No. 19A_____

In the Supreme Court of the United States

LADDY CURTIS VALENTINE AND RICHARD ELVIN KING,
INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED,
Applicants,

v.

BRYAN COLLIER, IN HIS OFFICIAL CAPACITY, ROBERT HERRERA, IN HIS OFFICIAL CAPACITY, AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Respondents.

EMERGENCY APPLICATION TO JUSTICE ALITO TO VACATE STAY PENDING APPEAL OF PRELIMINARY INJUNCTION ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court and Circuit Justice for the Fifth Circuit:

Plaintiffs-Applicants, two inmates at a geriatric state prison unit in Texas, filed the underlying action to require prison officials to provide safeguards against further COVID-19 contamination in a facility that has already experienced at least one COVID-19 related death. After an evidentiary hearing, the district court found that Plaintiffs made a sufficient showing of deliberate indifference to support a narrowly tailored preliminary injunction necessary to preserve the status quo and protect the lives and health of these elderly inmates. On April 22, 2020, the U.S. Court of Appeals for the Fifth Circuit stayed that preliminary injunction over Plaintiffs' objection and in contravention of the district court's factual findings. The COVID-19 pandemic is a serious public health crisis shown to spread in confined conditions at an alarming rate. Every day that the state refuses to implement the measures set forth in the injunction exposes Plaintiffs to serious and irreparable harm from COVID-19. This Court's intervention is urgently needed. Applicants respectfully request that the Fifth Circuit's stay be vacated.

STATEMENT

While most of the country observes social distancing and remains in their homes to keep safe from COVID-19, one highly at-risk population for contraction of the virus has been all but forgotten: those in our Nation's prisons. This case concerns the most basic human right—the ability to protect oneself from grave danger.

Plaintiffs Laddy Valentine (age 69) and Richard King (age 73) are elderly inmates in the Pack Unit, a prison in Grimes County, Texas for geriatric prisoners—a high-risk population for COVID-19. Plaintiffs filed a putative class action alleging violations of their and similarly situated inmates' constitutional rights under the Eighth Amendment and statutory rights under the Americans with Disabilities Act. Ex. 5, Complaint. Plaintiffs allege their rights are violated by Defendants' willful and deliberately indifferent and discriminatory conduct in failing to protect inmates housed in the Pack Unit who face severe illness or death from exposure to COVID-19. *Id.* 1. According to the complaint, Defendants are subjectively aware and "act with deliberate indifference to the serious risk COVID-19 poses to the inmates in their custody and care, including the numerous medically vulnerable individuals currently in confinement, without regard to their safety and health." *Id.* ¶¶ 75–77.

After the complaint was filed, the parties had several conferences with the district court to discuss steps the Pack Unit could implement to address the constitutional violations. Exs. 6–7, notices of settings. After one such conference, Defendants requested an additional, immediate conference and subsequently informed the district court and Plaintiffs, for the first time, that an inmate at the

Pack Unit, 62-year-old Leonard Clerkly, had died three days earlier from COVID-19 related complications. Ex. 8, Minute Entry; *see also* Ex. 9, TDCJ COVID-19 Update Apr. 14, 2020, https://www.tdcj.texas.gov/covid-19/index2.html. Given the clear urgency, Plaintiffs requested an immediate hearing on their application for injunctive relief, which was set for April 16, 2020 at 1:30 p.m. *Id.*

At that hearing, Plaintiffs put forward five live witnesses. Plaintiffs Valentine and King testified about the current prison conditions, including that many staff members still do not wear masks (Ex. 16, Valentine Decl. ¶ 12); that inmates have not been given any oral guidance on preventing COVID-19 transmission (Ex. 10, Inj. Hr'g Tr. 66:19–69:6); that inmates are not allowed to use hand sanitizer, despite Defendants posting signs recommending inmates do so (*id.* 65:25–66:5); that Defendants do not enforce social distancing even where it is feasible (*id.* 69:7–71:24); that inmates working janitorial duty have to share a single pair of gloves between three inmates (*id.* 80:2–14); and that half of one dormitory is presently empty but not being used to facilitate social distancing (*id.*75:17–76:13).

The district court also heard testimony from three of Plaintiffs' experts, Dr. Joseph C. Gathe, Eldon Vail, and Dr. Jeremy Young, who each testified consistent with their previously submitted declarations. Ex. 4, Inj. Mem. Op. 5–6. Dr. Gathe, an expert in internal medicine and infectious disease who currently treats COVID-19 patients, testified about the grave risks presented by the current conditions at the Pack Unit, especially given the recent fatality. *Id.* 5. Dr. Gathe also testified about the need to test all the Unit's inmates and begin quarantine procedures to prevent

COVID-19 from overwhelming the facility. *Id.* 26; Ex. 10, Inj. Hr'g Tr. 14:6–16:9. Eldon Vail, an expert on correctional administration who twice served as the Deputy Secretary for the Washington State Department of Corrections and as a warden for three state prisons, testified about his experience as a prison warden and administrator and how, in response to a significant influenza outbreak, he had taken steps like those in Plaintiffs' request for injunctive relief, including temporarily allowing inmates to have access to hand sanitizer in common areas to help prevent the virus's spread. Ex. 4, Inj. Mem. Op. 5; Ex. 10, Inj. Hr'g Tr. 28:3–31:19. Dr. Young, an expert in internal medicine and infectious disease with a background in suppressing virologic outbreaks in the Illinois prison system, testified about his experience controlling and suppressing infections in prison systems and the extreme risk to inmates at the Pack Unit, which he compared to a "tinderbox" ready to burst into flames.[1] Ex. 4, Inj. Mem. Op. 5–6; Ex. 10, Inj. Hr'g Tr. 93:14–17, 95:14–21. Dr. Young also agreed with Dr. Gathe and Secretary Vail about the measures needed to protect the inmates in the Pack Unit, which were reflected in Plaintiffs' requested relief. *See* Ex. 10, Inj. Hr'g Tr. 86:23–87:11. Defendants did not challenge the credentials or expertise of any of these witnesses, and their testimony went unrebutted. Ex. 4, Inj. Mem. Op. 13–14, 28.

[1] Plaintiffs also submitted the declaration of Dr. Robert L. Cohen, an expert in the field of Correctional Medicine who previously oversaw the provision of medical services to more than 13,000 prisoners at Rikers Island in New York. Ex. 11 (declaration of Robert L. Cohen); *see also* Ex. 4, Inj. Mem. Op. 4.

After the hearing, the district court issued a preliminary injunction, requiring Defendants to take certain measures that the district court found necessary to preserve the status quo: Plaintiffs and the putative class being alive and uninfected. Ex. 2, Prelim. Inj. 4. The last sentence of the district court's order reads: "The Court will issue a memorandum and order setting forth the grounds for this preliminary injunction." *Id.* 4.

That next morning, the press and local governments reported that another elderly inmate at the prison had tested positive for COVID-19. *See* Ex. 12, Press Release, Eighth and Ninth Confirmed Cases of COVID-19 in Grimes County, Grimes County Office of Emergency Management (Apr. 16, 2020), https://www.grimescountytexas.gov/page/open/2341/0/Grimes%20County%20Pack%20Unit%20Cases%20Press%20Release.pdf. That same day, Defendants filed a three-page motion requesting a stay of the preliminary injunction pending appeal. Within hours, the district court stayed the injunction "until 5:00 pm on Wednesday, April 22, 2020, in order to, among other reasons, allow for issuance of the Court's accompanying Memorandum and Order laying out the factual and legal basis for the Court's Preliminary Injunction Order." Ex. 3, Order Staying Inj. The district court noted it would "entertain requests for extension of the length of the stay if needed." *Id.* Rather than wait for the district court's memorandum and order to issue or for the district court's stay to expire, Defendants moved for the Fifth Circuit to stay the injunction pending appeal. *See generally* Ex. 1, Stay Op. Over Plaintiffs' opposition, the Fifth Circuit granted the stay. *Id.* Accordingly, the preliminary injunction is not

currently in effect. In the interim, based on the Fifth Circuit's stay, Defendants have refused to provide any details regarding the second COVID-19 positive inmate or whether other inmates have tested positive.

REASONS TO VACATE THE STAY

A Circuit Justice or the full Court has jurisdiction to vacate a stay entered by a court of appeals "regardless of the finality of the judgment below." *W. Airlines v. Teamsters*, 480 U.S. 1301, 1304 (1987) (O'Connor, J., in chambers); *see*, *e.g.*, *June Med. Servs., L.L.C. v. Gee*, 136 S. Ct. 1354 (2016) (vacating Fifth Circuit's stay of a district court's injunction pending appeal). An application to vacate a stay should be granted "where it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed [by this Court] upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue a stay." *W. Airlines*, 480 U.S. at 1305 (quoting *Coleman v. Paccar Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)); *see also Reynolds v. Int'l Amateur Athletic Fed'n*, 505 U.S. 1301, 1301–02 (1992) (Stevens, J., in chambers).

This case meets all of those requirements. The stay pending appeal risks imposing the very harm that Plaintiffs sought to prevent: infection and possible death from COVID-19 on Defendants' watch. The stay effectively acts as a pocket veto of the district court's well-supported findings. In rejecting those findings, the stay panel strayed from the governing standards—requiring deference to the district court's fact

findings—and instead did what the Fifth Circuit itself regards as improper, "simply [] substitute[ing] its judgment for the trial court's." *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985). The stay panel also misapplied this Court's precedent in *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 124 (1984) by reframing the preliminary injunction as enforcement of state law, even though the injunction was grounded in the Eighth Amendment. If the merits panel reverses the preliminary injunction on these grounds, the Court is likely to grant review to correct this fundamental deviation in appellate review and constitutional law. For these reasons, Plaintiffs request the stay be vacated.

I. The Stay Imposes a Risk of Serious and Irreparable Harm to Plaintiffs

COVID-19 is already inside the Pack Unit, costing one inmate his life, infecting at least one other, and risking the lives of Plaintiffs and the remaining population. Ex. 4, Inj. Mem. Op. 16. The Fifth Circuit recognized the urgency and set expedited briefing for the appeal, but with oral argument still a month away, there is a grave risk that any merits decision will be too late for Plaintiffs. Plaintiffs' infectious-disease expert described this dire situation as a "tinderbox ready to catch fire." Ex. 10, Inj. Hr'g Tr. 91:14–17. If the current stay is left in place, this spark could become an inferno, overwhelming the Pack Unit just as it has prisons across the country.[2] Within TDCJ's own system, the "Beto Unit" has over 100 positive cases. Ex. 13, TDCJ

[2] As an example, one Ohio prison had 73% of its inmates test positive for COVID-19. This is unfortunately not uncommon. A Tennessee prison has over 500 cases, representing 99% of the COVID-19 cases in its county, and Terminal Island Prison in California has 600 cases and five deaths.

COVID-19 Medical Action Center, https://www.tdcj.texas.gov/covid-19/offender_mac.html. A similar outbreak at the Pack Unit poses an even greater risk because of the Pack Unit's elderly and infirm population. Ex. 4, Inj. Mem. Op. 7. The district court recognized all of this and, based on the largely unchallenged medical and factual evidence, ordered the measures it found necessary to protect the status quo: "Plaintiffs and proposed class members remaining alive and free from serious illness stemming from COVID-19." *Id.* 29. The stay jeopardizes that status quo. Given this extreme risk of harm and the demonstrable misapplication of the stay factors, the stay should be vacated.

II. The Stay Panel's Application of the Stay Factors Was Demonstrably Wrong

In determining whether to grant the stay, the panel looked at: (1) whether the Defendants made a strong showing that they are likely to succeed on the merits; (2) whether Defendants will be irreparably injured absent a stay; (3) whether issuance of the stay would substantially injure Plaintiffs and other parties interested in the proceeding; and (4) where the public interest lies. Ex. 1, Stay Op. 5 (citing *Nken v. Holder*, 556 U.S. 418, 426 (2009). The stay panel's application of these factors was demonstrably wrong because it failed to apply the governing "abuse of discretion" standard for review of a preliminary injunction. The stay panel reached its decision on likelihood of success and harm by consistently rejecting or ignoring the district court's findings. These fact findings were entitled to deference under the clearly erroneous standard but received none. The stay panel also committed legal error by misapplying this Court's precedent in *Pennhurst*, effectively creating new law

forbidding injunctive relief for constitutional violations as long as Defendants have a policy in place, regardless of what they do in practice. Under the correct legal framework and giving proper deference to the district court's well-supported fact findings, none of the stay factors are met. Because the stay panel did not follow these standards, its stay should be vacated.

A. The Stay Panel Applied Incorrect Standards and Ignored the District Court's Fact Findings to Conclude that Defendants Are Likely to Prevail on Appeal

To be likely to prevail on an appeal, Defendants must make a strong showing that the district court abused its discretion in entering the preliminary injunction. *Enter. Int'l, Inc.*, 762 F.2d at 472 ("The district court's decision to grant or deny a preliminary injunction lies within its discretion, and may be reversed on appeal only by a showing of abuse of discretion.") (internal quotations omitted). This requires showing that the district court committed an error of law or based its injunction on an erroneous fact finding. *Atchafalaya Basinkeeper v. United States Army Corps of Engineers*, 894 F.3d 692, 696 (5th Cir. 2018) ("Factual determinations within the preliminary injunction analysis are reviewed for clear error, and legal conclusions within the analysis are reviewed de novo.").

The stay panel did not recite these standards, but nevertheless concluded that Defendants were likely to prevail for two reasons: "(1) after accounting for the protective measures TDCJ has taken, the Plaintiffs have not shown a 'substantial risk of serious harm' that amounts to 'cruel and unusual punishment'; and (2) the district court committed legal error in its application of *Farmer v. Brennan*." Ex. 1, Stay Op. 6. On the first point, the stay panel never concluded that the district court's

findings were clearly erroneous; rather, it simply chose to make new fact findings by giving more weight to TDCJ's CDC-compliance arguments in its brief, many of which were proven false by evidence put before the district court. And for the second, the stay panel incorrectly converted the district court's fact finding on subjective intent into a legal determination. The stay panel did not review these findings under the appropriate "clearly erroneous" standard, and thus erred in concluding Defendants are likely to succeed on appeal.

1. The Stay Panel Improperly Overruled the District Court's Fact Findings on Harm Without Finding Clear Error

Since the suit started, Defendants claim to have made some changes that they allege comply with CDC guidelines for prisons. The stay panel began with the objective harm requirement, finding Defendants were likely to prevail because TDCJ "submitted evidence to the district court of the protective measures it has taken" in response to COVID-19, and that the Eighth Amendment did not require more. Ex. 1, Stay Op. 6. To reach its conclusion, the stay panel treated the CDC guidelines as dispositive, and thus ignored its own instruction that an associational standard "may be a relevant consideration, [but] it is not *per se* evidence of constitutionality." *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004) ("[I]t is absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the [American Correctional Association] whenever it has relevant standards."). Treating the CDC guidelines as dispositive was also improper because the CDC itself advises that its "guidance may need to be adapted based on individual facilities'

physical space, staffing, population, operations, and other resources and conditions,"[3] and the sole prison at issue here is a geriatric prison with most inmates having additional comorbidities making it much higher risk than the average prison. Ex. 4, Inj. Mem. Op. 7. On this point, the district court heard from three medical experts that the on-the-ground conditions at the Pack Unit present an immediate and dire risk to Plaintiffs. Ex. 10, Inj. Hr'g Tr. 91:14–17. The district court also considered the obvious danger—one inmate at the Pack Unit has already died from COVID-19, with another infected, while other TDCJ facilities, like the Beto Unit, have numerous positive test results demonstrating the obvious risk that was present. Ex. 4, Inj. Mem. Op. 3–4; Ex. 13, TDCJ COVID-19 Medical Action Center, https://www.tdcj.texas.gov/covid-19/offender_mac.html. (showing hundreds of cases in other units).

In contrast, Defendants did not put on a single witness, fact or expert, to claim that the inmates were safe, instead choosing to stand on the policies they put in place, many of which were only allegedly implemented on the eve of the hearing. Ex. 4, Inj. Mem. Op. 4; Ex. 10, Inj. Hr'g Tr. 105:10–16. The stay panel mistook this *policy*—which would not set a constitutional floor—for what Defendants were actually doing in *practice*. Ex. 1, Stay Op. 6. Contrary to Defendants' claims, the evidence showed they: (1) were not providing inmates tissues or additional toilet paper as a substitute

[3] *See* Ex. 14, CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

(Ex. 10, Inj. Hr'g Tr. 37:5–17, 66:13–24), despite CDC guidance and their own policies to the contrary (Ex. 15, TDCJ Policy B-14.52; Ex. 14, CDC Interim Guidance); (2) were not giving gloves to all inmate janitors tasked with cleaning, but instead making three-person crews share a single pair of gloves between them (Ex. 10, Inj. Hr'g Tr. 81:2–14); (3) were leaving an entire dorm empty instead of using it to better distance inmates (*id.* 76:17–77:13); (4) were allowing prison staff to not wear masks (Ex. 16, Valentine Decl. ¶ 12); (5) were providing a significantly lower concentration of bleach for cleaning than their policy requires (Ex. 10, Inj. Hr'g Tr. 79:5–81:1); (6) were not providing any COVID-19 education beyond signs (*id.* 67:19–70:6), despite CDC recommendations to account for inmates "with low literacy," that have "cognitive or intellectual disabilities," or "who are deaf, blind, or low-vision" (Ex. 14, CDC Interim Guidance).

It was not clearly erroneous for the district court to credit this unrebutted evidence and find a substantial risk of serious harm. *Gates v. Cook*, 376 F.3d 323, 338 (5th Cir. 2004). Nor did the stay panel find it was, as it never applied the abuse of discretion standard at all. Ex. 1, Stay Op., *passim* (never concluding any finding was "clearly erroneous"). It simply credited Defendants' unsupported statements, overrode the district court's fact finding, and improperly substituted its own judgment. *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 857–58 (1982) ("An appellate court cannot substitute its interpretation of the evidence for that of the trial court simply because the reviewing court might give the facts another construction, resolve the ambiguities differently, and find a more sinister cast to actions which the

District Court apparently deemed innocent.") (internal quotations omitted). A stay based on this demonstrably improper application of the governing standards cannot stand. *W. Airlines*, 480 U.S. at 1305.

The stay panel also justified its decision by explaining that, even if Defendants were not following their own policies, Defendants could not be enjoined under this Court's holding in *Pennhurst State School & Hospital v. Halderman*. Ex. 1, Stay Op. 7. But this case does not present the *Pennhurst* scenario. There, the Court held that the Eleventh Amendment barred injunctive relief against a state for violating its own laws. 465 U.S. 89, 124 (1984). Defendants' policies and practices at issue here are not "state law" and Plaintiffs' claims do not flow from them but from the Eighth Amendment itself. *See* Ex. 4, Inj. Mem. Op. 2.

The stay panel's confusion appears to stem from the district court's acknowledgement that aspects of its injunction "largely overlap with TDCJ's COVID-19 policy requirements and recommendations." Ex. 1, Stay Op. 7; Ex. 4, Inj. Mem. Op. 23–24. Conflating this statement with *Pennhurst* rewrites the district court's injunction into something that it is not. Plaintiffs did not seek, and the district did not grant, an injunction for Defendants to follow their own policies or any other state law or guideline. *Id*. 2, 29. Based on a thorough record, the district court concluded that Defendants are violating Plaintiffs' Eighth Amendment rights and that the least-restrictive means to correct that violation were the basic protective measures set forth in its preliminary injunction. *Id.* 29.

Defendants never argued those actions were too restrictive (*id.* 31), as many were actions they tacitly agreed should be taken based on their own policy (*id.* 24), but were not happening in practice. That is the "virtue" the district court saw (Ex. 1, Stay Op. 7)—that its injunction was not overly restrictive because Defendants represented they were capable of many of the precautions, but chose not to actually fulfill them (Ex. 4, Inj. Mem. Op. 28–31). That does not turn the injunction into an improper declaration to "follow state law," because the obligation arises from the U.S. Constitution, not any state law (or even Defendants' own policy). There is of course no bar to such an injunction, and Section 1983 explicitly allows federal courts to grant such relief. *See* 42 U.S.C. Section 1983; *see also Ex Parte Young*, 209 U.S. 123 (1908). The stay panel improperly relied on *Pennhurst* to bar this well-established relief.

2. The Stay Panel Improperly Overruled the District Court's Fact Findings on Deliberate Indifference

The stay panel's second basis for finding Defendants likely to prevail on appeal was that the district court committed "legal error" in its application of *Farmer v. Brennan*. Ex. 1, Stay Op. 6–7. The purported error was "treating inadequate measures as dispositive of the Defendants' mental state" and failing to cite "evidence that they subjectively believe the measures they are taking are inadequate." *Id.* 7–8. This framing misunderstands the issue. It was not legal error for the district court to consider Defendants' own actions when making a fact finding on their subjective intent. As this Court noted in *Farmer*, circumstantial evidence will often be the basis of finding subjective intent. 511 U.S. at 842 ("Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration

in the usual ways, including inference from circumstantial evidence . . . ."). As the district court found, the very act of having policies to combat COVID-19 shows Defendants were subjectively aware of the excessive risk it posed. Ex. 4, Inj. Mem. Op. 21. The district court's further finding that Defendants refuse to actually *follow* those policies shows that they were deliberately indifferent to the known risk of that failure. *Id.* 21–23.

While those facts alone would be sufficient to carry the district court's finding, they were not the only evidence of Defendants' subjective intent. Plaintiffs also showed there is a completely empty dorm at the Pack Unit that could be used to improve social distancing—widely recognized as the most effective measure to combat COVID-19—but that Defendants refuse to use it (Ex. 10, Inj. Hr'g Tr. 76:17–77:13), that Defendants have not even considered allowing hand sanitizer despite Defendants' materials recognizing its importance (*id.* 65:25–66:5 (no hand sanitizer available to inmates); Ex. 4, Inj. Mem. Op. 10 (explaining TDCJ has posters and pamphlets that instruct inmates to use hand sanitizer)), and that Defendants ignore the CDC's recommendation that its "guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions" (Ex. 14, CDC Interim Guidance), such as the high-risk population of the Pack Unit. This evidence was largely unrebutted. Defendants' refusal to follow their own procedures or consider anything beyond the CDC guidelines—despite the recent death of an inmate due to COVID-19, the infection of another, and the CDC's emphasis that the guidelines must be adjusted based on the

circumstances—supports the district court's finding that Defendants are deliberately indifferent to the risk.

The stay panel again does not claim that these findings were clearly erroneous, nor is there a basis to do so given the circumstantial evidence. It implies that relying on circumstantial evidence *at all* was improper. That was legally incorrect as this Court explained in *Farmer*. 511 U.S. at 842. The district court was not required to take Defendants at their word and ignore the obvious. *Id.* Nor was it required to have a direct admission from Defendants that they knew their conduct was inadequate as the stay panel implied—a requirement that would bleed into intentional, rather than reckless, conduct. Under *Farmer*, the district court could properly consider the circumstantial evidence and make a fact finding on Defendants' subjective intent. It did, and that fact finding can only be overturned if it is clearly erroneous. *Atchafalaya*, 894 F.3d at 696. Because the stay panel did not use that standard, its application of the likelihood of success factor was demonstrably wrong and its stay must be vacated. *W. Airlines v. Teamsters*, 480 U.S. at 1305.

B. The Stay Panel Overruled the District Court's Fact Findings on the Remaining Elements Despite Not Finding Them Clearly Erroneous

As with its findings on likelihood of success, the stay panel did not apply the clearly erroneous standard to the district court's factual findings that: (1) Plaintiffs would be irreparably harmed; (2) that there was no evidence of harm to Defendants beyond a generalized institutional injury; and (3) that the balance of the harms and

the public interest weighed in favor of an injunction. Accordingly, the stay panel's application of these factors was demonstrably wrong.

1. The District Court's Finding of Irreparable Harm to Plaintiffs Was Not Clearly Erroneous

In its Memorandum and Order, the district court determined that "Plaintiffs' alleged harm is both imminent and irreparable [because] [s]ince this suit was filed, an inmate at Pack Unit has already died from COVID-related cause [and] [t]here continues to be an imminent harm threatening the inmates at Pack Unit." Ex. 4, Inj. Mem. Op. 28–29. The district court found that without testing all of the inmates—a remedy proscribed only in the injunction and not in TDCJ's policies—"Plaintiffs certainly face further infection." *Id.* 29. In rendering its opinion, the district court weighed the evidence presented by both parties, specifically noting that the "population at Pack Unit, a geriatric unit, is overwhelmingly older and sicker than the prison population at large," a fact that "Defendants have not contested," and that because of these risk factors, "COVID-19 is more likely to result in death or serious injury" to this population. *Id*. Consequently, the district court found that an "injunction is necessary to prevent these irreparable harms from befalling [Plaintiffs]." *Id*.

On review, the stay panel stated: "But the question is whether Plaintiffs have shown that they will suffer irreparable injuries even after accounting for the protective measures in TDCJ Policy B-14.52. Neither the Plaintiffs nor the district court suggest the evidence satisfies that standard." Ex. 1, Stay Op. 10. Not so. Plaintiffs presented, and the district court considered, undisputed evidence in this

regard. For example, Plaintiffs presented overwhelming and uncontroverted evidence that testing all inmates in the Pack Unit is necessary to avoid the high risk of serious injury and death to the vulnerable inmate population, particularly in light of the COVID-19 related death suffered by one of the inmates, and the infection of another high-risk inmate. Ex. 10, Inj. Hr'g Tr. 14:6–16:9, 90:9–91:21. Based on this evidence, the district court explicitly determined that Plaintiffs and other inmates at the Pack Unit will suffer irreparable harm if they are not tested for COVID-19 and if "further action to prevent transmission" is not taken (Ex. 4, Inj. Mem. Op. 28–29; *see also id.* 26 ("But the Court does not order widespread testing because it is 'optimal.' The Court orders it because it is necessary for abating a substantial risk of serious harm to Pack Unit inmates")), and ordered TDCJ to submit a detailed testing plan to test all Pack Unit inmates. Ex. 2, Prelim. Inj. 4.

Thus, at best, the stay panel made its determination without reviewing the district court's reasoned opinion or the underlying testimony upon which it relied. In any case, the stay panel failed to conduct the required inquiry, and in light of the underlying record, the stay panel's determination cannot stand.

2. Defendants Put Forward No Evidence of Actual Harm to Factor into the Balance of Equities

In weighing the equities, the stay panel found that the injunction created an "administrative nightmare" for Defendants. Ex. 1, Stay Op. 9. This finding was not based on any evidence presented in the case. Aside from boilerplate complaints, Defendants offered no explanation of why the specific relief requested would be overly burdensome or difficult to implement at the Pack Unit. Ex. 4, Inj. Mem. Op. 31

("[H]ere, Defendants have failed to present to the Court any evidence of undue burden by an injunction."). The stay panel again highlights TDCJ's statewide policy (Ex. 1, Stay Op. 9), which it believes will be interfered with, but the case concerns only the abnormally-high-risk Pack Unit, and the stay panel did not confront the district court's factual finding that the policy was not enforced at the Pack Unit. Ex. 4, Inj. Mem. Op. 31 ("[N]umerous provisions of the Court's injunction are measures that Defendants stated they had implemented but, in reality, have not—for instance, providing masks and gloves for each inmate during janitorial shifts."). Further, the stay panel's previous recognition that the preliminary injunction "largely overlapped with TDCJ's COVID-19 policy requirements and recommendations" (Ex. 1, Stay Op. 7) belies the claim that the same relief is somehow too burdensome for Defendants to implement.

After accounting for the lack of evidence of actual injury, the only thing remaining for the district court to consider was Defendants' claim of an "institutional injury." The district court took this into account while balancing the equities, finding that, although states have a "strong interest in the administration of their prisons" and while there may be federalism principles at play, those interests do not outweigh the threat to the lives of the Pack Unit inmates. Ex. 4, Inj. Mem. Op. 30 ("Principles of federalism and deference, however, do not erode the core tenet that '[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.'") (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)). The district court determined that where, as here, there is a likelihood that Plaintiffs will successfully

demonstrate that "Defendants' response to the global pandemic is deliberately indifferent in violation of their constitutional rights, *the balance of the equities and public interest weigh in favor of an injunction to protect those rights*." Ex 4., Inj. Mem. Op. 30. The district court appropriately balanced the potential harms to both parties and found, as a matter of fact, that Plaintiffs' harm outweighed that posed to Defendants. *See id*.

There is no suggestion by the stay panel or by Defendants that the district court abused its discretion or committed clear error in weighing the equities. Instead, the stay panel improperly substituted its own judgment for that of the district court, holding, without evidentiary support, that "[T]he burden upon TDC[J] in terms of time, expense, and administrative red tape is too great while it must respond in other ways to the crisis." Ex. 1, Stay Op. 9 (alterations in original). For the same reasons discussed above, this substitution of judgment is impermissible and should not stand. *Inwood Labs.,* 456 U.S. at 857–58.

3. The Injunction Was Not Against the Public Interest

The stay panel only briefly addressed the public interest, finding that a stay was warranted because Defendants' interest and harm merged with that of the public. The district court considered this, but used its discretion to find the public interest was better served by an injunction for two reasons. *First*, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (collecting cases); Inj. Mem. Op. 33. *Second*, the public has a strong interest in protecting the health and safety of the inmates because a COVID-19 outbreak on the Pack Unit threatens the

health and safety of the surrounding community where many of the staff live. Ex. 4, Inj. Mem. Op. 33. The stay panel did not consider these other public interests at all, and thus its opinion is demonstrably flawed. This, in combination with its incorrect analysis under the other factors, necessitates vacatur.

C. Defendants' Unproven PLRA Defense Does Not Justify a Stay

After concluding its analysis of the stay factors, the stay panel separately noted that Appellants "face several obstacles to relief" under the PLRA, specifically discussing exhaustion and narrowness of the injunction. Ex. 1, Stay Op. 10. While it is unclear what weight, if any, this was given in the stay analysis, neither hurdle warranted staying the preliminary injunction. As an affirmative defense, Defendants had the burden of showing an unexhausted yet available remedy, and they wholly failed to do so. Further, the district court found that its measures were the least-restrictive means based on the evidence, including expert testimony from a prison administrator and three medical experts. These PLRA requirements were not grounds to stay the injunction.

1. The Stay Panel Applied the Wrong Standard by Improperly Shifting the Burden to Plaintiffs

The PLRA only requires inmates to exhaust "such administrative remedies as are available" before bringing suit. 42 U.S.C. § 1997e(a); *see also Ross v. Blake*, 136 S. Ct. 1850, 1855, (2016) ("[W]e also underscore that statute's built-in exception to the exhaustion requirement: A prisoner need not exhaust remedies if they are not 'available.'"). The Court has held that this exhaustion requirement is an affirmative

defense, subject to the normal standards of pleading and proof. *Jones v. Bock*, 549 U.S. 199, 216 (2007).

The district court found there was no remedy available to Plaintiffs under the circumstances because TDCJ's grievance process was not "capable of use for the accomplishment of a purpose." Ex. 4, Inj. Mem. Op. 16 (quoting *Ross*, 136 S. Ct. 1859). TDCJ's policy requires inmates to informally raise disputes and then complete a multiple-step, months long process before the grievance is considered exhausted. *See id*. 16. The district court heard testimony from three medical experts concerning the immediate threat COVID-19 poses to Plaintiffs and the other inmates in the Pack Unit, especially given that there are already at least two positive cases, with one elderly inmate, Leonard Clerkly, dying from the disease. *Id*.[4] The stark reality was that even if Mr. Clerkly had filed a grievance before Governor Abbott declared a state of emergency, he would have died before even completing Step 1 of the grievance process. Ex. 5, Complaint ¶ 10. It was not erroneous for the district court to conclude that the grievance process was not "capable of use," when there was no evidence it could be completed before Plaintiffs suffered the harm. *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1173 (7th Cir. 2010) ("[T]here is no duty to exhaust, in a situation of imminent danger, if there are no administrative remedies for warding off such a danger.").

[4] The second inmate was announced by Grimes County, but Defendants have refused to disclose his identify. *See* Ex. 12, Press Release, Eighth and Ninth Confirmed Cases of COVID-19 in Grimes County, Grimes County Office of Emergency Management (Apr. 16, 2020), https://www.grimescountytexas.gov/page/open/2341/0/Grimes%20County%20Pack%20Unit%20Cases%20Press%20Release.pdf.

In reaching its conclusion, the stay panel flipped the burden—faulting the district court for not finding that TDCJ "*would* take the full time if given the chance." Ex. 1, Stay Op. 12. But it is Defendants' affirmative defense and their burden to show an "available" yet unexhausted remedy. *Ross*, 136 S. Ct. at 1855. Defendants emphasized that they were not required to respond until mid-May and gave no suggestion that they intended to move quicker so that some relief was actually possible. Ex. 17, Defs.' Opp. to TRO 7. In addition to improperly flipping the burden, the stay panel's wait-and-see approach requires Plaintiffs having their grievances mooted, through infection or even death, before being allowed to bring suit. Ex. 1, Stay Op. 12. This is not a requirement for injunctive relief, nor would it be justified in a situation where the potential harm is death. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them."). The district court was not required to let the months-long grievance period run its course–and potentially allow irreparable harm to Plaintiffs—to make its determination. The available evidence supported the district court's finding that no remedy was available here, and therefore exhaustion did not bar the preliminary injunction.

2. The District Court's Injunction Was Narrowly Tailored Based on the Record Before It

The stay panel's final criticism of the preliminary injunction was that it "appears that the district court's injunction goes well beyond the limits of what the PLRA would allow even if the Plaintiffs had properly exhausted their claims." Ex. 1,

Stay Op. 13. This too fails to give proper credence to the district court's findings of fact. The district court reached its conclusion on what steps were needed based on testimony from three separate infectious disease experts. Ex. 4, Inj. Mem. Op. 4–5. It also heard from Eldon Vail, the former Secretary of the Washington State Department of Corrections and an expert in prison administration, on what was feasible in prison environments, including steps he took to mitigate a viral outbreak at his prison. *Id.* 5. The stay panel found it "hard to see" how regular cleaning and testing of inmates could be narrowly tailored, viewing them as "salutary," but not required, actions. Ex. 1, Stay Op. 14. But the stay panel did not have the benefit of an injunction hearing with unrebutted expert testimony. As the district court explained, it did not order these measures because they were "optimal"; it did so because the evidence established they were "necessary for abating a substantial risk of serious harm." Ex. 4, Inj. Mem. Op. 26. This was a "direct and tailored response" based on the district court's findings (*id.* 25–26), and Defendants notably did not present any credible evidence that these measures would have an "adverse impact on public safety or the operation of the criminal justice system." 18 U.S.C. § 3626(a)(2). It was demonstrably wrong to stay the preliminary injunction on this ground.

III. The Court Would Likely Grant Review

Finally, it is also appropriate to vacate the stay because this Court "could and very likely would" review the court of appeal's merits decision as to the preliminary injunction. *W. Airlines*, 480 U.S. at 1305. This case presents a question of particular national importance at this time when courts across the county are addressing how to respond to violations of state and federal inmates' rights in connection with the

COVID-19 pandemic.[5] In circumstances as time-sensitive and pressing as these, any conflicts on these questions among the lower courts would warrant granting certiorari. *See* Sup. Ct. R. 10; *Mistretta v. United States*, 488 U.S. 361, 371 (1989) (granting certiorari "[b]ecause of the 'imperative public importance' of the issue" and "the disarray among the Federal District Courts"). The stay panel's misapplication of this Court's *Pennhurst* decision and failure to assess the district court's factual findings under the correct clearly erroneous standard of review would also warrant review, as a similar decision by the Fifth Circuit merits panel would "conflict with the relevant decisions of this Court" and other courts of appeals. Sup. Ct. R. 10(c).

[5] *See, e.g., Mays v. Dart*, Case No. 1:20-cv-02134 (N.D. Ill. filed Apr. 3, 2020); *Cullors v. County of Los Angles*, Case No. 2:20-cv-03760 (C.D. Cal. filed Apr. 24, 2020); *Martinez-Brooks v. Easter*, Case No. 3:20-cv-00569 (D. Conn. filed Apr. 27, 2020); *Abrams v. Chapman*, Case No. 2:20-cv-11053 (E.D. Mich. filed Apr. 29, 2020); *Fernandez-Rodriguez v. Licon-Vitale*, Case No. 1:20-cv-03315 (S.D.N.Y. filed Apr. 28, 2020).

CONCLUSION

For these reasons, Applicants respectfully request that the stay entered by the United States Court of Appeals for the Fifth Circuit be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brandon W. Duke, a member of the bar of this Court, certify that on May 4, 2020, a copy of the foregoing and the attached exhibits were served on all parties by email and first class mail to the individuals listed below:

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LIST OF EXHIBITS

1. Court of Appeals Order Granting Defendant's Motion to Stay of the Preliminary Injunction (5th Cir. Apr. 22, 2020)

2. Preliminary Injunction Order (S.D. Tex. Apr. 16, 2020)

3. Order Granting Five-Day Stay of the Preliminary Injunction (S.D. Tex. Apr. 17, 2020)

4. Memorandum and Order regarding the Preliminary Injunction (S.D. Tex. Apr. 20, 2020)

5. Complaint and Application for a Temporary Restraining Order

6. Notice of Setting for April 2, 2020 Telephonic Conference

7. Order Setting April 6, 2020 Telephonic Conference

8. Minute Entry for April 14, 2020 Telephonic Conference

9. TDCJ COVID-19 Updates

10. Transcript of April 16, 2020 Telephonic Evidentiary Hearing

11. Declaration of Robert L. Cohen

12. Grimes County Office of Emergency Management April 16, 2020 Press Release

13. TDCJ COVID-19 Medical Action Center

14. CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

15. TDCJ Policy B-14.52 Coronavirus Disease 2019 (COVID-19)

16. Declaration of Laddy Valentine

17. Defendant's Response in Opposition to Plaintiffs' Application for a Temporary Restraining Order

Exhibit 1

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 22, 2020
Lyle W. Cayce
Clerk

No. 20-20207

LADDY CURTIS VALENTINE; RICHARD ELVIN KING,

Plaintiffs-Appellees,

v.

BRYAN COLLIER; ROBERT HERRERA; TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:

This case implicates the State of Texas's response to COVID-19. On April 16, 2020, the United States District Court for the Southern District of Texas issued a reticulated preliminary injunction against the executive director of the Texas prison system and the warden of one of its prisons. The injunction regulates in minute detail the cleaning intervals for common areas, the types of bleach-based disinfectants the prison must use, the alcohol content of hand sanitizer that inmates must receive, mask requirements for inmates, and inmates' access to tissues (amongst many other things). The district court admitted that its injunction "goes beyond" the recommendations of the Centers

for Disease Control and Prevention. But in the district court's view, anything less than this injunction—including, presumably, the CDC guidelines—violates the Eighth Amendment. Pursuant to Federal Rule of Appellate Procedure 8, we stay the injunction pending appeal.

I.

As with every other part of the country, our Nation's correctional facilities have not escaped the reach of COVID-19. To mitigate the spread of the virus, the Texas Department of Criminal Justice ("TDCJ") has adopted and implemented several rounds of measures guided by ever-changing CDC recommendations. Plaintiffs are two inmates at the TDCJ Wallace Pack Unit ("Pack Unit"), a prison for the elderly and the infirm. They say TDCJ's measures don't go far enough.

On March 30, 2020, Plaintiffs filed a class action lawsuit on behalf of disabled and high-risk Pack Unit inmates against TDCJ, its executive director, and the warden of the Pack Unit. The complaint alleges violations of the Eighth Amendment's prohibition against cruel and unusual punishment, and of the Americans with Disabilities Act. In addition, Plaintiffs sought a preliminary injunction.

After considering Defendants' written evidence and Plaintiffs' live witness testimony, the district court granted that injunction, finding it likely that Plaintiffs could prove an Eighth Amendment violation. The district court enjoined TDCJ to:

- "Provide Plaintiffs and the class members with unrestricted access to hand soap and disposable hand towels to facilitate handwashing."
- "Provide Plaintiffs and the class members with access to hand sanitizer that contains at least 60% alcohol in the housing areas, cafeteria, clinic, commissary line, pill line, and laundry exchange."

- "Provide Plaintiffs and the class members with access to tissues, or if tissues are not available, additional toilet paper above their normal allotment."
- "Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning, including in quantities sufficient for each inmate to clean and disinfect the floor and all surfaces of his own housing cubicle, and provide new gloves and masks for each inmate during each time they are cleaning or performing janitorial services."
- "Provide all inmates and staff members with masks. If TDCJ chooses to provide inmates with cotton masks, such masks must be laundered regularly."
- "Require common surfaces in housing areas, bathrooms, and the dining hall to be cleaned every thirty minutes from 7 a.m. to 10 p.m. with bleach-based cleaning agents, including table tops, telephones, door handles, and restroom fixtures."
- "Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television controls, books, and gym and sports equipment."
- "Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic. In the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available."
- "Limit transportation of Pack Unit inmates out of the prison to transportation involving immediately necessary medical appointments and release from custody."
- "For transportation necessary for prisoners to receive medical treatment or be released, CDC-recommended social distancing requirements should be strictly enforced in TDCJ buses and vans."
- "Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic; (ii) information on how inmates can protect themselves from contracting COVID-19; and (iii) instructions on how to properly wash hands. Among other locations, all signage must be posted in every housing area and above every sink."

- "Educate inmates on the COVID-19 pandemic by providing information about the COVID- 19 pandemic, COVID-19 symptoms, COVID-19 transmission, and how to protect oneself from COVID-19. A TDCJ staff person must give an oral presentation or show an educational video with the above-listed information to all inmates, and give all inmates an opportunity to ask questions. Inmates should be provided physical handouts containing COVID-19 educational information, such as the CDC's 'Share Facts About COVID-19' fact sheet already in TDCJ's possession."
- "TDCJ must also orally inform all inmates that co-pays for medical treatment are suspended for the duration of the pandemic, and encourage all inmates to seek treatment if they are feeling ill."
- "TDCJ must, within three (3) days, provide the Plaintiffs and the Court with a detailed plan to test all Pack Unit inmates for COVID-19, prioritizing those who are members of Dorm A and of vulnerable populations that are the most at-risk for serious illness or death from exposure to COVID-19. For any inmates who test positive, TDCJ shall provide a plan to quarantine them while minimizing their exposure to inmates who test negative. TDCJ must also provide a plan for testing all staff who will continue to enter the Pack Unit, and for any staff that test positive, provide a plan for minimizing inmates' exposure to staff who have tested positive."

Prelim. Inj. Order at 2–4 [hereinafter PI Order].

In its memorandum opinion explaining this injunction, the district court acknowledged that "many of the measures ordered in the preliminary injunction largely overlap with TDCJ's COVID-19 policy requirements and recommendations." D. Ct. Op. at 23. Yet the court believed the injunction necessary "to promote compliance" with TDCJ's policy, as well as CDC guidelines. *Id.* at 24. Some of the conduct required of Defendants under the injunction goes even further than CDC guidelines. But the district court found that compliance with those guidelines alone could be constitutionally insufficient. *Id.* at 25–26.

The district court stayed its preliminary injunction until April 22, 2020, at 5 p.m. Defendants timely appealed and sought a stay of the preliminary injunction pending appeal.

II.

When considering a stay, "a court considers four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation omitted). The first two factors are the most critical. *Barber v. Bryant*, 833 F.3d 510, 511 (5th Cir. 2016).

A.

We start with TDCJ's likelihood of success on appeal. In a constitutional claim alleging deliberate indifference to the conditions of a prisoner's confinement, the plaintiff must satisfy both the "subjective and objective requirements" of the Eighth Amendment inquiry. *Farmer v. Brennan*, 511 U.S. 825, 846 (1994). To satisfy the objective requirement, the plaintiff must show an "objectively intolerable risk of harm." *Ibid.* To satisfy the subjective requirement, the plaintiff must show that the defendant: "(1) was 'aware of facts from which the inference could be drawn that a substantial risk of serious harm exists'; (2) subjectively 'dr[e]w the inference' that the risk existed; and (3) disregarded the risk." *Cleveland v. Bell*, 938 F.3d 672, 676 (5th Cir. 2019) (quoting *Farmer*, 511 U.S. at 837). The "incidence of diseases or infections, standing alone," do not "imply unconstitutional confinement conditions, since any densely populated residence may be subject to outbreaks." *Shepherd v. Dallas Cty.*, 591 F.3d 445, 454 (5th Cir. 2009). Instead, the plaintiff must show a denial of "basic human needs." *Ibid.* "Deliberate indifference is an extremely

high standard to meet." *Cadena v. El Paso Cty.*, 946 F.3d 717, 728 (5th Cir. 2020).

TDCJ is likely to prevail on the merits of its appeal. That's for two reasons: (1) after accounting for the protective measures TDCJ has taken, the Plaintiffs have not shown a "substantial risk of serious harm" that amounts to "cruel and unusual punishment"; and (2) the district court committed legal error in its application of *Farmer v. Brennan*.

1.

First, the harm analysis. There is no doubt that infectious diseases generally and COVID-19 specifically can pose a risk of serious or fatal harm to prison inmates. TDCJ acknowledges that fact. And it submitted evidence to the district court of the protective measures it has taken as a result.[1] Those protective measures include many of the things the district court ordered—including "access to soap, tissues, gloves, masks, regular cleaning, signage and education, quarantine of new prisoners, and social distancing during transport." D. Ct. Op. at 24. The legal question is whether the Eighth Amendment requires TDCJ to do more to mitigate the risk of harm.

The district court said yes. It acknowledged the numerous protections TDCJ provided, but it wanted to see "extra measures," such as providing alcohol-based sanitizer and additional paper products. D. Ct. Op. at 26. The district court further acknowledged that the "extra measures" it required "go[] beyond TDCJ and CDC policies." *Id.* at 25. Plaintiffs have cited no precedent

[1] The district court made much of the fact that TDCJ did not present "live testimony" at the preliminary-injunction hearing. It's unclear to us why that matters. It long has been true that parties can present evidence at the preliminary-injunction stage with declarations or affidavits. *See, e.g.*, *Sierra Club, Lone Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993). And, of course, it's the Plaintiffs' burden to prove their entitlement to an injunction, not the Defendants' burden to prove the opposite.

holding that the CDC's recommendations are insufficient to satisfy the Eighth Amendment.

TDCJ also is likely to succeed on appeal insofar as the district court enjoined the State to follow its own laws and procedures. In *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), a plaintiff class brought suit under *inter alia* the Eighth Amendment and state law to challenge the conditions at a state facility for people with mental disabilities. *See id.* at 92. The Supreme Court held that the Eleventh Amendment prohibits federal courts from enjoining state facilities to follow state law. *See id.* at 103–23. Here, however, the district court acknowledged that its injunction "largely overlap[ped] with TDCJ's COVID-19 policy requirements and recommendations." D. Ct. Op. at 23. In the district court's view, this was a virtue not a vice because its injunction would "promote compliance" with TDCJ's own policies. *Id.* at 24. *Pennhurst* plainly prohibits such an injunction.

2.

Second, even assuming that there is a substantial risk of serious harm, the Plaintiffs lack evidence of the Defendants' subjective deliberate indifference to that risk. In *Farmer v. Brennan*, the Supreme Court held that deliberate indifference requires the defendant to have a subjective "state of mind more blameworthy than negligence," *Farmer*, 511 U.S. at 835, akin to criminal recklessness, *id.* at 839–40. The district court misapplied this standard. It appeared to think that the question was "whether [the Defendants] reasonably abate[d] the risk" of infection, D. Ct. Op. at 20, or stated differently, "whether and how [TDCJ's] policy is being administered," *id.* at 23.

The district court thus collapsed the objective and subjective components of the Eighth Amendment inquiry established in *Farmer*, treating inadequate

measures as dispositive of the Defendants' mental state. Such an approach resembles the standard for civil negligence, which *Farmer* explicitly rejected. Though the district court cited the Defendants' general awareness of the dangers posed by COVID-19, it cited no evidence that they subjectively believe the measures they are taking are inadequate. To the contrary, the evidence shows that TDCJ has taken and continues to take measures—informed by guidance from the CDC and medical professionals—to abate and control the spread of the virus. *See* Dkt. 36-7 (declaration of TDCJ Health Services Director); Dkt. 36 at 13–20 (compiling evidence of protective measures taken by TDCJ). Although the district court might do things differently, mere "disagreement" with TDCJ's medical decisions does not establish deliberate indifference. *Cadena*, 946 F.3d at 729.

B.

TDCJ also has shown that it will be irreparably injured absent a stay. *See Nken*, 556 U.S. at 434. When the State is seeking to stay a preliminary injunction, it's generally enough to say "'[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.'" *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). The Texas Legislature assigned the prerogatives of prison policy to TDCJ. *See, e.g.*, TEX. GOV'T CODE ch. 501. The district court's injunction prevents the State from effectuating the Legislature's choice and hence imposes irreparable injury.

Moreover, the Supreme Court has repeatedly warned that "it is 'difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.'" *Woodford v. Ngo*, 548 U.S. 81, 94 (2006)

(quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973)); *see also Missouri v. Jenkins*, 495 U.S. 33, 51 (1990). Yet the district court in this case imposed a number of immediate demands on TDCJ. Among these is a plan within three days to test all Pack Unit inmates for COVID-19, as well as a new plan to quarantine those who test positive, distribute physical handouts with COVID-19 information to the inmates, clean common surfaces every thirty minutes for fifteen hours each and every day, and to provide masks to all inmates and staff members. As we've said before about such intrusive orders, this one creates "an administrative nightmare" for TDCJ "to comply with the district court's quotas and deadlines." *Ruiz v. Estelle*, 650 F.2d 555, 571 (5th Cir. Unit A June 1981). "[T]he burden upon TDC[J] in terms of time, expense, and administrative red tape is too great" while it must respond in other ways to the crisis. *Ibid.*

The harm to TDCJ is particularly acute because the district court's order interferes with the rapidly changing and flexible system-wide approach that TDCJ has used to respond to the pandemic so far. The TDCJ's Director of Health Services explained this statewide approach in her declaration. *See* Dkt. 36-7. The Director worked with a team of medical directors to develop Policy B-14.52 in response to COVID-19. *Id.* at 2. TDCJ first implemented that policy on March 20, 2020. It was designed "to adhere to guidance issued" by the CDC. *Ibid.* And the policy was then disseminated to staff, placed in the "Correctional Managed Health Care Infection Control Policy Manual[,] and posted on the TDCJ website." *Id.* at 3. But just three days later, the CDC updated its guidance, so TDCJ implemented a revised policy on March 27, 2020. *Id.* at 4. More changes came again on April 2, 2020, and again TDCJ disseminated and implemented the updated policy. *Ibid.* And on April 15, 2020, TDCJ disseminated and began implementation of yet *another* policy. *Id.* at 4–5.

TDCJ's ability to continue to adjust its policies is significantly hampered by the preliminary injunction, which locks in place a set of policies for a crisis that defies fixed approaches. *See, e.g.*, *Jacobson v. Massachusetts*, 197 U.S. 11, 28–29 (1905); *In re Abbott*, No. 20-50264, 2020 WL 1685929, at *12 (5th Cir. 2020) (describing COVID-19 as a "massive and rapidly-escalating threat"). And it prevents TDCJ from responding to the COVID-19 threat without a permission slip from the district court. That constitutes irreparable harm.

C.

The remaining two factors of the stay standard are the balance of the harms and the public interest. *See Nken*, 556 U.S. at 426. Both weigh in favor of staying the district court's injunction. There is no doubt that COVID-19 poses risks of harm to all Americans, including those in the Pack Unit. But the question is whether Plaintiffs have shown that they will suffer irreparable injuries *even after* accounting for the protective measures in TDCJ Policy B-14.52. Neither the Plaintiffs nor the district court suggest the evidence satisfies that standard. And "[b]ecause the State is the appealing party, its interest and harm merge with that of the public." *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (citing *Nken*, 556 U.S. at 435). Therefore, TDCJ has satisfied all four requirements of the stay standard.

III.

Plaintiffs also face several obstacles to relief under the Prison Litigation Reform Act ("PLRA"). Two bear emphasis at this stage: exhaustion and narrowness.

A.

First, exhaustion. The PLRA requires inmates to exhaust "such administrative remedies as are available" before filing suit in federal court to challenge prison conditions. 42 U.S.C. § 1997e(a). This exhaustion obligation

is mandatory—there are no "futility or other [judicially created] exceptions [to the] statutory exhaustion requirements . . . ." *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001). So long as the State's administrative procedure grants "authority to take *some* action in response to a complaint," that procedure is considered "available," even if it cannot provide "the remedial action an inmate demands." *Id.* at 736 (emphasis added); *see also id.* at 739 ("Congress meant to require procedural exhaustion regardless of the fit between a prisoner's prayer for relief and the administrative remedies possible.").

By contrast, a remedy is not "available"—and exhaustion is not required—when:

> 1. The procedure "operates as a simple dead end" because "the relevant administrative procedure lacks authority to provide any relief," or "administrative officials have apparent authority, but decline ever to exercise it."
>
> 2. The "administrative scheme [is] so opaque that . . . no reasonable prisoner can use them."
>
> 3. Or when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation."

Ross v. Blake, 136 S. Ct. 1850, 1859–60 (2016) (quotation omitted).

Under these standards, Plaintiffs' suit appears premature. All parties agree that the TDCJ administrative process is open for Plaintiffs' use. And Plaintiffs do not argue that TDCJ is incapable of providing *some* (albeit inadequate) relief. Nor do they contend that TDCJ always "decline[s] to exercise" its authority, *id.* at 1859, that the scheme is unworkably opaque, or that administrators thwart use of the system, *see id.* at 1859–60. Therefore, according to the standards the Supreme Court has given us, TDCJ's grievance procedure is "available," and Plaintiffs were required to exhaust.

The district court disagreed. It considered the TDCJ process too lengthy to provide timely relief, and therefore incapable of use and unavailable under

the special circumstances of the COVID-19 crisis. *See* D. Ct. Op. at 16. Other inmates have tried this argument before. In *Blake v. Ross*, 787 F.3d 693 (4th Cir. 2015), the court of appeals held that true exhaustion was not required when the inmate had "exhausted his remedies *in a substantive* sense by affording corrections officials time and opportunity to address complaints internally." *Id.* at 698 (quoting *Macias v. Zenk*, 495 F.3d 37, 43 (2d Cir. 2007)).

The Supreme Court rejected this "special circumstances" exception "as inconsistent with the PLRA." *Ross*, 136 S. Ct. at 1855. In so holding, the Court noted that the precursor to today's § 1997e(a) "would require exhaustion only if a State provided 'plain, speedy, and effective' remedies . . . ." *Id.* at 1858 (quoting § 7(a), 94 Stat. 352 (1980)). By enacting the PLRA (which removed that proviso), Congress rejected this "weak exhaustion provision" in favor of an "invigorated" and absolute "exhaustion provision." *Ibid.* (quotation omitted). In the Supreme Court's view, reading a "special circumstances" exception into the PLRA would undo the PLRA and "resurrect" its predecessor. *Ibid.*

The district court's understanding of the exhaustion requirement similarly revivifies the rejected portions of the old regime. The crux of the court's concern is that TDCJ has not acted speedily enough. But that was an exception to exhaustion under the old § 1997e(a), not the current one. Moreover, the district court held that TDCJ's procedure would be unduly lengthy if TDCJ were to use the full time allotted for a response to the grievance under state law. *See* D. Ct. Op. at 17. But the district court never found that TDCJ *would* take the full time if given the chance. The holding that the TDCJ process "presents no 'possibility of some relief,'" *id.* at 17–18 (citing *Ross*, 136 S. Ct. at 1859), is therefore unsupported by the evidence.

Nor are we persuaded by the district court's reliance on *Fletcher v. Menard Correctional Center*, 623 F.3d 1171 (7th Cir. 2010). In that case, Judge

Posner hypothesized that administrative remedies might "offer no possible relief in time to prevent . . . imminent danger from becoming an actual harm." *Fletcher*, 623 F.3d at 1174. But, in that hypothetical, the State procedure could "offer no *possible* relief" because State law prohibited a response to the grievance until two weeks after it was filed—rendering the procedure of no use to an inmate threatened with death in 24 hours. *Ibid.* (emphasis added). In those circumstances, of course the procedure is unavailable—"it lacks authority to provide any relief," *Ross*, 136 S. Ct. at 1859, because as a matter of law it cannot respond quickly enough. We need not confront Judge Posner's hypothetical because TDCJ faces no legal bar to offering timely relief. TDCJ is empowered to act on a grievance any time *up to*—not *after*, as in *Fletcher*—the statutory limit. Relief by TDCJ therefore remains possible (and the procedure available), even if TDCJ has not acted as swiftly as Plaintiffs would like.[2]

B.

Finally, it appears that the district court's injunction goes well beyond the limits of what the PLRA would allow even if the Plaintiffs had properly exhausted their claims. The PLRA mandates that "[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). And the PLRA says courts "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary

[2] Nor is the possibility of TDCJ action speculative. As noted above in Part II.B, Defendants offered uncontroverted testimony from the Director of TDCJ Health Services that TDCJ adopted an infection control policy as early as March 20, 2020. Dkt. 36-7 at 3. TDCJ's medical directors have updated the policy periodically in response to ever-evolving CDC guidelines and other input. *Id.* at 4.

relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief." *Ibid.*

The district court's order recited these propositions, *see* PI Order at 1–2, but the injunction's substance contravenes them. This is a class-action injunction that applies to all inmates—disabled and non-disabled alike—in the Pack Unit. And it's hard to see how an injunction that prescribes both a prison-wide testing regime and a cleaning schedule down to the half-hour interval is "narrowly drawn" or the "least intrusive means" available. *See id.* at 3–4. So too with the requirement that every single sink have a sign over it with COVID-19 information. *See id.* at 3. These may be salutary health measures. But that level of micromanagement, enforced upon threat of contempt, does not reflect the principles of comity commanded by the PLRA.

* * *

For the foregoing reasons, TDCJ's motion to stay the preliminary injunction pending appeal is GRANTED. The appeal is EXPEDITED to the next available argument calendar.

STEPHEN A. HIGGINSON, Circuit Judge, concurring in the judgment:

I agree that Appellants have demonstrated a substantial likelihood of success on their claim that Appellees failed to exhaust prison remedies prior to seeking relief in federal court. Appellees did not submit any grievance request to prison authorities before filing this lawsuit, and I am not aware of any case, nor do Appellees or the district court cite one, in which a prisoner has been deemed compliant with the Prison Litigation Reform Act (PLRA) when there has been no attempt to file a grievance prior to suit in federal court.[1]

I write separately, however, to emphasize two points as governments, state and federal, respond to the COVID-19 crisis, which presents enormous and imminent health risks for prisoners and correctional officers alike.

First, the instant stay order does not foreclose the possibility that, upon expedited consideration, our court may nonetheless conclude that a remedy using the Texas Department of Criminal Justice's (TDCJ) grievance system is not "available" because of the immediacy of the COVID-19 medical emergency coupled with statements credited by the district court that prisoners' grievances may not be addressed promptly. If these plaintiffs—geriatric prisoners, many of whom are medically compromised—have no opportunity to expedite systemic medical emergency grievances, our court might hold that prison administrative remedies "operate[] as a simple dead end" giving prison officials apparent authority though they decline to exercise it. *See Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016).[2] However, here it is undisputed that the

[1] *Cf. United State of America v. Vigna*, No. S1 16-CR-786-3 (NSR), 2020 WL 1900495, at *5 (S.D.N.Y. Apr. 17, 2020) (noting that the court is not aware of any case where an inmate's failure to exhaust has been excused without the inmate "at least submitting a request [to the prison] . . . prior to, or in conjunction with, his or her application to the court").

[2] *See also Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1174 (7th Cir. 2010); *Nellson v. Barnhart*, No. 20-CV-00756-PAB, 2020 WL 1890670, at *4 (D. Colo. Apr. 16, 2020) (discussing importance of an imminent-danger exception while also noting that the Supreme Court clarified that "total and immediate relief is not the standard for exhaustion, 'the

plaintiffs sought relief in federal district court *prior* to filing *any* grievance, and Appellees cite no PLRA exhaustion caselaw supporting a not "available" determination ex ante.

Second, our reasoning on PLRA's exhaustion requirement does not foreclose federal prisoners from seeking relief under the First Step Act's provisions for compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A)(i). Though that statute contains its own administrative exhaustion requirement, several courts have concluded that this requirement is not absolute and that it can be waived by the government or by the court, therefore justifying an exception in the unique circumstances of the COVID-19 pandemic. *See, e.g.*, *United States v. Russo*, No. 16-cr-441 (LJL), 2020 WL 1862294, at *4–5 (S.D.N.Y. Apr. 14, 2020) (holding that, "[d]espite the mandatory nature of [the statute's] exhaustion requirement," the exhaustion bar is "not jurisdictional" and can therefore be waived); *United States v. Smith*, No. 12 Cr. 133 (JFK), 2020 WL 1849748, at *2–3 (S.D.N.Y. Apr. 13, 2020) (citing cases); *see also Vigna*, 2020 WL 1900495, at *5–6 (identifying the difficulties of the First Step Act exhaustion question while ultimately deferring a ruling until the petitioner exhausted his remedies); *but see United States v. Raia*, -- F.3d --, No. 20-1033, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020); *United States v. Clark*, No. 17-85-SDD-RLB, 2020 WL 1557397, at *3 (M.D. La. Apr. 1, 2020).[3]

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possibility of some relief' is"). *Cf. Muhammad v. Mayfield*, 933 F.3d 993, 1000 (8th Cir. 2019) (identifying the examples in *Ross* as "*at least* three" of the circumstances where the administrative process may be "unavailable" (emphasis added)); *Williams v. Corr. Officer Priatno*, 829 F.3d 118, 123 n.2 (2d Cir. 2016) ("We note that the three circumstances discussed in *Ross* do not appear to be exhaustive . . . .").

[3] I note that, unlike the PLRA, Section 3582 does not limit the exhaustion requirement to "available" remedies. *See* 18 U.S.C. § 3582(c)(1)(A) (authorizing a motion for a sentence reduction "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility"). The "availability" caveat—PLRA's "built-in exception to the exhaustion requirement," *Ross*, 136 S. Ct. at 1855—arguably presents a stronger basis from which to conclude that Appellants were not required to exhaust their remedies here.

Because Appellants are substantially likely to succeed on their argument that statutory exhaustion of administrative remedies was not even sought prior to filing this lawsuit, I would not reach the merits of Appellees' ADA and 42 U.S.C. § 1983 claims. Whereas those claims face high legal hurdles,[4] they also are intensely fact-based.[5] The district court assessed lay and expert testimony before making extensive and careful findings of fact showing that mitigation deficiencies still exist. D. Ct. Op. at 7–14. However, given the TDCJ's systemic and ongoing responses to fast-changing guidance, I would reserve for the merits panel the complex question of whether and which of these deficiencies amount to a cognizable violation.

[4] *See Gobert v. Caldwell*, 463 F.3d 339, 349 (5th Cir. 2006) (holding that "deliberate indifference exists wholly independent of an optimal standard of care"); *see also Alexander v. Choate*, 469 U.S. 287, 301 (1985) (holding that an accommodation is reasonable under the ADA if it provides "meaningful access to the benefit[s] that the [prison] offers"); *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 561 (7th Cir. 1996) (holding that in the prison context, it is appropriate to consider "[s]ecurity concerns, safety concerns, and administrative exigencies"); *cf. Garza v. City of Donna*, 922 F.3d 626, 636–37 (5th Cir. 2019) (holding that a deliberate indifference claim does not "require[] proof that officials *subjectively* intend that the harm occur" (emphasis added)).

[5] *See, e.g.*, *Banks v. Booth*, No. 1:20-cv-00849 (D.D.C. Apr. 19, 2020) (order granting temporary restraining order in COVID-19 prison context); *cf. Fraher v. Heyne*, No. 1:10-cv-00951-MJS (PC), 2011 WL 5240441, *2 (E.D. Cal. Oct. 31, 2011) (prisoner with preexisting heart condition who was refused a swine flu test could state a claim for violation of constitutional rights).

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:20-CV-1115
	§	
BRYAN COLLIER, *et al*,	§	
	§	
Defendants.	§	

PRELIMINARY INJUNCTION ORDER

This matter came for hearing before the Court on April 16, 2020, upon the Application of Plaintiffs Laddy Curtis Valentine and Richard Elvin King, individually and on behalf of those similarly situated, for injunctive relief. At the hearing, the Court heard testimony from Plaintiffs' witnesses and argument from counsel for both parties. The Court notes that the Defendants chose to present no live testimony to controvert Plaintiffs' evidence. After consideration of the Class Action Complaint, the attached evidence, the testimony and evidence at the April 16, 2020 hearing, and any arguments of counsel, the Court finds that Plaintiffs are substantially likely to succeed on the merits of the underlying litigation; that, in the absence of a preliminary injunction, Plaintiffs will suffer immediate irreparable injury for which there is no adequate remedy at law, in that they will face a high risk of serious illness or death from exposure to COVID-19; that the issuance of a preliminary injunction will not inflict greater or undue injury upon those restrained or third parties; and the issuance of a preliminary injunction order will serve the public interest and maintain the status quo. The Court further finds the relief below is narrowly drawn, is consistent with Center for Disease Control (CDC) guidelines, extends no further than necessary to correct the harm the Court finds requires preliminary relief, and is the least intrusive means necessary to correct the

harm the Court finds requires preliminary relief. The Court has given substantial weight to any adverse impact on public safety and the operation of the criminal justice system caused by the preliminary relief and shall respect the principles of comity in tailoring this preliminary relief. *See* 18 U.S.C. § 3626(a)(2).

Plaintiffs' Application for a Temporary Restraining Order is therefore **GRANTED** as a preliminary injunction, and it is **ORDERED**, pursuant to Federal Rule of Civil Procedure 65, that all Defendants, their agents, representatives, and all persons or entities acting in concert with them are enjoined as follows:

- Provide Plaintiffs and the class members with unrestricted access to hand soap and disposable hand towels to facilitate handwashing.
- Provide Plaintiffs and the class members with access to hand sanitizer that contains at least 60% alcohol in the housing areas, cafeteria, clinic, commissary line, pill line, and laundry exchange.
- Provide Plaintiffs and the class members with access to tissues, or if tissues are not available, additional toilet paper above their normal allotment.
- Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning, including in quantities sufficient for each inmate to clean and disinfect the floor and all surfaces of his own housing cubicle, and provide new gloves and masks for each inmate during each time they are cleaning or performing janitorial services.
- Provide all inmates and staff members with masks. If TDCJ chooses to provide inmates with cotton masks, such masks must be laundered regularly.

- Require common surfaces in housing areas, bathrooms, and the dining hall to be cleaned every thirty minutes from 7 a.m. to 10 p.m. with bleach-based cleaning agents, including table tops, telephones, door handles, and restroom fixtures.
- Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television controls, books, and gym and sports equipment.
- Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic. In the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available.
- Limit transportation of Pack Unit inmates out of the prison to transportation involving immediately necessary medical appointments and release from custody.
- For transportation necessary for prisoners to receive medical treatment or be released, CDC-recommended social distancing requirements should be strictly enforced in TDCJ buses and vans.
- Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic; (ii) information on how inmates can protect themselves from contracting COVID-19; and (iii) instructions on how to properly wash hands. Among other locations, all signage must be posted in every housing area and above every sink.
- Educate inmates on the COVID-19 pandemic by providing information about the COVID-19 pandemic, COVID-19 symptoms, COVID-19 transmission, and how to protect oneself from COVID-19. A TDCJ staff person must give an oral presentation or show an educational video with the above-listed information to all inmates, and give all inmates an opportunity to ask questions. Inmates should be provided physical handouts containing

COVID-19 educational information, such as the CDC's "Share Facts About COVID-19" fact sheet already in TDCJ's possession.

- TDCJ must also orally inform all inmates that co-pays for medical treatment are suspended for the duration of the pandemic, and encourage all inmates to seek treatment if they are feeling ill.
- TDCJ must, within three (3) days, provide the Plaintiffs and the Court with a detailed plan to test all Pack Unit inmates for COVID-19, prioritizing those who are members of Dorm A and of vulnerable populations that are the most at-risk for serious illness or death from exposure to COVID-19. For any inmates who test positive, TDCJ shall provide a plan to quarantine them while minimizing their exposure to inmates who test negative. TDCJ must also provide a plan for testing all staff who will continue to enter the Pack Unit, and for any staff that test positive, provide a plan for minimizing inmates' exposure to staff who have tested positive.

The Defendants have not sought a bond and the Court finds and holds that no security need be posted. *See* Fed. R. Civ. P. 65(c); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) ("In holding that the amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court, we have ruled that the court may elect to require no security at all." (internal quotation marks omitted)); *see also A.T.N. Indus., Inc. v. Gross*, 632 F. App'x 185, 192 (5th Cir. 2015) (holding that, under Rule 65(c), a court may elect to require no security at all as the amount it considers to be proper).

The Court will issue a memorandum and order setting forth the grounds for this preliminary injunction.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 16th day of April, 2020.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:20-CV-1115
	§	
BRYAN COLLIER, *et al*,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Defendants' Emergency Motion to Stay. (Doc. No. 46). Defendants request a stay of the Court's Preliminary Injunction Order (Doc. No. 40) pending appeal to the Fifth Circuit.

The Court issues a five-day stay of its Preliminary Injunction, until 5:00 pm on Wednesday, April 22, 2020, in order to, among other reasons, allow for issuance of the Court's accompanying Memorandum and Order laying out the factual and legal basis for the Court's Preliminary Injunction Order. The Court will entertain requests for extension of the length of the stay if needed.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 17th day of April, 2020.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	**CIVIL ACTION NO. 4:20-CV-1115**
	§	
BRYAN COLLIER, *et al*,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER

Before the Court is Plaintiffs' Application for Temporary Restraining Order and Other Injunctive Relief. (Doc. No. 1). Plaintiffs Laddy Curtis Valentine and Richard Elvin King, both inmates at Wallace Pack Unit ("Pack Unit" or "the Unit"), a state geriatric prison, allege that Defendants have failed to reasonably protect the inmates of the Unit from the spread of the COVID-19 pandemic. In the face of a rapidly growing pandemic, the inmates of Pack Unit, who are disproportionately elderly and ill, fear the health repercussions if the virus made its way into the Unit. Plaintiffs accordingly request emergency injunctive relief, in the form of protective health measures that help prevent transmission of the coronavirus. After considering all motions and evidence submitted by parties, live testimony presented at the April 16, 2020 evidentiary hearing, and all relevant law, the Court granted Plaintiffs' application as a preliminary injunction. (Doc. No. 40). It now issues this accompanying Memorandum and Order to explain the legal and factual findings that underlie the Court's Preliminary Injunction Order.

I. BACKGROUND

A. Procedural History

Plaintiffs Laddy Curtis Valentine and Richard Elvin King filed the present case on March 30, 2020. (Doc. No. 1). Plaintiffs are both inmates housed at Wallace Pack Unit, a state prison run by the Texas Department of Criminal Justice (TDCJ) in unincorporated Grimes County, Texas. *Id.* at 3. In their Complaint, Plaintiffs allege that Defendants TDCJ Executive Director Bryan Collier, Pack Unit Warden Robert Herrera, and TDCJ are not taking proper measures to prevent transmission of COVID-19 within Pack Unit. *Id.* at 1–2. Plaintiffs allege violations of their Eighth and Fourteenth Amendment rights, as well as the Americans with Disabilities Act (ADA), and seek injunctive relief on behalf of themselves and a proposed class of all inmates who currently are or who in the future will be incarcerated at Pack Unit. Plaintiffs included their Application for Temporary Restraining Order and Preliminary Injunction with their Complaint. *Id.* at 31–34.

The case was initially assigned to Judge Kenneth Hoyt, but by agreement of the judges, the case was transferred before this Court because Plaintiffs had marked the case as related to *Cole v. Collier*, No. 4:14-cv-1698, which this Court has presided over for the past six years. (Doc. No. 2). The case continues because defendants have, in material respects, not always been in compliance with the terms of the agreed settlement. Upon receipt of this case, the Court set a telephonic hearing for the afternoon of April 2, 2020. (Doc. No. 3). Before the hearing, Defendants filed a Motion to Transfer Case, arguing that the case should be transferred back to Judge Hoyt or placed back in the random assignment system because the present case is unrelated to *Cole*. (Doc. No. 17). At the telephonic hearing, the Court declined to hear any evidence or make any decisions while the Motion to Transfer remained pending. Plaintiffs agreed to file their response to Defendants'

Motion to Transfer the next day and, acknowledging the urgency of the situation, the Court agreed to rule on the Motion expeditiously.

On April 6, 2020, the Court denied Defendants' Motion to Transfer, finding that the present case is related to *Cole* based on similarities in parties, potential class members, relevant facts, and potential relief. (Doc. No. 20). The Court also ordered a telephonic conference for later that afternoon. (Doc. No. 21). At the telephonic conference, parties reported that they had discussed potential resolutions and were continuing such discussions. The Court set a follow-up telephonic conference for Tuesday, April 13, 2020. (Doc. No. 22). At the April 13th conference, Plaintiffs reported that discussions had not been successful and that Defendants had refused to implement most measures that Plaintiffs considered essential. The Court requested that Plaintiffs file an updated proposed Temporary Restraining Order, specifying the measures on which they still seek relief. Defendants also alleged that, as of April 13th, there were no cases of COVID-19 in Pack Unit. Defendants reported that ten inmates and three staff members at Pack Unit had been tested for COVID-19; all had received negative results. Defendants did not have a plan for systematic testing of inmates; rather, individuals who were tested at that point had gone to the hospital for unrelated medical treatment and the hospital had determined that they should be tested.

The next day, Tuesday, April 14, 2020, at 2:18 PM, the Court received an email from Defendants requesting a telephonic conference with the Court that afternoon. The Court set a hearing for 3:30 PM. At the hearing, Defendants reported that an inmate at Pack Unit, Leonard Clerkly, had been transported to the hospital in the early morning hours of Saturday, April 11, 2020 for emergency care and passed away hours later. Preliminary autopsy results showed that he tested positive for COVID-19. A press release by TDCJ later that day noted that Mr. Clerkly was 62 years old and was transported to the hospital because he had difficulty breathing. *COVID-19*

Updates, TDCJ (Apr. 14, 2020), https://www.tdcj.texas.gov/covid-19/index2.html. Defendants reported that Pack Unit had been placed on precautionary lockdown on April 14th, and Mr. Clerkly's dorm was now on medical restriction. All inmates in Mr. Clerkly's dorm and all inmates at Pack who are 65 years old or older were given masks to wear. Defendants' counsel was unaware of any plans to provide masks to any other inmates. The University of Texas Medical Branch (UTMB) agreed to test the fifty-three inmates who were housed in the same dorm as Mr. Clerkly, but there were no plans to test the other inmates at Pack Unit. The Court ordered an evidentiary hearing for Thursday, April 16, 2020, at 1:30 PM.

B. Evidentiary Hearing

Prior to the hearing, Defendants notified the Court that they would not present any live testimony at the evidentiary hearing. Defendants instead rely on their response in opposition to Plaintiffs' requested relief and accompanying exhibits, which they submitted on the evening of April 15, 2020. (Doc. Nos. 35, 36). Defendants filed evidence of new measures taken at Pack Unit, most of which were put in place on April 14th and 15th. Defendants' exhibits included declarations by TDCJ Deputy Executive Director Oscar Mendoza, Pack Unit Senior Warden Robert Herrera, and Director of Health Services at TDCJ Dr. Lannette Linthicum, as well as a declaration on the status of Plaintiffs' Step One grievances. Defendants also filed copies of TDCJ's Correctional Managed Health Care (CMHC) Infection Control Policy B-14.52, which outlines management and control measures in response to the spread of COVID-19; photos of Pack Unit; and a copy of the CDC's guidelines for correction and detention facilities. Plaintiffs had previously filed declarations for all witnesses who would testify at the evidentiary hearing, described *infra*, as well as a declaration by Dr. Robert Cohen, a physician and expert on correctional medicine.

The evidentiary hearing took place telephonically on April 16, 2020. Counsel for both parties were present. Plaintiffs presented three expert witnesses and both Plaintiffs for live testimony.

- **Dr. Joseph Gathe** is a physician and infectious disease specialist practicing in Houston, Texas. He is board-certified in internal medicine and infectious diseases. He has been diagnosing and treating patients exposed to COVID-19. He was accepted as an expert in infectious diseases without objection. His testimony focused on how quickly COVID-19 can spread in confined spaces like prisons, and the measures that needed to be implemented at Pack Unit to keep inmates safe and healthy.
- **Dr. Eldon Vail** is the former Secretary of the Washington State Department of Corrections (WDOC). He has almost thirty-five years of experience as a corrections administrator, and over a decade experience as the Secretary and Deputy Secretary of the WDOC. He oversaw a severe flu epidemic at a Washington state prison while he was overseeing the WDOC. He also consulted the WDOC in its COVID command center a week before the hearing. He was accepted as an expert without objection. His testimony focused on the necessity and feasibility of various measures that Pack Unit should take in the face of the pandemic, given his previous experience managing a similarly contagious outbreak. Dr. Vail had previously visited Pack Unit, and so, he was able to testify on measures Pack Unit specifically could and should take.
- **Dr. Jeremy Young** is a physician and associate professor of practicing and teaching at Ohio State University. He is board-certified in internal medicine and infectious diseases. He also holds a Master of Public Health. Before returning to Ohio State in 2019, Dr. Young worked on controlling the spread of infectious diseases such as HIV and hepatitis C in the

Illinois state prison system for approximately ten years. He was accepted as an expert without objection. Dr. Young's testimony focused on the threat that COVID-19 poses to prisons in particular and the necessity of certain measures to keep inmates safe and healthy. Defendants chose not to cross-examine Dr. Young.

- **Laddy Curtis Valentine and Richard Elvin King** are Plaintiffs in this case. They have been living in Pack Unit for about six and nine years, respectively. Both are over 65 years old and have chronic medical conditions that make them more vulnerable to severe illness or death if they are infected with COVID-19. Both testified to the current conditions at Pack Unit, both before and after the recent death of Mr. Clerkly, as well as what concerned them about TDCJ's response to the ongoing pandemic. Defendants chose not to cross-examine either Mr. Valentine or Mr. King.

Defendants did not present any live testimony; none of their declarants were made available for cross-examination by Plaintiffs. Both parties were given the opportunity to present oral argument after close of evidence.

The Court issued a Preliminary Injunction Order that evening. (Doc. No. 40). In its Order, the Court stated that it would publish shortly a memorandum and order, explaining its reasoning. Accordingly, the Court explains the factual and legal basis for issuing its Preliminary Injunction Order here.

Prior to the issuance of this Memorandum and Order, Defendants filed an appeal of the Court's Preliminary Injunction Order with the Fifth Circuit. (Doc. No. 45). Defendants also filed an Emergency Motion to Stay before this Court, asking that it stay the effect of its Preliminary Injunction Order pending appeal. (Doc. No. 46). This Court granted a five-day stay, staying the

Preliminary Injunction Order until Wednesday, April 22, 2020, at 5 PM. (Doc. No. 47). In the Order, the Court also informed the parties that they could apply for an extension of the stay. *Id.*

II. FINDINGS OF FACT

After reviewing the exhibits submitted by both parties and considering the live testimony of witnesses at the evidentiary hearing, the Court makes the following findings of fact. Where Defendants have not challenged or refuted a fact presented by Plaintiffs, the Court accepts that fact as true.

1. Pack Unit is a Type I Geriatric Facility, which houses a high number of elderly and disabled prisoners. (Doc. No. 14 ¶ 10). The Unit currently houses 1,248 offenders, 827 of whom are 65 years old or older. (Doc. No. 35-4, at 3). As the Court knows from its own visit to the Pack Unit, the Unit is a dormitory-style prison, where each inmate has a small cubicle, built with a half-wall. (Doc. No. 14 ¶ 12; Doc. No. 35-4, at 3). Each dorm holds between 54 and 107 inmates, except the two wheelchair dorms, which house 30 inmates each. (Doc. No. 35-4, at 3). Pack Unit has a medical infirmary that is always available to inmates. *Id.* The infirmary has twelve beds and a small medical staff, but no physicians. *Id.*
2. It is undisputed that Pack Unit has a population that is predominantly and disproportionately elderly and ill.
3. The COVID-19 pandemic has presented a serious public health emergency to the United States. (Tr. 10:18–24).[1] COVID-19 is a respiratory illness that primarily spreads between people who come within approximately six feet of each other. (Doc. No. 36-3, at 2). It can also infect a person who touches a contaminated surface and then touches his own nose,

[1] All citations to the transcript of the April 16, 2020 evidentiary hearing are designated (Tr. XX:XX).

eyes, or mouth. *Id.* Those who become infected can become seriously ill and die from the disease. *Id.* Those over the age of 65 and with comorbid conditions, like lung disease, chronic obstructive pulmonary disease (COPD), heart disease, hypertension, diabetes, cancer, or a weakened immune system are at higher risk of serious illness or death. *Id.*; (Doc. No. 12 ¶¶ 17, 19–21; Doc. No. 13, at 10–11; Tr. 13:14–22).

4. There are currently no vaccines or FDA-approved cures for COVID-19. (Doc. No. 12 ¶ 16). Those who develop moderate or severe symptoms require hospitalization. *Id.* ¶ 18. Those who become seriously ill may need intubation and mechanical ventilation. *Id.* ¶ 17. Pack Unit does not have a hospital on site and must transfer patients to local hospitals for this type of care. (Doc. No. 35–4, at 3; Doc. No. 13, at 13–14).

5. Communicable diseases are more easily transmitted in prison population. This is because of the congregative nature of prisons. (Doc. No. 12 ¶ 23; Doc. No. 13, at 6–7; Tr. 84:23–85:8). Similarly, other densely packed environments, like nursing homes and cruise ships, are also highly conducive to rapid spread of disease. (Doc. No. 12 ¶ 23; Tr. 95:14–10). This is especially true in environments with dorm-style living arrangements, where many individuals share the same, open sleeping space and bathroom. (Doc. No. 12 ¶ 23; Tr. 33:1–12). Additionally, prisons tend to lack resources to treat and control spread once a disease has been introduced into the population. (Doc. No. 13, at 7–8; Tr. 84:23–85:8). Prison populations also tend to consist of people who are more likely to have underlying comorbidities. (Tr. 84:23–85:19).

6. COVID-19 is no different in this respect, and spreads easily through prison environments. In fact, COVID-19 is even more easily spread than some diseases because of its long incubation period and asymptomatic presentation in some people. (Doc. No. 12 ¶ 14; Tr.

94:4–13). Additionally, some individuals who are symptomatic and in close quarters with other people can become "superspreaders," and spread COVID-19 to many others. (Tr. 86:3–19, 95:21–10).

7. The CMHC created a coronavirus policy, B-14.52, Coronavirus Disease 2019 (COVID-19) on March 20, 2020. (Doc. No. 36-9 ¶ 4). The policy was updated on March 27, 2020, after the Center for Disease Control (CDC) issued its guidance to correctional institutions on March 23, 2020. *Id.* ¶ 6. It was updated again on April 2, 2020, then once more, after an inmate died at Pack Unit, on April 15, 2020. *Id.* ¶ 7–8. These policies are equally applicable to all TDCJ facilities and do not include additional or tailored requirements for Pack Unit or units that have particularly vulnerable populations. (Doc. Nos. 36-3, 36-5, 36-6).

8. On April 11, 2020, Leonard Clerkly, an inmate at Pack Unit, was transferred to the hospital because of difficulty breathing. He was pronounced dead at 5:25 AM. Preliminary autopsy results indicate that he died because of viral pneumonia due to COVID-19. *COVID-19 TDCJ Update*, TDCJ (Apr. 14, 2020), https://www.tdcj.texas.gov/covid-19/index2.html. TDCJ was informed of Mr. Clerkly's positive test result around 5:30 PM on April 13, 2020. (Doc. No. 36-9 ¶ 11).

9. On April 14, 2020, Pack Unit was placed on precautionary lockdown. (Doc. No. 35-4, at 4). Pursuant to the lockdown, all transfers to and from the Unit, other than those that are medically necessary, have stopped. Inmates are confined to their dorms other than for medical care and scheduled showers. Those inmates in Mr. Clerkly's dorm are placed on medical restriction, and thus, have their temperatures taken twice a day. *Id.* at 4–5. On April 15, 2020, TDCJ began giving all inmates cloth masks, which could be switched out once a day to be laundered. *Id.* at 5. If no other COVID-19 cases are confirmed in the Unit, the

lockdown will be lifted on April 25, 2020. Otherwise, Pack Unit will continue to be locked down for an additional fourteen days from the last known symptom. *Id.* at 5.

10. Beginning April 6, 2020, inmates could request additional soap at no cost. (Doc. No. 35-4, at 3).

11. However, TDCJ has refused to give inmates alcohol-based hand sanitizer or disposable paper towels, citing that they are both flammable, hand sanitizer can be ingested, and paper towels can be hoarded or used to damage the plumbing system. (Doc. No. 35-4, at 3–4). Inmates have always had access to items like paper, books, cotton clothing, and towels, which are all flammable and can be used to damage plumbing. (Tr. 66:13–18). Neither party was able to name a single example of inmates drinking or setting fire to hand sanitizer, or misusing paper towels in the past, even when these items were made available to inmates outside of Texas. (Tr. 24:14–25:3, 29:6–16, 30:10–18, 41:21–42:5, 45:6–21, 49:15–50:5, 66:6–12). TDCJ also refuses to give inmates facial tissue or additional toilet paper. (Tr. 65:10–12). Despite these policies, TDCJ posters and pamphlets instruct inmates to use alcohol-based hand sanitizer and facial tissues when practicing good hygiene. (Doc. No. 35-3; Tr. 65:13–22). Until April 2, 2020, TDCJ's official policy also recommend that staff and inmates use hand sanitizer with at least 60% alcohol and tissues to prevent transmission. (Doc. No. 36-3, at 3; Doc. No. 36-5, at 4; Doc. No. 36-6, at 4). TDCJ staff are instructed to carry alcohol-based hand sanitizer for their own use. (Doc. No. 36-6, at 13).

12. Hand sanitizer is an important part of preventing transmission. (Doc. No. 12 ¶ 30). Studies have shown that access to hand sanitizer improves hand hygiene, because it is easier to access than soap and water. (Tr. 91:22–92:21). Accordingly, the CDC also recommends use of alcohol-based hand sanitizers and instructs prisons to consider allowing access to

inmates. (Doc. No. 36-10, at 9). Other state prisons outside of Texas have lifted the ban on alcohol-based sanitizers, both in response to previous outbreaks of communicable diseases and in response to the present COVID-19 pandemic. (Tr. 45:9–21, 49:4–7, 49:18–50:5).

13. On April 15, 2020, TDCJ began providing its inmate janitors clean masks and gloves at the beginning of each twelve-hour shift. (Doc. No. 35-4, at 4). However, at Pack Unit, when inmate janitors work in pairs, each pair of janitors is given only one set of gloves to share for the duration of the shift. (Tr. 80:2–14). For gloves to be effective in protecting the wearer and preventing transfer of the virus between surfaces, they need to be changed out for clean gloves whenever soiled. (Tr. 37:22–9, 93:12–25). Additionally, while TDCJ does provide inmate janitors with CDC-approved cleaning supplies, (Doc. No. 35-4, at 4), they fail to provide janitors with enough product to sustain any amount of repetitive cleaning throughout a twelve-hour shift, (Tr. 78:5–79:8). TDCJ has not increased the number of inmate janitors since the onset of the pandemic. (Tr. 78:2–4). It is necessary to clean high-touch areas frequently, multiple times a day, to prevent transmission. (Tr. 37:5–21, 92:22–93:12). The CDC guidelines accordingly instruct prisons to clean and disinfect frequently touched areas several times a day, with appropriate cleaners. (Doc. No. 36-10, at 10).

14. Each inmate is responsible for cleaning his own cubicle. Once a day, a TDCJ officer sprays a bleach solution into each cubicle. (Doc. No. 35-4, at 4; Tr. 79:16–80:1). A spray bottle of disinfectant cleaner is also available in the dorm for inmates to use. (Doc. No. 35-4, at 4).

15. TDCJ has put up posters with information about COVID-19, how to prevent transmission, and notice that they had waived all medical copays for the duration of the pandemic. (Doc.

No. 35-4, at 6; Doc. No. 36-9, at 5; Tr. 80:15–20). However, TDCJ has not communicated orally to the inmates any of this information, through live or video presentations, nor have they invited inmates to ask questions about the disease or its prevention. (Tr. 67:11–21, 80:21–24). Signs are not sufficient for inmate education, as inmates who cannot read, cannot read well, or cannot understand English will not receive information in this way. (Tr. 35:1–36:4, 94:14–95:5). There are inmates at Pack Unit who are illiterate or cannot read English; the current signs are not accessible to them. (Tr. 68:18–69:6). Presumably for this reason, TDCJ presents educational videos on protection from excessive heat and cold twice a week to all inmates. (Tr. 36:22–37:4, 67:22–68:17). The CDC guidelines require educational materials to be accessible by non-English speakers, those with low-literacy, and those with disabilities. (Doc. No. 36-10, at 11).

16. Pack Unit has tested the 53 inmates housed in Mr. Clerkly's former dorm. As of April 16, 2020, a total of 64 inmates from Pack Unit have been tested. (Tr. 126:14–24). There is no plan or intent to test the remaining Pack Unit population. (Doc. No. 36-9 ¶ 13). There is no evidence that TDCJ intends to trace Mr. Clerkly's contacts and test those individuals. Where there is no contact tracing and where COVID-19 has already been inside Pack Unit, blanket testing is necessary to contain an outbreak, because COVID-19 can spread even when those infected are asymptomatic or have mild symptoms. (Tr. 14:2–16:9, 91:7–21).

17. Inmates are not six feet apart from each other when they are in their dorms. (Doc. No. 35-4, at 6; Tr. 63:1–7). The cubicles cannot be easily altered. (Doc. No. 35-4, at 6). There is a dorm in the E building that is currently unused, although there is no apparent or presented reason why it cannot be used to spread out inmates from other dorms. (Tr. 75:17–76:13).

The gymnasium cannot be used as living quarters because it is not air-conditioned. (Doc. No. 35-4, at 6).

18. Prior to the precautionary lockdown, only two dorms were allowed in the dining hall at a given time. This lowered the density of inmates in the dining hall, but still did not allow for strict social distancing of six feet. (Doc. No. 35-4, at 6; Tr. 70:1–4). Feeding inmates with strict social distancing enforcement would require about fourteen hours of feeding every day. (Doc. No. 35-4, at 6). Currently, while inmates are on precautionary lockdown, they are fed in their housing areas. *Id.* at 5.

19. Prior to the precautionary lockdown, inmates were told to keep six feet of distance between themselves and others in open, common areas, "where feasible." *Id.* at 5–6. However, TDCJ has no policies that call for enforcement of this distance, even where possible. Inmates are often within six feet of each other, even when it is possible to socially distance. (Tr. 63:5–7, 69:7–70:4, 70:18–24).

20. Prior to the precautionary lockdown, transfers between units were minimized, but still allowed upon agency or medical needs, as determined on a case-by-case basis. (Doc. No. 36-9, at 5). Individuals being transferred were screened only for visible symptoms or fevers before being integrated with the general population. *Id.* Individuals were seated in every other seat if transferred in a bus; only one inmate was transferred at a time in a van. *Id.* The CDC guidelines instruct prisons to restrict transfers to those that are "absolutely necessary." (Doc. No. 36-10, at 10).

21. Defendants did not present any evidence on the medical adequacy of their current policies or their implementation of those policies. Plaintiffs' medical experts both evaluated measures taken in Pack Unit and found them to be deeply inadequate to care for the Unit's

inmate population. (Doc. No. 12 ¶ 22; Doc. No. 13, at 11–12 (finding measures to be "grossly inadequate"); Tr. 18:3–16; 95:6–10 (finding measures to be "woefully inadequate")).

22. Defendants did not present any evidence of cost or budgetary impact of various measures.

23. Defendants did not present any plans or intent to create plans for reevaluating the need for hand sanitizer and paper towels, or an ability to provide comparable alternatives. Defendants did not present any plans or intent to design plans for expanding testing, triaging available tests, coordinating early release to reduce prison populations, or enacting new measures after precautionary lockdown is lifted.

III. PRELIMINARY INJUNCTION ANALYSIS

Plaintiffs challenge the constitutionality of the conditions of their confinement in Pack Unit during the COVID-19 pandemic. Plaintiffs seek preliminary injunctive relief under 42 U.S.C. § 1983 to protect the health and safety of inmates housed in the Unit.

To receive injunctive relief, Plaintiffs must show: "(1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the defendant; and (4) the granting of the [] injunction will not disserve the public interest." *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987) (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572–73 (5th Cir. 1974)); *see Parker v. Ryan*, 960 F.2d 543, 545 (5th Cir. 1992) ("[T]he requirements of [R]ule 65 apply to all injunctions.").

A. Substantial Likelihood of Success on the Merits

Plaintiffs allege that Defendants' failure to implement adequate protections against COVID-19 transmission in Pack Unit constitutes cruel and unusual punishment in violation of the

Eighth and Fourteenth Amendments. Defendants argue that Plaintiffs cannot show a substantial likelihood of success on this claim because (i) Plaintiffs did not properly exhaust their administrative remedies as required by the Prison Litigation Reform Act of 1995 (the "PLRA"), and (ii) Plaintiffs cannot prevail on the merits of their constitutional and ADA claims. Because the Court concludes that Plaintiffs are substantially likely to prevail on their Eighth Amendment claim, the Court does not address Plaintiffs' claims under the ADA. The Court will examine the exhaustion issue before proceeding to the substance of Plaintiffs' constitutional claim.

i. Plaintiffs' claims are not barred by the PLRA's exhaustion requirement.

Defendants contend that Plaintiffs cannot establish a substantial likelihood of success on the merits because, as a threshold matter, they did not properly exhaust their administrative remedies as required by the PLRA. The parties do not dispute that Plaintiffs have not fully exhausted TDCJ's administrative process. However, because no administrative remedy was available, the Court concludes that Plaintiffs were not obligated to exhaust prior to bringing this action.

The PLRA mandates that an inmate exhaust "such administrative remedies as are available" before bringing suit to challenge prison conditions. 42 U.S.C. § 1997e(a). The benefit of the PLRA's exhaustion requirement is to "allow[] a prison to address complaints about the program it administers before being subjected to suit, reduc[e] litigation to the extent complaints are satisfactorily resolved, and improv[e] litigation that does occur by leading to the preparation of a useful record." *Jones v. Bock*, 549 U.S. 199, 219 (2007). The exhaustion requirement is "mandatory," *Woodford v. Ngo*, 548 U.S. 81, 85 (2006), and courts may not excuse an inmate's failure to exhaust because of "special circumstances," *Ross v. Blake*, 136 S. Ct. 1850, 1858 (2016).

However, the PLRA has a "built-in exception to the exhaustion requirement: A prisoner need not exhaust remedies if they are not 'available.'" *Id.* at 1855. The exhaustion requirement in this way "hinges on the 'availab[ility]' of administrative remedies." *Id.* at 1858. The Supreme Court has explained that the ordinary meaning of "available" is "capable of use for the accomplishment of a purpose." *Id.* at 1858 (quoting *Booth v. Churner*, 532 U.S. 731, 737 (2001)). Accordingly, an inmate is required to exhaust only those grievance procedures that are "'capable of use' to obtain 'some relief for the action complained of.'" *Id.* at 1859 (quoting *Booth*, 532 U.S. at 738). The Supreme Court identified three examples of circumstances "in which an administrative remedy, although officially on the books, is not capable of use to obtain relief": (1) when the procedure "operates as a simple dead end," such that the procedure is not "'capable of use' for the pertinent purpose," (2) when the procedure is "so opaque that it becomes, practically speaking, incapable of use," and (3) when prison administrators thwart the use of the procedure "through machination, misrepresentation, or intimidation." *Id.* at 1859–60.

In light of the alarming speed with which COVID-19 has ravaged our country and prisons, TDCJ's administrative remedy is not "capable of use" to obtain the relief Plaintiffs seek. TDCJ's grievance procedures require that inmates complete a lengthy two-step grievance process before their claim is considered exhausted. *Rosa v. Littles*, 336 F. App'x 424, 428 (5th Cir. 2009) (citing *Johnson v. Johnson*, 385 F.3d 503, 515 (5th Cir. 2004)). Inmates must first file a Step One grievance within fifteen days of the alleged incident. *Rosa v. Littles*, 336 F. App'x 424, 428 (5th Cir. 2009) (citing Grievance Manual, ch. III, p.11). Inmates may then appeal the Warden's decision on the Step One grievance by filing a Step Two grievance. *Id.* (citing Grievance Manual, ch. V, p.1).

In this case, Plaintiffs filed Step One grievances on April 1 and April 2, 2020. (Doc. No. 36-1). Under TDCJ's grievance procedures, however, TDCJ is not required to respond to the Step One grievances until May 11 and May 12, 2020, respectively, *at the earliest*—as Defendants emphasized in their filings, TDCJ may seek an extension under the Offender Grievance Operations Manual. (Doc. No. 36, at 7; Doc. No. 36-1, at 2). Upon receiving the Warden's decision, Plaintiffs would then need to file Step Two grievances, which would delay any form of relief even further. Such delay, however, precludes any relief to Plaintiffs given how rapidly COVID-19 spreads. The experience of detention facilities across the nation presents alarming examples. At Rikers Island jail in New York City, the number of confirmed cases soared from one to nearly 200 in just twelve days. *See* Miranda Bryant, *Coronavirus Spread at Rikers Is a "Public Health Disaster," Says Jail's Top Doctor*, The Guardian (Apr. 1, 2020), https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster. At the Cook County jail in Chicago, the number of confirmed cases went from two to 101 inmates and a dozen employees in a single week. *See* Timothy Williams et al., *As Coronavirus Spreads Behind Bars, Should Inmates Get Out?*, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html. Indeed, the coronavirus has spread quickly through TDCJ facilities: over the past six days, the number of infected TDCJ employees and staff rose from 72 to 183, and the number of infected inmates rose from 167 to 376. *See COVID-19 Updates*, TDCJ (Apr. 11, 2020), https://www.tdcj.texas.gov/covid-19/index2.html; *COVID-19 Updates*, TDCJ (Apr. 18, 2020), https://www.tdcj.texas.gov/covid-19/index.html. Pack Unit itself has already had one inmate die because of COVID-19, before TDCJ confirmed a single case in the Unit.

Where, as here, the circumstances present an imminent danger, TDCJ's lengthy administrative procedure, which TDCJ may choose to extend at will, presents no "possibility of

some relief." *Ross*, 136 S. Ct. at 1859. Indeed, the Seventh Circuit has opined that "there is no duty to exhaust, in a situation of imminent danger, if there are no administrative remedies for warding off such a danger." *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1173 (7th Cir. 2010).[2] Such imminent danger is present here. Under TDCJ's grievance procedure, TDCJ is not required to respond to Plaintiffs' *first* grievances for at least another three weeks—during which time COVID-19 may have spread throughout Pack Unit, as it has done in several facilities across the country, rendering Plaintiffs' grievances moot. And TDCJ has pointed to no emergency procedures that Plaintiffs could avail themselves of that would expedite its review of either Step One or Step Two grievances. *Cf. id.* at 1174 (finding an available remedy where Illinois had created an emergency grievance procedure that expedited review of certain urgent medical complaints). Under these circumstances, the Court concludes that there is no available remedy and thus, Plaintiffs were not obligated to exhaust prior to bringing this action.

ii. Plaintiffs have established a substantial likelihood of success on their Eighth Amendment conditions-of-confinement claim.

The government has a constitutional duty to protect those it detains from conditions of confinement that create "a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). This duty extends to providing "adequate . . . medical care" and "tak[ing] reasonable measures to guarantee the safety of the inmates." *Id*. at 832.

However, "a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Id.* at 847. Thus,

[2]Although *Fletcher* was decided before *Ross*, *Fletcher*'s reasoning that administrative remedies may offer no remedy at all in situations of imminent danger is consistent with *Ross*'s holding that the PLRA's exhaustion requirement is exempted when there are no *available* remedies.

to establish an Eighth Amendment violation based on a failure to prevent harm, an inmate must show both that "he is incarcerated under conditions posing a substantial risk of serious harm" and that prison officials' failure to act manifests "deliberate indifference" toward that risk. *Id.* at 834.

Defendants do not dispute that COVID-19 poses a substantial risk of serious harm to Plaintiffs. Prisons are highly conducive to the spread of COVID-19 and Pack Unit has already reported one confirmed case of COVID-19, which resulted in the death of 62-year-old inmate Leonard Clerkly. Because Mr. Clerkly had not been recently transported, he must have contracted COVID-19 while he was in Pack Unit. As Dr. Young summarized at the evidentiary hearing, Pack Unit is a "tinderbox" and "the spark has been lit." (Tr. 93:14–17, 95:14–21). Moreover, Mr. Clerkly was not an outlier in his vulnerability. As a Type I Geriatric prison, Pack Unit is home to a large population of inmates that are over fifty years old, have serious pre-existing health conditions, or both. The CDC warns that these are precisely the type of people most at risk for serious illness from COVID-19. The current pandemic presents a substantial risk of serious harm and death to Pack Unit's current residents.

Defendants argue, however, that Plaintiffs cannot establish that TDCJ has responded to this substantial risk of death and serious harm with deliberate indifference. A prison official acts with deliberate indifference if "the official knows of and disregards an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. Because deliberate indifference requires knowledge of the risk, "mere negligence" does not satisfy the deliberate indifference standard. *Wilson v. Seiter*, 501 U.S. 294, 305 (1991). An official demonstrates disregard of a known risk by "failing to take reasonable measures to abate it." *Farmer*, 511 U.S. at 847. Accordingly, "prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause." *Id.* at 845. Only officials that "recklessly" or "consciously" disregard a known substantial risk of serious harm

act with deliberate indifference. *Id.* at 836. Whether an official is acting recklessly "should be determined in light of the prison authorities' current attitudes and conduct," both "at the time suit is brought and persisting thereafter." *Id.* at 845 (internal citation omitted). Past actions and conduct are relevant as well. Defendants' conduct must be viewed in conjunction with Defendants' failure to live up to the commitments they voluntarily assumed in the settlement of the related case of *Cole v. Collier*.

Defendants cannot, and do not, dispute that they have knowledge of the substantial risk that COVID-19 poses to the men of Pack Unit. "[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842. The risk of COVID-19 is obvious. One person incarcerated at Pack Unit has died from COVID-19 and we are seeing COVID-19 spread like wildfire in prisons, jails, and detention facilities within TDCJ's system, the country, and the world.

Instead, Defendants argue that Plaintiffs cannot demonstrate deliberate indifference because "TDCJ, and specifically, the Pack Unit are taking copious measures in response to the COVID-19 pandemic." (Doc. No. 36, at 20). The question before the Court is not, however, whether Defendants' measures are copious, but whether they reasonably abate the risk of COVID-19 transmission.

As discussed in detail above, Defendants claim to have adopted various TDCJ-wide measures before the first positive test at Pack Unit. *See supra* at 9–13. Mr. Clerkly died on April 11, 2020. Beginning on April 14, 2020, Pack Unit was placed on lockdown and the fifty-three men in Mr. Clerkly's dorm were placed in medical restriction. Defendants also claim that, beginning April 15, 2020, all inmates have been given cloth masks and janitors are given clean gloves and masks for each twelve-hour shift. Sixty-four total inmates at Pack Unit have also been tested for

COVID-19, including the fifty-three people in Mr. Clerkly's dorm. The Court has not been notified of any results of those tests.

Some of these measures adopted by TDCJ are so essential that they have become ubiquitous. Employee screenings, copay waivers, visit suspensions, masks for staff, and unlimited soap access are becoming the norm in prisons across the country. But it would not be reasonable to stop with those measures given the nature and magnitude of this pandemic, as TDCJ has effectively acknowledged by developing CMHC Policy B-14.52. The Court notes that many of the measures set out in this policy were not implemented under after the commencement of this lawsuit, and some were not adopted until the day before this Court's evidentiary hearing. Even so, Defendant's actions fall short of their own policy and do not reasonably abate the extremely high risks facing the inmates in Pack Unit.

Consider cleanliness. Defendants claim to have "ordered enhanced cleaning and disinfection of its facilities." (Doc. No. 36, at 12). Plaintiffs, however, presented unrebutted evidence at the evidentiary hearing that Pack Unit's post-pandemic procedures for cleaning common areas resemble their pre-pandemic procedures. Defendants have not increased the number of inmate janitors or increased their access to cleaning solutions. Plaintiff King, who is a janitor at Pack Unit, testified at the hearing that all inmate janitors perform twelve-hour shifts, that the cleaning solutions provided are used up largely on the initial morning cleaning and are almost depleted by mid-afternoon, and that only one pair of gloves is provided daily for him and his co-janitor to share—an arrangement Plaintiffs' medical experts described as being as effective as no gloves at all. (Tr. 91:12–14). Plaintiff Valentine also testified regarding his concern about sanitizing of the mess hall where meals are served, having observed that the same rag is used "without cleaning it, or without rinsing it" to wipe ten or more tables at a time. (Tr. 70:12–13). As

for personal spaces, Defendants spray each inmate's cubicle daily with diluted bleach, and otherwise provide a shared bottle of disinfectant spray for common use. Defendants do not provide access to disposable towels or additional tissues. These inadequate sanitizing and disinfecting measures, at a time when hygiene is a life or death matter, reflect a deliberate indifference toward the safety of Pack Unit inmates.

The Court is further concerned by Defendants' purported reasons for refusing to provide paper towels and hand sanitizer to Pack Unit members. Given that Plaintiffs routinely use a variety of other paper and cloth items without incident, the argument that disposable towels could be used to start fires or clog toilets falls flat. The same holds for Defendants' argument that alcohol-based hand sanitizer could be ingested. As testimony by Dr. Vail at the hearing revealed, hand sanitizer that is normally contraband has been used without incident in other prisons during other outbreaks. Indeed, the Court understands that prisoners have been entrusted with manufacturing hand sanitizer at another TDCJ facility. Denying Plaintiffs these potentially life-saving tools under such dire circumstances for such remote reasons evinces a disregard for the health and safety of the men at Pack Unit.

Mr. Clerkly's death also suggests a conscious disregard of substantial risk. Defendants' own policies provide that inmates complaining of symptoms consistent with COVID-19 "should be triaged as soon as possible" and "placed in medical isolation" and that all areas where the symptomatic inmate spent time should be "thoroughly clean[ed] and disinfect[ed]." (Doc. No. 36-5, at 5). Mr. Clerkly displayed difficulty breathing and quickly died from viral pneumonia soon after he was transported to the hospital. However, Defendants made no representations to the Court that they identified Mr. Clerkly as symptomatic, evaluated him for potential COVID-19 infection, or isolated or treated him for COVID-19 at any point before his transport to the hospital on the day

of his death. What is clear is that Pack Unit did not implement further precautionary measures until three days after Mr. Clerkly's death, when his COVID-19 test came back positive. In the meantime, countless inmates were knowingly exposed to a serious substantial risk of harm.

Defendants argue that they cannot possibly be acting with deliberate indifference because "TDCJ has implemented policies that are in accordance with CDC guidelines, and they have been careful to ensure that those policies are being followed at the Pack Unit." (Doc. No. 36, at 13). It is true that official policies "bear heavily on the inquiry into deliberate indifference." *Helling v. McKinney*, 509 U.S. 25, 36 (1993). But it also matters whether and how the policy is being administered. As discussed, Mr. Clerkly's death has cast doubt on the policy's implementation at Pack Unit. So does unrefuted testimony at the hearing. For instance, the Court heard testimony from Plaintiff King that an inmate janitor receives "maybe a quarter cup of powdered bleach" for a multi-gallon mop bucket. (Tr. 78:8–9). TDCJ's own policy requires a significantly higher concentration: 8 ounces of powdered bleach to 1 gallon of water. (Doc. No. 36-6, at 4). Moreover, the TDCJ cleaning guidance to which the policy refers states that common areas "should be disinfected at least twice a day," that "continuous (i.e., finish and then promptly begin again) disinfection" of hand-contact areas is recommended, and that the mess hall "must be disinfected between the feeding of groups." *See* CMHC Infection Control Policy B-14.26, *Gastrointestinal Illness*, at 7 (Aug. 2019), https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B-14.26.pdf; (Doc. No. 36-6, at 4 (citing CMHC Policy B-14.26 for cleaning recommendations)). As discussed *supra*, these policies are not being adequately implemented.

Indeed, many of the measures ordered in the preliminary injunction largely overlap with TDCJ's COVID-19 policy requirements and recommendations. These include the Court's orders

concerning access to soap, tissues, gloves, masks, regular cleaning, signage and education, quarantine of new prisoners, and social distancing during transport. The current version of TDCJ Policy CMHC B-14.52, effective April 15, 2020, advises that "in settings where social distancing measures are difficult to maintain or in areas of significant community-based transmission," "cloth face coverings" may be used and "should be worn at all times." (Doc. No. 36-6, at 2, 5). It also states that officials should inform inmates of the suspension of copays, emphasize "handwashing and cough etiquette with offenders," including "cover[ing] coughs or sneezes with a tissue, then throw[ing] the tissue in the trash," and place posters with COVID-19 information at "strategic places." (Doc. No. 36-6, at 4, 34). The CMHC policy also requires, in addition to the cleaning measures discussed above, that inmates or staff "thoroughly clean and disinfect all areas where suspected or confirmed COVID-19 cases spent time" while using "gloves and a gown." (Doc. No. 36-6, at 6). The policy's transportation provisions provide that "offender transportation must be curtailed, except for movement that is absolutely required," and requires that when inmates are transported "they must be seated at least 3 feet apart." (Doc. No. 36-6, at 12). The policy also recommends "implementing routine intake quarantine for all new intakes for 14 days before they enter the facility's general population." (Doc. No. 36-6, at 5).

The Court's injunctive relief aims to promote compliance with TDCJ and CDC guidelines, which Defendants themselves treat as the yardstick for reasonableness, based on a record that reflects numerous failures on Defendants' part to meet those guidelines. For instance, the Court's order that inmates be given access to tissue or additional toilet paper is intended to allow compliance with the TDCJ policy that offenders should cough or sneeze into disposable tissues. Currently, inmates at Pack Unit receive no tissues and only one roll of toilet paper each week, leaving them to cough or sneeze into their hands when they run out. (Tr. 65:18–24). Similarly, the

CDC directs that prisons should ensure that "signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision." (Doc. No. 36-8, at 6). The Court heard testimony that an illiterate inmate had asked Plaintiff Valentine to explain the COVID-19 posters to him. (Tr. 68:18–69:6). Inmates who do not take protective measures for lack of understanding present a known substantial risk of serious harm to Pack Unit. The Court's order that Pack Unit staff "give an oral presentation or show an educational video" provides a reasonable measure to abate that risk, where Pack Unit officials so far have taken none. (Doc. No. 40).

To the extent that the Court's order goes beyond TDCJ and CDC policies, it does so only with great care and out of great necessity. The CDC guidelines state, in bold, on the first page: "The guidelines may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions." (Doc. No. 36-8, at 1). In Pack Unit, the population consists of geriatric prisoners suffering from comorbidities that render them particularly susceptible to COVID-19. The environment is a dormitory, making social distancing in the living quarters impossible. And the conditions are now exceptionally dire, in that COVID-19 is known to have already entered the facility. Defendants presented no evidence or testimony to suggest that the steps they have taken are sufficient to meet this conflux of challenges facing Pack Unit. In fact, counsel for Defendants agreed that steps beyond those proscribed by the CDC may be needed to adequately protect Pack Unit inmates. (Tr. 109:15–110:2). Plaintiffs' expert, Dr. Young, described the measures taken by Defendants so far as "woefully inadequate" given the special needs of the Unit. (Tr. 95:10).

The Court's order that TDCJ "provide the Plaintiffs and the Court with a detailed plan to test all Pack Unit inmates," (Doc. No. 40, at 4), is a direct and tailored response to the special

vulnerabilities of Pack Unit. Defendants are correct that "deliberate indifference exists wholly independent of an optimal standard of care." *Gobert v. Caldwell*, 463 F.3d 339, 349 (5th Cir. 2006). But the Court does not order widespread testing because it is "optimal." The Court orders it because it is necessary for abating a substantial risk of serious harm to Pack Unit inmates. Dr. Gathe testified that because of Pack Unit's high-risk population, the difficulty of social distancing in the dorms, lack of sterilization thus far, and the known introduction of COVID-19, testing of all Pack Unit inmates for the virus is "necessary" in order to (1) isolate infected inmates, (2) provide them timely treatment, and (3) prevent staff from bringing COVID-19 back out into the community. (Tr. 14:6–15:6). Defendants have recently tested some inmates, including the fifty-three people in Mr. Clerkly's dorm. But more testing is essential because, as Dr. Gathe testified: "The [CDC] recommendation [is] to test[] anyone that is at high risk of exposure, and my understanding with the structure and where we are with the Pack Unit, is that each and every person at that institution becomes, by definition, a high-risk person." (Tr. 16:5–9). Defendants know they are working with an extremely high-risk population. Their lack of willingness to take extra measures, including measures as basic as providing hand sanitizer and extra toilet paper, to protect them reflects a deliberate indifference toward their vulnerability.

The Court readily acknowledges that any deliberate indifference inquiry must be sensitive to the expertise and discretion of prison officials, the challenging nature of their jobs, and the "realities of prison administration." *Helling v. McKinney*, 509 U.S. 25, 37 (1993). Furthermore, in times of evolving crisis, officials' understanding of the risks involved will change, and what may seem like reasonable measures to abate the crisis one day, may be revealed as inadequate the next. For this reason, officials may not be held liable "if they responded reasonably to a known risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 826. But for all the deference

owed, prison officials must still take reasonable steps to abate known substantial risks of serious harm, especially during a crisis. *Id.* at 847. What is "reasonable" will depend on the crisis.

The day after this Court issued its preliminary injunction in this case, Judge Jon S. Tigar of the Northern District of California declined to issue injunctive relief in *Plata v. Newsom*, No. 4:01-cv-1351 (N.D. Cal. Apr. 17, 2020), citing the reasonable steps taken by the California Department of Corrections and Rehabilitation (CDCR) to prevent the spread of COVID-19 in California prisons. The contrast between that case and Plaintiffs' case is illuminating. The plaintiffs in *Plata* filed suit seeking an order directing the CDCR to develop a plan to prevent the spread of COVID-19 in California prisons. By the time of the preliminary injunction hearing, the CDCR had developed and begun to implement an extensive plan. The measures taken included accelerating the release of 3,500 inmates to reduce prison population, transferring 1,300 inmates out of dorm housing to increase physical separation, sharply reducing transfers between facilities, mass producing hand sanitizer and cloth masks (22,000 per day) for use by staff and inmates, developing detailed protocols for managing symptomatic inmates and staff, disinfecting commonly touched objects between each use, and adjusting inmate housing and activities to increase physical distancing. Order Denying Plaintiffs' Emergency Motion at 6–9, *Plata*, No. 4:01-cv-1351, ECF No. 3291.The plaintiffs' primary concern at the hearing appears to have been that the physical distance between plaintiffs still had not been adequately increased. *Id.* at 9. Judge Tigar held that the CDCR's extensive efforts constituted reasonable measures to abate the risk of COVID-19, though he observed that "no bright line divides a reasonable response from one that is deliberately indifferent in violation of the Eighth Amendment." *Id.* at 14.

Defendants' actions in this case fall on the other side of the line. Although Defendants have taken some steps to address the substantial risk of COVID-19 in Pack Unit, Plaintiffs have made

a showing that a large portion of those steps have fallen short and continue to fall short even of TDCJ and CDC guidelines. Defendants have also declined to provide basic tools to Plaintiffs that would help them keep themselves safer, including adequate cleaning supplies, hand sanitizer, extra toilet paper, and disposable towels. Finally, Defendants have provided no evidence that the steps they have taken are adequate to reasonably address the specific needs of Pack Unit's high-risk population. Testimony from Plaintiffs' medical experts and the fact that an inmate at Pack Unit has died speak to how inadequate those steps have been. The Court concludes that Plaintiffs are likely to establish that their conditions of confinement place them at substantial risk of harm from COVID-19, in violation of their Eighth and Fourteenth Amendment rights, and that Defendants are being deliberately indifferent to their obvious and serious medical and safety needs.

B. Irreparable Harm

Plaintiffs allege that they and their proposed class members face irreparable harm because there is a strong likelihood that they will be infected with COVID-19, especially now that COVID-19 has entered Pack Unit, and that because of their medical vulnerabilities, they face a heightened risk of dying or suffering from serious illness and long-term health consequences. Plaintiffs must show that "irreparable injury is *likely* in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A harm need not be inevitable or have already happened in order for it to be irreparable; rather, imminent harm is also cognizable harm to merit an injunction. *See Helling*, 509 U.S. at 33 ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. . . . [A] remedy for unsafe conditions need not await a tragic event.").

Plaintiffs' alleged harm is both imminent and irreparable. Since this suit was filed, an inmate at Pack Unit has already died from COVID-related causes. Plaintiffs' most serious alleged

harm has thus come to pass. There continues to be an imminent harm threatening the inmates at Pack Unit. Mr. Clerkly was living among other inmates at Pack Unit until the morning of his death, thus coming into contact with an unidentified portion of the Unit's population. Defendants have not identified those who came in contact with Mr. Clerkly in the days preceding his death, nor have they tested the Unit's population for COVID-19. Thus, they have no means of isolating those who can transmit the disease from those who have not yet been infected. Without further action to prevent transmission, Plaintiffs certainly face further infection. The population at Pack Unit, a geriatric unit, is overwhelmingly older and sicker than the prison population at large. Defendants have not contested this fact, nor do they contest that COVID-19 is more likely to result in serious illness or death in individuals who are older and have comorbidities. Given that the population at Pack Unit is particularly vulnerable if exposed to COVID-19, and given that COVID-19 has already entered the Unit, Plaintiffs face irreparable harm, in the form of serious illness or death.

An injunction is necessary to prevent these irreparable harms from befalling Defendants. Measures taken by Defendants to keep COVID-19 from spreading throughout Pack Unit would maintain the status quo of Plaintiffs and proposed class members remaining alive and free from serious illness stemming from COVID-19. Because the alleged harm is a high likelihood of serious illness or death, the Court finds that Plaintiffs have properly alleged irreparable harm.

C. Balancing of Equities and Public Interest

The equities at issue and the public interest weigh in Plaintiffs' favor. Plaintiffs face serious irreparable harm—including severe illness, long-term health effects, and possibly death—if forced to remain in the current conditions at Pack Unit. As discussed *supra*, prisons are particularly susceptible to a rapid spread of the virus within their walls. And Plaintiffs and their proposed class members—many of whom are elderly individuals with co-morbidities—are especially vulnerable

to not only contracting the virus, but indeed having particularly severe cases that may result in death.

Defendant's countervailing contention is that they will suffer an institutional injury because an injunction would "upend[] federalism principles, disregard[] the separation of powers, and thwart[] the State's fundamental prerogative, and Defendants' basic duty as state officials, to maintain safety and security in Texas prisons." (Doc. No. 36, at 30–31). The Court recognizes that states have a strong interest in the administration of their prisons, which is "bound up with state laws, regulations, and procedures." *Woodford v. Ngo*, 548 U.S. 81, 94 (2006) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973)). The Court also appreciates deeply the difficulty of running a prison and that courts are "ill equipped" to undertake the task of prison administration, which is within the province of the legislative and executive branches of government. *Turner v. Safley*, 482 U.S. 78, 84–85 (1987) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405–06 (1974)). Courts accordingly should accord deference to prison authorities. *Id.*

Principles of federalism and deference, however, do not erode the core tenet that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner*, 482 U.S. at 84. "Because prisoners retain these rights, '[w]hen a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.'" *Id.* (quoting *Martinez*, 416 U.S. at 405–06). Thus where, as here, prisoners demonstrate a substantial likelihood of proving successfully that Defendants' response to the global pandemic is deliberately indifferent in violation of their constitutional rights, the balance of equities and public interest weigh in favor of granting an injunction to protect those rights. Deference to prison policies must not come at the expense of ensuring that inmates are

afforded a constitutional minimum standard of care, particularly in the face of a rapidly spreading and potentially deadly virus.[3]

Moreover, an injunction will not, as Defendants contend, be "unduly burdensome to Defendants, waste resources, and set a precedent for courts to micro-manage the operations of prisons during a pandemic." (Doc. No. 36, at 33). First, any burden Defendants incur from implementing reasonable measures in response to COVID-19 are outweighed by the significant and irreparable harm to Plaintiffs, particularly when the virus has already breached the prison's walls. *See Laube v. Haley*, 234 F. Supp. 2d 1227, 1252 (M.D Ala. 2002) ("The threat of harm to the plaintiffs cannot be outweighed by the risk of financial burden or administrative inconvenience to the defendants."). This is particularly true where, as here, Defendants have failed to present to the Court any evidence of undue burden by an injunction. Second, Defendants point to no evidence that allows the Court to conclude that implementing reasonable measures to protect Plaintiffs' lives and constitutional rights will waste resources. Indeed, numerous provisions of the Court's injunction are measures that Defendants stated they had implemented but, in reality, have not—for instance, providing masks and gloves for each inmate during janitorial shifts. And to the extent Defendants contend that an injunction contravenes public interest because it would divert

[3] The Court notes that the Fifth Circuit recently affirmed the Supreme Court's holding in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), that, "when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some 'real or substantial relation' to the public health crisis and are not 'beyond all question, a plain, palpable invasion of rights secured by the fundamental law.'" *In re Abbott*, No. 20-50264, 2020 WL 1685929, at *7 (5th Cir. Apr. 7, 2020) (quoting *Jacobson*, 197 U.S. at 31). The curtailment of constitutional rights permitted under *In re Abbott* and *Jacobson*, however, does not apply to the instant case. Critically, Plaintiffs claim not that the State is infringing upon their constitutional rights to combat a public health emergency, but rather that the State is infringing upon their constitutional rights precisely because it is *not* reasonably combatting a public health emergency within Pack Unit. Thus, Plaintiffs' constitutional rights remain protected under the Eighth Amendment's deliberate indifference standard.

resources away from medical professionals, their argument falls flat. Defendants have stated, for instance, that TDCJ is producing its own cloth masks for use by staff and inmates in TDCJ's manufacturing facilities.

Indeed, an injunction will help preserve resources and serve not only Plaintiffs' interests, but also the interests of TDCJ employees, medical staff, and healthcare workers in the community who would need to treat any infected inmates sent to nearby hospitals. Over the past six days, the number of TDCJ employees who have contracted the virus rose from 72 to 183. *See COVID-19 Updates*, TDCJ (Apr. 11, 2020), https://www.tdcj.texas.gov/covid-19/index2.html; *COVID-19 Updates*, TDCJ (Apr. 18, 2020), https://www.tdcj.texas.gov/covid-19/index.html. Failure to take reasonable measures exposes inmates and staff alike to the potentially deadly virus. Additionally, Pack Unit inmates who develop moderate to severe cases of COVID-19 are transported to local hospitals for more intensive care. *See COVID-19 Updates*, TDCJ (Apr. 14, 2020), https://www.tdcj.texas.gov/covid-19/index2.html. Implementing reasonable measures will also prevent an outbreak, which would strain resources at the local hospitals where sick inmates are sent for treatment.

Finally, an injunction will not encroach upon the administration of prisons. The Court deeply appreciates the inordinately difficult undertaking of running a prison and accordingly, the importance of deference to those with expertise in the task. The Court thus acknowledges that, in the face of a global pandemic the likes of which we have not seen in living memory, the response from our nation's leaders and prisons will change along with evolving guidance from medical experts—and so too may the Court's injunction. Recognizing Defendants' familiarity with the administration of Pack Unit in particular, the Court remains open to working with the parties to amend the injunction as the pandemic continues to evolve.

In the end, however, the irreparable harm to Plaintiffs and the public interest in protecting Plaintiffs' constitutional rights, as well as the safety of TDCJ staff and the broader community, tips the balance of equities and public interest decisively in favor of Plaintiffs. The Court thus concludes that the third and fourth factors weigh in favor of granting injunctive relief.

IV. CONCLUSION

For the above reasons, the Court finds that Plaintiffs have demonstrated the requirements for issuance of the Court's Preliminary Injunction Order (Doc. No. 40), dated April 16, 2020.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 20th day of April, 2020.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE and RICHARD ELVIN KING, individually and on behalf of those similarly situated, Plaintiffs, v. BRYAN COLLIER, in his official capacity, ROBERT HERRERA, in his official capacity, and TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Defendants.	)	Case No. _____

CLASS ACTION COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND OTHER INJUNCTIVE RELIEF

Plaintiffs Laddy Curtis Valentine and Richard Elvin King, on behalf of themselves and those similarly situated, bring this action to enjoin the above-named Defendants' willful and/or deliberately indifferent and discriminatory conduct in failing to protect inmates housed in the Wallace Pack Unit who face a high risk of severe illness from exposure to Coronavirus Disease 2019 or COVID-19.

STATEMENT OF THE CASE

1. This case is about the Texas Department of Criminal Justice's ("TDCJ") failure to take proper measures to prevent transmission of COVID-19 to some of its most vulnerable inmates. The named Plaintiffs and the classes they seek to represent are currently incarcerated at TDCJ's Pack Unit in unincorporated Grimes County, Texas. Prisons are an ideal breeding ground for COVID-19. The Centers for Disease Control and Prevention warns that prisons are particularly susceptible to the spread of COVID-19 due to the high population density of inmates, and the tight, confined environment. While it has always been a matter of when, not if, COVID-19 hits the state's

prisons, that time is now. In the last week there have been multiple reported cases of COVID-19 in both the TDCJ system and the community surrounding the Pack Unit.

2. Despite the ticking time bomb that COVID-19 represents, TDCJ has failed to implement necessary or even adequate policies and practices at the Pack Unit. Plaintiffs have been denied proper and equal access to vital preventative measures to avoid the transmission of COVID-19, in violation of federal law and the United States Constitution. While TDCJ adopted policies in response to this epidemic, they only encompass some of the guidance from the CDC and thus neglect critical measures for halting the spread of the disease. In practice the situation is even worse, as TDCJ has failed to implement many of its own policies, particularly at the Pack Unit. TDCJ's failure is especially harmful to Plaintiffs and the classes they seek to represent. As a Type-I Geriatric prison, the Pack Unit is home to a large population of inmates that are over 50, have serious pre-existing health conditions, or both. The CDC warns that these are precisely the type of people most at risk for serious illness, or even death, from COVID-19.

3. TDCJ's failures don't just affect the inmates. Prison health is community health. An outbreak at the Pack Unit could easily spread to the surrounding communities, and vice versa. Time is running out for proper protections to be put into place. Plaintiffs seek immediate relief from this Court before it is too late.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), § 1343 (civil rights), and § 2201 (Declaratory Judgment Act).

2. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

PARTIES

A. Plaintiffs

3. Laddy Curtis Valentine is 69 years old and currently incarcerated at the Pack Unit. He is not expected to be released from custody until 2036.

4. Richard Elvin King is 73 years old and currently incarcerated at the Pack Unit. He is not expected to be released from custody.

B. Defendants

5. Bryan Collier is the executive director of TDCJ. As such, Mr. Collier is the commanding officer of all TDCJ correctional officers, guards, and TDCJ employees and contractors, and is responsible for their training, supervision, and conduct. By law, he is responsible for protecting the constitutional rights of all persons held in TDCJ custody. At all times described herein, he was acting under color of state law. He is sued in his official capacity for declaratory and injunctive relief.

6. Robert Herrera is the warden of the TDCJ Pack Unit. At all times described herein, he was acting under color of state law. As the warden of the Pack Unit, he is responsible for ensuring the conditions of confinement at the Pack Unit are constitutional. He is sued in his official capacity for declaratory and injunctive relief.

7. The Texas Department of Criminal Justice is the state prison system, an agency of the State of Texas. Tex. Gov't Code § 493.004. TDCJ is a recipient of federal funds. At all relevant times, TDCJ operated the Pack Unit, a public facility with programs and services for which Plaintiffs and other prisoners with disabilities were otherwise qualified.

FACTS

A. COVID-19 Is a Deadly Pandemic and a Public Health Emergency

8. Since the end of 2019,[1] the Novel Coronavirus that causes Coronavirus Disease 2019 (or COVID-19)[2] has ravaged the world, country to country.[3] The extensive body of evidence regarding COVID-19 demonstrates that it is a highly communicable respiratory virus that spreads through close-contact and touching common surfaces containing the virus.

9. On January 30, 2020, the World Health Organization declared the COVID-19 outbreak a "Public Health Emergency of International Concern" as cases had been "reported in five WHO regions in one month."[4] The next day, the U.S. Secretary of Health and Human Services declared under Section 319 of the Public Health Service Act (42 U.S.C. § 247d), that COVID-19 "present[ed] a Public Health Emergency in the United States."[5] "On March 11, 2020, the World

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[1] World Health Organization, Pneumonia of Unknown Cause – China (Jan. 5, 2020), https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/ ("On 31 December 2019, the WHO China Country Office was informed of cases of pneumonia of unknown etiology (unknown cause) detected in Wuhan City, Hubei Province of China. As of 3 January 2020, a total of 44 patients with pneumonia of unknown etiology have been reported to WHO by the national authorities in China. Of the 44 cases reported, 11 are severely ill, while the remaining 33 patients are in stable condition.").

[2] The World Health Organization officially adopted the name COVID-19 for the novel coronavirus disease on February 11, 2020, WHO Twitter Post (Feb. 11, 2020), https://twitter.com/WHO/status/1227248333871173632?s=20.

[3] The first case of COVID-19 outside of China was reported by officials in Thailand on January 8, 2020. *See* WHO statement on novel coronavirus in Thailand, WHO (Jan. 13, 2020), https://www.who.int/news-room/detail/13-01-2020-who-statement-on-novel-coronavirus-in-thailand. Over the next several weeks, the outbreak spread to the Republic of Korea, Japan, and Singapore. *See* Statement on the meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV), WHO (Jan. 23, 2020) https://www.who.int/news-room/detail/23-01-2020-statement-on-the-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov). By January 21, 2020, the first case of COVID-19 in the United States was detected in Washington State. Washington State Department of Health, 2019 Novel Coronavirus Outbreak (COVID-19), https://www.doh.wa.gov/emergencies/coronavirus.

[4] Public Health Emergency of International Concern declared (Jan. 30, 2020), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen (The WHO's Emergency Committee "noted that early detection, isolating and treating cases, contact tracing and social distancing measures – in line with the level of risk – can all work to interrupt virus spread").

[5] Secretary Azar Delivers Remarks on Declaration of Public Health Emergency for 2019 Novel Coronavirus (Jan. 31, 2020), https://www.hhs.gov/about/leadership/secretary/speeches/2020-speeches/secretary-azar-delivers-remarks-on-declaration-of-public-health-emergency-2019-novel-coronavirus.html; Secretary Azar Declares Public Health

Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States."[6]

10. On March 13, 2020, Texas Governor Greg Abbott determined that "COVID-19 poses an imminent threat of disaster" and, under Section 418.014 of the Texas Government Code, declared "a state of disaster for all counties in Texas."[7] Subsequently, the Texas Department of State Health Services determined on March 19, 2020 that "COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code."[8] The same day, Gov. Abbott issued Executive Order GA08, which provides in part that "every person in Texas shall avoid social gatherings in groups of more than 10 people."[9]

11. Similarly, on March 16, 2020, Grimes County (where the Pack Unit is located) found that "extraordinary measures must be taken to contain COVID-19 and prevent its spread

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Emergency for United States for 2019 Novel Coronavirus (Jan. 31, 2020), https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html.

[6] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/; *see also* WHO Director-General's opening remarks at the media briefing on COVID-19 (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 ("WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic. Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.").

[7] Governor Abbott Declares State of Disaster In Texas Due To COVID-19 (Mar. 13, 2020), https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19.

[8] *See* Executive Order GA 08 (Relating to COVID-19 preparedness and mitigation), Mar. 19, 2020, https://www.grimescountytexas.gov/page/open/2263/0/20200319%20Governor%20Abbott%20Executive%20Order%20GA-08.pdf.

[9] *Id.*

throughout Grimes County," and declared a local state of disaster pursuant to Section 418.108(a) of the Texas Government Code.[10]

12. In only a few months, over 600,000 people worldwide have been diagnosed with COVID-19, and almost 30,000 of those people have died.[11] As of the date of this complaint, over 100,000 Americans have tested positive for COVID-19, while the number of deaths has risen to at least 1,668.[12] Those numbers are growing rapidly every day. There is no vaccine or cure for COVID-19. No one is immune.

B. COVID-19 Is Easily Transmissible and Will Spread Rapidly in a Prison Environment

13. The number of COVID-19 cases is growing exponentially. Nationally, projections by the CDC indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.7 million deaths in the most severe projections.[13]

14. COVID-19 is a particularly contagious disease. A recent study showed that the virus could survive for up to three hours in the air, four hours on copper, twenty-four hours on cardboard, and two to three days on plastic and stainless steel—the same type of surfaces prisoners

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[10] Declaration of Local Disaster for Public Health Emergency, Mar. 16, 2020, https://www.grimescountytexas.gov/page/open/2263/0/MARCH%2016%202020%20GRIMES%20COUNTY%20SIGNED%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf; Extended Declaration of Local Disaster for Public Health Emergency, Mar. 23, 2020, https://www.grimescountytexas.gov/page/open/2263/0/03232020%20EXTENDED%20MARCH%2016%202020%20GRIMES%20COUNTY%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf.

[11] World Health Organization, *Corona Virus disease 2019 (COVID-19) Situation Report – 69*, (Mar. 29, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200329-sitrep-69-covid-19.pdf?sfvrsn=8d6620fa_2.

[12] *Id.*

[13] Chas Danner, *CDC's Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Mag. (Mar. 13, 2020), https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html.

come into contact every day at the Pack Unit.[14] Another study of an early cluster of COVID-19 cases in Wuhan, China, revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal restroom, like the restrooms Pack Unit prisoners use.[15]

15. New research also shows that controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission—infection transmission by people who are contagious but exhibit limited or no symptoms, rendering any screening tools dependent on identifying symptomatic behavior ineffective.[16]

16. COVID-19 has been especially dangerous in areas of close confinement, such as cruise ships and assisted living facilities. It follows that jails and prisons are particularly vulnerable to an outbreak. In fact, jails and prisons are at an even greater risk because of their close quarters and communal living spaces.[17]

17. Experts predict that "[a]ll prisons and jails should anticipate that the coronavirus will enter their facility."[18]

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[14] Marilynn Marchione/AP, *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*. TIME, (Mar. 11, 2020),https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/.

[15] Cai J, Sun W, Huang J, Gamber M, Wu J, He G. *Indirect virus transmission in cluster of COVID-19 cases, Wenzhou, China, 2020*. 26 Emerg Infect Dis. 6, (2020) https://doi.org/10.3201/eid2606.200412.

[16] Chelsea Ritschel, *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19*? Independent (Mar. 15, 2020), https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptomsasymptomatic-covid-19spread-virus-a9403311.html.

[17] Evelyn Cheng and Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC, (Feb. 20, 2020), https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reported-nearly-250-cases.html.

[18] *See* Nicole Wetsman, *Prisons and jails are vulnerable to COVID-19 outbreaks*, The Verge (Mar. 7, 2020), https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap (quoting Tyler Winkelman, co-director of the Health, Homelessness, and Criminal Justice Lab at the Hennepin Healthcare Research Institute in Minneapolis).

18. Many jails throughout Texas, all over the country, and around the world are releasing people with the aim of preventing massive outbreaks of severe illness and death from COVID-19.[19] States, counties, and jails that have announced or planning the release of some inmates in their custody, include, but are not limited to: Harris County,[20] Texas; Jefferson County, Texas;[21] Hillsborough County, Florida;[22] Mobile County Metro Jail[23] and three other counties in Alabama;[24] Spokane in Washington;[25] Mercer County, Ohio;[26] Mecklenburg County, North

[19] BBC, *US jails begin releasing prisoners to stem Covid-19 infections*, (Mar. 19, 2020), https://www.bbc.com/news/world-us-canada-51947802 (discussing that some US cities have released hundreds of people from their jails and that Iran has released over 85,000 people to combat the pandemic).

[20] Jonathan Martinez, *Harris County Sheriff suggests releasing inmates to reduce the spread of coronavirus at county jails*, Click2Houston (Mar. 18, 2020), https://www.click2houston.com/news/local/2020/03/19/harris-county-sheriff-suggests-releasing-inmates-to-reduce-the-spread-of-coronavirus-at-county-jails/.

[21] Kierra Sam & Jordan James, *Jefferson County jail cancels visitation, releases some inmates amid coronavirus concerns*, 12 News (Mar. 18, 2020), https://www.12newsnow.com/article/news/local/jefferson-county-jail-cancels-visitation-releases-someinmates-amid-coronavirus-concerns/502-f7e9e268-e131-46af-a478-95553f309bf8 (Taking steps to reduce the jail population from 800 to 600 in the next few weeks, having already released some people held on misdemeanors or unpaid traffic citations, some who have health issues, and some not considered a flight risk).

[22] Tony Marrero, *Hillsborough sheriff releases 164 county jail inmates to reduce coronavirus risk*, Tampa Bay Times (Mar. 19, 2020), https://www.tampabay.com/news/hillsborough/2020/03/19/hillsborough-sheriff-releases-164-county-jail-inmates-to-reduce-coronavirus-risk/.

[23] Chris Best, *Some inmates to be released from Metro Jail due to coronavirus*, WKRG News (Mar. 18, 2020), https://www.wkrg.com/health/coronavirus/some-inmates-over-65-to-be-released-from-metro-jail-due-to-coronavirus/ (Releasing people over 65 years old who are charged with non-violent misdemeanors).

[24] Marty Roney, *Coronavirus: County jail inmates ordered released in Autauga, Elmore, Chilton counties*, Montgomery Advertiser, (Mar. 18,2020), https://www.montgomeryadvertiser.com/story/news/crime/2020/03/18/county-jail-inmates-ordered-released-autauga-elmore-chilton-counties/2871087001/ (Sheriff ordered to release inmates based on a person's risk to the public).

[25] Chad Sokol, *Dozens released from Spokane County custody following Municipal Court emergency order*, The Spokemsan-Review (Mar. 17, 2020), https://www.spokesman.com/stories/2020/mar/17/dozens-released-from-spokane-county-custody-follow/.

[26] *Mercer County Jail releases low-level inmates amid coronavirus pandemic*, WFMJ 21 (Mar. 18, 2020), https://www.wfmj.com/story/41912067/mercer-co-jail-releases-low-level-inmates-to-make-room-for-medicalisolation-cells-amid-coronavirus-pandemic (Granted early release to around 50 people held on low-level charges).

Carolina;[27] Cook County Jail in Illinois;[28] Sacramento, California;[29] Alameda County, California;[30] New York City;[31] Lexington County, South Carolina;[32] Jefferson County Jail in Kentucky;[33] New Jersey; and Washington County, Oregon.[34]

19. The Texas Department of State Health Services maintains a map and count of all COVID-19 cases, updating daily.[35] As of March 29, 2020, Texas had reported 2,552 cases of

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[27] Michael Gordon & Ames Alexander, *Mecklenburg begins releasing jail inmates to avoid cellblock outbreak of COVID-19*, The Charlotte Observer (Mar. 18, 2020), https://www.charlotteobserver.com/news/coronavirus/article241279836.html (Nearly 50 people scheduled for release).

[28] David Struett, *Cook County Jail releases several detainees who are 'highly vulnerable' to coronavirus*, Chicago Sun Times, (Mar 17, 2020), available at https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavirus-vulnerable-detaineesreleased-covid-19 (Released several detainees who are highly vulnerable to coronavirus who had been held on low-level, non-violent charges).

[29] Kristopher Hooks & Ja'Nel Johnson, *Some non-violent, low-level inmates being released from Sacramento jails amid coronavirus pandemic*, ABC10, (Mar. 18, 2020), https://www.abc10.com/article/news/health/coronavirus/sacramento-inmates-beingreleased-from-amid-coronavirus-pandemic/103-d10ab80d-81d6-41e1-bc47-e6643e1e0d7e (some low-level, non-violent inmates are being released following a court order).

[30] Clara Rodas, *Alameda County Superior Court releases 247 inmates in light of COVID-19*, The Daily Californian (Mar. 19, 2020), https://www.dailycal.org/2020/03/19/alameda-county-superior-court-releases-247-inmates-in-light-of-covid-19/ (247 inmates have been approved for sentence modification and early release, and another 67 inmates had already been released).

[31] Mayor announced plans to release "vulnerable" people from city jails. Julia Marsh & Ben Feuerherd, *NYC to begin releasing inmates amid coronavirus outbreak*, N.Y. Post (Mar. 18, 2020), https://nypost.com/2020/03/18/nyc-to-begin-releasing-inmates-amid-coronavirus-outbreak/.

[32] Releasing people under a state Supreme Court directive to release anyone facing non-capital charges who is not a danger to the community or an extreme flight risk. Meera Bhonsle, *Jail numbers affected by judicial coronavirus directives*, Cola Daily (Mar. 19, 2020), https://www.coladaily.com/communities/lexington/jail-numbersaffected-by-judicial-coronavirus-directives/article_bb2df04e-6a22-11ea-a187-f3aec5c6ac7d.html.

[33] More than 100 pretrial defendants are being released. Andrew Wolfson, *More than 100 pretrial defendants to be released from jail to avoid coronavirus spread*, Louiseville Courier Journal (Mar. 17, 2020), https://www.courierjournal.com/story/news/2020/03/17/kentucky-releasing-some-pretrial-defendants-due-coronavirus/5074206002/.

[34] Released 60 inmates to allow for appropriate social distancing. Noelle Crombie, *Oregon courts, jails respond to coronavirus: Washington County jail to release 60 inmates; court hearings see widespread delays*, The Oregonian (March 16, 2020), https://www.oregonlive.com/coronavirus/2020/03/oregon-courts-jails-respond-to-coronaviruswashington-county-jail-to-release-60-inmates-court-hearings-see-widespread-delays.html

[35] Texas Case Counts, COVID-19, Texas Department of State and Health Services, https://dshs.texas.gov/coronavirus/cases/ (last visited Mar. 30, 2020).

COVID-19, with 34 deaths. Harris County alone has 240 confirmed cases,[36] one of which was an inmate in the Harris County jail.[37] However, only 25,483 tests have been conducted in Texas as testing for COVID-19 remains limited, meaning the number of confirmed cases likely vastly understates the problem. The total Texas population is estimated to be around 29 million people.[38] The Governor of Texas declared COVID-19 a statewide public health disaster.[39]

20. The CDC recommends the following for virus transmission prevention:

- Wash your hands often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
- If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
- Stay home if you are sick, except to get medical care.
- After coughing or sneezing, immediately wash your hands with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer that contains at least 60% alcohol.

[36] Harris County COVID-19 Confirmed Cases, Harris County Public Health, http://publichealth.harriscountytx.gov/Resources/2019-Novel-Coronavirus/Harris-County-COVID-19-Confirmed-Cases (last visited Mar. 30, 2020).

[37] Coronavirus in Greater Houston: Live Updates, Houston Public Media, https://www.houstonpublicmedia.org/articles/news/health-science/coronavirus/2020/03/23/364988/coronavirus-in-greater-houston-live-updates/ (last visited Mar. 30, 2020) ("The first Harris County inmate has tested positive for COVID-19, according to a release from the Harris County Sheriff's Office.").

[38] QuickFacts: Texas, U.S. Census Bureau, https://www.census.gov/quickfacts/TX (last visited Mar. 27, 2020).

[39] Edgar Walters, *Texas governor declares statewide emergency, says state will soon be able to test thousands*, Texas Tribune (Mar. 13, 2020), https://www.texastribune.org/2020/03/13/texas-coronavirus-cases-state-emergency-greg-abbott/.

- Clean and disinfect frequently touched surfaces daily.[40]

21. Many of these recommendations—like staying home if sick—are simply not feasible in a prison. That is all the more reason it is important to take the proper precautions that can be taken.

C. COVID-19 Poses a High Risk of Serious Illness and Death to Older Adults and Adults with Underlying Medical Conditions.

22. COVID-19 is more likely to cause serious illness and death for older adults and those with certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke developmental delay, and pregnancy. These underlying medical conditions increase the risk of serious COVID-19 disease for people of any age. For people over the age of 50 or with medical conditions that increase the risk of serious COVID-19 infection, symptoms such as fever, coughing, and shortness of breath can be especially severe. Plaintiffs and the majority of putative class members fall into one or both of these categories of heightened vulnerability.[41]

23. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs, including

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[40] How to Protect Yourself–Coronavirus Disease 2019 (COVID-19), CDC (Mar. 18, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html (last visited Mar. 30, 2020).

[41] Medical information in this and the paragraphs that follow are drawn from the expert testimony of two medical professionals filed in a recent filed federal case in Washington State, as well the website of the Harvard Medical School. *See* Expert Declaration of Dr. Marc Stern, *Dawson v. Asher,* No. 20-0409 (W.D. Wa. *filed* Mar. 16, 2020), ECF No. 6, https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern; Expert Declaration of Dr. Robert Greifinger, *Dawson v. Asher,* No. 20-0409 (W.D. Wa. *filed* Mar. 16, 2020), ECF No. 4, https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger; Expert Declaration of Dr. Jonathan Golob, *Dawson v. Asher,* No. 20-0409 (W.D. Wa. *filed* Mar. 16, 2020), ECF No. 5, https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-jonathan-golob; Coronavirus Resource Center, Harvard Health Publishing, Harvard Medical School (Mar. 27, 2020), https://www.health.harvard.edu/diseases-andconditions/coronavirus-resource-center.

the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including negative pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients not killed by serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity.

24. Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

25. Many people infected with the virus, however, are completely asymptomatic carriers. People can be infected with the virus and not display any symptoms, or only have very mild symptoms, but still spread the disease to others who may not be as lucky.

26. Most people in high-risk categories who develop serious symptoms will need advanced supportive care requiring highly specialized equipment that is in limited supply, such as ventilator assistance, and a team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. That level of support can quickly exceed local health care resources.

27. High-risk patients should expect a prolonged recovery, including the need for extensive rehabilitation to accommodate profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity.

28. The need for care—including intensive care—and the likelihood of death is much higher from COVID-19 than from influenza. According to recent estimates, the fatality rate of

people infected with COVID-19 is about ten times higher than that of a severe seasonal influenza, even in advanced countries with highly effective health care systems. According to preliminary data from China, a much greater percentage of people in high-risk categories who contracted COVID-19 died than those who were not in high-risk categories.[42]

29. The only known, effective measures to reduce the risk for vulnerable people of serious illness or death caused by COVID-19 are aggressive social distancing and heightened attention to hygiene and disinfection—measures that TDCJ is making impossible at the Pack Unit.

D. CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

30. Because of this looming disaster, the CDC has published guidance for correctional and detention facilities to prepare and protect inmates and personnel from the COVID-19 pandemic.[43] The CDC's guidance includes the following advice for preventing the spread of COVID-19 in a correctional or detention facility:

[42] World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019* (COVID-19), at 12 (Feb. 28, 2020), https://www.who.int/publications-detail/report-of-the-who-china-joint-mission-on-coronavirus-disease-2019-(covid-19) (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: "13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer"); Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv, (Feb. 27, 2020) at 5, https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf (finding that even after adjusting for age and smoking status, patients with COVID-19 and comorbidities of chronic obstructive pulmonary disease, diabetes, hypertension, and malignancy were 1.79 times more likely to be admitted to an ICU, require invasive ventilation, or die, the number for two comorbidities was 2.59); Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, Lancet (March 11, 2020), tb. 1, https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext (finding that among hospital patients, who tended to be older, of those who had COVID-19 and died, 48% had hypertension, 31% had diabetes, and 24% had coronary heart disease).

[43] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional Detention Facilities, CDC (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 30, 2020).

- Facilities should ensure availability of sufficient stocks of hygiene supplies, cleaning supplies, personal protective equipment ("PPE"), and medical supplies (consistent with the healthcare capabilities of the facility).
    - This includes liquid soap, alcohol-based hand sanitizer containing at least 60% alcohol, recommended PPE including facemasks and gloves, and supplies for testing, such as sterile viral transport media and sterile swabs.
- Facilities should make contingency plans in the event of PPE shortages.
- Facilities should provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.
- Facilities should provide alcohol-based hand sanitizer containing at least 60% alcohol.
- Facilities should adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response, including cleaning and disinfecting frequently touched surfaces several times per day.
- Facilities should encourage all persons in the facility to protect themselves by practicing good cough etiquette and good hand hygiene and avoiding touching of the eyes, nose, or mouth.
- Facilities should encourage these behaviors by posting signage throughout the facility and communicating the information verbally on a regular basis.
- Facilities should implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).

- This should include enforcing increased space between individuals in holding cells and waiting areas, staggering time in recreation spaces, staggering meals and rearranging seating in the dining hall to increase space between individuals, liming the size of group activities, and rearranging housing spaces to increase space between individuals.

- Facilities should be providing inmates with information and consistent updates about COVID-19 and its symptoms.

E. TDCJ Has Adopted Grossly Inadequate Polices in Response to the COVID-19 Pandemic

31. While TDCJ has implemented policies in response to the COVID-19 pandemic, these procedures are woefully inadequate and do not comport with many of the CDC's recommendations. Indeed, although the CDC has issued a specific Guidance on Management of COVID-19 in Correctional Facilities, TDCJ's policy does not directly cite this Guidance in its references section, only the CDC Guidance for the healthcare setting and for clinical management of patients with confirmed disease.

32. For example, the CDC recommends considering "relaxing restrictions on allowing alcohol-based sanitizer in the secure setting where security concerns allow."[44] TDCJ's policy acknowledges that hand sanitizer is a method "used to prevent the spread of any respiratory virus" and that it should be carried by staff "and used whenever there is concern that hands have been contaminated."[45] However, TDCJ still mandates that inmates—even those performing the same

[44] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional Detention Facilities, CDC (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 30, 2020).

[45] TDCJ Infection Control Manual, No. 5-14.52, Corona Virus Disease 2019 (COVID-19) (Mar. 27, 2020), https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B-14.52.pdf (last visited Mar. 30, 2020).

duties as staff that need PPE and alcohol-based hand rub—"must not have access to the waterless hand rub but must wash hands with soap and water instead."[46] But as TDCJ's own policies acknowledge, this is not always practical, and thus inmates are at an increased risk of contracting and spreading COVID-19.

33. And, ironically, TDCJ inmates have been pressed into manufacturing alcohol-based hand sanitizer at the Roach Unit. Thus, TDCJ is forcing inmates to manufacture a necessary preventative measure they are prohibited from using themselves.

34. Inmates in other states have also been required to manufacture additional hand sanitizer.[47]

35. The CDC also recommends correctional facilities "[r]estrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding."[48] In contrast to this specific instruction to restrict transfers, except in limited circumstances where it is absolutely necessary, TDCJ's policy only requires facilities to "[m]inimize transfer of offenders between units."[49] This general guideline is insufficient to properly reduce the risk to the inmate population.

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[46] *Id.*

[47] Christina Carrega, *Nearly 100 prison inmates in NY to produce 100K gallons of hand sanitizer weekly*, ABC News (Mar. 10, 2020), https://abcnews.go.com/Health/prison-inmates-ny-produce-100k-gallons-hand-sanitizer/story?id=69501815.

[48] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional Detention Facilities, CDC (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 30, 2020).

[49] TDCJ Infection Control Manual, No. 5-14.52, Corona Virus Disease 2019 (COVID-19) (Mar. 27, 2020), https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B-14.52.pdf (last visited Mar. 30, 2020).

36. While moving TDCJ inmates between prisons is exceptionally risky, however, TDCJ is also still accepting new inmates from county jails, without any mechanism to test these newly introduced inmates for COVID-19.

37. In addition to being inadequate, some of TDCJ's policies are impossibly vague, further preventing proper precautions from taking place. For example, the CDC guidance explains that, while difficult, social distancing "is a cornerstone to reducing transmission of respiratory diseases such as COVID-19."[50] The CDC then provides examples of steps that can be taken in prisons and jails.[51] TDCJ's policy, in contrast, states only that units should "[p]ractice social distancing and avoid gatherings and meetings."[52] TDCJ's further reference to "teleconference or video conference" implies this policy is aimed more at reducing risk to prison staff, not prisoners directly.[53]

38. Correctional facilities across the country are now seeing the ramifications from an inadequate response.

39. As of March 25, 2020, Rikers Island in New York, New York had 52 confirmed cases of COVID-19 in the inmate population, with another 96 people under observation awaiting test results.[54] The Manhattan Supreme Court found this was a due process problem, and released

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[50] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional Detention Facilities, CDC (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 30, 2020).

[51] *Id.*

[52] TDCJ Infection Control Manual, No. 5-14.52, Corona Virus Disease 2019 (COVID-19) (Mar. 27, 2020), https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B-14.52.pdf (last visited Mar. 30, 2020).

[53] *Id.*

[54] Julia Crave, *Rikers Island Has 52 Confirmed Covid-19 Cases*, Slate (Mar. 25, 2020), https://slate.com/news-and-politics/2020/03/coronavirus-is-spreading-on-rikers-island.html.

16 inmates that were pretrial detainees or incarcerated for parole violations.[55] The infection rate in Rikers is now 87 times higher than the overall U.S. rate.[56] Rikers is not an anomaly – it is the canary in the coal mine.

40. As another example, Cook County Jail in Chicago, Illinois now has 89 detainees that have tested positive for COVID-19, which is an increase of 51 cases from the day before.[57] In addition, 12 Cook County Sheriff's Office employees at the jail have also tested positive for COVID-19.[58] The outbreak at the Cook County Jail happened in less than a week—the first reported case at the jail, a correctional officer, was confirmed last Sunday and the first two cases among inmates were announced last Monday.[59]

41. Prisons across the country are bracing for COVID-19, with some already reporting confirmed cases and even deaths.[60]

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[55] David Brand, *Manhattan judge orders release of 16 Rikers inmates, ruling COVID-19 violates due process rights*, Queens Daily Eagle (Mar. 26, 2020), https://queenseagle.com/all/manhattan-judge-orders-release-16-rikers-inmates-covid19-due-process.

[56] Jessica Schulberg & Angelina Chapin , *Prisoners at Rikers Say It's Like a 'Death Sentence' as Coronavirus Spreads*, Huffington Post (Mar. 28, 2020), https://www.huffpost.com/entry/rikers-prisoners-coronavirus_n_5e7e705ec5b6256a7a2a995d.

[57] Sam Kelly, *Sheriff announces 51 new coronavirus cases at Cook County Jail, raising total to 89*, Chicago Sun Times, Mar. 28. 2020, https://chicago.suntimes.com/coronavirus/2020/3/28/21198407/cook-county-jail-coronavirus-covid-19-cases-inmates-89 (noting that "92 are still awaiting results of the test").

[58] *Id.*

[59] *Id.*; CBS Chicago, *Coronavirus In Chicago: 89 Inmates, 12 Staff At Cook County Jail Test Positive For COVID-19* (Mar. 28, 2020), https://chicago.cbslocal.com/2020/03/28/coronavirus-cook-county-jail-inmates-staff-covid-19-saturday-march-28/.

[60] Joshua Sharpe & Christian Boone, *Georgia inmate dies from COVID-19 as virus hits more prisons, The Atlanta Journal-Constitution* (Mar. 27, 2020), https://www.ajc.com/news/local/breaking-inmate-dies-from-covid-outbreak-worsens-prison/TzQZL4uXfK4GzH9ebSFNQN/; Sarah N. Lynch, *Prisoner serving time for drug charge is first U.S. inmate to die from COVID-19*, Reuters (Mar. 28, 2020), https://www.reuters.com/article/us-heath-coronavirus-prison-death/federal-inmate-serving-time-for-drug-charge-is-first-inmate-to-die-from-covid-19-idUSKBN21G04T ("[A] 49-year-old prisoner in Louisiana who was serving a 27-year prison term for a drug charge, became the first federal inmate to die from COVID-19, the federal Bureau of Prisons (BOP) announced late on Saturday.").

42. Unfortunately, a similar outbreak appears to be on the horizon for TDCJ facilities. In the last week, multiple individuals working for TDCJ or within its facilities have tested positive for COVID-19. First, a contract employee at TDCJ's Management and Training Corporation tested positive on March 23, 2020 at the Jester I Unit.[61] The next day, a TDCJ inmate at the Lychner State Jail who had suffered shortness of breath and coughing, tested positive for COVID-19.[62] And the next day, a TDCJ staff member in Huntsville, Texas notified the agency of a positive COVID-19 test a week after having symptoms and interacting with staff and prisoners.[63] If TDCJ's inadequate response continues, there is a risk that COVID-19 will spread unhindered through its facilities, which will inflict particularly serious harm on Plaintiffs.

43. There have already been at least 2 confirmed cases of COVID-19 in Grimes County where the Pack Unit is located.[64] The two neighboring counties, Brazos and Washington, where many of the Pack Unit's employees likely live, also have confirmed cases of COVID-19. As of March 29, 2020, Brazos County had 44 confirmed cases[65] and Washington County had 6 confirmed cases.[66] Harris County, just an hour away, has 240 confirmed cases.[67] COVID-19 has

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[61] *TDCJ COVID-19 Updates*, TDCJ (Mar. 27, 2020), https://www.tdcj.texas.gov/covid-19/index2.html (last visited Mar. 30, 2020).

[62] *Id.*

[63] *Id.*

[64] *Grimes County's second confirmed COVID-19 case is a close contact of first patient*, KBTX (Mar 21, 2020), https://www.kbtx.com/content/news/Grimes-Countys-second-COVID-19-case-is-a-close-contact-of-the-first-patient-568993931.html.

[65] *Two Brazos County Deaths From Coronavirus And 44 Positive Cases As Of Sunday Afternoon*, WTAW (Mar. 29, 2020), http://wtaw.com/31-coronavirus-cases-brazos-county-friday/.

[66] *UPDATE: Six cases of coronavirus confirmed in Washington County*, KAGS (Mar. 28, 2020), https://www.kagstv.com/article/news/local/washington-county-in-texas-confirms-first-case-of-coronavirus/499-1599dc46-6e8d-4d4e-9012-5bc82d7bc608. As of March 29, 2020, there were at least 59 confirmed cases of COVID-19 across the Brazos Valley. *See Brazos Valley Confirmed COVID-19 Cases*, KBTX, https://www.kbtx.com/covid19.

[67] *Harris County COVID-19 Confirmed Cases*, Harris County Public Health, http://publichealth.harriscountytx.gov/Resources/2019-Novel-Coronavirus/Harris-County-COVID-19-Confirmed-Cases (last visited Mar. 30, 2020).

spread to all areas surrounding the Pack Unit. Without swift intervention, it will undoubtedly run rampant through the halls of the prison.

F. The Pack Unit Houses Sick, Elderly Prisoners in Conditions Likely to Spread the Virus

44. As Judge Keith Ellison noted in his 2017 preliminary injunction order, the Pack Unit is a Type-I Geriatric prison in the TDCJ system.[68] A large number of inmates at the Pack Unit face significant health issues, are over the age of 50, or both. As of September 2014, the Pack Unit contained 728 men with high blood pressure, 212 men with diabetes, 142 men with coronary artery disease, and 188 men over the age of 65.[69] Defendants agree that these numbers are typical for the Pack Unit.[70]

45. Pack Unit inmates primarily live in cubicles in a dormitory setting. Each inmate has his own bunk, separated from his neighbor only by a waist-high wall. It is impossible for inmates at the Pack Unit, in their existing bunks, to sleep more than six-feet apart (as the CDC recommends for proper social distancing).

46. The Pack Unit has communal restrooms, where a significant number of inmates share toilets, sinks, and other fixtures.

G. Despite the Exceptionally High Risk its Inmates Face, the Pack Unit Is Not Meeting Even the TDCJ's Inadequate Policies

47. In addition to its policies being inadequate to combat the COVID-19 threat, TDCJ is neglecting to even follow many of its own policies. Plaintiffs observe that, despite committing to do so, TDCJ is **not**:

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[68] *Cole v. Collier*, No. 4:14-CV-1698, 2017 WL 3049540, at *4 (S.D. Tex. July 19, 2017).

[69] *Id.*, at *5.

[70] *Id.*, at *5 n.5.

- Posting the signs and warnings attached to TDCJ's guidance throughout the prison, including attachments providing guidance and education on COVID-19 symptoms and best methods for preventing transmission;
- Reducing social gatherings or taking other precautions to reduce inmate contact;
- Educating inmates on how COVID-19 is transmitted, signs and symptoms, and prevention of transmission;
- Reducing and restricting inmate movement; and/or
- Reminding inmates of effective measures to prevent transmission, such as washing hands with soap for at least 20 seconds.

48. TDCJ's failure to implement these policies puts Plaintiffs at further risk of extreme harm. Because Plaintiffs are particularly at risk of severe illness or even death should they contract COVID-19, they must be provided the adequate care and safeguards recommended by the CDC and health experts. TDCJ is not meeting those standards.

H. The Pack Unit Has a History of Litigation Stemming from Poor Treatment of Inmates

49. The Pack Unit has a long history of litigation stemming from its poor treatment of inmates.[71] In 2014, inmates at the Pack Unit filed a lawsuit seeking relief in the form of adequate temperature control due to the Pack Unit's lack of air conditioning in living quarters.[72] Temperatures recorded during the summer of 2016 showed that the heat index at the unit exceeded

[71] Emanuella Grinberg, *Texas judge orders prison to cool down*, CNN (July 7, 2019), https://www.cnn.com/2017/07/19/us/texas-prison-heat-lawsuit/index.html.

[72] *Id.*

100 degrees on 13 days and reached into the 90-99 degree range on 55 days.[73] In 2017, Judge Ellison ordered officials overseeing the Pack Unit to move 500 "heat-sensitive" inmates to living quarters exceeding no more than 88 degrees.[74] In a temporary solution, the "heat-sensitive" inmates were moved to air conditioned units. The Pack Unit continued to be without air conditioning in its living quarters.[75]

50. A year later, in 2018, Judge Ellison approved a settlement agreement in which TDCJ would provide air conditioning for the entirety of the Pack Unit.[76]

I. Plaintiffs Are at a Serious of Risk of Infection

1. Plaintiff Richard King Faces Increased Risk from COVID-19 Due to his Disabilities

51. Plaintiff Richard King suffers from disabilities that, according to the CDC, place him "at higher risk of severe illness from COVID-19."[77]

52. Mr. King suffers from diabetes (and has diabetic neuropathy).

53. Mr. King's diabetes substantially limits several of his major life activities, including his ability to eat, and to digest food.

54. Mr. King's diabetes also substantially impairs the operation of several major bodily systems, including his digestive, neurological, circulatory, and endocrine systems.

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[73] *Id*.

[74] *Id*.

[75] Jolie McCullough, *Judge approves settlement mandating air conditioning at hot Texas prison*, The Texas Tribune (May 8, 2018), https://www.texastribune.org/2018/05/08/settlement-air-condition-hot-texas-prison-gets-final-judicial-approval/.

[76] *Id*.

[77] *People who are at higher risk for severe illness–Coronavirus Disease 2019 (COVID-19)*, CDC (Mar. 26, 2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last visited Mar. 30, 2020).

55. Mr. King was recently diagnosed with kidney problems, and had a follow-up appointment scheduled to evaluate the function of his kidneys before the pandemic. His doctors told him his kidneys are "not doing well."

56. Mr. King is 73 years old. While his advanced age is not a qualifying disability, it does independently place him "at higher risk of severe illness from COVID-19," according to the CDC.[78]

2. Plaintiff Laddy Valentine Faces Increased Risk from COVID-19 Due to his Disabilities

57. Mr. Valentine suffers from disabilities that, according to the CDC, place him "at higher risk of severe illness from COVID-19."

58. Mr. Valentine suffers from hypertension, which has substantially impaired the operation of his circulatory system. Mr. Valentine suffered a stroke in the past due to the impairment of his circulatory system. Mr. Valentine's hypertension is a "serious heart condition" which places him at increased risk of severe complications from COVID-19.

59. Mr. Valentine has also had a lumbar fusion in his back, and uses a walker for mobility. During the pandemic, his limited mobility impairs his ability to do things necessary to care for himself – such as aggressively wash his hands, and, where possible in the prison context, maintain a safe social distance.

60. Mr. Valentine is 69 years old. While his advanced age is not a qualifying disability, it does independently place him "at higher risk of severe illness from COVID-19," according to the CDC.[79]

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[78] *Id.*

[79] *Id.*

CLASS ACTION

61. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(1) and (b)(2), Plaintiffs bring this action on behalf of themselves and all similarly-situated persons.

62. Plaintiffs propose to represent a class composed of all inmates who currently are, or who in the future will be, incarcerated at the Pack Unit, and who are subjected to the TDCJ's policies and practices regarding COVID-19 ("Class").

63. Plaintiffs also seek to represent two subclasses of Pack inmates:

- **High-Risk Subclass:** those who are, according to the CDC, most at risk of severe illness from COVID-19, including death—these high-risk conditions include:
    - People aged 65 or older;
    - People with chronic lung disease or moderate to severe asthma;
    - People who have serious heart conditions;
    - People who are immunocompromised including cancer treatment; and
    - People of any age with severe obesity (body mass index [BMI] >40) or certain underlying medical conditions, particularly if not well controlled, such as those with diabetes, renal failure, or liver disease might also be at risk; or
- **Disability Subclass:** those who suffer from a disability that substantially limits one or more of their major life activities and who are at increased risk of COVID-19 illness, injury, or death due to their disability or any medical treatment necessary to treat their disability.

64. Plaintiffs King and Valentine are typical members of the Class, as well as the High-Risk Subclass and the Disability Subclass.

65. This action has been brought and may properly be maintained as a class action under Federal law and satisfies numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

66. **Numerosity:** The joinder of each class member would be impracticable because each class is so numerous. The approximate number of Class members exceeds 1,400 as the Pack Unit houses over 1,400 inmates and many other inmates could potentially be housed at the Pack Unit over the course of this litigation, or in the future. Joining all members of the Class is impracticable due to the minimum 1,400-person size and the fluctuating population of the Pack Unit. Approximately 200 prisoners over age 65 live at the Pack Unit. Joining all 200 prisoners over age 65 would be impracticable. In addition, the Pack Unit is a "Chronic Care I" facility; more than 700 inmates incarcerated there suffer from at least one medical condition or disability that would make them a class member. Identifying every inmate at the Pack Unit who is a member of the Class would require interviewing hundreds of prisoners and reviewing each of their medical records. Disposition of this matter as a class action will provide substantial benefits and efficiencies to the parties and the Court.

67. **Commonality:** Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class, in that they all have a right to be administered COVID-19 prevention, testing, and treatment measures.

- The common questions of law and fact for the proposed Class include:
    - Whether Defendants Collier and Herrera adequately protect the Class from the immediate threat of COVID-19;

- Whether the Class's Eighth and Fourteenth Amendment rights are being violated by Defendants Collier and Herrera's failure to implement adequate procedures and practices to protect the class from COVID-19;
- Whether Defendants Collier and Herrera's failure to implement adequate procedures and practices constitutes cruel and unusual punishment under the Eighth and Fourteenth Amendments; and
- What practices Defendants are actually implementing with respect to COVID-19 at the Pack Unit.

- The common questions of law and fact for the proposed High Risk Subclass include:
  - Whether the members of the proposed High Risk subclass are at heightened health risk from COVID-19; and
  - Whether the members of the proposed High Risk subclass require heighted measures to protect them from COVID-19 infection;
- The common questions of law and fact for the proposed Disability Subclass include:
  - Whether members of the Disability Subclass are qualifying individuals with a disability under the meaning of the ADA and Rehabilitation Act;
  - Whether TDCJ's policies and procedures are adequate to protect the Disability Class from the immediate threat of COVID-19;
  - Whether the Disability Class's rights under the ADA are violated by TDCJ's policies and practices;

- Whether the Disabilities Class's rights under the Rehabilitation Act are violated by TDCJ's policies and procedures; and
- Whether TDCJ illegally discriminated against the Disability Class by denying the Disability Class reasonable accommodations recommended by the CDC, both in policy and practice.

68. **Typicality:** Plaintiffs' claims are typical and representative of each class and subclass member's claims against Defendants, as identified above. The claims of Plaintiffs and the Class all arise from the same conduct by Defendants and are based not only on identical legal theories, but also seek identical relief. All members of the Class are similarly injured by Defendants' wrongful conduct and the harms Plaintiffs suffer are typical of the harms suffered by the Class.

69. **Adequacy of Class Counsel:** Plaintiffs and their counsel will fairly and adequately represent the interests of the class. Plaintiffs have no interests contrary to those of class members. Plaintiffs' class counsel, Winston & Strawn, LLP and Edwards Law, have litigated complex commercial and civil rights cases, including class actions against governmental entities. Edwards Law, in particular, has extensive experience with class action litigation against TDCJ.

70. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy, especially since joinder of all Class members is impracticable.

71. Each class member is irreparably harmed as a result of Defendants' wrongful conduct. Litigating this case as a class action will reduce the risk of repetitious litigation relating to the Defendants' conduct.

72. Plaintiffs do not seek monetary damages, except as may be incidental to declaratory or injunctive relief.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENTS: UNLAWFUL CONDITIONS OF CONFINEMENT

(Against Defendants Collier and Herrera in their Official Capacities)

73. Plaintiffs incorporate the previous paragraphs as if alleged herein.

74. The U.S. Constitution's Eighth Amendment, as incorporated against the States through the Fourteenth Amendment, protects prison inmates from cruel and unusual punishment by State actors and requires State actors to provide adequate healthcare to prison inmates. The State actors violate this right when they subject prison inmates to cruel treatment and conditions of confinement that amount to punishment or that do not ensure those inmates' safety and health.

75. In accordance with 42 U.S.C. § 1983, Defendants Collier and Herrera, in their official capacities, act with deliberate indifference to the serious risk COVID-19 poses to the inmates in their custody and care, including the numerous medically vulnerable individuals currently in confinement, without regard to their safety and health.

76. The Pack Unit presently does not comply with all CDC guidelines to prevent an outbreak of COVID-19 and cannot protect the health or safety of Plaintiffs and the class members, many of whom, because of their medical vulnerabilities, remain particularly susceptible to the most devastating health effects wrought by COVID-19.

77. Collier and Herrera, in their respective positions as executive director of TDCJ and warden of the Pack Unit, are aware of the COVID-19 pandemic, its rising spread throughout the nation (including in other facilities operated by TDCJ), and the deleterious threat to health that COVID-19 poses, particularly to the medically vulnerable—including Plaintiffs and the class members.

78. Collier's and Herrera's actions and inactions result in the confinement of Plaintiffs and the class members in conditions grossly inadequate to prevent COVID-19 outbreaks and the spread of the virus to Plaintiffs and the class members, which is a violation of their constitutional rights.

79. By operating the Pack Unit without the adequate conditions and practices to protect against COVID-19 transmission or a COVID-19 outbreak, Defendants Collier and Herrera, as supervisors, direct participants, and the ultimate policy makers for the Unit, have violated and continue to violate Plaintiffs' and the class member's Eighth Amendment rights.

SECOND CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
AND THE REHABILITATION ACT OF 1973
(Against Defendant TDCJ)

80. Plaintiffs and the class members incorporate the previous paragraphs as if alleged herein.

81. Defendants intentionally discriminate against prisoners with disabilities, like Plaintiffs King and Valentine and numerous class members, by intentionally denying them reasonable accommodations recommended by the CDC and necessary to protect themselves from COVID-19.

82. Reasonable accommodations recommended by the CDC and necessary to protect inmates with disabilities include, but are not limited to:

a. Access to alcohol-based hand sanitizer;

b. Provision of cleaning supplies for each housing area, including cleaning agents containing bleach;

c. Access to antibacterial hand soap and hand towels to facilitate handwashing;

d. A prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, a requirement to test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available); and

e. Social distancing measures in the cafeteria, pill line, and other locations where prisoners are required to congregate.

83. Failing to provide these reasonable accommodations is illegal discrimination under the Acts, entitling Plaintiffs to injunctive and declaratory relief.

84. Title II of the ADA and Section 504 of the Rehabilitation Act require public entities, like TDCJ, to reasonably accommodate people with disabilities in all programs and services for which people with disabilities are otherwise qualified. Because failing to provide adequate medical care and safe conditions of confinement to inmates also violates the Eighth Amendment, TDCJ's immunity from suit is waived by Congress's power to enforce the Fourteenth Amendment.

85. The Rehabilitation Act also requires federal funds recipients to reasonably accommodate persons with disabilities in their programs and services. As TDCJ is a federal funds recipient, its sovereign immunity from suit is waived by Congress's spending power under the Rehabilitation Act.

86. The Pack Unit is a facility, and its operation comprises a program and service, for ADA and Rehabilitation Act purposes.

87. Medical treatment and safe conditions of confinement are programs or services that TDCJ provides to prisoners for purposes of the ADA and Rehabilitation Act.

88. Plaintiffs King and Valentine, and other members of the Class, are qualified individuals with a disability under the meaning of both the ADA and the Rehabilitation Act.

89. TDCJ knows that Plaintiffs King and Valentine, and hundreds of other prisoners at the Pack Unit, including members of the Class, are qualified individuals with a disability. TDCJ knows that individuals with disabilities are in especially acute need of access to accommodations during the COVID-19 pandemic including hand sanitizer and the other items identified above, but deny these reasonable accommodations to Plaintiffs King and Valentine, and other members of the Class.

TEMPORARY RESTRAINING ORDER, INJUNCTION, AND DECLARATORY RELIEF

90. Plaintiffs and the class members incorporate all previous paragraphs as if alleged herein.

91. Plaintiffs and the class members seek an immediate temporary restraining order under Federal Rule of Civil Procedure 65 to protect their health, safety, and well-being in accordance with their constitutionally guaranteed Eighth Amendment rights. Plaintiffs and the class members further seek preliminary and permanent injunctive relief against Defendants under 42 U.S.C. § 1983, the ADA, and the Rehabilitation Act, for themselves and the class members.

92. Without the temporary restraining order and injunctive relief Plaintiffs and the class members seek, Defendants will continue their same perilous practices and conduct, disregarding federal legal mandates and endangering the lives and the welfare of current and future prisoners at the Pack Unit. Without swift intervention by this Court, Plaintiffs and the class members face immediate and irreparable injury: they risk contracting COVID-19 and, because of their particular medical susceptibility, likely will sustain severe, potentially *life-threatening*, health complications.

93. Plaintiffs and the class members have no plain, adequate, or complete remedy at law to address the wrongs described herein.

94. Plaintiffs and the class members are likely to succeed on the merits of their claims because Defendants are constitutionally required to take measures to avoid jeopardizing the health and safety of Plaintiffs and the class in the face of the COVID-19 pandemic. Alternatively, Plaintiffs and the class members submit they are not required to demonstrate likelihood of success on the merits to secure a temporary restraining order because their feared injury—including contracting a potentially life-threatening illness—is so severe.

95. Granting a temporary restraining order and injunctive relief also serves the public interest, because it will help guard against further community spread of COVID-19 in vulnerable populations and will help protect medically compromised individuals from contracting a potentially life-threatening virus. As an outbreak of COVID-19 at the prison would likely result in prison staff becoming infected and suffering as well, the public interest strongly favors granting immediate injunctive relief.

96. To protect their health and safety, Plaintiffs and the class members are entitled to a temporary restraining order and injunctive relief requiring that Defendants immediately take the following actions:

- Provide Plaintiffs and the class members with unrestricted access to antibacterial hand soap and disposable hand towels to facilitate handwashing;
- Provide Plaintiffs and the class members with access to hand sanitizer that contains at least 60% alcohol;
- Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning;

- Require common surfaces in housing areas to be cleaned hourly with bleach-based cleaning agents, including table tops, telephones, door handles, and restroom fixtures;
- Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television remote controls, books, and gym and sports equipment;
- Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available);
- Limit transportation of Pack Unit inmates out of the prison to transportation involving immediately necessary medical appointments and release from custody;
- For transportation necessary for prisoners to receive medical treatment or be released, social distancing requirements should be strictly enforced in TDCJ buses and vans;
- Implement and enforce strict social-distancing measures requiring at least six feet of distance between all individuals in all locations where inmates are required to congregate, including, but not limited to, the cafeteria line, in the chow hall, in all recreation rooms, during required counting, and in the pill line;

- To the extent possible, use common areas like the gymnasium as temporary housing for inmates without disabilities to increase opportunities for social distancing; and
- Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic; (ii) the CDC's recommendations on "How To Protect Yourself"[80] from contracting COVID-19; and (iii) instructions on how to properly wash hands. Among other locations, signage should be posted in every housing area, and above every sink.

97. Plaintiffs and the class members request an order declaring that the current conditions inside the Pack Unit are unconstitutional because those conditions are medically unsafe and dangerous to Plaintiffs and the class members, in violation of their Eighth Amendment rights.

98. Plaintiffs request an order declaring that TDCJ violates the ADA and Rehabilitation Act by failing to reasonably accommodate inmates with disabilities.

99. Plaintiffs and the class members are entitled to injunctive and declaratory relief to end this unlawful discrimination.

100. Plaintiffs do not seek damages.

ATTORNEY'S FEES

101. Pursuant to 42 U.S.C. § 1988, and 42 U.S.C. § 12205 Plaintiffs are entitled to recover attorney's fees, litigation expenses, and court costs, including expert costs.

[80] *See How to Protect Yourself–Coronavirus Disease 2019 (COVID-19)*, CDC (Mar. 18, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html (last visited Mar. 30, 2020).

PRAYER FOR RELIEF

THEREFORE, Plaintiffs respectfully request that the Court award the following relief:

- Certify this action as a class action, as described above;
- Remedy ongoing violations of law and the Constitution by granting declaratory and injunctive relief, as set out in this Complaint, on behalf of the Plaintiffs, and the class;
- Issue a temporary restraining order, and a preliminary and permanent injunction, to abate the risk of serious harm described above by requiring Defendants to take the following health and safety measures:
    - Provide Plaintiffs and the class members with unrestricted access to antibacterial hand soap and disposable hand towels to facilitate handwashing;
    - Provide Plaintiffs and the class members with access to hand sanitizer that contains at least 60% alcohol;
    - Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants;
    - Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television remote controls, books, and gym and sports equipment;
    - Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new

prisoners in quarantine for 14 days if no COVID-19 tests are available);

- Implement and enforce strict social-distancing measures requiring at least six feet of distance between all individuals in all locations where inmates are required to congregate, including, but not limited to, the cafeteria line, in the chow hall, in all recreation rooms, during required counting, and in the pill line; and
- Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic; (ii) the CDC's recommendations on "How To Protect Yourself"[81] from contracting COVID-19; and (iii) instructions on how to properly wash hands.

- Find that Plaintiffs are the prevailing parties in this case and award them attorney's fees, court costs, expert costs, and litigation expenses;
- Grant such other and further relief as appears reasonable and just, to which Plaintiffs may be entitled, separately or collectively.

[81] *See id.*

Dated: March 30, 2020

WINSTON & STRAWN LLP

By: /s/ John R. Keville

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Counsel for Plaintiffs

Exhibit 6

UNITED STATES DISTRICT COURT **SOUTHERN DISTRICT OF TEXAS**

HOUSTON DIVISION

Laddy Curtis Valentine, et al.
Plaintiff(s),

v. Case No. 4:20−cv−01115

Bryan Collier, et al.
Defendant(s).

NOTICE OF SETTING

PLEASE TAKE NOTICE

HEARING: **Telephone Conference**
RE: Amended Complaint/Counterclaim/Crossclaim etc. − #1

DATE: **4/2/2020**

TIME: **03:30 PM**

HAS BEEN SET BEFORE

JUDGE KEITH P. ELLISON

UNITED STATES COURTHOUSE
515 RUSK COURTROOM 3−A
HOUSTON, TEXAS 77002.

ALL PARTIES MAY APPEAR BY TELEPHONE BY CALLING IN
ON THE COURT'S DIAL−IN NUMBER AT 713−250−5238.
ENTER CONFERENCE ID: 45238, FOLLOWED BY PASSWORD: 13579.

David J. Bradley, Clerk Date: March 31, 2020

By Deputy Clerk, A. Rivera

Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:20-CV-1115
	§	
BRYAN COLLIER, *et al*,	§	
	§	
Defendants.	§	

ORDER

Counsel and those who can bind the respective parties are asked to participate in a telephonic conference at 4:00 p.m. on Monday, April 6, 2020. Issues to be discussed include:

1. Whether Defendants have the authority to release any state prisoners in advance of their scheduled release dates because of illness or likely exposure to COVID-19;
2. Whether Defendants can implement at the Pack Unit measures recommended by the Center for Disease Control; and
3. When participants in the telephonic conference can be available for a follow-up conference.

All parties may appear by calling in on the Court's dial-in number at 713-250-5238. Enter Conference ID: 45238, followed by password: 13579.

IT IS SO ORDERED.

SIGNED at Houston, Texas on the 6th day of April, 2020.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

Exhibit 8

U.S. District Court

SOUTHERN DISTRICT OF TEXAS

Notice of Electronic Filing

The following transaction was entered on 4/15/2020 at 11:27 AM CDT and filed on 4/14/2020

Case Name:	Valentine et al v. Collier et al
Case Number:	4:20-cv-01115
Filer:	
Document Number:	No document attached

Docket Text:
Minute Entry for proceedings held before Judge Keith P Ellison. TELEPHONE CONFERENCE held on 4/14/2020. Defendants notified the Court that an inmate at Pack Unit died on 4/11/2020 and has preliminarily tested positive for COVID-19 at autopsy. Telephonic evidentiary hearing on Application for TRO set for 4/16/2020 at 1:30 p.m. Appearances:Corinne Hockman, Scott Medlock, Eric Miller, Cynthia Burton, Michael Murphy, Jeff Farrow, Kristen Worman, Denise Scofield, Michael Singley, David James, Shanna Molinare, Eric Nichols.. Christin Cobe Vasquez, Jeffrey S Edwards, Brandon W. Duke, John R Keville.(Court Reporter: J. Sanchez)(Law Clerk: J. Zhang), filed. (arrivera, 4)

4:20-cv-01115 Notice has been electronically mailed to:

Brandon W. Duke bduke@winston.com, brandon-duke-2046@ecf.pacerpro.com, ECF_Houston@winston.com

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4:20-cv-01115 Notice has not been electronically mailed to:

Exhibit 9

April 29, 2020

COVID-19 TDCJ Update

In total there are 381 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 1050 offenders who have tested positive. 5 employees and 12 offenders are believed to have died as a result of COVID-19. There are now 46 employees and 156 offenders who have medically recovered.

There are an additional 14 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports. 19,598 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 41,301 offenders impacted

Baten, Beto, Byrd, Clemens, Clements, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 1, Jordan, Leblanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Polunsky, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

April 29, 2020

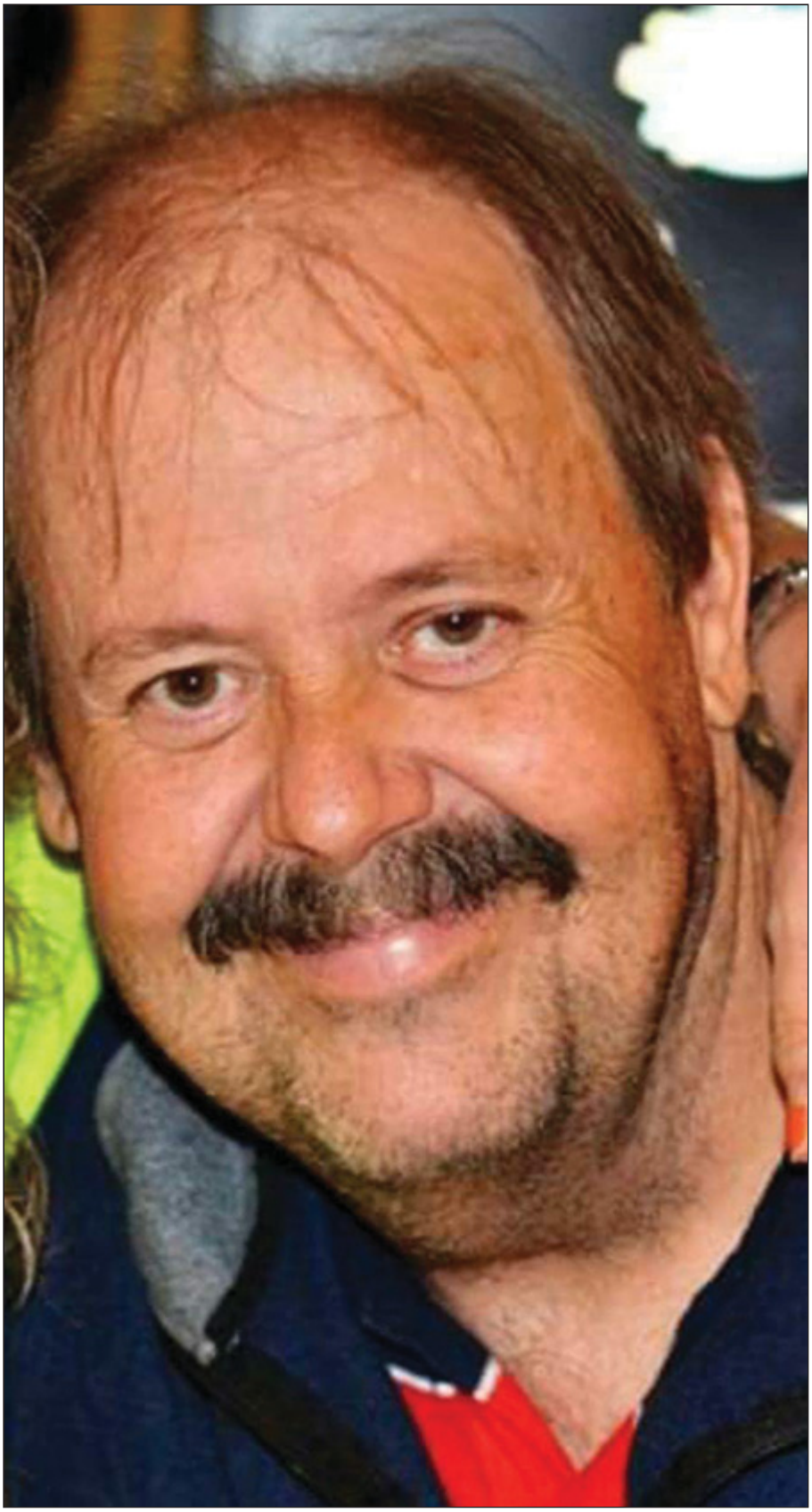
COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is grieving the loss of an employee that may be connected to the COVID-19 virus.

53-year-old James Coleman’s death is currently under investigation. Coleman last worked April 26, 2020 at the Middleton Unit in Abilene. On April 27th, he felt ill at home, collapsed and was taken to a local hospital where he

was tested for COVID-19. That test did return positive and Officer Coleman passed away yesterday afternoon. He was a 20 year veteran of TDCJ.

“There is no measure of the unexpected loss of someone we hold dear,” said Bryan Collier Executive Director of the Texas Department of Criminal Justice. “The thoughts and prayers of the TDCJ family are with those close to Officer Coleman. We can only hope that is of some comfort to his friends and family.”



April 28, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice regrets to inform you of the deaths of 2 offenders that are likely connected to the coronavirus.

77-year-old Nathaniel Morgan was pronounced dead at Hospital Galveston where he had been being treated for COVID-19. He had been assigned to the Wynne Unit but was taken to Hospital Galveston suffering from shortness of breath on April 22nd, where he tested positive for COVID-19. He suffered from a number of pre-existing health conditions. Morgan was serving a life sentence out of Tarrant County and died on April 24th, 2020. His family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death.

Vaughn Harvey also died at Hospital Galveston on April 26th, he was 70 years old. Harvey was serving a life sentence out of Smith County at the Wynne Unit. He went to a local hospital April 22nd, was tested for COVID-19 the same day and then transferred to Hospital Galveston on April 23rd. Harvey died on April 26th. His family also declined an autopsy, but COVID-19 is believed to have contributed to his death.

There are an additional 12 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

In total there are 350 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 950 offenders who have tested positive. There are now 46 employees and 156 offenders who have medically recovered from COVID-19.

17,953 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN 37,684 offenders impacted.

Baten, Beto, Byrd, Carole Young, Clemens, Clements, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 1, Jordan, Leblanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

April 27, 2020

COVID-19 TDCJ Update

In total there are 325 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 909 offenders who have tested positive. 4 employees and 10 offenders are believed to have died as a result of

COVID-19. There are now 34 employees and 97 offenders who have medically recovered. There are an additional 12 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

17,648 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 39,313 offenders impacted

Baten, Beto, Byrd, Carole Young, Clemens, Clements, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 1, Jordan, Leblanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

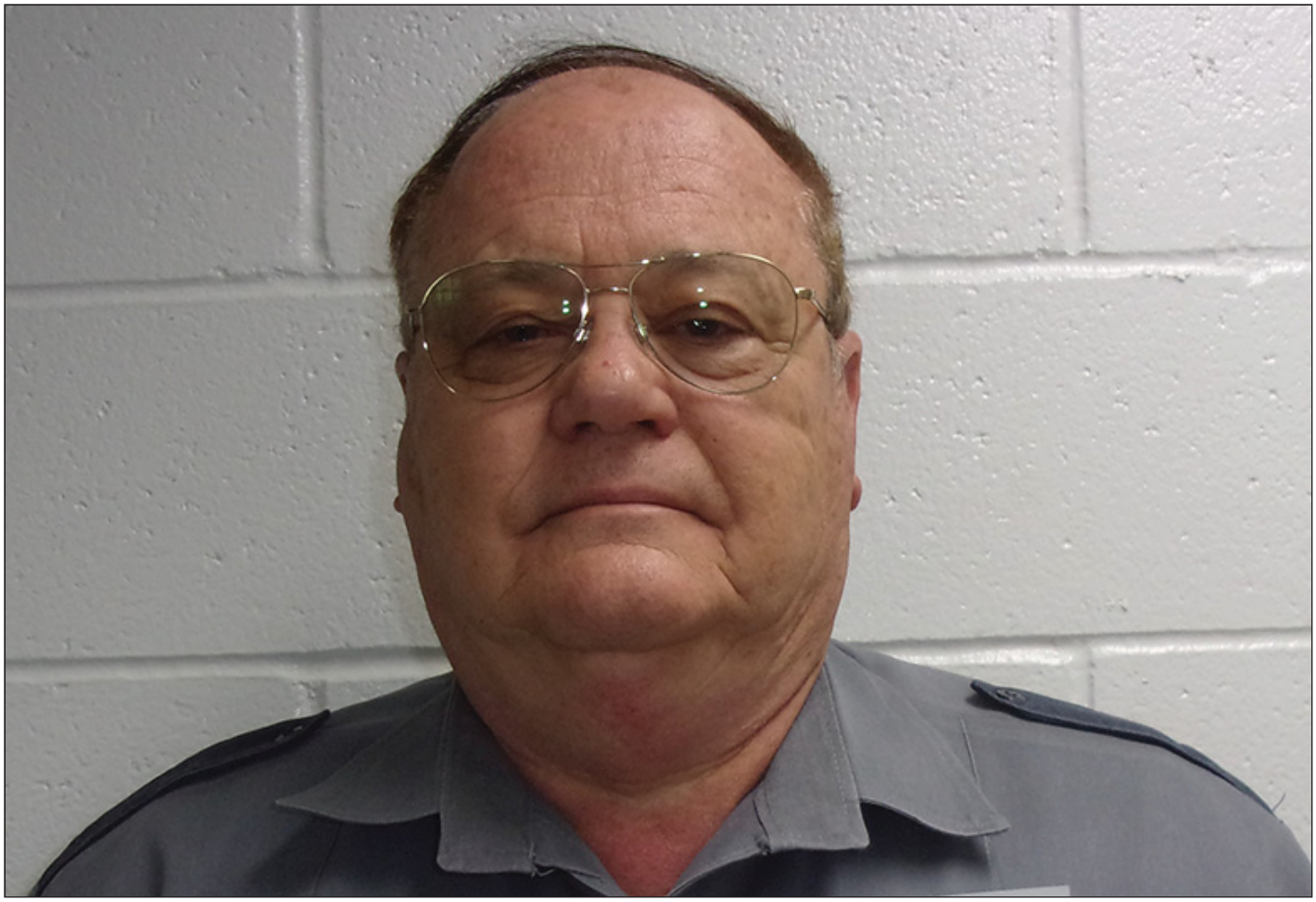
April 27, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to announce the death of an employee that may be connected to the COVID-19 virus.

65-year-old Coy D. Coffman Jr's death is currently under investigation. Coffman was a nine-year veteran Correctional Officer who last worked April 5, 2020 at the Telford Unit in New Boston. On April 14, 2020 he began suffering symptoms consistent with COVID-19 and was tested the next day. On April 17th, he was admitted to a local hospital in Texarkana due to possible complications from COVID-19. Coffman's test returned positive on April 19th. Several days later his condition began deteriorating and sadly Coffman passed away yesterday evening.

"The COVID-19 virus has changed our state and our agency forever, but no one can imagine the impact to the Coffman family who has lost someone so close," said Bryan Collier Executive Director of the Texas Department of Criminal Justice. "The thoughts and prayers of the TDCJ family are with those close to Officer Coffman. He died in the service of all Texans."



April 25, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice regrets to inform you of the deaths of 2 offenders that are likely connected to the coronavirus.

63-year-old Timothy Bazrowx was pronounced dead at Hospital Galveston where he had been being treated for COVID-19. He had been assigned to the Wynne Unit but was taken to Hospital Galveston suffering from shortness of breath on April 17th where he tested positive for COVID-19. He suffered from a number of pre-existing health conditions. Bazrowx was serving a 20 year sentence for Aggravated Sexual Assault out of Ellis County and died on April 23, 2020. His family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death.

Harold Dean Wilson also died at Hospital Galveston on April 23rd, he was 65 years old. Wilson was serving a 20 year sentence for Possession of Child Pornography out of Randall County at the Terrell Unit. He was transferred to Hospital Galveston on April 18th and tested positive for COVID-19 the next day. Wilson's family also declined an autopsy but COVID-19 is believed to contributed to his death.

There are an additional 8 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

In total there are 294 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 806 offenders who have tested positive. There are now 20 employees and 47 offenders who have medically recovered from COVID-19.

18,072 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN 42,675 offenders impacted

April 24, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice regrets to inform you of the death an offender that is likely connected to the coronavirus.

79-year-old Thomas Rodriguez was pronounced dead at Hospital Galveston where he had been being treated for COVID-19. He had been assigned to the Wynne Unit but was taken to Huntsville Memorial Hospital suffering from shortness of breath on April 19th later that day he was transported to Hospital Galveston where he tested positive for COVID-19. He suffered from a number of pre-existing health conditions. Rodriguez was serving a life sentence for aggravated kidnapping out of Harris County and died on April 23, 2020. His family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death.

There are an additional 7 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

In total there are 274 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 752 offenders who have tested positive. There are now 18 employees and 47 offenders who have medically recovered from COVID-19.

17,583 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 43,404 offenders impacted

Baten, Bell, Beto, Byrd, Carole Young, Clemens, Clements, Crain, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Gist, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 1, Jester 3, Jester 4, Jordan, Leblanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

April 23, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice regrets to inform you of the deaths of 2 offenders that are likely connected to the coronavirus.

79-year-old Robert Hohn was pronounced dead at Hospital Galveston where he had been being treated for COVID-19. He had been assigned to the Telford Unit but was transferred to a local hospital on April 14th where he tested positive for COVID-19. He suffered from a number of pre-existing health conditions. Hohn was serving a 50-year sentence for aggravated sexual assault of a child out of Liberty County and died on April 22, 2020. His family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death.

65-year-old James Lorke was taken from the Wynne Unit and life flighted to Hospital Galveston on April 16th suffering from symptoms consistent with COVID-19. Lorke tested positive for COVID-19. Lorke had served 28 years of a 99 year sentence for murder after being convicted in 1990 in Bexar County. He died on April 21th and his family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death.

There are an additional 6 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

In total there are 265 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 693 offenders who have tested positive. There are now 15 employees and 47 offenders who have medically recovered from COVID-19.

17,295 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 45,210 offenders impacted

Baten, Bell, Beto, Byrd, Carole Young, Clements, Crain, Darrington, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Gist, Goree, Gurney, Hodge, Hughes, Hutchins, Jester 1, Jordan, Leblanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

April 23, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice is mourning the loss of a long-time agency leader that may be related to the COVID-19 virus.

Chaplain Akbar Shabazz fell ill on April 3, 2020 with symptoms of COVID-19. After a nearly three weeklong fight, Shabazz passed away early this morning at Methodist Hospital in The Woodlands. He was 70 years old and had tested positive for COVID-19 earlier this month. Mr. Shabazz began his more than 40 years of service as a TDCJ volunteer and joined the agency as an employee in September of 1977. His formal title was Regional Area

Muslim Chaplain in that role, he coordinated Taleem classes, Jum'mah services and led the coordination of yearly Ramadan observances.

“Chaplain Shabazz was a part of the foundation of the Texas Department of Criminal Justice,” said Bryan Collier TDCJ Executive Director. “His dedication to his faith, his family, and this agency will not ever be forgotten. I considered him a personal friend and this loss to all is heavy. We can only hope that the thoughts and prayers of the TDCJ family help to lighten the burden.”

Mr. Shabazz will be deeply missed for his leadership, his knowledge and his endless willingness to help anywhere he was needed.

April 22, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice regrets to inform you of the deaths of 2 offenders that are likely connected to the coronavirus.

68-year-old James Nealy was found unresponsive in his cell at the Wynne Unit on April 15th, 2020. He was transported to a local hospital where he was pronounced deceased. Nealy, who was serving a 99-year sentence for aggravated assault with a deadly weapon out of Bell County, had not shown any symptoms for COVID-19 and had not been tested. As a part of the autopsy for in-custody death investigations, Nealy was tested for COVID-19 and was found to be positive. The preliminary autopsy results suggest the provisional cause of death is COVID-19. Nealy is the fourth offender who has a preliminary cause of death of COVID-19.

84-year-old Willie Eanes was taken from the Telford Unit to UT Tyler Medical Center on April 14th suffering from symptoms consistent with COVID-19. Eanes suffered from a number of pre-existing medical conditions and tested positive for COVID-19 on April 15th. Eanes, who was serving a 45-year sentence for murder out of Tarrant County, died on April 20th and his family declined to have an autopsy performed, however COVID-19 is believed to have contributed to his death..

There are an additional 6 deaths that are under investigation and pending preliminary autopsy results. 2 other deaths that had been under investigation have been determined to be non-COVID-19 related after the return of preliminary autopsy reports.

In total there are 252 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 594 offenders who have tested positive. There are now 12 employees and 47 offenders who have medically recovered from COVID-19.

16,049 offenders are on medical restriction because they may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 45,271 offenders impacted

Baten, Bell, Beto, Byrd, Carole Young, Clements, Crain, Darrington, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Gist, Goree, Gurney, Hughes, Hutchins, Jester 4, Jordan, Leblanc, Lopez, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

April 21, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an employee that may be related to the COVID-19 virus.

52-year-old Jonathon Keith Goodman died this afternoon at Baptist St. Anthony's Hospital in Amarillo after being removed from life support. Goodman was an 11-year veteran Correctional Officer who worked at the Bill Clements Unit in Amarillo. Last Friday, April 17th he was found in his home after suffering from an apparent stroke. He was taken to the hospital in critical condition. Saturday a COVID-19 test returned positive. It is believed the virus contributed to his death.

“All of the thoughts and prayers of the entire Texas Department of Criminal Justice go out to the Goodman family,“ Said TDCJ Executive Director Bryan Collier. “The unexpected loss of one who is loved so deeply is a tragic time and the TDCJ family sends its strength and extends its profound sympathy to the Goodman family to get through this difficult time.”

Goodman was last at work on April 15, 2020. His wife Kimberly Pride-Goodman is also employed by TDCJ. There are eight additional positive employee COVID-19 cases associated with the Clements Unit at this time. There are also 4 offender positive cases.

April 21, 2020

COVID-19 TDCJ Update

Today there are 230 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 557 offenders who have tested positive.

There are an additional 15,032 offenders on medical restriction who may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 44,955 offenders impacted

Baten, Bell, Beto, Boyd, Byrd, Carole Young, Clements, Crain, Darrington, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Gist, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 1, Jester 4, Jordan, Leblanc, Lopez, Michael, Middleton, Murray, Pack, Robertson, Sanchez, Scott, Smith, Stiles, Stringfellow, Ramsey, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

The Texas Department of Criminal Justice (TDCJ) has changed how we are reporting numbers on our website. The numbers reflect the current locations of pending, negative and positive cases among offenders. There are also added categories for recovered offenders, deaths and released.

April 20, 2020

COVID-19 TDCJ Update

Today there are 215 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 468 offenders who have tested positive.

There are an additional 15,218 offenders on medical restriction who may have had contact with either an employee or offender with a positive or pending COVID-19 test.

PRECAUTIONARY LOCKDOWN FACILITIES: 42,551 offenders impacted

Baten, Bell, Beto, Boyd, Byrd, Carole Young, Clements, Crain, Darrington, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Gist, Goree, Gurney, Hughes, Huntsville, Hutchins, Jester 4, Leblanc, Lopez, Middleton, Murray, Pack, Robertson, Sanchez, Scott, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

The Texas Department of Criminal Justice (TDCJ) has changed how we are reporting numbers on our website. The numbers reflect the current locations of pending, negative and positive cases among offenders. There are also added categories for recovered offenders, deaths and released.

April 18, 2020

COVID-19 TDCJ Update

Today 15 offenders in custody of the Texas Department of Criminal Justice have been added to the recovered from COVID-19 category. That is a significant increase putting the total recovered offenders at 18.

There was also noticeable drop in the number of new positive cases in offenders today with 18. There are now a total of 376 offenders who have tested positive for COVID-19. There are also 183 employees who have tested positive.

The Texas Department of Criminal Justice (TDCJ) has changed how we are reporting numbers on our website. The numbers reflect the current locations of pending, negative and positive cases among offenders. We have also added categories for recovered offenders, deaths and released.

April 17, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is changing how we are reporting numbers on our website. As of today, the numbers reflect the current locations of pending, negative and positive cases among offenders. We have also added categories for recovered offenders, deaths and released.

Today there are 175 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 358 offenders who have tested positive.

PRECAUTIONARY LOCKDOWN FACILITIES: 34,994 offenders impacted

Baten, Bell, Beto, Byrd, Carole Young, Clements, Crain, Darrington, ETTF, Estelle, Fort Stockton, Goree, Gurney, Hughes, Hutchins, Jester 4, Leblanc, Lopez, Murray, Pack, Robertson, Sanchez, Scott, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

There are an additional 12,914 offenders on medical restriction who may have had contact with either and employee or offender with a positive or pending COVID-19 test.

Offenders that are under medical restriction are asymptomatic but will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

April 16, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) continues to monitor and take necessary precautions to prevent and mitigate the spread of the coronavirus.

Today there are 158 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 327 Offenders who have tested positive.

PRECAUTIONARY LOCKDOWN FACILITIES: 29,604 offenders impacted

Baten, Bell, Beto, Byrd, Carole Young, Clements, Crain, Darrington, ETTF, Estelle, Fort Stockton, Goree, Hutchins, Leblanc, Lopez, Murray, Pack, Robertson, Sanchez, Scott, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

There are an additional 11,812 offenders on medical restriction who may have had contact with either and employee or offender with a positive or pending COVID-19 test.

Offenders that are under medical restriction are asymptomatic but will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

April 15, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an offender that may be related to the COVID-19 virus.

On April 9, 2020, 60-year-old offender Johnny Davis was transported from the Telford Unit in New Boston to a local hospital for treatment. A test for COVID-19 revealed he was positive for the virus. On April 11th, Davis was transferred from Texarkana to Hospital Galveston. On Tuesday, April 14, 2020, Davis, who had pre-existing medical conditions, was pronounced deceased by hospital staff. Davis' family declined to have an autopsy performed, however COVID-19 is believed to have caused his death. Davis was serving a 10 year sentence for obstruction/retaliation out of Hunt County. He began his sentence in October 2016.

48 offenders and 13 employees at the Telford Unit have tested positive for COVID-19 at this time.

In all there have been 138 TDCJ employees, staff or contractors and 284 offenders in custody who have tested positive for COVID-19.

April 14, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an offender that may be related to the COVID-19 virus.

An offender death from the Pack Unit in Navasota is under investigation to determine if it is connected to COVID-19. Early Saturday morning April 11, 2020, 62-year-old Leonard Clerkly had difficulty breathing and was

transported by EMS to Grimes County Hospital where life saving measures continued. Clerkly was pronounced dead at 5:25 a.m. Preliminary autopsy results suggest a preliminary cause of death of viral pneumonia due to COVID-19 with other contributing factors. Like all in-custody deaths, this death is under investigation, and the cause of death is pending final autopsy results. Clerkly had served 5 years, 7 months and 11 days of a life sentence for Aggravated Sexual Assault of a Child under 14 out of Tarrant County.

No other offenders or staff at the Pack Unit have tested positive for COVID-19 at this time.

In all there have been 97 TDCJ employees, staff or contractors and 236 offenders in custody who have tested positive for COVID-19.

A complete list of data is available at www.tdcj.texas.gov/covid-19/offender_mac.html.

April 13, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) continues to monitor and take necessary precautions to prevent and mitigate the spread of the coronavirus.

Today there are 85 TDCJ employees, staff or contractors who have tested positive for COVID-19 and 193 Offenders who have tested positive.

Two additional facilities were placed on precautionary lockdown today the Lopez and Sanchez Units.

PRECAUTIONARY LOCKDOWN FACILITIES: 26,572 offenders impacted

Bell, Beto, Byrd, Clements, Darrington, ETTF, Estelle, Goree, Hutchins, Jordan, Leblanc, Lopez, Murray, Robertson, Sanchez, Scott, Smith, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

There are an additional 11,283 offenders on medical restriction who may have had contact with either and employee or offender with a positive or pending COVID-19 test.

Offenders that are under medical restriction are asymptomatic but will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

April 11, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) continues to monitor and take necessary precautions to prevent and mitigate the spread of the coronavirus.

There have been 72 TDCJ employees, staff or contractors and 167 offenders in custody who have tested positive for COVID-19.

Two additional facilities were placed on precautionary lockdown today the Scott and Terrell Units. An additional work location employee positive test was added at the Leblanc Unit.

PRECAUTIONARY LOCKDOWN FACILITIES: 26,073 offenders impacted

Bell, Beto, Byrd, Clements, Darrington, ETTF, Estelle, Goree, Hutchins, Jordan, Leblanc, Murray, Robertson, Scott, Smith, Stringfellow, Telford, Terrell, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

There are an additional 10,651 offenders on medical restriction who may have had contact with either and employee or offender with a positive or pending COVID-19 test.

Offenders that are under medical restriction are asymptomatic but will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

April 10, 2020

COVID-19 TDCJ Update

There are 18 facilities on precautionary lockdown due to a positive offender or employee COVID-19 test impacting 20,970 offenders.

FACILITIES: Bell, Beto, Byrd, Clements, Darrington, ETTF, Estelle, Goree, Hutchins, Jordan, Leblanc, Murray, Robertson, Smith, Stringfellow, Telford, Woodman, Wynne

The precautionary lockdowns extend for 14 days from the date of a positive test. Those dates may be extended to the date of the most recent positive test.

There are an additional 8,014 offenders on medical restriction who may have had contact with either and employee or offender with a positive or pending COVID-19 test.

Offenders that are under medical restriction are asymptomatic but will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

There have been 69 TDCJ employees, staff or contractors and 132 offenders in custody who have tested positive for COVID-19.

A complete list of data is available at www.tdcj.texas.gov/covid-19/offender_mac.html.

April 9, 2020

COVID-19 TDCJ Update

Beginning tomorrow TDCJ's Health Services Division's Patient Liaison Program and our Correctional Managed Healthcare partners at the University of Texas Medical Branch and Texas Tech University Health Science Center will be staffing 3 hotlines to address inquiries related to COVID-19.

2 of these numbers are for offender family members only to get clinical updates of offenders under the universities care. Any release of information is contingent on the offender signing a release of information (ROI) for a designated family member. These numbers will operate from 2:00 p.m. to 5:00 p.m. Monday-Friday. That allows nursing staff to have the most updated patient information.

UTMB Hotline: (409) 747-2727
TTUHSC Hotline: (806) 743-3285

The TDCJ Patient Liaison Program will also operate a COVID-19 hotline for third parties such as State leadership offices, advocacy groups, and others including attorneys and government agencies. This line will operate from 8:00 a.m. to 5:00 p.m. Monday-Friday.

TDCJ Patient Liaison Hotline: (936) 437-3534

There are 15 facilities on precautionary lockdown due to a positive offender or employee COVID-19 test.

FACILITIES: Beto, Clements, Darrington, East Texas Treatment Facility, Estelle, Goree, Jordan, Murray, Ramsey, Robertson, Smith, Stringfellow, Telford, Woodman, Wynne.

Only staff that are assigned to those facilities will be allowed on the facilities. The medical lockdowns extend for 14 days from the date of the positive test. Those dates may be extended to the date of the most recent positive test.

Offenders that are under medical restriction will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

Today there have been reported 11 new employee/contractor tests and 23 positive offender tests.

In all there have been 62 TDCJ employees, staff or contractors and 70 offenders in custody who have tested positive for COVID-19.

April 8, 2020

COVID-19 TDCJ Update

Effective immediately any facility that has a positive offender or employee/staff COVID-19 test will be placed on lockdown. That includes 15 facilities today.

Only staff that are assigned to those facilities will be allowed on the facilities. The medical lockdowns extend for 14 days from the date of the positive test. Those dates may be extended to the date of the most recent positive test.

Offenders that are under medical restriction will continue to receive twice daily temperature testing and anyone interacting with those offenders will wear N-95 mask and glove PPE.

All correctional staff at all facilities continue to wear cotton masks at all times and are encouraged to wear those masks when in public off duty.

Facilities: Beto, Clements, Darrington, East Texas Treatment Facility, Ellis, Estelle, Goree, Henley, Holliday, Jordan, Murray, Ramsey, Robertson, Smith, Stringfellow, Telford, Woodman, Wynne

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an offender that may be related to the COVID-19 virus.

An offender death from the Telford Unit in New Boston is under investigation to determine if it is connected to COVID-19. 72-year-old Bartolo Infante was in medical isolation at a community hospital in Texarkana. Infante suffered from a number of pre-existing medical conditions and was hospitalized for viral pneumonia when he tested positive for COVID-19 on April 3rd. He passed away yesterday. Like all in-custody deaths it is being investigated and the formal cause of death is pending an autopsy.

At this time, there are four employees at the Telford Unit who have tested positive and are in self-quarantine, and seven confirmed offender cases who are in medical isolation. The facility has been placed on full medical restriction.

Today there have been reported 15 new employee/contractor tests and 19 positive offender tests.

In all there have been 56 TDCJ employees, staff or contractors and 47 offenders in custody who have tested positive for COVID-19.

April 8, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an offender that may be related to the COVID-19 virus.

An offender death from the Telford Unit in New Boston is under investigation to determine if it is connected to COVID-19. 72-year-old Bartolo Infante was in medical isolation at a community hospital in Texarkana. Infante suffered from a number of pre-existing medical conditions and was hospitalized for viral pneumonia when he tested positive for COVID-19 on April 3rd. He passed away yesterday. Like all in-custody deaths it is being investigated and the formal cause of death is pending an autopsy.

At this time, there are four employees at the Telford Unit who have tested positive and are in self-quarantine, and seven confirmed offender cases who are in medical isolation. The facility has been placed on full medical restriction.

In all there have been 36 TDCJ employees, staff or contractors and 28 offenders in custody who have tested positive for COVID-19.

A complete list of data is available at www.tdcj.texas.gov/covid-19/offender_mac.html.

Offenders in medical restriction are locked down and are being issued cotton masks. TDCJ staff and employees at facilities are provided with and required to wear cotton masks as are parole officers in the field. Where appropriate, staff are issued Personal Protective Equipment (PPE). As TDCJ learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

April 7, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is saddened to learn of the death of an employee that may be related to the COVID-19 virus.

49-year-old Kelvin Wilcher's death is currently under investigation. Wilcher was a Correctional Officer who last worked March 31st at the Estelle Unit in Huntsville. On April 1st he went to a Houston hospital and suffered a cardiac event, later in intensive care he was tested for COVID-19 and on April 4th that test returned positive. Wilcher died April 6, 2020. It is under investigation if the virus contributed to his death.

"The thoughts and prayers of the entire Texas Department of Criminal Justice are with the Wilcher family," Said TDCJ Executive Director Bryan Collier. "To lose a loved one unexpectedly is a tragic experience for anyone and the TDCJ family extends its sympathy and sends strength to get through this difficult time."

There are no other positive cases associated with the Estelle Unit at this time. There are 358 offenders currently on medical restriction at that facility.

April 6, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is constantly receiving updated information regarding testing and results of offenders, agency and contract employees as well as medical partners. Today there have been four new cases confirmed including three employee/contractors and one offender.

In all there have been 28 TDCJ employees, staff or contractors and 19 offenders in custody who have tested positive for COVID-19.

For a complete list of data please visit www.tdcj.texas.gov/covid-19/offender_mac.html.

Offenders in medical restriction and medical isolation are locked down and have been issued cotton masks. TDCJ staff and employees on prison units are all provided with and required to wear cotton masks as are parole officers in the field. As TDCJ learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

The agency is taking appropriate action to mitigate the potential exposure to others including following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities.

April 5, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice continues to analyze the current situation of the COVID-19 pandemic and the guidance provided by health professionals including the Centers for Disease Control (CDC). Starting today, the agency is distributing cotton masks manufactured by TDCJ to all staff. Those masks will be required for all personnel working at prison units and optional for those in administrative settings and parole officers in the field.

According to the CDC and the surgeon general of the US, these masks are not intended to be a replacement for six foot social distancing but a supplement to those guidelines. Cotton masks do not protect the wearer from the virus but they can help stop the spread of the virus by the wearer.

An initial distribution of 50,000 masks that have been produced in TDCJ garment factories are in use now. Ten prison unit factories are working seven days a week now producing up to 20,000 additional masks a day.

The new guidelines will continue for at least the next several weeks or until no longer recommended by health professionals. Temperature screening of all persons entering prison units and many offices will continue with anyone with a fever of 100.4 degrees or higher being sent home to self quarantine.

TDCJ also continues to receive results of COVID-19 testing in employees, contractors and the offender population. The agency is now routing all testing through our Correctional Managed Healthcare Partner, The University of Texas Medical Branch. That is resulting in much faster turn around times of tests as well as a higher degree of accuracy. As of today, there are new positive tests in 14 offenders and 5 staff or employees.

25 total staff/employee/contractor tests.

18 total positive offender tests by unit:

- Beto - 6
- Goree - 2
- Jordan - 1
- Lychner State Jail - 1
- Murray - 4
- Stringfellow - 2
- Woodman State Jail - 2

As a result of these cases and other possible contact investigations, there are approximately 3,700 asymptomatic offenders in medical restriction and 51 offenders in medical isolation with positive or pending COVID-19 tests.

Offenders in medical restriction are also being issued the cotton masks to protect others from possible virus infection. Also as of today medical restriction offenders are fully locked down instead of being restricted to their

housing unit.

For the most current information please visit www.tdcj.texas.gov or our social media channels.

April 4, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice continues to monitor the COVID-19 situation. Testing of both employees and offenders is ongoing.

As of this evening there are now 20 positive cases in TDCJ employees and contractors. There are an additional 6 cases in the offender population and 1 case in a parole client living at a transitional center facility. New cases are as follows:

- A 22 year old Correctional Officer at the Woodman State Jail has tested positive for COVID-19. The officer is now in self-quarantine.
- A Nurse employed by medical partner Texas Tech has tested positive. The 56 year old works at the Smith Unit and is now in self-quarantine.
- A 54 year old offender at the Goree unit has tested positive for COVID-19. The offender had been in medical restriction due to his exposure to a confirmed case.
- An offender at the Lane Murray Unit has tested positive. The 37 year old offender is now in medical isolation.

There are currently 41 offenders in Medical Isolation across the system who have positive or pending tests.

TDCJ continues to remind everyone to follow all guidelines for social distancing and hand hygiene at all times on the job and off.

April 3, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is constantly receiving updated information regarding testing and results of offenders, agency and contract employees as well as medical partners. Today there have been five new cases confirmed four employee/contractors and one offender.

- A Correctional Officer at the Wynne Unit in Huntsville has tested positive for the COVID-19 virus. The 41-year-old worked at the facility on Thursday March 26, 2020. The officer was tested on April 2, 2020 and is at home in good condition in self-quarantine.
- A 51 year old maintenance supervisor working at the Robertson Unit who was tested on March 31, 2020 has now tested positive. The employee was last at work Monday, March 30, 2020, and is recovering in self-quarantine at home.

- A Nurse employed by Texas Tech assigned to the Smith Unit in Lamesa has tested positive for COVID-19. The 56-year-old last worked Sunday, March 29, 2020, was seen by a doctor and tested the same day. The nurse is recovering in self-quarantine at home.

- A Substance Abuse counselor employed by Management and Training Corporation (MTC) working at the Jester Complex in Richmond has tested positive. This is the third positive test in a counselor at Jester. The 61 year old employee was tested by a physician on Monday, March 30, 2020 and remains in self-quarantine.

- An offender at the Woodman State Jail in Gatesville has tested positive for COVID-19. The offender was suffering from shortness of breath yesterday (April 2, 2020) and was taken to an outside hospital. The offender placed in medical isolation and was tested at the hospital. The test returned positive.

In all there have been 18 TDCJ employees, staff or contractors and 4 offenders in custody who have tested positive for COVID-19.

The agency is taking appropriate action to mitigate the potential exposure to others including following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities.

As TDCJ learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

April 2, 2020

COVID-19 TDCJ Update

More than 36,000 Texas Department of Criminal Justice employees, contractors, and staff are still hard at work through this crisis. They embody our mission. Courage, Commitment, Integrity, Perseverance.

The message is simple. Thank you. Today and everyday.

The Texas Department of Criminal Justice (TDCJ) is reminding all our employees, staff, and contractors of the importance of following all recommended social distancing measures especially outside of the workplace. As an essential state function many employees are still reporting to work and are screened before entry. Everyone is urged to continue to maintain strong workplace disinfecting and personal hygiene practices inside the workplace and out.

There are no additional cases to report today. In all there are 13 TDCJ employees, staff or contractors and 3 offenders in custody who have tested positive for COVID-19.

April 1, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is constantly receiving updated information regarding testing and results of offenders, agency and contract employees as well as medical partners. Today there have been four new cases confirmed Three employees and one offender.

- A Correctional Officer at the Jordan Unit in Pampa has tested positive for the COVID-19 virus. The 34-year-old worked at the facility on Friday March 27, 2020 and was sent home after entry screening showed a 101.2 temperature. The officer was seen by a doctor and tested on March 28th. The officer is at home in good condition in self-quarantine.

- A Correctional Officer at the Stringfellow Unit in Rosharon has tested positive for COVID-19. The 52-year-old last worked Thursday March 19, 2020. The officer was admitted to a hospital and tested on March 20, 2020. The officer has been discharged from the hospital and is recovering in self-quarantine at home.

- A Laundry Supervisor at the Murray Unit in Gatesville has tested positive. The employee was tested by a physician on Monday, March 30, 2020 and remains in self-quarantine.

- An offender at the Stringfellow Unit has tested positive for COVID-19. The offender was taken to an outside hospital yesterday suffering from respiratory distress. The offender was tested at the hospital and placed in medical isolation. The test returned positive today and the offender remains hospitalized in good condition.

In all there have been 13 TDCJ employees, staff or contractors and three offenders in custody who have tested positive for COVID-19.

The agency is taking appropriate action to mitigate the potential exposure to others including following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities. As TDCJ learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

March 31, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is constantly receiving updated information regarding testing and results of offenders, agency and contract employees as well as medical partners. The agency is taking appropriate action to mitigate the potential exposure to others. There are no new positive cases and two total in TDCJ offenders.

- A Correctional Officer at the Henley State Jail in Dayton has tested positive for the COVID-19 virus. The 61-year-old worked at the facility on Sunday March 22, 2020. The officer is at home in good condition in self-quarantine.

- A Parole Unit Supervisor working in the Houston Parole Office has tested positive for COVID-19. The 43-year-old Sugarland resident was last in the office on Friday March 20, 2020. The officer is in self-quarantine and is recovering.

- A Physician employed by the University of Texas Medical Branch (UTMB) has tested positive. The doctor was last at work on Monday, March 16, 2020 at the Skyview Unit. This person is not believed to have had any contact which would impact TDCJ.

The agency is following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities. As TDCJ learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

Medical restriction and medical isolation are two ways that TCDJ is managing the potential of COVID-19 in the prison population. Dr. Lannette Linthicum is the Director of the TDCJ Health Services Division. In this Q & A she explains how the protocol which is based on CDC guidelines works.

March 30, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) is constantly receiving updated information regarding testing and results of offenders, agency and contract employees as well as medical partners. The agency is taking appropriate action to mitigate the potential exposure to others.

- An offender at the Goree Unit in Huntsville has tested positive for the COVID-19 virus. The 36-year-old went to Huntsville Memorial Hospital on March 12th for an unrelated ailment and returned to Goree on March 20th. On March 27th the offender started feeling ill with COVID-19 type symptoms and was placed in medical isolation. The test happened Saturday March 28 and came back positive today. The offender remains in medical isolation and is in good condition.

- Two employees of the Texas Board of Pardons and Parole have tested positive for COVID-19. Other employees at the Huntsville Institutional Parole Office of the BPP are in at home self-quarantine. That office is not on a prison unit. In total there are now seven staff/contractors/state employees who are connected to TDCJ that have tested positive.

TDCJ is following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities. As the agency learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

March 28, 2020

COVID-19 TDCJ Update

The Texas Department of Criminal Justice (TDCJ) continues to receive information regarding test results of offenders, agency and contract employees and medical partners. As these results are received and confirmed, the agency is taking appropriate action to mitigate the potential exposure to others.

- A UTMB medical technician who works at Hospital Galveston has tested positive for COVID-19 virus. The individual has not been at work since March 21st.

- A contract employee of Management and Training Corporation (MTC) who works at the Jester 1 Unit in Richmond has tested positive. The individual has not been at work since March 19th.

- A correctional officer who works at the Segovia Unit in Edinburg has presumptively tested positive. The officer has not been at work since March 20th.

TDCJ is following the Centers for Disease Control guidelines for management of COVID-19 in correctional facilities. As the agency learns of new positive tests, contact investigations are being conducted to determine which individuals may have been exposed to the virus.

For the latest updates, follow us on our webpage https://www.tdcj.texas.gov/covid-19/index.html.

March 27, 2020

COVID-19 TDCJ Update

There were no additional cases of COVID-19 reported connected to TDCJ yesterday.

The results of contact investigations into the three TDCJ related positive cases in 1 offender, 1 contractor and one staff member have led to 42 employees in self-isolation at home. There are 29 tests that have been performed on offenders resulting in 1 positive test.

All offenders who have a pending test result or a positive test are in medical isolation. Any medical or correctional staff in extended close contact with those offenders are wearing full Personal Protective Equipment (PPE). Contact investigations are performed on anyone being tested.

As a result of those contact investigations there are offenders who are now in medical restriction. In those cases offender movements are restricted until the 14 day incubation period of the virus is reached. Temperature checks are performed at least twice a day per TDCJ protocol and CDC guidance. Staff in close contact with those offenders are using mask and glove PPE.

March 25, 2020

COVID-19 TDCJ Update

HUNTSVILLE, TX

A Texas Department of Criminal Justice (TDCJ) unit staff member at the Holliday Unit in Huntsville notified the agency today of a positive test for COVID-19.

The 38-year-old is not a correctional officer, but did have possible contact with others. The agency is now conducting a full contact investigation. The employee left work early on March 19th not feeling well, went to a doctor on March 23rd and was subsequently tested. The results came back today. The employee is in self-quarantine and is in good condition.

Any staff who are found to have been in close contact with the employee will be asked to self-quarantine for 14 days. The contact investigation extends to offenders as well. Any offender found to have been in close contact with the staff member will be medically restricted.

A contact investigation is also being conducted after a report of a positive case for an offender at the Dallas County Jail. In that case, a 48-year-old offender who was feeling ill was taken to Parkland Hospital in Dallas, and the positive test returned today. Intake from Dallas County has been temporarily suspended until the investigation can be completed, and more information is available regarding the affected area.

March 24, 2020

TDCJ Offender in Hospital Galveston tests positive for COVID-19

HUNTSVILLE, TX

The Texas Department of Criminal Justice (TDCJ) is treating an offender who has tested positive for the COVID-19 virus. The 37-year-old offender is currently medically isolated and being treated at Hospital Galveston where he has been for 3 days. He came into TDCJ custody on February 27th from Harris County where he had been convicted on two drug possession charges.

In the early morning hours of March 21, 2020, the offender reported he was suffering from shortness of breath and a cough while in custody at the Lychner State Jail. He was immediately evaluated in the medical facility there and transported to Memorial Hermann Hospital in Houston. After evaluation and treatment, the offender was transferred to Hospital Galveston where he was tested for the COVID-19 virus. Due to the nature of his symptoms and a pre-existing respiratory condition, he was treated following the coronavirus disease 2019 infectious disease protocol. TDCJ is also following the Centers for Disease Control guidelines for management of COVID-19 in Correctional facilities.

Under those protocols medical professionals from our partners at UTMB, are taking precautions including the use of personal protective equipment (PPE). The offender is currently in good condition.

Other offenders and staff who may have had contact with the individual who has tested positive are now being medically restricted per disease protocol which includes limiting their movement.

The initial investigation suggests there are no additional symptomatic offenders at the Lychner State Jail. The contact investigation concerning staff is on-going.

“TDCJ is saddened to learn of this positive case in an offender but the agency is well prepared to handle this challenge,” said Bryan Collier TDCJ’s Executive Director. “Our coronavirus protocol was developed exactly for a situation like this. Our prayers are with the offender and his family as he recovers from this illness.”

The mission of TDCJ is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist the victims of crime. We will continue to meet that mission.

March 23, 2020

Contract Employee Tests Positive for COVID-19

The Texas Department of Criminal Justice (TDCJ) has learned of an employee of Management and Training Corporation (MTC) who has tested positive for the COVID-19 virus. The employee is a substance abuse counselor. On March 17, 2020, he passed all unit entry screening and attended a training session with other MTC employees. He also had cell side counseling visits with a limited number of restricted housing offenders at the Jester 1 Unit in Richmond, TX. The employee went home early on the 17th and saw a doctor who issued him a clear to work note.

The employee returned to work on Saturday March 21, 2020, and saw additional offenders in restrictive housing. Offenders were behind a secure door, so there was no physical contact.

The employee did not know he had been tested for COVID-19, but received a call from his doctor Sunday afternoon with results of a positive test and an order to self-quarantine. The TDCJ received the lab results Monday morning.

No one in contact with the counselor are symptomatic at this time. The MTC employees who were in the training session on the 17th are not at work and are in self-quarantine. The offenders who had limited contact with the employee are all restrictive housing offenders who had limited contact through hard cell doors with the counselor.

“TDCJ and our university partners are prepared to treat and manage COVID-19 cases as outlined in the coronavirus disease 2019 infectious disease policy,” said Dr. Lannette Linthicum, TDCJ’s Health Services Director. “Any offenders who had any possible contact with the counselor are being closely monitored by medical staff,” Linthicum continued.

The mission of TDCJ is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist the victims of crime. We will continue to meet that mission.

March 20, 2020

0:00 / 2:46

There are no positive tests for COVID-19 in or connected to any TDCJ facility or individual.

Governor Abbott has approved the temporary suspension of medical co-pay for offenders needing health care services related to COVID-19.

Offender Telephone Services are expanded.

Tornado damage being repaired and power restored.

TDCJ is expanding its testing to continue to keep COVID-19 out of our 104 prison units.

Incoming offenders arriving at our 24 intake facilities are now being screened for fevers. Anyone with a 100.4 temperature or higher will be medically isolated and treated following our contagious disease protocol.

Employees and staff had already been being temperature screened before entry to the units. Anyone with a fever of 100.4 or higher would be denied entrance.

All visitation is still suspended.

The offender family hotline is open from 8:00 a.m. to 10:00 p.m. to assist family and friends who may have questions regarding COVID-19.

1-844-476-1289 (in-state calls only)

1-936-437-4927 (out-of-state calls)

March 17, 2020

0:00 / 2:02

TDCJ is expanding its testing to continue to keep COVID-19 out of our 104 prison units.

Incoming offenders arriving at our 24 intake facilities are now being screened for fevers. Anyone with a 100.4 temperature or higher will be medically isolated and treated following our contagious disease protocol.

Employees and staff had already been being temperature screened before entry to the units. Anyone with a fever of 100.4 or higher would be denied entrance.

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1-844-476-1289 (in-state calls only)

1-936-437-4927 (out-of-state calls)

There are no reported cases or signs of Coronavirus at any TDCJ facilities. TDCJ is actively working to keep COVID-19 out. All visitation has been suspended. We are making changes to employee screenings at prison units starting now.

March 16, 2020

0:00 / 3:38

There are no reported cases or signs of Coronavirus at any TDCJ facilities. TDCJ is actively working to keep COVID-19 out. All visitation has been suspended. We are making changes to employee screenings at prison units starting now.

March 11, 2020: Monitoring and Procedures for COVID-19

0:00 / 2:33

There is no indication of the coronavirus within TDCJ facilities or among its employees.

Procedures Implemented in Response to COVID-19
March 11, 2020

The Texas Department of Criminal Justice (TDCJ) remains in continuous communication with the Center for Disease Control, the Texas Division of Emergency Management, the Texas Department of State Health Services, and its university healthcare providers to monitor developments associated with the spread of COVID-19. To ensure the health and safety of employees and offenders, the agency is implementing the following steps to prevent and mitigate the spread of the virus:

Travel:

- Staff should limit any unnecessary domestic traveling.
- Agency travel should be limited unless it is an absolute necessity.
- Any international travel must be approved by the employee's division director, and if approved, the employee may be required to delay their return to work.

Illnesses:

- If an employee feels ill or is running a fever, they are advised to stay home.
- If an employee begins to feel ill at work, and they are assigned to an area where the Coronavirus has been confirmed, they will be required to complete the TDCJ COVID-19 Screening.
- Based on the completion of the Screening, if an employee appears to be ill, they will be sent home and will be required to submit a physician's note stating the employee is clear of any symptoms of COVID-19 upon returning to work.

Visitation:

March 13, 2020: In accordance with Governor Abbott's declaration, effective today, the TDCJ will be temporarily suspending visitation at all our facilities (statewide) until further notice. While we understand the

value and significance of the visitation process at our facilities, we also understand the importance of providing and maintaining a safe and healthy environment for all involved. For continued updates, please refer to our agency website.

Sanitation:

- ALL staff are reminded to take proper housekeeping/cleaning steps both in their personal office space as well as their total work environments.
- Staff are asked to use good hygiene practices, frequently wash hands thoroughly, and refrain from touching their eyes, nose, and mouth.

The agency will continue monitoring the situation for as long as necessary and will provide additional communication if there are any new developments.

Ongoing Monitoring Initiatives:

In addition to the procedures being implemented above, the agency has a confirmed supply of personal protective equipment, and has made arrangements to receive additional protective equipment as needed.

The TDCJ has policies and protocols in place to prevent the spread of all infectious disease.

https://www.tdcj.texas.gov/divisions/cmhc/infection_control_policy_manual.html

Other protocols, as necessary, will include:

- Temporary suspension of visitation (check the TDCJ webpage prior to visiting)
- Suspending offender movements
- Disinfecting visitation areas
- Regular cleaning of all areas of the unit using a 10% bleach solution

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Helpful Links:

Texas Department of State Health Services (DSHS) - News Updates COVID-19
Texas Department of State Health Services (DSHS) - Texas Case Counts Map

Centers for Disease Control and Prevention (CDC)- Coronavirus (COVID-19)
CDC Coronavirus Disease 2019 (COVID-19) - World Map
Facebook
Instagram
Twitter
YouTube

Texas Department of Criminal Justice | PO Box 99 | Huntsville, Texas 77342-0099 | (936) 295-6371

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, ET AL	*	4:20-CV-1115
	*	Houston, Texas
VS.	*	
	*	1:30 p.m.
BRYAN COLLIER, ET AL	*	April 16, 2020

TELEPHONIC EVIDENTIARY HEARING

BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

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THE COURT: Okay.

MR. KEVILLE: I believe we're ready for the plaintiffs, Your Honor.

THE COURT: Okay. Just for my benefit, I
01:29:32 haven't heard everybody's state their name. Let's start off with appearance of counsel, beginning with plaintiff.

MR. KEVILLE: For the plaintiff, Your Honor, John Keville from Winston and Strawn.

MR. EDWARDS: Jeff Edwards and Mike Singley
01:29:47 from Edwards Law (Simultaneous dialogue.

THE COURT: Sorry. I didn't hear that. We're still taking appearance from plaintiffs' counsel.

MR. DUKE: Yes. Brandon Duke from Winston and Strawn (Simultaneous dialogue).

01:30:05 THE COURT: I heard Mr. Duke. Who else? (Simultaneous dialogue) we're talking over each other. Let's finish with Winston Strawn, and then we'll do Edwards. Who else from Winston Strawn?

MS. SCOFIELD: Your Honor, this is Denise
01:30:22 Scofield.

THE COURT: Thank you (Simultaneous dialogue).

MR. MURPHY: Michael Murphy --

THE COURT: Who? I heard a female voice.

01:30:33 MS. HOCKMAN: Yes, Your Honor. Corinne

Hockman.

THE COURT: Thank you, Ms. Hockman.

MR. MURPHY: And Michael Murphy also from Winston and Strawn.

01:30:41 THE COURT: Okay. From Edwards Law Firm besides (Simultaneous dialogue) --

MR. MEDLOCK: John Medlock from Edwards Law Firm for plaintiffs, Your Honor.

MR. JAMES: David James from Edwards Law for

01:30:57 the plaintiffs.

THE COURT: Okay. Does that take care of plaintiffs, then?

Okay. For defendants?

MS. VASQUEZ: Christin Vasquez and Jeff

01:31:05 Farrell for the defendants, Your Honor.

THE COURT: Thank you. Anybody else on the defense side?

Okay. Thank you.

I first want to say that I'm very

01:31:19 heartened to learn that there's been so much testing done of inmates at the Pack Unit. It's very encouraging.

Can you tell me whether we've started to get results from the 875 or so people who were tested?

MS. VASQUEZ: I don't believe we have any

01:31:35 results, Your Honor, that we're aware (Simultaneous

dialogue) of --

THE COURT: When do you think you'll get those?

MS. VASQUEZ: We do not know. I think they were taken yesterday.

01:31:44

THE COURT: Is anybody else at the unit exhibiting any symptoms?

MS. VASQUEZ: Not to my knowledge.

THE COURT: Okay. I do think -- as I understand it, you've tested those who may have been exposed to the deceased inmate, but there's still a category of inmates you have not tested; is that correct?

01:32:08

MS. VASQUEZ: It's my understanding that the 3 Dorm where the deceased inmate was housed has been tested.

01:32:25

THE COURT: What's the argument against testing all inmates?

MS. VASQUEZ: Well, TDCJ doesn't have control over that. That was a UTMB medical decision.

MR. DUKE: Your Honor, this is Brandon Duke from Winston and Strawn. Sorry to interrupt.

01:32:39

One of our witnesses, I don't know if you're in a position to want to hear our witnesses. Dr. Gathe is going to testify as to testing. And he is, and currently seeing and treating patients and only has a

01:32:50

limited amount of time.

Would it be possible to hear from him now or fairly soon to get his testimony on the record?

THE COURT: Does the defendant have any objection?

MS. VASQUEZ: No.

THE COURT: That's fine. Let's tee him up right now.

MR. DUKE: Okay. Dr. Gathe, are you on the line?

DR. GATHE: Yes, I am on the line.

MR. DUKE: Okay. Without any objection, I'll go ahead and proceed.

THE COURT: Mr. Rivera, could you administer the oath, please?

CASE MANAGER: Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

DR. GATHE: Yes (telephonic static).

THE COURT: Please speak slowly. And you can provide a little bit of the doctor's background, in terms of the education and experience.

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JOSEPH GATHE,

after having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DUKE:

Q. Okay. Great. Dr. Joseph Gathe, that's your name; correct?

A. That's correct.

Q. And you prepared a declaration in this case; is that accurate?

A. That is accurate.

Q. And as far as your background, you're board certified in internal medicine and infectious disease, you've completed your residency in internal medicine, and did a fellowship in infectious disease at Baylor College of Medicine. Is that all correct?

A. That is all correct.

Q. And then just to continue briefly, you're an infectious disease specialist, and you've been practicing private practice in Houston since 1987?

A. That is accurate.

Q. And then you have been affiliated currently with multiple Houston area hospitals, including HCD, Houston Medical Center, Cornerstone Medical Center, and United Memorial Medical Center?

A. That's correct. But it's HCA hospital.

Q. HCA. Sorry. I must have a typo.

And then, lastly, before that, you have previous experience involving infectious disease, specifically including from 1987 to 2017, you were the co-director of the special disease unit at Park Plaza Hospital in Houston; is that correct?

A. That is correct.

Q. And then from 2002 to 2008, you were chief at Park Plaza Hospital?

A. Correct.

Q. And then have you published and presented work in this area?

A. Worked in the area of COVID-19?

Q. Sorry. In infectious disease generally.

A. In general, yes, I have.

Q. And as part of the practice of focusing specifically on COVID-19, are you working with patients that have been to exposed to COVID-19?

A. Yes.

Q. Can you describe that experience for the Court, to the extent that you're able?

A. Experiences, a variety experiences. The first is face-to-face care in the outpatient practice; the second is telemedicine visits to those that have been exposed or

potentially are infected with the virus. And we've also opened a COVID-only dedicated unit at one of the hospitals for 40 beds to begin to care for those that need inpatient care.

01:36:06 I have been part and experienced in all of those aspects of COVID-19 in our community.

Q. So based off of that experience --

MR. DUKE: And then, Judge, I'm proceeding past his expertise, so I proffer him as an expert in

01:36:18 infectious --

THE COURT: Does anybody want to ask questions as to his expertise?

MS. VASQUEZ: No, Your Honor.

THE COURT: The Court will accept him as an

01:36:26 expert in infectious disease.

MR. DUKE: Thank you, Your Honor.

BY MR. DUKE:

Q. So based on that experience with respect to treating patients, and also your knowledge and experience with

01:36:36 infectious disease more generally, how much of a threat is COVID-19?

A. It's extremely -- this is a extreme public health emergency for the United States in general, but for the Houston and Harris County areas in particular.

01:36:48 **Q.** And how quickly can COVID-19 spread among any

population?

A. Very quickly.

Q. And then to the extent that you're able to discuss to within a population, a confined population like the Pack

01:37:07 Unit?

A. I didn't understand the question. Please restate.

Q. Sorry. Just saying how quickly can it spread? Can it spread even more quickly within a confined population like the Pack Unit?

01:37:21 MS. VASQUEZ: Objection to --

THE COURT: Just a second. (Simultaneous dialogue) just a second. Hold on. We have an objection. What's the objection, please?

MS. VASQUEZ: Speculation, Your Honor.

01:37:28 THE COURT: Doctor, have you studied infectious diseases in confined spaces, such as nursing homes or cruise ships or prisons?

DR. GATHE: Yes, I have.

THE COURT: And they are of a different

01:37:40 category of risks. Would you agree?

DR. GATHE: 100 percent, yes.

THE COURT: I'm going to accept him as an expert in this field, and allow the question.

BY MR. DUKE:

01:37:51 **Q.** And just to repeat the question, I was saying with a

confined area like the Pack Unit, can the disease spread even more quickly than in the general population?

A. Yes.

Q. And as the Judge mentioned, is an analogous situation like a nursing home or cruise ship?

A. Yes.

Q. And do you understand that the population of the Pack Unit is comprised largely of what are called at-risk individual?

A. It's my understanding from what I have seen, yes, that is accurate.

Q. And what's your definition of highly at-risk or at-risk individuals with respect to COVID-19?

A. That definitely changed to the point that any at-risk individual for COVID-19 is anyone that has not been successfully socially distanced from people that may have the virus.

So at-risk for infection, it's purely (telephonic static) at-risk for getting ill with the illness with the virus is not a hundred percent clear, but what we're seeing is people over the age of 65 with comorbid conditions are clearly more at risk, but we're seeing in our community that we're having people less than the age of 60 without comorbid conditions also becoming very ill, and even dying from this disease.

So at-risk of spread are those that have not been able to socially distance their way away from people with it and the risk population to getting ill with the virus once obtained, is more widespread than what we first realized.

Q. And then in addition to becoming ill, do any group of individuals face or have a higher risk of increased or more severe consequences once being infected with COVID-19?

MS. VASQUEZ: Objection. Leading.

THE COURT: I'm going to deny the objection -- overrule the objection.

BY MR. DUKE:

A. The risk or why people with comorbid conditions that look like all people types of lung disease, asthma, COPD, heart disease, hypertension, diabetes, and clearly what we're seeing throughout the United States, there is a very much higher risk of communities of color, particularly African-Americans that can get this disease not only more frequently, but die more frequently once they get it.

So that clearly is a newly defined risk population for both infection, becoming ill, and death.

Q. Thank you. And then have you had a chance to review the list of measures that plaintiffs have requested be implemented with respect to the Pack Unit?

A. Yes, I have.

Q. And one of those includes testing, or implementing testing throughout the Pack Unit. Is that your understanding?

01:40:43 **A.** Yes.

Q. And in your expert opinion, why is testing the full unit necessary?

A. Because my understanding of the structure of the Pack Unit is there has been the inability to have appropriate

01:41:00 social distancing, and perhaps the inability to have appropriate ability to sterilize either the location or people that are there; and so, it makes it a two-edge sword for risk.

And so, the reason why you need to test

01:41:21 are several: One, you need to know who is positive so you can make sure those people are isolated away from those people that are negative; two, that those people can be offered medical care. Whether they need treatment or not, depends on where they are with the process.

01:41:36 And, three, very importantly, those that work in the prison are themselves at risk and we need to know therefore whether or not the people that are working there, in all capacities, whether or not they already have it, and if they don't already have it, they probably do

01:41:53 not need to be involved with inmates that are already

positive so you're not bringing this disease back out to the community.

So we need to know who is positive in there, both for treatment concerns, as well as surveillance concerns, to make sure that this disease process doesn't spread any further than where it is now.

Q. And do you understand that at least one inmate has tested positive for the COVID-19 at the Pack Unit?

A. I was informed of that yesterday, yes.

Q. And, in fact, that individual, he passed away, and at least as of now, the preliminary cause of death was stated to be pneumonia due to COVID-19?

A. That's what I have been told, yes.

Q. So based off of that information and what you previously understood, do you believe that other inmates of the Pack Unit have been exposed to COVID-19?

A. I think there is a high likelihood that there have been inmates exposed in the units. The numbers of which who they are will not be known unless each and every inmate, and each and every person interacting with those inmates, are tested in the most expeditious fashion as we can.

Q. And so, I think one objection that has been raised and it was a response to testing the full population, is that it goes beyond the CDC recommendation for testing

just generally.

Why is it, why should things be different within the Pack Unit, or why is it a more unique situation?

01:43:20 **A.** The recommendations to testing anyone that is at high risk of exposure, and my understanding with the structure and where we are with the Pack Unit, is that each and every person at that institution becomes, by definition, a high-risk person.

01:43:36 **Q.** Okay. Just a couple more questions.

What kind of testing would you recommend?

A. The testing I recommend at this time would be the rapid antibody test, because we need to know the results quickly.

01:43:52 Each test that we have at our disposal now all have problems with them. The nasal swabs that we do are very operator-dependent and takes several days to come back and have a 40 percent false-negative rate.

The antibody test benefit is that you can

01:44:10 get an answer within 15 minutes. The downside is it takes a few days to get antibodies.

So where we are with the disease process in our community and how it's spreading, a community like the Pack Unit, or a nursing home or a cruise ship, the

01:44:26 most expeditious way for surveillance is figure out where

you are with people that are already exposed will be to do the rapid antibody test, in my opinion.

Q. Okay. Can a physician's assistant or any other medical professional conduct these tests?

01:44:43 **A.** Yes.

Q. Okay. Do you need any special training beyond what those individuals will have?

A. Not a single drop of blood on a reader and it reads by itself in 15 minutes or less.

01:44:59 **Q.** Okay. And then you mentioned an alternative for realtime testing, which was the nasal swab; is that correct?

A. Yes.

Q. Okay. And with at least doing that testing be

01:45:12 helpful?

A. Well, any testing will be helpful. The question is which testing will be most expeditious where we are now.

The issue with the nasal swab is as follows: One, it is very operator-dependent; number two,

01:45:27 it takes a person with full PPE on to do the test; three, it takes several days for it to come back.

And so, in the absence of doing the antibody test, we need to do some test, and that test will be the next one I would recommend to get an avid downsize

01:45:48 for the reasons that I said, but that test would be better

than doing no test at all again.

Q. Okay. And one last question.

If testing is not implemented, how could that affect the public health of the community in general?

01:46:01 **A.** It would affect the health of every inmate in the facility, but it also affects the public health in the community, because those people going back out into our communities potentially with the virus unknowingly, and we've seen some new information, asymptomatic spread is

01:46:21 happening in our community, often before people even get symptoms.

And so, the patient may be going back to the home setting and bringing the disease back into our communities and increasing the number of people that we're

01:46:33 going to have to unfortunately care for in the next few weeks to month period of time.

MR. DUKE: Okay. And unless there's anything else that, Judge Ellison, that you would like to know, we pass the witness.

01:46:44 THE COURT: Okay. Ms. Vasquez, Mr. Farrell, do you want to ask any questions?

MS. VASQUEZ: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. VASQUEZ:

01:46:51 **Q.** Mr. Gathe, what is your understanding of the Pack

Unit structure based on?

A. Based on the understanding that their shared facilities where social distancing is not possible, and also the ability to sterilize one after being exposed is not readily available, is my general understanding about the unit.

Q. Have you ever been inside the Pack Unit?

A. No.

Q. Have you seen a diagram of the Pack Unit?

THE COURT: I don't think this is helpful. Unless you want to make -- inquire about something unique to the Pack Unit that would take it out of the ordinary, run of the mill prison, I don't think this is helpful. I've been to the Pack Unit. It's pretty much like all the other prisons I've been to.

MS. VASQUEZ: Your Honor, I'm asking because I'm wanting to know what it is that he's reviewed that's allowed him to opine that the Pack Unit is unable to practice social distancing.

THE COURT: Well, I didn't think that was a seriously contested point. I thought we had talked earlier that even the most ably run institutional setting would be -- would find it difficult to have social distancing as people went through the chow line, people went to the pill line, people use the available restrooms.

I didn't think that was a serious point of dispute. And it's not any fault of anybody in the Pack Unit. It's just a feature of general institutionalized confinements.

01:48:27 Is there something about the Pack Unit that takes it out of the ordinary run of prisons?

MS. VASQUEZ: No, Your Honor. My understanding was that he testified that Pack Unit is not ever able to engage in social distancing.

01:48:44 I just want to see what his opinion is based on.

THE COURT: But is there something about the Pack Unit that separates it from other prisons? Social distancing, everybody recognizes is hard or impossibly to

01:48:57 achieve in a prison setting.

Is there something -- I mean, can you make the argument that the residential accommodations are all such that inmates are six feet away from each other, or the chow line has people disbursed in six-foot increments,

01:49:15 or the pill line is only one person that (phone disconnects).

THE REPORTER: Judge, this is Johnny. I'm sorry. I lost connection.

DR. GATHE: Hello. This is Dr. Gathe. I'm

01:50:17 back. Somehow the call dropped.

THE COURT: Okay.

DR. GATHE: I'm back. I'm sorry.

THE COURT: Why don't you restate your question, Ms. Vasquez.

01:50:22 BY MS. VASQUEZ:

Q. Yes. Dr. Gathe what have you reviewed that allows you to opine that the Pack Unit is unable to practice social distancing?

A. My understanding is it's on a daily basis, the 01:50:37 inmates potentially are routinely not six feet apart. And my understanding is no one can be masked in the unit when they're less than six feet apart.

So any one of those, any one of those less than six feet apart interventions without a mask places 01:50:54 the inmate at risk.

Q. Is it your understanding that Pack is never able to engage in social distancing, or just there are times or areas of the Pack Unit where that is not possible?

A. It's not about never. It's about if it happens once.

01:51:15 **Q.** I'm sorry. I don't understand.

A. If you're next to a person that has COVID-19 one time, and one time at all without a mask, you can get (phone interruption). My understanding is, for 24 hours a day, not everyone is less than six feet apart. Not 01:51:34 everyone is less than six feet apart without a mask.

THE COURT: I think you mean not more than six feet apart. Not more than six feet apart.

DR. GATHE: More than six feet apart. I'm sorry. Yes. It just takes one time.

01:51:45 BY MS. VASQUEZ:

Q. Are you aware that there are inmates at the Pack Unit that do have masks?

A. I'm not aware of what the mask situation is. My understanding is it's not routinely done.

01:52:01 **Q.** So you're not aware that they have masks?

A. Am I aware that every inmate in the Pack Unit has a mask? No, I'm not aware that every inmate at the Pack Unit has a mask.

MS. VASQUEZ: Pass the witness.

01:52:19 THE COURT: Any redirect?

MR. DUKE: Yes. I just want to follow up on that.

REDIRECT EXAMINATION

BY MR. DUKE:

01:52:23 **Q.** If masks for all the inmates were just implemented yesterday, would that have been sufficient to prevent the spread of COVID when an individual prior to yesterday already had it in the Pack Unit?

A. Absolutely not. May I suggest they would have no

01:52:38 bearing on the transmission of the disease process over

the past few weeks' or months' period of time.

MR. DUKE: Thank you.

THE COURT: Doctor, thank you very much. You can leave us now. Thank you. I appreciate your time.

01:52:49 DR. GATHE: Thank you for your time. Thank you very much.

THE COURT: Does either side have anymore live witnesses? I don't want to delay that.

MS. VASQUEZ: Not from the defendants, Your

01:53:01 Honor.

THE COURT: Anymore witnesses?

MR. EDWARDS: Your Honor, this is Jeff Edwards.

We do have some live witnesses, but it may

01:53:06 be more beneficial to the Court for you to direct the inquiries back to Ms. Vasquez if any questions you have prior to us. No one else has a time constraint.

THE COURT: Okay. Well, I'm just -- I'm concerned that other seemingly agreed enhancements of

01:53:34 health and safety cannot seem to be provided in the prison setting. I mean, I understand paper towels are somewhat more expensive and perhaps involve a risk of someone wantonly stopping up a toilet with them, but surely the benefits on the other side are greater than those

01:53:59 perceived disadvantages. Same thing with hand sanitizers

that contains alcohol, and same thing with the frequency of cleaning common surfaces and common areas.

I mean, is there a cost benefit analysis being imposed on these precautions?

01:54:25 MS. VASQUEZ: In the security sense, Your Honor, yes.

THE COURT: Have you -- the security and the expense, vis-a-vis, the health of the inmates.

MS. VASQUEZ: Yes, Your Honor. I think is

01:54:43 an operational decision that has been weighed by the executive management of TDCJ, and these are the measures they've determined are appropriate based on the population they have.

THE COURT: Tell me exactly what the

01:55:00 experience has been when sanitizer with alcohol content has been used in the past. It really seems to me unlikely that people will try to drink it or inhale it some other way.

MS. VASQUEZ: I don't have specific

01:55:14 instances, Your Honor. I just know that it can be ingested, it can be used for alcohol abuse and alcohol poisoning, also it's highly flammable, and inmates are known to cause fires on units, which would also pose a very large risk to inmate population.

01:55:35 THE COURT: Because somebody would take a

match to a hand sanitizer?

MS. VASQUEZ: I don't know how they create fires, Your Honor, but they do.

MR. EDWARDS: Your Honor, this is Jeff Edwards.

01:55:47

That's one of the problems. Ms. Vasquez not only doesn't know that they create fires. The fact of the matter is they don't. And if you'd like to hear from Eldon Vail, plaintiff's corrections expert on that topic, he is on the line and can explain to you in no uncertain terms that this is not the issue that it is pretended to be by the -- by counsel.

01:56:00

And there is nothing in the record that would enable counsel for the defense to suggest that fires get started at the Pack Unit. In fact, to the extent you wish to hear from inmates, we also have them on the phone.

01:56:16

The inmates have plenty of flammable materials: Paper, clothing. The TDCJ does not, you know, provide fire-retardant clothing, and if this argument were real, it could eliminate virtually anything.

01:56:40

It's not a real argument. But that's Jeff Edwards advocate talking, Your Honor.

THE COURT: Let's hear from the witness.

MR. EDWARDS: Yes. Scott, would you take that over, please?

01:56:51

MR. MEDLOCK: Yeah, no problem. So let's -- the plaintiff will call Eldon Vail.

THE COURT: Spell the name for the court reporter, if you would.

01:57:01 MR. MEDLOCK: Eldon --

MR. VAIL: E-l-d-o-n.

MR. MEDLOCK: You go. It's your name, sir.

MR. VAIL: We're both talking. First name Eldon, E-l-d-o-n; last name Vail, V-a-i-l.

01:57:16 THE COURT: Thank you. You may inquire.

ELDON VAIL,

after having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEDLOCK:

Q. Mr. Vail, would you please just describe your background for the record briefly.

A. Briefly, I worked as a practitioner for 35 years. Retired in 2011 as the Secretary of the Washington

01:57:39 Department of Corrections.

Prior to that I was Deputy Secretary for seven years. So over a decade in either number one or number two positions in the agency.

Since then, I've been doing correctional

01:57:54 consulting expert witness work.

MR. MEDLOCK: Your Honor, it was pointed out to me by one of our colleagues that we didn't have the oath administered of Mr. Vail.

THE COURT: I'm sorry. Mr. Rivera, if you could do that.

CASE MANAGER: Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

MR. VAIL: I do.

THE COURT: You may proceed.

BY MR. MEDLOCK:

Q. Mr. Secretary, let's just walk through. During your experience with the Washington prison system, did you ever have an occasion where you needed to address the rapidly spreading contagious disease?

A. I did, and it certainly wasn't COVID. But we had a severe flu epidemic at one of our prisons that housed more than 2,000 inmates, nearly 1,000 of the prisoners there -- including the superintendent, actually -- came down with the flu. It was highly unusual in our experience, those kinds of numbers. It was Airway Heights Correction Center near Spokane, Washington.

So without the helpful guidance from folks this time around from the CDC, we were somewhat on our own trying to figure out what to do. So we went to a full

command center operation and help guide the facility through the crisis for several days.

Q. And would you just walk the Court through some of the measures that you took while managing that flu outbreak.

01:59:29 **A.** Well, I think the two that are pertinent is that we at least doubled the number of janitors who were working. And the equipment we had for them was basically haz mat suites. And so, guys were walking around constantly cleaning common surfaces -- door knobs, dayroom tables.

01:59:52 One of the unique challenges with a highly communicable disease -- and this is a facility that not dormitory, they were rooms, or cells, but the toilets in most of the units were outside of the cell. So they were group toilets.

02:00:07 And as we were thinking about the process of how diseases are communicated, we realized that going to the bathroom and having to flush a toilet, or touch a sink faucet to turn it on or off, there was always this moment of vulnerability.

02:00:28 You could wash your hands, but then you have to turn the water off. And if there was the flu on the faucet or on the handles, then you had to -- your hands weren't clean again. You can't wash your hands and leave the water running. It's kind of a unique problem.

02:00:45 So during the waking hours, we basically

staged inmates in the bathroom to do that. And then sleeping hours, these guys got to get up in the middle of the night and use the restroom, we just put bottles of spray disinfectant. So that was one unique challenge that
02:00:59 we came up with a solution for.

The other is that, like most correctional facilities, we did not allow alcohol-based hand sanitizer. We made an exception during this period of time so that prisoners could have access to the hand sanitizer.

02:01:12 There is a moderate risk of having that in the facility. You might have a knucklehead somewhere that decides to drink it, but that pales in comparison to trying to get a handle on this flu epidemic.

So we put the dispensers in common areas,
02:01:28 they were easily supervised by staff that we made the alcohol-based hand sanitizer available.

Those are the two biggest things we did that I think relates to the case here.

THE COURT: Just a second. Mr. Medlock, do
02:01:38 you wish to offer Mr. Vail as an expert?

MR. MEDLOCK: Yes, I do, Your Honor.

THE COURT: Do you want to take him on voir dire, Ms. Vasquez?

MS. VASQUEZ: No, Your Honor.

02:01:46 THE COURT: Okay. I'll accept him as an

expert.
BY MR. MEDLOCK:
Q. A couple followup questions, Mr. Secretary.
Now, when you were, you said doubled the
02:01:58 number of janitors. Just to clarify, those were additional inmates who were kind of assigned janitorial duties; is that right?
A. Yeah. I mean, the facility was basically on restricted movement, so we had lots of available workers.
02:02:12 **Q.** Okay. And when the hand sanitizer experience, did you actually have any problems with it being abused while you were using it to push down the flu epidemic?
A. None not that I can recollect. The prisoners were pretty serious about trying to help us get through this.
02:02:35 They didn't want to get sick either.
Q. You don't recall there being any fires being set or people going to the hospital with alcohol poisoning?
A. No.
Q. Now, have you actually been inside the Pack Unit?
02:02:54 **A.** I have.
Q. Are you familiar with how the Pack Unit is laid out and where you might be able to place hand sanitizer where you were able to supervise?
A. Yes.
02:03:07 **Q.** Do you think that would be possible at the Pack Unit

to place it in locations where an officer could supervise it?

A. I think for the most part -- I mean, I wouldn't expect an officer to be standing at each hand sanitizer container, but if it's something that is typically available for review, I would feel safe putting the dispensers there.

Q. What are some places where you think that it might be a good idea to place to put dispensers?

A. Well, to the degree that there is movement -- and I understand that there's a lockdown now -- but at pill lines, chow hall, at the front of each dormitory. At least in the main building, you can -- the officers generally supervise looking through those windows. Places like that.

Q. Do you see any reason why it would not be feasible to place hand sanitizers in locations like that at the Pack Unit?

A. No. I think it would be wise for them to do so.

Q. Based on your -- since the pandemic began, have you been doing any consulting, other than in this case, regarding COVID-19?

A. I'll give you a few examples. I spoke with attorneys in the State of Illinois who are pursuing a similar case at the Stateville Prison where there has been a large

outbreak of the COVID virus. I wasn't retained. It's just folks I worked with before who wanted to bounce some ideas off me.

Last Friday, I was invited into the COVID
02:04:44 command center here in the State of Washington Department of Corrections by the current secretary, Steve Sinclair. He's the person that worked for me for several years. We maintained contact since he's been promoted to secretary. And he just wanted a outside look at what was going on to
02:05:03 see if there are any suggestions that I might make for them to improve their response to the COVID virus epidemic.

And then actually yesterday, I was retained by some folks who were suing the Los Angeles
02:05:18 County Jail. These are attorneys I've worked with before, and they reached out and sent me some documents which are sitting in a folder now until this task is completed.

Q. Now, based on your experience in corrections and your experience visiting the Pack Unit, do you believe that the
02:05:40 COVID-19 situation poses a significant problem for the Pack Unit?

A. I think it poses a problem for all prisons based on the nature of the their design, but I think it's particularly risky at the Pack Unit, given the highly
02:05:58 vulnerable population that are at that location.

Q. Do you think there's anything about the design of the prison that would increase the risk?

A. Well, yeah. I mean, dorms are worse than being able to put a couple of people in a cell. I mean, if you have one person in a cell, that would be ideal. If you have two people in a cell, then that means exposure is limited to your cell partner.

But in dorms, you're exposed to several individuals that are close to a lot of the time, and you're sharing a bathroom.

There's no ability for a private toilet or sink.

Q. Now, if TDCJ is still transporting new inmates into the Pack Unit, do you have an opinion about that decision?

A. Yeah. Again, given the overall vulnerability of that population, it would be wise to stop intake into the facility.

Q. And would that -- it's my understanding that based on the representations that were made yesterday, that the Pack Unit has currently stopped taking inmates in while they're on this precautionary lockdown.

Even after the precautionary lockdown has ended, do you think the Pack Unit should be taking in new prisoners?

A. The risks for this population is extreme. I would

put that off as long as I possibly could, depending upon other strains and stresses of the prison.

THE COURT: I'm sorry? The what? What as long as possible?

02:07:38 MR. VAIL: I'd put off receiving new inmates as long as I possibly --

THE COURT: I misunderstood. Okay. Thank you.

BY MR. MEDLOCK:

02:07:48 **Q.** And if TDCJ were to bring in new inmates into the Pack Unit, what recommendations would you have?

A. Set up a separate housing unit where they could be quarantined for 14 days before they could they're allowed to enter the general population.

02:08:05 **Q.** And why would you make that recommendation?

A. Well, from what we know about the virus, I mean, that's pretty standard. If you think someone might have it, you quarantine them for 14 days. Bringing people in from other facilities you don't know.

02:08:22 And, again, back to the extremely vulnerable population at Pack, you don't want to introduce anymore of that virus into that facility.

So 14 days would give you a reasonable assurance that at least the inmates who are coming in

02:08:38 aren't bringing the virus with them.

Q. Now, it's been represented that there are some posters and flyers that have been put up in the Pack Unit in the last, like, week to ten days.

Do you have an opinion about whether that is sufficient educational material about COVID-19 for the inmates?

A. In the pictures that were attached to the defendants' work, it was hard for me to read the words on those posters. But having said that, and assuming that there has been written information on them, I think the posters are a good first step, but I also think that there needs to be some verbal training and communication with the prisoner population.

In my experience, you've got folks inside prisons who are sometimes illiterate, sometimes don't speak English. And just to make sure, some training, even a video that is shown in each of the dorms would be an additional preventive factor in providing information to prisoners so that they understand what they need to do to help keep themselves safe.

Q. And why is that so important?

A. You know, I was at Pack previously because of the concerns about risk of heat. And in those circumstances, I saw those posters, but I also was made aware that they did verbal presentations to the population.

It's just simply a more effective training technique than posting only the signs. It gives methods to the prisoners that this is serious stuff, to the degree they don't already know that.

02:10:28 **Q.** Now, do you believe that TDCJ could be providing facial tissue or additional toilet paper to use as facial tissue during the pandemic?

A. My understanding is that, today, they get one roll of toilet paper a week.

02:10:52 In my experience, that's a challenge in a normal prison environment, and lots of folks that I've spoken to have indicated that's really -- it's difficult to get through a week sometimes, depending upon who you are.

02:11:04 So, yes, I mean, additional roll of toilet paper would be very helpful to help individuals keep themselves clean and not infect others.

Q. Now, you talked a little about the measures that you took at Airway Heights with regard to cleaning.

02:11:26 Do you have any recommendations for what the Pack Unit should be making sure are clean?

A. Well, speaking personally, trying to go through this shelter-in-place and got to go to the grocery store every once in awhile, there are all kinds of ways where you

02:11:47 inadvertently violate the guidelines to keep yourself

safe, even if you've got a mask on, even if you've got gloves on.

I'm sorry. I lost track of your question a little bit. Can you ask me again?

02:12:01 **Q.** Is there anything in particular you'd want to make sure gets cleaned?

A. Oh. Yeah. You have to really examine where there are common touches. Door knobs are obvious. But when you get hyperaware of your movement in this kind of

02:12:19 environment, you begin to discover other places that are commonly touched.

And so, you need to be cleaning that stuff constantly, and to the degree that you can, between each person who touches it.

02:12:34 Remember that at Airway Heights, if someone came in the unit, there was a prisoner standing at the front door who would clean the door knob after the other person opened the door.

So you have to be really vigilant to try

02:12:48 to figure out where this virus might work, and have enough people assigned to make sure that surfaces stay clean.

Q. Now, you mentioned that you, at Airway Heights, when you assigned additional janitors, you actually had them wearing haz mat suites.

02:13:09 What kind of equipment would you want to

make sure that the inmates who are doing the cleaning have?

A. I would want them to have a mask, I would want them to have disposable gloves. I think that would be sufficient.

I would also like them to have access to hand sanitizer, at least when they take those gloves off, to make sure that nothing got on their hands during that glove-removal process.

02:13:33 **Q.** What about the cleaning supplies that the inmates should be given. What do you think, what supplies do you think they need?

A. Well, it needs to comply with CDC guidelines. Diluted bleach, and there other disinfectants that are

02:13:51 commonly used that reportedly help clean the virus off.

Q. At the prisons you've worked at, how often would you, like, refill a bucket of diluted bleach for inmates who were cleaning?

A. Whenever you needed to. I mean, this is an

02:14:13 extraordinary circumstance. Those supplies could be readily available to let those workers to continue to keep moving and cleaning whatever it is they need to clean.

Q. And would you create any sort of documentation regarding what had been cleaned and when and how?

02:14:30 **A.** It's typical, and we did it during the circumstance

at Airway Heights to have written job descriptions for the prisoners.

So you would make sure that the prisoner understood what their tasks were, and then, like, doing a
02:14:46 security check in the unit, which are typically done once an hour. Whoever is supervising them, would log that: Inmate John Doe is working this assignment, and appears to be following his job description.

Something simple like that. I wouldn't
02:15:02 expect people to -- I wouldn't expect staff to be documenting every time a doorknob is cleaned. But that's a general area that this person is assigned is indeed being tended to.

Q. And then how often would you have inmates cleaning an
02:15:19 area generally?

A. Constantly. I mean, you can downsize your janitor crew in the middle of the night, but you need something to help keep those toilets clean that are shared by folks, because they're going to get up in the middle of the night
02:15:33 and use the toilet and the sink. But this is like 24/7 cleaning efforts needs to be.

Q. Let's talk a little bit about the chow hall.

If TDCJ were to return to using the chow hall to feed the inmates, do you have an opinion on that
02:15:53 decision?

A. Well, my understanding prior to the lockdown, they were putting two people at a table, which is not sufficient social distancing.

It's also my understanding that now they are basically serving folks in the unit. I would want to explore all the options to see if it's possible to get just one person at a table in that chow hall.

I know that there's a concern, a legitimate concern about how long it takes to feed people, but putting myself in the position of maybe running that facility, which is what I try to do in these cases, it appears to have the capacity to serve some meals in the dorm.

So what would happen, for example, if one out of those three meals was served in the dorm, would that give them sufficient time to further separate everyone in the chow hall?

Q. And if the -- if it takes -- there were representations made yesterday that it might take up to 15 hours to feed three meals to everybody.

Do you have an opinion about whether that's something that TDCJ should be doing under these extraordinary times?

A. The key to your question is extraordinary times. I think if it takes 15 hours, it does. What I was

suggesting is that if one of those meals could be served in the dorm, maybe that would cut that time down a little bit.

Q. Let's shift to the showers.

02:17:17 Is there a way that TDCJ could be providing more social distancing during showers?

A. Well, if folks are lined up for a shower, they should be six feet apart. And you can accomplish that just like we see in our grocery stores with Xs on the ground. And

02:17:36 then those showers should be disinfected between use.

Q. And if the showers themselves are not six feet apart, what would you do with regard to that?

A. I would alternate which showers are being used so that people can stay six feet part as much as possible. I

02:18:01 quite honestly don't have in my mind what the showers at the Pack Unit look like.

MR. MEDLOCK: And, Your Honor, we can offer some testimony from the inmates about that.

THE COURT: Okay. Let me ask this. Maybe I

02:18:13 missed it in your earlier testimony.

In terms of paper towels, have you been at a prison where those were made available to inmates?

MR. VAIL: Yeah. Some facilities do; some don't -- (Simultaneous dialogue).

02:18:32 THE COURT: Just a second.

In your experience, has that led to a lot of mischief, were the hand towels are misused in any way?

MR. VAIL: No. It's no different than notebook paper. Prisoners have access to that, newspaper, all kinds of paper.

02:18:46

THE COURT: So is it an expense issue, is that why some of them don't do it?

MR. VAIL: Probably, yeah, that would be my guess. I don't have any information on that, though.

02:18:57

THE COURT: Okay. Thank you.

BY MR. MEDLOCK:

Q. Few more topics, Mr. Secretary.

Are you familiar with the copay that inmates have to pay to get healthcare in the TDCJ system?

02:19:13

A. I am.

Q. Now, I understand that that has been suspended. Were you aware of that?

A. Yeah. There was a little bit of confusion, but it's my understanding at this point that it's been suspended for all medical encounters.

02:19:29

Q. What do you believe TDCJ needs to be doing to communicate that important fact to the inmates?

A. Well, it goes back to the need to have some kind of verbal training for the prisoner population. If you don't understand English, or if you're illiterate and you don't

02:19:48

know that the copay has been waived, you might be reluctant to go to medical and incur a charge.

It would just make sense to make it very clear that right now, to the population at Pack, there is no copay for any reason if you need to go to medical.

Q. In your experience, do inmates' copays sometimes deter inmates from seeking healthcare?

A. Yes.

Q. And would you explain to the Court why that is?

A. Well, it's a debt. And, you know, it depends on the jurisdiction. My understanding is that Texas doesn't pay prisoners for any kind of work. We offer a minimum amount of pay here. And, you know, there's a lot of demands from an individual prisoner on how they might want to spend whatever money they got.

And like rest of us who try to manage a budget, if you -- you may make the decision not to incur another debt if you're running the show slower -- I sorry -- if you're running low on cash in your personal account.

Q. Now, are there -- from your visit to the Pack Unit, are there locations, other than the housing areas, where you think inmates could temporarily be housed to provide a little more social distance?

A. Yeah. I mean, I think the guideline that

correctional folks need to be following is that even though social distancing might not always be possible, what can you do to get as close to that as you can. So that speaks to people sleeping six feet or more apart.
02:21:39 That's not the current situation at the Pack Unit.

I would want to look at some alternative locations to expand maybe where people sleep. There are some classrooms, the visit room comes to mind.

When I was in the command post in the
02:21:56 State of Washington last Friday, they've done precisely that in order to further spread out population.

Q. If there were testimony from inmates in a minute that there's a half of a dormitory that's actually empty right now, how would you be using an empty dormitory?

02:22:22 **A.** If there's an empty dormitory right now, I would want to open that dormitory up and spread people out as far as I can, starting with those who medical staff tell me are at greatest risk should they contract the virus.

Q. And if half the dormitory is occupied and half of it
02:22:43 isn't, what would -- then what would you be doing?

A. I'd spread them out. I mean, I'd start using that vacant dormitory, get people as far apart as possible.

Q. Now, from your experience visiting the Pack Unit, if a substantial number of inmates individuals there were to
02:23:05 become sick with COVID-19, could they all be treated at

the prison?
A. No. I don't believe they could, and that's been the experience in other jurisdictions where in some locations they have overwhelmed small local hospitals. I hate to
02:23:22 see that happen in any jurisdiction.
Q. Other than what we've talked about, is there anything else that you think the Pack Unit should be doing to keep inmates safe from COVID-19?
A. I would just underscore the need for the
02:23:46 alcohol-based hand sanitizer. One of the things I learned in being in the Washington command center is that those -- janitors that they've put on for their response to COVID do have access to hand sanitizers, they have a plan to allow all prisoners to have access to hand sanitizers, but
02:24:04 supply has been a problem. So they now have their correctional industry working with the correct facilities to figure out how to make it so that it will meet standards for alcohol-based hand sanitizer.

Once that's done, more than just the
02:24:26 janitors, the other prisoners in Washington will also have access to the hand sanitizer.
Q. Are you aware of any other jurisdictions where inmates are actually producing hand sanitizer now?
A. I am not.
02:24:37 **Q.** Now, unfortunately, obviously Mr. Clerkly died over

the weekend of COVID-19.

What does that fact tell you about how the Pack Unit is addressing the epidemic?

A. Well, it's unfortunate in that that person lost their life.

The virus has been in the prison. Obviously, I'm not a medical person, but everything we've been learning about the virus, we've got really unlikely that that's the only isolated case that's probably there with other prisoners.

There is risk at that facility, and like everybody else across the country, prison officials need to do all they can to try to keep the population safe. I, you know, it would be great if one is done and there's no more, but I think that's pretty unlikely.

THE COURT: I want to ask. From your experience, have you heard of any prisons where, in the face of an epidemic like this one, found authority to release inmates who were, for instance, within one year of their termination date, or had achieved 90 percent of their sentence, or anything like that where an all purpose health crisis served to give, say, authorities extraordinary power to help downsize the population of a prison?

MR. VAIL: Yes. Jails have been most

aggressive on that, as opposed to prison. But in the State of Illinois, there is about 3500 people living in the State of New York. There is about 1100 people released -- and I'm talking about prison systems, not
02:26:28 jails.

In the State of Washington, there is a plan in place to release up to a thousand. I think the last number I saw was 950.

There's a variety of alternates available
02:26:42 to the department to let folks out, but they're in the process of doing that. They found 11 positive cases in the one prison so far out here.

THE COURT: Thank you. Anything further, or cross?

02:27:02 MR. MEDLOCK: I believe we're ready for cross, Your Honor. We'll pass.

THE COURT: Ms. Vasquez?

MS. VASQUEZ: Thank you, Your Honor.

CROSS-EXAMINATION

02:27:05 BY MS. VASQUEZ:

Q. Good afternoon, Mr. Vail.

A. Good afternoon.

Q. How many facilities are in the Washington State?

A. Twelve prisons. There used to be 15 (simultaneous
02:27:20 dialogue).

Q. I'm sorry?

A. Used to be 15, I closed three of them. To date, that's 12.

Q. Okay. And how many inmates are incarcerated within those facilities?

02:27:35

A. Between 17- and 18,000.

Q. And this flu outbreak that you were talking about was at Airway Heights?

A. Correct.

02:27:50

Q. And that flu outbreak was limited to one facility?

A. Yes.

Q. Okay. It was not --

A. It was limited to the degree where we were really concerned where we had almost half the population impacted. The flu went around that year, but it really took off at that one location.

02:28:03

Q. Right. And it was limited to that one facility. It was not all over the state; correct?

A. That level of crisis, correct.

Q. How long did that crisis last at Airway Heights?

02:28:14

A. I think it lasted a couple of weeks. I believe we were in command post mode only three or four days.

Q. And explain what command post mode is.

A. Well, it's an incident command system that you would use, for example, if there was a riot at a facility, where

02:28:36

the local folks do the same thing. They've got a command center, headquarters has a command center, and you communicate.

It's largely to, in our case, help with
02:28:49 resources. For example, we wound up sending medical staff from one facility to Airway to help them out, we made the policy decision to allow alcohol-based hand sanitizer.

It's just a constant communication to make sure that the facility has everything they need to do
02:29:07 everything that they can to deal with the crisis in front of the them.

Q. So the flu crisis lasted a couple of weeks at Airway Heights?

A. Yes. That's my memory.

02:29:22 **Q.** And are you aware that the Washington Department of Corrections does not allow alcohol-based hand sanitizer in their facilities currently?

A. We don't typically, but if you read -- I mean, they have -- there's a lawsuit there, too. And if you read
02:29:38 their most recent document, they are allowing it for those folks who are janitors, and they're seeking it for the rest of the population. That was in a document that was released on Monday.

Q. Okay. I'm correct, though, in that the Washington
02:29:54 Department of Corrections does not currently alcohol-based

hand sanitizers for the prison population?
A. Prior to this epidemic, correct, they did not allow alcohol-based hand sanitizer. But as of the document they filed on Monday, they have reversed that decision for the
02:30:12 short-term.
Q. Okay. And do you know the reason why Washington doesn't allow hand-based -- alcohol-based hand sanitizer normally?
A. Because sometimes guys will abuse it. Guys will try
02:30:29 to drink it. That's the biggest risk, in my opinion.
Q. Is there anything else they do with it to abuse it?
A. That's all I've heard about. I mean, I suppose it's flammable; it could start a fire.
Q. Okay. What's the risk if offenders drink it?
02:30:50 **A.** Everything from just simple intoxication to some kind of alcohol poisoning.
Q. Have you heard of that happening?
A. I have not.
Q. Because it's not usually allowed in Washington
02:31:05 corrections; right?
A. Correct.
Q. Okay. And you said earlier that the CDC guidance is helpful; right?
A. I did.
02:31:14 **Q.** You're aware that the CDC guidance does not

affirmatively recommend alcohol-based hand sanitizer to offenders; correct?

A. I believe they can consider. Soft language.

Q. Again, security restrictions; right?

02:31:34 **A.** Yeah. I'm not looking at it, but I assume that that's pretty close.

Q. Provide alcohol-based hand sanitizer with at least 60 percent alcohol where permissible based on security restrictions.

02:32:01 Does that sound about right? That's in the CDC correctional guidance document at Page 10.

A. That sounds exactly right.

Q. Okay. You would agree with me that hand sanitizer is considered contraband in states other than Texas; right?

02:32:26 **A.** Typically, yes.

Q. Okay. What about currently?

A. I've not done a, you know, massive survey to see who is allowing it. I'm not aware of other jurisdictions, other than the state here.

02:32:39 **Q.** I'm sorry. You're not aware that other jurisdictions are what?

A. Allowing the hand sanitizer other than my home state.

Q. Okay. So you're not aware of any other jurisdictions, other than Washington, that is allowing

02:32:54 offenders to carry alcohol-based hand sanitizer; is that

correct?

A. I would respond to your question a little bit. I don't know if the janitors are carrying the hand sanitizer in Washington. I know they have access to it.

02:33:10 **Q.** Okay.

A. But my short answer is: No, I don't know of another jurisdiction that is even allowing that much.

Q. Earlier, you were asked about verbal training to offenders regarding COVID-19.

02:33:32 Do you recall that line of questioning?

A. I do.

Q. Would it be sufficient, in your opinion, if medical staff were available to answer questions about COVID-19?

A. Yes. I mean, if they make themselves available to

02:33:51 everybody there so that they make sure everybody gets a chance to ask those questions, yes.

Q. And you would agree if, you know, medical staff was there, certainly they don't have the duty to go to each individual offender and ask if he has any questions. It

02:34:08 would kind of be on the offender to ask the questions if he had them; correct?

A. Well, what I think would be best is to have a group presentation of some sort. You know, the staff is standing at the front of the door and prepare a

02:34:24 introduction to this is what you need to do, and then

provide the opportunity for folks in that dorm to ask questions.

Q. Is that what the CDC recommends?

A. They don't go that specific, I don't believe. No.

02:34:37 They do talk about training for the prison population so they understand.

Q. Right. So my hypothetical earlier would suffice to the CDC recommendations; correct?

A. I'm not sure I understand the question. Could you

02:34:53 say it a different way?

What I think needs to happen is that the staff needs to go to the dorm and say, "Here's what you need to keep yourself safe. Anybody got any questions?"

Q. Are you aware of the authority under which state

02:36:05 prisons have released inmates prior to the completion of their sentence?

A. One more time, please. You broke up there a little bit.

Q. Are you aware of the authority under which state

02:36:19 prisons have released inmates prior to the completion of their sentences?

A. Not in the State of Texas, no. Every state has different laws in regard to the authority of either the department or the governors who make those kinds of

02:36:38 decisions. I'm aware of them here in my home state.

There are several.

Q. I'm going to go back and try to answer, or ask this question again. Maybe I asked it, but kind of confusing.

If there were medical staff going to the dormitories where the offenders are housed and available to answer questions, does that comply with the CDC guidelines?

A. I don't know that the guidelines are that specific on how the information is to be shared. So my answer is I don't know.

MS. VASQUEZ: I'll pass the witness.

THE COURT: Any redirect?

MR. MEDLOCK: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MEDLOCK:

Q. Mr. Secretary, is the -- it's my understanding that the CDC guidelines state the guidance may need to be adapted based on individual facility's physical space, staffing, population, operation, and other resources and conditions.

Are you familiar with that part of the CDC guidelines?

A. I've read them. I can tell you that much. I don't recall that specifically, but I would take your word for that's the language.

Q. Okay. Would you, for a population like at the Pack Unit, do you believe it would be important to take sort of an upward departure from the CDC guidelines to do more than just, like, considering providing hand sanitizers?

02:38:41 **A.** As I said I think repeatedly today, the level of risks and based on the vulnerability of that population at Pack is very hot, and I would hope that folks would be doing everything they can to protect that group of prisoners.

02:39:00 **Q.** And, likewise, if the medical staff is allegedly coming into the dorm is just there to distribute pills, is that sufficient an opportunity for inmates to learning from the medical staff about COVID-19?

A. No. What I'm recommending is that the synthesized 02:39:27 guidance from TDCJ that prisoners need to be aware of should be presented in each dorm, followed by the opportunity to ask questions.

That establishes a relationship between that medical staff and the folks in that unit. And then 02:39:39 the next day when they come back and they're not doing their presentation, I think it would be more likely if somebody had another question to feel free to ask them.

MR. MEDLOCK: Thank you, sir. Your Honor, I'll pass the witness.

02:39:53 THE COURT: Okay. Thank you, Mr. Secretary.

I think we're finished with you. Thank you very much for your availability.

MR. VAIL: Thank you.

THE COURT: One question that was raised by the final little bit of testimony, what kind of medical personnel are available during the day to the plaintiff prisoners at Pack Unit, somebody like a nurse or nurse practitioner might understand whether symptoms are or are not consistent with COVID-19 and might then make a judgment about whether testing should be done?

MS. VASQUEZ: Are you asking me, Your Honor?

THE COURT: Yes, I am.

MS. VASQUEZ: They pass pills daily to every dorm. Medical staff does. Obviously, if an offender has symptoms or medical concerns, he can submit a sick call request to be seen. But the medical staff is available on the dorms while they're passing pills.

THE COURT: And those are nurses?

MR. EDWARDS: Your Honor, this is --

THE COURT: Those are nurses who are available?

MS. VASQUEZ: I'm not sure the level of medical staff.

THE COURT: Mr. Edwards?

MR. EDWARDS: Your Honor, this is Jeff

Edwards.

I can't say with any certainty, but based on prior litigation, more likely than not, the people that are going passing out pills are licensed vocational nurses without any medical discretion at all.

Even if there are registered nurses, they're people that would be working according to standing delegated orders, not people with any sort of discretion.

There may be a physician's assistant at the Pack Unit because it is a 24-hour facility, but there is limited care beyond that. And this is more than at most facilities, but I don't want the Court to have the misimpression that there are, you know, qualified nurses, you know, like you'd see in a hospital walking around here.

This is a, you know, industrial-based, get-this-done. And, you know, in terms of the pills being passed out in the dorms, you know, my understanding that would be only be because of the lockdown and the precautionary lockdown, not because of any other reason. And I don't want it to be confused with training.

It's nothing like that, you know, absent direct evidence from someone who actually knows that quite to the contrary.

Thank you.

MS. VASQUEZ: Your Honor, if I may briefly respond to that?

THE COURT: Sure.

MS. VASQUEZ: Thank you.

02:42:51 The plaintiffs, Mr. Edwards just alluded to the fact that if they are LVNs that pass pills, they don't have any medical discretion. That has not even been pled or asked for by the plaintiff. They actually have asked for anybody, but I think even specifically most

02:43:09 recently they said they wanted TDCJ staff to provide this service for the offenders to answer questions.

So the fact that they are only LVNs should not be insufficient.

THE COURT: Okay. Thank you.

02:43:26 MR. EDWARDS: May I respond, Your Honor, very briefly?

THE COURT: Yes, sir.

MR. EDWARDS: I want it to be clear as to what we're asking for.

02:43:37 LVNs already with proper training certainly could be people who come to the dorm and provide information about COVID-19 and help answer questions about it, provided they've gotten the proper training to do so. That's a completely different and appropriate thing to do

02:43:53 with the suggestion that LVNs who aren't trained to do

this, who haven't received any sort of training to do this, might on the cuff simply answer a few questions that someone may have.

It's the difference between training and people being there who theoretically might believe to answer a question. The inmates have to be informed about the danger and have -- and be told there's an opportunity to ask questions, not -- the responsibility falls on TDCJ, not the inmates, because they're the ones who have custody of him.

Anyway, thank you for letting me say that, Your Honor.

THE COURT: Okay. Are there any other witnesses to be presented?

MR. MEDLOCK: Yes, Your Honor. This is Mr. Medlock.

We'd like to call both of the inmate plaintiffs. It's my understanding TDCJ was supposed to have them on the line.

THE COURT: Okay.

MS. VASQUEZ: Your Honor --

THE COURT: Yes.

MS. VASQUEZ: -- it's my understanding from our Tuesday hearing that Your Honor believes that the plaintiffs have presented their case, and that this was

defendants' opportunity to rebut it.

So to the extent that any testimony -- we've already had two witnesses -- is cumulative, we would object, and also the fact that it's not in rebuttal, we would object. And the plaintiffs themselves have submitted declarations for their testimony, Your Honor.

THE COURT: Well, when I'm sitting without a jury, I don't worry too much about cumulativeness. If there's something that is redundant, I think I can figure that out. I'm going to allow it.

Do you want to go ahead and call your next witness, then?

MR. MEDLOCK: Yes, Your Honor. This is Mr. Medlock.

The plaintiffs would call Laddy Valentine.

THE COURT: Mr. Valentine, can you hear us?

MR. VALENTINE: Yes, sir, I can hear you.

THE COURT: Mr. Rivera, who works with me, will administer the oath. If you would raise your right hand.

CASE MANAGER: This is Art Rivera.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

MR. VALENTINE: I do.

THE COURT: You may inquire.

LADDY CURTIS VALENTINE,

after having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEDLOCK:

Q. Mr. Valentine, would you please state your name for the record, and spell it for the court reporter?

A. Laddy Curtis Valentine. It's L-a-d-d-y, C-u-r-t-i-s, V-a-l-e-n-t-i-n-e.

Q. How old are you, sir?

A. I'm 69 years old.

Q. And do you have any medical problems, sir?

A. Yes, I do.

Q. Would you tell the Judge what those are?

A. I have -- from service, I have military service, I have neurological problems at the lumbar and cervical area. The lumbar area with instrumentation (telephonic static) and I have weakness in the upper and left portions of the neurological leg and arms. I've had a stroke, and I take medication for high blood pressure, and I take Aspirin daily for circulatory problems.

Q. Do you use a walker, sir?

A. Yes, I do.

Q. Does the walker make it more difficult for you to get

around?
A. Oh, of course it does, yes.
Q. Does it make it more difficult for you to wash your hands multiple times a day?
02:47:33 **A.** Well, to get up and get down continuously, yes, it will.
Q. Now, sir, just for the record, are you a prisoner at the Pack Unit?
A. Yes, I am.
02:47:46 **Q.** And how long have you been there, sir?
A. I've been here since January 8, 2014.
Q. Now, sir, what dormitory do you live in at the Pack Unit?
A. I live in D Wing, 14-6, dormitory 14, bunk 6.
02:48:08 **Q.** So that's D Wing, dorm 14, bunk 6?
A. Correct.
Q. And how many men live in that dorm with you?
A. Fifty-two.
Q. Could you describe your living arrangements for the
02:48:23 Court?
A. Well, the dorm, it consists of cubicles, 52 of them. I live in a cubicle on the outside wall. And adjacent to me on either side are two more inmates.
Then down the middle, there's a series
02:48:39 running parallel inmates' cubicles that are side-by-side.

Q. And about how large is a cubicle?
A. Oh, shoot. I'm going to guess that it's at least four feet wide, maybe five feet wide, and probably over six feet in length, probably seven feet in length.
02:49:08 **Q.** Do you believe it's physically possible for you to be six feet from your neighbor when you're in your cube?
A. No, it's not.
Q. Now, have you been confined in your dormitory 24 hours a day at any point in the last two
02:49:27 weeks?
A. Well, yes. We were fully locked down this last Tuesday.
Prior to that, from the 26th to about the 3rd, we were locked down off and on about three times.
02:49:45 **Q.** The first three times, as opposed to the lockdown that started on Tuesday, would you describe for the Court what happened why you were locked down, your understanding, and what kind of happened while you were locked down?
02:49:59 **A.** Well, to my understanding, we were blocked down because of an individual had gone on a medical transportation to a Hospital Galveston, and had somehow come up with, or had symptoms of this COVID, corona. Virus, and I don't know what they were, but they took
02:50:22 precautionary lockdown. And that happened about three

times.

Q. And how long were you locked down those three times?

A. It seemed like about two days each, until it was a negative -- or three days it could have been -- until a negative testing came back, and then they let us out.

Q. Are you familiar with who the inmate was that was experiencing symptoms?

A. I only know him that he came in on approximately a day ahead of us being locked down. He was there for about a day, and then he went out on the medical transportation, he came from the Powledge (phonetic) Unit, along with another inmate at that time. Up in the (telephonic static) B 1 area, to the best of my knowledge.

Q. And so, he had been new to your dorm, at least, for within a very short time of experiencing symptoms; is that right?

A. Correct.

Q. Now, while you were locked down those three times, was anything done to clean up the dormitory?

A. Initially, just the SSIs doing their normal cleaning. There was no additional bleach or anything like that.

Q. Now, sir, have you been tested for COVID-19?

A. No, sir.

Q. That was "no"?

A. That's "no."

Q. Okay. Thank you, sir.

In a typical week or a typical day, would just tell the Court what locations you go to in the prison?

02:52:16 **A.** I go from the dormitory to chow hall, and to showers and back.

Q. Those are the times you would leave the dorm in a typical week?

A. Yes.

02:52:28 **Q.** Now, sir, are you given any facial tissue like Kleenex?

A. I know we're given toilet paper once a week.

Q. Has TDCJ given you any advice about COVID-19 that requires you to have facial tissue?

02:52:48 **A.** Well, it says try to. One of the handouts says to try to sneeze or cough into your Kleenex and then dispose of it properly to cut down on the spread, but...

Q. Now, you said you're given one roll of toilet paper a week?

02:53:14 **A.** Yes.

Q. What happens if you run out?

A. I cough or sneeze into my hands to cover it.

Q. Have you ever tried to get more toilet paper?

A. Yes. They'd only issue one a week.

02:53:34 **Q.** Now, are you allowed to use alcohol-based hand

sanitizer?
A. No.
Q. Is there any location at the Pack Unit where you have access to hand sanitizer?
02:53:47 **A.** No.
Q. Are you the familiar with having hand sanitizer?
A. Yes.
Q. Would you ever consider drinking it?
A. No.
02:54:06 **Q.** In the six years that you've been at the Pack Unit, are you aware of any inmates starting a fire?
A. Not at all.
Q. Now, are you allowed to have other materials that are flammable?
02:54:19 **A.** Well, I have periodicals, I have books, and I have writing paper, I have letters that I've received from home. Wear cotton clothing. All those, I, believe are combustible.
Q. Now, has TDCJ done anything to provide oral education
02:54:49 for the inmates at Pack about COVID-19?
A. No.
Q. Now, while you're on lockdown, is there someone from the medical staff coming to the dormitory?
A. Yes. They come in with the pills now instead of
02:55:10 standing in the -- at the pharmaceutical window in line,

they bring it down in a cart and dispense it through the bars.

Q. Has that -- and do you know who from the medical staff is doing that?

02:55:28 **A.** Yes. It's two of them that normally work the pharmaceutical area, and they call everybody to the front dayroom, and the ones who have to go, for instance, this morning it was only like, I'd say there's about 11 or 12 that had to get pills. So they went up to the front

02:55:51 dayroom and stood at the bars waiting.

Q. Are the nurses, the staff who are coming to the bars, are they doing anything to educate prisoners about COVID-19?

A. No.

02:56:08 **Q.** Are they doing anything to say, like, "Hey, if you have questions about it, come ask me while I'm out here passing out pills"?

A. No.

Q. Now, does TDCJ have some educational videos that they

02:56:28 will show to inmates?

A. Not that I'm aware of.

Q. Okay. Are there informational videos they show you about like the heat or the cold?

A. Yes, uh-huh. We see those usually Wednesdays and

02:56:46 Saturdays.

Q. And just briefly, tell the Court kind of what the contents of those videos is?

A. Well, the heat, of course, is about hydration, heat exhaustion, and heat stroke.

02:56:57 And then, of course, the cold ones are about hyperthermia and frostbite.

And they're pretty informative, and most of the inmates are well aware of that. And we have discussed it among ourselves anyway.

02:57:12 They're two videos that we see on a regular basis and keep us informed.

Q. And how do those videos get shown?

A. They come across on the TV. I guess they're set up by the operations office, and at a certain time they start

02:57:30 playing on Channel 12. The guards move the channel to channel to Channel 12 on the remote, and then the videos come on back-to-back.

Q. Now, are there inmates at the Pack Unit who are illiterate?

02:57:48 **A.** Yes, there are. There's one in our dorm who I write letters for him to his sister. I've been writing so many that I know his name and his number, but he does manage to sign them, but it takes a while, but for the most part -- he showed me his paperwork where he has a 67 IQ. And he's

02:58:19 just illiterate.

Q. Do you believe he'd be able to read those posters about COVID-19 that TDCJ has put up?

A. The words I think he would make out some of them. Whether or not he would understand them, I don't know. He asked me about them, and I explained them to him to the best of my knowledge as I can.

Q. Let's talk about the chow hall briefly.

Can you describe for the Judge how you take your meals at the Pack Unit under normal -- for the last few weeks, you know, not the last few days where you've been locked down, but when you go to the chow hall, explain that process to the Court, please.

A. Certainly. Well, the dorm is notified by the officer in the hallway, and we move forward to get ready to go out into the hallway, and sometimes we're crowded up at the gate, but that's just the nature of the beast. It's just what they do.

Anyway, when we go out, then we're put in six-foot intervals to go down the hallway. And we stay at six-foot spacing pretty much all the way until we get to the chow hall. When we enter a chow hall, there's a corridor that leads down to the serving line.

Normally, as we go down that corridor, we start stacking up at the serving line. And then we're less than a foot apart.

And then as we go through the serving line, we try to distance again. Once we get out into the area, sometimes we're sitting at two to a table, and sometimes three to four at a table.

03:00:09 **Q.** And then are the tables wiped down between seatings?

A. Well, they do -- yes, they do have men out there who wipe the tables down. My observation that one day was that the individual came and wiped the table down just before we sat down.

03:00:26 And then he was wiping other tables down, and the only thing I noticed that was significant was that he used the same rag without cleaning it, or without rinsing it. And he continued to wipe, and I counted 11 tables that he wiped down.

03:00:44 **Q.** And what time does breakfast at the chow hall on a typical day?

A. Usually, in our dorm, usually around 4:30, 0430.

Q. I briefly want to talk about the showers.

Where do you shower at the Pack Unit?

03:01:05 **A.** We shower in the dorm -- in the shower that they provide, which is just past the chow hall.

Q. You have to leave your dorm shower?

A. Yes.

Q. Would you describe that process for the Judge,

03:01:20 please.

A. Well, it's similar to the chow hall process.

We get ready, we kind of stage. It's kind of like the dayroom is a staging area. And then they announce we're going. So we go out, we space, and we come
03:01:36 to the showers, and then we -- when we get to the showers, we have a line to go to get clothing and to get towels and we're not spaced at all then.

And once we receive our stuff, we usually go to our bench. If you have a walker or cane or
03:01:52 crutches, you're allowed to sit at the benches that are provided and then we usually sit right next to each other on the benching.

And then you go to the showers and you get whatever stall happens to be available. There's only two
03:02:06 handicap showers available in there which you can sit down at. So you have to wait your turn on those.

And once you're showered, you go back to your bench where you're sitting and get dressed, and then go back up into the front of the shower and wait to be let
03:02:23 out again down the hallway and return to your dorm.

Q. And how far apart are the actual showers?

A. Guessing probably window-length at the most apart, probably about three or four feet. That's literal three to four feet.

03:02:49 **Q.** Now, sir, does TDCJ's response to the COVID-19

pandemic concern you?

A. Yes.

Q. Tell the Court why.

A. Well, it concerns me, and I'm in that high category where I have problems, of course, physically, as well as any others that have them, but the spread of it, the rapid spread of it is my greatest concern, and not just for myself, but for the quite a few others that are here within the unit too. Some in worse condition than I am. And obviously one who's already died.

MR. MEDLOCK: Thank you very much for your testimony, sir. I'll pass the witness.

THE COURT: Ms. Vasquez?

MS. VASQUEZ: No questions, Your Honor.

THE COURT: Okay. Thank you very much, Mr. Valentine. Thank you.

MR. VALENTINE: You're welcome.

MR. MEDLOCK: The plaintiff will call -- (Simultaneous dialogue) I'm sorry, Your Honor.

THE COURT: I said do you have another witness?

MR. MEDLOCK: The plaintiffs calls Richard King.

THE COURT: Okay. Mr. King. Mr. King, are you with us?

MR. KING: Yes, sir, I'm here.

THE COURT: Mr. Rivera, who is a colleague of mine, will administer the oath. If you could raise your right hand.

03:04:23 CASE MANAGER: This is Art Rivera.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

MR. KING: Yes, I do.

RICHARD ELVIN KING,

after having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEDLOCK:

03:04:37 **Q.** Sir, would you please state your name for the record.

A. Richard Elvin King.

Q. And would you spell your middle name for the court reporter?

A. Elvin.

03:04:51 **Q.** And how old are you, sir?

A. 73.

Q. Mr. King, do you have any medical problem?

A. Yes. I have high blood pressure and diabetes, and my kidneys are failing.

03:05:11 **Q.** And are you a prisoner at the Pack Unit, sir?

A. Yes.

Q. And how long have you been there?

A. Since July 2011.

Q. Sir, in a typical week, tell the Court the various locations you go to at the prison?

A. Well, like often, I go through the chow hall. First, in the morning, I take a morning insulin shot, and then eat breast breakfast, and back to the dorm, and then I'm in the craft shop.

Craft shop supervisor comes gets us, we go up the craft shop, usually stay up there till lunch, go to lunch, come back and come out of the craft shop at 5:00 o'clock, I do an evening insulin shot, and then eat and go to the dorm.

Q. And what dorm do you live in, sir?

A. I live in -- outside the main building in a auxiliary building -- they call it E Building -- in 18 Dorm.

Q. And how many -- would you describe the E Building for the Court?

A. Well, it's just a freestanding building, it's got four dorms that two are double the size of the two smaller ones.

The small one holds 48 people; the large dorm holds 93 people, I think. And there's two of each of those.

Q. And would you describe your living arrangement in E Building?

A. Well, it's just like in the building, the same cubicles, the cubicles out there are a few feet longer, the same width, which I think is about 5-foot, but out there they're about 10-foot in the building, except just recently they -- all the downstairs cubicles, they have made them the wheelchair-accessible. So they're like 8-foot apart now.

MR. EDWARDS: Your Honor, this is Jeff Edwards. I believe Mr. Medlock fell off the call. I could potentially ask him questions if you'd like, or if we could wait perhaps 30 seconds giving him time to get back.

THE COURT: You go ahead, Mr. Edwards.

BY MR. EDWARDS:

Q. Okay. Mr. King, is there a portion of the dorm that you're living in that is not being utilized?

A. Well, again, I'm in, but the building, it's only half full. Half of it is empty when they were constructing it to wheelchair accessible.

Q. Have you seen them do anything to try to use that in light -- because of the COVID-19 situation? Have they put any extra beds in there for people to use, or told you that they were going to try to use that area for extra

housing?

A. Not that I'm aware of, no.

MR. EDWARDS: Mr. Medlock, are you back on?

MR. MEDLOCK: I sure am.

03:09:08 MR. EDWARDS: Okay. Why don't you take over, sir.

BY MR. MEDLOCK:

Q. Does there appear to be any construction still ongoing in that half of E Building, Mr. King?

03:09:17 **A.** No. I think they're finished.

Q. Do you see any reason why those bunks couldn't be used tonight for -- to put inmates in?

A. I see no reason, no.

Q. Now, sir, have you been tested for COVID-19?

03:09:34 **A.** No, sir.

Q. Are you allowed to have alcohol-based hand sanitizer?

A. No, sir.

Q. Would you ever consider drinking alcohol-based hand sanitizer?

03:09:50 **A.** No, sir.

Q. Now, are you familiar with TDCJ's peer educator program?

A. Yes. I've been to a few of those sessions.

Q. Would you describe that program for the Court.

03:10:10 **A.** Well, there are inmates that have had some training

on a particular subject, and they present their expertise to a group of inmates.

Sometimes they got a video that's involved, and they're questions and answers. Usually they're anywhere from 30 minutes to an hour long.

Q. And what kind of topic does the peer education cover?

A. Well, the ones that I attended dealt with HIV, Prison Rape Elimination Act, what we call PREA. And I can't remember the other one. I attended three of them, but I can't remember what the third one was.

Q. Have you taken one on hepatitis C?

A. Yes. That's what it was, hepatitis C, yes.

Q. Is there any sort of peer education program for COVID-19?

A. Not that I'm aware of, no.

Q. Has any of the prison staff done anything to orally inform inmates about COVID-19?

A. Not that I'm aware of.

Q. Now, Mr. King, do you have a job in the prison?

A. Yes. I'm what we call an SSI, which is a janitor in the dorm.

Q. And how many janitors are there for your dorm in your building?

A. Well, there's two on the shift that I worked on. We work four days and we're off four days, and I work from

6:00 in the morning to 6:00 in the afternoon.

Q. Has the number of people working as janitors increased in the past few weeks?

A. Not that I'm aware of, no.

03:12:46 **Q.** Tell the Court what cleaning supplies you're given for your work as a janitor.

A. Well, in the morning, they give me an ounce of disinfectant in a 16-ounce spray bottle. I get about maybe a quarter cup of powdered bleach that's put in my

03:13:18 mop bucket that I have water in, and I get a equal amount of Bifi (phonetic), which is like a Comet granular mixture.

Q. And how long do those supplies last you?

A. Well, they're supposed to last me the 12 hours that I

03:13:46 work, but the time I get through, me and my work partner get through initially cleaning, the chemicals are mainly used up.

Q. And how many times have you tried to do a cleaning each day?

03:14:09 **A.** Well, we give it an initial real good cleaning in the morning, and then touchup during the rest of the day. We'll sometime mop a couple, three times, we clean the bathrooms three or four times.

But it's a lot of times the morning

03:14:35 cleaning is the biggest one because that's where we have

the most chemicals used.

Q. So after that morning cleaning, how much chemicals do you really have left?

A. Just a little bit in the spray bottle disinfectant. And we individual, like when we go use the toilet, we spray that on there and wipe the toilet down individually. And it's usually gone, you know, by middle of the afternoon.

Q. Do the janitors do anything to clean the inmates' individual cubicles?

A. No.

Q. What opportunities do you have to clean your own cubicle?

A. Well, I can clean it anytime that I need and I want to.

Since this COVID outbreak started, they put up a spray can, like you do herbicide, out, and usually once a day, an officer comes in and will spray your -- the powdered or the liquid bleach that's in that front pumper sprayer in your cubicle, and he'll go around each one of the cubicles. But other than that, that's the only cleaning that we get.

Q. So the cleaning that you get for your cubicle is one spray from the pump up sprayer with the bleach solution once a day?

A. Yes.
Q. Now, in your work as a janitor, are you given any gloves?
A. Yes. I get a pair. Each morning when they issue the chemicals, I get one pair of disposable gloves.
Q. And is that one pair for you and your -- and one pair for your partner? Is it one pair for the two of you to share?
A. Well, they've just been given me one pair, and whoever cleans the bathroom, that's who uses the gloves.
Q. So the inmate who cleans the bathroom has gloves, and the inmate who does not, does not have gloves; is that right?
A. Yes.
Q. Now, has TDCJ done anything to communicate to prisoners that the healthcare copay has been suspended?
A. They -- in the dorm I'm in, they posted a flyer up that says during this COVID crisis, that all copays will be suspended. And I presume they put it in other living locations also, but I've not been in other locations.
Q. Other than putting up that flyer, have they done anything to go communicate that the copay is suspended to you?
A. No. Not that I'm aware of.
Q. Is it your experience, as a prisoner at the Pack

Unit, that the copay discourage inmates from seeking medical attention?

A. Yes. Very much so.

Q. Would you explain why to the Court?

03:18:28 **A.** Well, as Mr. Vail said, as most people know, Texas prisoners are not paid. What money we get is sent from our families, and a lot of families can, you know, not afford to send inmates much money. And most people, if they're limited on their funds, they would rather go buy

03:19:03 coffee or come to eat at the commissary than pay medical staff copay.

Q. And does the TDCJ's response to the COVID-19 pandemic concern you?

A. Well, yes. Like you know, we already lost one, and

03:19:44 seems to spread like wildfire. And the conditions that we live in is conducive to, you know, widespread infection of just untold numbers of us here.

MR. MEDLOCK: Thank you very much, sir. I'll pass the witnessed.

03:20:07 THE COURT: Okay. Thank you. Ms. Vasquez?

MS. VASQUEZ: No questions, Your Honor.

THE COURT: Okay. Thank you. Thank you very much. You may hang up now. Appreciate your participation.

03:20:20 MR. KING: All right. Thank you, Your Honor

many.

THE COURT: We'll take a five-minute break.

(Recessed at 3:20 p.m.)

THE COURT: Okay. Do you want to present
03:24:46 the witness?

MS. HOCKMAN: Your Honor, this is Corinne Hockman. We have one more witness whose presentation will be streamlined.

THE COURT: Mr. Rivera, are you there?

03:24:57 CASE MANAGER: Yes, Judge, I'm here.

THE COURT: Does anybody know if we're missing anyone? Okay. Let's proceed.

MS. HOCKMAN: Thank you, Your Honor. Plaintiffs call Dr. Jeremy Young.

03:25:08 THE COURT: Dr. Young.

DR. YOUNG: Hello. I'm here.

THE COURT: Mr. Rivera, if you would administrator the oath, please.

CASE MANAGER: Do you solemnly swear that
03:25:20 the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

DR. YOUNG: Yes, I do.

THE COURT: Thank you. May you inquire.

MS. HOCKMAN: Thank you, Your Honor.

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JEREMY YOUNG,

after having been first cautioned and duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HOCKMAN:

Q. Would you please state your name for the record?

A. My name is Jeremy Young, J-e-r-e-m-y, Y-o-u-n-g.

Q. Dr. Young, would you please walk the Court through your educational background and experience?

A. Sure. So I'm Board Certified in internal medicine and infectious diseases. I completed my residency in infectious diseases fellowship at the Ohio State University Medical Center. And also completed Master's Degree in Public Health from Ohio State University.

And currently I'm an Associate Professor and Associate Chief of the Division of Infectious Diseases Division at the Ohio State University Medical Center.

THE COURT: Thank you, Doctor. Ms. Vasquez, do you wish to voir dire the doctor as to his qualifications?

MS. VASQUEZ: No, Your Honor.

THE COURT: Okay. Thank you. Let's proceed, then.

BY MS. HOCKMAN:

Q. Okay. Dr. Young, would you please just give the

Judge an overview of any correctional experience that you have so we can orient the Court to that specific relevant experience?

A. Sure. So I came back to Ohio State as faculty member about six months ago, but before that for ten years, I designed and implemented and conducted a prison telehealth program where I managed in the State of Illinois every prisoner with HIV and/or hepatitis C.

So I was doing that for about a decade.

Q. Okay. And so, you do have -- I'm sorry. You do have infectious disease experience in correctional facilities; correct?

A. Yes.

Q. And you worked with the prison system across the entire State of Illinois; is that right?

A. Yes. Twenty-six different prisons.

Q. Thank you. Before we get into the substance of your opinions, I want to confirm that all of the opinions in the declaration that you submitted and in the testimony that you are about to provide, is to a degree of reasonable medical certainty. Is that accurate?

A. Yes.

Q. Okay. Let's discuss disease transmission in prison.

Is the exposure risk of transmissible viruses and diseases higher or lower than in the general

population?
A. Significantly higher.
Q. Why?
A. Well, number one, due to the just congregative nature
03:27:52 of these facilities and similar to nursing homes and cruise ships which have been mentioned already today. Also, in addition to that, lack of resources to treat and control spread.

And then also the composition of the
03:28:06 prison population, particularly, from my understanding the Pack Unit, which consists of people who are more likely to have underlying comorbidities like diabetes and lung disease and coronary artery disease. Things like that.
Q. Are there certain -- and so, I think we're just
03:28:24 alluding to this -- so there are certain populations who are more at risk, particularly when in prison, of developing serious symptoms, and potentially fatal symptoms if they contract COVID-19?
A. Yes, absolutely.
03:28:37 **Q.** Have you seen or studied firsthand the effects of COVID-19 at your hospital?
A. Yes. So I've studied it quite a bit. And my personal experience in the hospital in being on service, I've personally been involved with diagnosis and treatment
03:28:54 of about 40 to 50 COVID positive patients, and much more

suspected COVID patients in our medical center just over the last couple of months.

Q. Based on your infectious disease background, your knowledge of COVID-19, specifically, and your experience with the spread of infectious diseases in correctional facilities, how much of a threat is COVID-19 to the prison system more generally, and more specifically to the Pack Unit?

A. So this is a very large, imminent threat.

With infectious diseases in general, in sort of congregative settings like prisons and nursing homes, we already have concerns about transmissibility of viruses and bacteria and things like that, but this particular virus is very contagious.

And we know that especially if you have somebody who is symptomatic, who is in close quarters with other people, they can be what are called superspreaders and spread COVID-19 to not just one or two other people, but potentially dozens or hundreds of other people.

Q. You've been dialed into this hearing since its inception, is that right, at 1:30?

A. Yes, correct.

Q. You heard Dr. Gathe and Secretary Vail testify?

A. Yes.

Q. And did you also hear Mr. Valentine and Mr. King

testify?
A. Yes.
Q. In your expert medical opinion, are the measures that Dr. Gathe and Secretary Vail, the measures that they described, medically necessary to protect the health and safety of the Pack Unit inmate and staff?
A. Yes. I would say really all of what they said regarding hand hygiene, social distancing, enhanced surface cleaning, limiting transfers, quarantining asymptomatic patients and testing, as well education, are all reasonable.
Q. And did you hear Secretary Vail testify regarding the medical capabilities at the Pack Unit?
A. Yes.
Q. If multiple inmates were to become sick and need hospitalization, how would that affect public health in the greater community?
A. Well, again, we know that ZARS-CoV-2, which is the virus that causes COVID-19, is highly transmissible, so not just within the prison, but outside of the prison.
So we know not only with releasees, if they're infected whether they're asymptomatic or symptomatic, but people who work in the facility -- healthcare workers and prison guards -- can transmit this to their families at home or other people in the

community.

Q. In your experience at the hospital at the hospital at Ohio State, are you seeing an influx of patients in the hospital?

03:31:44 **A.** Yes.

Q. If the prisoners got infected from the Pack Unit and had to be transported to surrounding hospitals, would that contribute to overburdening of those hospitals?

A. Oh, yes, absolutely. And it depends on the hospital, 03:32:02 but there are a lot of particularly community hospitals that don't have the resources, the PPE, the staff, the ventilators, to be able to accommodate all of those acutely ill people.

Q. Have you reviewed the requested relief from the 03:32:17 plaintiffs that we filed as a proposed temporary restraining order dated yesterday, April 15, 2020?

A. Yes, I have.

Q. Do you believe that the relief requested is necessary to protect both the staff and inmates at the Pack Unit 03:32:32 from the risk of COVID-19?

A. Yes, I do.

Q. I want to briefly touch on a few specific aspects of the requested relief.

THE COURT: Before we do that, Doctor, 03:32:44 you're familiar with the CDC recommendations for

environments like a prison, are you not?

DR. YOUNG: Yes. I've read them.

THE COURT: Do you think those are inadequate?

03:32:56 DR. YOUNG: Well, I think the issue with the CDC guidance, some of the language in there is --

THE COURT: Specific.

DR. YOUNG: Yes. It's not quite specific enough, and I think that's on purpose because different

03:33:11 correctional facilities have different abilities to socially distance, and different risks, and things like that. So there is that.

And I will also say that I'm on the COVID-19 clinical care committee here at Ohio State, and

03:33:25 our internal guidelines sort of change by the day. We're learning more about disease all the time, so it's kind of an ever-evolving thing.

THE COURT: So you think the CDC itself might write it differently if they were writing today?

03:33:40 DR. YOUNG: I would think perhaps so, especially with specific environments like the Pack Unit where there are so many people at risk with older age and underlying medical conditions.

THE COURT: And you do agree that minority

03:33:52 communities, especially African-Americans, seem to be

disproportionately affected by the virus?

DR. YOUNG: Yes. Absolutely.

THE COURT: Thank you. Sorry to interrupt.

MS. HOCKMAN: No problem, Your Honor. Thank you.

BY MS. HOCKMAN:

Q. Before I touch on specific guidance, I just want to go one step further from what the Judge asked.

Have you read the CDC guidance as it pertains to testing?

A. Yes.

Q. And do you believe that's sufficient in this case, given that there was a death this past weekend?

A. No. So I think really, you know, I think we knew when I first was retained in this case couple of weeks ago, that this was sort of a tinderbox ready to catch fire. And I think now we know it has caught fire.

It's clear that COVID-19 is in the Pack Unit. As someone said earlier, there is no way this is the only person who has been infected. My understanding is that the inmate who passed away did not leave the facility, was not transported.

So, clearly was imported, and other people can easily become sick with this.

Q. And so, you think that that, for example, is one

place where the CDC guideline is insufficient to protect this population?

A. Yes. I think especially regarding testing, we know that the appropriate public health response to infectious
03:35:21 diseases is to test to do contact tracing, and to isolate people who are positive, even if they are asymptomatic.

Q. If contact tracing is not a viable option here, do you believe that everyone in prison should be tested?

A. Yes. Absolutely.

03:35:42 **Q.** Why is that important?

A. It's important for a lot of reasons: One is that we know there can be asymptomatic spread of this virus. So there could be people walking around without symptoms, or with very mild symptoms, who aren't presenting for a sick
03:35:58 call for medical care, who can be walking around with the virus.

And so, in those people who are asymptomatic, I think it would be ideal to test everybody, and then if you have somebody who is a symptomatic
03:36:12 positive, making sure that their quarantined, that they're isolated for at least two weeks.

Q. I'd like to now just circle back to a couple other aspects of the requested relief.

One of the things that we've discussed a
03:36:25 lot today is access to an alcohol-based hand sanitizer.

Why is that important to control the spread of infectious disease?

A. It's really a lot about access. So there are a lot of studies about this in hospitals with health workers, and for many years, decades, we recommended hand hygiene with soap and water, and it was clear that many healthcare workers, just because of access to sinks and soap, were not performing appropriate hand hygiene.

So you see in hospitals, and often in nursing homes, that there are alcohol-based hand rubs available in the hallways, often every few feet.

And so, that's really important because hand hygiene is incredibly important, whether you're somebody with COVID-19 who is coughing into your hands or sneezing into your hands, as one of the inmates attested to today, because he didn't have enough tissue.

And also if you're someone who is susceptible to it, to be able if you're touching high-touch surfaces that aren't clean, or come in contact with other people, that you can perform hand hygiene and do it quickly and effectively.

Q. Another area that we've discussed is surface sanitization.

You heard Mr. King testify about the cleaning that he does as a janitor in his dorm; correct?

A. Yes.

Q. In your medical opinion, is that once per day cleaning, and maybe one or two more touchups with a small amount of cleaner sufficient to clean common surfaces?

03:37:55 **A.** No. Certainly not for high-touch surfaces. I would recommend multiple times a day, ideally hourly would be a good interval.

Q. And what about Mr. King's testimony that he got one spray to clean his individual dorm surfaces, is that

03:38:13 sufficient, in your medical opinion, to clean personal -- I'm sorry -- personal surfaces, in light of this disease?

A. Right. That seems to be insufficient, as well as the gloves. If you're only going to have one pair of gloves per day, you almost might as well not have gloves. You

03:38:33 should really between touching -- again, I'll make an analogy in the hospital -- if I see a patient wear a gown and glove, after I've seen that individual patient, I remove the gown and gloves, perform hand hygiene, and then don new protective equipment before I go see another

03:38:49 person.

So similarly here, it would be good to have multiple pairs of gloves where if he's going to different areas or coming into contact with other people, that if necessary, if his gloves, for example, become

03:38:59 soiled, that he can change them out for new, clean gloves.

Q. The next issue is social distancing.

What is social distancing, and why is it important to control the spread of this specific disease?

A. So we know, like a lot of other respiratory viruses, that SARS-CoV-2, which is the virus here, is spread by respiratory droplets. So, typically, those don't go more than six feet away from a person if they're breathing or even coughing or sneezing.

So it's important that people remain at least six feet apart from one another because, again, there can be someone who is sick, or even asymptomatic, and if you come within six feet of them, their respiratory droplets can transmit the virus to you.

Q. I finally want to talk about education for the inmates.

You've heard it mentioned today in TDCJ put in some evidence that they posted signage. Is that sufficient for inmate education?

A. It seems not. And so, again, one of the inmates attested to this, and just with my experience over the past decade with inmates, many of them don't speak English, many of them may not be able to read, or may not be able to read past a certain grade level. And so, it would be good to have, I think, verbal instructions, and very specific verbal instructions. Not just wash your

hand, but how serious this is, this is not just a cold, you really have to be more concerned about this and more vigilant.

And the ability to answer questions as well, which isn't available with signage.

Q. Based on what you heard from Mr. Valentine and Mr. King, would you describe -- would you describe the measures taken by the Pack Unit as adequate or inadequate of the disease?

A. They seem to be woefully inadequate.

MS. HOCKMAN: I have one final question, Your Honor, and then I'll pass the witness.

BY MS. HOCKMAN:

Q. Before you mentioned that prisons were like a tinderbox, I believe is the word that you used, waiting to catch fire?

A. Yes.

Q. Given Mr. Clerkly's death and positive diagnosis of COVID-19, in your opinion, how has that impacted that metaphor?

A. So the spark has been lit. Again, we know, as I said before, that COVID-19 is within the facility. And all you need to do, if you don't know anything about infectious diseases or epidemiology, is just look at news reports over the last few months with nursing homes, with cruise

ships.

We know that when people are clustered together, especially once you have a asymptomatic person, they tend to shed more virus. Asymptomatic people can
03:41:56 transfer the virus, but we know symptomatic people in clustered areas are what we called superspreaders, and that they can transmit it to many, many people.

And that's a greater risk in nursing homes, in correctional facilities, on things like cruise
03:42:05 ships.

MS. HOCKMAN: I pass the witness, Your Honor.

THE COURT: Ms. Vasquez?

MR. FARRELL: Judge, the defendants don't
03:42:18 have any questions.

THE COURT: Thank you very much. Thank you, Doctor.

DR. YOUNG: Thank you.

THE COURT: Any further witnesses?

03:42:25 Okay. Would counsel like to make argument?

MS. VASQUEZ: Yes, Your Honor. Can I have a brief break, please?

THE COURT: How long do you need?

03:42:35 MS. VASQUEZ: Five minutes.

THE COURT: Okay. Five-minute break. Thank you.

MS. VASQUEZ: Thank you.

(Recessed at 3:42 p.m.)

03:45:55 THE COURT: Mr. Rivera, are you there?

CASE MANAGER: Yes, Judge, I'm here.

THE COURT: Ms. Vasquez, are you back?

MS. VASQUEZ: Yes, Your Honor.

THE COURT: Are you ready to proceed?

03:46:15 MS. VASQUEZ: Yes, Your Honor.

THE COURT: Okay. We're here on plaintiffs' motion. So I'll allow plaintiff to go first.

MR. KEVILLE: Thank you, Your Honor. This is John Keville.

03:46:29 So I think what we've heard is that there is an emergency, that while we appreciate some of the measures that have been taken by TDCJ during the pendency of this lawsuit, there is very much that needs to be done in order to protect the inmates.

03:46:50 And I think it's been very evidenced in all of the witnesses, certainly in the inmates' testimony as well, that while some measures are being taken, we're hearing excuses for inability to do things that really don't make sense.

03:47:11 In response to what they've said in the

briefing that was filed yesterday, I'll make a couple of points.

One is the defendants claim is that we did not exhaust -- the inmates did not exhaust their
03:47:23 administrative remedies; and, therefore, this case isn't proper. But the Supreme Court has said in the 2016 case, Ross versus Blake, that there's a built-in exception to the exhausting requirement, and a prisoner need not exhaust remedies if they're not available.

03:47:40 And the defendants admit in their response that the administrative grievances procedures require two steps. That's at Page 6 of their response. And then they note that as to Mr. Valentine's step one grievance filed after this lawsuit, that the defendants have until
03:47:56 May 11th to respond. And that's if they do not seek an extension, which they said they can do. And that's at Page 7.

So by defendants' own admission, it could easily be July before the administrative grievance
03:48:10 procedures two steps are completed. And in view of the urgency of COVID-19, particularly as Dr. Young just said, that a spark had been lit on the tinderbox; and in view of the death of an infected inmate, there is no available administrative remedy.

03:48:26 So the -- there is certainly not a good

reason, and there's very good law to say in this type of situation you can't just come back and say that prisoners need to exhaust administrative remedies. We would have many more deaths if we waited until the administrative
03:48:45 remedies were exhausted.

Then the defendants also say, "Well, this is not proper because we're not preserving the status quo."

The status quo in this case is not, as the
03:48:59 defendants would have it, the status quo of them taking limited precautions, or saying the CDC guidelines are somehow prohibiting or limiting in what they can do.

The status quo in this case is having inmates who are alive and not infected with the COVID-19
03:49:19 virus. That is the status quo that we're trying to preserve.

And as the Fifth Circuit has said, "The purpose of a preliminary injunction or a TRO, is always to prevent irreparable injury." And that's exactly what
03:49:33 we're talking about here. The irreparable injury is the infection with the COVID-19 virus.

So none of those are sufficient reasons for this Court not to act. And this Court really does need to act because while we've heard that some
03:49:50 improvements have been taken, what we've also heard is

that they're not being taken in the right way, or they're being taken in indefinite measures, we have no way to know how long they will keep them in play. We have heard from the inmates things like: Yes, they have gloves, but they have one pair of gloves to share between multiple janitors, and it's up to them to decide who wears them when.

So we do you need the Court's intervention to --

03:50:21 THE COURT: Mr. Keville --

MR. KEVILLE: Yes.

THE COURT: -- the bar is pretty high, isn't it? Don't we have to show deliberate indifference?

MR. KEVILLE: Yes, Your Honor. But in this 03:50:35 case, many things what we've seen are or have been indifferent. Right? To say we're only giving them the same limited amounts of cleaning supplies that we've given them before, that is deliberate indifference.

And to say, "Here's one pair of gloves for 03:50:51 you to share through the entire 12 hours," that would be deliberate indifference. And there are many things like that.

Even the hand sanitizer. We've heard the excuses on hand sanitizer, but their own evidence cuts 03:51:05 against them, Your Honor. They say, "We can't provide

hand sanitizer because it's flammable."

And if you look at their own Exhibit F filed yesterday, Attachment 1 at figure -- at picture 12, show the cubicle. And in that cubicle you can see toilet paper, you can see a book, you can see towels and sheets. All those things are flammable.

03:51:24

So saying that if we added hand sanitizer that would be something flammable is illusory, an excuse that just doesn't make any sense. And so, that would be an issue that they've really not shown anything, other than indifference to the current situation.

03:51:39

As Mr. Vail said, in extreme situations like this where there is an outbreak, it is not something that prisons can't do and say, "Okay. In a normal situation we would withhold this; but in this situation we can't."

03:51:57

I'd also say there are other, you know, excuses as to providing disposable hand towels. They say, well, they could be used to, you know, stuff up the sanitization. Well, if you look at that same picture, the roll of toilet paper, the book pages, the hand towel, those things could also be use to stop the toilet.

03:52:10

So they're not really -- they're finding reasons not to do it, rather than say, "Let's find the right precautions that we need to take to protect these

03:52:27

inmates.

And the other point on the hand sanitizer, Your Honor, if you look at their Exhibit F-3, at Page 3, the signs that they're posting in the prison say, "If no soap and water is available, use hand sanitizer with at least 60 percent alcohol."

03:52:43

So they're telling the prisoners, "When you don't have soap and water available, use hand sanitizer," and at the same time they're saying, "But we can't give them hand sanitizer."

03:52:55

And it's my understanding as well that inmates are manufacturing hand sanitizer at the Roach facility. So if inmates in some TDCJ prisons can be manufacturing hand sanitizer, it seems unreasonable and irresponsible to say we can't allow any of the inmates to have hand sanitizer.

03:53:12

THE COURT: Okay.

MR. KEVILLE: Your Honor, I think we've certainly made the case that there's an irreparable injury that all the elements for a TRO or preliminary injunction have been met. This is the absolute case for a preliminary injunction because the irreparable injury is so clear, and already has occurred, at least to one inmate, that there is no preserving the status quo unless we enter an order.

03:53:27

03:53:52

So we would ask that the Court enter either a TRO or preliminary injunction. I think both sides have been heard on this issue. It seems even in the response that we received yesterday, the defendants are looking at this as, you know, as this could be a preliminary injunction as well.

So we would ask that that be entered and immediately -- as immediately as the Court is able to do so.

03:54:16 THE COURT: Thank you very much.

Ms. Vasquez?

MS. VASQUEZ: Thank you, Your Honor.

This is a TRO hearing. The purpose of a TRO hearing is to preserve the status quo. It is

03:54:31 essentially a stay put order.

The plaintiffs are asking that the Court order the defendant to implement several different policies and practices that they are not currently doing. To that extent, they are asking for a preliminary

03:54:45 injunction.

A preliminary injunction requires four elements, as Your Honor knows: A substantial likelihood of success on the merits; substantial threat of irreparable injury; threatened injury if the injunction is

03:55:03 denied outweighs any harm that will result if the

injunction is granted; and that the granting of the injunction will not disserve the public interest; and also when the government is the nonmovant, the balance of the hardship and the public interest merge. And the plaintiff must clearly burden -- clearly carry their burden of persuasion on every -- every one of those elements.

03:55:20

Regarding the likelihood of success on the merits. Plaintiffs have not prevailed on their failure to protect claims under the Eighth Amendment of the United States Constitution. It requires --

03:55:39

THE COURT: Why do you say that? Somebody's already died, and he was in the prison environment up until almost the day he died. I would think the risk of contagious would be very high and the likelihood of harm would be very great.

03:55:59

MS. VASQUEZ: Your Honor, it would require that the defendants know there's a substantial risk of serious harm, and that they do nothing.

The record is voluminous with evidence of what TDCJ and the Pack Unit has done to protect the offenders and the staff from contracting COVID-19.

03:56:11

In addition, when COVID-19 enters the prison unit, like it is entering the entire world, there are additional measures being taken to try to combat the spread.

03:56:31

This is a worldwide epidemic, this is unprecedented for our times, Your Honor. And TDCJ has produced to this Court a lot of evidence proving that the measures it's taken to try to combat the spread.

03:56:47 In addition, under deliberate indifference, the Fifth Circuit held, "The complaints that policies or practices are inadequate to prevent the harm, even if that is true, are not sufficient to find the defendant liable."

03:57:03 We have on, March 20, 2020, correctional managed healthcare care policy B14.52 was enacted. It traces the CDC guidelines in response to the COVID-19 virus, and that is what TDCJ has implemented to try to limit the spread. This policy has been updated four times 03:57:32 since March 20th, which shows that TDCJ is being diligent in trying to keep this virus contained.

In addition to that policy, even before that policy was enacted, TDCJ took precautionary steps to try to prevent the virus from coming in, including 03:57:59 communication with CDC to monitor to COVID development.

On March 20th, the TDCJ got permission from the governor to waive medical copays. The CDC only recommends that copays be waived for respiratory illness complaint. However, TDCJ has chosen to waive all copays 03:58:22 to ensure that no offender is dissuaded from seeking

medical attention.

TDCJ advised all staff to stay home if they felt ill. And they implemented COVID screening to ill -- to screen ill employees.

03:58:43 On March 11th, they instituted screening for procedures for offender visitation.

And on March 13, just two days later, they eliminated all volunteer assemblies, routine audits, vendors, outside contractors, tours and training sessions,

03:58:58 in order to try to prevent the disease from coming into the unit.

THE COURT: I don't think anybody is suggesting that there's been no response from the prison authority. I don't think anybody is suggesting that.

03:59:14 The question is whether there has been sufficient response and sufficient change, given the, as you say, the unprecedented nature of the harm.

MS. VASQUEZ: Well, I think, Your Honor, they actually are saying that. If you're bringing a

03:59:27 deliberate indifference case, you're basically alleging that there is this known risk of extreme harm and you were doing -- the defendant is doing absolutely nothing to prevent that.

THE COURT: Well, the law couldn't be that

03:59:42 if you're doing a little bit, that that can't be

deliberate indifference. It couldn't be the law. As long as you're doing a little bit, that's enough. I think deliberate indifference means more than that, doesn't it?

MS. VASQUEZ: Your Honor, I would argue that
03:59:58 the TDCJ is not just doing a little bit. TDCJ, given the policy and given the declarations that we submitted, is doing a whole lot to try to prevent this virus from coming in.

It is constrained by its security
04:00:12 concerns. We have 50,000 inmates that we are trying to manage, and we're also budgetarily restricted. So there are concerns and constraints that TDCJ is under.

Deliberate indifference requires indifference to a substantial risk of serious harm. And
04:00:35 given the evidence that's been submitted, Your Honor, I do not think the plaintiffs have carried their burden.

It is clear that TDCJ has not been deliberately indifferent. And they have tried, within the constraints that they are under, to combat the spread and
04:00:51 to try to keep it out of the prison system.

So, Your Honor, like I said, and like Your Honor knows and how the plaintiffs pled in their complaint, this disease is nondiscriminatory. It is everywhere. It's all over the world.

04:01:06 THE COURT: I think that is a problem

alright, and I agree with you. I think that is the problem we're facing. And I just don't know that prison responses to previous crisis are all that illustrative of what the correct response is to this one.

04:01:24 Okay. Do you have anything further, Ms. Vasquez?

MS. VASQUEZ: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MS. VASQUEZ: In addition with regard to 04:01:31 plaintiffs specific asked in their TRO request that was filed with their complaint, I will object to anything beyond what's pled in their complaint. They have not filed any amended pleading.

We got a new proposed TRO at 5:50 p.m. 04:01:51 last night, to the extent that the Court is going to consider those additional requests. So I would object to untimeliness.

And regarding the -- regarding the complaints that they made in their original complaint, 04:02:10 Your Honor, they want unrestricted access to antibacterial soap and disposable hand towels to facilitate handwashing.

The CDC recommendation regarding this is that the prison system provide no-cost supply soap to incarcerated persons, sufficient to allow frequent 04:02:28 handwashing.

What we've done at the Pack -- what the Pack Unit has done, Your Honor, is they currently, or they've always got five bars of soap per week. But in addition, they have access to an unlimited supply, 04:02:41 essentially, that they can access upon request. If they run out of soap, they can just ask and they will get more.

Regarding hand sanitizer. We've discussed this with the expert. The CDC does not recommend that we provide hand sanitizer to inmates. It says consider 04:03:00 allowing staff to carry individual-sized bottles to maintain hand hygiene. Nowhere does it say that we should give hand sanitizer with alcohol to the inmates. To require us to do that would be beyond the CDC recommendation.

04:03:16 THE COURT: Well, of course, we're worried about a constitutional standard, and the CDC is a helpful standard, but I'm not sure it's coterminous with the constitutional standard. And the Pack Unit is particularly a precarious position because it's not only a 04:03:33 prison environment, but it's a prison environment for people who are geriatric and dealing with comorbidity. I'm not sure even the CDC itself would say that its standards are sufficient for this context.

MS. VASQUEZ: I one-hundred percent agree, 04:03:50 Your Honor. The CDC is more of a negligent standard.

They're saying that these are the measures that are reasonable.

What plaintiffs are pleading is that we are beyond unreasonable: We are deliberately indifferent. So, yes, I think the fact that we meet the CDC guidelines shows that we are being reasonable and not deliberately indifferent.

THE COURT: Okay.

MS. VASQUEZ: Regarding cleaning supplies. The plaintiffs have asked that each housing area be provided with bleach-based cleaning agents. And CDC recommended disinfectants in sufficient quantities to facilitate frequent cleaning.

The CDC recommendation is to use household cleaners and EPA registered disinfectants effective against the virus that COVID-19 causes as appropriate for the surface, and follow label instructions.

What the Pack Unit is doing, as you heard testimony from earlier, offender janitors were given the necessary cleaning supplies which do consist of bleach solution, as you've heard, what's called double D cleaner, which is like a household disinfectant, broom mops and other items.

In the dorms, you heard, I think it was Mr. King was the janitor. They are provided with a spray

bottle that the offenders themselves can use to clean down their cubicle.

In cleaning of common areas, the plaintiffs ask that we require common areas of the surfaces in the housing areas to be cleaned hourly with bleach-based cleaning agents, including, tabletops, telephones, door handles, restroom fixtures, increased regular cleaning and disinfecting of all --

THE COURT: Slow down. Slow down.

MS. VASQUEZ: I'm sorry.

THE COURT: Okay.

MS. VASQUEZ: Sorry about that.

Increased regular cleaning and disinfecting of all common areas and surfaces, including common used items, such as television controls, books, and gym and sports equipment.

The CDC recommendation is that even if COVID-19 cases have not yet been identified inside the facility, or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures. Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas --

THE COURT: Slow down.

MS. VASQUEZ: -- may include objects,

surfaces not ordinarily cleaned daily, such as doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, et cetera.

What Pack has done regarding this item, again, there's one -- at least one inmate janitor assigned to clean each common area. There are at least four janitors assigned to the E Dorm, and at least three janitors assigned to trustee camp.

Also, there are additional janitors assigned to the infirmary, laundry and kitchen. They all work 12-hour shifts, in which they are permitted breaks. And as part of their duties, they are -- the officers are assigned to monitor and observe these janitors cleaning, to ensure the cleaning is happening and is on a consistent basis.

Regarding offender transfers to Pack. Plaintiffs request that we institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic; or, in the alternative, test all new prisoners, or place them in quarantine for 14 days.

The CDC recommendation is to restrict transfers of incarcerated persons from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation, quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.

The CDC suggests that you strongly consider postponing nonurgent, outside medical visits. If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the
04:08:21 screening section.

What the Pack has done. On April 14th, as Your Honor knows, Pack was place on a precautionary lockdown. So all transfers to and from the unit have stopped, unless it's a medical emergency.

04:08:42 All the offender movement within the unit have stopped. The only offender movement currently permitted is for medical emergencies and such as showers. Otherwise, they remain in the housing during the precautionary lockdown.

04:08:58 If no other cases are confirmed at the Pack Unit, this lockdown will lift on April 25th. If other offenders do show symptoms, it will be on precautionary lockdown an additional 14 days from the last known symptom.

04:09:14 Medical restriction is also used to separate and restrict the movement of well persons who may have been exposed to communicable disease to see if they become ill. The offenders housed in the area will have their temperatures checked twice per day by medical staff,
04:09:34 and will be given masks to wear.

Regarding the administering the COVID test to any offenders. That is not TDCJ's decision; that is UTMB.

THE COURT: Okay. Thank you. Do you want to reply, Mr. Keville?

MS. VASQUEZ: Your Honor, I'm not finished.

THE COURT: Oh, yes, finish. I'm sorry.

MS. VASQUEZ: Thank you.

Regarding limiting transportation of Pack offenders, the plaintiffs want to limit transportation involving -- unless it involves immediately necessary medical appointments and release.

The CDC recommends that we restrict transfers except for medical reasons and overcrowding, strongly consider postponing nonurgent outside medical visits. And if transfer is necessary, perform verbal screening.

Before a lockdown, we were doing verbal screening, and we were limiting our transfers to medical appointments, medical visits that could not be rescheduled that were urgent. Now that we're on lockdown, we're only transporting for medical emergencies.

Social distancing during transport. The CDC has no recommendations regarding social distancing during transport; however, before we were on lockdown,

TDCJ was engaged in social distancing during transport.

If an offender was being transported by van, he would be the only offender in the van. If by bus, then where bus would normally hold 44 offenders, they would hold half that, and they were making them sit every other seat.

Regarding social distancing on the unit. The plaintiffs request strict, enforced social distancing requiring at least six feet of distance between all individuals in all locations. That is not possible, as Your Honor has recognized.

The CDC recommendation is that prisons implement social distancing strategies to increase the physical space between incarcerated persons ideally six feet, regardless of the presence of symptoms.

These strategies, the CDC recognizes, will need to be tailored to the individual space of the facility and the needs of the population of the staff, and not all strategies will be feasible in all facilities.

What TDCJ has done, regarding social distancing, is in the dining hall -- we've already discussed this, but for purposes of this hearing, Your Honor -- we have limited, or have limited before we were on lockdown, the dining hall, the two dorms in the dining hall at a time. One dorm sat on one side; the other dorm

sat on the other side.

This is less people than were normally in the dorm, but in order to get everyone fed in a timely manner, there was no way to enforce strict social
04:12:48 distancing. That would require one inmate per table. There are 50 tables in the Pack Unit, and that would take about 14 hours to feed three meals a day to the entire unit.

The recreation yard before Pack went on
04:13:11 lockdown, they had taken out all the sports equipment to encourage social distancing so offenders wouldn't be playing basketball or volleyball or handball close to each other.

Now we have completely stopped recreation
04:13:29 to avoid the spread of COVID.

And also social distancing is enforced, as you heard Mr. Valentine, I believe it was, testify in hallways they stand and walk six feet apart from each other when they can.

04:13:45 Alternate housing. The plaintiffs have asked that we use common areas like the gymnasium, the law library, to temporarily house inmates. CDC recommendations says if space allowed, three assigned bunks to permit more space between individuals.

04:14:04 The Pack Unit, as Your Honor knows, is a

geriatric medical facility. All these offenders have the medical needs to, number one, the gym is not air-conditioned --

UNIDENTIFIED SPEAKER: How can (indiscernible) it says two positive --

04:14:12

THE COURT: I don't know what that was. Please carry on.

MS. VASQUEZ: The gym is not air-conditioned, so there would be a substantial number of the offenders that could not be housed in the gymnasium.

04:14:35

To use any other areas of the Pack Unit to cause ADA violations, the law library needs to remain open for access to court. It's not feasible for this unit, Your Honor.

04:14:51

Signage. Plaintiffs request specific signs being posted. CDC recommends that we post signage throughout the facility, communicating for all symptoms of COVID-19 and hand hygiene instructions; and for inmates, report symptoms to staff. And TDCJ has done that.

04:15:11

There have been several posters hung throughout the system. One is a CDC poster that says, "Stop germs. Wash your hands." One is, "COVID. What to do." And another one is, "How are you feeling? Cough, fever, shortness of breath, contact your supervisor."

04:15:33

So the CDC recommendation regarding the

signs have been satisfied at the Pack Unit.

In addition, Your Honor, for those reasons, because like we've discussed, the CDC is more of a negligent standard. If the defendants are meeting the CDC recommendations, they are not even being negligent, let alone deliberately indifferent.

These are a lot of measures that TDCJ has implemented, in response to this pandemic, is the ever changing pandemic daily, we have already updated our policy four times since its implementation on March 20th.

If Your Honor looks at the declarations of Warden Herrera, which is Exhibit E, and the declaration of Mr. Mendoza, who is the Deputy Executive Director of TDCJ, Exhibit B, you'll see even more measures that I have not gone through that have been taken, also the policy itself that TDCJ has implemented, is included in Exhibit B and C.

So for those reasons, Your Honor, the plaintiffs are not likely to prevail on their deliberate indifference claim, and injunctive or TRO relief must be denied.

THE COURT: Thank you very much.

Mr. Keville?

MS. VASQUEZ: I'm sorry.

MR. KEVILLE: Yes. I'm sorry. Did you have something else?

MS. VASQUEZ: Go through my whole argument, or do you want to hear rebuttal, and then I'll finish?

THE COURT: I thought you were saying thank you. I thought you were finished. Go ahead. Finish your argument.

MS. VASQUEZ: Okay. Well, they've also made an ADA claim.

THE COURT: I think ADA doesn't belong in the case. Let's leave that one out.

MS. VASQUEZ: Okay. Thank you, Your Honor.

THE COURT: Anything else?

MS. VASQUEZ: Just one second.

Yes, I do have more.

Lastly, Your Honor, the balance of equities weigh against the plaintiffs. In the prison context, a request for injunctive relief must always be used with great caution, because one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of the local government institution.

Where a state penal system is involved, federal courts have additional reason to accord deference to the appropriate prison authorities. And that is the Texas Supreme Court case, Turner versus Safley.

Supreme Court explained that it is

difficult to imagine activity in which a state has a stronger interest, or one that is more intricately bound up with the state laws, regulations and procedures in the administration of its prison.

04:18:41 Importantly, Your Honor, the Supreme Court has cautioned that federal courts must defer to prison officials' adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline, and to maintain internal 04:18:55 security.

The Supreme Court has noted that federal --

THE COURT: Slow down. Slow down. Supreme Court has noted...

04:19:00 MS. VASQUEZ: That federal district courts are not to allow themselves to become enmeshed in the minutia of prison operation.

The plaintiffs are asking this Court to do exactly what the Supreme Court has warned against. Access 04:19:13 to hand sanitizer, unlimited access to disposable towels, cleaning that is performed at specific intervals logged by prison officials and submitted to the Court and to the plaintiffs for their approval. These measures are the exact enmeshment that the Supreme Court has warned 04:19:30 against.

The extraordinarily relief that plaintiffs speak would be unduly burdensome to the defendant, waste resources, and set a precedent for courts as to micromanage the operations of prisons during this pandemic, Your Honor.

The benefit of those measures to plaintiffs does not outweigh the burden, and it would impose on the defendants. Moreover, these measures would not serve the public interest.

04:19:55 That's all, Your Honor. Thank you.

THE COURT: Okay. Thank you. We'll take a five-minute break.

(Recessed at 4:20 p.m.)

THE COURT: This is Ellison. I'm back.

04:23:08 Anything further from the plaintiff?

MR. KEVILLE: Your Honor, John Keville for the plaintiffs. Make sure we have the reporter and Mr. Rivera.

THE REPORTER: I'm ready.

04:23:18 CASE MANAGER: I'm here.

THE COURT: We're ready.

MR. KEVILLE: All right. Your Honor, a few points in response.

Number one, on the standard, while we

04:23:30 agree TDCJ has taken some steps after this suit was filed,

in their own briefs they admit that just taking some steps is not the standard. They cite Farmer versus Brennan, 511, U.S., 825, for the proposition -- and I quote from their brief -- "A prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement, only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."

04:23:47

And that's what we're talking about here. The problem is they're not taking the reasonable measures. The reasonable measures are what the medical experts and the prison expert, Mr. Vail, have testified to.

04:24:05

Dr. Young testified that the measures they're taking are, quote, woefully inadequate. And that's what we've asked for in the proposed TRO, was simply for them the take the reasonable measures that need to be taken.

04:24:21

And on the proposed TRO, we filed that under the Court-ordered timeline. So I certainly don't see any basis for their objection to that.

04:24:35

Many of the things they're doing, Your Honor, they've only done or stopped doing in the recent days, after the death, after the irreparable harm has occurred, after the reasonable steps that may have prevented that were not taken.

04:24:51

For instance, they only stopped the movement between into the prison, and they only stopped recreation during lockdown. And by their own admission, that's going to lift on April 25th, if they don't have someone else who is shown as sick, without testing the entire population. So they won't know who is sick. That should remain in effect throughout the pendency of this pandemic.

We heard today on things like social distancing, that there's an empty dorm, and that could be used to complete -- to enhance the social distancing. That is complete indifference to the welfare of the inmates. It's certainly not reasonable measures to abate the issue.

We heard multiple times that they're encouraging social distancing in the hallways and common areas, instead of enforcing it. And that's what they need to be doing, is taking all the steps they can do to make reasonably certain that the inmates aren't going to face this risk of death. And they're not doing that. They're kind of using the CDC as the backstop.

But their own evidence, the CDC guidelines that they attached, I believe as Exhibit E, to their admission yesterday, says, "The guidance may need to be adapted based on individual facility's physical space,

staffing, population, operations, and other resources and conditions."

Well, here we have a population that is excessively at risk in this pandemic, and the CDC guidelines themselves say you may need to adapt that, based on the prison population, based on the physical space. Well, we know they have additional physical space that they're not using.

04:26:34

So they can't use the CDC guidelines to say, "Well, you can't have a claim against us because we're doing what we think falls within the CDC guidelines, or at least for a certain time." Those are, at best a four, and certainly need to be adjusted, and that's what the guidance say for this particular population.

04:26:48

The other thing I'd address is they talked about budget restrictions. Well, we have no evidence in the record at all of any budget restrictions. And I certainly hope that TDCJ is not saying that added costs, which they have not quantified, outweighs the risk to the lives and health of the inmates. And I'm sure that's not what they're saying. But budget restrictions shouldn't come in here at all.

04:27:03

04:27:21

In terms of the irreparable harm. This pandemic is exactly the extraordinary circumstance that warrants temporary relief because, as we've already seen,

04:27:37

one inmate has died, we know from the testimony we've heard, and from everything that is happening around the world, that this is a grave risk of illness and death to the plaintiffs, and the other inmates situated in the
04:27:54 Pack, due to their conditions and their high-risk position.

In terms of the balance of the hardships, here, defendants will suffer no harm at all if the TRO is granted.

04:28:05 Implementing the relief we requested to prevent the spread of COVID-19 not only protects the inmate population, but all the staff and employees, even from them, their families and the community at large.

So implementing the procedures that we
04:28:23 have requested in the TRO will reduce the spread of the virus and illness and death. So there's no question the balance of the hardship tips absolutely to putting these in.

It's certainly in the best interest of the
04:28:36 plaintiffs and the defendants as well to implement the proposed features so it's in the public interest because will prevent the spread not only within the Pack Unit, but ultimately among the community.

So the preliminary injunction or TRO
04:28:51 standards weigh very heavily in favor of granting the

requested relief.

And as the Supreme Court has said, an inmate's constitutional rights are violated by conditions that pose an unreasonable risk of future harm, even if
04:29:08 that harm has not yet come to pass. And that's the Helling versus McKinney at 509, U.S. 25, 1993.

It specifically, things like a communicable disease like this could constitute an unsafe life-threatening condition that the Court would have to
04:29:29 address. And that's what we're asking.

So with that, Your Honor, I have one other question that I think may be beyond counsel to ask, but then I'd also see if the Court has any questions.

The question I have is, very early in this
04:29:45 hearing today, Your Honor, I think you mentioned 875 tests had been done yesterday. And to the extent I can understand that, I think what Your Honor was referring to is in TDCJ, generally, and I just wanted to make clear that's not limited to the Pack Unit and to ask Ms. Vasquez
04:29:59 if she can confirm how many inmates at the Pack Unit have actually been tested.

THE COURT: Ms. Vasquez, do you have that information?

MS. VASQUEZ: 64.

04:30:30 THE COURT: How were those 64 chosen?

MS. VASQUEZ: I believe those are the two dorms -- no. I'm not sure. I know that the three dorms where the offender passed, that entire dorm was tested. And that dorm has 53 offenders. I guess the remaining
04:30:56 tests were for the offenders who have gone off the unit for medical treatment for other reasons and then have been subsequently tested.

THE COURT: Okay.

MR. KEVILLE: So, Your Honor -- this is John
04:31:12 Keville again.

With no back-tracing to say where that inmate had been in the preceding two, three, four weeks, when may have been asymptomatic with no knowledge of where he had been, in what common areas, who else has been
04:31:30 exposed, the rec areas and chow areas and pill line, it is clear that there needs to be testing of all the inmates. And that's what all the experts have said today. It's certainly not enough, now that we know there's been an inmate who was infected and died to say, "Well, we're
04:31:49 going to do tests in just this one dorm."

THE COURT: Okay. Does anybody else have anything to say? I'm going to take this under advisement.

MR. EDWARDS: Judge, this is Jeff Edwards. If I could just add one final thing.

04:32:06 I think it's important that the Court

understand that the medical evidence in this case is in fact undisputed.

TDCJ has not put forward any medical evidence, or any medical expert testimony to suggest that the policies that they're implementing are in fact adequate.

And you've heard from our experts that they are woefully inadequate. The only medical testimony of any kind submitted by TDCJ is Tab 20 to their response. And it is simply a discussion of the people involved in putting together their COVID-19 policy.

Nowhere in that declaration, or in the policy, does it say that any doctor has ever said that these measures are adequate or can protect the men from the known harm.

And the rest I think Mr. Keville did plenty. And thank you.

THE COURT: Okay. Thank you very much for your participation today. I am grateful.

Good health to all of you. Thank you very much.

(Recessed at 4:33 p.m.)

CERTIFICATE

I, Johnny C. Sanchez, RMR, CRR, certify that as an Official Federal Court Reporter for the Southern District of Texas, Houston Division, I have transcribed the audio-recorded hearing of the foregoing entitled case to the best of my ability; that any inaudible designations are because of audio or telephonic interference that precluded me from understanding the words spoken; and that the foregoing typewritten matter contains a full, true and correct transcript of my understanding of the aforesaid proceedings as reported to the best of my skill and ability.

S/Johnny C. Sanchez, RPR, RMR, CRR

Exhibit 11

DECLARATION OF ROBERT L. COHEN, M.D.

I. SUMMARY OF QUALIFICATIONS

I am a board-certified medical doctor in the field of internal medicine and expert in the field of Correctional Medicine. My Curriculum Vitae is attached to this Report. I have 35 years of experience in correctional medicine. I have served as a federal and state court-appointed monitor in cases regarding the provision of medical care in prisons and jails in Washington, D.C., Philadelphia, Michigan, New York, Ohio, Connecticut, and Florida. I served as a member of the Board of the National Commission on Correctional Health Care for seventeen years, representing the American Public Health Association. I have served as an appointed member of the New York City Board of Corrections since 2009. The Board of Correction is a nine-member independent board which oversees the New York City Department of Correction and has rule making authority. As Director of the Montefiore Medical Center for Rikers Island Health Services, I supervised and was responsible for the provision of medical and mental health services for more than 13,000 prisoners in the New York City jails, and oversaw a medical staff of approximately 500 physicians, mid-level practitioners, registered nurses, licensed practical nurses, psychiatrists, psychologists, social workers, pharmacists, laboratory technicians, administrative and clerical staff. I have published extensively on health care in corrections settings.

I served as the Vice President for Medical Operations of the New York City Health and Hospitals Corporation, reporting directly to the President with responsibility for clinical services,

including nursing, physician care, ambulatory care, and quality assurance for New York City's eleven hospital public health care system. I served as Director of the AIDS Center of St. Vincent's Hospital, located in Greenwich Village, New York.

I retired from the clinical practice of Medicine in November 2016. I maintain by NYS License and Internal Medicine Board Certification.

All of my opinions expressed herein are opinions to a reasonable degree of medical certainty.

II. PAST TESTIMONY

During the past four years I have given testimony in the following matters:

a. Parsons v. Ryan, 2:12-cv-00601 CV 12-00601-PHX-NVW (MEA)

b. Graves v. Arpaio, 2:77-cv-00479-PHX-NVW

c. Lin Li Qu, v. Cornell Companies, Inc. et al, USDC C.A. No. 09-53-S-DLM

d. Baires v. USA; et al, Northern District of California, CV 09-5171 (CRB)

e. Prasad v. County of Sutter, Eastern District of California, 2:12-CV-00592-TLN- CKD

f. Hadix v. Caruso, U.S. District Court, Western District of Michigan, Court Appointed, Associate Monitor

g. Milburn v. Coughlin, 79 Civ. 5077, Stipulation for Entry of Modified Final Judgment (S.D.N.Y. September, 1991), Court appointed Medical Auditor

h. Doe v. Meachum, CIVIL NO. H-88-562(PCD), (JGM) Court Appointed -- Agreement Monitoring Panel.

i. Zikianda v. County of Albany, et.al, USDC, NDNY, Civil Action No 12-1 194.

j. Luann Gillespie Shultz vs. Allegheny County, USDC Western District Pennsylvania, 2: 1O-cv-01530

k. Dang v. Eslinger, USDC Middle District of Florida, 6:14-cv-37-ORL-31TBS

l. Salcido v. Harris County, U.S. District Court, Southern District of Texas, 4:15-cv-02155

III. MATERIALS RELIED UPON

I have reviewed the following documents in preparation of this declaration:

- Plaintiffs' complaint;
- CMHC Infection Control Manual No. B-14.52, "Coronavirus Disease 2019 (COVID-19)," and attachments, dated Mar. 20, 2020;
- CMHC Infection Control Manual No. B-14.52, "Coronavirus Disease 2019 (COVID-19)," dated Mar. 27, 2020;
- Centers for Disease Control, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," dated Mar. 23, 2020;
- Texas Department of Criminal Justice, "Correctional Managed Health Care Infection Control Policy Manual" (lasted visited Mar. 30, 2020) *available at* https://www.tdcj.texas.gov/divisions/cmhc/infection_control_policy_manual.html;
- TDCJ Pack Unit Diagrams (D.E. 922-9, *Cole v. Collier*);
- Pack Unit Profile;
- Declaration of Eldon Vail;
- Excerpts from the Deposition of L. Linthicum on behalf of TDCJ.

IV. FACTUAL BACKGROUND

A. The Novel Coronavirus 2019 (COVID-19) pandemic

The novel coronavirus 2019, also known as SARS-CoV-2, causes a disease formally designated COVID-19. COVID-19 is a serious disease and has reached pandemic status. Over

711,480 people around the world have received confirmed diagnoses of COVID-19 as of March 29, 2020, including nearly 136,000 people in the United States. At least 33,565 people have died globally as a result of COVID-19 as of March 29, 2020, including 2,391 in the United States, and 35 in the State of Texas. These numbers will increase, perhaps exponentially.

Current evidence shows that coughing and sneezing are most likely to transmit the virus, which appears to pass mostly via infected respiratory droplets. There is also evidence that common surfaces—fomites such as doorknobs, tables, and especially other hard surfaces—can transmit the disease. In China, where COVID-19 originated, the average infected person passed the virus on to 2–3 other people, with transmission occurring at a distance of 3–6 feet. Everyone is at risk because no person's immune system has prior exposure to this virus.

COVID-19 can cause symptoms within two days of exposure, and those symptoms can become serious is as little as five days—for others, however, symptoms may never present or may take up to two weeks. This means that some people are particularly likely to suffer serious injury very quickly, while other people may not even realize they are infected, causing them to be more likely to transmit the virus to others.

While vaccines are being developed, most estimates state that one will not be widely available for at least another year. Treatments are in testing, but none have been FDA-approved. Some medications in testing, such as remdesivir, are only available as part of a clinical trial through the manufacturer or National Institutes of Health (NIH). Others are only available off-label use of unproven therapies such as chloroquine or hydroxychloroquine. Novel health strategies are unlikely to be deployed in the correctional context due to cost and ethical restrictions in the United States.

Most people infected with COVID-19 become mildly sick with flu-like symptoms from a mild upper respiratory infection. About 16% of people become seriously ill, which the CDC defines to mean requiring intubation or mechanical ventilation or causing death.[1] UpToDate reports an overall case mortality rate from the disease of 2.3%. The people most at risk of serious complications are the elderly and patients with underlying health conditions, such as diabetes, heart disease, lung disease, and liver disease.[2] Deaths typically occur from pneumonia complicated by acute respiratory distress syndrome (ARDS) and/or sepsis. The risk of death or serious illness is heightened for people who have not received the influenza and/or pneumonia vaccine as these co-infections can occur, increasing the risk of poor outcomes.

Treatment of individuals infected with COVID-19 varies based on the severity of illness. Individuals with mild symptoms may be treated at home without the need for hospitalization. Those with moderate and severe symptoms, however, likely require hospitalization for supportive care (such as intravenous fluids and supplemental oxygen) or for more intensive care (such as ventilation and intravenous antimicrobials). Doctors, infectious disease specialists, and public health officials anticipate that hospitals are likely to be overwhelmed and beyond capacity to provide the required intensive care as COVID-19 becomes more widespread across the United States. China and Italy

[1] *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), https://www.cdc.gov/coronavirus/2019-ncov/summary.html.
[2] *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, The Lancet (published online March 11, 2020), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext

have already suffered this same overcrowding crisis in connection with treatment of individuals with COVID-19. New York City is in the midst of overcrowding at hospitals now.

B. Infectious diseases and their communication to correctional environments

Prisons and other correctional facilities are at greater risk from infectious diseases than the general community, both in terms of risk of transmission and the level of harm to individuals who become infected, for at least three broad reasons. First, correctional facilities are often poorly equipped to diagnose, treat, and manage infectious disease outbreaks due to lack of resources and medical providers. Second, correctional facilities in general congregate large numbers of people in a small space, causing additional challenges to infection control for respiratorally transmitted contagious diseases that spread from person to person through infected droplets. Third, prisoners often have underlying characteristics or conditions that may predispose them to an increased risk of morbidity and mortality from infectious diseases.

Closed detention settings suffer more outbreaks of contagious droplet borne diseases than in non-correctional communities, and they can put the outside world at greater risk. Correctional facilities are not isolated from their surrounding communities—visitors, contractors, and staff can and do communicate diseases between a prison or jail and the outside world. These outsiders often have a high turnover, as prison jobs are not typically in high demand. Moreover, prisoners themselves may be communicating with the outside world—prisoners attend court, are shipped to doctor's appointments, or are simply transferred to or from another facility. The incarcerated are an at-risk population, and their contagious conditions also put communities at risk. Accordingly, prison health is a vital component of public health.

In fact, prisons and jails are communal in nature, creating an ideal environment for the rapid spread of infectious diseases that can spread from person-to-person, particularly if they can be transmitted by respiratory droplets, aerosols, direct contact, or fomites (objects or materials likely to harbor infectious pathogens, such as clothes, utensils, and furniture). People can transmit diseases by sharing dining space, living quarters, bathrooms, showers, and other common areas.

With highly contagious person-to-person diseases, the best initial strategies to help combat the spread of the infectious diseases are to perform frequent hand hygiene, clean and disinfect potential fomites, and maintain physical distancing of at least six feet. Prisoners, however, may not be free to practice all of these steps—particularly physical distancing. Spaces within prisons and other correctional facilities also tend to be poorly ventilated, which promotes highly efficient spread of infectious diseases through droplets. In short, prisoners cannot protect themselves from exposure to infectious diseases to the same degree members of the general community can, and communicable diseases spread more rapidly among them

In the free world, people can protect themselves from infectious diseases with basic hand hygiene, frequent vigorous hand washing for at least twenty seconds, either with soap and water or alcohol-based hand sanitizers. However, prisons and jails often do not supply enough soap or hand sanitizer—or may even forbid hand sanitizer—for prisoners to practice safe hand hygiene measures. Furthermore, in the free world, high-traffic fomites such as doorknobs, light switches, tables, and counters should also be cleaned and disinfected regularly with bleach-based solutions to prevent the spread of virus. Prisons and jails often fall short here as well; even as common surfaces are used as a matter of literal routine, correctional facilities often have limited cleaning supplies and

manpower to perform the necessary cleaning and disinfecting procedures. Prisons and jails also often mandate additional group activities compared to the free world such as searches of persons, searches of a person's belongings, searches of a person's living area, group meals, work assignments, submitting paperwork in person, and dispensing medications by each dose that require prisoners to come into additional personal contact with one another and staff.

Correctional facilities are also often ill-equipped to provide sufficient resources, including personal protective equipment (PPE) for people who are incarcerated and associated caregiving staff. Moreover, prisons and jails usually keep their isolation space near capacity already, so isolating symptomatic inmates quickly exhausts that capacity. In contrast, free world containment strategies require people who are symptomatic and may be infected to be isolated, while their caregivers, treating physicians, and nurses should use PPE, including gloves, masks, gowns, and eye protection (goggles or face shield). The comparative lack of resources inside a prison or jail increases the risk to the broader prison population (including inmates as well as those entering the prison for other reasons) of a widespread outbreak.

Likewise, prisons and jails often have fewer medical staff per person compared to the community at large—meaning that in an emergency, and certainly in a large outbreak, correctional facilities rely on medical services in the community at large. During a pandemic, however, those outside resources may be overcapacity or unavailable.

The CDC has issued guidance for correctional and detention facilities to prepare and protect inmates and employees from the spread of COVID-19. Specifically, the CDC recommends the following measures:

a. The availability of sufficient hand hygiene supplies, cleaning supplies, PPE, and medical supplies, including, but not limited to, liquid soap, alcohol-based hand sanitizers with at least 60% alcohol, facemasks, face shields, goggles, gloves, and testing supplies such as swabs and viral transport media.

b. Provide a no-cost supply of soap to incarcerated/detained persons and employees, sufficient to allow frequent handwashing.

c. Provide easy access to alcohol-based hand sanitizer containing at least 60% alcohol.

d. Adhere to CDC recommendations for cleaning and disinfection during the COVID19 response, including cleaning and disinfecting frequently touched surfaces several times per day.

e. Post signage throughout the facility and communicating the information verbally on a regular basis.

f. Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally at least 6 feet), including in holding cells and waiting areas, and by staggering time in recreation spaces, staggering meals and rearranging seating in the dining hall to increase space between individuals, limiting the size of group activities, and rearranging housing spaces to increase space between individuals.

g. Provide inmates with information and consistent updates about COVID-19 and its symptoms.

Implementing these procedures for the prisoners would also promote public health and public safety for not only the prison, but also the surrounding community. Increased social distancing will reduce the chance of spread of the virus if it is introduced; increased preventative measures such as handwashing, cleaning supplies for surfaces, etc. helps further restrict the spread of the virus and will help inmates protect themselves and others. These measures will, in turn, also reduce the burden on prison staff and local hospital and emergency room medical staff by reducing

the number of people who will become sick and require hospitalization. This, in turn, helps to reduce the health and economic burden to the local community at large.

C. The risk posed by COVID-19 to the inhabitants of the Wallace Pack Unit prison

The COVID-19 pandemic at the Pack Unit, according to the information available to me today, exemplifies the vulnerability of incarcerated persons to a disease outbreak, so the CDC guidance is the bare minimum that Pack should be implementing, for at least six reasons.

First, as discussed above, certain individuals are far more vulnerable to COVID-19 and the Pack Unit has concentrated a population of those meeting this threshold.

An individual's immune system is one of the primary defenses against COVID-19. As a result, people over 65 years of age, people with certain underlying medical conditions, and persons with impaired immunity more likely to be seriously injured or die if they are infected. The older a person is, the higher likelihood of death; this is thought to be due to impaired immunity with aging and the likely presence of compromised major organs, particularly the heart and lungs. Persons with severe mental illness in jails and prisons are also at increased risk of acquiring and transmitting infection because they may be unable to communicate symptoms appropriately.

Immune systems can be compromised by chemotherapy for the treatment of malignancies, HIV/AIDS, hepatitis C, immunosuppressive medications, and other reasons. All of these conditions make individuals more susceptible to poor outcomes associated with COVID-19.

People with impaired cardiovascular and other bodily systems are also more vulnerable to serious complications. Specifically, evidence shows that people with diabetes mellitus, serious heart disease, chronic lung diseases—such as asthma—severe obesity, chronic kidney disease, and

chronic liver disease are more likely to die or be seriously injured by COVID-19, especially if these underlying medical conditions are not well controlled.[3]

Serious complications from COVID-19 which are more likely for vulnerable people include severe respiratory illness and damage to major organs from ARDS, myocarditis, septic shock, among others. Supporting these cases requires significant resources, including clinicians, proper PPE, intensive care units, nursing support, and ventilators.

Based on TDCJ records, I understand the Pack Unit is a Type-I Geriatric prison within the Texas Department of Criminal Justice system. TDCJ has previously testified that a large number of inmates at the Pack Unit are over the age of 50, face significant underlying health issues meeting CDC criteria, or both. These inmates are at very high risk of serious illness and death should they contract the COVID-19 virus. This reason alone makes it extremely important for the Pack Unit to implement all CDC recommended practices, including the strategies outlined above, to mitigate the risk of contraction and spread of the virus within the Pack Unit. In addition, implementation of these practices for other, lower-risk prisoners housed in the Pack Unit would reduce the total risk to all inmates in the Unit.

Second, based on my understanding of the Wallace Pack Unit, my review of relevant materials, my experience working on public health in prisons and other correctional facilities, and

[3] Centers for Disease Control, *People who are at higher risk for severe illness* (last visited Mar. 31, 2020) *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/people-at-higherrisk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019ncov%2Fspecific-groups%2Fhigh-risk-complications.html.

my review of the relevant literature, it is my opinion that the Wallace Pack Unit has failed to implement sufficient infection control procedures to prevent and manage a COVID-19 outbreak. The current infection control measures in place to reduce the spread of COVID-19 at the Wallace Pack Unit are grossly inadequate. In reasonable medical probability this will lead to transmission of the coronavirus and resulting serious health effects to detained individuals at the Pack Unit, prison staff, and the broader community.

The Wallace Pack Unit is a dormitory environment that, like many prisons and jails, congregates where people live, sleep, eat, launder clothes, and work in close proximity. My understanding is that Pack Unit inmates almost all attend meals in the same room. Pack inmates primarily live in large dormitories with only unsealed cubicle walls between their beds. Each dormitory has a communal bathroom and sinks, as well as a communal dayroom area with benches and televisions. Inmates' clothes are laundered by a communal laundry room used by the entire facility, with those clothes being collected and distributed by other inmates. In an environment like this, COVID-19 is more likely to spread. Because the Wallace Pack Unit houses prisoners in close quarters, unable to maintain a six-foot distance from others, and unable to avoid sharing or touching objects used by others, the risks of spread are greatly, if not exponentially, increased as already evidenced by spread of COVID-19 in another congregate environment: nursing homes and cruise ships.

Third, the Pack Unit is located in a small community with limited resources that already has COVID-19 cases. This means that guards or contractors who enter the facility are likely sources or victims to communicate the disease.

Fourth, TDCJ has confirmed at least one case of an inmate with COVID-19 and many cases of employees and contractors with the disease. This means that transfers between the Pack Unit and the wider TDCJ system are potential conduits for COVID-19 transmission.

Fifth, county jails including the massive Dallas[4] and Harris County[5] jail systems have confirmed COVID-19 cases, meaning that new inmate assignments from outside the TDCJ system are potential avenues for COVID-19 transmission. Although TDCJ reportedly stopped taking new inmates from Dallas recently, it is unclear whether this stopped for Harris—or if TDCJ has done anything about those potentially infected inmates already in circulation from those locales.

Sixth, the Pack Unit routinely relies on private hospitals for emergency care. But the nearby town, as discussed above, already has its own COVID-19 cases and the large urban hospital system nearby the Pack Unit in Harris County is located amidst a community which already has over 250 confirmed COVID-19 cases.[5] This means that the private medical system is already under strain from the wider pandemic, so an outbreak at the Pack Unit is unlikely to be able to rely on private healthcare resources. Indeed, there is pervasive news coverage reflecting that the healthcare

[4] Jozelyn Escbedo, ABC 8, *COVID-19 cases in Dallas County jail reaches 17, report shows* (Mar. 31, 2020) *available at* https://www.wfaa.com/article/news/health/coronavirus/covid-19-cases-indallas-county-jail-reaches-17-report-shows/287-0542cb9d-bd5f-41ed-bc87-f796cf92354f. [5] ABC 13, *Harris Co. reports 1st inmate to test positive for COVID-19* (Mar. 29, 2020) *available at* https://abc13.com/coronavrius-harris-county-inmate-jail-covid19-strain/6060823/.

[5] Harris County Department of Public Health, *Harris County COVID-19 Confirmed Cases* (last viewed Mar. 31, 2020) *available at* http://publichealth.harriscountytx.gov/Resources/2019Novel-Coronavirus/Harris-County-COVID-19-Confirmed-Cases.

system, including both nationally and in Harris County, is already straining to acquire sufficient personal protective equipment to handle COVID-19 cases.[6]

As the Pack Unit is exemplifies typical at-risk, communal environment with limited health resources anticipated by the CDC guidance, TDCJ should stringently follow that guidance to reduce the risk of transmission and harm to inmates. TDCJ's lack of diligence on following these guidelines makes action now far more urgent, because it is far more likely that inmates are already infected, unbeknownst to the agency, and freely transmitting the disease.

V. CONCLUSIONS

A study of a cruise ship demonstrated that about 17% of persons infected with COVID-19 had no symptoms.[7] However, infected individuals become symptomatic in a range of 2.5 to 11.5 days with 97.5% of infected individuals becoming symptomatic within 11.5 days. The total incubation period is thought to extend up to 14 days. Thus, persons coming into jails or prisons such as the Pack Unit can be asymptomatic at intake screening only to become symptomatic later during incarceration. At the same time, screening every inmate daily for cough, shortness of breath, or fever daily would be a logistically daunting task that may not be fully effective in an institution such as the Pack Unit. Because testing kits are not currently available in the volume

[6] For example: Emma Platoff, Texas Tribune, *Texas hospitals brace for coronavirus surge with uncertain stocks of protective gear* (Mar. 25, 2020) *available at* https://www.texastribune.org/2020/03/25/texas-hospitals-coronavirus-personal-protectiveequipment/.

[7] Kenji Mizumoto, Kayaya Katsushi, Alexander Zarebski, Gerardo Chowll; *Estimating the asymptomatic proportion of coronavirus disease 2019 (COVID-19) cases on board the Diamond Princess cruise ship, Yokahama, Japan, 2020*, EUROSURVEILLANCE (Mar. 12, 2020), https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.10.2000180.

necessary to screen all inmates, and because the range of symptom acquisition ranges from 2 to 11 days, symptom screening at booking alone will not identify all persons who are infected with the virus.

The individuals in the Pack Unit are at a significantly higher risk of infection with COVID19 because of the conditions in which they are confined, as compared with the population at large and are at a significantly higher risk of harm if they do become infected because of their compromised health status. These harms include serious illness and high risk of death.

As discussed above, the Pack Unit is also a communal environment exemplifying the exact worst-case scenario anticipated by the expertise of the CDC.

TDCJ should implement, strictly adhere to, and enforce all of the CDC guidelines listed above. Moreover, the CDC recommends that transportation and movement of incarcerated persons between Units be limited. If transfer or movement into the Pack Unit occurs, those individuals should be tested for COVID-19 or placed in a 14-day quarantine before being released into the general population of the Pack Unit.

TDCJ's current policy regarding the coronavirus and COVID-19 disease, policy number B-14.52 (effective March 27, 2020), is egregiously deficient in comparison with the CDC standard. Continuing to only use this policy poses a substantial risk of an outbreak of COVID-19 at the Pack Unit, which would then cause grave risks to the health of inmates—particularly the vulnerable population—including the risk of death. The deficiencies in TDCJ's policy include the following items:

a. Forbidding inmates from using hand sanitizer, despite the fact that staff are required to carry and use it when needed. (TDCJ Policy, p. 9, II.B.) By contrast, the CDC recommends "relaxing restrictions on allowing alcohol-based sanitizer in the secure setting where security concerns allow."

b. With respect to the transfer of inmates, TDCJ's policy only suggests facilities "[m]inimize transfer of offenders between units" unless they are already medically restricted. (TDCJ Policy, p. 3, I.E.5) By contrast, the CDC Guidance recommends correctional facilities "[r]estrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding."

c. To the extent TDCJ cannot avoid transfers of inmates to the Pack Unit, the newly arrived inmates should either be tested for the virus, or quarantined for 14 days. TDCJ's policy is also seriously deficient for failing to require these measures to prevent an infected inmate from being transferred into the Pack Unit and instead limits the measures to cases of suspected COVID infection.

d. With respect to social distancing, TDCJ's policy states only that units should "encourage self-monitoring & social distancing" absent suspicion of exposure.[8] By contrast, the CDC policy recommends several specific social distancing steps, including a recommended distance of 6 feet, and the following: enforcing increased space between individuals in holding cells and waiting areas, staggering time in recreation spaces, staggering meals and rearranging seating in the dining hall to increase space between individuals, limiting the size of group activities, and rearranging housing spaces to increase space between individuals. Again, TDCJ waits until an inmate is suspected to have the virus before deploying these steps.

e. I also understand that, based on inmate reports, the Pack Unit is not even following the following provisions of TDCJ's policy:

    i. Posting the signs and warnings attached to TDCJ's guidance, including attachments providing guidance and education on COVID-19 symptoms and best methods for preventing transmission

[8] TDCJ Infection Control Manual, No. 5-14.52, Corona Virus Disease 2019 (COVID-19), available at https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_infection_control_policy_manual/B14.52.pdf.

ii. Reducing social gatherings or taking other precautions to reduce inmate contact

iii. Educating inmates on how COVID-19 is transmitted, signs and symptoms, and prevention of transmission

iv. Reducing and restricting inmate movement

v. Reminding inmates of effective measures to prevent transmission, such as washing hands with soap for at least 20 seconds

In light of the foregoing, TDCJ and the Pack Unit also needs to take the following steps:

- All persons with any symptom consistent with COVID-19 or with fever should be placed in respiratory isolation and tested for COVID-19.
- All inmates over 65, all persons with severe mental illness, all persons with immune disorders or with serious cardiac or pulmonary disease, and all persons with any cognitive disorder should have a daily symptom and temperature screening. Any positive symptom or temperature should require respiratory isolation and testing for COVID-19.
- All inmates coming into the prison on any day be housed in separate housing (quarantined). Pending release from quarantine, all individuals in such housing should have a symptom and temperature screening daily. The CDC recommends a 14-day isolation and this should be enforced.
- Ensure all custodial and medical staff are appropriately equipped with personal protective equipment when required. Adequate training should be provided on the appropriate procedures to don, operate, and remove personal protective equipment.
- If and when COVID-19 testing becomes widely and readily available, all inmates coming into the Pack Unit should be tested for COVID-19 prior to congregate housing. This is my opinion because inmates will be forced to live with one another with the uncertain risk that one of them is infected. Inmates cannot engage in social distancing. In my experience, spread of contagious respiratory disease can be prevented by screening and cohorting, placing together, groups of infected individuals, Also, intake symptom screening alone will not identify all inmates who may have disease but are not yet symptomatic.
- Provide hand sanitizer and additional soap for inmates to practice necessary hand hygiene.

- Reduce transfers of inmates to those absolutely necessary, and subject to the foregoing safety measures.
- Adhere to the detailed social distancing measures for prisoners in the CDC guidelines.
- Post signs and providing inmate training on hygiene, social distancing, and symptoms.
- Provide ongoing health education about developing information about the pandemic to residents of the Unit. This information should be provided by health educations or clinicians, not TDOC staff.
- Reduce and restrict group activities so that inmates can maintain social distancing without unduly eliminating privileges such as recreation.
- Suspend co-pays, with a wide announcement to inmates of the suspension, to avoid deterring prisoners from seeking medical care. (The current policy is to only "consider" suspending them. TDCJ Policy, p. 3, I.II.)
- Reduce staff presence and have staff, such as parole officers, work from home as much as possible.
- Coordinate with local partners, particularly healthcare providers, to plan for emergency care.
- Develop a written operational plan to address the above issues and to update the operational emergency plan for the Pack Unit.
- For the men who live at Pack, generally older men with severe chronic disease, the conditions in which the live pose an enormous risk of serious and life-threatening disease. The virus will be brought into the facility, if it is not already there. Infection will spread rapidly, because of the physical plant, the human density, and the structure of daily life. TDC, as part of its plan for management of COVID-19 should add a component which encourages release of patients at high risk of dying and who are eligible for parole, or near the end of their sentence, and anyone else that it determines can be safely released into the community. Release must be supported by necessary and appropriate discharge planning.

These steps are both necessary and urgent. The Pack Unit could already be exposed, or could be exposed within days, to COVID-19. If these measures are not implemented *before* a case

of COVID-19 is identified in the Pack Unit, it will likely be too late to prevent a widespread outbreak.

In summary, in my opinion to a reasonable degree of medical certainty, TDCJ's policy and practices at the Pack Unit regarding COVID-19 are egregiously inadequate, and pose significant risks to the Pack Unit inmates of transmissions of the virus and resulting serious health risks. Any competent physician in correctional care would recognize both 1) the serious deficiencies in TDCJ's policies and practices with respect to protecting inmates from the virus, and 2) the serious health risks posed by the virus, particularly to a geriatric population like that at the Pack Unit.

Health in prisons and correctional facilities impacts community health. Protecting the health of individuals who are detained and work in these facilities is vital. TDCJ and the Pack Unit should adjust their policies and procedures immediately to protect them.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Robert Cohen April 1, 2020

Robert L. Cohen, MD Date

EXHIBIT

Robert L. Cohen, MD
130 Barrow Street
New York, NY 10014
BobbyCohen@aol.com

A.B., Princeton University, 1970
M.D., Rush Medical College, 1975

POSTGRADUATE TRAINING

Residency, Medicine, Cook County Hospital, 1978
Chief Residency, Cook County Hospital, 1979
Board Certification, Internal Medicine - 1978

PROFESSIONAL EMPLOYMENT

Clinical Practice in General Internal Medicine
New York City, 1988 – 2016

Medical Director
CAI
New York, NY, 2007 --

Attending Physician
Department of Medicine
Langone Medical Center, NYU 2010 - 2017

Attending Physician
St. Vincent's Hospital and Medical Center
New York, NY 1988-2010

Medical Director
AIDS Center
St. Vincent's Hospital and Medical Center, NYC
January 1989 - October 1990

Vice President for Medical Operations
New York City Health and Hospitals Corporation
1986-1988

Director
Montefiore Medical Center
Rikers Island Health Services
1982 - 1986

Associate Medical Director
Montefiore Medical Center
Rikers Island Health Services
1981 - 1982

Attending Physician
Department of Medicine Cook
County Hospital
1979 - 1981

FACULTY APPOINTMENTS

Clinical Assistant Professor
Department of Social Medicine and Clinical Epidemiology Albert
Einstein College of Medicine
1985 – 2008

Clinical Instructor Department
of Medicine
New York University School of Medicine
2010 – 2017

BOARD MEMBERSHIP

Member
NYC Board of Correction 2009 –

Member
Institutional Review Board
City University of New York
2000 – 2014, 2017 --

Member, National Commission for Correctional Health Care
Representing the American Public Health Association
1994-2011

MEDICAL EXPERT -- PRISON HEALTH

Federal Court Appointed Monitoring of Health Care in Prisons and Jails

Michigan, *Hadix v. Johnson*, 2003 – 2013
Court Appointed monitor for oversight of medical care of in Jackson Prison

Ohio, *Austin v. Wilkinson*, 2002 -- 2005
Member of two-person Medical Monitoring Team to monitor compliance with settlement agreement regarding medical care in Ohio State Penitentiary

Connecticut, *Doe v. Meachum*, 1990 -- present
Medical expert at trial and court appointed monitor of compliance with settlement agreement covering care of all HIV infected prisoners in Connecticut.

New York State, *Milburn v. Coughlin*, 1989 -- 2014
Continuing review of compliance with health care consent agreement

Washington, D.C. 1986 - 2000
Court appointed medical expert involved in monitoring consent agreements regarding medical care at the DC Jail as well as DC prisons at Lorton *(VA)*

Florida, *Costello v. Wainwright*, 1983 through 1988
Review of compliance with settlement agreement in all Florida Prisons State Court Appointed Monitor

Philadelphia, PA, *Jackson v. Hendricks*, 1991 -- 1999
Review of compliance with consent agreement on medical care in Philadelphia jails
State Court Appointed Monitor

US Department of Justice Appointed Medical Expert

Cook County Jail, 1982 (Chicago, IL)

Essex County Youth House (NJ), 1995–99

Hampton Roads Regional Jail, (VA) 2017 -

San Luis Obispo Jail (CA) 2018 -

RECENT PRESENTATIONS

"Health and Justice Sectors Acting Together on Prisons Health: Good National Practices"
WHO Health in Prisons Project
Helsinki, Finland
March 27, 2019

Update on Deaths in Custody – USA
WHO Health in Prisons Program Regional Meeting
Copenhagen, Denmark
November 4, 2016

"Targeted Oversight of Correctional Health Care"
Out of the Shadows: The Promise of Independent Prison Oversight
University of Texas, LBJ School of Public Affairs
November 17-19, 2016

“Medical Care”
2016 Prisoner’s Advocates Conference
UCLA School of Law
Los Angeles, California
September 24, 2016

“Prison Health Care”
National Student Conference Physicians for Human Rights
Columbia University Medical School
November 7, 2015

“Assuring Equitable Health Care in Prison”
Directorate General for Prison Administration
Rabat, Morocco
October 27, 2015

“Medical Consequences of Mass Incarceration: What Do We Do Now?” Grand Rounds, Department of Family Medicine, Mt. Sinai School of Medicine June 24, 2014

“Inhumane and Ineffective: Solitary Confinement in Michigan and Beyond.” University of Michigan Journal of Race and Law, Ann Arbor, Michigan, February 2, 2013

“The Impact of Solitary Confinement on Prisoner Health”, WHO Health in Prison Project, Copenhagen, Denmark, October 12, 2012

Dialogues on Detention: “Applying Lessons from Criminal Justice Reform to the Immigration Detention System”, Human Rights First, University of Texas, Austin, TX, September 12, 2012

“Health Care for Detained Immigrants US and Europe”, Health in Prison and Throughcare: Provision and continuity of care for those in the criminal Justice System, Albano Terme - Italy, October 7, 2011

Prisoners’ Human Rights and Day to Day Correctional Health, 4th Academic and Health Policy Conference on Correctional Health, March 10, 2011, , Boston, MA

Mass Incarceration and Correctional Medicine: The Dialectics of Caring for Prisoners, Albert Einstein College of Medicine Social Medicine Lecture Series, February 16, 2011

Strategies for assuring the civil rights of detained persons: U.S. andInternational Perspectives; American Public Health Association, Denver, November 8, 2010

Why the United States Should Adopt the Optional Protocol to the Convention Against Torture; International Conference on Prison Health Care/WHO Health in Prison Project, Madrid, Spain, November, 2009

What is the Physician's Responsibility In an era of Mass Incarceration, Offender Health Research Network, Manchester, England, May 2009

Health Care for Immigration Detainees: What Should Be The Standard? Panel of the ABA Council on Immigration, American Bar Association February 13, 2009, Boston, MA

Medical Consequences of Mass Incarceration, 2ème Université d'Eté de Médecine en Milieu Pénitentiaire, Association of French Correctional Medicine Physicians, Perpignan France, May 21, 2008

American Exceptionalism: The Health Consequences of Mass Incarceration 2nd Annual Conference of the International Journal of Prison Health Care, Varna, Bulgaria, October 21, 2007

HIV/AIDS in Custody: Advocacy for Prevention, Care and Treatment In Correctional Settings and on Reentry, New York City Bar Association Wednesday, January 10, 2007

PUBLICATIONS

Cohen-R, deLone-M, Dubler-N, "Health Care Issues of Prisoners" in *Encyclopedia of Bioethics,* 4th *Edition.* Edited by Bruce Jennings. Farmington Hills, MI: Macmillan Reference USA, 2014.
Cohen-R, deLone-M, Dubler-N, "Health Care Issues of Prisoners" in *Encyclopedia of Bioethics,* 4th *Edition.* Edited by Bruce Jennings. Farmington Hills, MI: Macmillan Reference USA, 2014.

Allen-S, Wakeman-S, Cohen-R, Rich-J, Doctors in US Prisons in the Era of Mass Incarceration, International Journal of Prisoner Health, 6(3):99–106, 2010

Cohen-R., "Health and Public Health Advocacy for Prisoners" in Puisis-M, et.al, *Clinical Practice in Correctional Medicine*, Elsevier, 2006.

deLone-M, Cohen-R, et.al, Standards for Health Services in Correctional Institutions, 3rd edition, American Public Heatlh Association 2003

Cohen-R., The Medical Intake Examination, in Puisis-M, Cohen-R, et al, *Textbook of Correctional Medicine, Mosby, St. Louis, 1998.*

Frickhofen-N, Abkowitz-JL, Safford-M, Berry-M, Antunez-De-Mayolo-J., Astrow-A, Cohen-RL, King-LN,et.al., Persistent B19 Parvovirus Infection in Patients Infected with HIV-1: A treatable cause of anemia in AIDS., Annals of Internal Medicine, Vol. 113, No. 12, 926-933, Dec. 15, 1990.

Laudicina, S., Goldfield, N., Cohen, R., Financing for AIDS Care, The Journal of Ambulatory Care Management,Vol. II, No. 2, 55-66, May 1988.

Selwyn, Peter A., Feiner, Cheryl, Cox, Charles P., Lipshutz, Carl & Cohen, Robert L., Knowledge about AIDS and High-Risk Behavior Among Intravenous Drug Users in New York City, AIDS, Vol. 1, No. 4, 247-254, 1987.

Cohen, Robert L., Case Studies: A Prisoner in Need of a Bone Marrow Transplant, Hastings Center Report, Vol. 17, No. 5, 26-27, 1987.

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Cohen, Robert L., Oliver Dennis, Pollard-Sigwanz, Cathy, Leukopenia and Anergy as Predictors of AIDS, JAMA, Vol. 255, No. 10, 1289, 1986.

Whitman S, King L, and Cohen R, Epilepsy and Violence: A Scientific and Social Analysis. In: Whitman S, and Hermann B, ed. The Social Dimensions of Psycho pathology. Oxford University Press, 1986.

Cohen, R., AIDS: The Impending Quarantine, Bulletin of the Health Policy Advisory Committee, Vol. 17, No. 3, 9-14, 1985.

Whitman S, Coleman T, Patron C, Desi B, Cohen R, King L, Epilepsy in Prison: Elevated Prevalence and No Relationship to Violence. Neurology, Vol. 34, No. 6, June, 1984.

Cohen, Robert L., Imprisoned Plasma Donors: A Medical-Ethical Case and Comment, Journal of Prison & Jail Health, Vol. 2, No. 1, 41-46, 1982

Exhibit 12

THE GRIMES COUNTY OFFICE OF EMERGENCY MANAGEMENT

FOR IMMEDIATE RELEASE: 16 April 2020, 2:00 pm

Eighth and Ninth Confirmed Cases of COVID-19 in Grimes County

Grimes County has been notified by the Department of State Health Services of two more confirmed cases of COVID-19. The first case is a 62-year-old male inmate from the Pack Unit who died with his probable cause of death being pneumonia complicated by COVID-19. The second inmate in his 70's also tested positive for the virus and has been isolated from the inmate population. Eleven other inmates determined to have possibly come into contact with either confirmed case have been tested for the virus and were negative.

Exhibit 13

Data updated on April 30, 2020, at 5:00 p.m.

Please note:

TDCJ is conducting some targeted testing of asymptomatic offenders who may be more vulnerable to the COVID-19 virus. Those offenders may include people over age 65, with pre-existing health conditions or other considerations that may increase their risk.

Surveillance testing of employees has also been conducted on a voluntary basis in some locations.

Pending, positive and negative offender testing numbers include medically ordered testing and are listed by current location of tested offender not the initial housing location.

Offender Population

Medical Restriction: Used to separate and restrict the movement of **well** persons who may have been exposed to a communicable disease to see if they become ill. These people may have been exposed to a disease and do not know it, or they may have the disease but do not show symptoms. Medical restriction can help limit the spread of disease.

Medical Isolation: For people who are **sick and contagious**. Isolation is used to separate ill persons who have a communicable disease from those who are healthy. Isolation restricts the movement of ill persons to help stop the spread of disease.

PENDING TESTS	
171	
Allred	0
Baten	0
Bell	0
Beto	22

NEGATIVE TESTS	
478	
Allred	1
Baten	1
Bell	0
Beto	41

POSITIVE TESTS	
881	
Allred	0
Baten	5
Bell	0
Beto	126

MEDICAL RESTRICTION	
19,800	
Allred	0
Baten	48
Bell	0
Beto	2872

Boyd 0	Boyd 2	Boyd 1	Boyd 0
Bradshaw 0	Bradshaw 2	Bradshaw 0	Bradshaw 0
Bridgeport 0	Bridgeport 1	Bridgeport 0	Bridgeport 0
Briscoe 0	Briscoe 0	Briscoe 0	Briscoe 0
Byrd 0	Byrd 16	Byrd 6	Byrd 129
Clemens 1	Clemens 2	Clemens 1	Clemens 166
Clements 13	Clements 2	Clements 30	Clements 1678
Coffield 0	Coffield 6	Coffield 0	Coffield 0
Cole 1	Cole 0	Cole 0	Cole 0
Connally 0	Connally 0	Connally 0	Connally 0
Cotulla 0	Cotulla 2	Cotulla 0	Cotulla 0
Crain 0	Crain 7	Crain 0	Crain 0
Dalhart 0	Dalhart 0	Dalhart 0	Dalhart 0
Daniel 0	Daniel 0	Daniel 0	Daniel 0
Darrington 4	Darrington 4	Darrington 4	Darrington 643
Diboll 0	Diboll 0	Diboll 0	Diboll 0
Dominguez 1	Dominguez 1	Dominguez 0	Dominguez 49
Duncan 0	Duncan 2	Duncan 0	Duncan 0
Eastham 6	Eastham 6	Eastham 15	Eastham 1064
ETTF 0	ETTF 3	ETTF 0	ETTF 0
Ellis 9	Ellis 14	Ellis 50	Ellis 843
Estelle 7	Estelle 51	Estelle 41	Estelle 825
Estes 1	Estes 0	Estes 0	Estes 0
Ferguson 0	Ferguson 0	Ferguson 0	Ferguson 0
Formby 0	Formby 0	Formby 0	Formby 0
Fort Stockton 1	Fort Stockton 0	Fort Stockton 1	Fort Stockton 25
Garza East 0	Garza East 0	Garza East 0	Garza East 0
Garza West 3	Garza West 4	Garza West 1	Garza West 0
Gist 0	Gist 1	Gist 0	Gist 0
Glossbrenner 0	Glossbrenner 0	Glossbrenner 0	Glossbrenner 0
Goodman 0	Goodman 1	Goodman 0	Goodman 0
Goree 0	Goree 3	Goree 7	Goree 288
Gurney 4	Gurney 7	Gurney 6	Gurney 147
Halbert 0	Halbert 1	Halbert 0	Halbert 1
Hamilton 0	Hamilton 3	Hamilton 0	Hamilton 0
Havins 0	Havins 1	Havins 0	Havins 0
Henley 0	Henley 0	Henley 0	Henley 0
Hightower 0	Hightower 0	Hightower 0	Hightower 0
Hilltop 0	Hilltop 0	Hilltop 0	Hilltop 0
Hobby 0	Hobby 0	Hobby 0	Hobby 0
Hodge 1	Hodge 1	Hodge 0	Hodge 77
Holliday 2	Holliday 2	Holliday 0	Holliday 52
Hospital Galveston 5	Hospital Galveston 17	Hospital Galveston 52	Hospital Galveston 0
Hughes 2	Hughes 8	Hughes 2	Hughes 89
Huntsville 6	Huntsville 35	Huntsville 27	Huntsville 277
Hutchins 3	Hutchins 6	Hutchins 22	Hutchins 543
Jester 1 1	Jester 1 0	Jester 1 9	Jester 1 0
Jester 3 0	Jester 3 5	Jester 3 0	Jester 3 0
Jester 4 0	Jester 4 0	Jester 4 0	Jester 4 1
Johnston 0	Johnston 2	Johnston 0	Johnston 0

Jordan	1	0	5	895
Kegans	0	0	0	0
Kyle	0	0	0	0
LeBlanc	0	5	26	469
Lewis	0	0	0	2
Lindsay	0	0	0	0
Lockhart	0	1	0	0
Lopez	2	0	4	135
Luther	1	3	0	103
Lychner	1	0	0	0
Lynaugh	0	0	0	3
Marlin	0	1	0	0
McConnell	1	5	0	0
Michael	9	12	33	582
Middleton	8	3	33	671
Montford	2	3	8	4
Moore B.	0	0	0	0
Moore C.	0	1	0	0
Mountain View	1	1	0	2
Murray	6	18	70	476
Neal	0	0	0	0
Ney	0	3	0	0
Pack	1	14	0	134
Plane	1	5	0	0
Polunsky	0	2	0	0
Powledge	0	2	0	0
Ramsey	0	3	2	18
Roach	0	0	0	0
Robertson	7	5	25	292
Rudd	0	1	0	0
Sanchez	7	3	18	175
Sansaba	0	0	0	0
Sayle	0	0	0	0
Scott	4	9	48	754
Segovia	0	1	0	0
Skyview	1	3	0	21
Smith	2	3	4	490
Stevenson	0	0	0	0
Stiles	0	10	2	13
Stringfellow	0	4	45	622
Telford	6	8	25	693
Terrell	6	10	28	829
Torres	0	0	0	0
Travis	0	0	0	0
Tulia	0	0	0	0
Vance	0	0	0	0
Wallace	0	0	0	0
Wheeler	0	1	0	0
Willacy	0	0	0	0
Woodman	1	9	12	211

Wynne	1
Young	1
Local Hospital	8
West Texas RMF	0
No Longer in Custody	0
Bambi	0

Wynne	16
Young	14
Local Hospital	24
West Texas RMF	0
No Longer in Custody	14
Bambi	0

Wynne	49
Young	0
Local Hospital	38
West Texas RMF	0
No Longer in Custody	0
Bambi	0

Wynne	2389
Young	0
Local Hospital	0
West Texas RMF	0
No Longer in Custody	0
Bambi	0

MEDICAL ISOLATION

1069

Allred	0
Baten	5
Bell	0
Beto	148
Boyd	1
Bradshaw	0
Bridgeport	0
Briscoe	0
Byrd	6
Clemens	2
Clements	43
Coffield	0
Cole	1
Connally	0
Cotulla	0
Crain	0
Dalhart	0
Daniel	0
Darrington	8
Diboll	0
Dominguez	1
Duncan	0
Eastham	21
ETTF	0
Ellis	59
Estelle	48
Estes	1
Ferguson	0
Formby	0
Fort Stockton	2
Garza East	0
Garza West	4
Gist	0
Glossbrenner	0
Goodman	0
Goree	7

Gurney	10
Halbert	0
Hamilton	0
Havins	0
Henley	0
Hightower	0
Hilltop	0
Hobby	0
Hodge	1
Holliday	2
Hospital Galveston	57
Hughes	4
Huntsville	53
Hutchins	25
Jester 1	10
Jester 3	0
Jester 4	0
Johnston	0
Jordan	6
Kegans	0
Kyle	0
LeBlanc	26
Lewis	0
Lindsay	0
Lockhart	0
Lopez	6
Luther	1
Lychner	1
Lynaugh	0
Marlin	0
McConnell	1
Michael	41
Middleton	41
Montford	10
Moore B.	0
Moore C.	0
Mountain View	1
Murray	76
Neal	0
Ney	0
Pack	1
Plane	1
Polunsky	0
Powledge	0
Ramsey	2
Roach	0
Robertson	32
Rudd	0
Sanchez	25
Sansaba	0

Sayle	0
Scott	52
Segovia	0
Skyview	1
Smith	6
Stevenson	0
Stiles	2
Stringfellow	45
Telford	31
Terrell	34
Torres	0
Travis	0
Tulia	0
Vance	0
Wallace	0
Wheeler	0
Willacy	0
Woodman	13
Wynne	50
Young	1
Local Hospital	44
West Texas RMF	0
No Longer in Custody	0
Bambi	0

OFFENDER:

COVID-19 Recovered: 207
COVID-19 Presumed Death: 16
Deaths Pending Autopsy: 11
Non-COVID-19 Deaths: 3

Total Offender Positive: 1118

Pending Test: COVID-19 test that has been administered at an outside medical facility or in a unit infirmary and it still pending results. Offender in medical isolation.

Negative Test: CONFIRMED negative COVID-19 test. Offenders returned to general population.

Positive Test: CONFIRMED positive COVID-19 test. Offender in medical isolation.

Offender Recovered: Offender is at least 14 days asymptomatic since positive test.

Targeted Asymptomatic Offender Testing

Unit	Tested	Negative	Positive
Murray	72	54	18
Young	128	128	0

As of April 8, 2020, any facility with a confirmed positive offender or employee COVID-19 test will be placed on a precautionary lockdown for at least 14 days from the date of the positive test. This additional proactive step is in addition to existing medical restriction and medical isolation measures already in place.

Facilities currently on precautionary lockdown:

Baten, Beto, Byrd, Clemens, Clements, Eastham, Ellis, Estelle, Fort Stockton, Garza West, Goree, Gurney, Hospital Galveston, Hughes, Huntsville, Hutchins, Jester 1, Jester 3, Jester 4, Jordan, LeBlanc, Lopez, Lynaugh, Michael, Middleton, Murray, Pack, Ramsey, Robertson, Sanchez, Scott, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Woodman, Wynne, Young

Impacted offenders: 42,758

Employees and Contract Staff

POSITIVE TESTS	NEGATIVE TESTS	PENDING TESTS
394	1093	327

Work Locations: Baten, Bell, Beto, Clemens, Clements, Crain, Darrington, Eastham, Ellis, Estelle, ETTF, Ferguson, Fort Stockton, Gist, Goree, Henley, Holliday, Hospital Galveston, Hughes, Hutchins, Jester 1, Jester 3, Jester 4, Jordan, LeBlanc, Lopez, Michael, Middleton, Murray, Pack, Polunsky, Ramsey, Robertson, Sanchez, Scott, Segovia, Skyview, Smith, Stiles, Stringfellow, Telford, Terrell, Tulia, Woodman, Wynne, Young

Division/Employer: Business & Finance, Correctional Institutions, Facilities, Management & Training Corporation, Manufacturing, Agribusiness & Logistics, Parole, Texas Board of Pardons and Paroles, Texas Tech, University of Texas Medical Branch, Windham

EMPLOYEE POSITIVE TESTS BY UNIT

Baten	9	Estelle	14	Jester 1	5	Polunsky	3

Bell	1
Beto	19
Clemens	25
Clements	28
Crain	3
Darrington	2
ETTF	2
Eastham	5
Ellis	7

Ferguson	1
Fort Stockton	3
Gist	3
Goree	2
Henley	1
Holliday	2
Hosp Galv	19
Hughes	4
Hutchins	17

Jester 3	1
Jester 4	1
Jordan	13
LeBlanc	4
Lopez	3
Michael	12
Middleton	2
Murray	18
Pack	3

Ramsey	2
Robertson	6
Sanchez	5
Scott	6
Segovia	2
Skyview	4
Smith	17

Stiles	3
Stringfellow	11
Telford	41
Terrell	6
Tulia	1
Woodman	9
Wynne	50
Young	1

Employee Surveillance Testing

Unit	Tested	Negative	Positive
Beto	300	282	18
Murray	99	92	7

Helpful Links:

Texas Department of State Health Services (DSHS) - News Updates COVID-19
Texas Department of State Health Services (DSHS) - Texas Case Counts Map

Centers for Disease Control and Prevention (CDC)- Coronavirus (COVID-19)
CDC Coronavirus Disease 2019 (COVID-19) - World Map
Facebook
Instagram
Twitter
YouTube

Texas Department of Criminal Justice | PO Box 99 | Huntsville, Texas 77342-0099 | (936) 295-6371

Exhibit 14

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

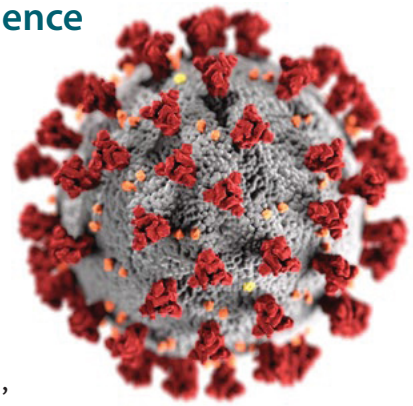
This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: https://www.cdc.gov/coronavirus/2019-ncov/index.html.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

Who is the intended audience for this guidance?



This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- √ Operational and communications preparations for COVID-19
- √ Enhanced cleaning/disinfecting and hygiene practices
- √ Social distancing strategies to increase space between individuals in the facility
- √ How to limit transmission from visitors
- √ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- √ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- √ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- √ Healthcare evaluation for suspected cases, including testing for COVID-19
- √ Clinical care for confirmed and suspected cases
- √ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to 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. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define "local community" in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, "incarcerated/detained persons" refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e, detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance below). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term "medical isolation" to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this CDC publication.

Staff—In this document, "staff" refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, "staff" does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—Symptoms of COVID-19 include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the CDC website for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness**. This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

√ **Develop information-sharing systems with partners.**

- o Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- o Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- **For all:** symptoms of COVID-19 and hand hygiene instructions
- **For incarcerated/detained persons:** report symptoms to staff
- **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- Review policies to ensure that they actively encourage staff to stay home when sick.
- If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- Determine which officials will have the authority to send symptomatic staff home.

- √ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - o Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - o Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- √ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - o Allow staff to work from home when possible, within the scope of their duties.
  - o Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - o Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - o Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- √ **Consider offering revised duties to staff who are at** higher risk of severe illness with COVID-19**.** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
  - o Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- √ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- √ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**
- √ **Review** CDC's guidance for businesses and employers to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

- √ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - o Standard medical supplies for daily clinic needs
  - o Tissues
  - o Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - o Hand drying supplies
  - o Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - o Cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See PPE section and Table 1 for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated

√ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**

- See CDC guidance optimizing PPE supplies.

√ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, CDC recommends cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.

√ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See Hygiene section below for additional detail regarding recommended frequency and protocol for hand washing.)

- Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.

√ **If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**

√ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See Table 1 for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

√ **Stay in communication with partners about your facility's current situation.**

- State, local, territorial, and/or tribal health departments
- Other correctional facilities

√ **Communicate with the public about any changes to facility operations, including visitation programs.**

- √ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - o Strongly consider postponing non-urgent outside medical visits.
  - o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- √ **Implement lawful alternatives to in-person court appearances where permissible.**
- √ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- √ **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

- √ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- √ **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.
  - o Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - o Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - o Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - o Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- √ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- √ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

- √ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**
- √ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis.** Sample signage and other communications materials **are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
    - o **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
    - o **Practice good** hand hygiene**:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
    - o **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
    - o **Avoid sharing eating utensils, dishes, and cups.**
    - o **Avoid non-essential physical contact.**
- √ **Provide incarcerated/detained persons and staff no-cost access to:**
    - o **Soap—**Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
    - o **Running water, and hand drying machines or disposable paper towels for hand washing**
    - o **Tissues** and no-touch trash receptacles for disposal
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.
- √ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

- √ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).
    - o **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
        - Require the individual to wear a face mask.
        - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
        - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
        - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a close contact of a known COVID-19 case (but has no COVID-19 symptoms):**
  - Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

√ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
  - Arrange bunks so that individuals sleep head to foot to increase the distance between them
  - Rearrange scheduled movements to minimize mixing of individuals from different housing areas
- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- √ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- √ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- √ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- √ **Provide** up-to-date information about COVID-19 **to incarcerated/detained persons on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Reminders to report COVID-19 symptoms to staff at the first sign of illness
- √ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

- √ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - o Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Employers' sick leave policy
  - o **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
  - o **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
  - o **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - o Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

- √ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- √ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

- √ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o Staff performing temperature checks should wear recommended PPE.
  - o Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- √ **Provide visitors and volunteers with information to prepare them for screening.**
  - o Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
  - o If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
  - o Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- √ **Promote non-contact visits:**
  - o Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
  - o Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
  - o Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- √ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
  - o If moving to virtual visitation, clean electronic surfaces regularly. (See Cleaning guidance below for instructions on cleaning electronic surfaces.)
  - o Inform potential visitors of changes to, or suspension of, visitation programs.
  - o Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
  - o If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

√ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

√ **Implement alternate work arrangements deemed feasible in the** Operational Preparedness **section.**

√ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**

- o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.

√ **When possible, arrange lawful alternatives to in-person court appearances.**

√ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**

- o Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
  - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
  - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
  - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

- √ **Coordinate with state, local, tribal, and/or territorial health departments.**
  - o When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
  - o When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
  - o Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

Hygiene

- √ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)
- √ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

Cleaning and Disinfecting Practices

- √ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)
- √ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

- √ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**
- √ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
  - o Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
  - o Serve meals to cases inside the medical isolation space.
  - o Exclude the individual from all group activities.
  - o Assign the isolated individual a dedicated bathroom when possible.
- √ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.
- √ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
  (NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

√ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:

- o **Cover** their mouth and nose with a tissue when they cough or sneeze
- o **Dispose** of used tissues immediately in the lined trash receptacle
- o **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.

√ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- o At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- o The individual has had no subsequent illness

√ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- o If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.

- o Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- o Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).

- √ **Hard (non-porous) surface cleaning and disinfection**
  - o If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
  - o For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
    - Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
    - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
      - 5 tablespoons (1/3rd cup) bleach per gallon of water or
      - 4 teaspoons bleach per quart of water
- √ **Soft (porous) surface cleaning and disinfection**
  - o For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
    - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
    - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.
- √ **Electronics cleaning and disinfection**
  - o For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
    - Follow the manufacturer's instructions for all cleaning and disinfection products.
    - Consider use of wipeable covers for electronics.
    - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

- √ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)
- √ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- √ Laundry from a COVID-19 cases **can be washed with other individuals' laundry.**
  - o Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
  - o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

√ **Consult** cleaning recommendations above **to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

√ **Incarcerated/detained persons who are close contacts of a** confirmed or suspected COVID-19 case **(whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**

- If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.

√ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**

- Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
- Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

√ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**

- Provide medical evaluation and care inside or near the quarantine space when possible.
- Serve meals inside the quarantine space.
- Exclude the quarantined individual from all group activities.
- Assign the quarantined individual a dedicated bathroom when possible.

√ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually.** Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.

- If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
- If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
- Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

√ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

√ **In order of preference, multiple quarantined individuals should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

√ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

√ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

- √ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
  - o If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
  - o See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- √ **If an individual who is part of a quarantined cohort becomes symptomatic:**
  - o **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
  - o **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
  - o **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- √ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- √ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- √ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- √ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
  - o Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
  - o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

- √ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- √ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See Medical Isolation section above.**

- √ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.
- √ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
  - o If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
  - o If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- √ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
  - o Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- √ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.
- √ **Consider additional options to intensify** social distancing within the facility.

Management Strategies for Staff

- √ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- √ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
  - o See above for definition of a close contact.
  - o Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

- √ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).

√ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).

√ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

√ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**

- If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
- The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.

√ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**

√ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.

√ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**

√ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**

√ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

√ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
- For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.

√ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**

√ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (**see Table 1). **Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**

√ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**

√ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection—**goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
  - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
  - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

√ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- **Guidance in the event of a shortage of N95 respirators**
  - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
- **Guidance in the event of a shortage of face masks**
- **Guidance in the event of a shortage of eye protection**
- **Guidance in the event of a shortage of gowns/coveralls**

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/ Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

- √ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**
  - o *Today or in the past 24 hours, have you had any of the following symptoms?*
    - ▪ *Fever, felt feverish, or had chills?*
    - ▪ *Cough?*
    - ▪ *Difficulty breathing?*
  - o *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*
- √ **The following is a protocol to safely check an individual's temperature:**
  - o Perform hand hygiene
  - o Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
  - o Check individual's temperature
  - o **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
  - o Remove and discard PPE
  - o Perform hand hygiene

Exhibit 15

Coronavirus Disease 2019 (COVID-19)

POLICY:

To outline management and control measures for facilities to follow in response to the spread of COVID-19.

OVERVIEW:

What is Coronavirus disease 2019 (COVID-19)?
COVID-19 is a respiratory illness that can spread from person to person. The virus that causes COVID-19 is a novel coronavirus that was first identified during an investigation into an outbreak in Wuhan, China.

What are the symptoms of COVID-19?
Symptoms commonly associated with COVID-19 include fever, cough, and shortness of breath. More severe symptoms suggesting the need for a higher level of care may include difficulty breathing, bluish lips or face, persistent pain or pressure in the chest, and new confusion or inability to arouse. People 65 years or older, and/or people with medical issues, like heart disease, diabetes, high blood pressure, cancer, or a weakened immune system, are at a higher risk for getting very sick from COVID-19. Complications include pneumonia, acute respiratory distress syndrome (i.e. ARDS) and even death.

How is COVID-19 transmitted?
The virus is known to spread person to person when there is close contact (approximately 6 feet) through respiratory droplets that are produced when an infected person coughs or sneezes. It is also believed that a person can become infected with COVID-19 by touching a contaminated surface or object that has the virus on it and then touching their own nose, eyes or mouth.

What is the difference between confirmed COVID-19 case vs. suspected COVID-19 case?
A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

DEFINITIONS:

Cloth Face Covering – A cloth face covering is a covering that is usually made of tightly woven cotton material that is designed to fit on the face to cover the nose and mouth. A cloth face covering is not considered personal protective equipment. Use of a face covering is one strategy that might help slow the spread of COVID-19 if worn by asymptomatic people who have the virus and do not know it in settings where social distancing measures are difficult to maintain or in areas of significant community-based transmission. They are worn to protect others, not the wearer.

Close Contact of COVID-19 Case – An individual is considered a close contact if they (1) have been within 6 feet of a COVID-19 case for a prolonged period of time, or (2) have had direct contact with respiratory droplets from a COVID-19 case such as a cough or sneeze.

Cohorting – Cohorting refers to the practice of housing multiple COVID-19 cases together as a group under medical isolation or housing close contacts of a particular case together as a group under medical restriction. Cohorting is used when there is inadequate space to place individuals in single cells for medical restriction or medical isolation.

Medical Isolation – Isolation is for persons who are **sick and contagious**. Isolation is used to separate ill persons who have a communicable disease from those who are healthy. Isolation restricts the movement of ill persons to help stop the spread of disease.

Medical Restriction – Medical restriction is used to separate and restrict the movement of **well** persons who may have been exposed to a communicable disease to see if they become ill. These people may have been exposed to a disease and do not know it, or they may have the disease but do not show symptoms. Medical restriction can help limit the spread of disease.

N95 respirator – An N95 respirator is a respiratory protective device designed to achieve a very close facial fit and very efficient filtration of airborne particles. The 'N95' designation means that when subjected to careful testing, the respirator blocks at least 95 percent of very small (0.3 micron) test particles.

Routine Intake Quarantine – Routine intake quarantine is used to separate and restrict the movement of well persons who have no known exposure to a communicable disease to see if they become ill. These people may have been exposed to a disease and do not know it, or they may have the disease but do not show symptoms. Routine intake quarantine can help limit the spread of disease.

Social Distancing – Social distancing is the practice of increasing the space between individuals (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic) and decreasing the frequency of contact to reduce the risk of spreading a disease. Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact and staying 6 feet apart), a group level (e.g., canceling group activities), and an operational level (e.g., rearranging chairs in clinics to increase distance between them).

Surgical Facemask – A surgical facemask is a disposable device that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. It is meant to help block large-particle droplets, splashes, sprays, or splatter that may contain germs (viruses and bacteria), keeping it from reaching your mouth and nose. Surgical facemasks may also help reduce exposure of your saliva and respiratory secretions to others. Surgical facemasks may also be referred to as isolation,

dental or medical procedure masks.

PROCEDURES:

I. INFECTION CONTROL

A. In preparation, staff should ensure there is sufficient stock on hand of hygiene supplies, cleaning supplies, PPE, medication, and medical supplies. This includes, but is not limited to, liquid soap, hand sanitizer, viral test kits and nasal swabs, surgical facemasks, N95 respirators, eye protection (goggles or face shields), gloves, and gowns.

B. During the COVID-19 outbreak, **all** units should:
1. Medical staff should educate offenders and staff on how COVID-19 is transmitted, signs and symptoms of COVID-19, treatment, and prevention of transmission (Attachment A).
2. Remind staff and offenders on the methods used to prevent the spread of any respiratory virus.
   a. Encourage handwashing with soap and water for at least 20 seconds (Attachment B). If soap and water is unavailable, hand sanitizer (at least 60% alcohol) may be used by medical and security staff to cleanse hands.
   b. Encourage cough etiquette. Cover coughs or sneezes with a tissue, then throw the tissue in the trash. Otherwise, cough inside of an elbow (Attachment C).
   c. Avoid touching eyes, nose, and mouth with unwashed hands.
   d. Avoid close contact (< 6 feet) with people who are sick or suspected of being sick.
   e. Stop handshakes, hugs, and fist bumps.
3. Practice social distancing and avoid gatherings and meetings.
4. Meet by teleconference or videoconference when feasible.
5. Disinfect common areas and surfaces that are often touched with a 10% bleach solution. The bleach solution should be sprayed or wiped on and allowed to air dry for at least 10 minutes. Cleaning recommendations can be found in Infection Control Policy B-14.26 (Attachment D, Housekeeping/Cleaning). The formula for the 10% bleach solution is:
   a. 8 oz. of powdered bleach to 1 gallon of water
   b. 12.8 oz. of liquid bleach to 1 gallon of water
6. Cancel all group healthcare activities (e.g., group therapy), and coordinate with unit warden and recommend temporarily canceling other group activities such as church and school.
7. Post visual alerts (signs and posters) at entrances, in the medical department, and other strategic places providing instruction on hand

hygiene, cough etiquette, and symptoms of COVID-19.

8. Post a sign at the entrance, so that high risk visitors can elect not to enter the unit if COVID-19 occurs (Attachment D).

C. Consider the use of cloth face coverings in settings where social distancing measures are difficult to maintain or in areas with significant transmission.
   1. Face coverings should be worn at all times unless it restricts breathing or interferes with activities of daily living.
   2. Face coverings are not a replacement for social distancing, cleaning of frequently touched items, good hand hygiene, or proper use of PPE (e.g., N95 respirator or surgical facemask) when indicated or as recommended in policy.
   3. Hands should be thoroughly washed before and after putting on a face covering.
   4. Face coverings should fit snugly but comfortably against the side of the face and completely cover the nose and mouth.
   5. Face covering should be removed by the elastics or straps from behind the ears. The eyes, nose and mouth should not be touched when removing a face covering.
   6. Face coverings should be laundered when visibly soiled or at least daily. Machine wash and dry is preferred.

D. Evaluate the need to expand the number of medications allowed to be distributed keep on person.

E. Consider suspending co-pays for medical evaluations so offenders will not be hesitant to report symptoms of COVID-19 or seek medical care due to co-pay requirements. If suspended, inform offenders.

F. If the facility has the capacity & resources, consider implementing routine intake quarantine for all new intakes for 14 days before they enter the facility's general population as a general rule not because they were exposed to COVID-19. Offenders that are close contacts of suspected or confirmed COVID-19 cases should be placed in medical restriction.
   1. Do not cohort individuals in medical restriction with individuals undergoing routine intake quarantine.
   2. The 14-day quarantine period begins on the day the last offender is added to the quarantine group.
   3. Asymptomatic individuals under routine intake quarantine, with no known exposure to a COVID-19 case, do not need to wear surgical facemasks.
   4. Staff supervising asymptomatic persons under routine intake quarantine, with no known exposure to a COVID-19 case, do not need to wear PPE.

G. Evaluate the need to minimize offender movement:
   1. Offenders stay in housing areas.
   2. Offenders may use dayrooms in housing areas.
   3. Offenders may go to the dining hall, work, commissary, recreation, etc., if they do not mingle with offenders from other housing areas during the process. They must be escorted when leaving the housing area.
   4. Contact visitation is suspended.
   5. Minimize transfer of offenders between units and intra-unit transfers.
   6. Advise unit food captains to eliminate self-serve foods in chow halls.

H. Influenza vaccination: During influenza season, vaccination against influenza is an important measure to prevent an illness that presents similarly to COVID-19. If there is influenza vaccine available; offer it to unvaccinated staff and offenders.

I. When possible, limit entrance to essential staff only. If possible, staff should be assigned to a single facility, with limited assignments to other facilities only when necessary to provide essential safety, security and services.

J. Incorporate questions about new onset of COVID-19 symptoms into assessments of all patients seen by medical staff.

K. Offenders complaining of symptoms consistent with COVID-19 should be triaged as soon as possible. (Attachment E)
   1. Ensure surgical facemasks are available at triage for patients presenting with COVID-19 symptoms.
   2. If possible, symptomatic patients should be kept > 6 feet apart from asymptomatic patients.

L. Offenders with suspected or confirmed COVID-19 as determined by medical should be placed in medical isolation.

M. Thoroughly clean and disinfect all areas where suspected or confirmed COVID-19 cases spent time. Staff and offenders performing cleaning should wear gloves and a gown.

N. Medical isolation
   1. All staff working in medically isolated areas and offenders who are placed in medical isolation, will be educated about early recognition of warning signs and rapid triage of patients with worsening symptoms.
   2. Isolation is for offenders with suspected or confirmed COVID-19 and are considered infectious.
   3. Isolated offenders must be under droplet and contact isolation

precautions.

4. Offenders should be single-celled (isolated) or may be cohorted (i.e., co- housed) with other offenders with COVID-19 if they cannot be single celled. If possible, suspected and confirmed COVID-19 cases should be kept separate.
5. If cohorted, each offender's isolation period is independent, so an offender may be released from the isolation area even if other offenders in the area are still under isolation.
6. Offenders should be isolated for 7 days after symptom onset **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath).
7. Offenders in medical isolation should not be transferred from the facility during the isolation period, unless released from custody or a transfer is necessary for health care (e.g., medical or behavioral health), infection control, lack of quarantine space, or extenuating security concerns.
8. Use of PPE
   a. Offenders under isolation must wear a surgical facemask if they are required to leave the isolation area.
   b. Staff (correctional and medical) entering an isolation housing area must wear a surgical facemask and gloves. Gowns and/or face protection should also be worn if they anticipate direct or very close contact with ill offenders. Personal protective equipment must be removed when leaving the area and hands washed after removal.
9. Isolated offenders must be observed by medical personnel as often as clinically indicated to detect worsening illness or complications, but in any case, must be observed at least twice per day. Monitoring consists of a temperature check and verbal questioning of symptoms (e.g., cough and shortness of breath).
10. Offenders in isolation must be fed with disposable trays and utensils. No items will be returned to the kitchen for cleaning or re-use.
11. Laundry items from isolation areas must be handled as contaminated laundry.
12. Offenders should **NOT** be transported on a chain bus or MPV except for medical emergencies.

O. All newly arriving offenders including extraditions and those returning from bench warrant or reprieve into TDCJ, including private facilities or intermediate sanction facilities, must be screened by medical staff for symptoms consistent with COVID-19 infection (Attachment F).

1. Offenders who are medically cleared upon provider evaluation will be

released to continue the intake process.

2. Offenders who have been exposed to COVID-19 but who are not yet ill (i.e., close contacts), will be placed under medical restriction for a minimum of 14 days.
3. Offenders with positive screening findings will be referred to a provider for further evaluation.
4. Offenders with confirmed or suspected COVID-19 shall immediately have a surgical facemask placed. The offender should be instructed to wash his or her hands. The offender will be isolated under droplet and contact isolation precautions for 7 days after symptom onset **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath).
5. Medical staff will notify the TDCJ intake security supervisor of all offenders placed under medical restriction or isolation, who will then notify the facility Warden and Classification Department.
6. TDCJ leadership, in coordination with the medical department, will identify an appropriate housing area to assign/cohort all offenders placed on medical restriction and/or isolation.

P. Assess risk level of exposure during contact investigations to guide management (Table 1). All exposures apply to the 14 days prior to assessment.

Table 1

Risk Level	Exposure	Management if Asymptomatic Patients	Management of Symptomatic Patients
High Risk	Close Contact that has been within 6 feet of a case for a prolonged period of time, or (2) has had direct contact with respiratory droplets E.g., living with someone, intimate partner, traveling on same bus, or working in healthcare setting (e.g., clinic or infirmary)	• Place in medical restriction for 14 days from the date of exposure • Monitor for development of symptoms twice daily including temperature check • Patient must wear a surgical facemask during transfer/movement outside housing area • Do NOT transport on a chain bus or MPV except for medical emergencies	• Immediately place in medical isolation • Must remain in isolation for 7 days after symptom onset **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath) • Monitor at least twice a day to detect worsening illness including temperature and symptom checks • Patient must wear a surgical facemask during transfer/movement outside housing area • Do NOT transport on a chain bus or MPV except for medical emergencies

Medium Risk	Travel from an area of sustained transmission without any known exposure to COVID-19 case	• Screen prior to entering the facility • Encourage self-monitoring & social distancing • If exposed to COVID-19 but is not yet ill, place under medical restriction • If the facility has the capacity & resources, consider placing all new intakes under routine intake quarantine for 14 days before entering the facility's general population	• Medical staff evaluation if becomes symptomatic • See management for high risk if suspected or confirmed COVID-19 per medical evaluation
Low Risk	Being in the same indoor environment (e.g., classroom, waiting room) but not meeting the definition of close contact	None required. Provide education and encourage self-monitoring & social distancing	• Medical staff evaluation if becomes symptomatic • See management for high risk if suspected or confirmed COVID-19 per medical evaluation
No Identifiable Risk	Interaction that does not meet exposure of high, medium, or low risk such as walking by a person or being briefly in the same room	None required. Provide education and encourage self-monitoring & social distancing	• Medical staff evaluation if becomes symptomatic • See management for high risk if suspected or confirmed COVID-19 per medical evaluation

1. Adapted from CDC guidance for persons with COVID-19 exposure

Q. Medical restriction

1. All staff working in medically restricted areas and offenders who are placed in medical restriction, will be educated about early recognition of symptoms, warning signs, and rapid triage of symptomatic patients.
2. Medical Restriction is used to separate and restrict the movement of well persons who have been exposed to COVID-19.
3. Offenders should be single-celled or may be cohorted (i.e., co- housed) with other offenders if they cannot be single celled. If possible, cohort groups should be kept separate.
4. Offenders may be released from medical restriction if they have not developed symptoms 14 days after the last exposure.
5. Cohorted offenders should be kept under medical restriction (i.e., quarantine) as a cohort until 14 days after the last exposure to a case for everybody in the cohort.
6. If a group is cohorted due to a suspected case who is subsequently tested for COVID-19 and receives a negative result, the group may be released from medical restriction if they were not housed with another cohorted group.
7. If an individual who is part of a quarantined cohort becomes symptomatic:

a. The 14-day quarantine clock for the remainder of the cohort must be reset to 0 if the individual is tested for COVID-19 and tests positive.
b. The 14-day quarantine clock for the individual and the remainder of the cohort does not need to be reset if the individual is tested for COVID19 and tests negative. This individual can return from medical isolation to the restricted cohort for the remainder of the quarantine period.
c. The 14-day quarantine clock for the remainder of the cohort must be reset to 0 if the symptomatic individual is not tested for COVID-19.

8. Use of PPE
   a. Staff (correctional and medical) entering medically restricted housing areas must wear a surgical facemask and gloves. Gowns and/or face protection should also be worn if they anticipate direct or very close contact with ill offenders. Personal protective equipment must be removed when leaving the area and hands washed after removal.
   b. Offenders on medical restriction do not have to wear a surgical facemask unless they must leave their housing area for some reason. They should be questioned about symptoms of COVID-19 before being taken from the housing area and be kept at least 6 feet from offenders from other housing areas as much as possible.
9. Medically restricted offenders may attend outdoor recreation and shower as a group. Areas used by them should be cleaned and disinfected before use by other offenders.
10. Medically restricted offenders may be fed on disposable trays in the housing area or may attend chow hall as a group. If fed in the chow hall, areas that may have been touched or otherwise contaminated must be disinfected before use by other offenders. Examples of such areas includes tables, benches, and tray rests.
11. Medically restricted offenders may work only if their job is essential and they will not mingle with non-medically restricted offenders while working or getting to or from the job location and must be screened for symptoms of COVID-19 at each turnout.
12. Medically restricted offenders should not be transferred from the facility during the 14-day restriction period, unless released from custody or a transfer is necessary for health care (e.g., medical or behavioral health), infection control, lack of quarantine space, or extenuating security concerns.
13. Offenders under medical restriction must be observed by medical personnel at least twice per day including a temperature check and verbal questions of symptoms (e.g., cough and shortness of breath). If the offender becomes ill or has symptoms, they should be made to wear a

surgical facemask and be kept at least 6 feet from other offenders and staff and must be evaluated by medical staff as soon as practical.

R. Units with offenders with COVID-19 should
1. Institute droplet and contact precautions for offenders with COVID-19.
2. Ensure that sick offenders do not expose other offenders without COVID-19 while in waiting rooms (consider setting up a separate waiting area for offenders with COVID-19). At a minimum, ensure that offenders with COVID-19 wear surgical facemasks or sit at least 6 feet from other offenders while waiting to be seen by medical.
3. Implement daily active surveillance for symptoms of COVID-19 among all offenders and health care personnel until at least 2 weeks after the last confirmed case occurred.

S. Ill staff
1. Employees who are sick should stay home and should not report to work.
2. If employees become sick at work, they should promptly report this to their supervisor and go home.
3. In general, the timetable for returning to work is 7 days after symptom onset **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath). Staff should refer to their respective employer's specific procedure for obtaining clearance to return to work.

T. Exposed staff
1. Staff that have had close contact with a suspected or confirmed COVID-19 case will be assessed for level of exposure to determine work restrictions. In general, staff with a medium to high-risk exposure will be restricted from the workplace for 14 days after the last exposure and may then return to work if remained asymptomatic.
2. To ensure continuity of operations of essential functions, critical infrastructure and healthcare staff that have a COVID-19 exposure may be permitted to continue to work provided they remain asymptomatic and additional precautions are implemented for 14 days after last exposure. Staff must wear surgical facemasks at all times while in the workplace and must be monitored for symptoms and temperature.
3. Staff should refer to their respective employer's specific procedure for risk assessments and obtaining clearance to return to work.

Table 2

Epidemiologic Risk Factor	Exposure Category	Work Restriction
Prolonged close contact with a COVID-19 patient who was wearing a facemask		
Staff wearing no PPE	Medium	Exclude from work for 14 days after last exposure

Staff not wearing a surgical facemask or N95 respirator	Medium	Exclude from work for 14 days after last exposure
Staff not wearing eye protection	Low	None. Staff should self-monitor.
Staff not wearing gown or gloves	Low	None. Staff should self-monitor.
Staff wearing all recommended PPE	Low	None. Staff should self-monitor.
Prolonged close contact with a COVID-19 patient who was <u>not</u> wearing a facemask		
Staff wearing no PPE	High	Exclude from work for 14 days after last exposure
Staff not wearing a surgical facemask or N95 respirator	High	Exclude from work for 14 days after last exposure
Staff not wearing eye protection	Medium	Exclude from work for 14 days after last exposure
Staff not wearing gown or gloves	Low	None. Staff should self-monitor.
Staff wearing all recommended PPE	Low	None. Staff should self-monitor.

*Adapted from CDC guidance for risk assessment for healthcare personnel

U. Security staff will screen all individuals entering the unit.
1. Before individuals enter a TDCJ location, they will have their temperature taken and if a fever is present, the screening form will be completed (Attachment G).
2. If the individual answers yes to fever question, they will be sent home and will be required to submit a physician's note stating they are clear of any symptoms of COVID-19 before being allowed to return to work.
3. If no fever is present but answered yes to cough or shortness of breath, the individual should be aware of potentially developing a fever.
4. If the individual answers yes to being in contact with anyone who tested positive for COVID-19, they will be sent home and not allowed to return to work without providing a physician's note stating they are clear of any COVID-19 symptoms. Notification must also be made to the TDCJ Office of Emergency Management and the TDCJ Deputy Director of Health Services.

V. Transportation
1. In general, offender transportation must be curtailed, except for movement that is absolutely required, such as for release, bench warrant, medical emergencies, etc.
2. When offenders are transported during these conditions, they must be seated at least 3 feet apart.
3. An offender who is in medical restriction or who is in isolation for COVID-19 (suspected or confirmed COVID-19 case) must wear a surgical facemask outside of restricted and isolation areas including movement from isolation to transport, during transport, and until the final destination is reached at the receiving facility. These offenders must be transported by ambulance or van. They should NOT be transported on a chain bus or MPV except for medical emergencies.

4. Multiple offenders who are under COVID-19 isolation may be transported in the same vehicle, but no non-isolated offenders (including offenders under medical restriction) may travel with them.
5. Staff or offender attendants must wear surgical facemasks and gloves during transport, unless the offender area has separate ventilation from the staff area. Gowns and eye protection should be worn if direct or very close contact is expected.
6. After all offenders have disembarked from the transport vehicle, the seats and hand contact areas such as handrails must be cleaned and disinfected.

II. USE OF PERSONAL PROTECTIVE EQUIPMENT (PPE)

A. An alcohol-based waterless antiseptic hand rub should be carried by staff and used whenever there is concern that hands have become contaminated. The waterless hand rub may be used when handwashing is unavailable.

B. Offenders who are required to perform duties for which staff would wear PPE should be provided the same PPE for the job, except they must not have access to the waterless hand rub but must wash hands with soap and water instead.

C. Goggles or protective face shields should be worn when there is a likelihood of respiratory droplet spray hitting the eyes. Since these items are re-usable, they should be cleaned and disinfected between uses. Hands should be washed before donning or doffing goggles, to prevent inadvertent contamination of the eyes.

D. Medical and Security Staff should wear surgical facemasks if their responsibilities require them to remain less than 6 feet from a symptomatic individual or patient suspected with suspected COVID-19. Hands should be washed before donning or doffing surgical facemasks, to prevent inadvertent contamination of the nose and mouth.

E. Surgical facemask, gloves, gowns, and eye protection (face shield or goggles) should be worn when examining or providing direct care to offenders with suspected or confirmed COVID-19.

F. Unless contact offender searches on general population would clearly involve contact with body fluids, gloves are unnecessary and handwashing between each search is adequate.

G. Gloves may be worn for contact offender searches of medically restricted offenders. Gloves must be worn and changed between each search for contact searches on isolated offenders. Hands should be washed before donning or doffing gloves to prevent inadvertent contamination.

H. Security and Medical Staff should be educated on the appropriate sequence of putting on PPE (Attachment J). Proper hand washing should be performed prior to putting on PPE, before putting on gloves, before removing eye protection, and immediately after removal of all PPE. Hand hygiene should also be performed between steps if hands become contaminated.

Table 3. PPE to Use While Caring for Patients with Suspected or Confirmed COVID-19

Setting	Rooming Procedure in Medical	Staff PPE	Symptomatic Offender Requirement
Clinic	Normal	• Gloves • Gown • Eye protection (face shield or goggles) • Surgical facemask or fit-tested N-95 respirator (only if surgical facemask is unavailable)[2]	Surgical facemask
Infirmary	Normal	• Gloves • Gown • Eye protection (face shield or goggles) • Surgical facemask or fit-tested N-95 respirator (only if surgical facemask is unavailable)[2]	Surgical facemask during transfer
Medical Restriction Area	Normal	• Gloves • Surgical facemask or fit-tested N-95 respirator (only if surgical facemask is unavailable)[2] • Gowns and/or eye protection (face shield or goggles) should be worn only if anticipate direct or very close contact with ill offenders (e.g., temperature check)	Surgical facemask outside of medical restriction area
Medical Isolation Area	Normal	• Gloves • Surgical facemask or fit-tested N-95 respirator (only if surgical facemask is unavailable)[2] • Gowns and/or eye protection (face shield or goggles) should be worn only if anticipate direct or very close contact with ill offenders	Surgical facemask outside of medical isolation area
Handling laundry or cleaning area of COVID-19 case or individuals in medical isolation or restriction	Not applicable	• Gloves • Gown	• Not applicable
Transport Van	Not applicable	• Gloves	• Surgical facemask during transfer

Table 3. PPE to Use While Caring for Patients with Suspected or Confirmed COVID-19			
Setting	**Rooming Procedure in Medical**	**Staff PPE**	**Symptomatic Offender Requirement**
		• Surgical facemask or fit-tested N-95 respirator (only if surgical facemask is unavailable)[2] • Gowns and/or eye protection (face shield or goggles) should be worn only if anticipate direct or very close contact with ill offenders	• Not transported on a chain bus or MPV except for medical emergencies
Procedural Setting (e.g., nebulizer high-flow oxygen, ventilation, intubation, CPR)[1]	Negative Pressure Room	• Gloves • Gown • Eye protection (face shield or goggles) • Fit-tested N-95 respirator	Surgical facemask during transfer

1. When performing procedure or care that may generate respiratory aerosols
2. Surgical facemasks are being used as an acceptable alternative to N-95 respirator to conserve supplies and to create surge capacity (i.e., the ability to manage a sudden increase in patient volume that could severely challenge or exceed present supplies).

III. DIAGNOSTIC TESTING

A. Diagnostic testing should be prioritized based on clinical features and epidemiologic risk.

B. Health care providers must contact their university designee if they feel testing should be considered **before** an order is placed in the electronic medical record. The University Designee will determine if patients meet the criteria for testing.

Table 4		
Clinical Features	**&**	**Epidemiologic Risk**
Fever[1] **or** signs/symptoms of lower respiratory illness (e.g., cough or shortness of breath)	AND	Any person, including health care workers, who has had close contact with a laboratory-confirmed COVID-19 patient within 14 days of symptom onset
Fever[1] **and** signs/symptoms of lower respiratory illness (e.g., cough or shortness of breath)	AND	A history of travel from affected geographic areas within 14 days of symptom onset **OR** An individual(s) with risk factors that put them at higher risk of poor outcomes
Fever[1] **and** signs/symptoms of lower respiratory illness (e.g., cough or shortness of breath) requiring	AND	No source of exposure has been identified

hospitalization		

1. Fever may be subjective or confirmed
2. Adapted Texas DSHS guide to testing

C. Instructions for ordering and specimen collection must be followed (Attachment H).

IV. REPORTING

A. Daily reporting of COVID-19 to the TDCJ Office of Public Health by email or fax (936-437-3572) is required.

B. Each unit must complete a report (Attachment I).
   1. The daily COVID-19 log should be sent by 9:00 AM. The list is only for the 24-hour period ending at 6AM that morning. Units may submit logs over the weekend or may submit three logs on Monday morning.
   2. Reporting should continue until 2 weeks has lapsed since the last case.
   3. The subject line of the email should include, "[Unit] Name, COVID-19 Log, and the Date Sent (MM /DD /YYYY)."

V. CLINICAL MANAGEMENT

A. Record proper diagnosis in the electronic health record for suspected COVID-19.

B. There is no approved vaccine for COVID-19.

C. There are currently no antiviral drugs licensed by the FDA to treat COVID-19.

D. There is currently no FDA-approved post-exposure prophylaxis for people who may have been exposed to COVID-19.

E. Clinicians are encouraged to test for other causes of respiratory illness (e.g., influenza during flu season) if clinically indicated. However, testing should not delay COVID-19 testing since detection of another respiratory pathogen does not rule out COVID-19.

F. Most cases of COVID-19 only require usual supportive care with fluids, analgesics and rest. Acetaminophen (i.e. Tylenol) is the preferred antipyretic for treating fever in non-allergic COVID-19 patients considering its efficacy and safety. Ibuprofen may be considered. However, remember its potential for renal (i.e. kidney) adverse effects. Recent reports suggest Ibuprofen may worsen the course of COVID-19. However, this is still theoretical and under investigation. Corticosteroids are not recommended unless they are indicated for another reason (e.g., COPD exacerbation).

G. Signs suggesting the need for a higher level of care include, but are not limited to, difficulty breathing, bluish lips or face, persistent pain or pressure in the chest, and new confusion or inability to arouse.

H. Clinical management for more severe cases is focused on supportive care of complications, including advanced organ support for respiratory failure.

I. Offenders who are suspected of having COVID-19 must be placed in medical isolation**.** Laboratory proof is not required for isolation. The diagnosis of COVID-19 should be made on a clinical basis and testing performed only as outlined above.

J. Adherence to strict infection control measures must always be observed. Cases in an inpatient setting must be under droplet and contact isolation (see Infection Control Policy B-14.21).

REFERENCES

1. Centers for Disease Control and Prevention. Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Available at https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Finfection-control.html
2. Centers for Disease Control and Prevention. Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19). Available at https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html
3. Texas Department of State Health Services. Interim Criteria to Guide Testing of Persons Under Investigation (PUIs) for Coronavirus Disease 2019 (COVID-19). Available at https://www.dshs.state.tx.us/coronavirus/healthprof.aspx
4. Centers for Disease Control and Prevention. Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. Available at https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html
5. Centers for Disease Control and Prevention. Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases. Available at https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html
6. Centers for Disease Control and Prevention. Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19).

Available at https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html

7. Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19. Available at https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html

Attachment A

COVID 19 CORONAVIRUS DISEASE

What you need to know about coronavirus disease 2019 (COVID-19)

What is coronavirus disease 2019 (COVID-19)?

Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread from person to person. The virus that causes COVID-19 is a novel coronavirus that was first identified during an investigation into an outbreak in Wuhan, China.

Can people in the U.S. get COVID-19?

Yes. COVID-19 is spreading from person to person in parts of the United States. Risk of infection with COVID-19 is higher for people who are close contacts of someone known to have COVID-19, for example healthcare workers, or household members. Other people at higher risk for infection are those who live in or have recently been in an area with ongoing spread of COVID-19. Learn more about places with ongoing spread at https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html#geographic.

Have there been cases of COVID-19 in the U.S.?

Yes. The first case of COVID-19 in the United States was reported on January 21, 2020. The current count of cases of COVID-19 in the United States is available on CDC's webpage at https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html.

How does COVID-19 spread?

The virus that causes COVID-19 probably emerged from an animal source, but is now spreading from person to person. The virus is thought to spread mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes. It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads. Learn what is known about the spread of newly emerged coronaviruses at https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

What are the symptoms of COVID-19?

Patients with COVID-19 have had mild to severe respiratory illness with symptoms of

- fever
- cough
- shortness of breath

What are severe complications from this virus?

Some patients have pneumonia in both lungs, multi-organ failure and in some cases death.

How can I help protect myself?

People can help protect themselves from respiratory illness with everyday preventive actions.

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.

If you are sick, to keep from spreading respiratory illness to others, you should

- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.

What should I do if I recently traveled from an area with ongoing spread of COVID-19?

If you have traveled from an affected area, there may be restrictions on your movements for up to 2 weeks. If you develop symptoms during that period (fever, cough, trouble breathing), seek medical advice. Call the office of your health care provider before you go, and tell them about your travel and your symptoms. They will give you instructions on how to get care without exposing other people to your illness. While sick, avoid contact with people, don't go out and delay any travel to reduce the possibility of spreading illness to others.

Is there a vaccine?

There is currently no vaccine to protect against COVID-19. The best way to prevent infection is to take everyday preventive actions, like avoiding close contact with people who are sick and washing your hands often.

Is there a treatment?

There is no specific antiviral treatment for COVID-19. People with COVID-19 can seek medical care to help relieve symptoms.

CS 314957-A 03/03/2020

For more information: **www.cdc.gov/COVID19**

Attachment B

Stop Germs! Wash Your Hands.

When?

- After using the bathroom
- Before, during, and after preparing food
- Before eating food
- Before and after caring for someone at home who is sick with vomiting or diarrhea
- After changing diapers or cleaning up a child who has used the toilet
- After blowing your nose, coughing, or sneezing
- After touching an animal, animal feed, or animal waste
- After handling pet food or pet treats
- After touching garbage

How?

Wet your hands with clean, running water (warm or cold), turn off the tap, and apply soap.

Lather your hands by rubbing them together with the soap. Be sure to lather the backs of your hands, between your fingers, and under your nails.

Scrub your hands for at least 20 seconds. Need a timer? Hum the "Happy Birthday" song from beginning to end twice.

Rinse hands well under clean, running water.

Dry hands using a clean towel or air dry them.

Keeping hands clean is one of the most important things we can do to stop the spread of germs and stay healthy.

LIFE IS BETTER WITH CLEAN HANDS

www.cdc.gov/handwashing

This material was developed by CDC. The Life is Better with Clean Hands Campaign is made possible by a partnership between the CDC Foundation, GOJO, and Staples. HHS/CDC does not endorse commercial products, services, or companies.

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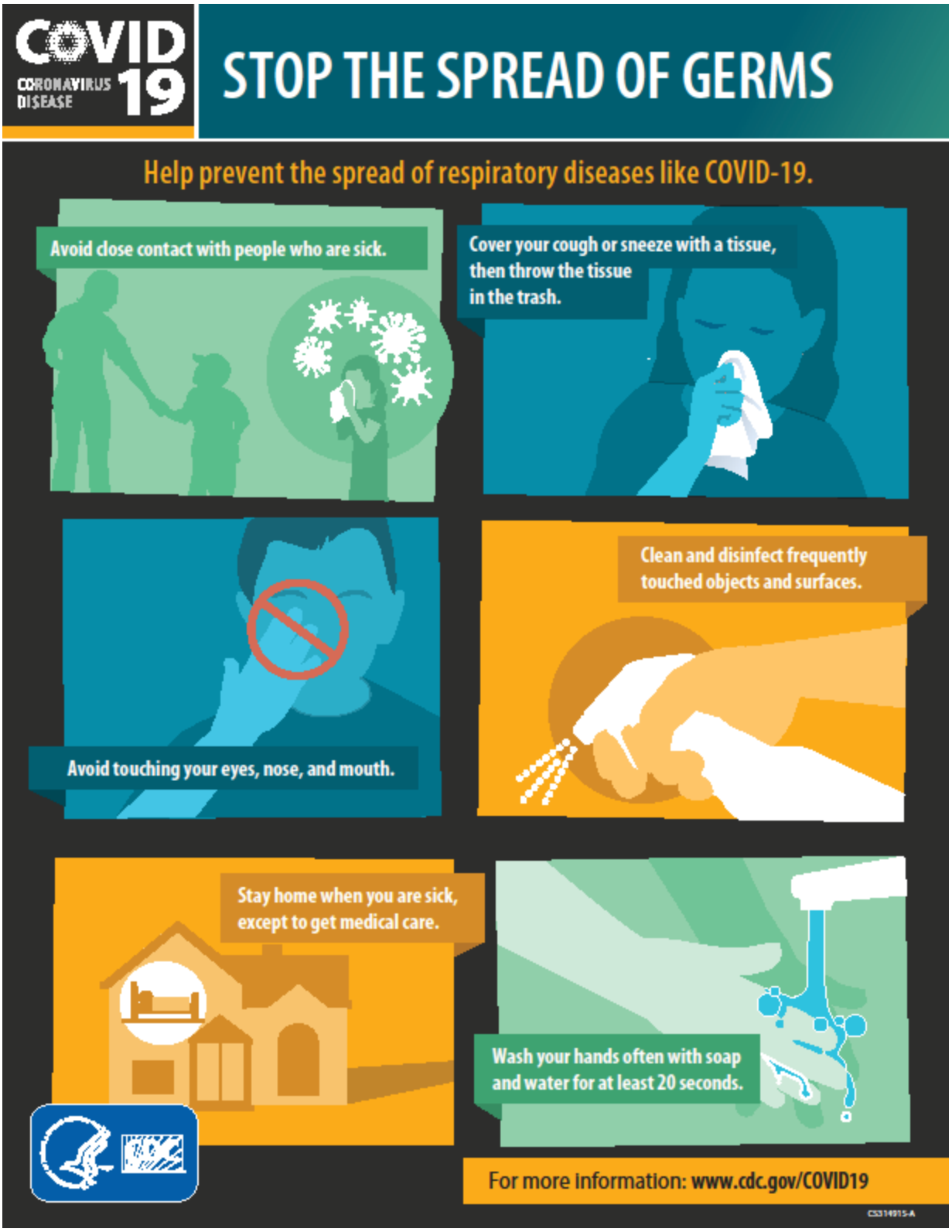
Attachment C



Attachment D

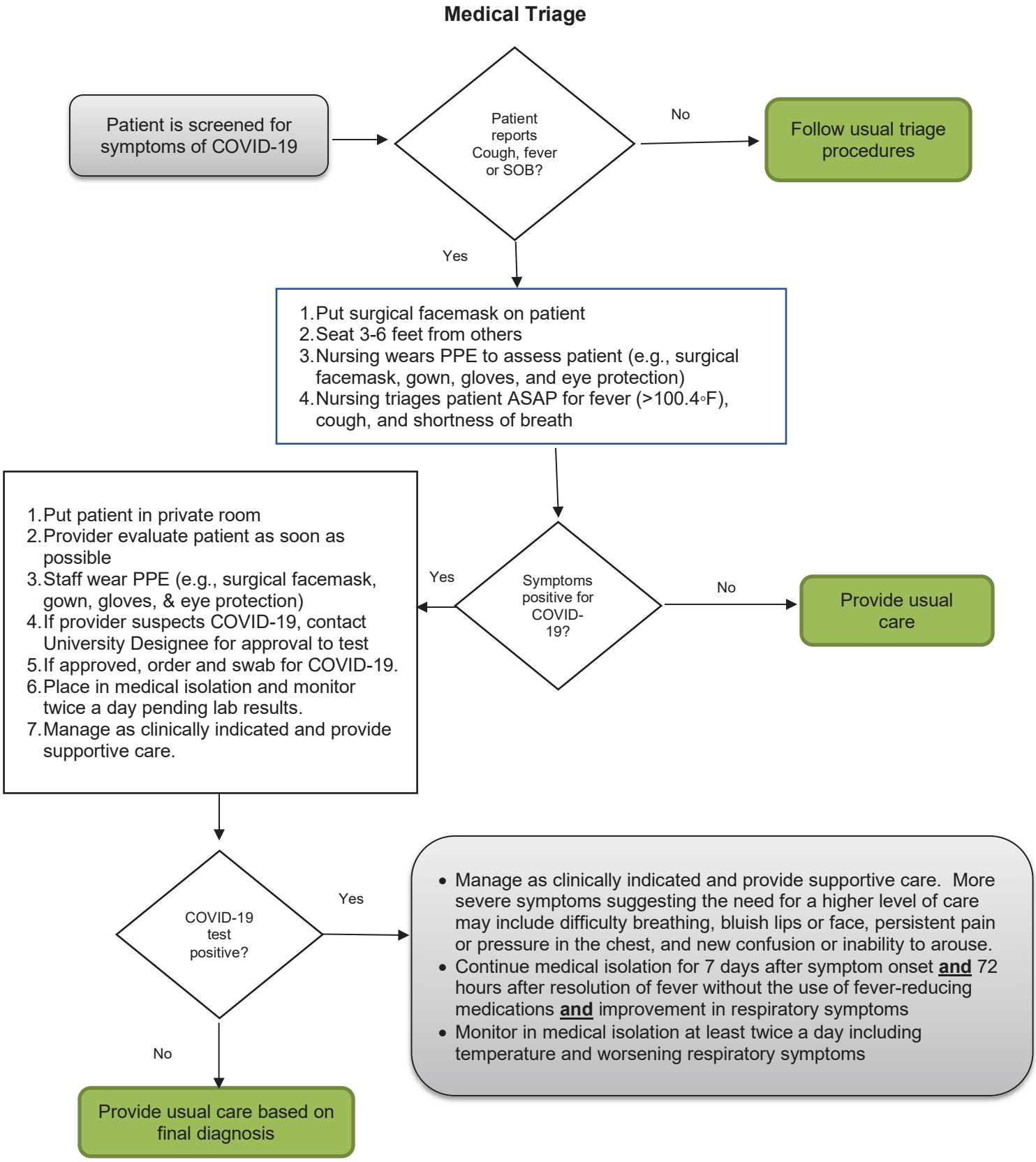
Visitors

WARNING

We are currently having cases of COVID-19 on this facility. This virus can cause severe disease in older adults 65 years and older and people with medical issues such as heart disease, diabetes, high blood pressure, cancer or weakened immune systems. If you are a member of one of these high-risk groups, you may not want to enter the unit at this time. If you do choose to enter the unit, you should observe the following precautions:

- Try to stay 6 feet away from other people as much as possible.
- Avoid shaking hands, hugging or touching surfaces that get a lot of hand contact.
- Wash your hands often
- Avoid touching your eyes, nose or mouth without washing your hands before and afterward.

Attachment E



Attachment F

CORRECTIONAL MANAGED CARE
COVID-19 Health Screening Intake Form

Date: _____

Patient Name: _____

DOB: _____

Facility: _____

1. Temperature: Above 100.4F? ☐ Yes ☐ No
2. Cough? ☐ Yes ☐ No
If YES, date of onset:
3. Shortness of breath? ☐ Yes ☐ No
If YES, date of onset:
4. Had contact with anyone with fever, cough or shortness of breath in the last 14 days? ☐ Yes ☐ No
If YES to any question, place a surgical facemask on the patient and separate from the rest of the intake group for additional screening and orders.

_____ _____

Nurse's Signature Date

Attachment G

Texas Department of Criminal Justice

COVID-19 Health Screening Form

Before any individual enters a TDCJ location, they will have their temperature taken and if a fever is present, the screening form must be completed. This health screening form is an important first step to assist staff in maintaining the safety and health of TDCJ employees and offenders.

Clearly **PRINT** information below:

Name: _____ Birthdate (mm / dd): _____

Has the individual:

		Date Range
Traveled internationally in the last 30 days?	☐ Yes ☐ No	If yes when?
***Had contact with anyone who tested positive for COVID-19 in the last 14 days?**	☐ Yes ☐ No	If yes when?

Does the individual have:

		Result
Fever above 100.4F?	☐ Yes ☐ No	If yes, temperature?
Cough?	☐ Yes ☐ No	
Shortness of breath?	☐ Yes ☐ No	

If the individual answers yes to fever question, they will be sent home and will be required to submit a physician's note stating they are clear of any symptoms of COVID-19 before being allowed to return to work. If no fever is present but answered yes to cough or shortness of breath, the individual should be aware of potentially developing a fever.

**If the individual answers yes to being in contact with anyone who tested positive for COVID-19, they will be sent home and not allowed to return to work without providing a physician's note stating they are clear of any COVID-19 symptoms. Also, notification will need to be made to the Melissa Kimbrough, Office of Emergency Management and Chris Black Edwards, Deputy Director Health Services.*

Staff completing COVID-19 Health Screening Form:

Name: _____ Date: _____

CONTACT INFORMATION:

Melissa Kimbrough, Emergency Management Coordinator
936-437-6038 (Office)
936-581-9848 (State Cell)
melissa.kimbrough@tdcj.texas.gov

Chris Black-Edwards, Deputy Director Health Services
936-437-4001 (Office)
chris.black-edwards@tdcj.texas.gov

Attachment H

COVID-19 Testing for Units

Note: Requires pre-authorization from the University Designee prior to placing the order.

- Providers in the Texas Tech Sector should contact the Northern Region Medical Director for approval.
- Providers in the UTMB Northern Geographical Service Area (GSA) should contact the Chief Medical Officer for approval.
- Providers in the UTMB Southern GSA should contact the Region 4 Medical Director for approval.

1. **Units Designated for Testing by Galveston Laboratory:**

Test should be sent to the Galveston laboratory for processing. The test is available in the EMR under **CORONAVIRUS COVID-19 TESTING (COVID19)**. The viral culture collection kit is available from the CMC Medical Warehouse (stock # 495-38-15427-6).

Test name and code:	COVID-19 (Test code: 8000101424) Note: Order as "Miscellaneous" and add comment: "COVID-19 ARUP"
Collect:	Nasopharyngeal swab. Place in one collection tube (redtop viral transport tube).
Specimen Preparation:	Place in viral transport media (ARUP Supply #12884). Available through **Ms. Judy Mitchell at (409) 772-9247**. Place each specimen in an individually sealed bag. Also, acceptable: Media that is equivalent to viral transport media or universal transport media.
Storage/Transport Temperature:	Acceptable Conditions: Frozen
Unacceptable Conditions:	Specimens not in viral transport media.
Remarks:	Specimen source required. Submit only one specimen per patient.
Stability:	Ambient: Unacceptable; Refrigerated: 4 days; Frozen: 1 month

2. **Units Designated for Testing by Quest Diagnostics:**

Staff must manually order the test. Each unit should have the paper ordering forms. The test should be ordered on its own dedicated requisition and not combined with any other test. National test code is 39433. It is not a STAT test and a STAT pick-up cannot be ordered. Test results are typically available 3-4 days from the time of specimen pick-up and may be impacted by high demand.

Test name and code:	SARS-CoV-2 RNA, RT PCR
Collect:	Preferred Specimen(s): One (1) nasopharyngeal swab collected in a multi microbe media (M4), V-C-M medium (green-cap) tube or equivalent (UTM).

	Also acceptable: 0.85 mL bronchial lavage/wash, nasopharyngeal aspirate/wash, sputum/tracheal aspirate sample in a plastic sterile leak-proof container
Specimen Preparation:	Place in multi microbe media (M4), V-C-M medium (green-cap) tube, or equivalent (UTM). It is acceptable to place both an NP and an OP swab at the time of collection into a shared media transport tube. **Do not combine other specimen sources.** Also, acceptable: Plastic sterile leak-proof container.
Storage/Transport Temperature:	Transport refrigerated (cold packs) to local Quest Diagnostics accessioning laboratory.
Unacceptable Conditions:	Specimens not in viral transport media. Calcium alginate swab • Cotton swabs with wooden shaft • Received refrigerated more than 72 hours after collection • ESwab • Swabs in Amies liquid or gel transpo
Remarks:	Order SARS-CoV-2 RNA, RT PCR separately from other tests - on a separate requisition and place each transport tube with paperwork into its own sealed bag. The SARS-CoV-2 test will be prioritized if submitted on a shared requisition. One specimen transport tube will be tested per order. It is acceptable to place both an NP and an OP swab at the time of collection into a shared media transport tube. **Do not combine other specimen sources.**
Stability:	Ambient: Unacceptable; Refrigerated for up to 72 hours or Frozen at -70^{0}C

3. Texas Tech Units Designated for Testing by LabCorp

The test is available in the EMR under "2019 Novel Coronavirus (CoVID-19), NAA". Contact your Facility Health Administrator if you are in need of additional culture collection kits.

Test Name and Code:	COVID-19 – Test Code 139900
Collect:	Nasopharyngeal or Oropharyngeal swab, placed and transported in Universal Transport Medium (UTM).
Specimen Preparation:	Universal Transport Medium (UTM) with included swabs, specimen label and biohazard bag are needed. Follow instructions published by LabCorp regarding OP and NP specimen collection for COVID-19 testing.
Storage/Transport Temperature:	Samples/specimens should be shipped frozen due to limited stability at 2°-8° C. Refrigerated swabs submitted within 72 hours will be accepted.
Unacceptable Conditions:	Swabs with calcium alginate or cotton tips; swabs with wooden shafts; refrigerated samples greater than 72 hours old; room temperature specimen submitted; improperly labeled; grossly contaminated; broken or leaking transport device; collection with substances inhibitory to PCR including heparin, hemoglobin, ethanol, EDTA concentrations >0.01M.

Remarks:	Submit separate frozen specimens for each test requested. Submit COVID-19 test on one requisition with test code 139900.
Stability:	Ambient: Unacceptable; Refrigerated: 72 hours
Turnaround Time:	Current turnaround time for COVID-19 testing is estimated between 3-4 days and may be impacted by high demand.

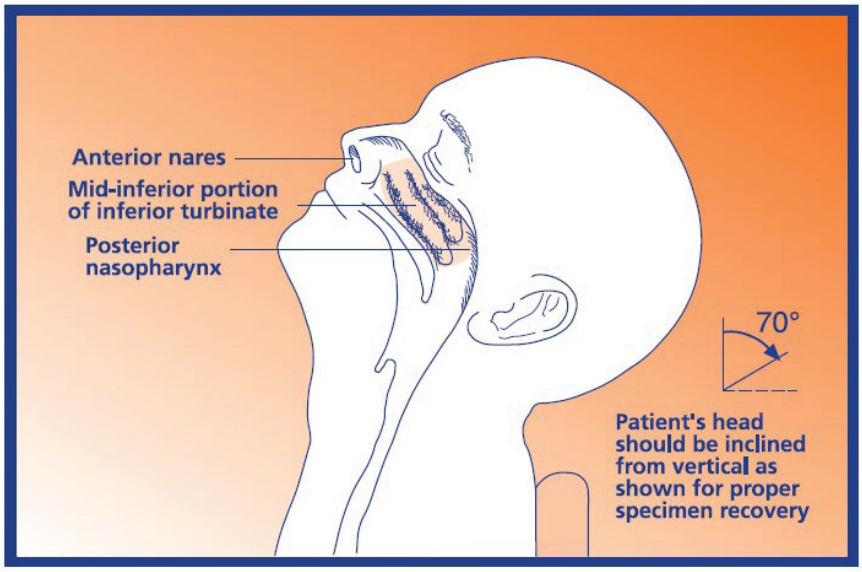
4. **Montford Testing**

******Contact Lisa Wilson, Carrie Culpepper, or Mike Parmer******

Fill out health screening form and await approval from TDCJ Office of Public Health to proceed. This test will be sent to UMC as a reference test. **CORONAVIRUS COVID-19 TESTING (COVID19)**

Test name and code:	SARS-CoV-2 (Test code: 39433) aka COVID-19 **Order on UMC paper requisitions**
Collect:	Nasopharyngeal swab (Use Xpert® Nasopharngeal Sample Collection Kit---in lab). Ensure swab is broken off and left in liquid media.
Specimen Preparation:	• Refer to Nasopharyngeal Collection Below • Ensure swab is broken off and left in liquid media. • Place each specimen in an individually sealed bag.
Storage/Transport Temperature:	Acceptable Conditions: Refrigerated (2-8° C)
Unacceptable Conditions:	Specimens not in viral transport media.
Remarks:	Specimen source required. Submit only one specimen per patient.
Stability:	Ambient: Unacceptable ; Refrigerated: 3 days
Remarks:	Order SARS-CoV-2 RNA, RT PCR separately from other tests - on a separate requisition and place each transport tube with paperwork into its own sealed bag. The SARS-CoV-2 test will be prioritized if submitted on a shared requisition. One specimen transport tube will be tested per order. **Stat Delivery**

5. **Nasopharyngeal swab method**
   - Insert swab into one nostril
   - Rotate swab over surface of posterior nasopharynx
   - Withdraw swab from collection site; insert into transport tube
   - After collection, wipe own outside of tube with a disinfectant wipe and doff gloves
   - Perform hand hygiene and don new gloves
   - Place in a biohazard bag and close
   - It is not a STAT test and STAT pickup should not be ordered
   - Transport specimen to the laboratory for testing. If transport will be delayed, place specimen in the refrigerator.


Anterior nares
Mid-inferior portion of inferior turbinate
Posterior nasopharynx
70°
Patient's head should be inclined from vertical as shown for proper specimen recovery

Attachment I

COVID-19 LOG

Completed forms should be emailed to the TDCJ Office of Public Health or faxed to 936-437-3572.

Unit Name: _____

Report for new (not cumulative) patients with COVID-19 for 24-hour period beginning 6AM _____/_____/_____ to 6AM _____/_____/_____

Date* sent: _____/_____/_____

Demographics				Lab Information	
Offender Last Name	Offender First Name	TDCJ Number	Unit of Assignment	Name of Laboratory to which Specimen was Submitted (e.g., Quest)	Collection Date

* On Monday morning, send 3 logs (one for each 24-hour period ending at 6AM)

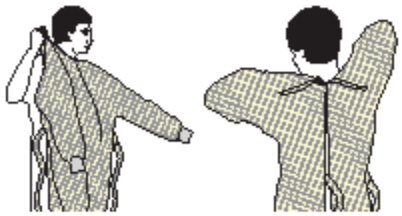
Attachment J

SEQUENCE FOR PUTTING ON PERSONAL PROTECTIVE EQUIPMENT (PPE)

The type of PPE used will vary based on the level of precautions required, such as standard and contact, droplet or airborne infection isolation precautions. The procedure for putting on and removing PPE should be tailored to the specific type of PPE.

1. GOWN

- Fully cover torso from neck to knees, arms to end of wrists, and wrap around the back
- Fasten in back of neck and waist



2. MASK OR RESPIRATOR

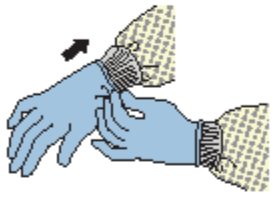
- Secure ties or elastic bands at middle of head and neck
- Fit flexible band to nose bridge
- Fit snug to face and below chin
- Fit-check respirator

3. GOGGLES OR FACE SHIELD

- Place over face and eyes and adjust to fit

4. GLOVES

- Extend to cover wrist of isolation gown



USE SAFE WORK PRACTICES TO PROTECT YOURSELF AND LIMIT THE SPREAD OF CONTAMINATION

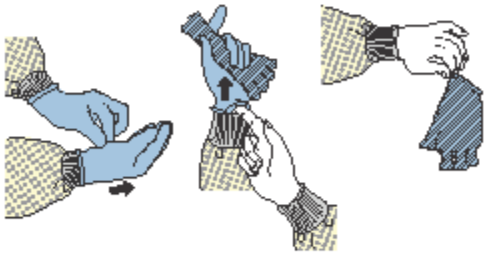
- Keep hands away from face
- Limit surfaces touched
- Change gloves when torn or heavily contaminated
- Perform hand hygiene

HOW TO SAFELY REMOVE PERSONAL PROTECTIVE EQUIPMENT (PPE)
EXAMPLE 1

There are a variety of ways to safely remove PPE without contaminating your clothing, skin, or mucous membranes with potentially infectious materials. Here is one example. **Remove all PPE before exiting the patient room** except a respirator, if worn. Remove the respirator **after** leaving the patient room and closing the door. Remove PPE in the following sequence:

1. GLOVES

- Outside of gloves are contaminated!
- If your hands get contaminated during glove removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Using a gloved hand, grasp the palm area of the other gloved hand and peel off first glove
- Hold removed glove in gloved hand
- Slide fingers of ungloved hand under remaining glove at wrist and peel off second glove over first glove
- Discard gloves in a waste container

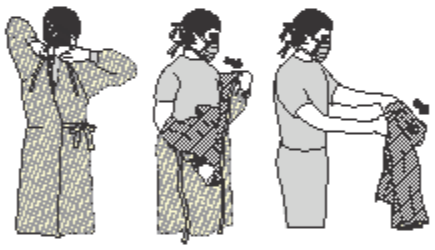


2. GOGGLES OR FACE SHIELD

- Outside of goggles or face shield are contaminated!
- If your hands get contaminated during goggle or face shield removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Remove goggles or face shield from the back by lifting head band or ear pieces
- If the item is reusable, place in designated receptacle for reprocessing. Otherwise, discard in a waste container

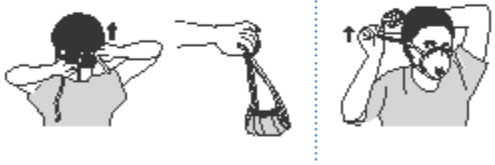
3. GOWN

- Gown front and sleeves are contaminated!
- If your hands get contaminated during gown removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Unfasten gown ties, taking care that sleeves don't contact your body when reaching for ties
- Pull gown away from neck and shoulders, touching inside of gown only
- Turn gown inside out
- Fold or roll into a bundle and discard in a waste container

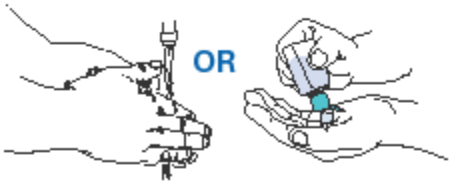


4. MASK OR RESPIRATOR

- Front of mask/respirator is contaminated — DO NOT TOUCH!
- If your hands get contaminated during mask/respirator removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Grasp bottom ties or elastics of the mask/respirator, then the ones at the top, and remove without touching the front
- Discard in a waste container



5. WASH HANDS OR USE AN ALCOHOL-BASED HAND SANITIZER IMMEDIATELY AFTER REMOVING ALL PPE



PERFORM HAND HYGIENE BETWEEN STEPS IF HANDS BECOME CONTAMINATED AND IMMEDIATELY AFTER REMOVING ALL PPE

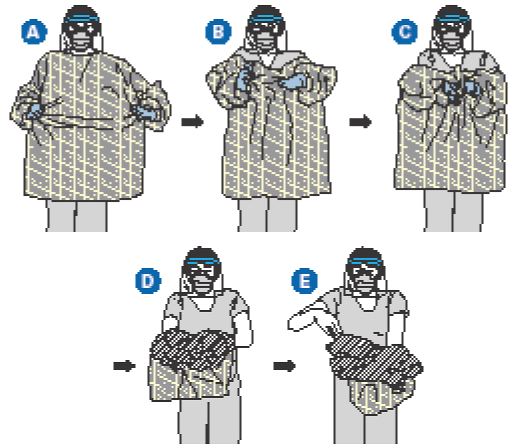
CG250572-E

HOW TO SAFELY REMOVE PERSONAL PROTECTIVE EQUIPMENT (PPE) EXAMPLE 2

Here is another way to safely remove PPE without contaminating your clothing, skin, or mucous membranes with potentially infectious materials. **Remove all PPE before exiting the patient room** except a respirator, if worn. Remove the respirator **after** leaving the patient room and closing the door. Remove PPE in the following sequence:

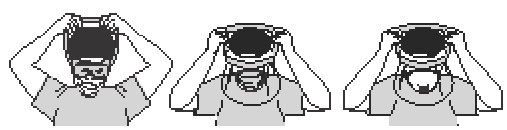
1. GOWN AND GLOVES

- Gown front and sleeves and the outside of gloves are contaminated!
- If your hands get contaminated during gown or glove removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Grasp the gown in the front and pull away from your body so that the ties break, touching outside of gown only with gloved hands
- While removing the gown, fold or roll the gown inside-out into a bundle
- As you are removing the gown, peel off your gloves at the same time, only touching the inside of the gloves and gown with your bare hands. Place the gown and gloves into a waste container



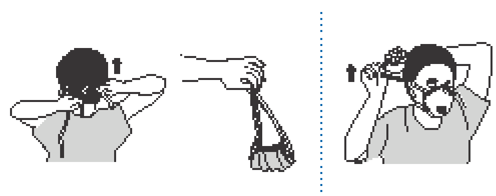
2. GOGGLES OR FACE SHIELD

- Outside of goggles or face shield are contaminated!
- If your hands get contaminated during goggle or face shield removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Remove goggles or face shield from the back by lifting head band and without touching the front of the goggles or face shield
- If the item is reusable, place in designated receptacle for reprocessing. Otherwise, discard in a waste container

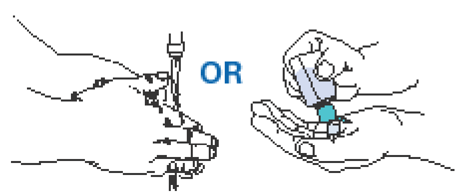


3. MASK OR RESPIRATOR

- Front of mask/respirator is contaminated — DO NOT TOUCH!
- If your hands get contaminated during mask/respirator removal, immediately wash your hands or use an alcohol-based hand sanitizer
- Grasp bottom ties or elastics of the mask/respirator, then the ones at the top, and remove without touching the front
- Discard in a waste container



4. WASH HANDS OR USE AN ALCOHOL-BASED HAND SANITIZER IMMEDIATELY AFTER REMOVING ALL PPE



PERFORM HAND HYGIENE BETWEEN STEPS IF HANDS BECOME CONTAMINATED AND IMMEDIATELY AFTER REMOVING ALL PPE

CS250672-E

Attachment K

Pandemic COVID-19 Alert Stages and Matrix

I. Stage I – Normal conditions, no pandemic COVID-19 anywhere in the world.
   A. Maintain clinical suspicion for COVID-19 like illnesses
   B. Record proper diagnosis in the electronic health record for suspected COVID-19 and/or report number of cases to Preventive Medicine weekly to facilitate surveillance
   C. Practice usual infection control and personal hygiene measures
   D. Consider stockpiling critical supplies

II. Stage II – Pandemic COVID-19 observed outside the United States.
   A. Continue Stage 1 activities
   B. Emphasize handwashing and cough etiquette with offenders and all unit staff
   C. Place posters (handwashing, cough etiquette, COVID-19 symptoms) if not already done

III. Stage III – Pandemic COVID-19 observed in the United States. Because COVID-19 spreads quickly, it is likely that only a few weeks, at most, would elapse between the first observation of COVID-19 in the Unites States and its appearance in the local community.
   A. This stage is subdivided into 3a – no in-state cases reported, 3b – cases reported in Texas.
   B. Continue Stage 2 activities
   C. Work with security to identify areas that can be used to cohort offender cases
   D. Screen for symptoms of COVID-19 at main gate and exclude symptomatic individuals
   E. Screen for symptoms of COVID-19 before allowing offenders on chain buses.
   F. Increase emphasis on cleaning/disinfecting high hand contact areas and offender transportation.
   G. Allow staff to carry waterless hand cleaners.
   H. Additional precautions for Stage 3b
      1. Non-essential offender movement between units must be stopped Elective medical procedures should be postponed
      2. Intake facilities screen arriving offenders by asking about new cough or sore throat and taking temperature
      3. Intake facilities should consider placing new intakes under routine intake quarantine for 14 days before allowing them into general population. The 14-day quarantine period begins on the day the last offender is added to the quarantine group.
      4. Consider locking down the unit and stopping visitation.
      5. If the warden deems it necessary to allow a person with symptoms of COVID-19 or household contacts onto the unit, the following precautions are recommended:
         a. Each person should always be required to wear a surgical facemask on the unit and wash hands before entering the unit.
         b. Employees restricted to jobs that do not entail contact within 6 feet of others (such as picket duty or strictly outdoor work)
         c. Employee workstation and hand contact areas are disinfected with Double D solution or a 1:10 bleach solution at the end of their shift.

IV. Stage IV – Initial cases of COVID-19 on the prison facility

A. Continue actions from lower stage levels.

B. Unit should be locked down and visitation stopped if this has not been done previously.

C. Cases/suspected cases should be placed in (order of preference): 1) Respiratory isolation, if available on the unit, or in a single cell in cell block designated for cohorting COVID-19 cases. If single celled they should not be allowed access to the day room unless all offenders using the day room are suspected or confirmed COVID-19 cases. Consider using segregation or similar housing for the initial cases.

D. Cases or suspected cases must not be allowed to attend work, school, dining hall or group recreation.

E. Isolation should continue until 7 days after symptoms started **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath).

F. If the offender requires transfer to a hospital, he should go by ambulance or van. Multiple offenders with COVID-19 may be transported in the same vehicle if necessary. Attendants and other staff in the vehicle must wear surgical facemask and gloves. Gowns and eye protection should be worn if direct or very close contact is expected. The offender should wear a surgical facemask unless breathing is restricted, and his condition does not allow. The transport vehicle should be disinfected after use. The receiving facility must be notified that the patient has COVID-19 before arrival at the facility.

G. Offenders in the cellblock or dormitory of the index case must be medically restricted (no housing reassignments, no work or school; dining and recreation as a cohort only) until 14 days have elapsed without another case of COVID-19 in the living group. If their work is deemed critical, they must be screened for symptoms of COVID-19 before their shift before being allowed to work.

V. Stage V – Multiple cases of COVID-19in the facility, when the number of cases is too large to isolate individually.

A. Continue previous stage level activities

B. At this point individual case isolation is not practical and confirmed cases should be cohorted in living areas (dormitories or cellblocks). Cases need to remain in the cohort living area for 7 days after onset of their symptoms **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath), but may be transferred to other living areas after their isolation period has passed.

			Offender Management					
Alert Stage	**Medical Department**	**Security**	**Housing**	Feeding/Showering	Recreation	Transportation	Work/School	Visitation
Stage 3b – pandemic COVID-19 in Texas	• Work with security to identify housing areas that can be used to cohort cases • Train staff on identification of COVID-19 cases and early isolation of cases	• Continue Stage 2 activities • Train staff in recognition of COVID-19 symptoms and how the medical triage/cohorting system will work	• Cohort essential workers by shift • Stop housing reassignment except for disciplinary or medical reasons, or within same	• Consider unit lockdown procedures • Feed and shower offender in cohorts by housing area. Disinfect showers/dining facilities between cohorts	• Consider unit lockdown procedures • Recreation in cohorts by housing area. Disinfect equipment between cohorts	• Screen for symptoms of COVID-19 before allowing offenders on chain bus • Disinfect seats, handrails and other contact areas before	• Consider suspending classes • Consider suspending non-essential work • Screen workers for symptoms at turnout	• Screen for symptoms of COVID-19 and exclude symptomatic individuals, whether staff or visitors • Stop contact visitation

			Offender Management					
Alert Stage	**Medical Department**	**Security**	**Housing**	Feeding/Showering	Recreation	Transportation	Work/School	Visitation
	• Reinforce personal hygiene and cough etiquette with offenders • Limit use of medical staff on multiple units • Cancel/reschedule elective medical procedures • Begin COVID-19 triage and early isolation process • Allow staff to carry and use alcohol-based hand antiseptic rub • Intake units screen offenders arriving on the unit by asking about new onset of cough or shortness of breath and taking their temperature	• Increase emphasis on cleaning and disinfecting high hand contact areas and offender transportation • Stockpile food and other essential supplies for at least a 2-4 week period • Place new intakes and offenders returning from bench warrant, etc. under routine intake quarantine for 14 days • Allow staff to carry and use alcohol-based hand antiseptic rub • Limit use of staff on multiple units • Consider unit lockdown	housing area (dorm or cell block) • Prepare one or more cell blocks to be designated as medical wards, if feasible			loading offenders and at end of trip • Stop non-essential offender movement between units		• Consider stopping all visitation
Stage 4 – initial cases of COVID-19 on unit	• Continue Stage 3b activities • Place suspected cases in droplet and contact isolation in a single cell for 7 days after symptom onset **and** 72 hours after	• Continue Stage 3b activities • Security staff assigned to medical and isolation areas wear facemasks •	• Create one or more isolation wards, and medical wards if needed • No transfer of exposed offenders	• Unit lockdown.	• Unit lockdown.	• Continue Stage 3b actions • Transfer of symptomatic cases by ambulance or van only. Multiple cases	• Continue Stage 3b actions • Medically restricted and isolated offenders cannot work • If a medically restricted	• Continue Stage 3b actions

			Offender Management					
Alert Stage	**Medical Department**	**Security**	**Housing**	Feeding/Showering	Recreation	Transportation	Work/School	Visitation
	resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath). • Cases wear surgical facemask whenever moved out of their isolation room • Medically restrict contacts of the case until 14 days after the last case appears in the medically restricted group • If a medically restricted offender develops signs and symptoms of COVID-19, place him in droplet and contact isolation and extend the medical restriction on the remaining offenders for 14 more days • Make rounds of isolated offenders in the isolation housing area at least twice per shift • Make daily rounds on medically restricted housing areas • Medical staff wear PPE when entering a room with an ill offender	• Staff on affected units not to work on unaffected units if possible	into areas housing unexposed offenders			can be in same vehicle. • Notify receiving facility of COVID-19 case before arrival • Attendants with transported cases must use surgical facemasks and gloves. Gowns and eye protection should be worn if direct or very close contact is expected.	offender must work because of a critical need, he must be screened to rule out symptoms of COVID-19 before each shift he works.	

			Offender Management					
Alert Stage	**Medical Department**	**Security**	**Housing**	Feeding/Showering	Recreation	Transportation	Work/School	Visitation
	• Staff on affected units not to work on unaffected units if possible							
Stage 5 – multiple COVID-19 cases on unit	• Continue Stage 4 actions • Cohort cases and suspected cases • Cases may be moved to any living area 7 days after symptom onset **and** 72 hours after resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g. cough, shortness of breath). They can be considered immune for the remainder of the pandemic	• Continue Stage 4 actions	• Continue Stage 4 actions	• Continue Stage 4 actions	• Continue Stage 4 actions	• Continue Stage 4 actions	• Continue Stage 4 actions • Cases who have completed their 7 day isolation and 72 hours after resolution of fever and improvement in respiratory may work without restriction if their symptoms have resolved	• Continue Stage 4 actions
Termination of COVID-19 alert: May return to Stage 4 when there are no new cases on the unit in 7 days, or to stage 3b when there have been no new cases on the unit for an additional 7 days								

Exhibit 16

Declaration of Laddy Valentine

Valentine et al. v. Collier et al. (TXSD 4:20-cv-1115)

1. My name is Laddy Valentine. I am over the age of 18 and of sound mind. The following is based on my personal knowledge.
2. I am currently incarcerated in the TDCJ Pack Unit (TDCJ # 01782033 dw).
3. I am very concerned for my health and safety because of the COVID-19 virus at the Pack Unit.
4. I am 69 years old. My date of birth is September 2, 1950.
5. I have high blood pressure and hyperlipidemia, and I take medications to manage my heart problems.
6. I had to have back surgery due to an injury from my time in the military, and I have drop foot. Because of these problems, I need a walker to move by myself.
7. Since the pandemic began, my dorm has been "locked down" several times while an inmate was tested after having symptoms.
8. The prison is denying me and other inmates at the Pack Unit protections from COVID-19.
9. The prison does not allow me or other prisoners to use waterless hand sanitizer.
10. Because I use a walker, it is hard for me to get up to wash my hands multiple times a day, and it would be much easier for me to keep my hands clean if I had hand sanitizer. There are other inmates here who use walkers or wheelchairs who I believe would have similar difficulties.
11. The prison has not adjusted my housing area so that I can sleep at least 6 feet away from other people. There are 54 2 dw men in my dorm, and I think I am no more than 5 feet away from my neighbors on both sides whenever we are in our cubicles.

12. Though many of the officers started wearing face masks this week, there are other staff members who are still not wearing masks. ~~Some of the officers do not have proper masks, and are only wearing bandanas.~~

13. There has been no oral instruction for inmates about how washing hands can prevent spreading the virus. We were given handouts last week, but many prisoners are illiterate and cannot read them. I have not seen a video about how to prevent catching the virus, and there has not been an officer, nurse, or peer educator teaching us how to stay safe. ~~A true and correct copy of the handouts we were given is attached to this declaration as Exhibit 1.~~

14. The prison does not require me or other inmates to maintain a physical distance of 6 feet or more from others during group activities like meals, showers, recreation, and the "pill line" which forms outside the infirmary when inmates pick up their medications.

15. ~~I do not see inmate workers, like the food servers and laundry workers, wearing masks or gloves, even though they interact with many prisoners each day as part of their jobs.~~ I do not believe INMATE WORKERS have access to hand sanitizer to use while doing their jobs, and have never seen them using hand sanitzer.

16. I filed a Step 1 grievance asking to get protection from COVID-19, but to the best of my knowledge the grievance has not yet been answered.

17. I see many elderly people every day at the Pack Unit.

18. I have seen long lines of prisoners waiting at the "pill window" to get medications, so I believe there are many chronically ill people at the Pack Unit.

19. I understand that I am a named Plaintiff in a class action lawsuit about the virus seeking to protect myself and other Pack Unit inmates.

20. I have spoken with my attorneys many times by telephone about the virus, and how the prison is responding to COVID-19.

21. I was ready to testify at the telephone hearing on April 2, 2020, if the judge wanted to hear from me.

22. I am familiar with Edwards Law, where some of my attorneys for this lawsuit work, because I also worked with these same attorneys as a potential witness and as a class member in a different class action lawsuit. I am confident in my attorneys' representation of me and other inmates for this issue.

23. My attorneys have explained the nature of the lawsuit to me by telephone.

24. It is my understanding the all visitors are barred from the Pack Unit, including my attorneys.

25. ~~I received the complaint in this lawsuit and read it.~~ I talked with my lawyers about the allegations in the complaint before they filed it.

26. I understand this is a lawsuit seeking a Court order to implement the protections I and other Pack Unit inmates need to minimize the spread of COVID-19.

27. I understand that the lawsuit is claiming violations of the Constitution and of laws protecting people with disabilities.

28. I understand that the lawsuit is supposed to help inmates at the Pack Unit to protect them from COVID-19.

29. I am ready and willing to continue working closely with my attorneys to help protect myself and other inmates at the Pack Unit from the virus.

30. I am ready and willing to cooperate in the ongoing litigation about the virus, including by testifying to the Court, participating in a deposition, assisting my lawyers in responses to written questions, or any other tasks my attorneys advise me I need to do.

31. I understand that my lawyers and I are asking for this to be a class action case on behalf of all Pack Unit prisoners, and we are asking for the Court to order that everyone be protected from the virus.

32. I am committed to serving as a class representative in this case, and will stay informed about the case, work with my attorneys to pursue the case, appear in court, and give testimony for the case as needed. I am willing to continue as a class representative to help others even if TDCJ takes steps to protect me personally without protecting other Pack Unit inmates.

33. I am not expecting to receive any money from serving as a class representative in this case. I am asking only that I, and everyone else at the Pack Unit, receive the protection they need from the virus. I am not asking for damages for myself or the class in this case.

34. All of the prisoners here need the same protections. I do not see how these protections would harm any prisoners, and the protections would be better if everyone at the prison was safe.

35. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

4-15-20
Executed on this Day

Laddy Valentine
TDCJ # 01782033

Exhibit 17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE and RICHARD ELVIN KING, individually and on behalf of those similarly situated, Plaintiffs,	§	
v.	§	Civil Action No. 4:20-cv-01115
BRYAN COLLIER, in his official capacity, ROBERT HERRERA, in his official capacity, And TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Defendants.	§	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER

TO THE HONORABLE KEITH ELLISON:

Defendants Bryan Collier ("Collier"), Robert Herrera ("Herrera"), and the Texas Department of Criminal Justice ("TDCJ") (collectively, "Defendants"), through the Office of the Attorney General, file their Response in Opposition to Plaintiffs' Application for a Temporary Restraining Order. In support, Defendants offer the following:

STATEMENT OF THE CASE

Plaintiffs Laddy Valentine ("Valentine") and Richard King ("King") (collectively, "Plaintiffs") are inmates currently confined at TDCJ's Pack Unit in Navasota, Texas. ECF 1 at 1. Plaintiffs contend that they suffer from disabilities that, according to the Center for Disease Control ("CDC"), place them at a higher risk of severe illness from COVID-19. *Id.* at 22, ¶ 51; 23, ¶ 57. Valentine is sixty-nine years old and suffers from hypertension and mobility problems resulting from a lumbar fusion in his back. *Id.* at 23, ¶ 58-59. King is seventy-three years old and

suffers from diabetes and kidney problems. *Id.* at 22, ¶ 51-56. Plaintiffs filed this putative class action suit on March 30, 2020, alleging that Defendants have failed to adequately protect them and other similarly situated inmates within the Pack Unit who are at high risk for severe illness should they become exposed to COVID-19. *Id.* at 1.

While Plaintiffs concede that TDCJ has implemented policies in response to the COVID-19 pandemic, they contend that those policies are "woefully inadequate." *Id.* at 15, ¶ 31. Plaintiffs allege that TDCJ's policies do not comport with the CDC's Guidance on Management of COVID-19 in Correctional Facilities. *Id.* Rather, Plaintiffs allege that TDCJ's policies only cite the CDC's guidelines pertaining to a healthcare setting and for clinical management of patients with confirmed disease. *Id.* Particularly concerning to Plaintiffs is the fact that TDCJ does not allow inmates to carry or utilize alcohol-based hand sanitizer. *Id.* at 15-16, ¶ 32. Plaintiffs further allege that TDCJ is not even adhering to its own purportedly inadequate polices. *Id.* at 20, ¶ 47. For example, Plaintiffs allege that TDCJ is not: (1) posting sings and warnings throughout the unit that provide education and guidance on COVID-19; (2) reducing social gatherings to minimize inmate contact; (3) educating inmates on the signs and symptoms of COVID-19 and how it is transmitted; (4) reducing and restricting inmate movement; and (5) reminding inmates of effective ways to stop transmission of COVID-19, such as proper handwashing methods. *Id.*

Plaintiffs contend that Defendants' failure to implement adequate policies to protect their health and ensure their safety amounts to an Eighth Amendment violation. *Id.* at 28-29, ¶ 73-79. Plaintiffs also assert that TDCJ has intentionally discriminated against them by denying them reasonable accommodations recommended by the CDC, which they allege violates the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). *Id.* at 29, ¶ 81. For relief, Plaintiffs have requested a temporary restraining order ("TRO") requiring that Defendants:

- Provide them and the class members with unrestricted access to antibacterial hand soap and disposable hand towels to facilitate handwashing;

- Provide them and the class members with access to hand sanitizer that contains at least 60% alcohol;

- Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning;

- Require common surfaces in housing areas to be cleaned hourly with bleach-based cleaning agents, including table tops, telephones, door handles, and restroom fixtures;

- Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television remote controls, books, and gym and sports equipment;

- Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available);

- Limit transportation of Pack Unit inmates out of the prison to transportation involving immediately necessary medical appointments and release from custody;

- For transportation necessary for prisoners to receive medical treatment or be released, social distancing requirements should be strictly enforced in TDCJ buses and vans;

- Implement and enforce strict social distancing measures requiring at least six feet of distance between all individuals in all locations where inmates are required to congregate, including, but not limited to, the cafeteria line, in the chow hall, in all recreation rooms, during required counting, and in the pill line;

- To the extent possible, use common areas like the gymnasium as temporary housing for inmates without disabilities to increase opportunities for social distancing; and

- Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic; (ii) the CDC's recommendations on "How to Protect Yourself" from contracting COVID-19; and (iii) instructions on how to properly wash hands. Among other

> locations, signage should be posted in every housing area, and above every sink.

Id. at 32-34, ¶ 96.

ARGUMENT

I. Plaintiffs are not entitled to a TRO.

Plaintiffs characterize their demands as requests for "a temporary restraining order and injunctive relief . . . ." ECF 32, ¶ 96. To the extent Plaintiffs are seeking a TRO, however, they are not entitled to such relief. The purpose of a TRO pursuant to Federal Rule of Civil Procedure 65(b) is to preserve the status quo until there is an opportunity to hold a hearing on the plaintiff's application for a preliminary injunction. *See* FED. R. CIV. P. 65(b); 11A Wright & Miller, Fed. Prac. & Proc. § 2951. As the Fifth Circuit has explained, "[a] temporary restraining order is a 'stay put,' equitable remedy that has as its essential purpose the preservation of the status quo while the merits of the case are explored through litigation." *Foreman v. Dallas Cnty., Tex.*, 193 F.3d 314, 323 (5th Cir. 1999).

Here, Plaintiffs do not seek to preserve the status quo. Rather, they seek to *change* the status quo by requiring Defendants to tailor their COVID-19 protocol at the Pack Unit to their wishes. Because Plaintiffs seek affirmative relief that would change—rather than preserve—the status quo, injunctive relief in the form of a TRO is inappropriate. *See Foreman*, 193 F.3d at 323; *Sosa v. Lantz*, 660 F. Supp. 2d 283, 290 (D. Conn. 2009) (explaining that a state prisoner was not entitled to a TRO when the relief he sought would change the status quo). Therefore, to the extent Plaintiffs seek a TRO, the Court should deny their request.

II. Plaintiffs are not entitled to a preliminary injunction.

Should the Court construe Plaintiffs' request for injunctive relief as a request for a preliminary injunction, Plaintiffs are not entitled to relief in that form, either. A party moving for

preliminary injunction must prove: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Cooper Lighting, LLC v. Kumar*, 4:13-CV-2640, 2013 WL 5775687, at *7 (S.D. Tex. Oct. 25, 2013). However, when the government is the nonmovant, the balance of hardships and the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The applicant must clearly carry the burden of persuasion on all of the required elements. *See Bluefield Water Ass'n, Inc. v. City of Starkville, Miss.*, 577 F.3d 250, 253 (5th Cir. 2009) (internal marks omitted).

Plaintiffs cannot carry their burden of persuasion on *any* of the required elements for a preliminary injunction. Therefore, to the extent Plaintiffs seek preliminary injunctive relief, that request should be denied.

A. Plaintiffs cannot show a substantial likelihood of success on the merits of their claims.

1. Plaintiffs did not properly exhaust their administrative remedies.

As a threshold matter, Plaintiffs did not properly exhaust their administrative remedies as required by the Prison Litigation Reform Act ("PLRA").

The PLRA imposes a strict exhaustion requirement: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a); *see Jones v. Bock,* 549 U.S. 199, 218, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007).

The purpose of this exhaustion requirement is to "give an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court"

and to allow for claim resolution in proceedings before an agency because it is faster and more economical than litigation in federal court. *Woodford v. Ngo,* 548 U.S. 81, 89 (2006). "Requests for injunctive relief are not exempt from the exhaustion requirement, and failure to completely exhaust prior to filing suit cannot be excused." *McMillan v. Dir., Texas Dept. of Criminal Justice, Corr. Institutions Div.*, 540 Fed. Appx. 358, 359 (5th Cir. 2013) (citing *Gonzalez v. Seal,* 702 F.3d 785, 788 (5th Cir. 2012)).

The Fifth Circuit requires an offender's strict adherence to TDCJ grievance procedures before a claim may be deemed properly exhausted. *See Dillon v. Rogers*, 596 F.3d 260, 268 (5th Cir. 2010) ("Under our *strict approach*, we have found that mere 'substantial compliance' with administrative remedy procedures does not satisfy exhaustion; instead, we have required prisoners to exhaust available remedies properly."). TDCJ's grievance procedure requires an offender to file both a Step One and Step Two grievance and receive a response from the highest authority–which is the Step Two grievance investigator–prior to filing his lawsuit. Tex. Gov't Code § 501.008(d). If an inmate fails to properly exhaust, his suit must be dismissed pursuant to section 1997e. *See Moussazadeh v. Tex. Dep't of Criminal Justice*, 703 F.3d 781, 788 (5th Cir. 2012) ("District courts have no discretion to waive the PLRA's pre-filing exhaustion requirement"); *Johnson v. Johnson*, 385 F.3d 503, 515 (5th Cir. 2004) ("[A] prisoner must pursue a grievance through both steps for it to be considered exhausted.").

Mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion. *Ross v. Blake*, 136 S. Ct. 1850, 1862, 195 L. Ed. 2d 117 (2016) (citing *McNeil v. United States,* 508 U.S. 106, 111 (1993) ("We are not free to rewrite the statutory text" when Congress has strictly "bar[red] claimants from bringing suit in federal court until they have exhausted their administrative remedies")). Therefore, courts may not engraft an

unwritten "special circumstances" exception onto the PLRA's exhaustion requirement. *Id*. "The only limit to § 1997e(a)'s mandate is the one baked into its text: [a]n inmate need exhaust only such administrative remedies as are 'available.'" *Id*.

Here, Plaintiffs have not exhausted their remedies with respect to any of their claims; nor have they shown that TDCJ's administrative remedies are or were unavailable to them. As recently as April 1, 2020—two days after this lawsuit was filed—Plaintiff Valentine filed a Step One grievance complaining of lack of hand sanitation and cleaning supplies. Exhibit A. TDCJ's deadline to respond to offender Valentine is May 11, 2020, unless it seeks an extension as permitted by the Offender Grievance Operations Manual. Exhibit A. On April 2, 2020, Plaintiff King filed a Step One grievance claiming that Classification continues to move offenders from other units to the Pack Unit during the coronavirus pandemic. Exhibit A. TDCJ's deadline to respond to offender King is May 12, 2020, unless it seeks an extension as permitted by the Offender Grievance Operations Manual. Exhibit A. Because neither Plaintiff exhausted his administrative remedies prior to filing suit, their claims are barred and must be dismissed.

2. Plaintiffs cannot prevail on the merits of their Eighth Amendment failure-to-protect claim.

Notwithstanding their failure to exhaust, Plaintiffs cannot show a substantial likelihood of success on the merits of their Eighth Amendment failure-to-protect claim because they cannot show that Defendants have been deliberately indifferent to their health or safety.

To establish an Eighth Amendment violation, "the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm" and that the prison official acted with "deliberate indifference" to the inmate's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Deliberate indifference under the Eighth Amendment requires a showing of "subjective recklessness" as used in criminal law. *Id*. at 839. Under the deliberate-indifference

standard, "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety." *Id.* at 837. "[D]eliberate indifference 'is a stringent standard of fault, requiring proof that a [defendant] disregarded a known or obvious consequence of his action." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (quoting *Bd. of Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 410 (1997)). "Deliberate indifference encompasses only unnecessary and wanton infliction of pain repugnant to the conscience of mankind." *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997); *see also Easter v. Powell*, 467 F.3d 459, 463 (5th Cir.2006) (citing *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). This is "an extremely high standard to meet," *Domino v. TDCJ*, 239 F.3d 752, 756 (5th Cir. 2001), and it "exists wholly independent of an optimal standard of care." *Gobert v. Caldwell*, 463 F.3d 339, 349 (5th Cir. 2006).

A prison official's failure to avoid harm or eliminate a risk does not violate the Eighth Amendment. To be liable for deliberate indifference, the official must "*know of* and *disregard* an excessive risk to inmate health and safety." *Stewart v. Murphy*, 174 F.3d 530, 534 (5th Cir. 1999) (quoting *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976)) (emphasis added). "[A] prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer*, 511 U.S. at 847. Actions and decisions that are merely inept, ineffective, or negligent do not constitute deliberate indifference. *Thompson v. Upshur Cty., Tex.*, 245 F.3d 447, 458-59 (5th Cir. 2001) ("[D]eliberate indifference cannot be inferred merely from a negligent or even a grossly negligent response to a substantial risk of serious harm."). And complaints that policies or practices were inadequate to prevent harm—even if true—are not sufficient for liability. *See, e.g.*, *Brumfield v. Hollins*, 551 F.3d 322, 328 (5th

Cir. 2008) (while jail's policies "lacked the specific directives Brumfield would have preferred to have been in place, policies nonetheless existed"); *Delaughter v. Woodall*, 909 F.3d 130, 136 (5th Cir. 2018) ("mere disagreement with one's medical treatment is insufficient to show deliberate indifference"). Even if the threatened harm is not averted, "prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause." *Farmer*, 511 U.S. at 845; *see also David v. Hill*, 401 F. Supp. 2d 749, 759 (S.D. Tex. 2005).

Here, to the extent that TDCJ officials have inferred a substantial risk to offender safety, TDCJ has implemented Correctional Managed Health Care (CMHC) Policy B-14.52 which is specifically targeted at preventing the introduction and spread of COVID-19 within the prison system—including at the Pack Unit. Exhibit B (CMHC B-14.52); see also Exhibit C (Declaration of Dr. Lannette Linthicum). Even before CMHC B-14.52 was implemented and before there was any indication of COVID-19 directly affecting TDCJ facilities or its employees, TDCJ took precautionary steps with respect to the operation of TDCJ units. *See* Exhibit D (Declaration of TDCJ Deputy Executive Director Oscar Mendoza). These measures included the following:

- On or about, March 13, 2020, TDCJ management began maintaining regular communication with the CDC, the Texas Division of Emergency Management, the Texas Department of State Health Services, TDCJ's Health Services Division (which maintains contact with the Office of Professional Services), and its university healthcare providers to monitor developments associated with the spread of COVID-19. The university health care providers (UTMB and Texas Tech), administrative medical staff (regional and at unit level) and TDCJ Health Services Director also held daily conference calls.
- Effective March 16, 2020, TDCJ activated the Command Center located at the TDCJ Administrative Headquarters Building, 861-A IH 45-N, Huntsville. The location is staffed

by various agency leaders Monday – Friday, 7:00 a.m. – 6:00 p.m. and Saturday and Sunday, 10:00 a.m. – 4:00 p.m. TDCJ conducts a daily briefing conference call with agency leadership. After the conference call, the TDCJ website is updated.

- TDCJ began providing COVID-19 specific updates on its website on March 11, 2020. The website can be accessed at www.tdcj.texas.gov. TDCJ also implemented an Ombudsman Family Hotline for offender families and the public.
- Effective March 20, 2020, pursuant to the Governor's Executive Order, all offender medical copays have been waived and continue to be waived as of this date.
- With respect to travel, TDCJ management asked staff to limit any unnecessary domestic traveling; limited agency travel to travel that was a necessity; limited international travel; and instituted telework on a case-by-case basis.
- With respect to employees and illness, TDCJ management advised employees who felt ill or who were running a fever to stay at home; began implementing COVID-19 screenings for employees who felt ill at work and who worked in parts of the state in which the presence of the coronavirus had been confirmed; and required a physician's note stating that an employee who appeared to be ill was clear of any symptoms of COVID-19 as a condition of returning to work.
- Effective March 24, 2020, TDCJ minimized transfers between units based upon agency needs on a case by case basis. Currently, for all units on precautionary lockdown, there are no transfers in and out of the units, except for necessary medical needs or emergencies. If a unit is not on precautionary lockdown, agency needed transfers have been authorized for offenders that were releasing (to be near home), for medical appointments, or necessary transfers due to classification. For transfers based upon agency needs, TDCJ

implemented screening processes on every facility before the offender departed and upon arrival to the new unit which included temperature screening and interviews by staff regarding fever and other symptoms such as shortness of breath. The screening is conducted before the offender enters a vehicle and when they exit the vehicle upon arrival at the unit to which they transferred. During offender transportation, offenders are seated in every other seat if in a bus. In other instances, only one offender is transported in a van instead of two offenders per van as was done prior to the implementation of COVID-19 protocols. Buses and vans are disinfected before and after each use.

- TDCJ has manufactured COVID-19 related signs, an offender pamphlet, and an offender pocket card. The informational pamphlet and pocket cards are distributed to offenders at the unit. In general, units post the signs in high traffic areas and other locations as determined by unit warden.
- With respect to visitation, TDCJ management first instituted screening procedures for offender visitation (as early as March 11, 2020) and later (effective March 13, 2020) suspended all offender visitation in accordance with a declaration from the Governor of Texas; and eliminated all other visitors to units to include volunteer assemblies, routine audits, vendors, outside contractors, tours, and training sessions.
- TDCJ inventoried existing stock of personal protective equipment ("PPE") and began to acquire additional PPE for TDCJ units.
- TDCJ increased distribution of hand sanitizer at all TDCJ units and departments.
- TDCJ began manufacturing cloth masks, face shields, and plastic gowns as supplemental PPE at TDCJ factories equipped to manufacture such for use by TDCJ offenders and staff.

- TDCJ produces hand soap which is issued to offenders in all facilities. Staff and offenders are encouraged to follow CDC guidelines on frequent handwashing. Each unit has been provided adequate supplies of hand soap for use by offenders and staff.
- As a general practice, TDCJ already had in place cleaning guidelines for its facilities and maintains a high standard of cleanliness. As part of its implementation measures for COVID-19, TDCJ ordered enhanced cleaning and disinfection of its facilities. TDCJ facilities are following the COVID-19 policy to disinfect surfaces with bleach solution sprayed on and allowed to air dry for 10 minutes. The bleach solution is a mixture of powdered bleach manufactured by TDCJ that is mixed with water. TDCJ also manufactures and distributes "DD" cleaner which is equivalent to Pine Sol and "Bippy" which is equivalent to Comet. In addition, facilities have an adequate supply of laundry bleach which also is used in mixtures for disinfecting and as a multipurpose type product. Heightened disinfection of areas with a positive COVID-19 test also is required in each facility.

  Exhibit D at 3-7.

In accordance with CDC guidelines, based on unit configuration, TDCJ has initiated social distancing measures as much as operationally possible in a correctional environment. As stated in CDC guidelines, not all strategies will be feasible in all facilities.

Contrary to Plaintiffs' assertions, the policies included in CMHC B-14.52 are substantially similar to those recommended by the CDC in the context of correctional facilities. See generally Exhibit E (CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities).

Plaintiffs request injunctive relief that goes beyond the CDC recommendations for correctional and detention facilities. TDCJ has implemented policies that are in accordance with CDC guidelines, and they have been careful to ensure that those policies are being followed at the Pack Unit. These policies are a reasonable response to the threat posed by COVID-19. *See David*, 401 F.Supp.2d at 759. Exhibit B*; see* also Exhibit D.

The Pack Unit is complying with CDC recommendations to the extent possible based on the Unit's physical space, staffing, population, population's medical restrictions, security and operational concerns. The following paragraphs set out (a) the relief Plaintiffs' request, (b) what the CDC recommends regarding the issue, and (c) the precautions Pack is taking in accordance with CDC regulations regarding the issue, or why it is reasonable for Pack not to implement those recommendations:

1. **Soap and towels:**

    a) Requested Relief: Provide Plaintiffs and the class members with unrestricted access to antibacterial hand soap and disposable hand towels to facilitate handwashing (ECF 1 at 32, ¶ 96)
    b) CDC Recommendation: Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing (Exhibit E at 7).
    c) Pack Precautions: Offenders are given five bars of soap per week and can receive extra soap upon request, at no cost to them, as needed to facilitate frequent handwashing. Before the Precautionary Lockdown (April 14, 2020), offenders had daily access to clean face towels. Since the Pack Unit has been placed on Precautionary Lockdown, offenders have an opportunity to shower three times per week and receive a clean bath towel for each shower. During the Precautionary Lockdown, there will continue to be a daily exchange of clean face towels. Exhibit F at 2.

2. **Hand sanitizer:**
    a) Requested Relief: Provide Plaintiffs and the class members with access to hand sanitizer that contains at least 60% alcohol.
    b) Consider allowing staff to carry individual sized bottles to maintain hand hygiene. Exhibit E at 10.
    c) Pack Precautions: Alcohol-based hand sanitizer is considered contraband when possessed by an offender housed at the Pack Unit. During the COVID-19 health crisis, correctional staff are permitted to carry it for personal use. Offenders are

not permitted to use hand sanitizer because it is flammable and can be ingested, which can cause intoxication and/or alcohol poisoning. Further, soap and water are available to offenders in their housing areas as well as within approximately 20-30 yards from the dining hall. Exhibit F at 3, Exhibit D at 8.

3. Cleaning supplies:

a) Requested Relief: Provide cleaning supplies for each housing area, including bleach-based cleaning agents and CDC-recommended disinfectants in sufficient quantities to facilitate frequent cleaning, including in quantities sufficient for each inmate to clean his own housing cubicle.

b) CDC Recommendation: Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants. Exhibit E at 9.

c) Pack Precautions: Offender janitors are given the necessary cleaning supplies, which consist of bleach-solution, Double D cleaner, as well as brooms, mops, and other necessary items. In the dorms, each offender cleans his own personal housing area, or cubicle, once per day with a bleach-based cleaning solution. In addition, there is a spray bottle of a disinfectant cleaner available for offenders to use if they wish to clean their housing area more frequently. Exhibit F at 3.

TDCJ facilities are following the COVID-19 policy to disinfect surfaces with bleach solution sprayed on and allowed to air dry for 10 minutes. The bleach solution is a mixture of powdered bleach manufactured by TDCJ that is mixed with water. TDCJ also manufactures and distributes "DD" cleaner which is equivalent to Pine Sol and "Bippy" which is equivalent to Comet. In addition, facilities have an adequate supply of laundry bleach which also is used in mixtures for disinfecting and as a multipurpose type product. Heightened disinfection of areas with a positive COVID-19 test also is required in each facility. Exhibit D at 6.

4. Cleaning of common areas:

a) Requested Relief: Require common surfaces in housing areas to be cleaned hourly with bleach-based cleaning agents, including table tops, telephones, door handles, and restroom fixtures; Increase regular cleaning and disinfecting of all common areas and surfaces, including common-use items such as television controls, books, and gym and sports equipment.

b) CDC Recommendation: Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures… Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones. Exhibit E at 9.

c) Pack Precautions: There is at least one inmate janitor assigned to clean each common area, including each dorm, the kitchen, laundry room, law library, dining hall, recreation yard, bathrooms, showers, the main hallway, and the gym. There are at least four janitors assigned to E-Dorm (with more than one janitor for 19 and 20 dorms in E) and at least three janitors assigned to the trusty camps. Also, there are additional janitors assigned to the infirmary, laundry and kitchen. All janitors are assigned to work 12-hour shifts, during which they are continually cleaning their assigned area (aside from breaks). As part of their duties, the correctional officers assigned to each area of the Pack Unit monitor and observe the janitors' cleaning to ensure that cleaning is happening on a consistent basis throughout each janitor's shift. Exhibit F at 3.

5. Offender transfers to Pack

a) Requested Relief: Institute a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available) (ECF 1 at 33);

b) CDC Recommendation: Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding. Strongly consider postponing non-urgent outside medical visits. If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. Exhibit E at 9.

c) Pack Precautions: On April 14, the Pack Unit was placed on precautionary lockdown, which means that all transfers to and from the Unit have stopped unless it is a medical necessity. Substantially all offender movement within the Unit has stopped. The only offender movement currently permitted is for medical emergencies and scheduled showers. Otherwise, offenders remain in their housing areas during precautionary lockdown. If no other COVID-19 cases are confirmed on the Pack Unit, this Precautionary Lockdown is expected to last through at least April 25. If other offenders show symptoms, then Pack will be on Precautionary Lockdown an additional 14 days from the last known symptom. In addition to the Precautionary Lockdown, dorms in which any COVID-19 positive offender lived will be placed under medical restriction. Medical restriction is used to separate and restrict the movement of well persons who may have been exposed to a communicable disease to see if they become ill. The offenders housed in the area will have their temperatures checked twice per day by medical staff and will be given masks to wear. Exhibit F at 3-4.

COVID-19 tests are determined by TDCJ-Pack Unit's medical provider, UTMB, not by TDCJ. Exhibit D at 8.

6. Limit transportation of Pack Offenders

a) Requested Relief: Limit transportation of Pack Unit inmates out of the prison to transportation involving immediately necessary medical appointments and release from custody. ECF 1 at 33.

b) CDC Recommendation: Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding. Strongly consider postponing non-urgent outside medical visits. If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. Exhibit E at 9.

c) Pack Precautions: While the Pack Unit is on Precautionary Lockdown, there is no transportation of offenders to or from the Pack Unit unless an offender is being transferred off the Unit for a medical emergency or returns to the Unit after a medical emergency. Prior to Precautionary Lockdown, transportation from the Pack Unit was limited to that necessary for offender medical needs available only at the Pack Unit, medical emergencies, and security reasons. Except in cases of medical emergencies, all offenders transported from or to the Pack Unit–are verbally screened and have their temperature taken before departure and upon arrival accordance with CDC guidance. Exhibit F at 4

Currently, for all units on precautionary lockdown, there are no transfers in and out of the units, except for necessary medical needs or emergencies. Exhibit D at 5.

7. Social distancing during transport

a) Requested Relief: For transportation necessary for prisoners to receive medical treatment or be released, CDC-recommended social distancing requirements should be strictly enforced in TDCJ buses and vans. ECF 1 at 33.

b) CDC Recommendation: None found regarding social distancing during transportation.

c) Pack Precautions: For transfers based upon agency needs, TDCJ implemented screening processes on every facility before the offender departed and upon arrival to the new unit which included temperature screening and interviews by staff regarding fever and other symptoms such as shortness of breath. The screening is conducted before the offender enters a vehicle and when they exit the vehicle upon arrival at the unit to which they transferred. During offender transportation, offenders are seated in every other seat if in a bus. In other instances, only one offender is transported in a van instead of two offenders per van as was done prior to the implementation of COVID-19 protocols. Buses and vans are disinfected before and after each use. Exhibit D at 5.

8. Social distancing on the Unit

a) Requested Relief: Implement and enforce strict social-distancing measures requiring at least six feet of distance between all individuals in all locations where inmates are required to congregate including, but not limited to, the cafeteria line, in the chow hall, in all recreation rooms, during required counting, and in the pill line. ECF 1 at 33-34.

b) CDC Recommendation: **Implement social distancing strategies to increase the physical space between incarcerated/ detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)

- Arrange bunks so that individuals sleep head to foot to increase the distance between them
- Rearrange scheduled movements to minimize mixing of individuals from different housing areas

- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

Exhibit E at 11.

c) Pack's Precautions: TDCJ, including the Pack Unit, enforces social distancing as a matter of correctional practice. Since the Governor issued a statewide disaster declaration on March 13, 2020, regarding COVID-19, offenders have been told to keep at least 6 feet of distance between themselves and any other person in open areas like hallways, rec yards, the gym, pill window line, commissary line, and other areas where feasible.

The dining hall was limited to two dorms eating at a time: one dorm on each side of the dining hall. This measure caused meal serving times to extend from taking approximately two hours per meal to feed the Unit (before the pandemic), to taking four to five hours to serve each meal. According to TDCJ policy, offenders must be allowed at least 20 minutes to eat, and it takes approximately 15 minutes to clean and sanitize the dining hall in between groups of offenders.

There are 50 tables in the dining hall and four seats per table. To enforce strict social distancing, requiring at least six feet of distance between all individuals in all locations where inmates are required to congregate, as Plaintiffs request, would only allow one inmate to sit per table; with 50 inmates eating at one time. *See* Attachment 1 at 7-9. To accomplish this would take approximately five to six hours per meal (three times per day)—approximately 14 or more hours in one day. It is simply not feasible to dedicate this amount of time to feeding, as there are many other essential functions that need to be performed. However, currently, no offenders are going to the dining hall due to Precautionary Lockdown.

Also, before the Pack Unit went on Precautionary Lockdown, only two dorms were permitted to go to the recreation yard at a time. In practice, this usually resulted in 10-15 offenders being on the yard at a time. *See* Attachment 1 at 2-5. Sports equipment (basketballs, volleyballs, handballs) were removed from the

recreation yard to eliminate any risk of transmission and to prevent offenders from being in close proximity to one another when playing sports. However, currently, no offenders are going to the recreation yard due to Precautionary Lockdown.

Exhibit F at 4-5.

9. Alternate housing

a) Requested Relief: To the extent possible, use common areas like the gymnasium, library, law library, and class rooms as temporary housing for inmates without disabilities to increase opportunities for social distancing. ECT 1 at 34.

b) CDC Recommendations: If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. Exhibit E at 11.

c) Pack's Precautions: The dorms at the Pack Unit cannot easily be altered to enforce "strict social distancing." The dorm cubicles are bolted to the ground and cannot be moved. Furthermore, even if the dorm cubicles could be moved, the physical layout of the dorms would not allow the cubicles to be spread out any more. Attachment 1 at 10-11. It is not feasible to use the gymnasium as alternate living quarters as it is not air conditioned. Because the Pack Unit is a medical facility with various offender medical needs including many wheelchair-bound offenders, using other areas of the Pack Unit, such as education rooms, for alternate housing space could create ADA violations. Exhibit F at 5.

10. Signage

a) Requested Relief: Post signage and information in common areas that provides: (i) general updates and information about the COVID-19 pandemic, including, but not limited to, the CDC's "Stop the Spread of Germs" poster already in TDCJ's possession; (ii) the CDC's recommendations on "How To Protect Yourself" from contracting COVID-19; and (iii) instructions on how to properly wash hands. Among other locations, all signage must be posted in every housing area, and (iii) must be posted above every sink.

b) CDC Recommendations: Post signage throughout the facility communicating the following: For all: symptoms of COVID-19 and hand hygiene instructions; For incarcerated/detained persons: report symptoms to staff. Exhibit E at 6.

c) Pack's Precautions: Several posters have been hung throughout the Pack Unit to educate and remind offenders to look out for symptoms of COVID-19, to wash their hands frequently, and to clean and disinfect frequently. Specifically, Pack has posted the CDC poster, "Stop Germs! Wash Your Hands" in the main hallways, in high traffic areas between the commissary and infirmary and front office (Attachment 2 at 8). A TDCJ pamphlet, "COVID—What to do," has also been posted throughout the main building, in the trusty camp, and by all sinks. TDCJ also has provided this pamphlet to every offender, and offenders have also

> received this information in the form of a pocket card to carry with them. TDCJ has posted a sign that reads, "How are you feeling? Cough, fever, shortness of breath. Contact your supervisor," throughout the main building and in the trusty camp. Exhibit F at 5, Exhibit D at 5.

TDCJ, and specifically, the Pack Unit are taking copious measures in response to the COVID-19 pandemic. Because the implementation of these policies and practices is a reasonable response to the threat posed by COVID-19, Plaintiffs have failed to show a substantial likelihood of success on the merits of their deliberate indifference claims under the Eighth Amendment.

3. Plaintiffs cannot prevail on the merits of their ADA claim.

Defendants are likely to prevail on Plaintiffs' ADA claim[1] because the ADA does not apply in the exigent circumstances, Defendants are not discriminating against Plaintiffs—all offenders (and all Texans for that matter) face the real risk of illness and death from COVID-19—and, in any event, the ADA does not require the modifications Plaintiffs seek.

a. "A prisoner's rights are diminished by the needs and exigencies of the institution in which he is incarcerated. He thus loses those rights that are necessarily sacrificed to legitimate penological needs." *Elliott v. Lynn*, 38 F.3d 188, 190-91 (5th Cir. 1994). Plaintiffs' ADA claim fails at the outset because the Fifth Circuit has held that an ADA "claim is not available under Title II under" "exigent circumstances." *Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000); *accord Wilson v. City of Southlake*, 936 F.3d 326, 331 (5th Cir. 2019) ("[O]fficers do not first have to consider whether their actions will comply with the ADA . . . when they are reacting 'to potentially life-threatening situations.'"). *Hainze* requires the rejection of Plaintiffs' ADA claim.

[1] Plaintiffs have pleaded this claim under both the ADA and RA. The same legal standards apply to both. *See Kemp v. Holder*, 610 F.3d 231, 234 (5th Cir. 2010). So Defendants will refer to this claim simply as the ADA claim.

None can dispute that the COVID-19 pandemic has created exigent circumstances in every area of life and government. *See, e.g.*, Special Order H-2020-09, *In re Court Operations in the Houston and Galveston Divisions Under the Exigent Circumstances Created by the Covid-19 Pandemic* (S.D. Tex. Apr. 3, 2020); General Order 20-03: Court Operations Under Exigent Circumstances Created by the Covid-19 Pandemic (E.D. Tex. Mar. 16, 2020); Order Regarding Court Operations Under the Exigent Circumstances Created by the Covid-19 Pandemic (W.D. Tex. Mar. 13, 2020). Plaintiffs themselves recognize the immense scale of the risk to everyone posed by the COVID-19. Comp. ¶ 13.

Courts "are required, as a matter of both common sense and law, to accord prison administrators great deference and flexibility in carrying out their responsibilities to the public and to the inmates under their control, including deference to the authorities' determination of the 'reasonableness of the scope, the manner, the place and the justification for a particular policy.'" *Elliott*, 38 F.3d at 191 (5th Cir. 1994) (holding that prisoners' Fourth-Amendment rights gave way during prison emergency). The exigency created by the COVID-19 crisis leaves no room for courts, under the guise of the ADA, to micromanage the State's response "in a continuously evolving environment." *Roell v. Hamilton County*, 870 F.3d 471, 489 (6th Cir. 2017) (citing *Hainze*).

b. Plaintiffs' ADA claim also fails because "[n]o discrimination is alleged"; Plaintiffs were "not treated worse because [they were] disabled." *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996). Plaintiffs do not allege that Defendants have denied them "participation in or . . . the benefits of the services, programs, or activities of a public entity" because of their disability or discriminated against them in any other way. 42 U.S.C. § 12132; *Providence Behavioral Health v. Grant Rd. Public Util. Dist.*, 902 F.3d 448, 459 (5th Cir. 2018).

To allege a prima facie claim under the ADA, a plaintiff must allege facts plausibly suggesting that "(1) that he has a qualifying disability; (2) that he is being denied the benefits of services, programs, or activities for which the public entity is responsible, or is otherwise discriminated against by the public entity; and (3) that such discrimination is by reason of his disability." *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011). Plaintiffs' allegations fail to satisfy the second and third elements of an ADA claim.

Plaintiffs have not, for example, alleged or shown that Defendants have denied them meaningful access to or benefits from any services, programs, or activities at the Pack Unit, let alone that any denial was because of their disability. *See Hainze*, 207 F.3d at 801 ("A necessary prerequisite to a successful claim under Title II is that a disabled person be denied the benefits of a service, program or activity by the public entity that provides such service, program or activity."); *see also Hay v. Thaler*, 470 F. App'x 411, 418 (5th Cir. 2012). Because "the plain language of" the controlling regulation "makes clear that an accommodation only is required when *necessary* to avoid discrimination *on the basis* of a disability," *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 751 (7th Cir.2006) (en banc) (citing 28 C.F.R. § 35.130(b)(7)), none of the modifications demanded by Plaintiffs or ordered by the district court can be justified under the ADA.

Similarly, Plaintiffs have not alleged or shown that they are being discriminatorily denied the various modifications to prison life that they request. TDCJ has adopted a state-wide protocol for addressing COVID-19 concerns based on the CDC's recommendations for correctional facilities. Those protocols are implemented at the Pack Unit as well as the other units in Texas. Since Plaintiffs are subject to the same conditions as other non-disabled inmates across Texas, they cannot show that they are being discriminated against, or that any discrimination is "by

reason of" their disabilities. *See Tuft v. Tex.*, 410 F. App'x 770, 775 (5th Cir. 2011) (disabled inmate-plaintiff failed to show "by reason of" discrimination in claim regarding overcrowding in the showers where all inmates were subjected to the same conditions). Plaintiffs are not asking to be treated the same as other, non-disabled inmates—rather, they wish to be treated *differently*. But Texas is "not obligated to alter its" administration of the Pack Unit "by creating a new benefit previously unavailable to any" other prisoner. *Taylor v. Colo. Dept. of Health Care Policy & Fin.*, 811 F.3d 1230, 1236 (10th Cir. 2016); *accord Providence Behavioral Health*, 902 F.3d at 459 (holding that ADA was not implicated where the denial of an accommodation "did not create a situation where disabled individuals had an unequal ability to use and enjoy the facility compared to individuals who do not have a disability").

c. Even if one assumes that the ADA applies, and that Plaintiffs are suffering some sort of discrimination, the accommodation they seek—judicial micromanagement of a prison during an emergency—is not reasonable. On top of that, the modifications they seek will "fundamentally alter" the State's operation of the Pack Unit, undermine the safety of Pack Unit offenders, and "impose an undue financial or administrative burden." *Tennessee v. Lane*, 541 U.S. 509, 532 (2004). To be clear, Defendants and others may make and have made fundamental changes to prison life to combat COVID-19 as they determine that such fundamental changes are necessary and achievable. But those decisions should and must be left to the informed discretion of the State's elected leaders and agency officials.

Plaintiffs "bear[] the burden of showing that [they] requested a modification and that it was reasonable." *Block v. Tex. Bd. of Law Examiners*, 952 F.3d 613 (5th Cir. 2020). As set above, under the Fifth Circuit's precedent, the ADA does not apply to exigent circumstances like these. But even courts that apply the ADA to exigent circumstances recognize that any exigency greatly

limits what accommodations are reasonable. *See, e.g.*, *Seremeth v. Bd. of Cty. Comm'rs*, 673 F.3d 333, 341 (4th Cir. 2012); *Loye v. County of Dakota*, 625 F.3d 494, 498 (8th Cir. 2010); *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1086 (11th Cir. 2007). And in the prison setting specifically, deference to the judgment of officials on the ground is necessary. *See Cadena v. El Paso County*, 946 F.3d 717, 725 (5th Cir. 2020); *Wells v. Thaler*, 460 F. App'x 303, 313 (5th Cir. 2012). "The difficulties of operating a detention center must not be underestimated by the courts." *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 326 (2012). "Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Id*. Because operating a prison "call[s] for the exercise of significant judgment and discretion," courts "will not second guess those judgments, where, as here, [officials are] presented with exigent or unexpected circumstances." *Bahl*, 695 F.3d at 785. Because "[t]he judiciary is ill-equipped to manage decisions about how best to manage any inmate population" and "the concern about institutional competence is especially great where, as here, there is an ongoing, fast-moving public health emergency," *Money*, 2020 WL 1820660, at *16, it is not reasonable to tie the hands of prison officials.

Even apart from exigent circumstances, Plaintiffs' requested modifications "must be judged in light of the overall institutional requirements, including security concerns, safety concerns, and administrative exigencies." 1 Thomas R. Trenkner, Americans with Disabilities: Practice & Compliance Manual § 2:92. Thus, any requested modification to prison life must be judged against a State's "penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Among the factors considered when a prisoner claims a right to some policy change are (1) whether there is a 'valid, rational connection' between the prison regulation and the legitimate governmental

interest put forward to justify it"; (2) whether the prisoner has "alternative means" of exercising some right; (3) "the impact accommodation of the asserted . . . right will have on guards and other inmates, and on the allocation of prison resources generally"; and (4) whether "an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at de minimis cost to valid penological interests." *Id.* at 90-91. The State's penological interests defeat Plaintiffs' plea for judicial micromanagement of the State's Covid-19 response.

Plaintiffs do not even suggest that TDCJ's current policies lack any rational connection to penological interests. The accommodations Plaintiffs seek, but are allegedly being denied, include: (1) access to alcohol-based sanitizer; (2) provision of cleaning supplies for each housing area, including cleaning agents containing bleach; (3) access to antibacterial soap and hand towels to facilitate handwashing; (4) a prohibition on new prisoners entering the Pack Unit for the duration of the pandemic (or in the alternative, a requirement to test all new prisoners entering the Pack Unit for COVID-19 or place all new prisoners in quarantine for 14 days if no COVID-19 tests are available); and (5) social distancing measures in the cafeteria, pill line, and other locations where prisoners are required to congregate. For example, offenders "are not permitted to use hand sanitizer because it is flammable and can be ingested, which can cause intoxication and/or alcohol poisoning." Exhibit F at 3. Bleach is also a dangerous chemical that offenders are generally not allowed to possess. The prohibition on contraband is a "legitimate safety requirement[] necessary for the safe operation of its services, programs, or activities," which respond to "actual risks" posed by offenders. 28 C.F.R. § 35.130(h) (limiting accommodations that pose a safety risk). According to the FDA, "Antibacterial soap," meanwhile, provides no benefit compared to regular soap and water Plaintiffs already have access to, because COVID-19 is caused by a virus, not bacteria. *See "*Antibacterial Soap? You Can Skip It, Use Plain Soap and

Water, FDA, U.S. Food & Drug Administration," https://www.fda.gov/consumers/consumer-updates/antibacterial-soap-you-can-skip-it-use-plain-soap-and-water (last visited Apr. 15, 2020)).

On top of this, Defendants have provided Plaintiffs with alternatives to their demands. In light of COVID-19, common surfaces are being cleaned (with bleach-based cleaning agents) with high frequency. Exhibit F at 3. Additionally, the Pack Unit has implemented social distancing measures to help prevent the spread of COVID-19. These include: limiting the number of offenders in the dining hall, pill window, recreation yard, in the dayroom, on transportation buses and vans, as well as enforcing social distances in hallways and other common areas. Exhibit F, generally. Finally, traffic in and out of the Pack Unit has been significantly reduced, and screening measures have been implemented so that inmates suffering from COVID-19 symptoms can be identified and isolated from the rest of the population. Exhibit F at 3-4. As of April 14, 2020, the Pack Unit has been placed on precautionary lockdown, which precludes any transfers to or from the unit and severely restricts all offender movement within the building. Exhibit F at 3-4. These policy choices reflect TDCJ's weighing of the impact various changes to daily life will have on correctional officers and staff, other inmates in the Texas prison system, and on the allocation of prison resources generally.

Additionally, because Plaintiffs cannot demonstrate likelihood of success as to their constitutional claim, Defendants are entitled to immunity as to Plaintiffs' ADA and RA claims. The ADA abrogates the States' Eleventh Amendment immunity to extent that the condition challenged is also a violation of the plaintiffs' constitutional rights. *United States v. Georgia*, 546 U.S. 151 (2006). Because the ADA was passed pursuant to Congress' remedial power under

Section 5 of the Fourteenth Amendment, the States' Eleventh Amendment immunity remains intact except where a constitutional violation has been shown. *Id*.

4. Plaintiffs are not entitled to the injunctive relief they seek.

Plaintiffs have not shown a substantial likelihood of success on the merits of their Eighth Amendment failure-to-protect claim or their ADA/RA claims. Regarding preliminary injunctions, the Fifth Circuit has explained that there is no need to proceed to the other elements if a substantial likelihood of success on the merits is not proven. *See Walgreen Co. v. Hood*, 275 F.3d 475, 477 (5th Cir. 2001). The Court, therefore, should deny Plaintiffs' request for a preliminary injunction without proceeding further in its analysis. *See id.*

Even if Plaintiffs could show a substantial likelihood of success, however, injunctive relief is inappropriate because it would impermissibly interfere with Defendants' effort to manage the COVID-19 pandemic. The State's police powers are at their apex during a public-health emergency. The Supreme Court has thus recognized that "the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29 (1905). And judicial authority to review claims alleging the denial of individual rights is restricted by the State's paramount interest in responding to the crisis. In a recent grant of mandamus relief, the Fifth Circuit explained that judicial review is available only "if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has *no real or substantial relation to those objects*, or is, *beyond all question, a plain, palpable invasion of rights secured by the fundamental law*." *In re Abbott*, 2020 WL 1685929, at *1 (quoting *Jacobson*, 197 U.S. at 29). The Fifth Circuit emphasized that absent such a clear violation, "'[i]t is no part of the function of a court' to decide

which measures are 'likely to be the most effective for the protection of the public against disease.'" *Id.* (quoting *Jacobson*, 197 U.S. at 30).

Plaintiffs do not allege, and they could not possibly show, that Defendants' efforts to respond to the COVID-19 pandemic have "no real or substantial relation" to the goal of protecting inmates' health and safety, or that Defendants' policies are "beyond all question, a plain, palpable invasion" of their constitutional rights. *In re Abbott*, 2020 WL 1685929, at *1. Even if the Court agreed with Plaintiffs that alternative measures would be more effective, that would not justify the exercise of "judicial power to second-guess the state's policy choices in crafting emergency public health measures." *Id.* at *6.

It is not necessary to reach that question here because Plaintiffs have not shown a substantial likelihood of success on the merits. But the principle articulated by the Supreme Court in *Jacobson* creates an additional, independent barrier to injunctive relief, and it defeats any suggestion that a federal court's authority to intervene in the management of state prisons somehow increases during a pandemic. To the contrary, the current public health emergency further restricts any such authority. *See In re Abbott*, 2020 WL 1685929, at *1; *Money*, 2020 WL 1820660, at *16 ("The judiciary is ill-equipped to manage decisions about how best to manage any inmate population . . . . And the concern about institutional competence is especially great where, as here, there is an ongoing, fast-moving public health emergency.").

B. Plaintiffs cannot show a substantial threat of irreparable injury if their request for injunctive relief is not granted.

Should the Court proceed to consider the irreparable-harm element, it will find that Plaintiffs cannot make their required showing. Showing irreparable harm is "[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction." 11A Wright & Miller,

Fed. Prac. & Proc. § 2948.1. Irreparable harm must be *likely*, not merely speculative. *See, e.g.*, *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).

Determining whether injunctive relief is appropriate in light of COVID-19 calls for a fact-specific analysis. *See Sacal-Micha v. Longoria*, No. 1:20-CV-37, ---F.Supp.3d---, 2020 WL 1518861, at *5 (S.D. Tex. Mar. 27, 2020). In New York, for example, a federal judge ordered the release of immigration detainees held in facilities with confirmed cases of COVID-19. *See Basank v. Decker*, No. 20 Civ. 2518, ---F.Supp.3d---, 2020 WL 1481503, at *7 (S.D.N.Y. Mar. 26, 2020). Additionally, some courts have ordered the release of immigration detainees after finding a substantial likelihood that they would succeed on their constitutional claims. *See Castillo v. Barr*, No. 20-cv-0605, 2020 WL 1502864, at *6 (C.D. Cal, Mar. 26, 2020); *Coronel v. Decker*, No. 20-cv-2472, 2020 WL 148 7274, at *10 (S.D.N.Y. Mar. 27, 2020).

At least one court, however, has declined to release an immigration detainee due to COVID-19 concerns after finding that the plaintiff was not likely to succeed on the merits of his underlying deliberate indifference claim. *See Sacal-Micha*, 2020 WL 1518861, at *6 (explaining that "the fact that ICE may be unable to implement the measures that would be required to fully guarantee Sacal's safety does not amount to a violation of his constitutional rights and does not warrant his release"). Another court has declined to release an immigration detainee due to COVID-19 concerns in part because the plaintiff did not show irreparable harm. *See Dawson v. Asher*, No. C20-0409 JLR-MAT, 2020 WL 1304457, at *3 (W.D. Wash Mar. 19, 2020).

Defendants are well aware of the threat COVID-19 poses to inmates—especially those of advanced age and those who suffer from underlying health conditions. The measures put in place by TDCJ and the Pack Unit follow CDC recommendations to the fullest extent possible within the confines of the Pack Unit. *See* Exhibits D and F, generally. Plaintiffs cannot show that those

measures are deliberately indifferent to the risk posed by COVID-19, let alone that their preferred measures would be more effective than the measures being implemented by TDCJ. At this point, any threat of harm to Plaintiffs from the lack of injunctive relief requiring TDCJ to implement their proposed measures is merely speculative. *Winter*, 555 U.S. at 22. This is not sufficient. Since Plaintiffs have not shown they are likely to suffer irreparable harm in the absence of an injunction that requires TDCJ to implement their proposed measures, the Court should deny their request for injunctive relief.

C. The balance of equities and the public interest weigh against Plaintiffs.

Finally, Plaintiffs cannot show that the balance of equities and the public interest weigh in their favor. In the prison context, a request for injunctive relief must always be viewed with great caution because "one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions." *Missouri v. Jenkins*, 495 U.S. 33, 51 (1990). And "where a state penal system is involved, federal courts have . . . additional reason to accord deference to the appropriate prison authorities." *Turner v. Safley*, 482 U.S. 78, 85 (1987). The Supreme Court has explained that "it is 'difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.'" *Woodford v. Ngo*, 548 U.S. 81, 94 (2006) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973)). Plaintiffs invite the Court to ignore those interests entirely.

The injunctive relief requested by Plaintiffs would irreparably injure Defendants because it upends federalism principles, disregards the separation of powers, and thwarts the State's fundamental prerogative, and Defendants' basic duty as state officials, to maintain safety and

security in Texas prisons. A State suffers an "institutional injury" from the "inversion of . . . federalism principles." *Texas v. United States Envt'l Protection Agency*, 829 F.3d 405, 434 (5th Cir. 2016); *see Moore v. Tangipahoa Par. Sch. Bd*., 507 F. App'x 389, 399 (5th Cir. 2013) (per curiam) (finding that a State suffers irreparable harm when an injunction "would frustrate the State's program"); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (recognizing that "the inability to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State").

The Supreme Court has cautioned that federal courts must defer to prison officials' adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain internal security. *Block v. Rutherford*, 468 U.S. 576, 584–85 (1984). It has expressly recognized that the judiciary is ill-equipped to manage prisons:

> Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.

Turner, 482 U.S. at 84-85. And it has noted that the difficulties in managing prisons "are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Procunier v. Martinez*, 416 U.S. 396, 405 (1974) (quoted in *Rhodes v. Chapman*, 452 U.S. 337, 351 n.16 (1981)). Consequently, the Court has noted that federal district courts are not to allow themselves to become "enmeshed in the minutiae of prison operations." *Lewis v. Casey*, 518 U.S. 343, 362 (1996) (quoting *Bell v. Wolfish,* 441 U.S. 520, 562 (1979)).

Plaintiffs ask the Court to do exactly what the Supreme Court has warned against. They seek a mandatory injunction compelling Defendants to implement numerous detailed policies and procedures at the Pack Unit. These policies and procedures would include, for example, unlimited access to hand sanitizer; unlimited access to disposable towels; cleaning that is performed at specific time intervals, logged by prison officials, and submitted to the Court for the Court's approval. This is precisely the "enmesh[ment] in minutiae of prison operations" the Supreme Court has long condemned. *See Lewis*, 518 U.S. at 362.

Illustrating the dangers noted by the Supreme Court, Plaintiffs' request for relief ignores the practical considerations that Defendants must deal with in managing the unprecedented and ever-changing crisis presented by the COVID-19 pandemic. For instance, Plaintiffs ask for COVID-19 tests to be performed on all those who enter the Pack Unit, whether they are displaying symptoms of COVID-19 or not. ECF 1 at 33 and 35. But not even members of the general public can be tested for COVID-19 in the absence of symptoms. *See Criteria to Guide Evaluation and Laboratory Testing for COVID-19* (March 24, 2020), https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html ("Clinicians should use their judgment to determine if a patient has signs and symptoms compatible with COVID-19 and whether the patient should be tested. Most patients with confirmed COVID-19 have developed fever and/or symptoms of acute respiratory illness (e.g., cough, difficulty breathing)"). Among other reasons, that is because testing is not readily available, and someone who wishes to be tested must go through distinct procedures in order to obtain testing. *Id*. In fact, what Plaintiffs suggest is actually contrary to what the CDC recommends for COVID-19 testing. *See Testing for COVID-19: How to Decide If You Should Be Tested Or Seek Care* (April 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html ("Not everyone needs to be tested for COVID-19.").

If it were required that everyone that comes into or goes out of the Pack Unit be tested—even in the absence of symptoms—the medical providers would necessarily have to obtain testing equipment that could be diverted from other parts of the state where people who actually display symptoms are in need of testing. This would be an unwise use of resources that would disserve the public interest.

The extraordinary relief Plaintiffs seek would be unduly burdensome to Defendants, waste resources, and set a precedent for courts to micro-manage the operations of prisons during a pandemic. The benefit of these measures to Plaintiffs does not outweigh the burden it would impose on Defendants. Moreover, these measures would not serve the public interest. The Court, therefore, should deny Plaintiffs' request for injunctive relief.

CONCLUSION

Plaintiffs are not entitled to a TRO because they are not seeking to preserve the status quo. Plaintiffs are also not entitled to a preliminary injunction, because they cannot show; (1) a substantial likelihood of success on the merits of their claims; (2) a threat of irreparable harm; or (3) that the balance of equities and the public interest weigh in their favor. The Court, therefore, should deny Plaintiffs' request for injunctive relief.

Respectfully submitted.

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NOTICE OF ELECTRONIC FILING

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that I have electronically submitted a true and correct copy of the foregoing for filing in accordance with the Court's electronic filing system, on April 15, 2020.

/ s/ Christin Cobe Vasquez
CHRISTIN COBE VASQUEZ
Assistant Attorney General

CERTIFICATE OF SERVICE

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that a true and correct copy of the foregoing *Defendants' Response in Opposition to Plaintiffs' Application for a Temporary Restraining Order* has been served electronically upon all counsel of record *via* the electronic filing system of the Southern District of Texas, on April 15, 2020.

/ s/ Christin Cobe Vasquez
CHRISTIN COBE VASQUEZ
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