3 objection to me releasing this witness not subject to  
4 recall, Plaintiffs?

5 MR. BARNETT: I had a couple more questions,  
6 Your Honor, just a few.

7 THE COURT: All right. Sure. That's fine.

8 MR. BARNETT: Thank you. May I proceed?

9 THE COURT: You may.

10 RECROSS-EXAMINATION

11 BY MR. BARNETT:

12 Q. Mr. Jones, you mentioned something called  
13 convalescent. Do you remember that?

14 A. Yes.

15 Q. Does that mean the person's not contagious anymore?

16 A. We don't know. And that's why we established that  
17 situation.

18 Q. Okay. Thank you. And I want to make sure I  
19 understand who gets tested by Parkland -- from the jail.  
20 People entering the jail are not tested for COVID-19; is  
21 that right?

22 A. No, they are not.

23 Q. And that's everybody, whether it's a loved one or  
24 lawyer -- of course loved ones you can't visit anymore,  
25 or a detainee or a guard or somebody from Parkland, they

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1 are not tested for COVID-19 before they enter the jail,  
2 right?

3 A. That is correct.

4 Q. Okay. And the same is true for people leaving the  
5 jail?

6 A. That is correct. You -- there is not universal  
7 testing for people either entering the jail or people  
8 exiting the jail.

9 Q. And guards and other staff that work at the jail  
10 also aren't tested?

11 A. We do not test guards on a daily basis or we don't  
12 test guards going into the jail, no, we do not.

13 Q. Right. So the people who do get tested are people  
14 who for some reason or another come to your attention?

15 A. That's correct. They are people who go through the  
16 screening processes as they enter the jail or come to our  
17 attention in some other manner within the jail. And that  
18 leads our clinicians down the road to perform testing --  
19 to perform testing. Those are the people that get  
20 tested.

21 Q. Okay. Very good. Thank you.

22 MR. BARNETT: Your Honor, nothing further.

23 MR. STEPHENS: Your Honor, this is my fault for  
24 omitting it earlier. I needed to ask Mr. Jones to clear  
25 up something in his prior testimony.

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1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY MR. STEPHENS:

4 Q. Mr. Jones, is there anything you wanted to clear up  
5 for the Court about your prior testimony?

6 A. The -- I just wanted to make sure that everybody  
7 understands that as people enter the jail, they are all  
8 screened as they enter the jail. And again, they're  
9 screened in central intake, as well, by the nursing staff  
10 there. So there is actually two screenings performed.

11 And so access to care is not only through the  
12 sick call process, access to care is actually established  
13 there at intake and continues past that point. So  
14 instead of just having a reactive system where inmates  
15 can only request care, the system is actually more  
16 proactive and interviews them upon their entry.

17 Q. And you testified earlier about the number of jail  
18 staff, I believe, who tested positive for COVID-19. Was  
19 that number -- I believe you may have answered, Parkland  
20 is at nine staff that tested positive.

21 Was your answer intended to reflect the number  
22 of jail staff who have tested positive or the number of  
23 Parkland staff overall that tested positive?

24 A. Only -- only the amount of Parkland staff who are  
25 assigned to the Dallas County jail. That was the only

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1 number that was intended to reflect.

2 MR. STEPHENS: That's all I have, Your Honor.

3 THE COURT: Okay. Mr. Barnett, do you have  
4 anything based on that you need to ask?

5 MR. BARNETT: No, Your Honor.

6 THE COURT: All right. Intervenors, do you have  
7 any questions?

8 MR. BIGGS: They both did such a good job, I  
9 don't think I'll ask the 45 minutes of questions I have  
10 saved up.

11 THE COURT: You just made a legion of fans. All  
12 right. Great.

13 All right. Any objection to me releasing this  
14 witness to go back to his job, Plaintiffs?

15 MR. BARNETT: None from the plaintiffs, Your  
16 Honor.

17 THE COURT: All right. Intervenors?

18 MR. BIGGS: None from us.

19 THE COURT: Defendants?

20 MR. STEPHENS: No, thank you.

21 THE COURT: All right. Thank you so much for  
22 being here. Your testimony was very helpful to the  
23 Court. I appreciate what you're doing to try to keep  
24 people safe. And thank you for your patience dealing  
25 with our technical issues and for your testimony today.

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1           You are released from court.

2           THE WITNESS: All right. Thank you.

3           MR. BARNETT: Your Honor, may I say that the  
4 plaintiffs are also grateful to Mr. Jones and the people  
5 working with him for keeping the people that we represent  
6 as healthy as we can. Thank you.

7           THE COURT: Thank you. That was nice of you to  
8 say. Thanks.

9           You are free to go, sir.

10          Okay. With that said, I know there was a  
11 declaration that's in the record that you-all wanted me  
12 to look at, Mr. Segura's testimony.

13          Other than that, do Defendants rest?

14          MR. STEPHENS: I -- yes. I think the  
15 understanding is all of our filings are in the record.

16          THE COURT: All of your filings are in the  
17 record.

18          MR. STEPHENS: Thank you, Your Honor. We'll  
19 rest.

20          THE COURT: And my understanding, just so we're  
21 all on the same page, is that Intervenor's are relying  
22 just on declarations that are in the record and not  
23 presenting any live testimony to supplement that already  
24 presented by Defendants; is that correct?

25          MR. BIGGS: That's correct, Judge. And then if

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1 I could have a moment to take up the -- the declaration  
2 misfire I had earlier, I have a solution for that.

3 THE COURT: Absolutely, let's do that.

4 MR. BIGGS: So I have provided Ms. Monk with the  
5 appropriate declaration. Again, sorry for the  
6 miscommunication earlier.

7 This is a declaration that is publicly filed, so  
8 it does not need to be filed under seal. But I just  
9 wanted to -- that is the correct declaration. It is of  
10 Mr. Mendoza. And it just is from the Valentine case and  
11 it just lays out what was happening at TCJS in a factual  
12 manner.

13 So if the Court needs to refer back -- because  
14 the opinion, it's on writ posture, so it's a little  
15 sparse on facts. So we just wanted to offer this for the  
16 Court's convenience so you can see what was actually  
17 happening at the time, when this was actually submitted  
18 by TDCJ, Judge.

19 THE COURT: In the Valentine case? Okay.

20 Is there any objection to Intervenor's -- I have  
21 this labeled as Number 5; is that right? Intervenor's 5,  
22 any objections from Plaintiffs for the Court considering  
23 this to put the Valentine case in context?

24 MS. WOODS: No objection, Your Honor.

25 THE COURT: Hearing none from Plaintiffs, any

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1 objection from Defendants?

2 MR. STEPHENS: No, Your Honor.

3 THE COURT: All right. I will admit this and  
4 consider it when referring to the Valentine case to give  
5 me some context.

6 Thank you, Intervenor.

7 Anything else from Defendants or Intervenor as  
8 far as evidence -- other than those things already in the  
9 record, of course? Anything from Defendants?

10 MR. STEPHENS: No, Your Honor.

11 THE COURT: All right. Intervenor?

12 Oh, Mr. Biggs, I think you're on mute.

13 (Off-the-record discussion.)

14 THE COURT: All right, Defendants? Can you say,  
15 yes, for the record?

16 MR. STEPHENS: Yes, Your Honor.

17 THE COURT: All right. Rest and close from  
18 Defendants and Intervenor, rest and close?

19 MR. BIGGS: Yes, Judge.

20 THE COURT: Okay.

21 MR. STEPHENS: I'm sorry, Ms. David got kicked  
22 off and she is taking a couple minutes to get back in.

23 (Off-the-record.)

24 MS. WOODS: Good afternoon. Your Honor has  
25 expressed concerns about the -- the effect of the Fifth

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1 Circuit stay order in the Valentine case. And Plaintiffs  
2 understand that one of our greatest burdens this  
3 afternoon is to walk the Court through the effect of that  
4 order, the reason that this case is different, and the  
5 reason that the relief Plaintiffs seek today in this TRO  
6 stage are -- is not foreclosed by the Valentine order.

7         So I plan to proceed with an unpacking of the  
8 Valentine case. I then plan to spend quite of bit of  
9 time walking through the manner in which Plaintiffs have  
10 met their burden on the true application, the deliberate  
11 indifference standard. And that is going to involve  
12 going through a PowerPoint and talking about all of the  
13 evidence before the Court.

14         And then finally, I'd like to speak to the  
15 relief Plaintiffs are seeking, which I know raises  
16 important questions for the Court. And so I'd like to  
17 kind of just give you that road map of that's what I'm  
18 planning to cover.

19         The Court has already denied the pending motions  
20 to dismiss, but if there are questions that come up in my  
21 -- the other parties' arguments, I do ask for a very  
22 short opportunity to give a rebuttal if there is any  
23 confusion there.

24         So to begin with the Valentine case, I have  
25 given the Court a bit of a preview, but this case

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1 presents different legal theories than the Valentine case  
2 had before it. And I've mentioned those at the beginning  
3 of the day, but to be clear, those are two separate,  
4 stand-alone due-process claims.

5         The preadjudication class, which constitutes the  
6 majority of the plaintiffs in this action, have a  
7 separate constitutional burden to make under these two  
8 claims we've alleged. And I don't mean to belabor this  
9 point, because the Court heard a little bit of argument  
10 on this earlier. But just to be sure, I'm kind of  
11 providing the road map.

12         For -- plaintiffs who are raising issue with the  
13 constitutionality of their medical care and the  
14 conditions of their confinement, if the Court determines  
15 from the evidence before it that incarceration in a  
16 Dallas County jail in light of a rapidly-expanding  
17 COVID-19 outbreak is objectively and sufficiently serious  
18 scenario to deprive them of their rights, then under the  
19 Supreme Court precedent in the Kingsley v. Hendrickson  
20 test adopted to -- adopted to pretrial detainees by the  
21 majority of circuits, the Court should find that  
22 Plaintiffs have satisfied that Fourteenth Amendment  
23 burden.

24         As the Court's well aware, for the Eighth  
25 Amendment test we go from that objective standard to the

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1 second subjective standard where the Court has to  
2 evaluate whether Plaintiffs have shown evidence of  
3 deliberate indifference. And I plan to spend quite a bit  
4 of time on that.

5 The second Fourteenth Amendment claim that the  
6 preadjudication class raises, again, is entirely  
7 untreated by Valentine. It involves the right to be free  
8 from preadjudication punishment, and that is a right that  
9 the Fifth Circuit recognizes for persons on parole --  
10 parole holds and probation warrants in the Hamilton v.  
11 Lyons case.

12 Here, if the Court determines that the  
13 conditions of the preadjudication class is confinement or  
14 excessive in relation to the government objective for  
15 holding someone in preadjudication confinement, then they  
16 have made out their claim.

17 And our briefing refers the Court to a number of  
18 cases and opinions that have looked at these  
19 circumstances of being in the congregate environment of  
20 the correctional or detention center as -- and concluding  
21 that they are, indeed, excessive in relation to the --  
22 the -- the Court's interest in either civil or pretrial  
23 detention.

24 So I will just refer the Court to our briefing  
25 on that, but if the Court has questions on that, I'm

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1 happy to take it up in more detail.

2           To reiterate, these are claims completely  
3 unaddressed and uncharted by the Valentine case. And  
4 they -- they are the claims of the majority of the  
5 plaintiffs in this case.

6           Second reason that the Valentines -- the  
7 Valentine stay order doesn't foreclose Plaintiffs' case  
8 is because, as the Court's well aware, the plaintiffs  
9 here have an entirely stand-alone habeas writ before the  
10 Court pursuant to 2241.

11           Plaintiffs have brought this habeas action  
12 before the Court for the very simple reason that for the  
13 most medically vulnerable people incarcerated in the  
14 Dallas County jail in the presence of a serious rapidly-  
15 spreading disease that we know spreads particularly  
16 rapidly in congregate environments such as this, the only  
17 appropriate remedy, if the Court finds their  
18 constitutional rights have been violated, is their  
19 release.

20           And Plaintiffs acknowledge that that release can  
21 be made conditional under habeas principles, and we have  
22 some ideas about the ways the Court can reconcile that  
23 ask with the other balance of interests that the Court  
24 has to make.

25           But simply put, the plaintiffs here are also

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1 habeas petitioners, at least a subset of them are. And  
2 that was not the case in the Valentine case. There was  
3 not a request for a release; it was a request for  
4 enhanced protocols in the Pack Unit prison.

5 So I plan to address the -- the -- the habeas  
6 question in a bit more detail at the end because I know  
7 that the Court has -- has concerns about how it might  
8 effectuate orders of habeas, given the balance of  
9 equities before the Court.

10 But -- and this is a foundational difference  
11 between this case and Valentine. And the habeas power is  
12 clearly at this Court's disposal as a potential response  
13 to the facts before it and the constitutional violations  
14 we believe we've made out.

15 And I also acknowledged this earlier in the day,  
16 but Plaintiffs here, unlike the plaintiffs in Valentine,  
17 have endeavored to really center their 1983 request for  
18 injunctive relief solely on public health guidance.  
19 We've provided the Court with medical expert opinion,  
20 declaration reports from an epidemiologist, countless  
21 citations to the -- in the record to other public health  
22 guidance. None of that has been rebutted.

23 We -- we've -- we want the Court, and we believe  
24 it would be a practical and administrable solution to the  
25 shortcomings and the failures of the Dallas County jail

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1 to manage this outbreak, to appoint a public health  
2 expert, someone who the Court can appoint who is trusted  
3 under Rule 706, and who can go and get a real grip on  
4 what's going on in the Dallas County jail.

5 The Court's heard competing presentations about  
6 what the reality really is. Plaintiffs have done  
7 everything we can to provide the Court with the testimony  
8 of people who are living and working in the jail, because  
9 we believe that they are the best source of information,  
10 but Defendants have presented supervisors and  
11 administrators who see things differently.

12 And to reconcile that difference, we offer that  
13 a public health expert can be a great solution and -- and  
14 frankly, is in line with CDC guidance.

15 Defendants throughout --

16 THE COURT: Well, and here is a question for you  
17 about that.

18 Let's say hypothetically I found that  
19 appropriate, how does their power, if I had a -- if  
20 you-all agreed and I had some court-appointed expert who  
21 sort of oversaw the jail, how do they -- how do they  
22 reconcile with -- I mean, I have some federalism and  
23 separation of powers concerns.

24 How do they interact with the county  
25 commissioners, who trumps? I mean, they would have the

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1 power of this Court behind them, and is that appropriate  
2 for the Court to weigh in to -- what the county  
3 commissioners and -- and the government -- state  
4 government has already allocated to other people for  
5 supervision? Is it appropriate for me to take on the  
6 local jail system as my child in this pandemic?

7 MS. WOODS: Your Honor, it is if the Court  
8 concludes that the rights of Plaintiffs are being  
9 violated, their fundamental constitutional rights are  
10 being violated. And it is -- it is because it's -- while  
11 I understand the Court's concern about the language in  
12 the Valentine case, again, this particular type of remedy  
13 wasn't before that court.

14 But it's commonplace for injunctions to need to  
15 be monitored, for some kind of reporting or data, at  
16 minimum, to take effect. That is just the simple manner  
17 in which parties and courts can monitor compliance.

18 So if the Court believes that the relief is  
19 needed and needs to be entered, I refer the Court to two  
20 other courts who have evaluated COVID-19 cases: The D.C.  
21 district court and the district court in Maryland both  
22 have seen this as very practical and not an overbearing  
23 solution.

24 THE COURT: Okay.

25 MS. WOODS: So I'll sort of pause there. But



1 again, I think the notion that jails, specific jails may  
2 have different needs has been cited pretty consistently  
3 by Defendants in this action because there is language in  
4 the CDC to that effect, CDC guidelines to that effect.  
5 Having someone who can go in and determine the specific  
6 needs of this facility, the specific ways that bunks  
7 could be unbolted and moved, the specific layout, the  
8 amount of staffing, what can actually be achieved, what  
9 actually is feasible.

10 Defendants haven't provided very convincing  
11 evidence that that's been done to date, and having  
12 someone go in and really make that determination is on  
13 all fours with what the CDC recommends. And so it is  
14 not -- even if the Court finds that it can't go past CDC  
15 guidelines -- which I'll speak to in just a moment, this  
16 would be in line with that view.

17 But so I do want to speak a little bit about the  
18 CDC guidelines and their role here. This is my third  
19 reason that the Valentine opinion doesn't foreclose  
20 Plaintiffs' case or the relief we're seeking.

21 THE COURT: And if I can pause you there and  
22 jump in, one of the other concerns I have, I was thinking  
23 about this last night.

24 So what the CDC has now are recommendations.  
25 And so if I were to court order something that is

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1 currently recommended and probably going to change, I'm  
2 turning recommendations now into law. I mean, I'm  
3 mandating something that is a recommendation. So talk to  
4 me about that. I have some concerns about doing that.

5 MS. WOODS: Sure. And Your Honor is actually  
6 making a very important point about the difference  
7 between the CDC guidelines and the remedy to a  
8 constitutional violation.

9 Bell v. Wolfish, the U.S. Supreme Court opinion  
10 has great language on this that explains that even when  
11 the recommendations of an outside group are valuable and  
12 informative to a Court's determination about where the  
13 constitutional floor lies, they -- they are not, in fact,  
14 determinative of what the Constitution requires. So I  
15 refer the Court to Bell v. Wolfish, 441 U.S. 520, 543, at  
16 Note 27.

17 THE COURT: Can you give me that again, please?

18 MS. WOODS: The pin is 543, at Footnote 27, Your  
19 Honor.

20 THE COURT: Great. Thank you.

21 MS. WOODS: And so, just to offer that to the  
22 extent the Fifth Circuit's uncited and unsupported notion  
23 that the CDC guidelines constitute the ceiling on what a  
24 petitioner or plaintiff, whose rights are being violated  
25 in light of the Coronavirus pandemic, to the extent the

1 Fifth Circuit is saying that the CDC guidelines equal the  
2 ceiling, that's simply not the law. They cite nothing  
3 for that principle. And it's -- it stands in contrast to  
4 Bell v. Wolfish, which it could not and did not overturn.

5 And so to, kind of -- to get to Your Honor's  
6 question that is related to this, it's Plaintiffs'  
7 position that it really is for the Court to evaluate  
8 the -- the evidence before it, and if the Court finds  
9 that the Fourteenth and Eighth Amendment rights of the  
10 plaintiffs and petitions in this case have been violated,  
11 then it really is for the Court.

12 Viewing the CDC guidelines is, again, very  
13 helpful to fashion the appropriate relief. So I  
14 understand the Court's concern about sort of an order  
15 that simply says, follow the CDC guidelines. And the  
16 Court's aware that is not actually what Plaintiffs are  
17 asking. We're asking the Court to look at the  
18 circumstances and fashion appropriate relief that meets  
19 the deficiencies that are currently in effect in the  
20 Dallas County jail in which I am happy to spell out.

21 THE COURT: I've got a question about that. So  
22 I've got the Valentine opinion here in front of me, and  
23 the Fifth Circuit really takes to task this similarly-  
24 situated -- even if it is a different case -- similarly-  
25 situated district court judge for micromanaging -- I

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1 think that's the language they use -- for micromanaging  
2 the prison from afar.

3 And so I look at your -- your list of requested  
4 relief, and if they thought that his short list was going  
5 to be micromanaging, what would they think of this?

6 MS. WOODS: Certainly, Your Honor, and as the  
7 Court is aware, the -- the long list in Plaintiffs'  
8 amended proposed order was issued prior to the Valentine  
9 decision. I mean, we certainly acknowledge that the  
10 Court would probably be interested in scaling back what  
11 is on that list, and the Court's not bound by our  
12 proposed order in terms of what we think the most  
13 immediate protocols need to be.

14 And I submit that there are still immediate  
15 protocols consistent with the CDC, consistent with  
16 Valentine that are not being followed and the Court could  
17 reasonably order. I'm including things like taking  
18 reasonable steps to enable social distancing, making the  
19 phone call that Chief Robinson wasn't willing to make to  
20 unbolt bunks and separate them, ensuring that staff is --  
21 is supported and trained and clear on what they need to  
22 do, that they know how to find extra cleaning supplies  
23 when they run out. The Court heard Officer Lewis saying  
24 he had no idea what he was supposed to do.

25 And so simple things like cleaning supplies not

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1 being adequate. I'm planning to kind of go through in my  
2 PowerPoint in a bit more detail, but Plaintiffs have  
3 submitted un rebutted evidence that the sanitation  
4 policies that the jail claims to be following are not  
5 being followed.

6 And so there are a number of things that I think  
7 the Court could still order because they're necessary and  
8 because they are consistent with Valentine and the CDC.

9 THE COURT: And also -- and don't skip ahead if  
10 this is already in what you are going to discuss. But at  
11 some point I would like you to talk about  
12 the applicability or inapplicability of the prisoner --  
13 the Prison Litigation Reform Act. Just work that in  
14 whenever it works for you.

15 MS. WOODS: Your Honor, it is an important  
16 question and I don't want to lose track of it, so I will  
17 address it.

18 THE COURT: Okay. Very good.

19 MS. WOODS: And the first thing it actually goes  
20 to another point about the -- the -- that the  
21 micromanaging piece is, again, Plaintiffs' habeas request  
22 here. That a habeas request, while again we think that  
23 there are ways the Court would probably need to parse out  
24 reviewing and granting those habeas requests, once that  
25 habeas request is granted in the cases where it is, there

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1 isn't any more micromanaging. A person is just out of  
2 custody, home, self-isolating like Mr. Bailey is right  
3 now because that was their only proper remedy.

4 And so that is another piece of it. And PLRA  
5 does not apply to habeas, doesn't apply to 2241. So that  
6 request is not influenced in any way by the Prison  
7 Litigation Reform Act.

8 The other piece -- and that is the only request  
9 for release that Plaintiffs have before the Court. It is  
10 worth really stressing that. Because habeas does not --  
11 the PLRA does not apply to our habeas request. The  
12 Court's not -- the procedural requirements for a, quote/  
13 unquote, release orders from the PLRA.

14 THE COURT: Pause for -- if you'll -- I'm sorry,  
15 but I'm -- you blurred on the screen, so if you go back  
16 and just kind of give me the last 30 seconds of that  
17 again. I'm so sorry.

18 MS. WOODS: No, I want to be sure I'm getting  
19 through.

20 So the -- I believe what I was saying is, that  
21 the PLRA very squarely does not apply to habeas. And so  
22 the only requests for release from the Dallas County jail  
23 that are currently before this Court are habeas requests.  
24 And so those are not influenced or barred by the PLRA.

25 However, Plaintiffs' 1983 claims and requests

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1 for injunctive relief do certainly fall under the PLRA.  
2 And the Court has before it in our response to the -- our  
3 position to the motions to dismiss from the other  
4 parties, that docket Number 632 to 634, very detailed  
5 descriptions of the grievance procedures that the named  
6 plaintiffs in this case took.

7           The Valentine Plaintiffs, the Court may  
8 remember, did not file grievance procedures and did not  
9 convincingly state ways that they tried to. The record  
10 could not be more different before this Court, in terms  
11 of jurisdiction -- of any jurisdictional bars presented  
12 by the PLRA.

13           Plaintiffs filed grievances and even filed first  
14 and second appeals not required by the handbook. They  
15 went above and beyond to file their grievances, and  
16 that -- that evidence is before the Court and the record.

17           And so the -- but the final point on what the  
18 PLRA is going to instruct from the Court is, that any  
19 injunctive relief ordered pursuant to 1983, the Court  
20 will have to find is necessary to remedy the violation of  
21 our clients' rights, and the least intrusive.

22           And so that's part of why Plaintiffs have  
23 offered that simple protocols that are squarely in line  
24 with public health guidance, that are squarely in line  
25 with the CDC, and the appointment of a monitor to

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1 streamline, truly, the fact-finding and to really tailor  
2 any further -- injunctive relief, that is a -- that is  
3 a -- that is a way to sort of narrowly craft 1983  
4 injunctive relief consistent with the PLRA.

5           So Your Honor, I think I was speaking a little  
6 bit about the role earlier, the relationship between the  
7 CDC guidelines and Valentine and what that means for us.

8           I do want to -- I do want to say that the record  
9 in Valentine was quite different on this front. So in  
10 Valentine, the testimony at the -- the -- the preliminary  
11 injunction hearing, Plaintiffs did not dispute in  
12 Valentine that the Pack Unit prison had written policies  
13 that complied with the CDC that they were following.

14           And the Fifth Circuit, as you noted, really  
15 reprimanded the District Court because the District Court  
16 before it didn't have a record that the CDC guidelines  
17 weren't being followed or that a much more robust written  
18 and formal policy than that the Court has before it here  
19 was -- was scaling to be followed. Plaintiffs here have  
20 evidence that Dallas County jail is not doing what it  
21 says it is doing, and we don't have formal written  
22 policies anywhere in the ballpark of what was happening  
23 in Valentine.

24           And so the Court just has a different dispute  
25 about whether the CDC guidelines are being followed. The

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1 Plaintiffs in Valentine did not dispute that the CDC  
2 guidelines were being followed.

3           And most particularly, I think just to -- the  
4 fourth of my four points on Valentine that I want to be  
5 sure to cover for Your Honor. In the ways that it  
6 matters most, when we think about the intersection of the  
7 constitutional claims in this case and the realities of  
8 this Coronavirus, the ways that matters most that this  
9 case is different from Valentine, is the fact that the  
10 Valentine record showed considerable social distancing  
11 was being achieved; it showed that the prisoners in the  
12 Pack Unit were living in what were called, single  
13 cubicles, in many cases with 8 to 10 feet between them  
14 and anyone else near them.

15           The record here shows continued housing of  
16 detainees in 40- to 64-person pods. It shows continued  
17 housing of people in six-, seven-, or eight-person cells.  
18 And the Court may remember that when asked on  
19 cross-examination, Chief Robinson referred to being  
20 housed in an eight-person cell as being socially distant.

21           And so it is just a really different scenario  
22 and really, we would offer a different understanding of  
23 what social distancing really is. And the failure to  
24 fully grasp that and implant that is part of the record  
25 before this Court.

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1 Another important difference that the Court's  
2 heard, the Dallas County jail only has 213 single cells  
3 in the entire facility. And so again, that is a  
4 different housing arraignment than Plaintiffs in  
5 Valentine were dealing with. Because of the importance  
6 of social distancing, including as stressed by the CDC as  
7 a cornerstone of any intervention, the fact that there is  
8 a different fact scenario about social distancing in the  
9 Dallas County jail from the Pack Unit is tremendously  
10 important.

11 And the other -- the other really important  
12 difference of -- I'm alluding to this just a little bit,  
13 is the fact that it's uncontested that the Valentine --  
14 the defendants in Valentine had a formal written policy  
15 that was specific in response to COVID-19 that was  
16 updated multiple times as they found out more about how  
17 the virus worked. And Plaintiffs in that case didn't  
18 make out an argument that that policy wasn't being  
19 followed or that policy didn't track CDC guidelines.

20 Here, we've perceived no formal written policy.  
21 Chief Robinson acknowledged that many policies are not  
22 written down. The Court heard Mr. Jones echo that  
23 testimony, that there is not a lot of clarity about  
24 formal written policies.

25 What's been provided to the Court in terms of

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1 policies is a ten-year-old manual, an attachment that was  
2 sent to the staff of the Dallas County jail sharing the  
3 wrong CDC policy, sharing the March 4th policies about  
4 protecting law enforcement, not the policies about  
5 keeping detainees safe that were promulgated on the March  
6 23rd -- not policies that trained staff on the ways to  
7 transport people properly, think about how many people  
8 could be in the shower at once, stagger meals, which the  
9 CDC explicitly encourages.

10 We have a lot of confusion and a lot of  
11 disorganization on this record about what the actual  
12 policy is, and that was simply not the case in Valentine.

13 And as the Court heard when Officer Lewis was  
14 testifying, the line staff who are really in the jail and  
15 who are really responsible each day for the safety of the  
16 detainees have no idea what the policies are. They're  
17 doing their best, but they're confused. They've gotten  
18 inconsistent information from their supervisors. And the  
19 Court might remember the moment where -- when Officer  
20 Lewis was being cross-examined, he learned for the first  
21 time about new policies that were apparently in place in  
22 the Dallas County jail.

23 So because the -- the core logic at the heart of  
24 this case really is, first, that COVID-19 presents a  
25 serious and intolerable risk to the health and life of

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1 people confined in the Dallas County jail. Second, the  
2 only way to significantly mitigate the rampant  
3 transmission of this disease is through social  
4 distancing, which the CDC acknowledges is cornerstone and  
5 crucial. And third, because that distancing is not  
6 possible and it is not happening in the Dallas County  
7 jail with its current population, staffing,  
8 configuration, and practices, the record before this  
9 Court is different in very important ways from the  
10 Valentine case.

11 I'd like to turn to the deliberate indifference  
12 test, and in so doing, signpost of a bit of misleading  
13 characterization about what that deliberate -- deliberate  
14 indifference test actually requires, and then I'm going  
15 to walk the Court through the well-defined deliberate  
16 indifference test on these facts.

17 So I mentioned this before, but I just want to  
18 be very, very clear that the deliberate indifference test  
19 under the Eighth Amendment, which the Court should apply  
20 to the post adjudication classes claims, is a two-step  
21 process.

22 The -- we'll focus for now, I'm very  
23 disappointed and very sad that I had to make argument  
24 earlier today on the first prong, the objective prong. I  
25 think it's -- it's pretty clear, as we all have this

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1 hearing in our homes, under extraordinary circumstances,  
2 under what is unquestionably the greatest public health  
3 crisis of the century, it's pretty clear that we've met  
4 the objective prong and that this is a sufficiently  
5 serious situation. So I won't belabor that point, Your  
6 Honor, but I was very sad that that was an argument that  
7 the defendants actually disputed earlier today.

8           So I think the -- the meat of the Court's  
9 inquiry, the much more important part of the Court's  
10 inquiry is the subjective part of this test. And that  
11 test comes from Farmer v. Brennan from the U.S. Supreme  
12 Court. And what the Court needs to evaluate.

13           What I'm going to walk the Court through is  
14 whether the defendant knows of and disregards an  
15 excessive risk to a plaintiff's health and safety. The  
16 Court may have noted language in the State Intervenor's  
17 notice of authority and the way that they characterized  
18 the deliberate indifference test from Valentine. And I  
19 want to be very, very clear about what the law is here.

20           The subjective intent of the defendants does not  
21 play a role, they do not have to have subjectively wanted  
22 the harm, they do not have to show malice or be bad  
23 people. It's simply whether they know of and disregard  
24 an excessive risk. And risk is a really central part of  
25 this test, as the Supreme Court made clear in the Helen

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1 case.

2           And there's -- there is language in Valentine  
3 that suggests that the subjective intent should play a  
4 role, but I want to refer the Court to clarity in the  
5 Fifth Circuit in the case of Garza v. City of Donna,  
6 which I believe is in our briefing, but it's at 922 F.3d  
7 626. And that is a 2019 case from the Fifth Circuit.  
8 That case collects a dozen other Fifth Circuit cases, and  
9 explains unequivocally that even though some case law  
10 occasionally uses some language about subjective intent,  
11 subjective intent is not a part of this test.

12           And it -- the Garza case even acknowledges that  
13 it is setting separate, en banc decisions from the Fifth  
14 Circuit for that principle. And so Valentine to the  
15 extent it infused the subjective intent for harm to  
16 happen requirement, it doesn't change the test from  
17 Farmer, it doesn't change the tests from the en banc  
18 Fifth Circuit.

19           And so I'm going to walk the Court through the  
20 true Eighth Amendment test. And so that's where the  
21 PowerPoint comes in. And I'll see if I can get this  
22 going.

23           THE COURT: Off the record for just a moment  
24 while we do a check to make sure everybody can see it.

25           (Off-the-record discussion.)

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1 MS. WOODS: So Your Honor, I'd like to march  
2 through the record before the Court and really unpack the  
3 ways that the plaintiffs have shown a likelihood of  
4 success and met our burden, even under the deliberate  
5 indifference test. And so that is what this presentation  
6 is for.

7 I've already mentioned that the -- that those  
8 cases, distinct from the Valentine case, just to  
9 reiterate some of the really important reasons for that.  
10 Note there are -- the lack of formal, stated policies in  
11 Dallas County is a tremendously different fact, and the  
12 Court can recall the -- the weight that the Fifth Circuit  
13 applied to the fact that there was a -- a true policy in  
14 place in the Pack Unit.

15 We contest, unlike the plaintiffs in Valentine,  
16 that the CDC guidelines are being followed. And I'll get  
17 to that evidence in just a moment. We've provided the  
18 Court with testimony that there are only 213 single cells  
19 in the Dallas County jail. That's distinct from the  
20 single cubicles at issue in the Valentine case.

21 And I'm just going to skip ahead, because the  
22 Court's heard some of this already, to the final bullet  
23 point on this slide, which is --

24 MR. BIGGS: Judge, can we make a request? I  
25 don't mean to interrupt.

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1 THE COURT: I'm sorry? Mr. Biggs --

2 MR. BIGGS: Would it be possible if -- so the  
3 folks -- we have some appellate lawyers and other people  
4 that are just listening on the phone. Could we get a  
5 copy of this so we could e-mail it around to -- to those  
6 folks so they can see? Because they obviously can't see  
7 what's going on on the screen.

8 THE COURT: Okay. During the closing or later?

9 MS. WOODS: After the conclusion? I'm happy to  
10 share it and I won't change it, so it is in their hands.

11 THE COURT: I guess I'm not clear. Let's go off  
12 the record for a minute.

13 (Off-the-record discussion.)

14 MS. WOODS: Just thinking, one last point to  
15 remind the Court of the distinction between the Valentine  
16 case and this one, and that's just to be very clear,  
17 Plaintiffs here, we believe we've shown that the  
18 plaintiffs will suffer irreparable injuries even when we  
19 account for the measures taken today in the Dallas County  
20 jail. And that is a finding that the Fifth Circuit  
21 makes, that the plaintiffs were clearly being harmed in  
22 the Pack Unit because of all of the measures, all of the  
23 distancing, the way their housing was spaced out. So  
24 just to be very clear that we're making a completely  
25 different showing. And I believe we will have met it.

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1           This next slide is just to provide the Court  
2 with that language from Bell v. Wolfish that I mentioned  
3 earlier. And I think it's really important to clarify  
4 the difference again between helpful guidance from the  
5 CDC, which we -- we've been offering public health  
6 guidance and epidemiological guidance throughout the  
7 case, but the difference between that and the  
8 constitutional finding that this Court is uniquely  
9 empowered to make. So I just wanted to be sure that the  
10 Court had that language. It is here, I won't read it  
11 because I read it earlier -- or I summarized it earlier  
12 and I'm mindful of my time.

13           So I'd like to speak for a moment, because I  
14 think this is really key, about what the CDC guidelines  
15 actually say about social distancing. It's -- Defendants  
16 have attempted to characterize the CDC guidelines as  
17 though it is kind of up to them if they try to invoke  
18 social distancing because, quote/unquote, it might not be  
19 feasible.

20           That is one line from the CDC's guidelines, but  
21 as Mr. Barnett's questioning earlier today of Mr. Jones  
22 underscored, the CDC guidelines say a lot about social  
23 distancing. The public health experts say a lot about  
24 social distancing. Public health experts have said  
25 frequently that if they could wave a magic wand and keep

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1 all of us in place for 14 days, this disease would go  
2 away.

3           So I just want to reiterate that in the CDC's  
4 March 23rd guidelines, the more relevant guidelines, they  
5 say that social distancing is a cornerstone of reducing  
6 transmission of respiratory diseases such as this, and  
7 that both good hygiene practices and social distancing  
8 are critical. And that's on Pages 4 and 8 of the CDC  
9 guidelines.

10           THE COURT: I've got a question for you about  
11 that. I remember the Chief's testimony yesterday where  
12 he was talking about that a portion of -- of social  
13 distancing is up to the inmates themselves. So I think  
14 there are legitimate concerns about making sure they are  
15 educated about the need for social distancing, but I  
16 remember one of the things he said was, you know, shy of  
17 strapping people to the walls 6 foot apart, that there is  
18 voluntary movement, and we don't want to restrict  
19 inmates' voluntary movement.

20           So aside from telling people they should social  
21 distance, and I know you want me to thin out the jail  
22 population so that that's feasible, but do you agree that  
23 to some extent, if inmates are educated on the need to  
24 socially distance, some of that is up to them. As long  
25 as I provide them with education and the opportunity to

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1 do so, and I guess it would be -- I think it would be  
2 good practice for the jail to diligently encourage them  
3 if you see people violating the social distancing  
4 recommendations, to step further apart.

5 But you know, I -- I'm just imagining the pod  
6 that we saw, aside from if I were to stagger people so  
7 that they had more room between them, it's -- I think  
8 it -- because it is an institutional environment and it  
9 would be hard to make them not be closer than 6 feet. I  
10 mean, how do I order that?

11 MS. WOODS: Your Honor, I think the important  
12 difference is that it's one thing to say that we have a  
13 certain amount of personal responsibility for our  
14 physical bodies. And we wouldn't contest that. But  
15 it -- it's -- it's another thing to make it possible, to  
16 make it actually possible for somebody who wants to keep  
17 themselves safe to do so.

18 And it's our position that the housing  
19 environments, the staffing levels, do not make that  
20 possible. It's different for --

21 THE COURT: I get that that's your position. I  
22 get your position is that it is -- that it -- and mine is  
23 a hypothetical question to you. You know, I've heard  
24 evidence, conflicting evidence, granted, but some  
25 evidence from your side that we're not properly educating

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1 people on the need to socially distance and we don't have  
2 CDC information up.

3           So taking that aside, and let's assume that we  
4 properly educate people and let's assume that we -- for  
5 purposes of this hypothetical, that we spread people out  
6 in the jail enough so that they can socially distance, my  
7 question to you is, can I order them to actually follow  
8 that? I mean, it's a recommendation from the CDC, but  
9 are you asking me to order inmates to stand 6 feet away  
10 from each other once I've educated them on the need to do  
11 so and I've provided them the opportunity to do so. I  
12 mean, these are still adult human beings with free will.

13           MS. WOODS: Certainly. What we're asking Your  
14 Honor to order is, to order the jail to make it possible  
15 for them to do so and to order the jail to meet its  
16 requirements as the custodian responsible for their care  
17 and safety, to set them up to be successful and take care  
18 of themselves and protect themselves from the  
19 Coronavirus. We aren't asking the Court to take a 6-foot  
20 measuring stick and go up to the particular detainees.  
21 We're asking the Court to order the jail, who's  
22 responsible for these people, to set up an environment  
23 where their care and custody is possible; that is what  
24 we're asking the Court for.

25           THE COURT: Got you. I think we're on the same

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1 page.

2 MS. WOODS: Okay. Sure.

3 So moving on to another just piece about what  
4 the CDC guidelines themselves say about social  
5 distancing. On Page 11 of the March 23rd guidelines,  
6 this is where they note, That correctional facilities  
7 should implement social distancing strategies to increase  
8 the physical space between incarcerated people, ideally 6  
9 feet, regardless of the presence of symptoms. This is  
10 because we know asymptomatic people transmit this  
11 disease.

12 And they note, Strategies need to be tailored to  
13 the individual spacing of the facility. This is where  
14 Plaintiffs' request for a facility-specific expert comes  
15 in.

16 And then, of course, there the language the  
17 Court's heard many times, Not all strategies will be  
18 feasible at all facilities. But that is not to say that  
19 correctional facilities are free to throw up their hands  
20 and not attempt strategies. And CDC guidelines even  
21 offer strategies such as staggering meals, reassigning  
22 bunks, which we haven't heard evidence that the Dallas  
23 County jail is doing.

24 And Plaintiffs have -- have submitted to Your  
25 Honor and state here that releasing the most vulnerable

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1 people is another feasible strategy. And Defendants have  
2 provided evidence that they have -- they have -- they are  
3 aware of who the most vulnerable people are, they have  
4 made arguments that they are very amenable to taking  
5 steps to downsize their population. And so releasing the  
6 most vulnerable people, the people most likely to die if  
7 they contract this virus, is not only what we offer as an  
8 essential intervention as a matter of the habeas rights  
9 of the people with the most medical vulnerabilities, it  
10 is also a strategy to enable the jail to operate in a way  
11 that is safe and constitutional for everyone.

12 And then the final piece which Your Honor just  
13 mentioned is the CDC guidelines do instruct correctional  
14 facilities to provide clear information about the  
15 presence of COVID-19 in the facility and a need to  
16 increase social distancing and hygiene. And Your Honor  
17 alluded to this, we have evidence that there's a total  
18 lack of clarity, especially around what staff and  
19 detained people know and about the -- about the public  
20 health guidance. The efficacy of training and showing  
21 materials is very low in the Dallas County jail.

22 I'd like to also just -- sorry, just checking my  
23 notes here.

24 THE COURT: No rush, take your time.

25 MS. WOODS: So one more point on the clarity of

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1 the information. Your Honor has heard testimony by a  
2 number of -- a number of witnesses, including Officer  
3 Lewis, that the -- were pretty consistent that the  
4 signage is not being provided in Spanish or people didn't  
5 know if it was provided in Spanish. And that 60 to 70  
6 percent of the population Officer Lewis supervises are  
7 native Spanish speakers. So this just, again, the  
8 Court's heard a lot of evidence on this. But we don't  
9 think that the information being provided on this -- on  
10 social distancing or any of the CDC guidelines is very  
11 clear.

12 I'd like to just take a moment and address the  
13 argument that Defendants have been providing about this  
14 notion that the Coronavirus is so novel and complicated  
15 that smart people can disagree about the best  
16 interventions. And I think when it comes to some  
17 versions of the interventions, that's true. And I'm  
18 going to walk the Court later in this PowerPoint through  
19 a timeline about when we knew what we knew.

20 But it hasn't been recent that we've learned  
21 that congregate environments are dangerous. And it  
22 hasn't been recent that we've learned that this disease  
23 spreads through droplets. And it hasn't been recent that  
24 we've learned that social distancing is the central and  
25 most important public health intervention.

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1           And so I just wanted to be sure to -- to make  
2 that argument that a lot of what we know is not new. And  
3 what we've known for a while is that social distancing is  
4 important, this disease spreads like wildfire, and that  
5 it's very dangerous.

6           So, Your Honor, now I'd really like to focus  
7 specifically on the deliberate indifference showing. And  
8 I'm going to offer five reasons as quickly as I can as to  
9 why Plaintiffs submit Defendants are operating with  
10 deliberate indifference, and that we're likely to make  
11 out the showing.

12           So first, Defendants have not implemented social  
13 distancing. The Court's heard a lot of evidence and  
14 testimony on this. Second, the fact that Defendants  
15 knowingly expose hundreds of medically vulnerable people  
16 to COVID-19 in the jail. Third, very importantly,  
17 Defendants are not adhering to their stated policies  
18 around preventing COVID-19 outbreak from worsening.  
19 Fourth, Defendants did not respond sufficiently or  
20 swiftly enough to this crisis. And fifth, Defendants  
21 continue to minimize and disregard the risks of COVID-19  
22 in their jail.

23           So turning to the first key reason about social  
24 distancing. The Court noted that the pods, like that in  
25 the one pictured here, are places where the detainees

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1 quote, Do all their living, end quote. This is where  
2 detainees use tables and telephones, it's where they sit  
3 shoulder to shoulder while watching TV, as Mr. Jones  
4 testified.

5 This is where they line up single file for meals  
6 and medication. These are dormitory-style pods, the beds  
7 are bolted together, people sleep at arm's length or  
8 closer. Officer Lewis noted that at least as of this  
9 past weekend, the -- the minimum population in one of the  
10 pods that he supervises is 40 and that at least one pod  
11 still had a full 64 people.

12 Chief Robinson noted that it would require  
13 permission to unbolt the bunks and move them, but offered  
14 no testimony that he's asked for permission. And this is  
15 a month after the CDC guidelines came down on March 23rd.

16 Defendants have only asserted that social  
17 distancing is now, quote, More feasible, end quote, in  
18 light of the population reduction achieved to date. They  
19 have not asserted that it is happening.

20 Defendants do not have sufficient staffing to  
21 implement true social distancing. The Court heard  
22 Officer Lewis' testimony that they were already short  
23 staffed. In fact, the fact that the jail couldn't spare  
24 Officer Lewis to go through formal training is a  
25 tremendous example of how shorthanded they are. And

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1 Officer Lewis is worried that as staff become more  
2 concerned for their safety -- they're already starting to  
3 call out sick more -- it will be harder and more  
4 impossible for the Dallas County jail to implement any  
5 social distancing, and they haven't supported their staff  
6 to do so.

7           Importantly, and I know I've said this, but Your  
8 Honor, it is such an important fact, the Dallas County  
9 jail continues to use multiperson cells, tanks, and large  
10 dormitory style pods. And the Court heard Chief Robinson  
11 testify that people wearing masks are a substitute for  
12 social distancing. With great affection and respect for  
13 my co-counsel, Mr. Barnett's line of questioning that  
14 Defense counsel seemed to pick up on, it is not true that  
15 wearing PPE is a substitute for social distancing. But  
16 the fact that the head of the Dallas County jail thinks  
17 it is, is incredibly disturbing.

18           One last note on this, from Chief Robinson's  
19 testimony, Chief Robinson testified that it might be a  
20 good idea and it might be promoting social distancing if  
21 people would sleep head-to-foot in their bunks, their  
22 really close together bunks. But he didn't say that they  
23 had been instructed to do so. It is just another way  
24 that Defendants are not even exploring feasible and  
25 reasonable ways that they could implement social

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1 distancing, which is the -- the key public health  
2 protocol under these circumstances.

3         The second key reason that Plaintiffs submit  
4 that we've met our burden on deliberate indifference is  
5 the simple fact that Defendants knowingly expose hundreds  
6 of medically vulnerable people to COVID-19 in the Dallas  
7 County jail. There's been unrebutted testimony and  
8 evidence provided by the plaintiffs that people with  
9 certain underlying health conditions and people over 50  
10 face worse outcomes when they contract COVID-19.

11         Indeed, Defendants have known about these  
12 medically vulnerable people. We learned yesterday that  
13 they've had a list of some number of medically vulnerable  
14 people since the end of March. Plaintiffs' counsel was  
15 only able to briefly review that list because we just saw  
16 it yesterday, but seven of our named plaintiffs are on  
17 that list. And they clearly remained in jail, despite  
18 their known vulnerabilities to their custodian.

19         Chief Robinson testified that it would be  
20 important to know the medical circumstances of people in  
21 the Dallas County jail's custody, but that he had not  
22 consulted with any medical experts or Dr. N in  
23 determining any options for them.

24         Defendants are asking this Court to trust the  
25 process that has taken place to date, but it's just worth

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1 stressing that that process has yielded a Titanic's worth  
2 of medically-vulnerable people sitting in this jail as  
3 confirmed cases of COVID-19 increase and the disease is  
4 spreading. It is undisputed that the most effective way  
5 to reduce the death toll is to remove the most medically  
6 vulnerable people and enable social distancing. The  
7 declaration of Dr. Eric Lofgren, an epidemiologist  
8 provided in the record by Plaintiffs, indicates that if  
9 you can remove the medically-vulnerable people from the  
10 population, you can reduce deaths by 56.1 percent.

11 And Your Honor, here is Dr. Lofgren's  
12 projection: Based on the numbers in the Dallas County  
13 jail as of last Friday, about -- the number of people who  
14 will die if left to its current course, the top line, the  
15 black is, status quo, even considering the population  
16 reductions to date.

17 Faced with this grim reality, it is no wonder  
18 that Declarants like Plaintiff Oscar Sanchez have  
19 testified that prayer is the only weapon they have.

20 MR. STEPP: Objection, Your Honor. That  
21 statement is in the Fly supplemental declaration, it is  
22 not in the record.

23 MS. WOODS: Your Honor, this is in a  
24 supplemental declaration and it is absolutely on the  
25 record. The only Fly supplemental declaration that is

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1 not on the record is Docket Number 79. This is at Docket  
2 Number 47.

3 MR. STEPP: I apologize.

4 THE COURT: It is all right. Please proceed.

5 MS. WOODS: Thank you. Third, and importantly,  
6 I recognize this is going to take a little bit more time  
7 to march through, I appreciate the Court's patience.  
8 Defendants are not adhering to their stated policies.  
9 This --

10 THE COURT: Pause for just a second. You don't  
11 have to apologize for taking time to do this. These are  
12 complicated issues and you are helping me, and Defendants  
13 and Intervenor are going to help me too, so take your  
14 time. I'm not in a hurry.

15 MS. WOODS: Thank you, Your Honor. I just  
16 appreciate this has been long for everyone.

17 THE COURT: It has, but this is important and  
18 we're wrapping it up. Don't feel rushed walking through  
19 the most important part. You are helping me to get this  
20 law right, so take your time with that.

21 MS. WOODS: Thank you, Your Honor.

22 So this is important. Plaintiffs have --  
23 have -- unlike the plaintiffs in Valentine, we very  
24 fervently maintain that the Dallas County jail is not  
25 adhering to their stated policies. And again, there

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1 aren't really that many stated policies, so I refer to  
2 them as practices for purposes of this presentation.

3         Two courts to evaluate cases very similar to  
4 this in the face of the Coronavirus outbreak have  
5 stressed this, the Banks v. Booth decision from D.C.  
6 noted that having a written policy in place, but not  
7 implemented, cannot protect Defendants from a finding of  
8 deliberate indifference. Again, that would be generous  
9 to call what's in the record here a written policy. And  
10 the Mays v. Dart case noted, A policy is only as good as  
11 its execution.

12         I want to just pause before I dive into the  
13 comparison of the facts just to acknowledge, once again,  
14 that the Court has heard a real difference in testimony  
15 from the two sides. And as I noted before, Plaintiffs  
16 worked very, very hard to provide witnesses, especially  
17 under very unusual circumstances, who had firsthand  
18 knowledge.

19         I also want to point the Court to admitted  
20 portions of the declaration evidence, which have not been  
21 rebutted, that detainees in the jail have been told,  
22 quote, Hey, we got some visitors, everybody put your  
23 masks on. Detainees in the jail report being asked to  
24 clean up, keep their masks handy when important visitors  
25 come through the jail, including the sergeant.

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1 I want to mention this because the Court has to  
2 make a credibility determination. And the district --  
3 the D.C. District Court recently was on a similar record,  
4 and explicitly in the Banks decision, notes that it gives  
5 greater weight to the testimony of people who have been  
6 working in the jail than supervisors who didn't have  
7 firsthand knowledge of whether the things that they hoped  
8 were being implemented in fact were.

9 And so I just -- I just want to refer the Court  
10 to the Banks decision and stress that the Court heard  
11 from both Chief Robinson and Mr. Jones at different  
12 moments that they were testifying to what people have  
13 told them is happening and what the policy says should be  
14 happening. But the Court can recall a number of times  
15 where they didn't know whether that was really being  
16 done.

17 So I'm going to move through a few categories of  
18 the ways that Defendants are not adhering to their stated  
19 practices, and I've listed them here as a bit of a road  
20 map. But I think I'll just hop to it, because they will  
21 be on each slide.

22 So first, Defendants have stated that  
23 information is being provided about the Coronavirus via a  
24 CDC one-pager and through TV messages that are --  
25 throughout the jail. Plaintiffs have submitted evidence

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1 that when asked for information about the Coronavirus,  
2 staff told them, I'm not here to have a debate, don't  
3 worry, you don't have the virus, I'm not here to answer  
4 questions.

5           Officer Lewis noted that he hadn't seen the CDC  
6 one-pager in the pods where he works. And as I mentioned  
7 earlier, the CDC one-pager that is attached as Exhibit C  
8 to the Robinson declaration is not the March 23rd  
9 guidelines for correctional facilities, those are the  
10 guidelines for the safety of law enforcement.

11           Further, the CDC one-pager that is available, we  
12 couldn't confirm that it is in all the pods, as Officer  
13 Lewis' testimony shows. It is a small print form that is  
14 not easy to read. No one could confirm that it is  
15 available in Spanish and it doesn't have enough -- or a  
16 way for someone who is low literate or illiterate to  
17 understand.

18           No one could answer whether detainees are  
19 receiving information via the inmate channel, and Officer  
20 Lewis testified that the inmate channel is rarely on;  
21 people would prefer to watch other things. And we  
22 couldn't confirm whether the inmate channel has this  
23 information available in Spanish.

24           Just to kind of briefly note another difference  
25 here from the Valentine record, the prison in Valentine

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1 handed people coming into the prison and people in the  
2 prison pamphlets and materials personally, with  
3 information about the Coronavirus.

4           The -- during the cross-examination, both  
5 Mr. David Jones and Officer Lewis, Defendants seemed to  
6 be suggesting that people can just equip themselves with  
7 information about this deadly disease by watching the  
8 news. And it's true that we're all consumed with the  
9 news about this virus, but it really sidesteps the duty  
10 of the jail and the leadership of the jail to ensure that  
11 the people in their care and their staff actually  
12 understand what's going on. And so I just want to  
13 underscore that cross-examination and the suggestions  
14 that Defendants seem to be making in there.

15           Another manner in which the defendants are not  
16 following their stated practices, the -- Chief Robinson's  
17 declaration states that cleaning supplies are widely  
18 available and that they are provided to inmates at all  
19 times. Plaintiffs have submitted Declarant testimony  
20 that, again, was not disputed, that one detainee when  
21 they were so frustrated that they couldn't access  
22 cleaning supplies, actually broke down and used his  
23 washcloth to clean a very dirty toilet. That's the  
24 washcloth that he needed to bathe with. Another  
25 statement noted that guards have announced to detainees

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1 that they were using too many paper towels and then  
2 taking the roll away.

3 Mr. Jones testified both that the only cleaning  
4 supplies available when he was in the West Tower were a  
5 mop and no sanitation supplies. And then upon being  
6 transferred to a housing unit, he was put in a unit just  
7 littered with trash and debris.

8 And Officer Lewis noted that there -- the  
9 availability of cleaning supplies even after the scurry  
10 of activity that he described is -- is hit or miss and he  
11 doesn't know who he would have to call or how he could  
12 get more.

13 Next, Defendants state that all staff are  
14 required to wear masks. And CDC recommends PPE that  
15 includes eye protection, N95 masks, and gowns.  
16 Plaintiffs have submitted evidence that when detainees  
17 asked guards for masks, the guard replied, how are we  
18 supposed to give you masks if we can't get them  
19 ourselves? And the Court will remember Officer Lewis'  
20 testimony that he was told and guards were told, don't  
21 wear masks, it might spook the inmates.

22 I'll note that the very CDC guidelines that  
23 Defendants here were aware of and were sharing as of  
24 March 4th encouraged PPE, including masks for law  
25 enforcement.

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1           With respect to detainees receiving masks, the  
2 Robinson declaration states that, Inmates are provided  
3 masks, including immediately upon being brought into the  
4 jail. And once again here, the March 23rd CDC guidelines  
5 recommend eye protection, N95 masks, and gowns for some  
6 subset of the detainee population. Plaintiffs have  
7 submitted evidence, including from Plaintiff Ideare  
8 Bailey, who was given a mask only after he contracted  
9 COVID-19 eight days after he was booked -- excuse me, I  
10 accidentally scrolled. And there are also reports,  
11 numerous reports of detainees wearing the same mask for  
12 days and in many cases over a week or two.

13           Officer Lewis also noted how flimsy and unsturdy  
14 and breakable many of the masks are. And Dr. Cohen  
15 described that a lot of these masks are really best for  
16 single use. But detainees don't always know how to  
17 easily get their masks, and we've submitted a number of  
18 declarations that detainees have been forced to use masks  
19 for a very long time. And Chief Robinson acknowledged it  
20 is not their policy to provide a mask every day to the  
21 detainees.

22           Third, and this one will be brief, the Robinson  
23 declaration notes that hand soap is made available to  
24 inmates at all times. The CDC pretty firmly notes that  
25 liquid soap is preferable. And the Court's heard that

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1 while when David Jones was booked in the jail, there  
2 wasn't necessarily a stack -- stock of free hand soap  
3 available. Sounds as though now there is bar soap  
4 available, but the Court did hear testimony about 64  
5 people in the pod sharing a common bar of soap at a  
6 single sink, and liquid soap was only available for  
7 staff.

8           With respect to sanitation, Defendants have  
9 stated and claimed a third-party vendor sanitizes each  
10 part of the jail in which the positive or suspected  
11 positive inmate may have had contact. The CDC's March  
12 23rd guidelines recommend that all high-touched surfaces  
13 be sanitized several times per day.

14           Plaintiff has submitted evidence that detainees  
15 have been required to clean up the bunks of other people  
16 who have been removed from their cells or pods without  
17 PPE, and detainees are certainly not a third-party  
18 vendor. Officer Lewis testified that the majority of  
19 cleaning -- in fact, in his first recollection, all  
20 cleaning is done by the detainees. He could only recall  
21 one very fast and brief -- I think he described as 20  
22 seconds, instance of a sanitation company showing up.

23           Also, Officer Lewis testified about the  
24 irregular cleaning in the pods. And he noted that the  
25 phones in the kiosks, especially the kiosks that are

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1 needed to submit medical requests, are not disinfected  
2 and sanitized routinely. This is particularly important  
3 given how central the kiosks are for visiting of loved  
4 ones, seeking medical care, filing grievances, or  
5 speaking with a lawyer. These are high-touched surfaces  
6 that are not being sanitized.

7           Plaintiffs have put on the record, as well, and  
8 I think it was David Jones' testimony, about being in a  
9 pod with a sick detainee who couldn't clean up his own  
10 vomit.

11           The CDC also requires that bunks be cleaned  
12 thoroughly anytime they are assigned to a new occupant.  
13 And Plaintiffs have provided a number of examples,  
14 including Mr. Jones' testimony, that that's not  
15 happening.

16           Defendants indicate that staff are, quote,  
17 Consistently impressed upon inmates -- that staff  
18 consistently impress upon inmates the need to practice  
19 social distancing, end quote, but Officer Lewis testified  
20 that it is completely unclear to staff whether and how  
21 they could implement social distancing, that they're not  
22 getting consistent information from leadership.

23           CDC guidelines require a very clear plan. They  
24 require correctional facilities to think ahead about how  
25 to enable their staff to be successful and how to get

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1 this information in the right hands. But Chief Robinson  
2 acknowledges that social distancing is not possible, and  
3 he's -- wasn't aware or didn't seem to be aware of this  
4 particular CDC guidance. He thought that if people slept  
5 head-to-foot, an instruction that he hasn't given anyone,  
6 that that would suffice.

7           Officer Lewis was asked at one point during his  
8 testimony, If no one gave you any training on COVID-19,  
9 how do you know what to do during a pandemic? He  
10 replied, I do not. He doesn't know what to do.

11           Defendants have discussed that video visitations  
12 have been made available free of charge to anyone who  
13 requests them. That appears to be true, but Plaintiffs  
14 have provided evidence that these video visitations are  
15 not reliable, including for legal visits. Officer Lewis  
16 testified that there are daily technical issues and  
17 backups and that these often cause a backup of people  
18 waiting for these very important video visits.

19           When he described where the legal visits are,  
20 and those are in a separate booth in Officer Lewis' pod,  
21 which requires movement and touching, again, a  
22 high-touched surface. So this is another way that both  
23 the importance of being able to have these video visits  
24 is not successful and that people are coming into contact  
25 with high-touched surfaces that are not essentially

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1     sanitized.

2             The CDC recommends that correctional  
3     institutions medically isolate confirmed and suspected  
4     cases. David Jones' testimony that an entire 64-person  
5     pod was moved to other 64-person pods when they had been  
6     exposed to the Coronavirus, meaning all of those people  
7     who had been exposed to a sick person were distributed  
8     throughout other pods in the jail. Marcus White, one of  
9     the plaintiffs in this action, tested positive for the  
10    Coronavirus weeks ago, but other persons in his tank were  
11    only moved last week.

12            Defendants have made much of their efforts -- a  
13    lot of their efforts to decrease the jail population.  
14    Plaintiffs have made our position very clear that the  
15    decreases to date certainly do not enable CDC guidelines  
16    or social distancing to be realized, and the Court heard  
17    evidence today that the jail population today is actually  
18    higher, or at least the jail population today is higher  
19    than the jail population was in mid April of 2019.

20            Officer -- Chief Robinson also testified that  
21    there's been an increase in arraignments at the Dallas  
22    County jail over the last few weeks. So it's not clear  
23    exactly what's going on in terms of the reduction in the  
24    population. But once again, this is not where it needs  
25    to be and a little incongruous with the fact that the

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1 jail population has in the past been even lower than it  
2 is right now.

3           The Court also heard testimony that Officer  
4 Lewis in his, you know, estimation, as someone who works  
5 in these pods every day, that he thought a pod's  
6 population would probably need to get down to about 20  
7 people for social distancing to be possible. And both  
8 Dr. N and Dr. Cohen have testified that significant  
9 population reductions would need to be in effect.  
10 Defendants have not facilitated that kind of population  
11 reduction.

12           There are a handful of other CDC guidelines that  
13 are not being followed in the Dallas County jail. I  
14 won't belabor this point on this slide about signage. I  
15 think I have covered it. But again, the -- the policies  
16 that are posted are the wrong ones, they are not  
17 multilingual, they aren't accessible to people with low  
18 literacy.

19           The CDC guidelines also instruct correctional  
20 facilities to review their policies and ensure that they  
21 are actively encouraging staff to stay home when sick.  
22 Officer Lewis testified that the staff were told they  
23 would have to use their sick time if they got sick, and  
24 if they weren't, in fact, sick with COVID-19 when they  
25 took their sick time, they'd have to pay it back or be

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1 fired.

2           The CDC guidelines encourage correctional  
3 facilities to have a plan in place for the restocking of  
4 hygiene products, cleaning supplies, PPE, and medical  
5 supplies. And as I've stated already, Officer Lewis, on  
6 his examination, testified that it can be very  
7 hit-or-miss and he doesn't know how he gets more of these  
8 supplies or who he talks to.

9           The CDC guidelines recommends suspending copays  
10 for detained persons seeking medical evaluation.  
11 Plaintiffs and -- witnesses testify copays have been  
12 suspended in the Dallas County jail, but the Court heard  
13 Officer Lewis note that if that's true, the detainees  
14 don't know that that's true. And so a lot of people are  
15 operating under the same assumption that they can't place  
16 a sick call because it will cost them \$10. And  
17 Plaintiffs have submitted record evidence of detainees  
18 who've stated that they are afraid to report symptoms  
19 because the conditions in the quarantine units,  
20 conditions where they can't have calls or video visits,  
21 conditions where their meals are smashed onto trays and  
22 slid under the door are so distressing that it deters  
23 them from reporting their symptoms.

24           The CDC guidelines instruct correctional  
25 facilities that if a staff member has a confirmed

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1 COVID-19 infection, the relevant employer should inform  
2 other staff about their possible exposure in the  
3 workplace. The Court heard Officer Lewis testify that he  
4 only discovered one of his pods was in quarantine upon  
5 walking in and seeing a sign.

6 THE COURT: And I don't want to rush you, but if  
7 you'll let me know when you hit a good breaking point,  
8 I'd like to give my court reporter a rest and take a  
9 quick powder room break.

10 MS. WOODS: Sure. I'll just -- this will be  
11 very quick and I think it is a perfect time for a break.

12 THE COURT: Okay.

13 MS. WOODS: The Court heard evidence that the  
14 defendants are not providing detainees with hand  
15 sanitizer. That is a very quick point to make, and I  
16 think we can take a -- take a pause.

17 THE COURT: Okay. Sounds great. Let's take a  
18 ten-minute break. It's 4:09, let's be back at 4:20.

19 (Recess taken.)

20 MS. WOODS: So I was just turning to the fourth  
21 of our fifth categories of showings for the deliberate  
22 indifference in this case. And the fourth category is  
23 the fact that the defendants didn't respond adequately  
24 and they didn't respond swiftly enough to this pandemic.  
25 So I'm just going to offer the chronology for the Court

1 to provide a bit of an illustration.

2           So Chief Robinson testified that they forwarded  
3 along to their staff at the Dallas County jail these CDC  
4 law enforcement guidelines. And he testified that the  
5 date on those law enforcement guidelines was March 4th.  
6 That was his testimony. These guidelines for the  
7 protection of law enforcement recommend PPE for law  
8 enforcement.

9           Just for context, on March 8th, the cruise ship,  
10 the Diamond Princess, was making headlines all over the  
11 country, and particular dangers on congregate  
12 environments was becoming very well-known with respect to  
13 this disease.

14           On March 12, the Dallas County's safer-at-home  
15 order issues, instructing people to socially distance.  
16 The next day, March 13th, there's a national state of  
17 emergency declared by the president. On March 16th,  
18 Chief Robinson sends the CDC guidelines for law  
19 enforcement to his staff. Based on his testimony, that's  
20 about two weeks after he received them, or after they  
21 issued.

22           Note that during this time, David Jones was  
23 incarcerated in the Dallas County jail. There was no  
24 social distancing; there were no masks. There was not  
25 soap beyond four small bars received per week. There was

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1 no hand sanitizer.

2           On March 25th, Dr. Nijhawan urges the defendants  
3 to release medically-vulnerable people from the Dallas  
4 County jail. That same day, the first confirmed  
5 COVID-19-positive case is identified in the Dallas County  
6 jail from a man who had been in custody since December.  
7 And so, likely he got it from someone else in the jail;  
8 and who was only identified as a COVID-positive case  
9 because he was in the hospital.

10           On March 25th, the Dallas County jail begins to  
11 post the one-pager, but as I've noted, it's the wrong  
12 guidelines and it is not uniformly visible.

13           On March 3rd, David Jones' last day in the  
14 Dallas County jail, there were still no masks, cleaning  
15 supplies, medical screening, information, or social  
16 distancing in practice. This was also around the time  
17 that the CDC begins to recommend masks for the general  
18 public. But they had recommended them for law  
19 enforcement about a month earlier.

20           On April 6th, when Ideare Bailey is booked into  
21 the Dallas County jail, there are similarly a lack of  
22 PPE, cleaning supplies, screening information, and social  
23 distancing. It's on a telephone call with his wife, she  
24 urges him to use a shirt to cover his mouth, because he  
25 has no other way to protect himself.

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1           On March -- on April 9th this lawsuit was filed.  
2       And around April 9th, Officer Lewis testified that he had  
3       witnessed a flurry of activity, including distributing  
4       masks in the Dallas County jail.

5           Between April 6th and 13th, there is evidence on  
6       the record from declarants that they had difficulty  
7       accessing medical treatment, difficulty receiving clean  
8       and unbroken masks, and social distancing is still not in  
9       practice.

10          As of Saturday, April 18th, Officer Lewis  
11       testified that he still had 40 to 64 people in the pods  
12       he supervised. And just today, the Court heard Patrick  
13       Jones testify that he's comfortable with the number of  
14       COVID-19 tests on hand in the Dallas County jail, but  
15       there aren't enough to test even the people in quarantine  
16       in the Dallas County jail; and certainly not enough to  
17       test them according with their own stated practices of  
18       testing people twice.

19          Sorry, Your Honor, I'm just going to go back --  
20       I'm sorry, here we are.

21          Now, speaking to the sufficiency of the Dallas  
22       County jail's response here, they have a higher number of  
23       COVID-19 cases confirmed than other jails in the state.  
24       They have reduced their jail population by a small  
25       percentage than other counties in the state. They -- the

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1 ratio of jail population in quarantine is significantly  
2 worse than in other jails. And as the Court heard today,  
3 the Dallas County jail population is higher than it was  
4 in April of 2019.

5         These are Dr. Lofgren's epidemiological models.  
6 And they show how important immediate reaction, immediate  
7 activation of significantly reducing the jail population,  
8 the number of medically-vulnerable people, and the number  
9 of intakes in a jail is. And the Court has seen this in  
10 our filings. But this just shows the reason that this is  
11 so important, the reason that swift action is so  
12 important. It affects the number of infections,  
13 hospitalizations, and deaths not only in the jail, but in  
14 the community at large.

15         Finally, there's evidence before the Court that  
16 the defendants are minimizing the risks of COVID-19.  
17 Chief Robinson wouldn't testify that the disease is  
18 spreading exponentially or rapidly in the jail. Counsel  
19 for the defendants, in questioning Dr. Cohen, indicated  
20 that the Dallas County jail is doing a good job because  
21 they haven't had a confirmed death yet.

22         They also suggested that Dallas County is doing  
23 a good job because there are fewer infections to date  
24 than Rikers Island, about three miles from where I'm  
25 sitting right now, Your Honor; the source of the greatest

1 transmission rate of COVID-19 on the planet.

2 In Defense Counsel's opening statement, she  
3 compared being incarcerated with not -- very limited  
4 ability on one's freedom of choice and circumstances to  
5 the inability to greet a friend with a hug in the grocery  
6 store.

7 I'm sorry, I had one point from Patrick Jones'  
8 testimony today that wasn't in my notes. The testimony  
9 of Patrick Jones further confirms that Defendants knew  
10 that social distancing was an essential public-health  
11 intervention, and that failure to implement social  
12 distancing would speed the transmission of this disease,  
13 and get people sick and people will die.

14 So Plaintiffs submit that this all adds up to  
15 ample evidence for this Court to make a finding that they  
16 are likely to succeed on the merits of our deliberate  
17 indifference showing. As I mentioned, in my effort to  
18 point the Court towards the correct test of the  
19 subjective intent of Sheriff Brown and Dallas County is  
20 not relevant; it doesn't play a role in this test.

21 Sheriff Brown doesn't have to be a bad person to  
22 be found deliberately indifferent to the constitutional  
23 and medical needs of Plaintiffs in this case. That is  
24 not the test.

25 Further, the Court can issue injunctive relief

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1 to remedy a constitutional violation even if the  
2 defendants' affirmative contact -- conduct wasn't the  
3 source of overcrowding, and even if the resources  
4 available to the defendants were limited. For example,  
5 resources like PPE or tests.

6 Defendants have also made argument in a briefing  
7 and in the hearing about how they can't be found  
8 deliberately indifferent under the federal constitution  
9 because of the limits to their state law authority. The  
10 Mays case made clear that the scope of Defendants' state  
11 law authority has no bearing on a petition for a writ of  
12 habeas corpus in federal court.

13 And indeed, the analogy that Dr. Cohen provided  
14 during his testimony, the idea that, surely, if a flood  
15 were hitting the jail, something would need to be done  
16 and people would need to get out. It wouldn't matter  
17 that the sheriff's steep court authority, state law  
18 authority were hindered. In an emergency, they would get  
19 people out.

20 Getting a small percentage of the people out  
21 when a devastating emergency or flood -- is not  
22 sufficient. And the fact that the Dallas County jail has  
23 knowingly failed to do so supports a showing of  
24 deliberate indifference.

25 And, Your Honor, just to provide the Court with

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1 a couple of examples of what other district courts  
2 have -- have found with respect to this, the Banks' case  
3 noted that when social distancing was slow to be  
4 instituted, and not fully operationalized, that this can  
5 support deliberate indifference showing because, as the  
6 record is made very clear, an inability to do so exposes  
7 Plaintiffs to an unreasonable -- an intolerable, I would  
8 say, risk of damage to their health, and death.

9           The Eastern District of Michigan noted  
10 likelihood of success on the same claims before the Court  
11 here, because of the -- because there -- the allegations  
12 reflected failure to impose safety measures. And they  
13 noted that it just simply can't be disputed that this  
14 disease poses a serious health risk.

15           In summary, the way that the defendants have  
16 indeed recklessly disregarded the risks caused by  
17 COVID-19, they did not adopt a formal, written policy.  
18 The only policy they've produced is ten years old. The  
19 other practices are in unspecified places, and no one  
20 could explain why they haven't been provided to the Court  
21 or the plaintiffs.

22           Officer Lewis' testimony highlights the  
23 confusion and the failure to adopt real policies and  
24 guidance in response to this devastating crisis. Officer  
25 Lewis also testified that protocols weren't realized on

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1 the ground, in daily life in the jail, until after April  
2 9th when this lawsuit was filed.

3 Defendants have not hired and trained sufficient  
4 staff to manage the crisis, to enable social distancing,  
5 to keep people safe.

6 Defendants witnesses continue to testify that  
7 the spread of this disease is not exponential, in  
8 flagrant contrast to what public health experts and  
9 epidemiologists say. And Plaintiffs have provided that  
10 kind of testimony in record evidence before the Court.

11 Chief Robinson acknowledged that, in considering  
12 the kinds of these recommendations, in light of this  
13 crisis to date, he acknowledged that he did not consider  
14 detainees' ages; that he did not consult public health  
15 experts like Dr. N.

16 Distressingly, Chief Robinson treated the  
17 wearing of masks as a substitute for social distancing,  
18 and treats incarceration in eight-person cells as a  
19 substitute for social distancing.

20 The defendants know that social distancing is  
21 important, especially highlighted by Patrick Jones'  
22 testimony today.

23 Again, the suggestion that the only way they  
24 could possibly take steps to implement social distancing  
25 is to physically restrain everyone from freedom of any

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1 movement whatsoever in the jail, shows the -- the  
2 attitudes that support a finding of deliberate  
3 indifference.

4 Defendants waited to distribute CDC guidance to  
5 their staff. They waited a week from March 16th to March  
6 25th to actually post that CDC one-pager in the jail.  
7 And those guidelines were ultimately not the appropriate  
8 guidelines to be posting and training on.

9 Mrs. Bailey testified that, after her ordeal,  
10 and trying to get her husband released; after selling her  
11 wedding ring, waiting six hours to talk to somebody about  
12 her husband's release; having paid his bond, pretrial  
13 services' staff said to her, she told me they were not  
14 going to touch him, and if my husband had not been out  
15 committing crime he would not have been placed in the  
16 Dallas County jail to get COVID.

17 This statement from the pretrial services' staff  
18 in the Dallas County jail reflects a callous attitude  
19 towards this devastating crisis. And it supports our  
20 showing of deliberate indifference.

21 Deliberate indifference is shown by the fact  
22 that Chief Robinson hasn't even asked permission,  
23 apparently, to separate bunks to get people more than six  
24 feet apart where they live and sleep. The suggestion  
25 that the Dallas County jail is doing a good job because

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1 it doesn't yet look like Rikers Island is further  
2 evidence of the attitudes that promote our deliberate  
3 indifference showing.

4 That's the end of the PowerPoint, Your Honor.  
5 And so I'm going to stop sharing my screen to make the,  
6 kind of, final part of my presentation.

7 So before I pivot to the remaining TRO factors,  
8 which I will give very brief treatment to, and then  
9 discuss the relief requested by Plaintiffs, I just want  
10 to underscore that this constitutional obligation is one  
11 that Dallas County owes the Plaintiffs in this case,  
12 regardless of that they've been accused or convicted of.  
13 They owe this case to every human being in their care and  
14 custody. They are not discharged from their  
15 constitutional obligations simply because it is hard.

16 I'd like to pivot to the other factors the Court  
17 needs to consider on the request for the TRO. I'm not  
18 going to speak to irreparable harm, because I think that  
19 is fairly uncontroversial. But I will speak briefly to  
20 the balance of equities that the Court needs to consider.

21 First of all, I mean, the balancing test just  
22 has to be considered, in light of the incredible risk,  
23 the intolerable danger that Plaintiffs are facing under  
24 the circumstances. But even so, when we consider the  
25 hardships on the other side, there has been testimony

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1 from Defense evidence -- Defense witnesses that they can  
2 readily access information of who the  
3 medically-vulnerable persons in the jail are. And that  
4 they also have easy and ready access to information on  
5 their criminal history and their dangerousness  
6 assessments. So the administrative burden in providing  
7 that kind of information to the parties and the Court,  
8 they haven't testified that that's going to be a  
9 significant hurdle.

10           There is also testimony that the County spends  
11 \$75 a day incarcerating everyone. So the suggestion by,  
12 I think it was State Intervenors, that any public health  
13 supports that people released from the jail may need,  
14 such as a vacant hotel room, is -- is outweighed by the  
15 fact that that's money that the taxpayers are spending  
16 anyway. And frankly, the suggestion that the taxpayer  
17 money spent to save lives and reduce incubation of this  
18 disease in the Dallas County jail, it is not particularly  
19 logical.

20           Chief Robinson also indicated that the Dallas  
21 County jail has considerable support from the County  
22 Commission to receive funding to address this issue. And  
23 so, I would offer that there may be -- the -- the kind of  
24 injunctive relief requested, to the extent that that is  
25 going to require the jail to get more cleaning supplies,

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1 do better and more consistent sanitation, or hire  
2 additional staff, Chief Robinson seemed to suggest that  
3 there was a lot of support for that.

4 Then, turning, briefly, to the public interest,  
5 which I know is very, very heavy on the Court's mind,  
6 given the importance of this case and the -- the  
7 difficult questions presented.

8 Plaintiffs have presented un rebutted testimony  
9 and evidence about the fact that releasing people from  
10 jail, decreasing the number of medically-vulnerable  
11 people in the jail, and thinning out the jail population  
12 actually reduces the transmission of COVID-19, not only  
13 for the jail, not only for the jail staff, but for the  
14 greater Dallas community.

15 It is through this intervention that the Dallas  
16 County community is able to curb an incubation site for  
17 the virus, is able to reduce the tax that's going to take  
18 place on local hospitals, ventilators, and other public  
19 health supports.

20 So the public interest is served by enabling  
21 people who can be released from the jail, and find either  
22 a hotel room or a shelter bed or a home where they can  
23 social distancing, that promotes the public interest.

24 To illustrate, the -- the vast majority of the  
25 named plaintiffs have such a home release plan. And

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1 Dr. N testified that it's -- it is safe and appropriate,  
2 when someone is not seriously ill, to release them to --  
3 to self-isolate at home and receive the -- the sort of  
4 milder care that they need.

5 And it -- it is particularly important, and in  
6 favor of the public interest to do that. Because once  
7 again, allowing people to infect others in the jail, to  
8 infect other staff in the jail, and particularly given  
9 the fact that a lot of people who are in some kind of  
10 quarantine status in the Dallas County jail go to the  
11 infirmary, where they could get other people who are  
12 otherwise sick, but not sick with COVID-19, to spread the  
13 virus, as Dr. Cohen's supplemental report points out.  
14 There are general public health reasons to facilitate the  
15 safe release of people.

16 THE COURT: Well, I want to -- I've got a  
17 question for you about that.

18 MS. WOODS: Yep.

19 THE COURT: Certainly I -- I'm very concerned  
20 about the safety of the inmates. But one of the things  
21 I've also got to balance is the safety of the community.

22 And so, last night I was looking at the NCICs  
23 that were provided to me en camera, the National Crime  
24 Information Center data. And so, for example, one of  
25 your plaintiffs, whose name I won't name for privacy

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1 reasons, has domestic violence convictions and aggravated  
2 robbery convictions, and a host of violent crimes. And  
3 I'm concerned -- he doesn't currently have the virus,  
4 according to what I've heard so far, but I have some  
5 concerns about sending him back home and back out to the  
6 community.

7           And so, I've got to balance the concerns of  
8 keeping this individual safe, but I've also got some very  
9 real concerns, based on -- and these are not crimes for  
10 which he is accused; these are crimes for which he has  
11 been convicted and, in some cases, tried by a jury or  
12 pled guilty.

13           But, you know, we have -- we have -- I did some  
14 clicking around through the people who remain in the  
15 jail, and I found one guy who's being held on, you know,  
16 seat belt stuff. But I've got to tell you, most of what  
17 I was seeing were violent crimes, and significant ones,  
18 with -- and these are not allegations, again; these are  
19 convictions.

20           And so, I think there is a very real risk that  
21 I've got to consider -- definitely I've got to think  
22 about the 5,000 souls on the ship, but I've got to think  
23 about all of the other people holed up in their houses.  
24 You know, we've got businesses boarded up.

25           One of your named plaintiffs has something along

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1 the lines of almost ten felony convictions; a lot of them  
2 for burglary of habitations and burglary of businesses,  
3 and here I've got businesses, you know, boarded up.

4 And so, just in fairness, you know, you are  
5 asking me to release some people who are either going to  
6 be risky for me to release to the community, as far as  
7 physical safety or -- you know, I have reduced police  
8 force available in this pandemic.

9 So, you know, there are a couple of things I've  
10 got to consider in this pizza other than just the  
11 individuals. You know, if I -- if I let them out, and I  
12 don't know whether or not they're positive, where are  
13 they going to go? Are they going to go to Parkland?  
14 Parkland's already chocked-full of people who are sick.  
15 You know, and these hotel rooms I'm supposed to send them  
16 to, who is going to pay for that? You know, and that is  
17 not my only concern, cost, but that is a concern.

18 So I have some -- some public safety concerns  
19 that I think are very real --

20 MS. WOODS: Absolutely.

21 THE COURT: -- when you are talking about people  
22 with some -- I mean, these -- you have got several named  
23 plaintiffs who have parole holds for violent convictions.  
24 What do I do with that? How do I balance that?

25 In looking up the -- you know, I know that

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1 whatever their criminal past, they're human beings  
2 entitled to appropriate care. And then, if -- certainly  
3 in a pandemic, if we're going to incarcerate somebody, we  
4 need to give them good health, and make that as -- make  
5 the incarceration as healthy and safe to them as  
6 possible. But I've got to tell you, I have some real  
7 public-safety concerns about releasing just the named  
8 plaintiffs. Not even talking about the class of people.

9 MS. WOODS: Certainly, Your Honor. And I'm  
10 happy to address that. I think it's central, and where  
11 we should go next.

12 So -- and the Court acknowledged that it's --  
13 just to kind of frame the way that I want to answer your  
14 question, to kind of set it into three categories.

15 So the first category is the merits of their  
16 constitutional claim. And that is obviously unaffected  
17 by what they're accused or convicted of.

18 THE COURT: I agree with that statement.

19 MS. WOODS: Of course.

20 THE COURT: Absolutely true. Whoever you are,  
21 whatever you have done, you are entitled to  
22 constitutional protections. I agree with that.

23 MS. WOODS: Thank you, Your Honor. I didn't  
24 mean to belabor that. I know the Court understands that.

25 I also just want to note, and I recognize, that

1 the concern is still there, and I'm going to get to it in  
2 just a moment. But the majority of people in the jail  
3 are, in fact, pretrial. And so, again, the merits of  
4 their claims fall under this Fourteenth Amendment  
5 standard.

6 But to answer your -- to get to the Court's  
7 question; I don't want to push it off. So thinking about  
8 the relief we're seeking here, we're seeking, on the one  
9 hand, injunctive relief, under 1983, that injunctive  
10 relief that -- that is tailored appropriately to make the  
11 jail a safe place for people. And that is our public  
12 health expert, and that's the other health protocols that  
13 the Court's so empowered to make, consistent with  
14 Valentine. Then there's the habeas request. And I think  
15 that is what the Court is really concerned about here  
16 with this question.

17 And so, the Court saw -- I just want to say,  
18 Plaintiffs have really tried to grapple hard with making  
19 suggestions that account for the really difficult job the  
20 Court has here. And numerous witnesses came forward.  
21 And when asked this difficult question, said they were  
22 really glad it wasn't their job. And so I want to  
23 acknowledge that it is the Court's job, and it is a  
24 difficult job.

25 The plaintiffs really wrestled hard with this.

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1 And as you've seen in our amended proposed order, we --  
2 the -- the plan we submit can kind of take that into  
3 account, while still considering the -- the real habeas  
4 rights here and the real constitutional rights, and the  
5 real harm to people who may get sick and die, is to  
6 first -- to take off a subset of the medically-vulnerable  
7 people, we've proposed a subset of them, just for the  
8 Court's most immediate consideration, to get the process  
9 going.

10       People who are only in custody because they are  
11 awaiting treatment -- a transfer to a treatment facility.  
12 People who are awaiting a bed in a drug treatment  
13 facility, or some such thing. Chief Robinson said that  
14 is a population they can identify pretty easily. These  
15 are people who are already essentially sentenced and on  
16 probation. They have a supervision plan on probation;  
17 they are technically on probation.

18       Local counsel has informed me that there are  
19 neighboring counties that, prior to COVID-19, as a matter  
20 of course, would allow people to go home and wait for  
21 their treatment bed and then report. So we'd offer that  
22 that's a category of people -- just from scanning list  
23 of -- the Defendants will know better than I do how --  
24 how big that list is. I think it might be a couple  
25 hundred people.

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1           THE COURT: And to chime in, I did see some  
2 people like that. When I was clicking on them, I would  
3 just kind of pick random ones to read about. And one of  
4 them is being held for treatment at a judicial treatment  
5 center for drug rehabilitation.

6           MS. WOODS: So we offer that that is a -- that  
7 is a sensible category for the Court to really start  
8 consideration of habeas petitions with, because -- for  
9 the reasons I just outlined.

10           We thought, particularly, just given that this  
11 is a lot to get -- to get all of our heads around, and  
12 acknowledging that a habeas request is a big request, but  
13 we think it is commensurate with the big moment that  
14 we're in. We thought that that was a good place for the  
15 Court to start.

16           And then the Court will see that, beyond that,  
17 kind of, most immediate batch of people who we think the  
18 Court could take up consideration of habeas petitions  
19 more quickly, we propose that essentially the Court take  
20 the remaining medically-vulnerable people and provide a  
21 process by which the state intervenors and the defendants  
22 can lodge objections. We presume they will largely be  
23 based on public safety concerns to the release of those  
24 other people.

25           This is an approach that the Eastern District of

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1 Michigan and the Southern District of Florida have both  
2 adopted in similar cases to basically say, well, we know  
3 this is the list, so we'd like to hear the objections to  
4 their release. And from there, we'd essentially ask the  
5 Court to establish a process, either through this Court,  
6 through the magistrate court, wherein -- likely in  
7 batches, the Court evaluates the balance between the harm  
8 to this individual and then an established risk of flight  
9 or danger.

10 And this is kind of aligned with the guidance  
11 that the -- the DOJ has given to the BOP, right, in their  
12 home-confinement policies, where they say, yes, you have  
13 to consider the -- the risk of public safety -- and  
14 Plaintiffs -- baked into this craft of -- of requesting  
15 our relief, we understand there will be public safety  
16 concerns in many of these cases. And so we'd ask that --

17 THE COURT: I'm sorry, I have a follow-up  
18 question for you about that.

19 So this individualized -- you know, looking at  
20 each case in batches, isn't that the job of the district  
21 court and county court judges? How am I uniquely placed  
22 to do that? I mean, if we're in such an emergency  
23 situation that I should open the jails, then am I not  
24 stepping on the toes of my brethren in the criminal  
25 courthouse and stepping into their role? I mean, if

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1 there's time for me to individually evaluate these cases,  
2 why is there not time for them?

3 MS. WOODS: I think the first response to that  
4 question, Your Honor, is that that's the process that led  
5 us to this moment; that that process, Defendants have  
6 acknowledged, has been undertaken, the collaborative  
7 process of seeking a lot of review with defense counsel  
8 locally. That process has done about what I think it's  
9 going to do, and leaves the Court with this current  
10 situation, with the numbers that the Court has. So that  
11 is a first point.

12 The second point is that, particularly, when  
13 we're talking about a habeas remedy, that is a remedy  
14 that the Court is empowered to make. And the habeas  
15 remedy can be made conditional. We've really proposed  
16 that the Court make it conditional, because we understand  
17 the balance of interest and factors that the Court's  
18 going to need to weigh.

19 So we recognize it's unorthodox. This -- it is  
20 not unprecedented. It --

21 THE COURT: I understand it is not  
22 unprecedented. But in Valentine, I'm -- I'm sorry, it is  
23 not Valentine. I read the -- the Houston -- Judge  
24 Rosenthal's opinion, where she declined to jump in to the  
25 dispute and -- and abstained.

1           And she talked about this -- you know, all of  
2 these stakeholders. You know, you have got the -- the  
3 county court judges who have say over misdemeanor  
4 defendants, and you have got the criminal district court  
5 judges who have say over their felony defendants; and  
6 then you have got the TDC, who's got their blue warrants  
7 for parole violations. And then you have got the county  
8 commissioners who oversee the jail.

9           And so my question to you is, who am I to jump  
10 in -- where we've got these stakeholders, who am I to  
11 jump in and manage this in a pandemic, and tell people  
12 who have already done, like you said, some collaborative  
13 work, who am I to jump in and pick a winner? Is that  
14 the (unintelligible) of a federal judge? I mean, you  
15 tell me.

16           MS. WOODS: Your Honor, it is if the Court is at  
17 the point in its evaluation of the issues here that its  
18 found violation of the federal constitutional rights of  
19 the petitioners. And so if the Court has arrived to that  
20 conclusion, and is considering relief, then the Court is  
21 empowered. The federal courts are exactly who  
22 Petitioners, like the people in this case, turn to, to  
23 rectify the harm to their federal constitutional rights  
24 and their well-being.

25           And so I also --



1 THE COURT: I --

2 MS. WOODS: -- just want to point out that it's

3 particularly --

4 THE COURT: -- and, I'm sorry, I know I have

5 that authority. I guess my question for you is -- I

6 don't doubt that I have that capability. I guess I think

7 of it sort of like -- I remember being a young trial

8 lawyer, and my first boss told me just because you can

9 object doesn't mean you should. And so I -- I get that I

10 have the authority to do it. My question to you is,

11 what -- why should I?

12 You know, if you are asking me -- because what

13 you are asking me to do, to take these people in batches

14 and go through them individually, that sounds to me like

15 exactly what a district court judge should be doing, and

16 a county court judge, and the parole board.

17 And so, if there is time to do that -- I mean,

18 to me, you are -- your strongest argument is, hey, Judge,

19 there is a pandemic; there's no time. But if there is

20 time for me to go through one by one, or in batches, why

21 can't they? Why me?

22 MS. WOODS: Well, Your Honor --

23 THE COURT: Why the federal court?

24 MS. WOODS: -- well, first of all, the -- again,

25 the moment we've arrived in shows that they're not. They

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1 are not sufficiently doing that.

2 THE COURT: Well, they thinned out the jail  
3 population a thousand or 1,200 people in the last month  
4 and a half. I mean, they're going through them.

5 So here is my question for you: At what point  
6 do we say as a society that the people who -- and I don't  
7 know this to be true. Like I said, I've just kind of  
8 clicked on NCIC reports. But at some point, there are  
9 some people who are going to have to remain incarcerated  
10 for public safety.

11 Do you guys acknowledge that or do you want  
12 everybody out?

13 MS. WOODS: No, Your Honor. We -- baked into  
14 the way we've crafted this is an acknowledgement that it  
15 will only be a subset of the medically-vulnerable  
16 subclasses that ultimately get released, because we  
17 totally agree that there needs to be consideration here.

18 So -- but again, the -- the reason that we get  
19 to that point, as the Court just mentioned, is this is a  
20 crisis. It is --

21 THE COURT: It is.

22 MS. WOODS: -- spreading rapidly. And again, if  
23 the Court -- by the time the Court is considering this,  
24 the Court will have agreed that there is a federal  
25 constitutional violation at play.

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1 THE COURT: Absolutely.

2 MS. WOODS: And I do want -- a point that I  
3 meant to make earlier, Your Honor, about just sort of the  
4 concern about overreach from the federal court, right --

5 THE COURT: That's a pointing concern I've got.  
6 So please speak to that.

7 MS. WOODS: Absolutely. Yes, I'd love to.

8 So the petitioners, I just need to really  
9 underscore, they aren't seeking the Court to go in and  
10 change the timing of their trial dates. They aren't  
11 asking the Court to change the conditions of their bail.  
12 They aren't asking the Court to under -- to overturn  
13 validly-entered state court convictions. There is  
14 nothing about jumping into the adjudicatory process of  
15 their criminal prosecution and conviction here.

16 This is about --

17 THE COURT: Well, let me ask you about that,  
18 though.

19 So let's take -- of your named plaintiffs, I  
20 think there are at least two who've got blue warrants,  
21 who've got parole holds. And so, how am I not  
22 interfering with the adjudicative process if I let them  
23 out of jail -- and I've got to tell you -- so I've got  
24 two concerns on that.

25 One, federalism. Should I be doing this at all;

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1 two, let's talk about public safety concerns. When I've  
2 got somebody who potentially -- I'm thinking of a person  
3 who's got, let's say, an aggravated robbery. And they've  
4 been convicted of it, so this is not something for which  
5 they've just been accused. They've been convicted. And  
6 so, yes, you absolutely have constitutional rights, but I  
7 also know that you have been convicted of a violent  
8 crime.

9           And so, if I let you out because of this  
10 pandemic, what am I going to have to do to get you back  
11 in when it is over? And so -- I mean, I think that's a  
12 valid concern. If somebody's looking at going back to  
13 prison for the rest of their life, and I let them out on  
14 a leg monitor, you know, common sense says some  
15 percentage of people are going to cut those leg monitors  
16 off and I'm maybe not going to get them back without a  
17 shootout with cops.

18           And so, I've got to think about that, as I'm the  
19 judge, you are throwing the keys to me and asking me to  
20 let people out of jail who -- some of your -- some of  
21 these people who are over 50 and have these comorbid  
22 conditions also have very violent criminal histories.

23           And so, I not only have to think about the  
24 danger to the community if I let them out, but I have to  
25 think about can I lawfully get them back, you know? And

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1 that's -- that is where I've got -- even misdemeanor  
2 convictions, like evading arrest or detention, I think  
3 that becomes relevant. Resisting arrest.

4           So I've got some concerns about releasing people  
5 in a pandemic and getting them back without losing life  
6 and limb trying to get them back in jail.

7           MS. WOODS: Of course, Your Honor.

8           THE COURT: So if you could just answer my  
9 question about if I've got a parole warrant, to me that  
10 is still the criminal justice process working its way  
11 through. So is it appropriate for a federal court judge,  
12 even in a pandemic, and even if we find constitutional  
13 violations, to let somebody out of jail? I mean, just  
14 talk to me about that, because I -- I'm acknowledging  
15 that everybody in this whole world, even the worst crime  
16 committed, you have got absolute constitutional rights.  
17 But there are some very practical concerns I have about  
18 letting out -- you know, some of your named plaintiffs  
19 have some really bad criminal records.

20           MS. WOODS: Your Honor, I mean, I think that  
21 the -- the most straightforward answer to that is the  
22 fact that, if the Court undertakes the process we've  
23 proposed, and looks and tries to balance -- which, again,  
24 I really think this Court is -- is the body to do this,  
25 to balance the danger that the Coronavirus presents to

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1 them in their Eight and Fourteenth -- well, Fourteenth  
2 Amendment rights, and the danger to public safety and  
3 flight. And the Court, we absolutely believe and  
4 concede, will, in many cases, conclude that the public  
5 safety risk outweighs the risk to their health and  
6 safety. And in that case, the petitioner wouldn't be  
7 released. That's how we've conceived of this. And so --

8 THE COURT: Okay. All right. So you  
9 acknowledge -- you -- I just want to make sure we're on  
10 the same page. Because when we had our first conference  
11 call, and I kind of was trying to get my arms around this  
12 case, my recollection is that we had sort of three groups  
13 of people.

14 We had people 50 and over, people medically  
15 vulnerable, as listed in your petition; which was a  
16 broader definition than that listed by the CDC, and then  
17 sort of everybody else. And my -- my clear recollection  
18 was that -- was that the goal was that we don't just let  
19 the over 50s and the medically vulnerable out of the  
20 jail; that you really want me to clean the whole jail  
21 out.

22 MS. WOODS: I think that that may have been  
23 inartful drafting in Paragraph 9 of our original  
24 complaint, Your Honor. Our request for relief -- we've  
25 always intended to be limited to the medically

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1 vulnerable -- the habeas relief, excuse me, to be limited  
2 to the medically-vulnerable people who are at the most  
3 risk, who are, again, conditioned on a finding that  
4 public safety doesn't trump that risk.

5 THE COURT: Okay. That is very helpful.  
6 Because I felt like that was -- that was very difficult  
7 relief for me to conceive of. So if you-all have dialed  
8 that back, that is very helpful. Thank you.

9 MS. WOODS: And, Your Honor, I think it is  
10 right, we've -- in our amended order we offer this sort  
11 of two-step process to maybe -- to get the habeas  
12 petitions going. Our original complaint's prayer for  
13 relief did have some of this conditional language, but  
14 I -- upon further review, I did see that Paragraph 9 of  
15 our complaint misstated things. And so I do apologize  
16 for the confusion.

17 THE COURT: No problem. That is helpful.

18 MS. WOODS: Great.

19 So then I just -- to offer again, that the Court  
20 has brethren in the Eastern District of Michigan,  
21 Southern District of Florida, the District Court for  
22 Massachusetts, and Northern District of Ohio. And just  
23 yesterday, the Central District of California. These are  
24 all courts that have set up some version of a process  
25 wherein medically-vulnerable people facing danger because

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1 of the COVID outbreak will have their release considered,  
2 and in -- in a process where objections can be lodged, a  
3 process where petitions will be undertaken; they have set  
4 schedules to do this.

5 And so, again, we -- we acknowledge fully that  
6 this is a big ask, but it's -- it is a big ask for a very  
7 big reason, Your Honor.

8 THE COURT: Well, I understand there are lives  
9 on the line, and that hopefully we'll never see this  
10 again in our lifetime. So -- and it is helpful to remind  
11 the Court that we would only reach this if we found  
12 constitutional violations.

13 Let me ask you, you are talking about these  
14 other cases in these other courts. Do they -- you know,  
15 if I -- if I -- do they consider the -- the victims of  
16 these cases?

17 MS. WOODS: Absolutely, Your Honor. I can't  
18 claim to know intimately the mechanics of each of those  
19 cases in the same way that I know our proposal. But I  
20 know that there is an opportunity to object, and I  
21 presume that those objections are going to stem from the  
22 same public safety and victim safety concerns that the  
23 Court is expressing. But I am happy to provide more  
24 information on that to the Court.

25 THE COURT: If that becomes necessary, I will



1 certainly reach out to you.

2 MS. WOODS: Great. Okay. So that's actually  
3 covered, I think, some of the important questions I  
4 wanted to be sure to answer for the Court about the  
5 habeas relief. And so we've actually gotten through a  
6 lot of the rest of what I wanted to be sure to say. But  
7 I'm just going over my notes for one moment.

8 THE COURT: Sure. Absolutely. Take your time.

9 MS. WOODS: Your Honor, there is one more point  
10 on -- that kind of touches both the public interest and  
11 the mechanism of release relief that I just want to be  
12 sure that I've spoken to. And that is the concern that  
13 the Court expressed about people who -- who have been  
14 exposed to COVID-19 in a jail, going out, and what -- how  
15 can that, sort of, safely be managed. I just want to  
16 underscore -- I stated it a second ago.

17 The epidemiological advice is that that is  
18 actually still better for community transmission, to get  
19 someone out of the jail environment. I also just want  
20 to --

21 THE COURT: Now, does that -- when you say that,  
22 are you speaking about people who are at risk or are you  
23 asking me to take people who have been actually confirmed  
24 and are in single cell -- my understanding from the  
25 testimony was that people who actually have the COVID

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1 virus are -- or I may be saying that wrong, COVID-19, are  
2 in single cells and isolated, and getting their medical  
3 treatment.

4 Are you asking me to let people out who are  
5 actively positive into the community? Because I do have  
6 some concerns about that.

7 MS. WOODS: So two things on that. The first is  
8 that -- we actually heard testimony that people are  
9 considered in quarantine in entire pods and multi-person  
10 cells. So it -- I think there is a factual record issue  
11 about how many people are actually in single cells. I  
12 don't think it is all of the case, but --

13 THE COURT: Well, and I'm not questioning  
14 about -- and just so we're on the same page, I'm not  
15 talking about people who are quarantined to see if they  
16 develop symptoms. I'm talking about people who have  
17 actually -- we definitely know they have the COVID-19.

18 MS. WOODS: Okay.

19 THE COURT: Are you asking me to release those  
20 people into public resources?

21 MS. WOODS: I'm asking you to release them  
22 consistent with Dr. N's advice from yesterday, where she  
23 said it actually is safe and appropriate if -- unless  
24 they have severe symptoms -- to release people. And both  
25 Dr. N and Patrick Jones described for the Court that that

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1 is a process that they already have. They -- they know  
2 how to discharge people, give them instructions.

3 The Court heard about the -- the pains that  
4 Mr. Bailey and his family are going to, to abide by those  
5 instructions.

6 I wanted to say something on this point, because  
7 it is important to me, Your Honor. And that's State  
8 Intervenors asked some questions about this, that seemed  
9 to suggest -- when they were questioning Dr. Cohen,  
10 seemed to suggest that we can't trust people to go home  
11 and self-isolate because they -- they are the kind of  
12 people who stepped foot in a jail. And that because we  
13 can't monitor their self-isolation, that there's just no  
14 reasonable way to trust this.

15 First, that's just Counsel's speculation. That  
16 is not consistent with what the Court's now heard from  
17 the actual medical professionals who work in the jail.

18 THE COURT: Well, I don't know that I've heard  
19 any testimony about how people behave -- I mean, I --  
20 I -- Mrs. Bailey, it sounds like her family is being very  
21 responsible. But, I mean, you know, I -- I go to the  
22 grocery store, and people who are not convicted of  
23 violent felonies are not socially distancing.

24 So -- now, I'm not saying that because you have  
25 felony convictions that makes you a terrible person, who

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1 will never follow rules of etiquette. But I do think  
2 this -- it is not completely ridiculous to think that  
3 perhaps people who have not followed laws, will not  
4 follow the rules of etiquette. Certainly not everybody.  
5 That doesn't always apply. Some of the convictions for  
6 these folks are from the 1980s. But, you know, I don't  
7 know that somebody who can stick a gun in somebody's face  
8 is -- is going to be super concerned about keeping  
9 society safe from the virus. I think that's a fair  
10 question.

11 Now -- and I don't want to paint everybody with  
12 a brush, because not everybody who's done bad things is a  
13 bad person. Some good people do bad things; some bad  
14 people do good things. But I think it is a fair question  
15 to -- to, you know, wonder if, if we have people who have  
16 broken the laws, are they going to follow society's laws.  
17 I think that is a fair point.

18 Yeah, go ahead.

19 MS. WOODS: Okay. And sure, Your Honor. But a  
20 couple of things that are really important to say about  
21 that.

22 The first is that we know they can't socially  
23 isolate in the jail. And so whatever speculation we have  
24 about their ability to prevent transmission to others at  
25 home, we know that they can't do that in this

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1 environment.

2           The second is that -- I just -- I -- I don't  
3 fully agree that the same logic about general law  
4 abidingness, from the general world that we know, applies  
5 when we're talking about whether people care about  
6 themselves and their families getting sick with this  
7 very, very scary disease. And so I just think --

8           THE COURT: Well, and possibly on a human level  
9 you have people -- I mean, you are not talking about --  
10 so taking -- I'm picking out an absurd result. But let's  
11 take a rather ridiculous example of an armed robber.  
12 Someone who's been convicted of running up to someone  
13 with a gun, taking your money at gunpoint. I think it is  
14 a fair question to ask if that person is going to abide  
15 by society's other rules that we all need to abide by to  
16 keep themselves safe.

17           Now, I think on a human level, if you are at  
18 home with people who you love and care about, that's  
19 probably not the same person you stuck a gun up to. And  
20 so probably you are going to be more prone to follow  
21 society's rules, because you don't want the people you  
22 love and care about at your house to get sick.

23           So I agree with you. I mean, I don't know that  
24 you can paint it with a broad brush, but I think it is a  
25 fair concern when we're talking about public safety. I

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1 think there are going to be some people, certainly not  
2 all, who, if we released them from the jail, would not  
3 follow the rules. I don't know that it would be any  
4 higher than we see in society, in general. But I -- I'll  
5 tell you, I have concerns from what I read in the news --  
6 on the Dallas news a couple of weeks ago, we have  
7 something called a Katy Trial. And it had people  
8 shoulder to shoulder in the middle of a pandemic, and  
9 they're not socially isolating.

10 And I don't know what anybody's criminal record  
11 was. I don't know that that is probative. But these  
12 were just ordinary people not doing what they're supposed  
13 to do to survive. And they've got children and family  
14 members that they should be thinking of, too, and they're  
15 just not.

16 So I think criminal record or no, there are  
17 going to be some percentage of people, if I granted you  
18 relief, who are going to get out and infect people in the  
19 general community. I think that is just a given from  
20 just the number of people. Not saying that their  
21 criminal record makes them more prone to do that.  
22 Although, I think -- I think -- you know, I think that --  
23 that is kind of a concern if you have people who -- I  
24 mean, this is -- you know, it is not a trial where we're  
25 talking about improper character evidence here in front

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1 of a jury.

2           You know, if you have -- if you have -- okay.  
3 So take, for example, one of your named plaintiffs, I'm  
4 not kidding here, has a theft of a corpse conviction. I  
5 had to look it up. I don't even know what that is. And  
6 I was a prosecutor for, like, years. So -- you know, he  
7 has a bunch of burglary of vehicles and burglary of  
8 houses, and armed robbery and agg assault, serious bodily  
9 injury. And so is it fair for the Court to wander if  
10 that guy's going to care about socially distancing?  
11 Yeah, I think that's fair. I think that's a fair  
12 question.

13           MS. WOODS: Certainly.

14           THE COURT: You have also got another plaintiff  
15 who had a conviction from 1989, and he seems like he's --  
16 you know, he's -- he's made some mistakes in his life,  
17 and gone on and -- I don't have any -- I think that guy  
18 is probably a whole lot more likely to follow the rules  
19 of society. Because he did something when he was 20, I  
20 don't think that makes him a terrible person. And maybe  
21 I'm -- I'm a little less frightened about releasing him  
22 to the general public.

23           But yeah, I do think that's a fair question to  
24 wonder, if you have somebody with a record as long as my  
25 arm, if they are going to do what we need them to do,

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1 because they're -- people aren't going to know in the  
2 grocery store, you're not going to know in Kroger, when  
3 you are grabbing bread, if this guy's fresh out of Lew  
4 Sterrett and doesn't care about the rest of us.

5 So I -- if you could address that, I think that  
6 would be helpful.

7 MS. WOODS: Certainly, Your Honor.

8 So I think the first -- the first point is that,  
9 if the Court were evaluating in -- you know, in the, sort  
10 of, proposal that we've presented, if the Court or the  
11 magistrate court was evaluating somebody's petition and  
12 concluded that they couldn't be trusted to ensure public  
13 safety, and that that was of greater risk than their own  
14 risk being in jail, then they wouldn't be getting  
15 released. So that's the first point. And --

16 THE COURT: Well, I guess my question is, when  
17 you started talking about this, you made it sound as if  
18 that were not a fair and legitimate inquiry at all. Do  
19 you concede now that that is a legitimate inquiry?

20 MS. WOODS: I do, Your Honor. I took issue with  
21 the suggestion that people don't care about the  
22 well-being of their own families just because they've  
23 stepped foot in a jail.

24 THE COURT: And I agree with that. I have  
25 members of my own family who have, in their youth, done



1 stupid stuff and gone on to live law-abiding lives, and  
2 love their family and are now good citizens. I don't  
3 think that having a run-in with the law at some point  
4 necessarily makes you a bad person. Or makes you more  
5 prone to not follow the rules, you know, later in life.

6 But, you know, if you are talking about a --  
7 a -- somebody who is, what I would call, a habitual  
8 criminal, I think it is a fair inquiry.

9 MS. WOODS: Sure. Then the only other point to  
10 underscore is that the actual -- the epidemiological  
11 reality is that it is still encouraging more community  
12 spread of this disease by allowing more people to be  
13 congregated in the jail. Just --

14 THE COURT: Okay.

15 MS. WOODS: Your Honor, if I could just have a  
16 moment to go over my notes and see if there is any  
17 last...

18 THE COURT: Absolutely.

19 MS. WOODS: Thank you.

20 Your Honor, just a couple of points. I'm  
21 looking at my notes and seeing that -- one factual detail  
22 that the Court was curious about, about where the  
23 positive cases are housed when they are all in single  
24 cells. The record shows that there are positive cases of  
25 people with COVID-19 who are in tanks in the North Tower

1 that are not single cells. So I wanted to confirm that.

2 And I think that Your Honor has heard  
3 sufficiently about the non-habeas injunctive relief that  
4 we're seeking via 1983. And so, I think I'll just close  
5 with -- with just the emphasis again, Your Honor, that  
6 this case raises legal issues, seeks relief not hindered  
7 by the Valentine stay order. Plaintiffs brought this  
8 case because of just a grave and considerable threat to  
9 their well-being. And that regardless of the  
10 difficulties and the characterizations and the realities  
11 of what people who are currently in this moment, sitting  
12 in the Dallas County jail, regardless of what they've  
13 been accused or convicted of, the Constitution and the  
14 Supreme Court have made it clear that we're just not  
15 permitted to leave them there and let nature take its  
16 course. We're just not.

17 And so, this is -- this is -- we acknowledge the  
18 difficult questions before the Court. We're grateful for  
19 the Court's really detailed and close and patient  
20 consideration of the case. These are exactly the kinds  
21 of moments that people like the plaintiffs and  
22 Petitioners in this case turn to courts like this on.  
23 And we're very grateful for the care towards their rights  
24 and their humanity that the Court's shown. So thank you.

25 THE COURT: Well, thank you. I appreciate that.

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1 And I want you to -- want to tell you, I won't get a  
2 chance probably after we finish all this to say this. I  
3 want to tell you I thought your team did an outstanding  
4 job presenting this. It's easy to forget that these are  
5 real people and not just numbers. And so the  
6 spreadsheet, each line is a little life, with a family  
7 that cares about them, and I get that. And I -- I think  
8 you guys have done a great job telling me a good story  
9 about people so that I don't forget that. So thank you  
10 for what you are doing.

11 MS. WOODS: You're welcome.

12 THE COURT: And with that said, let's take a  
13 ten-minute break, and we'll come back and, Defendants,  
14 we'll let you start your opening [sic].

15 Court is in recess until -- it's 5:17, how about  
16 5:30 we'll come back.

17 (Brief recess.)

18 THE COURT: Back on the record in the Dallas  
19 County, et al, case.

20 Defense Counsel, we're ready for your closing.

21 MR. STEPP: Thank you, Your Honor. May it  
22 please the Court.

23 I greatly admire my colleagues who are opposing  
24 counsel in their dedication to promoting the efficient  
25 and effective care of inmates during COVID-19. I know

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1 that my colleagues representing Defendants here share  
2 that sentiment. And I know that the sheriff and Dallas  
3 County commissioners are very interested, and working  
4 hard to comply with their constitutional duties.

5 And best way to do that here is for the Court to  
6 deny Plaintiffs' application for temporary restraining  
7 order, preliminary injunction, and writ of habeas corpus.

8 Let's begin with where Ms. Woods left off:  
9 Habeas.

10 First of all, as Mr. Biggs explained this  
11 morning, habeas relief is not available for class  
12 members, because we're nowhere close to certifying a  
13 class. Second, Ms. Woods suggested that blanket relief,  
14 and releasing a whole bunch of people, is not part of  
15 Plaintiffs' request at this time. I would refer the  
16 Court to Document 72, Plaintiffs' prefer -- proposed  
17 order.

18 Paragraph 8C suggests there should be an  
19 evaluation of whether the release of subclass members  
20 permits adequate social distancing, and whether other  
21 categories of prisoners must be released to provide for  
22 compliance with CDC guidelines. And so I -- I would just  
23 refer the Court to that.

24 The other concern the Court expressed was about  
25 micromanaging, with respect to habeas corpus. And so

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1 Paragraph -- in other words, Plaintiffs' counsel  
2 suggested that if the Court granted habeas relief, it  
3 would not be micromanaging various aspects of the  
4 operation of state jails. And that's just not quite  
5 true.

6 Paragraph 8B of Plaintiffs' proposed order  
7 suggests that there needs to be a housing or public  
8 support plan for released subclass members who don't have  
9 a space to readily isolate. The Court referred to that  
10 previously as providing hotel rooms.

11 So perhaps we could pull up Ms. David's  
12 PowerPoint at this time.

13 While that is happening, let me make one other  
14 introductory comment. There has been the suggestion that  
15 the Fourteenth Amendment inquiry for these pretrial  
16 detainees is quite different from the Eighth Amendment  
17 inquiry for convicted inmates. Cleveland versus Bell,  
18 938 F.3d 672, 676 says those two inquiries; namely the  
19 deliberate indifference inquiry under the Eighth  
20 Amendment, is functionally equivalent to the Fourteenth  
21 Amendment inquiry. That is not a new holding. It goes  
22 back to Hare versus City of Corinth, which is a 1996  
23 Fifth Circuit case.

24 THE COURT: Would you give me that Cleveland  
25 cite? I got 938 F.3d.

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1 MR. STEPP: 672, 676.

2 THE COURT: Thank you.

3 (Off-the-record discussion.)

4 MR. STEPP: So my colleagues suggested that we  
5 just don't know what's going on in the jail, because  
6 there's conflicting testimony. I would point out to the  
7 Court that a temporary restraining order or a preliminary  
8 injunction is not a discovery tactic. Plaintiffs are  
9 required to make a showing of an affirmative violation  
10 here, and they have not done so.

11 A temporary restraining order requires Plaintiffs  
12 to make a clear showing on each of the four elements: A  
13 substantial likelihood of success on the merits, a  
14 substantial threat of irreparable injury if the  
15 injunction is not issued; a showing that the threatened  
16 injury, if the injunction is denied, outweighs the harm  
17 that will result if the injunction is granted; and that  
18 the grant of an injunction will not disserve the public  
19 interest.

20 Let's advance, please.

21 Let me -- also, let's revisit Bell versus  
22 Wolfish, the Supreme Court case. Respectfully, my  
23 colleague has the case backwards. Note 27 of Bell versus  
24 Wolfish says, standards like those promulgated by the CDC  
25 are not determinative of the constitutional standard.

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1 The context in which the Court said that was a claim by  
2 inmates, pretrial inmates, that the jail in which they  
3 were housed was overcrowded and, otherwise, the  
4 conditions of their confinement were improper.

5 They cited --

6 THE COURT: I actually read that last night  
7 about the New York City jail, yes.

8 MR. STEPP: That is right.

9 And so they cited to various standards.  
10 Standards for health services, and -- the American Public  
11 Health Association, a Sheriff's Association manual. And  
12 the Court said, these standards, which would presumably  
13 include the CDC standards, are not indicative of  
14 constitutional norms.

15 Importantly, the Bell Corp. continued to reject  
16 Plaintiffs' Fourteenth Amendment claims of improper  
17 conditions of confinement. What that means is, the  
18 Constitution may permit standards below published  
19 guidance, not that the published guidance is the minimum.  
20 That's consistent with the exact language in Valentine,  
21 which said not that CDC is a minimum standard, but that  
22 there is no precedent for going beyond CDC's guidelines  
23 as a constitutional minimum. And so, Plaintiffs have  
24 Bell versus Wolfish backwards.

25 They are correct, however, that the sheriff's

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1 March 16th e-mail did not attach the March 23rd  
2 guidelines for correctional institutions.

3           So let's talk specifically about the standard  
4 that the plaintiffs must show: A condition or practice  
5 not reasonably related to a legitimate governmental  
6 interest. I would point the Court to Valentine,  
7 beginning on Page 6.

8           The Texas Department of Criminal Justice is  
9 likely to prevail on the merits of its appeal. That is  
10 for two reasons. One, after accounting for the  
11 protective measures TDCJ has taken, the Plaintiffs have  
12 not shown a substantial risk of serious harm that amounts  
13 to cruel and unusual punishment; and, two, the district  
14 court committed legal error in applying Farmer against  
15 Brennan. And so the Court can read for itself the  
16 remainder of Valentine, and I trust the Court will  
17 understand the standard there.

18           As to the subjective component of the standard  
19 for deliberate indifference, however, the standard is  
20 that the defendant knew and consciously disregarded a  
21 substantial risk, right? It's criminal recklessness.

22           THE COURT: So there is actual knowledge, right,  
23 actual knowledge required?

24           MR. STEPP: Actual knowledge of inadequate  
25 measures and -- and deliberate disregard of pursuing

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1 those measures.

2 And so what Plaintiffs are doing, when they talk  
3 that -- talk about the Dallas County jail has not acted  
4 swiftly enough, is they're inviting this Court to make  
5 the same error that Judge Ellison, whom I admire greatly,  
6 made in applying Farmer versus Brennan. The Court can  
7 see that discussion at the bottom of Page 6 of  
8 Valentine -- excuse me, at the bottom of Page 7.

9 Farmer treating inadequate measures as  
10 dispositive of Defendant's mental state is improper,  
11 because that conflates the objective and subjective  
12 components, and transforms the deliberate indifference --  
13 the -- the criminal recklessness standard of Farmer into  
14 civil negligence.

15 And so the Court should decline that invitation,  
16 because following Plaintiffs' argument is very likely to  
17 get this Court reversed in the same way the Fifth Circuit  
18 reversed Judge Ellison.

19 The next slide, please.

20 Next.

21 All right. We've covered that. Next.

22 Next.

23 All right. Let me just point out, the  
24 Valentine's plaintiffs -- I mean, the Court can compare  
25 the proposed order, Paragraphs 5 and 7, with the order in

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1 Valentine, as laid out in the Fifth Circuit opinion. And  
2 it can also compare the declaration that Mr. Biggs  
3 offered as evidence earlier today and see that they  
4 follow. TDCJ implemented many of the same protective  
5 measures that the Court here has heard that the Dallas  
6 County jail has implemented that the plaintiffs are  
7 asking for. And the Fifth Circuit held, if you account  
8 for those protective measures, the plaintiffs simply  
9 can't show an objective risk of serious harm.

10 Next slide, please.

11 Ms. David?

12 MS. DAVID: Thank you, Nick. Well done.

13 And I want to echo Mr. Stepp's comment earlier  
14 about how much we respect and appreciate the plaintiffs  
15 and the Court. And we know that this is a difficult  
16 matter, and so we -- we appreciate this. And I know our  
17 clients also appreciate the more information that they  
18 have, the better. So everyone is happy about that.

19 So I get the job of going through the evidence.  
20 And, unsurprisingly, I take issue with many of  
21 Plaintiffs' representations regarding the evidence. And  
22 I'm not going to address and nitpick every single one,  
23 because I know, from the comments that have been made  
24 throughout the case, that the judge has also been  
25 listening incredibly closely to the testimony. But I do

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1 want to make that clear so that no one ever  
2 mischaracterizes what I'm saying as every single thing  
3 that I didn't disagree with is something that I do agree  
4 with. So I just want to make that crystal clear. I'm  
5 not agreeing with anything that they said about the  
6 evidence, but I'm not going to nitpick everything.

7           One thing that I want to fix right upfront, just  
8 because I think it is really important, is there were  
9 repeated references to these eight-men tanks and cells.  
10 Mr. Jones testified -- at least Mr. Jones; it might have  
11 been in there a couple of other times -- that what those  
12 are are eight separate cells within one area.

13           So to the extent those were characterized as not  
14 being single cells, that -- I think that is a really  
15 important thing for me to make sure everybody  
16 understands. Because I do think that the -- the way it  
17 is -- described is confusing. And so, I would understand  
18 the confusion with that. But I just want to make sure  
19 that we all know what that is.

20           And then the other really important point that I  
21 want to address is, there's been a lot of testimony about  
22 the fact that -- that all of the COVID-19 positives have  
23 been placed in single cells. My understanding was that  
24 if that couldn't continue, there was a plan to  
25 cohabitate, as necessary, positives with positives.

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1 Which is in accordance with the CDC. I don't recall that  
2 that has happened, but I just wanted to make it clear,  
3 that if there is cohabitation, it was clear that those  
4 were being done per CDC guidelines; that that is a  
5 policy.

6 And then another just kind of broad thing to  
7 address is, that I do agree with Ms. Woods that there is  
8 a real difference in the evidence. And I do agree that  
9 the Court has to make credibility determination. And  
10 I -- I know that she knows we have made hearsay  
11 objections. And I get that there's no jury, but I do  
12 feel like I need to point out one more time, in  
13 particular, with respect to the Fly declarations, that  
14 what we're talking about there is an attorney who  
15 communicated with people in the jail and then summarized,  
16 under oath -- under her oath.

17 And I would argue that really the only thing  
18 that shows is that Attorney Fly had no issue at all  
19 communicating with clients in the jail. Because there  
20 were a lot of people she talked to.

21 And I would also -- and, of course, the Court  
22 knows this, but I just -- I need to say this, I --  
23 calling people who are in jail and asking them if they  
24 have any complaints about the jail, when there's no  
25 accountability attached, and there's no even concern at

1 all about lying, that is a real problem, and that is why  
2 we have hearsay rules. So I just ask the Court to really  
3 keep that in mind, especially with the Fly declarations.

4 And then I want to talk a little bit about  
5 Mr. Jones' testimony. I just want to point out this was  
6 all before April 3rd. A lot of his testimony was very  
7 consistent with the policies that we have said that we  
8 have in the jail, about how people are quarantined and  
9 how PPE was used and how that's evolved over time, as  
10 we've learned more and more about that. And I also want  
11 to point out his testimony that he did receive that  
12 initial bail hearing before a magistrate within 18 hours  
13 of book-in. And also about some mask usage even before  
14 April 3rd.

15 Next slide, please.

16 Officer Lewis, I want to point out a couple of  
17 things. Officer Lewis, you know, went back and forth on  
18 a couple of things, which is totally reasonable, given  
19 the situation and the -- the posture that we're in. But  
20 he did say, very clearly, that Sheriff Brown has  
21 instituted the following measures: Temperature checks,  
22 gloves and masks for guards, masks for everyone; signs on  
23 COVID-19, plenty of soap. I know that Plaintiffs don't  
24 like the bars of soap, but there's nothing wrong with the  
25 bars of soap. And he talked about how they can get more

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1 if they want. He talked about he gives them hand  
2 sanitizer upon request.

3 Contrary to some of the things that I heard  
4 earlier, he did know where the cleaning supplies were.  
5 In fact, I think he testified that the bleach was with  
6 the guards. Bleach and disinfectant readily available.  
7 He testified that inmates can clean whenever they'd like;  
8 no one would ever stop that.

9 He testified that there were multiple ways to  
10 seek medical attention and file grievances. And he  
11 characterized and testified about the extraordinary step  
12 of shutting down pods for professional cleaning. And  
13 then he also talked about, to Your Honor's point earlier,  
14 that the -- the fact that attorneys were working together  
15 to get appropriate people released, and he lauded those  
16 efforts.

17 Next slide, please.

18 Then we have Mrs. Bailey. And this -- that --  
19 just quickly, I want to summarize what she said.

20 She said that Mr. Bailey arrived at the jail at  
21 6:00 p.m. on Monday, April 6th. She said that Mr. Bailey  
22 was exposed to a cougher on Tuesday, April 7th. And then  
23 she said that Mr. Bailey was symptomatic as of Wednesday,  
24 April 8th, at 1:00 p.m.

25 So even assuming that we -- that he got the

1 COVID the -- at 6:00 p.m. when he checked into the jail,  
2 the strong -- their own expert opinion would suggest that  
3 there is no possible way he got COVID-19 in Dallas County  
4 jail.

5 Dr. Cohen's declaration and testimony is that  
6 the vast majority of patients begin showing symptoms  
7 within two and a half -- two and a half -- she had not  
8 been in the -- he had not been in the jail in two and a  
9 half days -- for two and a half days at 1:00 p.m. on  
10 April 8th, to 11 and a half days of exposure, with 97.5  
11 percent showing symptoms within 11 and a half days. So  
12 there are some people who show symptoms after those 11  
13 and a half days, but most of them are within that time  
14 period.

15 Typically infected -- this is -- again, I'm just  
16 quoting from Dr. Cohen. Typically an infected individual  
17 would become symptomatic around day five. So again, the  
18 most reasonable conclusion, and it's sad and I'm sorry  
19 that he has COVID. But to imply or to suggest or to  
20 testify that he got that in the jail is just not  
21 consistent with the science.

22 Mrs. Bailey also testified about the fact that  
23 bail review hearings were available; that she got one  
24 swiftly. And then she also testified about the fact that  
25 state and county officials went above and beyond to

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1 assist her. The elected district attorney talked to her  
2 and did what he could to help. The judge talked to her.  
3 The fact that anyone is claiming that state law remedies  
4 aren't available, that that evidence, coupled with the  
5 evidence in the record about how fast -- I mean, how so  
6 fast that the state courts are dealing with these habeas  
7 issues, is -- is just not credible.

8 Next slide, please.

9 Back to Dr. Cohen. And I know the plaintiffs  
10 don't want to talk about the New York system, but their  
11 expert relied upon his experience from the New York  
12 system. He based his recommendations, such as the  
13 50-plus recommendation on that system. I think these  
14 numbers are really important.

15 Rikers Island has about a thousand fewer inmates  
16 than Dallas County jail, but they have 367 inmates at  
17 Rikers Island, as of April 22nd, versus 80 positive  
18 inmates. And I know that has gone up. And I updated my  
19 slide as of yesterday, before the testimony. And I  
20 will -- that slide we'll show later, so I'm not trying to  
21 misrepresent that. But that -- that was apples to  
22 apples, actually. The 367, I think, was at the same  
23 time. But I did update that later.

24 At the time, two deaths at Rikers; no deaths at  
25 Dallas County. Rikers Island has over 2,000 inmates in

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1 quarantine; Dallas has less than 500. Rikers Island has  
2 800 officers who have tested positive, with ten deaths.  
3 Dallas County has 90 officers who have tested positive,  
4 with no deaths.

5 I don't want to be mischaracterized here. I'm  
6 not saying the fact that -- just the fact that no one has  
7 died means that everything is okay. That is absolutely  
8 not what I'm saying. But what I'm saying is, this goes  
9 to show that the practices that he's talking about and  
10 that he is implementing in New York are not necessarily  
11 going to help any more than what we are doing here. And  
12 Dr. Cohen's primary complaint all boiled down to he wants  
13 us to go beyond CDC guidance. And as Mr. Stepp  
14 summarized the case law, that is absolutely not required.

15 And then I just -- this is my pet peeve. I've  
16 got to point this out again. The pictures they keep  
17 showing over and over and over again, taken by an unknown  
18 person at an unknown time; they're referred to as the  
19 YouTube pictures, that is not good evidence of what's  
20 happening today in the Dallas County jail.

21 Next slide, please.

22 Here is what the credible evidence shows. The  
23 credible evidence shows that everybody's being screened  
24 at intake. Inmates enter through the sally port. They  
25 are -- their temperature is taken. If they say "yes" to

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1 certain questions, or their temperature is equal to or  
2 greater than 100.4 degrees, they are isolated and more  
3 screening happens.

4           If the screening indicates a risk, Parkland  
5 performs additional screening. And if they meet CDC  
6 criteria for screening -- I mean, for testing, the  
7 arrestee is tested. And that those results come back  
8 within one day. The testimony is also that there is  
9 appropriate PPE for everyone.

10           Next slide, please.

11           This slide shows the intake area and some of the  
12 measures that have been taken to try to promote social  
13 distancing.

14           Next slide, please.

15           So if the person is positive for COVID-19, you  
16 heard the testimony, Parkland classifies them as a  
17 patient-confirmed COVID, or PCC. They are moved to these  
18 specific areas, where they get a -- a higher level of  
19 care and where different PPE is used, as recommended. If  
20 they test negative, they are placed under monitoring.

21           Next slide, please.

22           Parkland administers all of the COVID-19 tests  
23 on-site at the jail. The determination of who should  
24 receive the testing is based on CDC guidelines. The test  
25 swabs go to the Dallas County Department of Health and

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1 Human Services for results. Dr. N, who testified, has --  
2 is also helping in these efforts.

3 I think there's some testimony that we haven't  
4 sought any guidance from health professionals. And I  
5 would just say, the strong weight of the evidence says  
6 the contrary, including from Dr. N about preparing that  
7 spreadsheet early on. The spreadsheet that was, I think,  
8 probably as broad as what Plaintiffs want. I don't know  
9 exactly. But she did use the over-50 guidance that is in  
10 excess of what the CDC requires. And she obviously works  
11 there, and is one of the people providing services to the  
12 inmates.

13 Next slide, please.

14 Law enforcement screening. I think that this  
15 was -- has been, you know, kind of banged into  
16 everybody's head. But again, they get their temperature  
17 taken. They have to wear masks. The inmates have to  
18 wear masks -- well, they are supposed to wear masks.  
19 They don't have to; that is wrong. I -- to the extent  
20 they do. Staff must wear masks.

21 Next slide, please.

22 Attorney, visitors. In-person visits, only  
23 attorneys. Virtual visitation: Anyone may visit with an  
24 inmate by video or phone that you need. All of the  
25 evidence and -- well, I shouldn't say all. The great

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1 weight of the evidence shows that that is absolutely  
2 happening.

3 Mrs. Bailey, I don't remember the exact number,  
4 but she talked to her husband, it sounds like, you know,  
5 pretty regularly throughout the day. The plaintiffs have  
6 talked to a whole lot of people in the jail. And if an  
7 attorney does come in to visit, though, their temperature  
8 is taken as well.

9 Next slide.

10 Here's just some pictures of that visitation  
11 area, what that looks like and what they see. The first  
12 slide is for the in-person. The second is for -- the  
13 first picture is visitation -- I'm sorry. The first  
14 picture is for in-person; the second picture is for  
15 virtual.

16 Next slide, please.

17 Here are those most -- much-discussed kiosks in  
18 the pods. This is what they look like. And you heard a  
19 lot of testimony about how those are used, so I won't  
20 belabor that.

21 Next slide, please.

22 Again, temperature taken for all staff and  
23 contractors. And all staff and contractors are required  
24 to wear appropriate PPE.

25 Next slide, please.

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1           The PPE for inmates. The masks are distributed  
2 in accordance with CDC guidelines. And I think that this  
3 has been belabored, but I will mention it again. CDC  
4 does not require masks for everyone. But they do  
5 encourage it, and we are doing it for everyone.

6           Inmates with additional responsibilities are  
7 provided with appropriate PPE. One example would be  
8 the -- what they call the trustee inmates, who do  
9 cleaning or meal service, have additional PPE. They're  
10 told to wear the PPE at all times. And the PPE is  
11 provided at no cost.

12           Next slide, please.

13           So here, this -- you just heard Mr. Jones talk  
14 about this. So again, I won't belabor it. But we have a  
15 policy for how we deal with patients under monitoring,  
16 and this is how they are dealt with. They are  
17 examined -- interviewed and examined daily for 14 days.  
18 Unless there is another incident, and then that -- that's  
19 extended. They get face masks. And if they're  
20 symptomatic, they are tested in accordance with CDC  
21 guidelines.

22           Next slide, please.

23           Parkland employees with COVID. I think Your  
24 Honor asked about this. They're not allowed in the jail.  
25 Parkland conducts tracing to determine who they came in

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1 contact with. And inmates who have come into contact  
2 with the employee are quarantined, or under, you know,  
3 the PUM, patients under monitoring.

4 Next slide, please.

5 So this is -- this is the CDC guidelines, a -- a  
6 summary of some of the things that they suggest. And I  
7 could go item by item and discuss the Plaintiffs'  
8 interpretation of the CDC guidelines, many of which I  
9 disagree with. But I know from the comments that the  
10 judge has asked, and the questions that you have asked,  
11 Your Honor, and comments you have made, that you are  
12 reading them very closely. So I just urge you, you know,  
13 to continue doing so, because we're very comfortable with  
14 them.

15 I do want to point out that Valentine  
16 specifically says that these CDC guidelines inform these  
17 state and local decisions. They do not have the force of  
18 law. And then would be -- in the actual guidelines,  
19 clean your hands often. You can do that with bars of  
20 soap. Avoid close contact. I believe, actually, the --  
21 the CDC guidelines that Ms. Woods read contained the  
22 language, quote, ideally six feet. That is the ideal.

23 And as Your Honor knows from the case law, the  
24 ideal is not the standard for an injunction. But that's  
25 the ideal; that is what we all would love to happen for

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1 all of us, all the time. But it doesn't happen all the  
2 time for anyone anywhere, that I know of.

3 The specific guidelines, I talked about this,  
4 contemplate cohorting. And there are very narrow -- a  
5 very narrow subclass of inmates for which N95 masks are  
6 suggested. So I just wanted to highlight that for the  
7 Court as well. That that's not at all what they say  
8 everyone needs. In fact, there's some dispute among  
9 people about whether it's good -- when it is good to do  
10 it and when it is not so good.

11 Cover coughs and sneezes. As Mr. Jones  
12 testified, the -- all of the detainees are watching the  
13 news all the time, and they know that coughs and sneezes  
14 are how it is transmitted. And then clean and disinfect.  
15 And you have heard all of the evidence on how readily  
16 available all of that cleaning equipment is, and about  
17 how professional services are used where appropriate.

18 Next slide, please.

19 Posted information. The sheriff's office has  
20 posted information throughout the facility recommending  
21 social distancing. Again, trying to maintain that ideal  
22 of six feet when possible. We -- we can't put everybody  
23 in bubbles. That -- that would be awesome for everybody,  
24 but we can't. The use of PPE and also proper personal  
25 hygiene are all encouraged.

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1           Then on the next slide, please.

2           Here's some of the pictures that are in evidence  
3 showing some of the signs and guidance that have been  
4 placed throughout the jail. And it talks about how it  
5 spreads; that you should wash your hands; don't touch  
6 your eyes, nose, and mouth. Cover coughs and sneezes,  
7 throw away used tissues, wash your hands with soap and  
8 water for at least 20 seconds. Try to maintain a six-  
9 foot distance between yourself and other inmates, medical  
10 staff, and officers. And then people who have severe  
11 underlying medical conditions, like heart and lung  
12 disease or diabetes, are at higher risk.

13           Next slide.

14           THE COURT: I've got a question for you.

15           So nothing I'm seeing so far is posted in  
16 Spanish. And we have a significant number of people who  
17 speak Spanish.

18           MS. DAVID: You know, Your Honor, you are such a  
19 mind reader. Because if you'll take a look at this  
20 slide, you will see -- it is up right now, and I'm not  
21 sure how easy it is to read. But this droplet isolation  
22 and airborne isolation sign, about how to wash your hands  
23 and use face masks, are both in Spanish. So yes, Your  
24 Honor. So well done. You are right there.

25           But the other thing that I would point out is

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1 that the -- there's the banner that runs across the  
2 inmate television, and that banner is on both the English  
3 channel and the Spanish channel. And I know that  
4 Plaintiffs were a little dismissive about our discussion  
5 of news as a source for understanding how to protect  
6 ourselves, but frankly, you know, that's where I got my  
7 information before this case. And I think that's where a  
8 lot of people are getting their information.

9 But I do want to say that in addition to the  
10 news that they're watching, these -- these -- these --  
11 you'll hear -- going to see it in a minute, the banners  
12 are on those channels so that they can see those as well.

13 If you could show the next slide, please.

14 This shows -- I think this is -- is probably  
15 more tailored to the jail staff. But it shows the masks.  
16 But then it also -- this is where -- I think this is one  
17 of the doors, the secure areas, you know, where they take  
18 the inmates. And then the inmates -- they lock one door  
19 until you get to the other door -- kind of for security  
20 purposes. And you will notice that this sign reminds  
21 everyone to practice social distancing in that space.  
22 And limits occupancy to eight because of that social  
23 distancing.

24 Next slide, please.

25 And here is -- is that banner. It is an example

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1 of some of the -- the material that they receive from the  
2 TV. Clean your hands often, wash your hands often with  
3 soap and water for at least 20 seconds, especially after  
4 blowing your nose, coughing or sneezing. Avoid touching  
5 your eyes, nose, and mouth with unwashed hands. Avoid  
6 close contact. Avoid close contact with people who are  
7 sick. Stay on your bunk as much as possible. Put  
8 distance between yourself and other people. Remember  
9 that some people without symptoms may be able to spread  
10 virus. This is especially important for people who are  
11 at higher risk of getting very sick.

12           Next slide, please.

13           Sanitation. I -- I guess I've mentioned this a  
14 few times, but I do think it is incredibly important,  
15 because this is what I stress in my daily life as well.  
16 Wash hands, wash hands, wash hands. This is -- it's --  
17 everything is available. The bleach and disinfectant are  
18 available. There's sinks. No one is ever charged for  
19 cleaning supplies, soap or water. No one is ever charged  
20 for laundry. There's a sanitation officer who is  
21 responsible for administering the cleaning supplies and  
22 PPE, ensuring sufficient stock.

23           Next slide, please.

24           Here is just an example of one of the areas  
25 where the -- the cleaning agents are in the jail. All

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1 due respect to Officer Lewis, I took a tour of the jail  
2 on Monday. Walked through many areas. All of this was  
3 really easy to see. It is not hidden at all.

4 Next slide, please.

5 Soap. This, I think, Officer Lewis testified he  
6 has at his desk. There it is. There's also the  
7 disinfectant that -- I think that was the Tuff Green  
8 stain remover. And some other cleaning supplies there.

9 Next slide, please.

10 The meals are -- are delivered directly to the  
11 cells by inmates or staff wearing appropriate PPE. So  
12 they don't have to move around and contaminate areas, to  
13 limit that moving around.

14 Next slide, please.

15 Here is our post-COVID-19 response time line.  
16 The -- on March 16th, the sheriff sent that letter to the  
17 staff with some COVID-19 guidance. And I urge you to  
18 read that, and the attachments, to see what all everyone  
19 in Dallas County jail received, on top of what they heard  
20 from their superiors.

21 March 17th, 2020, the officer sent a letter to  
22 local law enforcement, encouraging cite-and-release for  
23 low-level offenses. On March 23rd is when Dr. N began  
24 working on that list, prioritizing high-risk inmates.  
25 Which again, I believe her testimony was, went beyond the

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1 CDC guidelines and used, I think, that 50 and up.

2           Then that was given to the sheriff on March  
3 25th. Parkland -- she believes it was. And then  
4 Mr. Jones confirmed that on March 25th that high-risk  
5 list went to the sheriff. The sheriff forwarded that to  
6 the judges.

7           Next slide, please.

8           Some other proactive steps that have been taken,  
9 the sheriff and the judges set up a process to sign  
10 personal bonds at the jail. They did this pretty early  
11 on, rather than transfer prisoners to the courthouse.  
12 Before, they had to go over and sign things in person.  
13 The sheriff helped facilitate a process where everybody  
14 did not have to do that.

15           The vast majority of folks these days who are  
16 getting those bail review hearings by the misdemeanor  
17 judges, they're occurring, quote/unquote, on paper, so  
18 they can get those personal bonds. There are still some  
19 hearings happening in the jail. I know you heard  
20 testimony about that. That is when attorneys request  
21 those in person. Some of the attorneys are not  
22 comfortable with the technology, and so the judges and  
23 the district attorney do what they can to facilitate that  
24 and -- as safely as they possibly can.

25           You also heard some testimony about the DA

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1 asking the judges to consider release on those drug  
2 cases, where the lab results were taking a long time, to  
3 get those folks out of the jail. You also heard  
4 testimony about the -- the district attorney and public  
5 defender and the private Defense Bar working together to  
6 agree to the release of inmates wherever possible, to  
7 speed up that process.

8           The judges working with the attorneys and with  
9 that list that Parkland created to evaluate high-risk  
10 defendants' cases and determine whether pending charges  
11 could be released.

12           That goes to your questions earlier, Your Honor,  
13 about what's going on in the state court system. And  
14 again, I would say that the evidence shows they --  
15 they're doing everything they can. And as you have seen,  
16 and will continue to see when you go through the NCIC  
17 data, a lot of these people are in jail because of the  
18 very reasons -- or very concerns that you yourself have  
19 raised about safety to the community, which -- and I know  
20 that Plaintiffs minimized this, what state law requires.  
21 But state law does require a consideration of the victim  
22 and the community. And the judges and the district  
23 attorney and everyone involved take that very seriously  
24 as well, but they're doing what they can.

25           Next slide, please.

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1           So in summary, the sheriff has met all of the  
2 CDC guidance and more. The policies are -- are -- are  
3 good policies. She sent that guidance. She asked the  
4 LEAs to reduce arrests. She provided information to the  
5 judiciary.

6           Dallas County Commissioner's Court is actively  
7 engaged in oversight. I think you heard some testimony  
8 about, in particular, Commissioner Daniel, who comes to  
9 these meetings and is actively engaged. Commissioner  
10 Price, I -- I mean, I don't even know how to describe his  
11 commitment. He is in the jail all the time, morning and  
12 night. And it -- I will tell you, if some of the things  
13 that the plaintiffs said were happening were actually  
14 happening, his conversations with Chief Robinson would be  
15 very different than what you heard.

16           And then you have Parkland advising. And you  
17 heard testimony from Pat Jones today that the medical  
18 policies that are followed in the jail are Parkland  
19 policies, including their written infectious disease  
20 policy. But in any event, as Your Honor I am sure is  
21 well aware, the law does not require there to be written  
22 policies. And there is ample evidence that the practices  
23 and policies are to follow CDC guidance where we can and  
24 where that is possible.

25           Finally, you have District Attorney Creuzot, you

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1 heard testimony about that. About how he's getting  
2 engaged trying to help people, and working with defense  
3 attorneys to notify them of cases where they should be  
4 asking for a personal bond, because no one's going to  
5 oppose it.

6 Next slide, please.

7 Again, just to go through again the people on  
8 the ground that you've asked questions about. The -- all  
9 of the judges have been engaged, but I particularly want  
10 to point out Presiding Judges White and Kemp. Carmen  
11 White is the chief -- or not chief; that is the wrong  
12 terminology -- presiding judge of the courts of -- the  
13 county courts -- county criminal courts at law. Sorry,  
14 it is really hot in here. Our air conditioner cuts off  
15 at 5:00. And Judge Tammy Kemp is provided -- is the  
16 presiding judge of the district court judges.

17 And there's evidence in the record of how hard  
18 they are working to get these habeas decisions out  
19 quickly, and to evaluate folks and get out the people  
20 that they safely can release. There's evidence about  
21 magistrates setting bail quickly. Thirty judges, there  
22 are thirty judges conducting these bail review hearings  
23 on a regular basis.

24 And then you also heard testimony that at any  
25 given time there are approximately 5 to 20 people -- not

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1 percent, people -- in jail on any given day who are  
2 charged with non-violent, non-DWI misdemeanors with no  
3 holds. And I would -- that -- that's a pretty low  
4 number. And I'm sure that Plaintiffs would respond,  
5 well, it should be zero. But I do want to point this  
6 out.

7           Those are rolling, right? So every day some of  
8 those people get released and more people come into jail.  
9 So at any given time, there are going to be people  
10 awaiting -- going through the process, right, to make  
11 sure that these individualized considerations happen,  
12 that we need to happen for public safety, and also for  
13 the defendants' rights, constitutional rights, it takes  
14 some time for that process to happen.

15           So that's why you are going to have a few people  
16 in jail at any given time.

17           Next slide, please.

18           And I know the judge is aware of this, but given  
19 that -- you are like me and -- it sounds like, and learn  
20 by seeing, I thought a demonstrative might be helpful.  
21 This is using those daily jail population reports that  
22 you have heard the plaintiffs and us both talk about.  
23 And this shows how the jail population has changed.

24           March 9th you will see the jail population was  
25 under 6,000, but just a hair. 5,987 folks in jail on

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1 March 9th. That had been reduced due to all those  
2 efforts that I was talking about. That had gone down to  
3 4,995 as of April 9th, the day the lawsuit was filed.

4           So to the extent there was some -- implying by  
5 some of the witnesses that nothing happened until this  
6 lawsuit was filed, I would just state that is not  
7 credible, giving the data.

8           And then, just during this hearing --

9           If you could go to the next slide, please.

10           Just during this hearing, April 17th, jail pop,  
11 4,859. And of course that fluctuates during the day.  
12 This is when the reports come out in the morning.

13           April 23rd, jail pop, 4,829. And then you heard  
14 testimony that today jail pop's at 4,820. So it's  
15 continuing -- and it's slower now because, as you  
16 probably remember from being a judge, there's the really  
17 easy cases that, you know, this -- this person should be  
18 out, and then there are the medium cases and then there  
19 are the really hard cases. And I would argue that the  
20 evidence shows, the charts that we've put into evidence  
21 and the NCIC data, that most of these people are the  
22 really, really hard cases.

23           Next slide, please.

24           I just have to say this again, because I think  
25 it is so important. Great team. Sheriff Marian Brown,

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1 DA John Creuzot, Public Defender Lynn Richardson, Dallas  
2 County magistrates, Dallas County Public Health, and the  
3 Parkland team.

4 And I like the analogy, Your Honor, when using  
5 the "Mother May I" and the -- is this going to be my  
6 baby. And I will tell you it does not have to be,  
7 because there are already a whole lot of parents in the  
8 room who are watching this issue and taking care of it.

9 Next slide, please.

10 We have multiple monitors as well. And those  
11 include the 30 judges that I mentioned, who are looking  
12 at this every day to make sure that the magistrates did  
13 their job and that they don't disagree with it. The  
14 court of -- courts of criminal appeals and the -- court  
15 of criminal appeals. And again, there is evidence in the  
16 record they are prioritizing these cases, they are going  
17 fast. The county judge, the commissioners, the Parkland  
18 Hospital board of managers that's overseeing -- that is  
19 an appointed board, but it is appointed by elected  
20 officials. And as Mr. Jones testified, they are  
21 highly -- the C suite of Parkland is highly, highly,  
22 highly -- I think I got all the highlys in -- engaged.  
23 So this is being monitored by experts and by people who  
24 care every day.

25 Next slide, please.

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1 I thought this would be helpful to the Court.  
2 And the plaintiffs also mentioned that they thought we  
3 might have more information, so this might be helpful to  
4 them, too. But it's from the spreadsheet that we sent  
5 them over the weekend. It's no magic. Your Honor can do  
6 the same thing with the spreadsheets.

7 As of last Friday, April 17th, there were 2,212  
8 people in the Dallas County jail who meet the plaintiffs'  
9 at-risk criteria. Again, that is more inclusive than the  
10 CDC. I just want to make that clear on the record.

11 Of those 2,212 people, 1,970 of those people are  
12 in on a felony charge; 540 of those are in on a  
13 first-degree felony charge. I couldn't mention criminal  
14 history, but, Your Honor, you have that. And I know that  
15 is important, the convictions.

16 Sixty-one of the people in the jail were on a  
17 misdemeanor charge. Of -- only a misdemeanor charge. Of  
18 those 61, 42 were subject to holds from other  
19 jurisdictions. And then you had 19 with no holds, as the  
20 system keeps that data. But there are some of those who  
21 are awaiting transfer to a -- a mental health facility  
22 that -- it is not considered a hold, but that is one of  
23 the reasons that they're there; they are waiting for  
24 their spot. And 14 out of these 19 people were arrested  
25 on either a violent offense; family violence being the

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1 most prevalent, or a DWI charge.

2           So that would leave 5, which would be consistent  
3 with Chief Robinson's testimony that, on any given day,  
4 there are 5 to 20 folks.

5           On the mental health issue, I would be remiss if  
6 I didn't say the evidence shows that a -- a lot of people  
7 in Dallas County jail are mentally ill, unfortunately.  
8 So to the extent you are talking about releasing out into  
9 the community, it would -- it would be something that  
10 would need to be addressed, how to get those people the  
11 help they need if they're released. So I would hope, if  
12 that's something you're considering, that you would seek  
13 more information on that.

14           And then, to Plaintiffs' question earlier, 154  
15 of the people in Dallas County jail, as of last Friday, a  
16 week ago, have some kind of hold. And those vary. That  
17 could be Department of Corrections; that could be another  
18 county. I think you heard testimony nobody's there on a  
19 Class C, so it is not that.

20           Next slide.

21           And I -- this is -- this is the -- the Rikers'  
22 data, updated to reflect the chart that Mr. Barnett  
23 discussed to 105 positive inmates. And one of the  
24 reasons I think this is so important is, to talk about a  
25 little bit to reiterate the standard that Mr. Stepp

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1 talked about earlier.

2 If you would go to next slide.

3 There's some charts included, Your Honor, just  
4 so you can, you know, visualize that and see what it  
5 looks like.

6 And then the next slide, please.

7 So you can see what that looks like. And the  
8 reason that this is included is not -- not to keep  
9 harping on Dr. Cohen, but more to say that I'm sure he's  
10 trying his best. He seemed like a good guy. He seemed  
11 like a very nice man.

12 But I would argue, and I know people disagree  
13 with me, but I would argue that even Dr. Cohen and his  
14 colleagues in Rikers, even they meet the standard that is  
15 set out by Valentine. They're -- I'm sure they're not  
16 deliberately indifferent, and neither is Dallas County.

17 I would ask Your Honor to let the people in  
18 Dallas County continue to do their jobs, and to not  
19 hamper them in their efforts. I appreciate your time,  
20 and thank you very much for the opportunity to discuss  
21 these important issues.

22 THE COURT: Thank you. And does that conclude  
23 Defendants' closing?

24 MS. DAVID: Yes, Your Honor.

25 THE COURT: All right. Great. Well, thank you

1 so much. Let's take a stretch break. And then,  
2 Intervenors, I'd like to hear from you.

3 Let's take ten. It is 6:23, let's come back at  
4 6:33. And let's go off the record for a moment.

5 (Brief recess.)

6 THE COURT: Mr. Biggs, we're ready when you are.

7 MR. BIGGS: Thank you, Judge.

8 THE COURT: Sure.

9 Before you get going, does Plaintiffs' counsel  
10 intend to have the last word, or are you-all resting on  
11 your opening?

12 MR. BIGGS: Your Honor, I think we'd like to  
13 reserve just a very short rebuttal if possible.

14 THE COURT: Okay. Sounds good. All right.

15 Go ahead, Mr. Biggs. You're on. And I won't  
16 interrupt you again.

17 MR. BIGGS: Thanks, Judge.

18 In a pandemic, there's not a lot of good  
19 options, but there are definitely still very bad options.  
20 And what the plaintiffs are asking this Court to do is  
21 one of those bad options.

22 They want you to release felons in the middle of  
23 a pandemic, a once-in-a-century pandemic. That is a  
24 terrible idea. Not only that, they want you to release  
25 them and have the Dallas County taxpayers put them up in

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1 hotels, in some instances, in the midst of a massive  
2 financial crisis that we haven't seen since the Great  
3 Depression.

4           And worse, they want to take over the Dallas  
5 County jail. And they want to usurp the legal roles of  
6 elected officials who are doing the best they can in  
7 these uncharted times, all because they think they know  
8 better. Well, Judge, you hit the nail on the head. This  
9 is a federalism nightmare waiting to happen if they were  
10 to get their way.

11           These elected officials are going through the  
12 process currently of trying to accommodate for this  
13 pandemic. They are filling their role. Placing a  
14 monitor in charge of the jail, that the plaintiffs will  
15 allow to impose their will on these elected officials,  
16 and second-guess everything they do, and would deprive  
17 them of the flexibility necessary to respond cannot be  
18 the option.

19           In fact, the Supreme Court, 115 years ago warned  
20 this Court about doing this in Jacobson versus  
21 Massachusetts. And the Fifth Circuit, over the last  
22 three weeks, has repeatedly warned district courts to not  
23 do this, citing Jacobson. And, in fact, just last month,  
24 Judge Rosenthal, someone who was sitting in your position  
25 previously, warned against taking this step.

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1           In that case, some of the same Plaintiffs'  
2 lawyers who are in this case, wanted to release all of  
3 the felons; violent and non-violent, from the Harris  
4 County jail. And Judge Rosenthal denied that request,  
5 because it just became so unwieldy. And she closed in  
6 her TRO talking about, there is no good, clearly safe,  
7 constitutionally and jurisdictionally just-right solution  
8 to many of the short-term problems and disagreements the  
9 pandemic has made so acute. That was true then; that was  
10 true now; that was true 115 years ago when the Supreme  
11 Court said there has to be maximum deference in times of  
12 public disease.

13           We need to allow the Dallas County officials to  
14 do what they've been doing thus far. Dealing with this  
15 fast-changing, inflexible situation, without having their  
16 hands tied behind their back by a federal court.

17           My co-counsel has done a great job of talking  
18 about the merits and defending themselves on the 1983  
19 claim, so I'm not going to beat that horse at this point.  
20 It's pretty simple. The 1983 claims are barred by  
21 Valentine one way or the other. As well as, they're just  
22 prohibited from being granted, TROs that is, because of  
23 the facts on the ground.

24           The plaintiffs keep saying there's an unclear  
25 record and we're unsure and things like that. That's not

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1 how you get a TRO. A TRO is based on clear evidence.  
2 This is a emergency relief. This is relief that is going  
3 to result in some felons committing new crimes when they  
4 are out. Absconding, and we're not going to be able to  
5 get them back. This is more than preserving the status  
6 quo. This is upending it and upending Dallas County life  
7 as we know it, in all likelihood, Judge.

8 And so, I implore you, and I won't talk anymore  
9 about the merits. If that record's unclear, if that  
10 record isn't anything but substantial likelihood of  
11 success on the merits, they can't win. And I -- I will  
12 submit to you, as Dallas County has pointed out, they  
13 just can't.

14 So I'm going to focus my time on the writ  
15 aspect, because that is what really concerns me. The  
16 notion that we're going to let potentially thousands of  
17 felons out using the great writ, using the writ of habeas  
18 corpus. And, Judge, there are procedural problems, what  
19 they're trying to make you do, that have nothing to do  
20 with the merits. And I would focus on those for the  
21 Court currently.

22 The first is, you can't challenge conditions of  
23 confinement in the Fifth Circuit using a writ. You just  
24 can't. That's what they're trying to do here. And they  
25 can call it whatever they want, but they are challenging

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1 conditions of confinement. And that is barred by a Fifth  
2 Circuit precedent. If they want to point to Fourth  
3 Circuit, Ninth Circuit cases, that is fine. They can do  
4 that until they are blue in the face. That does not  
5 change that the Fifth Circuit has held since, I believe,  
6 1979, you cannot bring condition of confinement claims  
7 this way.

8           Second, you cannot bring classwide writs in the  
9 Fifth Circuit. You have an issue where -- you have an  
10 issue here where, long ago there were courts that allowed  
11 some sort of classwide relief. However, since the  
12 Supreme Court's decision in Calderon, where they said you  
13 have to consider each individual circumstance;  
14 specifically each individual inmate's exhaustion of state  
15 court remedies, that has foreclosed the ability to bring  
16 a classwide writ of habeas corpus.

17           Beyond the fact that -- completely foreclosed by  
18 Supreme Court precedent, and Fifth Court -- Fifth Circuit  
19 precedent, Plaintiffs don't seem to grasp the notion that  
20 what they are asking this Court to do -- you know, 2,000  
21 to 3,000 mini trials -- flies directly in the face of  
22 what class actions are meant for.

23           This case is not meant for class treatment. It  
24 just isn't, Judge. And they are going to say, in all  
25 likelihood, in response, big, overarching questions; such

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1 as, is the jail treating everybody badly. That's not the  
2 inquiry.

3           The inquiry is, do those common questions  
4 produce common answers. And if this Court is having to  
5 have 2,000, 3,000 mini hearings, that's not class  
6 treatment. That's just an inappropriate use of a  
7 vehicle. And they are using this particular vehicle  
8 because they're trying to run an end-around PLRA's  
9 release provisions. That's the sole reason they're doing  
10 this. And it is pretty transparent. They won't say it,  
11 but it is transparent from their actions.

12           This leads me, Judge, to the practical  
13 impossibility of what they're going to ask you to do. If  
14 you look at their order, it is absolute nonsense in the  
15 sense of, they want to have thousands of mini trials in  
16 your courtroom and in magistrate courtrooms just over a  
17 seven-day period. And we're going to bring everybody  
18 together. We're going to consider everyone's criminal  
19 history, everyone's charges, everyone's family situation.  
20 Everyone's victims. Every single person's financial  
21 circumstances. How is that feasibly possible? It isn't.  
22 And that is why you can't do it this way.

23           How is this Court going to be able to also  
24 conduct this? We couldn't even get these inmates to  
25 testify via Zoom in your courtroom, Judge, on this

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1 important case. How are we going to get thousands of  
2 them to potentially testify on these individual writ  
3 hearings?

4           Also, there is a question of who actually  
5 represents these individuals. They all have, in all  
6 likelihood, individual criminal defense lawyers. And so,  
7 we're going to allow the plaintiffs' attorneys, civil  
8 attorneys, to now take over representation of people who  
9 have criminal defense lawyers, bring them over here,  
10 potentially put their clients under oath. How are we  
11 going to do that? We can't coordinate all of these  
12 people, especially in seven days. If we go this route,  
13 the COVID-19 disaster is probably going to be over by  
14 then, or at least under control.

15           It is just a mess they're trying to have this  
16 Court put in place that just -- it makes no sense. It is  
17 practically impossible. I mean, the other case I would  
18 point out for the judge, which you flagged earlier, who's  
19 going to call TDCJ and tell them that their blue warrants  
20 are no longer any good? That is a violation of state law  
21 for the sheriff to release somebody under that.

22           Who is going to call ICE and tell them that  
23 their immigration warrants are no longer any good? I  
24 mean, again, that puts the sheriff in a strange position,  
25 seeing how we have a sanctuary cities law in this state

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1 that says you have to honor ICE detainers. That's not an  
2 enviable position to be in, and I'm sure the sheriff does  
3 not want to be in that position.

4 Third, what do we do about the valid bail  
5 orders? The order that district court judges instead --  
6 you know, you used to be one. You sit there, you look at  
7 the facts and circumstances, you weigh them. And that  
8 state court judge says, that person's bail is X; the  
9 conditions of confinement are Y.

10 Why should we invade those valid orders by just  
11 releasing them? And again, the only way it's possible to  
12 even start conceiving that is thousands of mini trials.  
13 Which, again, cuts decidedly against class treatment.

14 Another reason, Judge, that should end in  
15 dismissal absolutely of this writ, the Fifth Circuit has  
16 made it clear that under 2241, a petitioner must exhaust  
17 state court remedies. It is not on the face of the  
18 statute, but it is firmly established in case law.

19 And they are going to tell you it's prudential  
20 and you can pick and choose whenever you do it. But I  
21 want to read you what Judge Elrod wrote two years ago and  
22 see if we can agree that this is not prudential.

23 It has long been settled that a Section 2241  
24 petitioner must exhaust available state court remedies  
25 before a federal court will entertain that challenge to

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1 state detention.

2 That doesn't sound prudential to me. It may be  
3 "must" means something different in the Ninth Circuit, or  
4 something else, but in the Fifth Circuit, "must" means  
5 must.

6 Granted, there are exceptions. And those  
7 exceptions are that the writ is unavailable, or the state  
8 court relief is unavailable, or it is patently futile to  
9 go that route.

10 Plaintiffs have admitted they haven't gone that  
11 route. Instead, they are asking you to excuse their  
12 ability to completely bypass state court. And that has  
13 federalism concerns. Because the underlying  
14 constitutional issue needs to be presented to the state  
15 court at all levels before it goes to the federal court.  
16 That's federalism and comity 101.

17 So their excuse is COVID makes this hard because  
18 it is too slow. Well, I can tell you from my personal  
19 experience, courts have gone into overdrive because of  
20 COVID-19.

21 For example, we briefed for you our experience  
22 with the civil courts in Travis County. They -- they  
23 were getting TRO hearings done in two days, and were  
24 getting to the Texas Supreme Court in four. You have the  
25 Court of Criminal Appeals receiving direct writs from

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1 inmates, and having briefing schedules set in three days;  
2 decisions made in five, six days.

3 Chapter 11 provides specifically -- of the Code  
4 of Criminal Procedure, provides you can file a writ with  
5 any judge that has the jurisdiction to grant it. That's  
6 district court, county court, Fifth Court, Court of  
7 Criminal Appeals. All of those courts are currently  
8 operating.

9 And as the Supreme Court of Texas made clear in  
10 the order just, I believe, yesterday, granting my  
11 office's writ of mandamus, defending the governor's  
12 executive action, these courts are open for business.  
13 And they are taking this seriously. And Plaintiffs'  
14 claim that it's going to take too long is ridiculous.

15 It is essentially creating an exception that  
16 says, we do not need to even attempt -- because they  
17 don't say they even tried. There's not a single  
18 declaration saying, we tried to file a writ. Not one.  
19 It's, it would have unnormally taken too long. And  
20 that's not acceptable.

21 Because if you think about creating that  
22 exception, Judge, if you were to do it and say COVID  
23 creates an overarching issue, state exhaustion is not  
24 necessary, how many and what kind of petitioners are you  
25 going to have walking through your door directly to

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1 federal court? I mean, it is going to open the flood  
2 gates, precedentially wise, to allow anybody to state --  
3 skip state court remedies. And that flies directly in  
4 the face of federalism, basic principles, comity, and  
5 just the exhaustion requirements of the Fifth Circuit.

6 And I just -- I can't -- I can't explain enough  
7 how easy it would be for these folks to have exhausted  
8 their state court remedies. I have talked with the staff  
9 attorney from Dallas County. They're firing these things  
10 as fast as they can, as fast as people can bring to them.

11 In fact, Chapter 11 of the Code of Criminal  
12 Procedure, 11.25, has a specific writ provision for  
13 people afflicted with disease that allows them to be  
14 moved. In my experience, if you put "emergency" and  
15 "COVID" in an e-mail to a court coordinator, and say you  
16 need to be heard quickly, it is being heard quickly  
17 throughout the entire state.

18 That cuts decidedly against, mind you, a lawyer  
19 declaration from one of Plaintiffs' counsel, that she  
20 believes it takes too long normally. I mean, that is  
21 just -- it's not even a bare-boned attempt to say, we  
22 tried; it is just, it is too long, throw our hands up in  
23 the air, please excuse our lack of exhaustion, Judge.

24 I find it hard to believe that Judge Elrod is  
25 going to be able to look at that and say, that sounds

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1 like a valid reason to go against my ruling that you must  
2 exhaust state court remedies.

3           And that goes for the PLRA as well. This Fifth  
4 Circuit, it is more 1983-related, the Fifth Circuit talks  
5 specifically about stripped compliance of PLRA's  
6 exhaustion requirements. The only evidence in this case  
7 is that you have a couple inmates who tried to  
8 short-circuit the process by filing grievances very  
9 quickly. They have to actually let the time line play  
10 out. They don't -- there is no special circumstances.

11           They can't file a grievance, the next day file  
12 an appeal, and then file a lawsuit. They have to go  
13 through Step 1, Step 2, as well as get a final  
14 determination. That is more about 1983.

15           And finally, Judge, I really want to highlight a  
16 very technical problem with what Plaintiffs are doing  
17 here. And this is not a case law; this is not  
18 interpretation; this is not me spinning this.

19           2242 lays out the application's technical  
20 requirements for a writ of habeas corpus. It requires --  
21 federal law, congress requires, an application for a writ  
22 of habeas corpus shall be in writing, signed, and  
23 verified by the person whose relief is intended or by  
24 someone acting in his behalf.

25           A person seeking to sign for a prisoner in a

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1 habeas petition must show, one, they have to explain why  
2 the real party in interest cannot prosecute the action on  
3 their own behalf; and, two, they have to establish a  
4 significant relationship with, and true dedication to the  
5 best interest of the real party in interest, the inmate.  
6 Dismissal is the result if they don't follow a 2242.

7           Well, what do we have here? First and foremost,  
8 none of their pleadings are verified. They're signed by  
9 one lawyer, under the normal pleading standards. Which  
10 flies directly in the face of what we've talked about in  
11 our briefing, you can't do habeas under the normal civil  
12 pleading rules.

13           Second, they're not signed by the inmates. They  
14 are signed by lawyers. So that puts us in the second  
15 camp. Plaintiffs' counsel must show the requirement that  
16 they have a significant relationship with, and a true  
17 dedication to the best interest of the inmates. That is  
18 just not the named plaintiffs; that is the class members.  
19 And that is what they can't do. They cannot show that  
20 relationship.

21           Take, for example, their relief. They're asking  
22 to represent every single class member. And they're even  
23 admitting to you some class members aren't going to get  
24 out. How in the world are they going to advocate for the  
25 best interest of the class members who they're not going

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1 to be able to get out, that they're not going to be able  
2 to actually present their case and get them out of jail?

3           So that also cuts to the second piece. So there  
4 is the medically-vulnerable group and then there is the,  
5 we will reduce by a number that has been undetermined  
6 until we can socially distance properly. That means  
7 they're going to put people up there.

8           So let's assume the medically-vulnerable group  
9 are out, but social distancing is not possible. That  
10 means Plaintiffs' plan is to put inmates up one by one  
11 until we get to that magic number. Unless that magic  
12 number is zero, that means they're going to have to pick  
13 and choose between class members who they put up there.  
14 There's no way in the world that could possibly be the  
15 best interest of the ones that get left behind, Judge.

16           These are technical requirements under statute  
17 that they have not even shown you have been satisfied.  
18 But they are, nonetheless, asking you for --  
19 extraordinarily does not even capture it -- breathtaking  
20 relief from this Court.

21           And, Judge, I want to end as -- I think we came  
22 into this case really talking about public safety,  
23 because I think this Court hit it on the head. And I'm a  
24 former prosecutor. I work for elected officials that  
25 care a lot about public safety. They don't -- not that

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1 they don't care about inmates and people getting sick.  
2 There is no way anybody should take it as that. But we  
3 care paramount about protecting Texans. And protecting  
4 us in this pandemic is the absolute power of the governor  
5 and the other elected officials, under Jacobson, under  
6 418 of the Government Code.

7 Dr. Cohen has admitted that inevitably some of  
8 these folks are going to re-offend. It's happened in New  
9 York. It's happening in this state currently. Here  
10 in -- Harris County let a lot of folks out under the  
11 Compassionate Release Program. And you can just follow  
12 the news, or The Chronicle, every single two days, it  
13 seems like, you have somebody who's, Free on bail:  
14 Person commits homicide, or commits domestic violence.  
15 It is inevitably going to happen.

16 And I know I'm going to be accused of fear  
17 mongering and things like that. But the key is, if we  
18 can avoid a single innocent Texan from being hurt, we  
19 have to do that. That's truly the way it is.

20 And it's not just the violent folks, Judge.  
21 Like you said, and you have read our declarations, it's  
22 the burglars; it's the fraudsters. It's the folks that  
23 are drunk drivers, intoxic manslaughter, things of that  
24 nature. And that is -- I mean, not to mention the folks  
25 who won't be on violent charges, such as possession of

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1 child pornography, human traffic, things of that nature.  
2 So it's not plausible to think in terms of violent versus  
3 non-violent when you're talking about releasing folks.

4           And, Judge, this is not just about  
5 revictimization. It's about stretching law enforcement.  
6 Because law enforcement's going to have to go catch some  
7 of these folks, and they're going to come into contact  
8 with individuals that have COVID-19 because they do it.

9           And again, if you want to look at our briefing  
10 in Russell, in the Harris County case, we pointed all  
11 this out. I mean, it is there -- it is there for the  
12 Court to see. We are dedicated in opposing this to try  
13 to preserve those limited resources for law enforcement  
14 and protect Texans, and also try to make sure that  
15 victims are heard in this.

16           Because again, back to the practical point, who  
17 is calling the victims? State law requires you have to  
18 do it. I mean, they are entitled to it. I think it's in  
19 the Texas Constitution, actually, that they're entitled  
20 to it. Who's calling the family of the person who  
21 committed the -- you know, who's calling the family of  
22 the victim of the intoxic manslaughter to say, the guy who  
23 killed your family member is out. Well, don't worry,  
24 we're going to put an ankle monitor on him; it'll be  
25 fine.

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1 I mean, they're not going to come to the  
2 Plaintiffs' attorneys when someone dies at the end. They  
3 are going to come to state and local officials and  
4 they're going to say, what happened? And we're just  
5 going to have to point back to this and say, we opposed  
6 this, Judge. And that's -- that is all we can do at this  
7 point.

8 And we vigorously, vigorously ask you, stand  
9 with the elected officials in this case, stand with law  
10 enforcement, and stand with Texans and deny the requested  
11 relief.

12 Thank you, Judge.

13 THE COURT: Thank you.

14 Let's go off the record for just a moment.

15 (Off-the-record discussion.)

16 THE COURT: Ms. Woods, you have the last word.

17 MS. WOODS: Thank you, Your Honor.

18 I will refer the Court primarily, I guess, to  
19 our briefing, but I do want to tee up a couple of short  
20 points.

21 The first, with respect to the availability and  
22 rationale of classwide relief, the -- which was on the  
23 case cited earlier in the day. I just want to note that  
24 it didn't deal with provisional class certification and  
25 didn't deal with our request for injunctive relief. It

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1 was a damages case. And if the Court isn't satisfied  
2 about its broad powers to conditionally and provisionally  
3 certify class, we believe on this record the Court could  
4 always just move -- I'm sorry, order the class certified.

5 So I wanted to just tee that up.

6 The issues around habeas exhaustion, they are in  
7 our briefs, if you want to just note the -- the  
8 requirement and the concerns that would trigger the  
9 exhaustion requirement.

10 THE COURT: I do have a question about that.  
11 Because I looked at -- you had a criminal defense  
12 attorney, Ms. Grinter, who wrote in her declaration, you  
13 know, kind of, generally, that this is unavailable, and  
14 then she attached some attachments that showed that bond  
15 hearings and cases like that were being reset. But it  
16 did show that the courts were closed, and I heard no  
17 testimony in your case that the courts were closed. I  
18 really -- so that is a concern of mine.

19 MS. WOODS: Okay. So, Your Honor, a couple of  
20 points on that. I'd like to address it in a couple of  
21 different parts.

22 So the first is that a bond hearing is an  
23 individual remedy. It's an individual setting. It's not  
24 a forum to raise the kind of requests for relief that are  
25 essential to effectuate the relief needed in a case such

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1 as this, a case involving the need for systemic  
2 intervention to make the jail a safe place to be.

3 Another really practical point is that for a lot  
4 of the petitioners, a bond hearing isn't available.  
5 There are people -- I mean, the Court's heard testimony  
6 today that the number of people for whom the only thing  
7 they're being held on is a misdemeanor charge with no  
8 holds is only 5 to 20 people on each day.

9 So a bond hearing isn't going to do anything for  
10 the people with other holds, the people who have been  
11 waiting for parole hearings that have been suspended  
12 since March, for the post-adjudication class who no  
13 longer has a right to criminal counsel. The -- the Court  
14 heard --

15 THE COURT: Do you know what percentage of --  
16 and I'll have to look back through the charts, but I know  
17 in -- in Defendants' closing, when she was walking  
18 through, there were -- let's say, X number of people held  
19 on first-degree felony charges. Why can't those people,  
20 and why haven't those people petitioned the district  
21 court to get bonds? I don't have any evidence in the  
22 record on that.

23 MS. WOODS: Okay. In our -- oh, Your Honor, in  
24 our response to the motion to dismiss, we did -- we do  
25 reference -- and this is in the amended complaint as

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1 well -- each individual plaintiff's efforts to seek  
2 relief in the state court system. And Mr. Bailey is a  
3 good example, both of somebody who went to great lengths  
4 to seek that release, and at the time he petitioned this  
5 Court, that had been proven to be delayed and futile. He  
6 remained in jail for nearly a full week after getting a  
7 bond reduction that his wife sold her wedding ring for.

8           So we've detailed there were efforts made by  
9 those who had that available to them.

10           THE COURT: Well, let me ask you a question  
11 about Mr. Bailey. Because my recollection, and correct  
12 me if I'm wrong, because it's -- it is all kind of  
13 becoming a blur in my brain. But I thought that  
14 Mr. Bailey tested positive pretty quickly after he got to  
15 the jail.

16           And so was he being held because he was being  
17 held on a charge or was he being held because he was  
18 being treated for COVID?

19           MS. WOODS: He was being held because the staff  
20 in the Pretrial Services Department refused to fit him  
21 with an ankle monitor and release him. So he had a  
22 release order; he paid his bond.

23           THE COURT: Was he COVID positive? My  
24 recollection -- and again, I very well could be wrong  
25 about this, because it is blurry in my head. But wasn't

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1 he positive and that was why they didn't want to put the  
2 monitor on him, because he was COVID positive at that  
3 time?

4 MS. WOODS: It is, Your Honor. But that -- that  
5 illustrates the -- the ineffectiveness of his pursuit of  
6 a bond review hearing.

7 THE COURT: Well, I think it's a little  
8 different, though. I mean, I see that as kind of --  
9 not -- probably not your strongest example. Because you  
10 have got somebody who is COVID positive, and so there are  
11 some concerns about releasing him that would have nothing  
12 to do with the charges.

13 What -- do you have another -- another  
14 plaintiff, named plaintiff who had a -- a more normal  
15 bond experience? Because I think it would be helpful to  
16 the Court to know -- and I'll go back and look at the --  
17 at the filings. But if you had someone who was not COVID  
18 positive in the middle of treatment, or beginning  
19 treatment at the jail, who was just kind of a regular Joe  
20 held on some charge after a bond hearing, I think that  
21 might be more illustrative than Mr. Bailey's.

22 MS. WOODS: Sure, Your Honor. Although, first,  
23 I do -- I mean, we're talking about exhaustion right now.

24 THE COURT: Sure. Sure, absolutely.

25 And so -- well, and -- so what I'm trying to

1 figure out is, if you guys have got to show me an order  
2 for me to properly act, that -- it would be futile to --  
3 you know, to go before state court judges and hear this,  
4 I don't think Bailey's a good example, one, because he  
5 has COVID, and so that messes up the timing; and, two,  
6 he's really a success story. Because she talked to the  
7 elected DA and he got her husband out. And I know you  
8 weren't happy with the timing of it --

9 MS. WOODS: Not at all.

10 THE COURT: -- and that he was in for several  
11 days, and I -- I know that. But ultimately he was out  
12 and he is home.

13 And so, the system didn't work as urgently as  
14 you want, but it did work for Mr. Bailey.

15 Is there somebody for whom it didn't work that  
16 you could point to?

17 MS. WOODS: There is, Your Honor. But I'd like  
18 to zoom out, if I may, on this issue.

19 THE COURT: Sure. Absolutely.

20 MS. WOODS: Just -- so there are really three  
21 categories of reasons that the exhaustion requirements  
22 don't foreclose our petition. And the first -- I didn't  
23 want to spend too much time on this, but the -- I would  
24 refer the Court to the Dickerson versus Louisiana case.

25 I notified Defendants in our briefing for the

1 notion that this is a -- this is a mandatory exhaustion  
2 requirement. That case actually deals with the  
3 difference between the kind of petitioner who is asking  
4 the federal court to go in and dismiss a pending criminal  
5 accusation on the -- the claims of this being -- trial  
6 rights have been violated. And they state pretty clearly  
7 that there is a difference between that kind of comity  
8 concern versus the kind of comity concern where the  
9 federal court would simply order the state court to grant  
10 a speedy trial on time, instead of dismissing the case.  
11 So the kind of intrusion we would submit is different.

12 And again, it's not a statutory --

13 THE COURT: I'm not -- I'm not seeing the  
14 distinction there. What do you mean? Because I -- so  
15 let me throw this out as an example and maybe you can use  
16 it.

17 So you have got several named plaintiffs who've  
18 got parole holds. And so state law is involved in that.  
19 So how -- help me understand, are -- just pick any one of  
20 those. Let's say somebody who is not COVID positive, so  
21 they don't have health care issues, who you want me to  
22 release, and they've got a parole hold. Point to me as  
23 to what you think you have to do, as far as exhaustion,  
24 before you come to me properly. Before I properly act,  
25 let me put it that way.

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1 MS. WOODS: Okay. Well, for that -- and  
2 unfortunately, Your Honor, I'll have to treat these  
3 different depending on the category of what --

4 THE COURT: Okay.

5 MS. WOODS: -- why the person was detained in  
6 the jail.

7 So the first thing is that, for the parole-hold  
8 people, parole hearings were suspended. And so they --  
9 they didn't have an avenue to bring their parole hearing  
10 before the parole board because they were suspended in  
11 March, at the time that this lawsuit was filed.

12 So -- and I also just want to be sure to state  
13 that, given all the evidence and realities about the way  
14 this disease progresses, people like not only Mr. Bailey,  
15 other plaintiffs, including Keith Baker and Tesmond  
16 McDonald, these are all people who -- not parole-hold  
17 category; now we're talking again about bond.

18 And I'm sorry that I'm jumping around. I'm just  
19 trying to provide the Court with --

20 THE COURT: That's okay.

21 MS. WOODS: Those are people who, again, they  
22 stopped -- they sought bond reductions, in Mr. McDonald's  
23 case. Still couldn't afford the reduced bond, and so  
24 remains in, even after seeking that individual review.  
25 Keith Baker was -- received apparently a PR bond, but is

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1 still in the jail today.

2           So I just -- just to illustrate the -- the --  
3 for different people, the doors that are open to them  
4 look different. But the ones who had a door open to  
5 them, we've chronicled their efforts to meet that.  
6 And --

7           THE COURT: Let me throw in one more thing.

8           So just by way of example, so one of those  
9 people you mentioned, I pulled him up and looked at what  
10 he was being held on. He was being held on several -- in  
11 Texas we call it 3G. They're aggravated offenses. And  
12 so the reason -- I think he's sitting on \$325,000 worth  
13 of bond, but that's because he's accused of, I think more  
14 than one, violent crime.

15           And so, how do I factor in to your analysis -- I  
16 mean, so you're using him as an example of exhaustion,  
17 because he wasn't able to be released because he couldn't  
18 afford the bond. But part of that analysis is he  
19 couldn't afford the bond because the bonds were \$100,000  
20 apiece because they were violent offenses.

21           So how do I factor that into your exhaustion  
22 analysis?

23           MS. WOODS: Your Honor, the exhaustion analysis  
24 is -- is simply a -- a question of did the petitioners  
25 make a reasonable effort to seek redress in the state

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1 court system. So that -- that -- the outcome is part of  
2 the reason that they had to petition this Court. And  
3 their claims before this Court aren't about whether their  
4 bail was set fairly; these are claims about the  
5 conditions of their incarceration.

6 So just to -- the reasonable --

7 THE COURT: It's okay to tell me if that's not  
8 relevant -- relevant that it's sought and not that it  
9 worked, then that is okay.

10 MR. BIGGS: Judge, I can actually clarify this,  
11 okay? Where you guys are kind of swinging past each  
12 other a little bit, I have a very clear answer to this  
13 for you, Judge.

14 THE COURT: Okay. Ms. Woods, this won't take  
15 from your time.

16 So I think it would help the Court if you can --  
17 because I think we are missing each other.

18 MR. BIGGS: Yeah. So, Judge, we're talking  
19 about bail hearings, bond reductions, things like that.  
20 That is one way to get released. So that is an example  
21 of a potential way to get out of jail, get them to  
22 ultimate relief.

23 Exhaustion remedy, any one of the class members  
24 that is restrained, or any one of the named plaintiffs  
25 can file a writ under Chapter 11. You look at the

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1 language. It's anyone can file it to any of those judges  
2 I named.

3 And the -- the whole thing about it -- you know,  
4 exhaustion looking different to everybody, that's why  
5 Ashmus and Calderon ended the way they did. The Supreme  
6 Court said, you have to look at the individual exhaustion  
7 by each person. That is why you can't have a classwide  
8 writ. And so they've essentially proven our point of why  
9 you can't have a classwide writ. And I don't think they  
10 realize it, but they did.

11 So my next point about the writ -- and, Judge,  
12 you were a state court judge. I mean, you -- there  
13 are -- the Code requires they be liberally construed. So  
14 you can write it on a napkin and some judges will take  
15 them. You can -- you can orally ask for them. I mean,  
16 people who are prosecutors know, defense attorneys walk  
17 in all the time and say, hey, can I get my guy out on a  
18 writ and the judge will be like, oh, I'll consider that a  
19 writ on the record, and then off they go after you get an  
20 agreement, or something like that.

21 So file a writ. Your can file it in the  
22 district court. If you don't like the result, you can  
23 appeal it to the Fifth Circuit -- or the 5th Court. If  
24 you don't like that result, petition for review from the  
25 CCA.

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1           The state court exhaustion requirement is not,  
2 we tried once, we didn't like the result, and we just  
3 came to the federal judge. I mean, that's just -- it's  
4 kind of -- it is -- I don't want to say disingenuous, but  
5 it just doesn't really get the point of -- the Chapter 11  
6 writ is available, and there is one specifically for  
7 people affected with disease.

8           THE COURT: Got you. I appreciate that. I  
9 appreciate you clarifying that. I want to get her back  
10 on track, but thank you for your input.

11           MR. BIGGS: Thank you.

12           THE COURT: Ms. Woods, thank you.

13           MS. WOODS: Thank you, Your Honor.

14           So again, I -- I do want to be -- I feel that  
15 I'm not being very clear in my argument, and I'm sorry  
16 for that.

17           So, okay, we have put in our briefing not only  
18 the reasons that this Court truly can dispose of the  
19 exhaustion requirement, but also the reasons that the  
20 petitioners who had an option available to them sought  
21 it. And the Court mentioned we did file, in the record,  
22 statements from, again, co-counsel, but a -- a local and  
23 experienced defense attorney, whose experience is at the  
24 state courts, our -- if we'd been focusing on bond  
25 hearings and jail pleas, the state courts where the

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1 petitioners in this action, this -- there wasn't a way  
2 for them to seek the kind of relief they need to seek in  
3 this case. Because the relief they need to seek in this  
4 case involves something that is not an individual's  
5 conditions getting better on individual release. And  
6 that's -- that's subject to quite a lot of discussion for  
7 today.

8           Also, again, I think it does matter, the  
9 realities of certain petitioners' ability to seek and  
10 meet with counsel. Ms. David suggested that there aren't  
11 any trouble meeting with counsel, including because we  
12 were able to talk to our clients. But Defense Counsel is  
13 aware that we've had trouble talking to our clients, and  
14 the Court's heard testimony about the inability of the  
15 backups.

16           The Court heard testimony --

17           THE COURT: I remember the -- the detention  
18 officer talking about how frequently the video calls  
19 wouldn't work. I remember that.

20           MS. WOODS: Yes. And today, I think there  
21 was -- today or yesterday, I think the Judge actually  
22 asked Chief Robinson whether people are still being  
23 transported to court via jail chains, and he said very  
24 rarely.

25           THE COURT: Very rarely.

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1 MS. WOODS: So I think -- we've put forth  
2 evidence in the record about -- about what's available.  
3 I also want to point to the Court the Fifth Circuit  
4 opinion in Estelle v. Brown, which noted that if a  
5 Petitioner, a would-be Petitioner isn't able to secure  
6 counsel, they should be deemed to have exhausted. So I  
7 just want to put all that into the -- the atmospherics of  
8 whether they've exhausted. But again, even if the Court  
9 applies the exhaustion requirement, even if the Court  
10 looks at the record and concludes that the Petitioners  
11 here didn't try to do everything they could, which we  
12 really think we've demonstrated the efforts they've gone  
13 to, really serious significant efforts they've gone to,  
14 then there are a number of exceptions to this exhaustion  
15 requirement, and I would submit that virtually all of  
16 them apply under these circumstances.

17 And I don't want to belabor that. I think the  
18 Court knows what those exceptions are. It's in the  
19 briefing.

20 But if not now, I don't really know when a court  
21 would find the kinds of extraordinary circumstances that  
22 would justify such a -- such a finding. So --

23 THE COURT: I appreciate you pointing that to  
24 me, that's helpful. Because exhaustion was a concern,  
25 but I'll be candid with you. In the last couple of days,

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1 that's sort of gotten lost and so I have to go back and  
2 reread that, get that fresh back on my mind. So your  
3 briefing is not at the forefront on my mind right now,  
4 but I will go back and look at that.

5 MS. WOODS: Okay, Your Honor. One moment.

6 I really think that the most important thing for  
7 me to close on, again, encouraging the Court to turn back  
8 to our briefing. And if the Court --

9 THE COURT: Sure.

10 MS. WOODS: -- at some point needs any  
11 supplemental briefing, we'd always be happy to provide,  
12 but --

13 THE COURT: And I'll be candid with you guys.  
14 There's been a -- like so much information packed in  
15 these five days, that I will be very forthcoming with you  
16 if I need some addition briefing. If I'm on the fence  
17 about something, I'll give -- I'll give you the  
18 opportunity to speak to that issue I'm on the fence  
19 about. So I will let you know. I'm going to work on  
20 this this weekend and try to get a decision out as early  
21 at the beginning of next week as I can. But if there is  
22 something I need, I'll go back and read what's already  
23 written. There's just so much of it, it's hard to call  
24 it to memory. So I don't want you to think I haven't  
25 read it initially; I have. It's just it feels like it's

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1   been a long time ago.

2           MS. WOODS:   Certainly.   And it -- and I don't  
3   know -- I don't know if it's in our briefing in part  
4   because there are so many of these decisions coming down  
5   every day, Your Honor.   But I've -- I've seen great  
6   language from the Central District of California that  
7   really acknowledges the -- the reason that this kind of  
8   petition on behalf of a class of habeas petitioners is  
9   appropriate, just given the realities and just -- the  
10   truth is that one person's bond hearing isn't going to  
11   fix the issues.

12           So I'll leave that discussion there.   And really  
13   what I wanted to close on and emphasize is just a really  
14   short discussion of what it is we're really asking for.  
15   I just feel like that needs to be emphasized given the  
16   other comments.

17           Again, the reason that we're here and the reason  
18   that we're making this ask is because of the critical  
19   nature of social distancing, the fact that social  
20   distancing is not occurring, and that because that is  
21   true, Petitioners face really grave and serious risk to  
22   their health and well-being.

23           So we propose and we're seeking this Court to  
24   implement a process that we think can result in good  
25   outcomes, good outcomes for public health, good outcomes

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1 for safety that we think can be workable. And again,  
2 that's the first ask moving for the Court, is that the  
3 Court look at the habeas petitions of the people who are  
4 awaiting transfer to a treatment provider.

5 I didn't hear significant or serious or even  
6 specific objection to that group, these are people who  
7 have been deemed released. And so we --

8 THE COURT: I saw from a look, just general kind  
9 of clicking around on people, that that is a class of  
10 people, so that's a concern.

11 MS. WOODS: Okay. Your Honor, sure. And so  
12 what we propose is that if -- if Defendants object or  
13 show cause for why anyone in that group can't be  
14 released, that the Court take that up. But that  
15 otherwise, that group be presumed to be released.

16 We then propose another process that we think  
17 really can allow essentially for everyone else, the  
18 Court's seen the list, the Court knows who is on the  
19 medically vulnerable list. There are still people on  
20 that list who are pretrial and accused of nonviolent  
21 felonies that wasn't mentioned. And there are people who  
22 are on there still because they can't afford to pay bail,  
23 so they've essentially been ordered released on bail.

24 But again, what we're really asking for is for  
25 process by which Defendants lodge their objections to the

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1 release of people on that list. People who are not  
2 objected to, then the Court would release. And for the  
3 -- the folks who have been objected to, then Plaintiffs  
4 would decide, we would review that list and decide who we  
5 really want to bring before the Court for this kind of,  
6 batches-style process that other courts are -- are taking  
7 on and managing because it's what this crisis requires.

8 THE COURT: Well, just -- go back to my question  
9 during your opening or earlier today, I can't remember  
10 when it was, when I asked you, I mean, that is a  
11 laborious process that you are asking the Court to take  
12 on. And if it's required by the Constitution, I'll  
13 certainly do it. But my question to you is, if you are  
14 asking me to give such individual attention to each  
15 defendant, why is that not a task for a county court  
16 judge or a district court judge who knows this inmate and  
17 has handled this case and has either put somebody on  
18 probation or put somebody on bond; why me? I know you --  
19 you talk about me having the power to do it and I don't  
20 doubt that I have the power, but I'm just asking why I  
21 should.

22 Why -- why -- because I'm concerned about  
23 federal district court judges sticking their fingers in  
24 district court, state district court, and county court  
25 judges' pies. I don't know these inmates, I don't know

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1 their histories, I haven't dealt with them. Who am I to  
2 jump in.

3 And I know it's premised on me finding a  
4 constitutional violation. And I understand that. But  
5 you are not asking for -- I mean, I could -- I would have  
6 a -- an easier time swallowing your ask if it required  
7 just a simple order. But you're not. You're asking me  
8 to do bond hearings for 5,000 people. I mean, is that  
9 appropriate for a district court judge to do? Or for --  
10 or even -- let's just take a -- let's just take your  
11 medically vulnerable people, a subclass of whom will have  
12 criminal records that are troublesome and require  
13 individualized hearings. Some of them do. Am I supposed  
14 to have an individual hearing on all of those people?

15 MS. WOODS: So I think the first -- the first  
16 answer that I can really give is -- is kind of resting on  
17 my earlier answer to this question, Your Honor, which  
18 is -- which is simply that, again, in this scenario -- we  
19 said the Court would have found that the process that's  
20 played out to date in the local system violated the  
21 constitutional rights of these people. And so --

22 THE COURT: Let me pause you for just a moment.  
23 And so, I can understand -- I could understand if  
24 because of these constitutional violations, if --  
25 assuming -- assuming that -- let's say I'm -- let's say

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1 I'm sympathetic to you and I think that inmates should  
2 get more soap, and we should be wiping down tables every  
3 five hours and socially distancing, and releasing people  
4 from the jail so that the remainder of the people can  
5 socially distance. And I agree with you that a process  
6 needs to be put in place so that we can reduce the  
7 population so that people can actually have a chance to  
8 social distance if they chose to do so.

9 I guess my question for you is, you are not  
10 asking for a blanket order; you are asking me to -- to do  
11 these very individualized -- I mean, I -- help me  
12 understand. Is there any way I can do what you are  
13 asking me to do without having 500, 600 hearings, at a  
14 minimum? I mean --

15 MS. WOODS: Yes.

16 THE COURT: Yes, okay. How?

17 MS. WOODS: So first, by the blanket order that  
18 applies to the people who are only awaiting transfer to  
19 treatment facilities. That's one process, one order.

20 THE COURT: Okay. So if I granted that order,  
21 that's a blanket order and that's not individualized  
22 hearing. Okay. So who is left?

23 MS. WOODS: Then there's the group of people who  
24 the defendants object -- I'm sorry, who the defendants  
25 don't object to.

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1 THE COURT: Okay.

2 MR. BIGGS: I've got a really bad echo. Can we

3 -- it's just hard to hear.

4 THE COURT: If you would say that again, Ms.

5 Woods, I think that would be helpful. I think we lost

6 the last part of that. I know I did.

7 MS. WOODS: I think I am still echoing a little

8 bit.

9 (Off-the-record discussion.)

10 MS. WOODS: So we have that first order

11 resolved. The second requested order would essentially

12 be that for the people on the remaining list who

13 Defendants do not object to the release of, that they be

14 released.

15 THE COURT: Okay. So let me pause you there for

16 just a second to make sure I'm understanding what you are

17 asking. So that would require the sheriffs, the DA, the

18 county court judges, the district court judges to go

19 through your spreadsheet or go through this group of

20 people, come to an agreement, come to a consensus, and

21 decide who is going to be released. And my question for

22 you is, if they're going to do that, why do you need me?

23 MS. WOODS: So -- Your Honor, the --

24 THE COURT: If they're not -- if everybody

25 agrees they should be released, they would already be

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1 released, right? Is that a population that even exists?

2 MS. WOODS: Well, Your Honor, we would submit it  
3 does. But -- both on the fact that this first category  
4 population exists, and the fact that there are still  
5 people accused of nonviolent felonies and people  
6 incarcerated because they can't pay bail on this list.  
7 So we -- we -- we would --

8 THE COURT: Okay. Well, I'll work with you and  
9 assume that. So -- okay. And so we've identified this  
10 class, we get stakeholders' input, and then what, what do  
11 I do then?

12 MS. WOODS: Then Your Honor releases the people  
13 who there was no objection to. And then Plaintiffs would  
14 decide who's left that we want to bring before the Court  
15 for this individualized determination about the risk to  
16 their health and the risk to the public safety. And  
17 those, it would be I really think a much narrower class  
18 of these -- these sort of batch inquiries that other  
19 courts are -- are setting up.

20 THE COURT: Okay. And so I would have to --  
21 what I'm imagining is, I would have to have a -- kind of  
22 mini bond hearings. Texas state law would require me to  
23 bring in -- for anybody they're objecting to, I'm  
24 guessing -- just pulling this out of air, but I'm  
25 guessing it's probably not going to be people charged

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1 with possession of controlled substance. We're probably  
2 going to be talking about crimes with victims. And so I  
3 need to bring the victims down to court and they get to  
4 have a say, and then the DA gets to have a say and then  
5 the criminal defense attorney gets to have a say; and the  
6 ACLU gets to have a say, and I do that for each person  
7 who's left in this pile that -- we don't know how big it  
8 is.

9 And so, how am I supposed to get all that done  
10 in the middle of a pandemic when I don't have anybody in  
11 my courthouse? I'm just asking you, because I don't want  
12 to -- what is the point of granting relief if it's  
13 impossible? I mean, I can sign an order saying unicorns  
14 can jump over the moon, but if we can't make it happen,  
15 that's really kind of useless.

16 And so, if you are asking me to -- if you're --  
17 if you're telling me it's futile to go to the criminal  
18 district courts and the misdemeanor courts because they  
19 are shut down during a pandemic and we can't get  
20 individual hearings, I'm just trying to understand how  
21 you think I can do that.

22 MR. BARNETT: Ms. Woods, can I weigh in on this?

23 MS. WOODS: Sure.

24 MR. BARNETT: Your Honor, the hearing that we're  
25 talking about is not a bail hearing. It is a hearing --

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1 THE COURT: I understand it is not a bail  
2 hearing, but -- and I -- maybe I gave a bad analogy, but  
3 I'm thinking of something similar in the sense that you  
4 have to have all these stakeholders present and there is  
5 not a blanket. So the first two categories we talked  
6 about, you are asking me to make a blanket order, an  
7 umbrella order that covers more than one person. This is  
8 individualized. This would require me looking at each  
9 defendant, each case, each victim, DA, prosecutor. I've  
10 got to have the DA there, I've got to have the criminal  
11 defense attorney there, I've got to have the ACLU there,  
12 and I've got to take them one by one by one by one by  
13 one. And I, too, am operating a docket in a pandemic.

14 And so I just -- you know, I want to make sure  
15 I'm clear on what your requested relief is. Because if  
16 you are telling me you can't do it down the street, I  
17 don't know how you think I'm going to do it? Blank  
18 orders, I can understand you asking me to give you a  
19 blanket order in an emergency, but I just -- I'm not  
20 understanding how it's realistic for you to think that  
21 I'm -- I'm going to be -- even if they're not called bond  
22 hearings, it's going to be an individualized hearing;  
23 everybody's relief is going to be specific to them. And  
24 so that requires me to learn about a case I know nothing  
25 about, about a person I know nothing about -- and I'm

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1 happy to do that if the Constitution requires it.

2 I guess my question is, if we're going to take  
3 the time to do all that, there is a place where they  
4 already know about this person, they already know about  
5 this case, and it is called Frank Crowley. And that's  
6 the criminal courthouse down the street.

7 MR. BARNETT: The reason I said it's not a bail  
8 hearing is because that is what you are saying they would  
9 have to do --

10 THE COURT: Okay.

11 MR. BARNETT: -- alternatively. But this is not  
12 a bail hearing. This is a hearing to determine the  
13 appropriate remedy for a constitutional violation that  
14 the Court will have found had occurred --

15 THE COURT: And I'm assuming for your  
16 hypothetical -- for this hypothetical I'm assuming that  
17 I've already found that the -- let's say the jail has  
18 horrific conditions and I find that. And so I can issue  
19 blanket orders that have these umbrellas of people under  
20 them. But now we get to this third group that they're  
21 not agreeing to, and I'm just -- you know, I asked you to  
22 be just real candid with the Court. I'm trying to figure  
23 out if I gave you what you wanted, how do I manage this.

24 MR. BARNETT: That's what I'm trying to do. I  
25 knew -- I knew this was going to be a concern of yours.

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1 THE COURT: Okay.

2 MR. BARNETT: What I'm trying to do is to draw  
3 on my experience and just how I see it playing out.

4 THE COURT: Sure. And I know it's not a bail  
5 hearing. I know it would be a little different. But as  
6 far as -- will you agree with me that it would require a  
7 cast of characters and an individualized look at each  
8 case? And maybe it's 5 cases, maybe it's 50.

9 MR. BARNETT: No, it doesn't require that, Your  
10 Honor. It's up to you how to fashion that hearing. So  
11 the parade of horrors is up to you.

12 THE COURT: Well, I don't know that -- would so  
13 much be a parade of horrors, but I can tell you,  
14 practically, if they're objecting to someone, I'm going  
15 to need to take a look at why they're objecting it, in  
16 fair -- objecting to that person being released, in  
17 fairness. And I don't know that I could make a blanket,  
18 you know, we're going to let everybody's history and  
19 story is going to be different, everybody's crime is  
20 going to be different, everybody's alleged crimes.

21 So how do I -- I mean, are you telling me I  
22 could do a blanket order?

23 MR. BARNETT: It's -- Your Honor, yes. The  
24 blanket order is, if you object to these people who are  
25 medically vulnerable and for whom this pandemic may be a

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1 death sentence, if you object to them being let go, say  
2 so within seven days.

3 THE COURT: Okay. So let's -- let's -- let's  
4 set that class aside. Just for my hypothetical, okay.  
5 So we get all the medically vulnerable people taken care  
6 of as to -- okay. And now my understanding is, you still  
7 want relief. You still want relief after I let the  
8 50-year-olds and older out, after I let the medically  
9 vulnerable people out to -- and then you still want  
10 relief. You still want me to deal with the remaining  
11 inmates, right?

12 MR. BARNETT: We just let two groups out so far.

13 THE COURT: And I know you are happy. But --  
14 but I just want to make sure I'm sure -- clear on what  
15 you're asking. You are not done yet. You still want me  
16 to keep working. And I'm happy to do that if the  
17 Constitution requires it, but now you want me to deal  
18 with everybody else left in the jail. And what do you  
19 want me to do with them; you tell me?

20 MR. BARNETT: That's what I want to impress on  
21 you is not the case.

22 THE COURT: Okay. Right. I think your  
23 pleadings -- my -- when we were on our telephone call, I  
24 asked, you know, to get my arms around this case. We're  
25 talking about you got three buckets of people: You got

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1 the 50s-plus, you have got the medically vulnerable, and  
2 you've got everybody else. And my understanding was that  
3 when you get the 50-plus and the medically vulnerable  
4 out, that you still wanted me to look at everybody else  
5 in the jail. And you wanted to see who should be  
6 released from that. And that was my view of your  
7 pleadings. Now, if that's changed and we're just down to  
8 50-plus and medically vulnerable, that completely changed  
9 your posture and that certainly makes my task more  
10 simple.

11 But if you want me to still look at the  
12 remaining population after we've got those two groups  
13 done, then I don't know how it's not an individualized  
14 task. You tell me your --

15 MR. BARNETT: Okay. Can I walk you through it,  
16 Your Honor, and --

17 THE COURT: Sure. And use my bucket analogy so  
18 we're on the same page. Are there three buckets or are  
19 there two?

20 MR. BARNETT: So far there is just two.

21 THE COURT: Okay. So if hypothetically --  
22 hypothetically I grant you the relief you requested. I  
23 give you the 50-plus people, I give you everybody  
24 medically vulnerable -- and this is just a hypothetical,  
25 so just for argument's sake, let's say I give you

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1 everything on your list that's broader than CDC and all  
2 those people are out of jail, are we done?

3 MR. BARNETT: Your Honor, that's not what we're  
4 asking you to do.

5 THE COURT: Okay. What are you asking me to do?  
6 Maybe I've missed it.

7 MR. BARNETT: Okay. Well, please, let me walk  
8 through it and --

9 THE COURT: Sure, please.

10 MR. BARNETT: -- and let --

11 THE COURT: And all I'm talking about at this  
12 point is the writ. I know I'm focused on the writ  
13 because that's my concern as far as public safety. I  
14 think I got it on the TRO and the jail conditions, but as  
15 far as the writ. So I don't want to get off track as far  
16 as -- you know, I know that you have other complaints, so  
17 -- I guess I should have asked a better hypothetical,  
18 because I know those are not all your complaints.

19 But as to the writ, as to the release of the  
20 body, of the habeas corpus, 50-plus --

21 MR. BARNETT: Right.

22 THE COURT: -- medically vulnerable according to  
23 your definition and -- what else --

24 MR. BARNETT: Please don't do that.

25 What we're asking for --

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1           THE COURT: I got it -- I got it from your  
2 pleadings, and so if -- if -- point to me if I'm wrong.  
3 I mean, if -- I thought there were three buckets. I  
4 thought I got that clearly from the call, but if I'm  
5 wrong and there are two, tell me -- tell me so you can  
6 make my task more manageable.

7           MR. BARNETT: Okay. First thing is --

8           MS. WOODS: Your Honor --

9           MR. BARNETT: -- those people who are awaiting  
10 treatment programs, that's a category that you can let  
11 go.

12          THE COURT: Okay.

13          MR. BARNETT: They're probably not going to be  
14 objected to, so that's bucket one.

15          THE COURT: Okay.

16          MR. BARNETT: Bucket -- two is going to be  
17 people who are medically vulnerable --

18          THE COURT: Okay.

19          MR. BARNETT: -- who on that list we saw about  
20 2,200 out of the almost 5,000. And they are ranked  
21 according to their health problems. And if Defendants  
22 want to contest letting them out because they are  
23 concerned that they're going to be a public safety risk  
24 -- they object. The people who are not objected to --  
25 and this is bucket two, go home.

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1           THE COURT:   Okay.

2           MR. BARNETT:   They're free.   So we've got a lot

3 of starfish who are back in the water.

4           THE COURT:   I agree.   I agree.

5           MR. BARNETT:   Okay.   So bucket three comes when

6 the plaintiffs sit down and look at whether we're going

7 to be able to persuade Your Honor on the only issue that

8 will be before you.   And I think that it is a very

9 simple, straightforward issue.

10           We know that -- the reason we brought this case

11 is because there is something terribly wrong that's

12 happening in the Dallas County jail and it's getting

13 worse.   The infection is accelerating.   The peak that you

14 saw in the posters about Rikers, it's coming.   It's

15 coming here and it could --

16           THE COURT:   All that, Mr. Barnett.   I -- I -- I

17 believe all of that.

18           MR. BARNETT:   Okay.   So --

19           THE COURT:   Tell me about the next bucket.

20           MR. BARNETT:   So the next bucket is, we decide

21 which ones we're going to contest that we think the

22 decision that Your Honor should make would be that the

23 risk of harm to those individuals outweighs the potential

24 risk to the community.   And you don't need a whole bunch

25 of people to come in and talk about that.   These lawyers

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1 who are in here right now who -- sent whatever the  
2 presentation needs to be as to those people. And the  
3 stakeholders, however many stakeholders they want to have  
4 in the process of deciding whether to let people go or  
5 not is fine, as long as the process is quick.

6 That's the best chance that Your Honor will be  
7 able to do this expeditiously and simply without getting  
8 bound -- tied down to a grinding process. I don't expect  
9 it will be a grinding process. And furthermore, you've  
10 got a great magistrate judge, I believe Judge Ramirez is  
11 appointed to this case. She's vastly experienced in  
12 things like this and she could make recommendations to  
13 Your Honor because I know you are very busy.

14 And that -- then we're done. That's it.

15 THE COURT: Okay. So -- so after we deal with  
16 the medically vulnerable people, the people awaiting  
17 treatment, bucket one, the medically vulnerable people,  
18 and I assume the 50-pluses are in there too, right, can  
19 we put them in with the medically vulnerable?

20 MR. BARNETT: Well, the -- I think they're  
21 classified as medically vulnerable, Your Honor.

22 THE COURT: Okay. Okay. So that's rolled in.  
23 Okay. And so you are not seeking any relief from  
24 anybody -- so what do I call this third category that  
25 we're talking about, that -- that we've separated people

1 to whom -- people remaining in the jail to whom  
2 stakeholders have no objection to release, so they're  
3 gone with a blanket order, got that. And then we've got  
4 all these other people. It's those people, this unknown  
5 quantity of people who -- and I'll tell you, let me be  
6 candid. Because I see something that you don't get to  
7 see, and that's the NCIC reports. And so we've got -- I  
8 can't tell you exactly how many, but we've got a  
9 significant amount of people who are held because they  
10 either are charged with -- although it seemed like most  
11 of them are being -- most of the people on the  
12 spreadsheet I saw, or the -- the NCICs that are being  
13 held, to which I just expect that Defendants would  
14 object, have violent criminal histories.

15 And so, I don't -- I don't know how I would make  
16 orders on those cases without looking at each case  
17 individually.

18 MR. BARNETT: Well, okay. I -- I hear you, but  
19 remember, Your Honor, the only issue is whether --  
20 because there is a constitutional violation, the person's  
21 rights have been violated, they're in danger of a death  
22 sentence unless they are removed from the jail --

23 THE COURT: I get that.

24 MR. BARNETT: -- and the question is whether  
25 that -- whether that danger to that person outweighs

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1 potential harm to the community from releasing that  
2 person --

3 THE COURT: So let's just talk --

4 MR. BARNETT: -- under whatever conditions Your  
5 Honor determines are appropriate.

6 THE COURT: Okay. So let's -- let's just -- as  
7 we're talking about this, let's pretend I've got one  
8 case, one such case and just a garden variety burglary of  
9 a habitation. Let's say somebody's been convicted of  
10 burglary just once. In order to evaluate that, I've got  
11 a hearing here, bring the person forward, bring the  
12 victim of the crime forward, read the police report, look  
13 at the NCIC and do a customized evaluation of whether or  
14 not this person's going to be at risk. And remember,  
15 we're not talking about people to whom Defendants have  
16 agreed, this is the remainder.

17 So I don't know how many there are, but just --  
18 just -- let's take one. Just one person. And so, how  
19 many people have to be in the room for that, and how much  
20 testimony do I have to listen to for that -- for that one  
21 person? There is no blanket order.

22 MR. BARNETT: Well, the thing I really want to  
23 stress, Your Honor, is we're going to be in there  
24 presenting the case to you. And it's completely up to  
25 you whether you grant the relief that we're asking for.

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1 So if you think you need all of that, all of those  
2 stakeholders and all of those witnesses and all of that  
3 stuff, to make this, to me, very simple determination,  
4 then that is up to you. But we're not asking for that.

5 THE COURT: Well, some of it is deemed -- some  
6 of it's required by state law. I don't think that I  
7 could -- could make a decision on somebody who has got a  
8 parole hold without having TDC here. I don't think that  
9 I could make a decision on letting somebody out who's got  
10 a victim under state law, unless I heard from the victim.  
11 I think I would have to do those things. I don't think  
12 it's a matter of the Court requiring it; I think the law  
13 would require it.

14 MR. BARNETT: Well, I -- Your Honor, if we were  
15 sitting on the state court felony bench I would agree  
16 with you that all of that would apply, but the context is  
17 that the Eighth Amendment -- under the Fourteenth --

18 (Reporter instruction.)

19 THE COURT: Mr. Barnett, I'm sorry. That was my  
20 fault. I spoke over you. I agree with you, Mr. Barnett.  
21 And I'm assuming for purposes of this hypothetical that  
22 that's true. And I don't want you to think for a minute  
23 I'm not assuming that if I found that to be so, that I  
24 wouldn't be incredibly disturbed. But by your analysis,  
25 I mean, the constitutional rights of the person who is in

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1 this jail are very important to the Court. But also  
2 important to the Court are these other concerns. And so  
3 you know, I feel like you are presenting it to me as a  
4 rock-paper-scissor and that their constitutional rights  
5 always win. And that's an important --

6 MR. BARNETT: Your Honor, I -- I'm sorry I  
7 interrupted.

8 THE COURT: That's okay. You go.

9 MR. BARNETT: Well, I -- I think it's -- it's  
10 appropriate for you --

11 THE COURT: You are cutting out.

12 MR. BARNETT: -- this person.

13 THE COURT: You cut back out. If you don't mind  
14 saying that again. Sorry, you are blurry.

15 MR. BARNETT: To me, the simple question that  
16 Your Honor would have to decide is, whether the risk of  
17 death or serious health problems for this individual  
18 person outweighs the potential risk of this person to the  
19 community from being released into the community. We  
20 will already know that the person is sick, because  
21 they're on the list. And we will -- the plaintiffs will  
22 have evaluated that risk before we decide to bring this  
23 to Your Honor.

24 THE COURT: Okay. And so just so I'm clear,  
25 Mr. Barnett, you are talking about these will only be

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1 sick Plaintiffs, so just so I'm clear on who is on this  
2 bucket, I thought we had already dealt with the sick  
3 people. I thought now we were talking about remaining  
4 people in the jail --

5 MR. BARNETT: No.

6 THE COURT: -- who you want out because they  
7 can't socially distance.

8 MR. BARNETT: No. We're talking purely about  
9 the TRO relief that we're asking for, Your Honor.

10 THE COURT: Okay.

11 MS. WOODS: Purely the habeas relief, which is  
12 just the medically vulnerable.

13 THE COURT: Okay. That's right.

14 MR. BARNETT: So the habeas -- so far that's all  
15 we've been talking about, and there are only three  
16 buckets.

17 THE COURT: Okay. That's very helpful.

18 MR. BARNETT: The second thing is, and I'm going  
19 to let Ms. Woods get back to this, because she is the  
20 boss -- she knows what I should be saying. And so I'll  
21 finish it and toss it to her, but the -- the Section 1983  
22 thing is different, and it's not letting people out; it's  
23 helping the people who have to stay survive.

24 THE COURT: Okay. And you raised very important  
25 concerns. I mean, the constitutional rights of people in

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1 jail are very important. And whatever you're accused of  
2 or whatever you're convicted of, you have a right to be  
3 safe if we're going to hold you in jail. I agree with  
4 that.

5 I just wanted to get with you on the same page  
6 on what's on our buckets and it's narrower than I  
7 thought. So I appreciate you going with me through  
8 the -- through that exercise. Thank you.

9 Ms. Woods, I'm -- it's back to you. I think  
10 we're on the same page.

11 MS. WOODS: Your Honor, really the -- what I  
12 wanted to do was clear up the scope of the habeas  
13 request, and with Mr. Barnett's help I think we got  
14 there.

15 So you know, the only other request on -- before  
16 the Court is the 1983 TRO request, which I think the  
17 Court has a good handle on what we're asking there, so  
18 I -- I might just take one moment just to confer with  
19 Mr. Barnett, but I think that we're covered.

20 THE COURT: Okay. You want to take a moment --

21 MR. BIGGS: Can I clarify something quickly?

22 THE COURT: Sure.

23 MR. BIGGS: Promise to be quick.

24 So I'm a little disturbed with this notion of  
25 the plaintiffs and the defense attorneys are going to get

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1 to decide who's in or out. Isn't that the job for the  
2 prosecutors and the public defense -- or the public  
3 defenders, or -- you know, the -- the criminal lawyers?  
4 I don't know why we're the ones making these decisions.  
5 That -- that's a little disturbing to me, Judge.

6 I want to make sure that's clear, we object to  
7 us, the -- you know, State Intervenors, deciding who goes  
8 and who doesn't in these trials.

9 THE COURT: Okay. Thank you. That is noted for  
10 the record. And I'm assuming, Defendants, you join in  
11 that objection?

12 MR. STEPHENS: Yes, Your Honor.

13 THE COURT: All right. Noted for the record.

14 While she's looking at that, I'll tell you, I  
15 will think about your starfish example as I'm going  
16 through this. That's a good reminder that these are real  
17 people, so that is helpful. Thank you.

18 MR. BARNETT: Buckets of starfish, Your Honor.

19 THE COURT: Yeah, we got a lot of starfish out  
20 there. And I know there are lots of -- lots of -- I know  
21 how powerless I feel trying to keep my own family safe.  
22 And they are all free, sitting in nice homes with  
23 air-conditioning and watching lots of YouTube and  
24 Netflix. And so I can only imagine what it's like if  
25 your people are incarcerated. You don't love them any

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1 less and you don't worry about them any less and you're  
2 even more powerless than I would feel right now. So that  
3 would be a pretty scary feeling.

4 MR. BARNETT: Thanks, Your Honor. Thank you.

5 MS. WOODS: Thank you, Your Honor. I -- I think  
6 that we're -- we're ready to rest our argument.

7 THE COURT: Okay. Thank you. Well, thank you,  
8 everybody, for a really zealous argument. I got to see  
9 some really good lawyering. And I'll tell you, as a  
10 referee, I love the game of law. And these are high  
11 stakes, important issues, and I got to see some really  
12 good lawyers from all over America zealously representing  
13 their sides. So everybody believes in their position and  
14 I think everybody has got a good point. I'm going to go  
15 home this weekend and re-read all the critical stuff.

16 You have my commitment that I'm going to do my  
17 very, very best to keep in mind that it is real people,  
18 they're starfish, and we'll see what we can do. And I'll  
19 balance that with the need to keep the community safe,  
20 but being cautious and cognizant of the fact that these  
21 are living people stuck in a place where there is a  
22 horrible virus that kills some of us. I get that and I  
23 understand why you're worried, and I'm worried, too.

24 So I'll go look at the law and do what the law  
25 requires. And thank you-all for giving me -- I feel like

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1 court is about you-all giving me all the ingredients I  
2 need to go cook up my opinion. And I feel like I've got  
3 really good ingredients from both sides.

4 So thank you-all for zealously representing all  
5 of the souls on the ship who don't have anybody else to  
6 speak for them. Thank you, Mr. Biggs, for representing  
7 the State. And thank you, Defendants, for so zealously  
8 and capably representing the County and the Sheriff. I  
9 think everybody's done a really job and I'll be talking  
10 for years about the great lawyers I met.

11 So it's been an honor to preside over this case.  
12 I'm going to do my very best to give you a decision as  
13 quickly as I can. And with that said, Court's in recess  
14 and you are court ordered to have a fantastic weekend.

15 (End of proceedings, 7:47 p.m.)  
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25

BROOKE N. BARR, CSR (214) 753-2661

1 I, BROOKE N. BARR, United States Court Reporter for  
2 the United States District Court in and for the Northern  
3 District of Texas, Dallas Division, hereby certify that  
4 the above and foregoing contains a true and correct  
5 transcription of all proceedings in the above-styled and  
6 -numbered cause.

7 WITNESS MY OFFICIAL HAND this the 29th day of April,  
8 2020.

9  
10  
11  
12 /S/ BROOKE N. BARR  
13 BROOKE N. BARR, CSR NO. 6521  
14 CSR Expiration Date: 12/31/21  
15 United States Court Reporter  
16 1100 Commerce Street  
17 Room 1376  
18 Dallas, Texas 75252  
19 (214) 753-2661  
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# EXHIBIT E



## Declaration of Eric T. Lofgren, MSPH PhD

### I. Background and Qualifications

1. My name is Eric T. Lofgren and I am an Assistant Professor at Washington State University in Paul G. Allen School for Global Animal Health. My research focuses on the computational and mathematical modeling of infectious diseases, with a focus on hospital epidemiology as well as emerging pathogens.
2. I have worked for the past fifteen years as a researcher of infectious diseases and epidemiology and hold both MS and PhD-degrees in Epidemiology from the University of North Carolina at Chapel Hill.
3. I was heavily involved in the response to the 2014 West African Ebola epidemic as well as the initial outbreak of Middle East Respiratory Syndrome (MERS), another novel coronavirus. This included leading the creation of a position paper on the role of modeling in public health response and working closely with federal agencies including the Defense Threat Reduction Agency (DTRA) and the Biomedical Advanced Research and Development Authority (BARDA). Additionally, my research group is one of five in the nation funded by the Centers for Disease Control and Prevention (CDC) to model the spread of healthcare-associated infections, and we have been actively working on COVID-19 related research.
4. My C.V., attached as **Exhibit A**, includes a full list of my honors, experience, and publications.
5. I am donating my time reviewing materials and preparing this report. Any live testimony I provide will also be provided *pro bono*.
6. I have not previously testified as an expert at trial or by deposition. I submitted two declarations in support of the plaintiffs in *Sanchez v. Dallas County*, 20-cv-832 (N.D. Tex.) related to the urgent issues surrounding COVID-19 in the Dallas County Jail.

### II. Opinion

7. As an expert in infectious disease dynamics, it is my opinion that individuals who can safely and appropriately remain in the community should not be brought into the Dallas County Jail system at this time.
8. It is also my opinion that individuals who are already in the Jail should be evaluated for release. A careful evaluation of procedural and housing guidance should be created for those who remain in jail facilities until at least such time as the epidemic in the broader community has been contained to the extent that the public recommendations relax all measures of social distancing.

9. These steps could substantially reduce the number of COVID-19 infections in both the jail and the surrounding community, and reduce the risk that the Dallas County healthcare system becomes overwhelmed.

### III. Risk of COVID-19 Within Jails and Wider Community

10. The health of persons in jail and the health of the rest of the community are inherently linked. The two populations must interact, because jails constantly release people into the wider community, admit new people from the wider community and rely on staff and vendors who regularly mix with the wider community. Further, many jails rely on local hospitals to treat incarcerated persons requiring advanced medical care, adding to the burden on the limited resources of local healthcare systems.
11. The existence of jail-driven disease dynamics result in worse health outcomes for the entire population. Cases of infection occurring within a jail cause additional cases of infection, hospitalization and deaths in the wider community.<sup>1</sup> This is not surprising; it reflects the features of the jail population and the jail system itself. The conditions of incarceration degrade the health of incarcerated people, leaving them more vulnerable to infection and severe outcomes from infection.<sup>2</sup> As an epidemiological result of decreasing individual robustness to disease, the vulnerability of the whole jail population increases.
12. Jails with disease prevalence higher than the general populations they serve will therefore act as sources of infection. Jails will continue to re-seed infection into the wider community, undermining the wider community's efforts to contain or mitigate outbreaks, or even introducing disease into non-infected communities. This cannot be resolved by ceasing release of people from jail, because a substantial number of staff and vendors regularly pass between the jails and the wider community.
13. Outbreaks of disease in jails are exacerbated by both the continuous introduction of potential new sources of infection (for example, as a result of new admissions or by staff) and by the maintenance of higher rates of contact amongst susceptible incarcerated people, due to the density and structure of jail housing arrangements. These dynamics drive the resulting efficacy of any proposed interventions.

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<sup>1</sup> Eric Lofgren, Kristian Lum, Aaron Horowitz, Brooke Madubonwu, Nina Fefferman, *The Epidemiological Implications of Incarceration Dynamics in Jails for Community, Corrections Officer, and Incarcerated Population Risks from COVID-19*, medRxiv 2020.04.08.20058842; doi: <https://doi.org/10.1101/2020.04.08.20058842>.

<sup>2</sup> McClelland, David C., Charles Alexander, and Emilie Marks, *The need for power, stress, immune function, and illness among male prisoners*, *Journal of Abnormal Psychology* 91.1 (1982): 61; Jacobs, Elizabeth T., and Charles J. Mullany, *Vitamin D deficiency and inadequacy in a correctional population*, *Nutrition* 31.5 (2015): 659-663; Kouyoumdjian, Fiona G., et al., *Do people who experience incarceration age more quickly? Exploratory analyses using retrospective cohort data on mortality from Ontario, Canada*, *PloS one* 12.4 (2017); .S. Department of Justice, Special Report, *Medical Problems of State and Federal Prisoners and Jail Inmates*, 2011–12, Revised October 4, 2016 (available here: <https://cutt.ly/myUWxZ8>).

14. The living conditions within the jail spread disease. Incarcerated people cannot practice social distancing due to the lack of space, overcrowding, or the requirement of constant supervision. Incarcerated people are moved in groups from jail to court or, where court proceedings are halted due to this pandemic, forced to remain in their cells or dorms in close proximity to each other. Incarcerated people often have limited access to products and equipment necessary to practice good personal hygiene, such as soap, or hand sanitizer or cleaning products.
15. There are strategies that can help to slow the spread of disease and improve individual health outcomes for people incarcerated within the jail system. For example, increased physical/social distancing measures; decreased population density; improved facility sanitation, access to free personal hygienic care, such as warm water, soap, free hand sanitizer, and free cleaning products; increased time spent outside; better nutrition and increased access to free medical care.
16. However, these improvements are unlikely to occur quickly enough or significantly enough to improve the epidemiological risks of COVID-19 for people living within the jail system or the wider community. In the Dallas County Jail, the infection numbers for COVID-19 suggest that the measures have not been taken quickly or significantly enough.
17. Further, it is becoming increasingly important to deter every single case of COVID-19 infection possible, including infected incarcerated people, so that the capacity of the local healthcare system in Dallas County, including ICU beds, does not become overwhelmed.
18. Texas's stay at home order<sup>3</sup> expired on May 1, 2020 and retail stores, restaurants, movie theaters, museums, libraries, and malls are allowed to operate at a limited capacity.<sup>4</sup> Dallas County's "Safer at Home" order was allowed to expire on May 15, 2020.<sup>5</sup> Dallas County is also reopening offices, restaurants, hair salons and gym facilities subject to restrictions.<sup>6</sup>
19. As social distancing mandates are eased, it is reasonable to assume that within weeks the number of COVID-19 cases in the Dallas County community will increase substantially and that the number of serious COVID-19 cases requiring hospitalization will also increase. It is estimated that Dallas County's hospitals have 827 intensive care unit (ICU) beds and 944 ventilators<sup>7</sup> for a population of over 2.6

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<sup>3</sup> Office of the Tex. Gov., Press Release: *Governor Abbott Issues Executive Order Implementing Essential Services and Activities Protocols* (March 31, 2020), <https://cutt.ly/stJUKfc>.

<sup>4</sup> Office of the Tex. Gov., Press Release: *Governor Abbott Announces Phase One to Open Texas, Establishes Statewide Minimum Standard Health Protocols* (April 27, 2020), <https://cutt.ly/AyE3foB>.

<sup>5</sup> Steven Dial, *Dallas County Stay-at-Home Order Allowed to Expire*, Fox4News (May 16, 2020), <https://cutt.ly/tyE3cPq>.

<sup>6</sup> *Id.*

<sup>7</sup> Joseph Hoyt and LaVendrick Smith, *Dallas County Reports a New Daily High of 234 Coronavirus Cases; Tarrant County Reports 4 Deaths*, Dallas Morning News (May 3, 2020), <https://cutt.ly/cyE3CS1>.

million people.<sup>8</sup> As of May 3, 2020 approximately 66% of those ICU beds and 39% of ventilators were in use.<sup>9</sup> An increase in COVID-19 cases could quickly overwhelm the limited capacity of the local healthcare system, even if the county implements some surge capacity. By preventing the infection of incarcerated people and especially those most vulnerable to serious illness, and therefore preventing the resulting infections that follow in the wider community, valuable resources, including ICU beds, can be preserved.

#### **IV. Conclusion and Recommendations**

20. It is my professional judgment, based on the work I have done on mitigation and containment strategies for infectious disease, including COVID-19 and other diseases (such as Ebola and MERS) that reducing the population of the Dallas County Jail by increasing rates of return home for medically-vulnerable individuals currently incarcerated in the jail system and admissions into the jail system will substantially reduce the number of COVID-19 infections in the jail and the community the jail serves. Successful implementation of these strategies will also clearly yield a reduction in the source of risk to incarcerated people's families and the broader community.
21. Corrections officials can increase the rate of release from jails by evaluating release options or transfer to home confinement for those most vulnerable to serious illness or death if they contract COVID-19. This should be coupled with a decreased rate of intake, since increasing only release rates can increase infection risks for incarcerated people, as well as the staff who work at the jails and court systems, and the broader community.
22. Decreasing population density achieves tremendous benefits. It decreases the probabilities of disease transmission and supports better health for incarcerated people, which also helps to protect the health of jail staff and the community at large. Decreasing population both directly decreases disease exposure, interrupting transmission dynamics, and also facilitates many other interventions. By reducing transmission, it also preserves the precious resources of local healthcare systems.
23. It is my professional opinion that these steps are both necessary and urgent. Each additional day the jail system continues under current operational standards will cost lives in both the incarcerated population and the broader community each jail serves.
24. The health of people in jails and prisons, whether incarcerated or employed within, is inextricably linked with community health. It is essential to protect the health of individuals who are detained in and work in these facilities, for their sake and the sake of the wider community.

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<sup>8</sup> See Census.gov "Quick Facts" for Dallas County, Texas: <https://cutt.ly/QyE3AqE>.

<sup>9</sup> *Supra*, note 7.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

A handwritten signature in black ink, appearing to read 'Eric Lofgren', with a long horizontal stroke extending to the right.

Eric Lofgren MSPH, PhD  
Name

May 17, 2020  
Date

**EXHIBIT A**  
**Curriculum Vitae**

# **Eric T. Lofgren, MSPH PhD**

Eric.Lofgren@gmail.com • (509) 335-4022

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## **Research Interests**

Computational and mathematical modeling of infectious diseases, with a focus on hospital epidemiology as well as emerging, enteric, and respiratory pathogens.

## **Education**

**Virginia Tech, Virginia Bioinformatics Institute, Blacksburg, Virginia**

**Network Dynamics and Simulation Science Laboratory**

Postdoctoral Associate: September 2013 to December 2015

Supervisor: Dr. Stephen Eubank

**University of North Carolina at Chapel Hill, UNC Gillings School of Global Public Health, Chapel Hill, North Carolina**

**Department of Epidemiology**

PhD: May 2013    Advisor: Dr. David Weber

MSPH: December 2009    Advisor: Dr. Jennifer Smith

**Tufts University, Medford, Massachusetts**

BA: January 2007

Major: Biology with Highest Thesis Honors

## **Professional Appointments**

**Assistant Professor, Washington State University, Paul G. Allen School for Global Animal Health.** December 2015 to present.

**Postdoctoral Research, Virginia Tech, Virginia Bioinformatics Institute, Network Dynamics and Simulation Science Lab.** September 2013 to December 2015.

**Research Assistant, UNC Gillings School of Global Public Health, Department of Epidemiology.** January 2009 to May 2009 and August 2011 to May 2013.

**Teaching Assistant, UNC Gillings School of Global Public Health, Department of Epidemiology.** August to December 2008, August to May 2010.

**Summer Lab Manager, Rutgers University, Center for Discrete Mathematics and Theoretical Computer Science. Fefferman Lab.** May 2008 to August 2013.

**Research Assistant, Tufts University, Initiative for the Modeling and Forecasting of Infectious Disease.** August 2005 to July 2007.

## Teaching Experience

**Instructor, College of Veterinary Medicine, Washington State University.** 2018 to present.

- VetPath 571: Methods of Analysis in Epidemiology
- VetClin 570: Infectious Disease Journal Club

**Session Organizer, “A gentle introduction to mathematical modeling: Lessons from the living-dead”, American Public Health Association Annual Meeting Learning Institute.** November 2011, 2012 and 2014.

**Teaching Assistant, UNC Gillings School of Global Public Health, Department of Epidemiology.** 2008 – 2010.

- EPID 722: Epidemiologic Analysis of Time-to-Event Data
- EPID 750: Fundamentals of Public Health Surveillance

## Publications

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## Book Chapters

**Lofgren, E.T.** 2017. Systems Dynamics Models. In *Systems Science and Population Health*. El- Sayed and Galea, eds. Oxford University Press : Oxford. pp. 77-85.

## Submitted Manuscripts

**E.T. Lofgren**, M.S. Mietchen, C.S. Short, K.V. Dicks, R.W. Moehring, D.A. Anderson. Estimating the Per-use Effectiveness of Chlorhexidine Gluconate and Mupirocin in Methicillin-resistant *Staphylococcus aureus* Decolonization in Intensive Care Units. *In submission*. Preprint available at: [medrxiv.org/content/10.1101/19012732v1](https://medrxiv.org/content/10.1101/19012732v1)

C.S. Short, M.S. Mietchen, **E.T. Lofgren**. Transient Dynamics of Infection Transmission in a Simulated Intensive Care Unit. *In submission*. Preprint available at: [arxiv.org/abs/1909.11878](https://arxiv.org/abs/1909.11878)

Mietchen, M.S., C.S. Short, M. Samore, **E.T. Lofgren**. 2019. Population Structure Drives Differential Methicillin-resistant *Staphylococcus aureus* Colonization Dynamics in ICUs. *In submission*. Preprint available at [medrxiv.org/content/10.1101/19002402v2](https://medrxiv.org/content/10.1101/19002402v2).

Slayton, R.B., J.J. O'Hagan, S. Barnes, S. Rhea, R. Hilscher, M. Rubin, **E. Lofgren**, B. Singh. Modeling Infectious Diseases in Healthcare Network Framework for Describing Multidrug Resistant Organism and Healthcare-Associated Infections Agent Based Modeling Methods. *In submission*.

Myers, K., **E.T. Lofgren**, N.H. Fefferman. 2018. 30 Relaxed Fit vs. 32 Slim Cut: Structural Nonidentifiability in Outbreak Models. *In submission*.

Omulo, S.\*, **E.T. Lofgren**, S. Lockwood, et al. 2017. Saturated prevalence of antimicrobial resistance in an informal urban community. *In submission*.

## Invited Talks

*Synthesizing the Clinical Literature using Approximate Bayesian Computation*. 2019. SIAM Conference on Computational Science and Engineering. Spokane, WA.

*Meet the Professor: Building a Virtual Laboratory to Inform Improved Infection Control with Facility-Level Mathematical Modeling*. 2018. IDWeek, San Francisco, CA.

*The Patient-Patch: Hospital Epidemiology as an Ecology Problem*. 2017. National Institute for Mathematical and Biological Synthesis, University of Tennessee, Knoxville, TN.

*Adventures in Modeling for Policy*. 2017. University of Utah, Salt Lake City, UT.

*Agent-based Models and Population Health*. 2016. Center for Health and Society at the University of Copenhagen, Copenhagen, Denmark.

*Beyond Forecasting: Modeling for Decision Support, Policy and Translational Research*. 2015. Society for Vector Ecology, Albuquerque, NM.

*Epidemiology on Networks: Human and Otherwise*. 2014. Department of Mathematics, Tulane University, New Orleans, LA.

*Mathematical Modeling of In-Hospital Transmission of Infectious Diseases*. 2013. Infectious Disease Grand Rounds, Duke University School of Medicine, Durham, NC.

*Defining Epidemics: Detection, Behavior, and Intervention*. 2011. Department of Homeland Security US-Sweden Workshop "A Visualization and Analytics Approach to Flooding and Pandemics". Norrköping, Sweden.

*The Plagues of Azeroth: Outbreaks and Epidemiology in Virtual Worlds*. 2011. UNC Gillings School of Global Public Health, Chapel Hill, NC.

## Funding

U01CK000533-01                      Lofgren, Eric T. (PI)                      08/01/17 – 07/31/20  
Centers for Disease Control and Prevention  
Model-driven Surveillance and Intervention Evaluation in Highly Stochastic Healthcare Settings  
Role: PI

200-2018-96423                      Lofgren, Eric T. (WSU PI)                      01/01/2018 – 06/30/19  
Centers for Disease Control and Prevention  
Identifying Predictors of Antimicrobial Exposure for Application in the Standardized Antimicrobial Administration Ratio Risk Adjustment Strategy  
Role: PI of WSU Subcontract from Duke University

1U01GH002143-01                      Njenga, M. Kariuki (PI)                      09/30/16-09/29/21  
Centers for Disease Control and Prevention  
Conducting Communicable Disease Research in Kenya  
Role: Co-I

WSU College of Veterinary Medicine Lofgren, Eric (PI)                      07/01/16 – 06/30/17  
Intramural Award  
Modeling Emerging Infections in Frontline Veterinary Care Settings  
Role: PI

## Awards and Honors

2007 University Merit Assistantship, UNC Gillings School of Global Public Health  
2017 Finalist, Society for Healthcare Epidemiology of America Epi Project Competition

## Professional Memberships

2010 - Member, Society for Epidemiological Research  
2017 – Membership Committee

2010 - Member, Society for Industrial and Applied Mathematics

2012 - Member, Society for Healthcare Epidemiology of America  
2017 – Journal Club  
2018 – Research Committee

2015 - Member, Association for Computing Machinery

2017 - Member, American Association for the Advancement of Science

## Other Experience and Service

**Manuscript Referee:** *Epidemiology, American Journal of Epidemiology, Infection Control and Hospital Epidemiology, BMJ, BMJ Open, Environmental Health Perspectives,*

*Scientific Data, BMC Infectious Diseases, Clinical Infectious Diseases, Bulletin of Mathematical Biology, PLoS One, PLoS Computational Biology among others.*

**Editorial Boards:** *Epidemiology*

**U.S. Research Delegate:** DHS US-Sweden Workshop 'A Visualization and Analytics Approach to Flooding and Pandemics'. Norrköping, Sweden. 2010.

### **Press Coverage**

**Television:** BBC World News, CBS News, Canada Television, Discovery Channel

**Radio:** BBC UK News, National Public Radio, North Carolina Public Radio

**Print/Online News:** ABC News, ABS CBN News, Canadian Press, The Economist, Forbes, Fox News, New Scientist, Science News, Reuters, TIME, The Washington Post

# EXHIBIT F

## **DECLARATION OF ANK NIJHAWAN, M.D., M.P.H., M.S.C.S.**

1. My name is Ank Nijhawan, my date of birth is January 7, 1975, and my address is 5323 Harry Hines Boulevard, Dallas, Texas 75390. I am an Associate Professor of Internal Medicine at University of Texas Southwestern Medical Center and a treating infectious disease doctor at Clements University Hospital and Parkland Health and Hospital Systems.

2. I have a Bachelor's Degree from Princeton University, a Medical Degree from UT Southwestern, a Master's Degree in Public Health from the Harvard School of Public Health, and a Master's of Science Degree from UT Southwestern.

3. I have worked as a doctor in jail and prison settings since 2007. I am currently the lead infectious disease doctor working at the Dallas County Jail. I have been working at the Dallas County Jail in this capacity part-time since 2012.

4. I am leading the jail's response to the COVID-19 crisis and managing care for all inmates, including those who have tested positive.

5. I testified in my personal capacity on April 23, 2020, at the hearing on Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Habeas Relief in *Sanchez v. Dallas County Sheriff*, Case No. 3:20-cv-00832-E (N.D. Tex.). I have reviewed my testimony, which still reflects my knowledge and belief.

6. I am writing in my personal capacity as a physician and not as a representative of UT Southwestern, Parkland, Dallas County, or the Dallas County Jail.

### **COVID-19**

7. Coronavirus disease of 2019 (COVID-19) is a pandemic. COVID-19 is caused by a novel coronavirus (SARS-CoV-2) for which there is no established curative medical treatment

and no vaccine. UpToDate<sup>1</sup> reports an overall case mortality rate from the disease of 2.3 percent, though the rate ranges in different geographies.

8. Medical care for COVID-19 focuses on prevention strategies, which emphasizes physical distancing, handwashing, respiratory hygiene, and the wearing of masks. Currently, severe cases of the disease can be treated only with supportive care including respiratory isolation, oxygen, and mechanical ventilation.

9. COVID-19 is generally transmitted by infected people when they sneeze or cough. It can also be transmitted through droplets emitted when people talk or breathe heavily. Droplets of respiratory secretions infected with the virus can survive as an aerosol for up to three hours.<sup>2</sup> Droplets can be directly transmitted by inhalation to other individuals in close proximity. Droplets can land on surfaces and be picked up by the hands of another person who can then become infected by contacting a mucous membrane (eyes, mouth, or nose) with their hand. Infected droplets can remain viable on surfaces for variable lengths of time, ranging from up to three hours on copper, 24 hours on cardboard, and two to three days on plastic and stainless steel.<sup>3</sup>

10. COVID-19 can be transmitted by asymptomatic individuals, though a broad range (6%-80%) of infections are estimated to be transmitted by persons who are asymptomatic or presymptomatic.<sup>4</sup> This is critical in a jail because persons coming into the jail or already in jail

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<sup>1</sup> UpToDate is an online medical reference resource widely used in hospitals and health organizations and by private physicians. The 2.3 percent figure is from an update on May 13, 2020.

<sup>2</sup> N van Doremalen, *et al.* Aerosol and surface stability of HCoV-19 (SARS-CoV-2) compared to SARS-CoV-1. *The New England Journal of Medicine*. DOI: 10.1056/NEJMc2004973 (2020) (available at <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>)

<sup>3</sup> *Id.*

<sup>4</sup> Nathan W. Furukawa, *et al.*, *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, 26 *Emerg. Infect. Dis. J.*, May 4, 2020 (access May 17, 2020) (available at <https://doi.org/10.3201/eid2607.201595>).



and newly infected may be asymptomatic, are confined in close quarters, and may be transmitting the infection to others.

11. As of May 15, 2020, Dallas County has reported 7,036 confirmed cases of COVID-19.<sup>5</sup> Of those, 1,221 cases have required hospitalization, and 164 people have died. *Id.* 309, or 4.4% of *confirmed* COVID-19 cases in Dallas County, have involved inmates in the Dallas County Jail.<sup>6</sup> The true percentage is likely higher given limited testing and capacity to trace contacts. In Harris County, more than 10% of confirmed cases have been traced to the jail.

### **COVID-19 in the Dallas County Jail**

12. On March 25, 2020 I sent a letter to Dallas County officials expressing my concern with the risks COVID-19 presented to persons incarcerated in the Dallas County Jail. A true and correct copy of that letter is attached as **Exhibit A** to this declaration. The views expressed in this letter remain my views today.

13. It is my opinion that the outbreak of COVID-19 in the Dallas County Jail presents the continued possibility of overwhelming our County's health care and hospital system. It is also my opinion that because of the outbreak, the Dallas County Jail is a possible and probable medium of COVID-19 transmission to or between humans.

14. Reducing the jail population is key to preventing the virus from spreading further throughout the jail and into the community. I am particularly concerned that the people in the jail who are medically vulnerable will become sick, require hospital care, and possibly die.

15. It is my opinion that officials operating the Dallas County Jail should dramatically reduce the jail population to allow for social distancing, and they should begin by releasing people

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<sup>5</sup> Dallas County Health and Human Services 2019 Novel Coronavirus (COVID-19) Summary at 1, May 15, 2020 (access May 17, 2020) (available at [https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary\\_051520.pdf](https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_051520.pdf)).

<sup>6</sup> *Id.* Figure 6.

who are especially vulnerable because of their age (over age 50) or underlying medical conditions to contracting COVID-19 and developing the most severe symptoms or dying.

16. I recommend that persons fifty years older be considered for release because both my experience working with incarcerated populations and medical literature suggest that patients aged 50 or older are at higher risk for chronic diseases and complications<sup>7</sup>. This is true because of compounding medical issues, often including chronic stress, substance use, and poverty. Over half of the people incarcerated in the Dallas County Jail have chronic medical conditions. Approximately 1800 meet the CDC's criteria for being medically vulnerable to COVID-19.

17. The number of confirmed cases of COVID-19 in the Dallas County Jail continues to grow, and this is not surprising: social distancing is practically impossible in the jail, where people are crowded all day in small spaces with dozens of people.

18. I believe the number of confirmed cases of COVID-19 in the Dallas County Jail is an undercount, as the jail is currently only testing symptomatic people and is averaging 10-20 tests per day. In addition, we have had multiple patients go to the hospital for reasons not related to COVID (=asymptomatic) who tests positive for COVID at the hospital.

19. The outbreak of COVID-19 in the Dallas County Jail will continue to get worse. This is because the virus will continue to spread in the jail environment, people will continue to get booked into the jail, and hundreds of members of the jail staff will continue to enter and exit the jail each day. The increasing rate of infections in the jail will cause an increase in community infections among people outside the jail given the constant churn of people in and out of the jail.

20. It is important to understand that even small improvements in social distancing can make a dramatic difference in whether the COVID-19 outbreak spreads and how quickly. A study

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<sup>7</sup> Loeb SJ, Abudagga A. Health-related research on older inmates: an integrative review. *Res Nurs Health*. 2006;29(6):556-565. doi:10.1002/nur.20177

by colleagues at UT Southwestern Medical Center shows that, based on their modeling, the COVID-19 outbreak in Dallas County is now spreading faster than at the end of April 2020 and that a 5 percentage point improvement in the effectiveness of social distancing and other prevention measures would by August 1, 2020, reduce the number of daily new infections in Dallas County by more than 700 and by even more after August 1, 2020.<sup>8</sup>

### **An Outbreak in the Jail Will Affect Public Health**

21. The outbreak in the jail will increase the spread of COVID-19 throughout Dallas and, as more people become seriously ill, could make it significantly harder for people in the general public to access the health care they need.

22. First, people detained in the jail will become sick and develop serious symptoms in larger numbers than they would if those same people were at home and able to practice social distancing. When a greater the number of people *inside* the jail become infected, it will cause a greater number of people *outside* the jail to become infected. This result will occur because of the frequent daily transition of people in and out of the jail, including inmates being booked and released, and jail guards and staff who come and go each day.

23. As more people inside and outside become infected, the local health system is likely to become increasingly strained as there are a limited number of intensive care unit beds, personal protective equipment, and ventilators in the County.

24. In the absence of a cure or treatment, the cornerstone, indispensable tool for mitigating the spread of COVID-19 is social distancing. Without social distancing, the disease will continue to spread rapidly, as it has done in jails and prisons throughout the country. One reason

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<sup>8</sup> *COVID-19 Current State Analysis and Forecasting for the DFW Region*, May 12, 2020 (access May 17, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

that slowing the spread is so important is that the health system in Dallas may not be able to treat the number of people who will become sick if the spread is not contained.

25. In a congregate setting like the jail where social distancing is impossible, the spread cannot be contained. This will have ripple effects throughout the community. It is probable that COVID-19 infections in the jail have already spread from the jail into the community outside the jail.

**Medically-Vulnerable People**

26. In mid-March 2020, I assisted the medical director of Parkland Jail Health with putting together a list of people incarcerated in the Dallas County Jail who were “medically vulnerable,” meaning that they are particularly susceptible to serious illness and death if they contract COVID-19. This list is based on age and health conditions. I compiled this list, which had approximately 2,200 people on it.

27. I am not aware how many medically-vulnerable people on the list compiled in March remained in the Dallas County Jail. Today there are approximately 1800 of medically-vulnerable people in the Dallas County Jail.

28. On April 23, 2020 I was subpoenaed to testify via videoconference in a court hearing dealing with COVID-19 in the Dallas County Jail. Among other things, I provided my medical opinion that the jail should adopt measures such that we can actually enforce social distancing in order to keep people safe.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_Dallas\_\_ County, State of \_\_Texas\_\_, on the \_\_20th\_\_ day of  
\_\_May\_\_, \_\_2020\_\_.  
(Month) (Year)

A handwritten signature in black ink, appearing to read 'Ank' followed by a stylized, large 'N' or 'A' shape.

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Dr. Ank Nijhawan, M.D., M.P.H., M.S.

# EXHIBIT G

**Declaration of Robert L. Cohen, M.D.,  
Regarding the Spread of COVID-19 in and from the Dallas County Jail**

**Professional Background**

1. I am an internist. I received my M.D. degree from Rush Medical College at Rush University. I have worked as a physician, administrator, and expert in the care of prisoners and persons with HIV infection for more than thirty years. I was Director of the Montefiore Rikers Island Health Services from 1981 to 1986. In 1986, I was Vice President for Medical Operations of the New York City Health and Hospitals Corporation. In 1989, I was appointed Director of the AIDS Center of St. Vincent's Hospital. I represented the American Public Health Association (APHA) on the Board of the National Commission for Correctional Health Care for 17 years. I have served as a federal court monitor overseeing efforts to improve medical care for prisoners in Florida, Ohio, New York State, and Michigan. I have been appointed to oversee the care of all prisoners living with AIDS in Connecticut, and I also serve on the nine-member New York City Board of Corrections.

2. I am familiar with the COVID-19 virus as a clinician experienced in detention settings, including its causes, conditions, and transmission – especially in crowded and unsanitary conditions – and its ability to quickly spread through correctional facilities, like the Dallas County Jail. I have studied the scientific literature about COVID-19, including the literature regarding symptoms, testing, infection rates and transmission. In addition, I have studied and am familiar with the public health guidance regarding prevention and containment of COVID-19, including U.S. Centers For Disease Control (“CDC”)’s Guidance for Population in Jails and the CDC’s Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings.

3. I have been asked by counsel for persons incarcerated at the Dallas County Jail

(DCJ) to describe the impact of the COVID-19 pandemic on those persons and the surrounding community under the current population levels and conditions at the Dallas County jail. To address this question, I rely on my background and training, the public health literature and guidance about COVID-19, as well as information about COVID-19 in DCJ and the community. The information about the DCJ includes publicly available information about the Jail from the Dallas County Sheriff's Department's webpages, pictures of the jail structure and units used in federal court, community infection information from the Dallas County Department of Health, declarations of jail administrators and Parkland officials; declarations from persons detained at DCJ, and the sworn testimony of former detainees, family members of detainees, and staff of the Jail.

#### **Coronavirus of 2019 Poses a Significant Threat in Correctional Settings Like the Dallas County Jail**

4. Coronavirus disease of 2019 (COVID-19) is a pandemic. COVID-19 is caused by a novel coronavirus (SARS-CoV-2) for which there is no established curative medical treatment and no vaccine. UpToDate<sup>1</sup> reports an overall case mortality rate from the disease of 2.3 percent, though the rate ranges in different geographies.

5. The numbers of COVID-19 cases in Dallas County and Texas are rising rapidly, resulting in a public health crisis. Texas was declared a disaster area due to COVID-19 by Governor Greg Abbott on March 13, 2020. Cases in Dallas County increased from one as of March 10, 2020 to 921 as of April 2, 2020.<sup>2</sup> According to Dallas County Health and Human Services, as of May 15 total cases in Dallas County reached 7,036.<sup>3</sup> Cases in Texas rose from five on March 6,

<sup>1</sup> See "Coronavirus disease 2019 (COVID-19)", UpToDate, <https://cutt.ly/GtJYSkj>. UpToDate is an online medical reference resource widely used in hospitals and health organizations and by private physicians. The 2.3 percent figure is from an update on April 4, 2020.

<sup>2</sup> See Dallas County Health and Human Services *2019 Novel Coronavirus (COVID-19) Summary*, Fig. 2, (Apr. 3, 2020), <https://cutt.ly/ptJUtCt>.

<sup>3</sup> See Dallas County Health and Human Services *2019 Novel Coronavirus (COVID-19) Summary*, Fig. 1, (May 15, 2020), <https://cutt.ly/QyR6YrC>.



2020 to 6,110 on April 3, 2020. The cases continue to rise, and as of today there have been 47,784 total cases reported in Texas.<sup>4</sup>

6. On May 14, 2020, the number of confirmed cases of COVID-19 in the Dallas County Jail was already 309<sup>5</sup> people – a number that plainly understates the actual extent of COVID-19 cases due to the Sheriff’s failure to conduct anything close to adequate testing in the Jail.<sup>6</sup>

7. The current conditions in DCJ create a high risk of contributing to an outbreak of COVID-19. Jails and prisons are long known to rapidly spread air-borne respiratory infection like COVID-19 because they house large number of persons held in cramped conditions with inadequate air flow. Tuberculosis, for example, is a bacterium that is significantly less transmissible than COVID-19 yet has been responsible for numerous outbreaks of illness in prisons and jails over the years. For this reason, the Centers for Disease Control and Prevention (CDC) recommend universal screening for tuberculosis in all jails and prisons. The intensity of tuberculosis screening in prisons and jails depends on the inmate population, their length of stay, and the prevalence of tuberculosis in the population that live in and work in the jail.<sup>7</sup>

8. Everyone is at risk for COVID-19 infection, and the danger of transmission presented by COVID-19 in jails and prisons thus requires more intense screening and testing than tuberculosis. Everyone who lives and works in a jail is at the highest risk.

<sup>4</sup> See Texas Department of State Health Services, “Texas Case Counts COVID-19” (accessed May 18, 2020), <https://cutt.ly/YtJUaXJ>.

<sup>5</sup> Dallas County Health and Human Services, *supra* note 3, at Table 6.

<sup>6</sup> The Jail averages only 11 COVID-19 tests per day, has capacity for only an average of 25 tests per day, and does not test members of the Jail’s guards and other staff at all. See Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://cutt.ly/JyTqUXP>).

<sup>7</sup> Centers for Disease Control, *Prevention and Treatment of Tuberculosis in Correctional and Detention Facilities*, (July 2006), <https://cutt.ly/HtJUIqu>.

9. Jails promote the spread of respiratory illnesses because large groups of people are forced suddenly into crowded congregate housing arrangements. Normal civilian recommendations that are made with the expectation that individuals can safely shelter in place. These restrictions on the movement of individuals are effective and are the basis of our national strategy to control the pandemic. They are not relevant to a jail where congregate living is forced on all who enter. This situation is complicated by the fact that custody and other personnel who care for detainees live in the community and carry the virus into a jail with them and, just as concerning, out into the community at large.

10. At a time when (a) the President's task force on COVID-19 recommends limiting gatherings to no more than 10 persons, (b) the President has declared a national emergency, (c) the Centers for Disease Control and Prevention (CDC) recommend wearing a face mask in public settings where social distancing is difficult to maintain, and (d) there is a hard fought stay-at-home order in Dallas County, the Jail is forcing over 5,000 people to live in congregate living conditions at the Dallas County Jail with a continuing influx of new bookings every day. Because of the structure of the jail and manner in which daily activities occur in a jail, incarcerated persons intermingle, and it is not possible to limit gatherings to less than 10 individuals or engage in social distancing required by public health guidance. The conditions in the Dallas County Jail are contrary to the President's recommendation, to the stay at home order in Dallas County, and to current public health recommendations. These circumstances have already, and will continue to, result in the spread of disease both within the Dallas County Jail and to the broader community.

11. Indeed, there are already confirmed cases of COVID-19 in the Dallas County Jail: on March 25, 2020, Dallas County Sheriff Marian Brown announced during a news conference at the Frank Crowley Courthouse that a Dallas County Jail inmate, a man in his 40s, who tested

positive for the novel coronavirus had been in custody for at least three months, since December 2019.<sup>8</sup> Sheriff Brown said on April 1, 2020 that it was unclear how he contracted the virus while in custody.<sup>9</sup> Since March 25, 2020, the pace of infection in the Jail has skyrocketed. By April 21, 2020, the number of confirmed positives among people detained in the jail stood at 81. Two weeks later, the number had more than tripled, to 248. As of May 14, 2020, it had risen further at 309.<sup>10</sup> Sadly, this type of rapid-fire transmission in institutions is to be expected with the COVID-19 Pandemic where inadequate prevention measures are being taken.

12. Medical care for COVID-19 focuses on prevention, which emphasizes physical distancing, handwashing, respiratory hygiene, and the wearing of masks. Paper masks should be replaced daily, cloth masks can be washed and re-used, but must be washed on a daily basis. Improper use of masks can transfer the virus.<sup>11</sup>

13. Currently, severe cases of the disease can be treated only with supportive care including respiratory isolation, oxygen, and mechanical ventilation. In cities with widespread disease, hospitals are anticipating a lack of ventilation equipment to handle the expected cases.

14. COVID-19 is transmitted by infected people when they sneeze or cough. Droplets of respiratory secretions infected with the virus can survive as an aerosol for up to three hours.<sup>12</sup> Droplets can be directly transmitted by inhalation to other individuals in close proximity. Droplets can land on surfaces and be picked up by the hands of another person who can then become infected by contacting a mucous membrane (eyes, mouth, or nose) with their hand. Infected

<sup>8</sup> Cassandra Jaramillo, Nic Garcia and Sam Blum, *After five Dallas County inmates test positive for COVID-19, here's how officials responded*, The Dallas Morning News (March 25, 2020), <https://cutt.ly/jyTwtKw>.

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 6.

<sup>11</sup> New York State Department of Health, *The Facts About Facemasks*, ([accessed May 18, 2020, 1:22 PM](https://cutt.ly/ryTwe1p)) <https://cutt.ly/ryTwe1p>.

<sup>12</sup> National Institute of Health, *New Coronavirus Stable for Hours on Surfaces* (March 17, 2020), <https://cutt.ly/BtJOaia>.

droplets can remain viable on surfaces for variable lengths of time, ranging from up to three hours on copper, 24 hours on cardboard, and two to three days on plastic and stainless steel.<sup>13</sup>

15. COVID-19 can be transmitted by asymptomatic individuals, and it is estimated that approximately six percent of infections are transmitted by asymptomatic persons.<sup>14</sup> This is critical in a jail because persons coming into the jail or already in jail and newly infected may be asymptomatic, are confined in close quarters, and are passing the infection without outward signs of illness.

16. Infected individuals become symptomatic with COVID-19 in a range of 2.5 to 11.5 days with 97.5 percent of infected individuals becoming symptomatic within 11.5 days. Typically, an infected individual becomes symptomatic around day five of their infection. The total incubation period for COVID-19 is thought to extend up to 14 days.<sup>15</sup> Thus, persons coming into jails can be asymptomatic at intake only to become symptomatic later during incarceration. For that reason, a comprehensive correctional intake screening test for COVID-19, including COVID-19 testing is essential. No person whose COVID-19 status is unknown should be admitted into the general population of the Dallas County Jail without being tested for the presence of virus. With the rapid testing now available, results can be available in less than an hour, and certainly within one day. COVID-19 testing of new admissions to the jail is the appropriate strategy for mitigating spread of the disease.

17. A number of jails and prisons across the country have conducted testing of all

<sup>13</sup> *Id.*

<sup>14</sup> Wycliffe Wei, Zongbin Li, Calvin Chiew, Sarah Yong, Matthias Toh, and Vernon Lee, Presymptomatic Transmission of SARS-CoV-2 Singapore, January 23-March 16, 2020, Morbidity and Mortality Weekly Report, Vol. 69, April 1, 2020 (available at <https://cutt.ly/EyTwRiD>).

<sup>15</sup> [Centers for Disease Control, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease \(COVID-19\), \(updated May 15, 2020\), https://cutt.ly/MyTw3Gt.](https://cutt.ly/MyTw3Gt)

incarcerated persons in their facilities, including in Arkansas, North Carolina, Ohio and Virginia,<sup>16</sup> and the Montgomery County Correctional Facility.<sup>17</sup> These tests have shown that current estimates of COVID-19 prevalence and incidence are undercounted. Testing in Montgomery County showed that of the 948 incarcerated people tested, 177 (18%) tested positive, resulting in an infection rate 30 times greater than that identified before testing was begun. These high positivity rates are themselves undercounts, because, as recent reports have shown, the current COVID-19 nasopharyngeal testing may have significant number of false negative tests.<sup>18</sup>

18. Because of the fact that asymptomatic people transmit COVID-19 to others, it is difficult, if not impossible, for a jail to develop an effective plan to protect incarcerated people and staff members from the spread of COVID-19 without mass testing as there is no way to ensure proper quarantine and isolation practices. Mass testing will allow facilities to isolate individuals who are COVID-19 positive and asymptomatic until they are ready to be discharged or readmitted to the general population, and to quarantine people exposed to them. CDC guidance specifically recognizes the special case of jails, and recommends, with regard to discharging persons from COVID-19 isolation status, “more stringent” criteria for “people normally residing in congregate living facilities (e.g., correctional/detention facilities, retirement communities, ships) where there might be increased risk of rapid spread and morbidity or mortality if spread were to occur.”<sup>19</sup> The CDC in this instance recognizes that the likelihood of viral spread in a jail is extremely high, and

<sup>16</sup> Linda So & Grant Smith, *In four U.S. state prisons, nearly 3,300 inmates test positive for coronavirus – 96% without symptoms*, Reuters (April 25, 2020), <https://cutt.ly/3yTenjm>.

<sup>17</sup> Jeremy Roebuck & Allison Steele, *Montgomery County's jail tested every inmate for COVID-19 – and found 30 times more cases than previously known*, The Philadelphia Inquirer (April 28, 2020), <https://cutt.ly/GyTeOrA>.

<sup>18</sup> West CP, Montori VM, Sampathkumar P., *COVID-19 testing: the threat of false-negative results* [published online ahead of print April 9, 2020]. *Mayo Clin Proc* <https://cutt.ly/cyTeXnG>; see also Rob Stein, *Study Raises Questions About False Negatives From Quick COVID-19 Test*, NPR Morning Edition (April 21, 2020), <https://cutt.ly/byTe0xT>.

<sup>19</sup> Centers for Disease Control, *Symptom-Based Strategy to Discontinue Isolation for Persons with COVID-19*, (updated May 3, 2020), <https://cutt.ly/TyTrtaO>.

the need for isolating infectious persons is critical. CDC states specifically in an FAQ answering the question of an incarcerated person “Do I have a greater chance of getting COVID-19?” by stating: “People in correctional and detention facilities are at greater risk for some illnesses, such as COVID-19, because of close living arrangements with other people.”<sup>20</sup> Given these obvious risks, testing of all persons in jail facilities is necessary to avert preventable morbidity and mortality.

19. COVID-19 infection is more likely to be serious or life-threatening if the infected person has a high-risk health profile, such as advanced age or certain underlying illnesses.<sup>21</sup> All of the groups identified in Plaintiffs’ definition of “Medically Vulnerable” fall into groups that are especially at risk to COVID-19. That definition includes persons over the age of 50, and/or has or experiences (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g., bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) hypertension; (f) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (g) blood disorders (including sickle cell disease); (h) inherited metabolic disorders; (i) history of stroke; and/or (j) a current or recent (within the last two weeks) pregnancy. It is my professional opinion that individuals with these conditions are properly enumerated as medically vulnerable within the context of COVID-19 infection.

20. COVID-19 has affected persons in all age groups, but patients over 50 are almost

<sup>20</sup> Centers for Disease Control, *FAQs for Correctional and Detention Facilities*, (updated April 10, 2020), <https://cutt.ly/AyTrfL4>.

<sup>21</sup> Fei Zhou et al., *Clinical Course and Risk Factors for Mortality of Adult Inpatients with COVID-19 in Wuhan, China: A Retrospective Cohort Study*, *The Lancet*, Vol. 395 1054 (Mar. 28, 2020), <https://cutt.ly/Ut4njeN>.

2-and a-half times more likely to progress to a severe case of COVID-19.<sup>22</sup> Further, data collected from 14 states showed that COVID-19-associated hospitalizations in the United States are highest among older adults, with the jump in increased rates of hospitalizations beginning at ages 50-64.<sup>23</sup> **This data is reflected in Figure 1 below.** According to the CDC’s “Weekly Summary of U.S. COVID-19 Hospitalization Data,” individuals above the age of 50 face an acute risk of hospitalization if infected.<sup>24</sup>

21. Accordingly, individuals within the age range of 18-49 have a 6.3% hospitalization rate. The risk of hospitalization increases dramatically for individuals in the age group 50-64, with a 20.7% rate. Individuals above 65 have a 38.7% hospitalization rate. A different study found that out of 500 hospitalizations, 20.8% of patients were between the age of 20-44.<sup>25</sup> Other studies that have been recently released with regard to hospitalization rates among age groups pose a grimmer picture with regard to the risk.<sup>26</sup>

<sup>22</sup> Maria Godoy, *Study Calculates Just How Much Age, Medical Conditions Raise Odds Of Severe COVID-19*, NPR News (March 22, 2020), <https://cutt.ly/At4nkvW>.

<sup>23</sup> Shika Garg et al., *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 — COVID-NET, 14 States, March 1–30, 2020*, Centers for Disease Control Morbidity and Mortality Weekly Report, Vol. 69, No. 15 458 (April 17, 2020), <https://cutt.ly/jt4nzXp>.

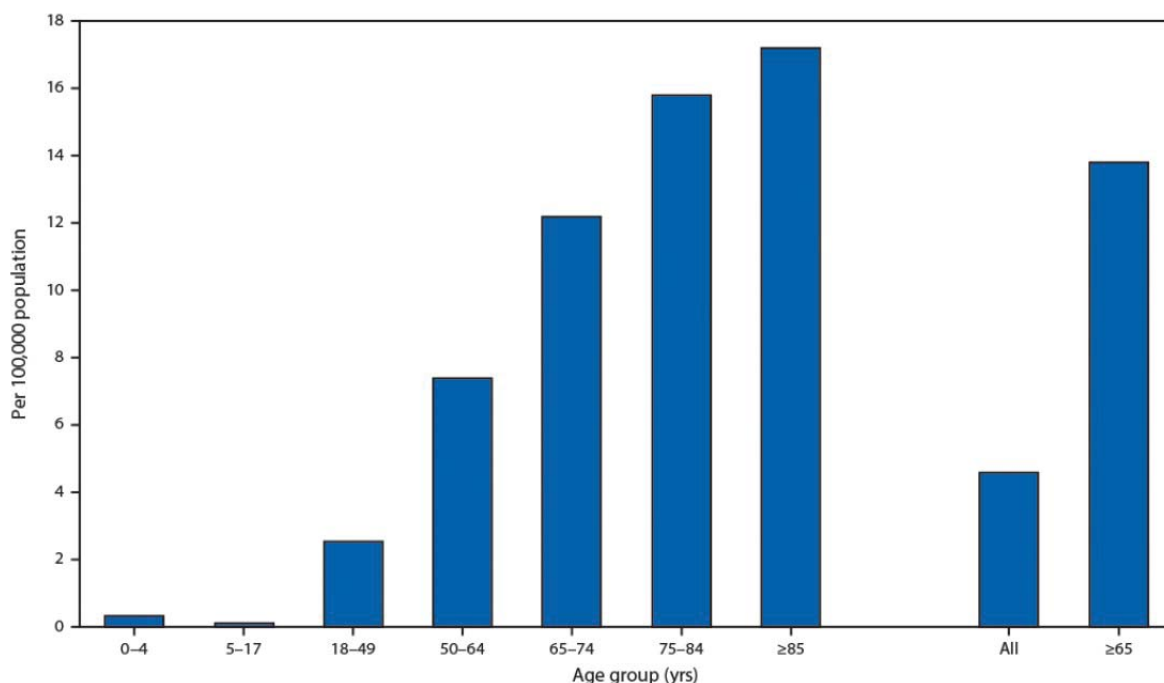
<sup>24</sup> Centers for Disease Control, *COVID-NET: A Weekly Summary of U.S. COVID-19 Hospitalization Data, Laboratory Confirmed COVID-19-Associated Hospitalizations*, (accessed April 17, 2020, 4:42 PM), <https://cutt.ly/Xt4nmzX>.

<sup>25</sup> Shawn Radcliffe, *Nearly 40% of Those Hospitalized for COVID-19 Are Under 55*, Healthline (March 19, 2020), <https://cutt.ly/nt4nWuD>.

<sup>26</sup> Dylan Scott, *The Covid-19 risks for different age groups, explained*, Vox News (March 23, 2020), <https://cutt.ly/ft4nRqK>.



**FIGURE 1. Laboratory-confirmed coronavirus disease 2019 (COVID-19)-associated hospitalization rates,\* by age group — COVID-NET, 14 states,† March 1–28, 2020**



**Abbreviation:** COVID-NET = Coronavirus Disease 2019–Associated Hospitalization Surveillance Network.

\* Number of patients hospitalized with COVID-19 per 100,000 population.

† Counties included in COVID-NET surveillance: California (Alameda, Contra Costa, and San Francisco counties); Colorado (Adams, Arapahoe, Denver, Douglas, and Jefferson counties); Connecticut (New Haven and Middlesex counties); Georgia (Clayton, Cobb, DeKalb, Douglas, Fulton, Gwinnett, Newton, and Rockdale counties); Iowa (one county represented); Maryland (Allegany, Anne Arundel, Baltimore, Baltimore City, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George’s, Queen Anne’s, St. Mary’s, Somerset, Talbot, Washington, Wicomico, and Worcester counties); Michigan (Clinton, Eaton, Genesee, Ingham, and Washtenaw counties); Minnesota (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties); New Mexico (Bernalillo, Chaves, Dona Ana, Grant, Luna, San Juan, and Santa Fe counties); New York (Albany, Columbia, Genesee, Greene, Livingston, Monroe, Montgomery, Ontario, Orleans, Rensselaer, Saratoga, Schenectady, Schoharie, Wayne, and Yates counties); Ohio (Delaware, Fairfield, Franklin, Hocking, Licking, Madison, Morrow, Perry, Pickaway and Union counties); Oregon (Clackamas, Multnomah, and Washington counties); Tennessee (Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties); and Utah (Salt Lake County).

22. Even more striking is New York City Department of Health data published May 1, 2020, which shows that between March 3, 2020 and May 5, 2020, the rate of hospitalization for persons aged 45-64 was 726 per 100,000, four times the rate of hospitalization for those 18-44. Critically, the death rate for the population 45-64 was 150 per 100,000, nine times higher than the death rate of 16 per 100,000 for those under 45.<sup>27</sup>Based on New York City data, age greater than

<sup>27</sup> [New York City Department of Health, COVID-19: Data](https://cutt.ly/JyTrcAv), (accessed May 18, 2020, 2:11 PM), <https://cutt.ly/JyTrcAv>.



50 is a substantial risk factor for hospitalization and death from COVID-19 infection:

AGE_GROUP	Cases	Hospitalizations	Deaths
0-17 years	239.56	17.14	0
18-44 years	1874.03	181.14	16.29
45-64 years	3070.06	725.52	149.7
65-74 years	3058.57	1411.92	486.76
75 and older years	3582.98	2228.8	1222.54
Citywide total	2044.63	516.54	163.41

Note (numbers are rates per 100,000)

23. Due to the enormous hospitalization rate of individuals who are over 50 once they contract COVID-19, it is clear these individuals are at risk of serious symptoms that require a high level of care. Without measures to protect and remove these vulnerable populations in the Dallas County Jail (DCJ), it is likely that the hospital system will experience substantial burdens to accommodate the intensive medical care of medically vulnerable COVID-19 patients admitted from the jail . Reducing the need for hospitalization on the front-end by taking measures to protect those over 50 is essential to reducing the likelihood of an overwhelmed public health system in the Dallas Community.

24. The CDC and Texas Department of State Health Services both classify individuals 65 years as having higher risk for severe illness and death from COVID-19.<sup>28</sup> Due to the well-known serious health risks for detained populations over 50, the New York City Public Health Department has officially recognized individuals who are 50 and over as vulnerable populations to the COVID-19 virus at the Rikers Jail.<sup>29</sup>

<sup>28</sup> Texas Department of State Health Services, Coronavirus Disease 2019, (April 17, 2020, 4:53 PM), <https://cutt.ly/4t4nYpr>. See also, Centers for Disease Control, Coronavirus Disease 2019 (COVID-19): People Who Need Extra Precautions, Older Adults, (April 17, 2020, 4:55 PM), <https://cutt.ly/nt4nUnf>.

<sup>29</sup> New York City Department of Health, COVID-19: Symptoms, Chronic Health Risks, (April 17, 2020, 6:15 PM), <https://cutt.ly/St4EIb4>.

25. The rate of COVID-19 infection spread in correctional settings is also proving to be extremely rapid. At Rikers Island, the main jail in New York City with a similar population size as the Dallas County Jail (DCJ), data reveals that in the space of three weeks, from March 26 through April 16, the facility went from 73 confirmed infections in the jail to 343 confirmed cases currently in the jail. This number did not include those who had been diagnosed positive who were no longer in the jail. It was therefore an undercount of confirmed cases and an underestimate of the number of infected people as the jail was only testing symptomatic people at the time. It is notable that during the same period the number of confirmed infections among correction officers increased from 58 to 686. Today, May 19<sup>th</sup>, one month later, 1346 correction officers in New York City have confirmed Covid-19 infection. .<sup>30</sup>

26. The exponential rate of COVID-19 infections in jail settings, similar to those in Rikers and the Dallas County Jail, has overwhelmed local public health resources and even required the deployment of the National Guard in several states to supplement the lack of staffing and resources.<sup>31</sup>

<sup>30</sup> New York City Board of Correction, NYC Board of Correction and COVID-19, (April 17, 2020, 6:26 PM), <https://cutt.ly/It4RkBk>.

<sup>31</sup> On April 6, 2020, Ohio Governor Mike DeWine ordered the Ohio National Guard to provide assistance to federal authorities in the Elkton Federal Correctional Institution in Columbiana County, where several inmates were tested positive for COVID-19, and five inmates have died from the disease thus far. *See* Office of the Oh. Gov., News Release: Sites Selected for Enhanced Hospital Capacity; Ohio National Guard to Assist Federal Prison; Dispute Resolution Commission Now Active (April 6, 2020), <https://cutt.ly/6t3SUhd>. Recent news reports suggest that the Ohio National Guard may be asked by Governor DeWine to extend their assistance period at Elkton. Tom Giambroni, *Prison may seek extra week of Guard help*, Salem News (April 15, 2020), <https://cutt.ly/Nt3SMhZ>. Governor DeWine has since authorized the Ohio National Guard to assist medical staff at the Pickaway Correctional Institution, a state facility, after the prison reported the death of an inmate due to coronavirus. Talia Naquin, *Ohio National Guard members begin working at prison that reported inmate coronavirus death*, Fox 8 News, (April 14, 2020), <https://cutt.ly/tt3D5Pp>. Similarly, the Illinois National Guard has sent service members to assist medical staff at the Statesville Correctional Center. *See* Tina Sfondeles and Carlos Ballesteros, *Illinois National Guard medics headed to Stateville as inmate coronavirus cases rise*, Chicago Sun Times, (April 1, 2020), <https://cutt.ly/ot3FosB>, and in the state of Alabama the Department of Corrections has outlined a plan to seek assistance from its National Guard should the pandemic prove unmanageable in local facilities. Connor Sheets, *Alabama prison system's COVID-19 plan anticipates widespread infection, deaths, National Guard intervention*, AL.Com, (updated April 7, 2020), <https://cutt.ly/St3FvT8>.

27. The rate of COVID-19 spread in jail and detention settings is also requiring significant numbers of people in these facilities to be quarantined. As each new case emerges, more areas of a facility require quarantine as do the individuals who came in contact with the infected individual for 14 days. For facilities, like the DCJ, with limited areas for housing, this means that it is almost impossible to adhere to the 14-day quarantine in date-based cohorts. The result will be either mixing different quarantine cohorts so the risk of infection spread between groups grows or an utter failure to continue quarantine cohorts, meaning that close contacts and possibly infected individuals will remain in mixed housing with individuals who do not require quarantine. The social distancing and quarantine required to contain COVID-19 is simply not possible in a jail setting like DCJ, especially as the virus continues to move through the population. The result of either scenario is rapid spread of the virus throughout the facility and ultimately the community.

**Significant and Immediate Steps Need to be Taken at the Dallas County Jail in order to Protect Incarcerated Persons and the Community from COVID-19**

28. In preparing for this declaration I reviewed the declarations of DCJ officials, including a Parkland administrator. These declarations set forth some policies that appear to track the Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Settings (CDC Guidelines). However, significant gaps in COVID-19 planning, prevention and care remain. I also reviewed the Declarations and witnessed the testimony summarizing recent reports from detainees/prisoners regarding the actual conditions in the jail which reflect seriously insufficient prevention, planning and treatment for confronting the COVID-19 pandemic in the Dallas County Jail.

29. ***PPE & Sanitation*** – CDC guidance makes clear that both staff and detainees/prisoners should have masks and wear those masks when required for social distancing

and infection reasons. Despite this clear directive, it is apparent that not all staff and incarcerated people are wearing masks and that even where masks are provided, it is insufficient. DCJ states that it will provide incarcerated people with masks, but this alone is also insufficient. If paper masks are provided, a new one must be provided every day. If cloth masks are provided, people who receive them should be given an opportunity to wash them at least once daily. Training on putting on masks, and training on the safe removal of masks must be provided by health staff.

30. Medical staff should also be wearing masks when dealing with any patient and in all situations where social distancing is not possible – including with other staff. This would include typical duties such as medication lines, medication passes, on unit or in clinic patient care, any infirmary care. Although DCJ officials indicate that all staff are supposed to wear face masks and all detainees/prisoners are being given free masks and instructed to wear them, numerous detainees/prisoners report that they do not have access to masks and have been denied masks when they are requested, and that staff are not always wearing masks. Additionally, there appears to be no policy on how often new masks must be provided – if at all.

31. DCJ officials have indicated that cleaning supplies and soap are available to people who live in the jail and that cleaning has been enhanced since the onset of the Pandemic. But DCJ's policies fail to address the CDC's key recommendations about the types of cleaning agents and cleaning processes that should be employed. DCJ's official statements regarding enhanced sanitation also stand in stark contrast to the reports of numerous detainees who indicate that cleaning materials and soap are often not provided or simply not available. Moreover, the reliance on detainees/prisoners to conduct critical environmental cleaning as indicated in official statements begs the question of whether they are being given proper training, protection or supervision. If this is not the case, these actions will likely lead to the spread of the virus. There is also no evidence that such cleaning is being documented so that officials know it is actually being done, when and

by whom. Moreover, in a congregate setting like DCJ, common surfaces, such as chairs, tables, phones, and kiosks, must be properly cleaned throughout the day – again, there is no indication that this is happening at DCJ.

32. Additionally, there is no reason for DCJ to deny people who live in the jail hand sanitizer. This is a vital tool to help combat infection from a public health perspective. At least 30 corrections departments, including the Texas prison system, now allow prisoners to access hand sanitizer despite any alleged safety considerations.<sup>32</sup>

33. While the greater availability of PPE and the enhanced cleaning are important steps to combat COVID-19 – if they are actually being rigorously practiced in the facility – such measures must be paired with adequate social distancing measures to make a substantial difference in the spread of the virus. Cleaning and PPE alone will not adequately prevent infection in a congregate jail setting like DCJ.

34. ***Social Distancing*** – The difficulties of social distancing in a jail setting are clear. But it is also clear that social distancing is the key to stopping the spread of COVID-19. Without adequate social distancing, the rapid-fire spread of the virus is assured in DCJ. Despite the critical importance of these measures, DCJ's stated plans around social distancing fail to address how it will undertake basic social distancing measures, such as modified meal or recreation times, or how to address common scenarios in which detainees/prisoners find themselves in close quarters, such as living in dorms or living in shared cells, or what to do with shared bathroom facilities, common walkways, day rooms, sally ports, medication lines, or transportation. For example, there is no mention of creating sleeping arrangements that allow for the necessary six feet of separation between beds in dormitory areas. Also, there is nothing indicating what happens when people

<sup>32</sup> Casey Tolan, *Hand Sanitizer is Still Considered Contraband in Some Prisons Around the Country*, CNN (May 5, 2020) <https://www.cnn.com/2020/05/05/us/coronavirus-prison-hand-sanitizer-contraband-invs/index.html>

housed in cells are permitted to leave their cells so that appropriate social distancing is required. Distancing is not optional. It is essential for individuals to be able to separate six feet to prevent them from getting infected. Yet there is no indication that this is happening at DCJ.

35. The failure to implement a rigorous social distancing policy and practice at DCJ is highly disturbing because distancing should take place in every aspect of life within DCJ facilities, especially in a congregate setting where the population of incarcerated people as of May 1, 2020, was 4,805,<sup>33</sup> and where the vast majority of those thousands of individuals in DCJ occupy bunk beds in tanks and pods capable of holding 28 and 64 individuals, respectively. The West Tower alone has 132 tanks housing people in close congregate settings.<sup>34</sup> Further, it is my understanding that there are only 213 single-person cells in the entire complex. The living and sleeping arrangements do not allow for proper social distancing and as a result, they catalyze the spread of the virus to detainees, staff, and the community.

36. The failure to address how to practice social distancing in the dorm settings where people are living and sleeping in the DCJ is especially troubling as this type of housing encourages viral spread. Critically, DCJ's stated social distancing plans also do not address the need for staff social distancing. This is an enormous oversight as staff are moving back and forth between the jail and the community daily and thus very likely to bring the disease into the facility.

37. The utter lack of social distancing in the vast majority of the jail is even more dangerous for medically-vulnerable persons. Yet there is no policy or practice being implemented to protect such vulnerable persons from infection either by releasing them or housing them in spaces where appropriate social distancing is actually feasible, and more intensive efforts of screening and protection from transmission are possible. .

<sup>33</sup> Texas Commission on Jail Standards – Abbreviated Population Report for 5/01/2020 at 2, <https://cutt.ly/7yTrAfX>.

<sup>34</sup> Dallas County Sheriff's Department, *Detention Centers*, <https://cutt.ly/4yTrHaL>.

38. ***Lack of Training for Staff & Incarcerated People*** – The CDC Interim Guidance and basic, well-established public health principles make clear that education of both staff and detainees is critical to help prevent the spread of COVID-19. Despite this, there appears to be little to no vigorous training and reinforcement measures for staff or detainees, especially on the need for social distancing. It is critical to provide education on COVID-19 and prevention measures to people who live in the jail, and it is equally important to educate staff. This is especially the case because staff are the people who are moving in and out of the facility on a daily basis and are thus more likely to be carriers of the virus into the facility. It is also critical for staff to be informed about and directed to conduct social distancing amongst themselves in order to prevent the spread of the virus. Likewise, testing should be available to all staff.

39. DCJ must also have a program of health education, provided by health trained professionals, not DCJ security staff, in addition to posting appropriate printed material encouraging physical distancing, handwashing, mask wearing, intensive surface cleaning, and hygienic coughing procedures, and showing the videos mentioned DCJ states is being run on TVs in the facility.

40. ***Testing*** – Testing at DCJ is entirely insufficient. Under policy, an incoming detainee receives a screening test for COVID-19 only if intake personnel refer the detainee to health care professionals at the jail and they determine the detainee meets “Dallas County Health and Human Services criteria.”<sup>35</sup> Others are not routinely tested. Thus far, there is a daily average of only 11 COVID-19 tests being administered at the jail – and a daily average of only 25 tests that can be administered at the jail due to a shortage in available capacity.<sup>36</sup> It is highly likely that

<sup>35</sup> Dallas County Sheriff’s Office, “COVID-19 Initiatives,” (May 19, 2020), <https://cutt.ly/NtJO7zY>.

<sup>36</sup> Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, The Dallas Morning News (May 15, 2020), (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”), <https://cutt.ly/ayTrLeN>.

there are far more detained people in DCJ who are sick with COVID-19 than is currently reported and that those individuals are spreading the disease to detainees and staff.<sup>37</sup>

41. There is also no policy of testing people entering and leaving DCJ – security staff, administrative staff, or medical staff from Parkland – for COVID-19. The only people who get tested are people who are obviously symptomatic detainees who happen to come to the attention of Parkland staff. Especially given the high possibility of asymptomatic transmission with COVID-19 this is not sufficient policy or practice to stop its spread to a larger and larger population.

42. ***Monitoring and Care of Symptomatic Patients*** – The CDC Guidelines make clear that patients who exhibit symptoms of COVID-19 should be immediately placed in medical isolation. But the evidence provided by DCJ suggests this is only regularly done at intake and may be delayed even there. Unfortunately, Dallas County has produced no written policy for monitoring and caring for COVID-19 patients. This means that adequate screening, testing and care for the vast majority of the population is in question. There is also no evidence that those who are positive for COVID-19 or appear symptomatic are being monitored by medical staff at least twice a day per CDC guidelines. In statements made by a Parkland administrator there is only mention of a daily check given to Patients Under Monitoring (PUM) who are the individuals the nurse believes are likely exposed to someone with COVID-19 at the initial screening. Even if these checks are being conducted, people incarcerated at DCJ report that the nurse uses the same device to check the temperatures of 40-60 people, some of whom have tested positive for COVID19, without cleaning the device in between patients. Other detainees who tested positive for COVID-19 report that they not being properly monitored or are being ignored when they seek emergency medical attention. Given the fact that these patients are in isolation and not able to communicate freely with

<sup>37</sup> Roz Plater, *As Many as 50 Percent of People with COVID-19 Aren't Aware They Have the Virus*, Healthline News (April 24, 2020), <https://cutt.ly/lyTr9IR>.



staff or other people for help, it is even more critical that the level of medical monitoring being implemented complies with the CDC guidelines so that those who become sicker are transferred to appropriate medical care facilities in a timely manner in order to avoid serious medical conditions or even death. Detainees report needing to kick the door to get the attention of guards for medical treatment. Detainees also report that when they press a button to seek emergency medical attention, their calls are ignored by DCJ staff. Further, detainees who tested positive for COVID-19 report being denied vital medical supplies, such as an asthma pump, inhaler, Tylenol for headaches, psychiatric medications, and other treatment for COVID-19 symptoms.

43. The system of Patient Under Monitoring (PUM) and Patient Confirmed COVID (PCC) being utilized by DCJ is somewhat helpful but misses key distinctions that should be made for public health purposes and appropriate cohorting. The following different population cohorts should be considered: PCC (COVID-19 positive); (PUM – those who are symptomatic, all of whom should have pending tests); People Exposed (all those who have had potential contact with the virus who are in a separate quarantine from PCC and PUM ); and Unexposed (the rest of the jail population not being held in quarantine but subject to social distancing and other prevention measures). These distinctions ensure that cross-infection is not occurring between infected and uninfected populations.

44. The apparent practice of quarantining an entire 64-person pod when one person in the pod has been suspected of being exposed to COVID-19 is also highly problematic. This practice is reported to include allowing all 64 of the men who are quarantined together to commingle with one another. This quarantine in a space where physical distancing is impossible, could very likely result in exposing more people to the virus. The reason people who may not have COVID-19 have to wait with and potentially be exposed to somebody who does have the virus is because the jail continues to hold people in 64-person pods rather than in smaller groups. If the

jail had enough single cells or used smaller cells to house just one person or even a few, the jail would not have to house potentially exposed people with so many other people who are potentially not yet exposed to the virus. This points to the need to reduce the population to a safer level where appropriate quarantine and physical distancing measures can be implemented.

45. There is also no evidence that DCJ has a plan for conducting medical isolation when the numbers of COVID-19 infected patients exceed the number of such rooms/cells available which is apparently only 213 cells. All jails have limited single cells where medical isolation can be effectuated so this omission is deeply problematic. Given the trajectory of jail infection seen elsewhere there is every reason to believe that isolation beds will run out in DCJ in the coming weeks. Failing to plan now will lead to greater infection and increased deaths down the road.

46. Likewise, there is no evidence of policy or plan on how DCJ will handle the elevated need for hospitalization of COVID-19 cases. In a jail with roughly 5,000 people there will be a large demand for beds in the Parkland Hospital, especially given the enormous likelihood of infection spread in the jail that far surpasses the community. There should be a plan that addresses how Parkland Hospital and the surrounding community will be able to accommodate these cases.

47. ***Care for the Medically Vulnerable*** – As discussed above, the CDC has identified individuals who are especially vulnerable to the COVID-19 virus and at heightened risk of serious medical complications and even death if they become infected. Although it is clear that DCJ has identified at least 2200 people who qualify as medically-vulnerable to the virus, there is no evidence that DCJ has any policies or procedures in place to minimize the risk of infection for these groups or to ensure adequate care for them if they do become infected. In contrast, there are numerous examples of vulnerable individuals with known risk factors not being provided adequate care and prevention measures. In one example, a detainee who has asthma and is COVID positive, pushed the button to seek staff attention because he could not breathe, but was never provided with

medical attention. He was also denied the asthma pump despite repeated requests. Another detainee, who has a history of seizures and is COVID positive, was denied treatment for his symptoms, such as diarrhea, sore throat, and congestion. Finally, detainees who are COVID positive and require regular medical treatments, such as psychiatric medications, inhalers, or diabetic meals, have been unable to get those supplies while in isolation for COVID-19. These examples illustrate that medically vulnerable people are not receiving the basic care they need to stay healthy at DCJ.

48. **Staffing** – CDC Interim Guidelines identify the need to account for adequate staffing during the pandemic. There is no evidence that DCJ has considered this in its COVID-19 planning or that a concrete plan has been developed. In particular, a detailed plan is required to address existing gaps in staffing; what happens with a decreased workforce due to COVID-19 illness and infection; and what are the already apparent increased need for medical monitoring and other needs brought on by the advent of infection at DCJ. Such planning is especially critical in order to avoid harmful practices such as having officers, LPNs or RNs do medical work they are not qualified to do.

### **Opinions and Recommendations**

49. Given current conditions in the jail, it is my opinion that steps should immediately be taken to release any inmate who is over the age of 50 or otherwise medically-vulnerable as described above to protect them from a serious risk of death. No less intrusive intervention will adequately address the public health risk posed by COVID-19 in the Dallas County Jail environment.

50. In addition to release, it is my opinion that the following steps must be taken to protect those in the Dallas County Jail, and that they too are necessary in order to address the threat posed by COVID-19. These additional necessary measures cannot replace the release of medically-

vulnerable individuals described above.

51. It is my opinion that at this time, testing for COVID-19 must be expanded to all incoming detainees. Beyond testing at the time of intake and for people who have previously tested positive, testing should also be expanded to include all persons in DCJ's facilities. This is of course a time-consuming process, but a schedule of testing should be established and presented. Medically vulnerable persons, including all persons over 50 should be prioritized, along with persons in quarantine status who have been exposed to someone with COVID-19. The testing of all persons over 50 is essential due to the fact that vulnerability to hospitalization and death increases dramatically with age. CDC data from 12 states published on April 17, 2020 showed the rate of hospitalization for persons age 50-64 was three times the rate of those 18-49.<sup>38</sup> These tests need to be done as rapidly as possible due to problems with potential for transmission in the quarantined population and the need to discharge people quickly. Rapid COVID-19 testing also needs to be expanded for as many people as possible because of the continuing rise in cases and continuing transmission within the jail. This recommendation is made to protect both the incarcerated population and the civilian population who will be exposed to employees who work within the jail.

52. It is my opinion that persons under monitoring (PUM) for COVID-19 need to be housed in separate housing and not in cells on tiers with other inmates.

53. It is my opinion that – to the extent, for any reason, they are not immediately released – any incarcerated person over 50, or with severe mental illness, or a medical vulnerability as set forth above, along with all persons in quarantine or who have potentially been exposed to the virus should, immediately, have a daily symptom and temperature screening. Any positive symptom or temperature should require respiratory isolation and testing for COVID-19. All PUM

<sup>38</sup> [Centers for Disease Control, \*see supra\* note 24.](#)

and known COVID-19 positive detainees need to be monitored every shift with at least vital signs including temperature and pulse oximeter testing.

54. It is my opinion that all persons anticipated to be discharged who have uncertain status need to be tested with a COVID-19 test prior to discharge.

55. All symptomatic persons requiring discharge planning services to assure safe transition back to their community must have access to these services, including temporary housing. The need for such services should not be treated as a bar to release.

56. It is my opinion, and the CDC recommendation, that all inmates and staff should wear a face mask. Employees interacting with potentially positive detainees (most detainees at this time) must wear CDC recommended personal protective equipment.

57. It is my opinion that all incarcerated people in the jail should receive full and free access to sanitation supplies (including soap, cleaning supplies, paper supplies and sanitizer with at least 60 percent alcohol) and adequate advice, orally and in writing, by appropriately trained personnel, regarding the relevant symptoms to look for, the urgency of the social distancing, and appropriate use of PPE.

58. Jail administration should document that cleaning supplies are available to persons working and living in the jail, that all surfaces in all housing and living areas are cleaned. This information should be published.

59. It is my opinion that all persons housed in the jail should receive information, both verbally and in writing, about the latest CDC and public health guidance about the COVID-19 disease, including best practices and updated protocols as they emerge.

60. It is my opinion that statistics reflecting the state of the pandemic in Dallas County

Jail be published daily and provided to the community, including those who live and work in the jail. This data is essential to assure that current pandemic management plans are working, and to provide timely evidence if they are not, so that plans can be changed.

61. Elements of this daily published report must include:

- a. Number of patients with confirmed COVID-19
- b. Number of patients tested each day
- c. Number of positive and number of negative results received each day
- d. Number of Correction Staff with Confirmed COVID-19 positive (cumulative)
- e. Number of Jail Health Staff with Confirmed COVID-19 (cumulative)
- f. Total Population in Custody
- g. Total New Admissions
- h. Total Pretrial
- i. Total Sentenced
- j. Total held on Technical Parole Violation
- k. Total 50+
- l. Total in Infirmary Status (Men's and Women's infirmary)
- m. Total Pregnant Women in Custody
- n. Number in Quarantine Status
  - i. Admission
  - ii. Exposed, not tested
- o. Number of Persons Under Investigation (PUI)
- p. Number COVID-19 in cohorted housing
- q. Total Hospitalized

- i. Daily Hospital Admissions
- ii. Daily Hospital Discharges
- iii. Daily Number of Patients on Ventilators
- iv. Deaths (daily and cumulative)

62. It is my opinion that all persons housed in the jail should receive clean, laundered sheets and clothing at least twice a week, and showers with soap once per day, and at least one hour of large muscle recreation.

63. It is my opinion that sufficient physical distancing must be implemented throughout the jail, including allowing for six feet of distance between inmates, in addition to the measures outlined above for those who are positive or PUM. People should be released from the jail until it can be run in a manner that ensures sufficient social distancing at all times, beginning with persons over 50 and the medically vulnerable, as I set forth above. Having evaluated the social distancing plans provided by DCJ, it is my opinion that those plans will not mitigate the spread of the virus and cannot mitigate the spread of the virus without serious population reductions to allow for the necessary social distancing under CDC guidelines for both staff and detainees/prisoners. As our country re-opens non-jail institutions, we are cognizant of the constraints imposed by the need for social distancing to mitigate the next surge of infections. Our planning and practice in jails should respect and support that same principles. Inside and outside the jails we are living in the pandemic time.


64. It is my opinion that inmates must continue to have access to timely and emergency medical and mental health care as this virus continues to spread.

65. It is my opinion that the Sheriff must be in close communication with the health staff and the Dallas County Department of Health and Human Services.

66. In reaching my opinions in this matter, I have relied on my personal expertise, professional experience in correctional medicine, as well as the statements and testimony

referenced above regarding operations at DCJ.

I declare under penalty of perjury that the foregoing is true and correct. Executed this  
18<sup>th</sup> day of May, 2020 in New York, New York.

  
Robert L. Cohen



# EXHIBIT H

In the County of Dallas §

State of Texas §

**Affidavit of Thomas William Boston**

Before me on this day, personally appeared Thomas William Boston, who being by me first duly sworn, on oath deposes and says as follows: I am competent and qualified to make this affidavit and I have personal knowledge of the facts stated herein and they are true and correct. I declare the following under penalty of perjury.

My name is Thomas William Boston. My date of birth is . I live at :

I have never been convicted of any felony or any crime involving moral turpitude. I am retired.

On May 18, 2020 my daughter was having a mental health episode, a problem that runs in the family and has been exacerbated by some changes in her medication regimen and the social distancing that has taken so many of her outlets away from her. My wife called police in an effort to have my daughter taken to the hospital, but the police decided to arrest me instead.

I was taken to the jail at about 5pm. In the intake line, the man to the left of me in line for screening said that he had just been discharged from the hospital in Ft. Worth and was positive for COVID-19. At that point everyone was standing 6 feet apart to comply with social distancing. We were given masks and temperatures were taken. The man who self-identified as COVID positive was sent to the line for the nurse's station for screening, as was everyone else.

After we finished at the nurse station, we were sent to the processing room, which was an open area with benches, the seats were all full. The open area held 64 people, side-by-side in rows of four. All full. There was another connected area with identical benches. It had a sign that said 17 on it. This part was totally empty. A detention service officer, Mr. Botero, an Asian man, told me to sit on the bench and wait for arraignment. I told him that those places were all full, and I asked to sit in the empty part so that I

could social distance. I had recently been tested negative for COVID antibodies, and I was nervous about the pandemic. In February I saw my father die on a ventilator, and I know how serious this disease can be. The officer wouldn't let me sit in the empty area, and insisted that I go sit next to all of the other men in the full section. I told him I didn't want to be rude, but I was worried about catching the disease and I wasn't going to sit there. Mr. Botero told me to sit there or he was going to put me in the drunk holdover. I told him to do what he needed to do but I wasn't going to pack in with a bunch of strangers, including the man who had already said he was positive.

Officer Botero put me in the drunk holdover, where 10 or 12 people were being held also. It was about 40 feet by 15 feet with a central booth with a guard inside. Two toilets were visible, but I didn't go anywhere near them. The drunk holdover was filthy. There was urine on the floor, what appeared to be blood on the walls. Dust had collected into streamers off of the air conditioning unit. I stood up and maintained my distance as best I could for about 20 hours. Eventually, a man with a shirt that said pretrial release came in and told me that court would be in an hour. That was at 6:30 AM. But at noon, I still hadn't been to court. I never saw the pretrial man again. Around noon, they moved us all out into the benches, the original benches that I didn't want to sit on, but now they were empty. They had the drunk holdover folks go sit in the section labeled 17 so that they could clean. I saw four inmates come in with sprayers of the kind that you would use to lay down weed killer. They put us back into the drunk holdover. The room wasn't clean, but it had been sprayed. The floors and walls were still sticky. About half an hour later they took me out, fingerprinted me, I finally got to wash my hands. They put me back in the drunk holdover. Finally at about 2pm they called me to court. We were marched into the courtroom and we were sat side by side packed into the courtroom. I had given up arguing. The room was full. The judge read our charges. She read my charge and set my bail at \$1,000. I was sent back to the drunk holdover. About a half hour later, the floors were mopped by more inmates. And the officer with them sprayed what I think was an air freshener.

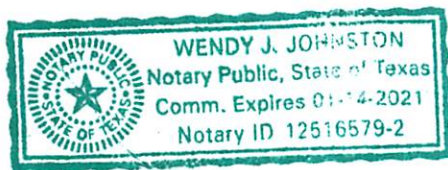
Soon thereafter, I was taken to another part of the jail. They had me take off all of my clothes and searched me and gave me jail clothes. They took me to another holding cell for an hour and a half, then to the South Tower pod 2G. The officer in charge of 2G saw that I was already set to be released, so he put me in bunk 1. The people in the pod looked like they were trying to keep their distance as best they could. I was called to leave about 30 minutes later.

The process to get booked out involved another holding cell. This one had a noticeable puddle of blood on the floor. The cell was 20 feet by 20 feet, there were 34 men in the cell when I counted, but that number would fluctuate by one or two as people would be brought in and out. I poked my head out of the cell to look when the door was open, and I was told to stay in there. I asked whether there were too many people, whether it was safe, the DSO, Officer Spears said "get back in there and shut your mouth" I was there for about four hours. Time is difficult to judge with no clocks but we would ask guards and people who were brought in what time it was. Eventually we were all brought out and lined up against the wall, given bags with our property, and all crammed into the same elevator and marched out of the building.

I called my attorney Brad Nance as soon as I got out. He told me that he had a bondsman ready as soon as the police drove me off, but the jail had put a 24 hr hold on me.

I got home and showered immediately. I am terrified that I have been exposed to the virus.

FURTHER, Affiant sayeth not.



DocuSigned by:  
  
 0EC1B5879D88472

Thomas William Boston

SUBSCRIBED AND SWORN TO BEFORE ME, on the 21<sup>st</sup> day of May, 2020, to certify which witness my hand and official seal.

  
 Notary Public, State of Texas

