

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00977-PAB

THOMAS CARRANZA;  
JESUS MARTINEZ;  
RICHARD BARNUM;  
THOMAS LEWIS;  
MICHAEL WARD;  
COLBY PROPE; and  
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

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**DEFENDANT’S RESPONSE TO PLAINTIFFS’ EMERGENCY MOTION  
FOR LIMITED EXPEDITED DISCOVERY [ECF 31]**

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Defendant Sheriff Steven Reams (“Sheriff”), by and through his counsel, Hall & Evans, L.L.C., respectfully responds to Plaintiffs’ Emergency Motion for Limited Expedited Discovery [ECF 31], and requests the Motion be denied except as expressly set forth in this Response, as follows:

**I. INTRODUCTION**

Plaintiffs seek to subject the Sheriff to several discovery requests—some of which the Sheriff perceived as reasonable and expressed a willingness to comply subject to certain equally reasonable conditions, and others of which he perceived as harassing and oppressive. However, under the law governing early discovery requests including

Fed.R.Civ.P. Rule 26(d)(1), Plaintiffs were required to present the Court with substantial “good cause” for the totality of their requests. Yet, they offer the Court argument devoid of evidentiary support. The Court should partially grant the Motion within the boundaries of the Sheriff’s previously-stated agreement below, and otherwise deny the Motion.

## **II. BACKGROUND**

Initially, the Sheriff denies Plaintiffs’ assertion any procedures, customs, policies, or practices at the Weld County Jail (“WCJ”) were a response to Plaintiffs’ lawsuit. The Sheriff also denies Plaintiffs’ assertion any of the extremely small number of inmates testing positive for COVID-19 at the WCJ were exposed due to the conduct of the Sheriff or the Weld County Sheriff’s Office (“WCSO”). Despite this disagreement, the Sheriff’s counsel attempted to work with opposing counsel as to the parameters of what eventually became ECF 31, but negotiations broke down based on opposing counsel’s failure to engage the Sheriff’s legitimate requests.. For the Court’s edification, the relevant conferral circumstances are attached as **Exh. A**.

1. As conclusively detailed in the Sheriff’s Declaration, but more importantly by the significant evidentiary attachments submitted along with the Declaration, the Sheriff and the WCSO began taking substantial steps beginning on February 27, 2020—well before any outbreak of COVID-19 in Weld County proper or before the current minor outbreak within the WCJ—to combat the spread of COVID-19. [ECF 26-1 to 26-9.]

2. In fact, of the substantial steps taken beginning on February 27, 2020, virtually all of them were taken before 11:59 PM on April 6, 2020—the day before anyone attributable to the Sheriff, the WCSO, or the Sheriff’s counsel were even aware of the

prospect of the above-captioned litigation being filed. [See *generally* ECF 26-1 to 26-9; see *also* ECF 26-1 at 3-21.]

3. On April 7, 2020, the Sheriff, the WCSO, and the Sheriff's counsel learned of this litigation being filed.

4. On April 9, 2020, the Sheriff's counsel conferred with Plaintiffs' counsel on the parameters of a potential inspection of the WCJ and agreed on an inspection protocol, the relevant portions of which are attached to this Response as **Exh. B**.

5. The inspection occurred on Friday, April 10, 2020. [ECF 26-1 at 21 ¶ 86.] During the inspection, both sides' expert were given a tour of the WCJ for approximately 3 hours and 15 minutes including donning and doffing of personal protective equipment ("PPE"), during which time all participants were escorted by two WCSO personnel for their safety and security, viewed whatever areas they desired of WCJ operations, and were permitted to ask all questions they desired on the WCSO response to COVID-19. [*Id.*] Plaintiffs have not challenged this description of the April 10, 2020, inspection despite it being on the Court's docket for more than seven days.

6. Thereafter, and even after filing an uninvited and non-conferred "Notice of Supplemental Evidence and Authority" in violation of PAB Civ. Prac. Std. III.B.2, Plaintiffs withdrew their request for a TRO. [See ECF 29, ECF 30.]<sup>1</sup>

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<sup>1</sup> In ECF 28, ECF 28-1, and ECF 31, Plaintiffs violated the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") by including the purported individually identifiable health information of a person not yet dead 50 years. See 45 C.F.R. § 160.103, ¶ (2)(iv) in definition of "protected health information" under HIPAA.

7. After close of business April 15, 2020, Plaintiffs' counsel emailed the Sheriff's counsel to obtain counsel's position on Plaintiffs' early-discovery request. [**Exh. A** at 4-5.]

8. More than two hours before response deadline, the Sheriff's counsel set forth areas of agreement to Plaintiffs' sought-after discovery with conditions on compliance (data), one area of partial agreement (WCSO policies and procedures relating to COVID-19 but only in the context of hearing exhibits), and one area of total disagreement (second inspection to which Plaintiffs asserted entitlement). [**Exh. A** at 1-2.] The Sheriff's counsel requested a substantive response from Plaintiffs to the concerns and issues raised.

9. Thereafter, the Sheriff's counsel received only the following inaccurate statement:

We have already provided you with a detailed description of our need for the requested discovery – it is all narrowly tailored to give us what we need so as to present to the Court the current jail conditions at the time of the preliminary injunction hearing in light of the changes the WCJ has made in response to our lawsuit. This is critically important so that the Court can take appropriate action to protect the class of vulnerable people under your client's custody who are at grave risk of exposure to COVID-19, as well as those who are already exposed as a result of your client's conduct.

As for your proposal to give us information subject to the conditions you seek to impose, we cannot agree to those conditions. We will note Defendant's opposition to our motion, although we disagree that we are required to include your lengthy email in the text of our motion or as an attachment to it.

The Sheriff's counsel requested the prior conferral string be attached to give the Court an accurate portrayal of the conferral, which request went unheeded.

10. A re-inspection of the WCJ, for multiple reasons, would be unduly burdensome and substantially disruptive to the Sheriff and to WCJ operations. [See *generally* **Exh. C**, Decl. of Capt. Matthew Turner, Jail Captain of Weld County Jail, at 2-5.]

### **III. STANDARD OF REVIEW**

A court order allowing expedited discovery under Fed.R.Civ.P. 26(d)(1) can issue but only upon a showing of good cause, where the plaintiff's need for expedited discovery outweighs any possible prejudice or hardship to the defendant. See ***Qwest Comm's Int'l, Inc. v. Worldquest Networks, Inc.***, 213 F.R.D. 418, 419 (D. Colo. 2003); ***Pod-Ners, LLC v. N. Feed & Bean of Lucerne LLC***, 204 F.R.D. 675, 676 (D. Colo. 2002). Good cause exists where the evidence sought "may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation." ***Qwest***, 213 F.R.D. at 419. That is, entry of such an order is not appropriate where it is less likely relevant evidence may be destroyed or lost. Cases where plaintiffs may require expedited discovery to meet their burden of proof to obtain a preliminary injunction are "expected to be rare". ***Notaro v. Koch***, 95 F.R.D. 403, 405 n.3 (S.D.N.Y. 1982). In ***Pod-Ners***, for example, expedited discovery occurred because the plants at issue were capable of spoiling or being consumed or destroyed over time. ***Pod-Ners***, 204 F.R.D. at 676.

Expedited discovery may be appropriate in some cases where a party seeks a preliminary injunction. ***Pod-Ners***, 204 F.R.D. at 676. However, such expedited discovery must be limited and narrowly tailored to seek only information necessary to support expedited relief. See ***Qwest***, 213 F.R.D. at 420 (denying request for expedited discovery as overly broad). For example, the use of a broad term such as "relate to" or "concerning" in an expedited discovery request provides no basis upon which a party can reasonably determine what documents may or may not be responsive. ***Qwest***, 213 F.R.D. at 421. When expedited discovery is sought to prepare for a preliminary injunction hearing, the

discovery requests are examined in the context of the whole record and their reasonableness in light of all circumstances. See ***Merrill Lynch, Pierce, Fenner & Smith v. O'Connor***, 194 F.R.D. 618, 624 (N.D. Ill. 2000).

And concerning an early-discovery request to inspect premises, the Sheriff as the responding party must be permitted, in the context of this written Response filed with the Court pursuant to ECF 33, to “state with specificity the grounds for objecting to the request, including the reasons.” Fed. R. Civ. P. 34(b)(2)(B).

#### **IV. ARGUMENT**

##### **A. The Sheriff’s Agreement to and Conditions on Furnishing Data Are Reasonable**

In the parties’ conferral on ECF 31, the Sheriff indicated he would be agreeable to the following narrowly tailored furnishing of daily data:

(1) Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count in the isolation unit (only one such unit at present, but if additional units come into such use the data will be furnished);

(2) Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count of persons currently housed within the Weld County Jail who at some point since March 1, 2020 were diagnosed by a healthcare professional as having tested positive for COVID-19;

(3) Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count of persons currently housed within the Weld County Jail who at some point since March 1, 2020 were designated by a healthcare professional as being treated as “presumptively positive” for COVID-19 but who have not in fact tested positive (or did not in fact test positive) for COVID-19; and

(4) As for all data from April 11, 2020 to April 17, 2020, counsel-of-record for Plaintiffs could expect to receive it no earlier than 5:30 PM on April 17, 2020; from April 18, 2020 to April 19, 2020, counsel-of-record for Plaintiffs could expect to receive it no earlier than 5:30 PM on April 20, 2020; and from April 25, 2020 to April 26, 2020, counsel-of-record for Plaintiffs could expect to receive it no earlier than 5:30 PM on April 27, 2020.<sup>2</sup>

[**Exh. A** at 1.] The Sheriff made this offer (and the offer concerning the furnishing of policies) subject to the following limited conditions: request a briefing schedule, for Plaintiffs to respond and Defendant to reply with no sur-reply permitted, on the legal issues identified in ECF 27; have the preliminary injunction hearing no earlier than 04/29/2020; and a stipulation as to authenticity of all defense hearing exhibits, whether documents or video. [See **Exh. A** at 2.] Plaintiffs offered no response to the Sheriff's counsel, and no complaint in ECF 31, as to why this proposed scope of data and these conditions would be unreasonable.<sup>3</sup>

### **B. The Sheriff's Agreement to and Limits on Furnishing Policies Are Reasonable**

In the parties' conferral on ECF 31, the Sheriff indicated he was agreeable to the following narrowly tailored furnishing of COVID-19-related policies [see **Exh. A** at 1-2]:

(1) The Sheriff would furnish written policies and procedures from the WCSO and Weld County Health Department (to the extent given to the WCSO and applicable to WCJ operations) relating to COVID-19, including policies or procedures to protect inmates from COVID-19, whether they have been disseminated to the inmates or otherwise. However, the Sheriff was willing to do so only in the form and context of PI hearing exhibits under

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<sup>2</sup> The Sheriff does not concede good cause exists for provision of any of these data points but he is willing to provide them nonetheless.

<sup>3</sup> The Sheriff continues to believe the legal issues before this Court are paramount, and warrant further briefing and consideration by this Court. The Sheriff maintains the legal barriers articulated by the Sheriff foreclose this Court awarding the relief Plaintiffs demand regardless of the facts presented at any evidentiary hearing before this Court.

whatever PI hearing exhibit exchange schedule the Court in its discretion might set.

(2) The Sheriff's made this offer subject to the same limited conditions as for data.

### **C. Any WCJ Re-Inspection Will Be Unreasonable, Burdensome, and Disruptive**

In contrast, Plaintiffs' proposed re-inspection of the whole WCJ is unnecessary and disproportionate to its heavy and undue burden, expense, and substantial disruption.

In the context of correctional facility inspections, "the search for the truth must be balanced against the burdens and dangers created by the inspection." ***United States v. Territory of the V.I.***, 280 F.R.D. 232, 236-37 (D.V.I. 2012) (denying motion for inspection of correctional facility); ***Silverstein v. Fed. Bureau of Prisons***, 2009 U.S. Dist. LEXIS 47646, at \*4 (D. Colo. May 20, 2009) (same). Plaintiffs must offer a "heightened showing" of relevance and necessity. ***De Abadia-Peixoto v. U.S. Dep't of Homeland Sec.***, 2013 U.S. Dist. LEXIS 98578, at \*7 (N.D. Cal. July 12, 2013).

A claim to re-inspection of the WCJ required Plaintiffs to present the Court with supporting evidence. Not data in the nature of which the Sheriff has agreed to provide, but specific evidence from their expert's first inspection indicative of deliberate indifference by the Sheriff. Notably absent from Plaintiffs' presentation is any expert report or other articulation of any specific deficiencies in the operations, policies, or procedures of the WCJ. It is not enough for Plaintiffs to assert disagreement; they must present evidence, have entirely failed to do so, and cannot later attempt to sandbag the Sheriff.

Moreover, Plaintiffs identify the wrong merits issue (the effectiveness of the procedures implemented since April 10, 2020, in reducing transmission). The actual issue



is whether the Sheriff has taken reasonable steps, both inside and outside the WCJ, to protect inmate health and safety. Plaintiffs haven't articulated what specifically they weren't able to inspect previously or what they anticipate finding in a re-inspection on any specific issue other than generalized and unsubstantiated rhetoric. Even if more WCJ inmates have tested positive for COVID-19 (which is not occurring as of this filing), that proves nothing other than the WCJ is subject to the same spread as the entire world.

In contrast, the Sheriff now offers the Court evidence of undue burdens and substantial disruptions implicated by an unwarranted re-inspection, namely: scant PPE to spare; hours of cleaning necessitated after inspection concludes; prospect of inmates slowly beginning to have incrementally increasing time outside of cells in appropriately sized groups; additional operational and staff burdens due to how much commotion the prior inspection created and associated prospect of creation of understaffed areas to accommodate inspection group; and the Sheriff and WCSO have no idea how well Plaintiffs' counsel or their expert are doing at social distancing, hand washing, etc., yet the WCJ is taking and continuing to take many steps to reduce who comes in and isolate new arrivals, so allowing more people in the WCJ is itself a public health risk and weighs against re-inspection, all of which Plaintiffs apparently haven't considered. [See **Exh. C.**]

Physical inspections assuredly are more burdensome and intrusive than written discovery. Here, the issue is whether Plaintiffs must be allowed a re-inspection. But Plaintiffs present no specific evidentiary basis for a re-inspection. See **Silverstein**, 2009 U.S. Dist. LEXIS 47646, at \*6 ("allowing another site visit for [plaintiff's expert] is duplicative of discovery already allowed"). A re-inspection must be denied because

Plaintiffs haven't established how the re-inspection is anything but an "ammo recon" mission which, like a hornbook fishing expedition, is "rarely appropriate and uniformly discouraged." *I'Mnaedaft, Ltd. v. Intelligent Office Sys.*, 2009 U.S. Dist. LEXIS 50717, at \*18 (D. Colo. May 29, 2009).<sup>4</sup>

## **V. CONCLUSION**

Applicable federal authority reveals the requisite "good cause" standard for early discovery is in fact quite high. Plaintiffs fail to satisfy this standard. Accordingly, Defendant Sheriff Steven Reams respectfully requests the Court enter an Order: authorizing the Sheriff to comply with Plaintiffs' claimed entitlement to early discovery only as agreed herein; denying ECF 31 to the extent inconsistent with the Sheriff's expressed agreement herein; and granting all other and further relief deemed just and appropriate.

Respectfully submitted this 20th day of April, 2020.

s/ Matthew J. Hegarty

Matthew J. Hegarty, Esq.

Andrew D. Ringel, Esq.

John F. Peters, Esq.

of HALL & EVANS, LLC

1001 17th Street, Suite 300

Denver, CO 80202

T: (303) 628-3300

F: (303) 628-3368

hegartym@hallevans.com

ringela@hallevans.com

petersj@hallevans.com

**ATTORNEYS FOR DEFENDANT**

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<sup>4</sup> *U.S. v. Erie Cnty.*, 2010 U.S. Dist. LEXIS 25646 (W.D.N.Y. Mar. 17, 2010), does not assist Plaintiffs, because in that case no inspection of the correctional facility occurred yet, whereas here a quite detailed inspection already occurred and Plaintiffs haven't given the Court the requisite good cause for a second inspection. [**Exh. B**; 26-1 at 21 ¶ 86.]

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on this 20th day of April, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of Court which will send notification of such filing to the following email addresses:

Darold W. Killmer  
David A. Lane  
Andrew Joseph McNulty  
Michael Paul Fairhurst  
KILLMER LANE & NEWMAN LLP  
dkillmer@kln-law.com  
dlane@kln-law.com  
amcnulty@kln-law.com  
mfairhurst@kln-law.com  
***Attorneys for Plaintiffs Thomas Carranza, Jesus Martinez, Michael Ward, Colby Propes, and Chad Hunter***

Daniel David Williams  
Lauren Elizabeth Groth  
HUTCHINSON BLACK & COOK, LLC  
williams@hbcboulder.com  
groth@hbcboulder.com  
***Attorneys for Plaintiffs Richard Barnum and Thomas Lewis***

David George Maxted  
MAXTED LAW LLC  
dave@maxtedlaw.com

Jamie Hughes Hubbard  
STIMSON STANCIL LABRANCHE  
HUBBARD LLC  
hubbard@sshlhlaw.com

***Attorneys for Plaintiffs Thomas Carranza, Jesus Martinez, Michael Ward, Colby Propes, and Chad Hunter***

Mark Silverstein  
Rebecca Teitelbaum Wallace  
Sara R. Neel  
AMERICAN CIVIL LIBERTIES UNION-DENVER  
msilverstein@aclu-co.org  
rtwallace@aclu-co.org  
sneel@aclu-co.org  
***Attorneys for Plaintiffs Richard Barnum and Thomas Lewis***

s/ Marlene Wilson, Legal Assistant to  
Matthew J. Hegarty  
HALL & EVANS, L.L.C.

---

**From:** Hegarty, Matthew J.  
**Sent:** Thursday, April 16, 2020 12:56 PM  
**To:** Daniel D. Williams; Michael Fairhurst; Mark Silverstein; David Maxted; Rebecca Wallace; Lauren E. Groth; Sara Neel; David Lane; Jamie Hubbard; Andrew McNulty; Charlotte Scull; Darold Killmer  
**Cc:** Ringel, Andrew D.; Peters, John F. "Jack"  
**Subject:** RE: Weld County Jail Litigation - Conferral re Discovery Motion

Daniel:

Below is Defendant's conferral position on Plaintiffs' Rule 26(d)(1) Motion as Defendant presently understands it. To ensure the Court is adequately informed of the conferral circumstances, you must either attach this particular email or copy and paste the below bolded text into your conferral section. It will probably be simpler just to attach this particular email as an exhibit to your filing but, as before, we leave the choice up to you.

**"The current description of Plaintiffs' proposed Motion is inadequate for Defendant to evaluate at present. As you know, Rule 26(d)(1) requires Plaintiffs to make a substantial showing of need for the "rare" case in which early discovery may be warranted—that is, to set forth the granular reasons why Plaintiffs think they are entitled to this information and inspection so early in the case—and you have not articulated below with any level of specificity the reasons why Plaintiffs believe they are entitled to early discovery on each of the four specific items you set forth below. We request you do so in reply to this email or else Defendant will be unable to confer adequately on your Motion. Keeping in mind, of course, that after receiving the as-filed version of your Motion Defendant is entitled to an opportunity to state with specificity and in writing in a separate filing with the Court the grounds for its objections to any and all such early-discovery requests to which Defendant objects.**

**"Despite these grave concerns and after consideration, Defendant would not be opposed to the following, to the extent Defendant is able to glean it from available information:**

**----Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count in the isolation unit (only one such unit exists at present, but of course if additional such units come into use Defendant will make that data available);**

**----Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count of persons currently housed within the Weld County Jail who at some point since March 1, 2020 were diagnosed by a healthcare professional as having tested positive for COVID-19;**

**----Providing Plaintiffs with a daily report, served on counsel-of-record only by 6:00 PM each day and current as of 5:00 PM on said day, from 04/11 through the day before the preliminary injunction hearing, of the total inmate count of persons currently housed within the Weld County Jail who at some point since March 1, 2020 have been designated by a healthcare professional as being treated as "presumptively positive" for COVID-19 but who have not in fact tested positive for COVID-19; and**

**----As for all data from April 11, 2020 to April 17, 2020, counsel-of-record for Plaintiffs can expect to receive it no earlier than 5:30 PM on April 17, 2020. As for all data from April 18, 2020 to April 19, 2020, counsel-of-record for Plaintiffs can expect to receive it no earlier than 5:30 PM on April 20, 2020. As for all data from April 25, 2020 to April 26, 2020, counsel-of-record for Plaintiffs can expect to receive it no earlier than 5:30 PM on April 27, 2020.**

**"Further, as for written policies and procedures issued from the Weld County Sheriff's Office and the Weld County Health Department (to the extent applicable to the operations of the Weld County Jail) concerning COVID-19, including any policies or procedures to protect inmates from COVID-19, whether they have been disseminated to the**

**EXHIBIT A**

inmates or otherwise, Defendant is willing to offer them in the form of hearing exhibits pursuant to whatever hearing exhibit exchange schedule the Court in its discretion may set, but Defendant is opposed to doing otherwise.

“However, Defendant’s agreement to proceeding in, and only in, the fashion outlined above is contingent on Plaintiffs agreeing to include the following concessions in the text of their Rule 26(d)(1) Motion:

----Plaintiffs shall in their Rule 26(d)(1) Motion request of the Court a briefing schedule, for Plaintiffs to respond and Defendant to reply with no surreply permitted, as to the legal issues identified in ECF 27;

----Plaintiffs shall in their Rule 26(d)(1) Motion state they agree to have the preliminary injunction hearing no earlier than Wednesday April 29, 2020;

----Plaintiffs shall in their Rule 26(d)(1) Motion represent they will stipulate to authenticity of all of Defendant’s hearing exhibits, whether documentary or video evidence.”

Thank you!

Matthew

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**From:** Hegarty, Matthew J. <hegartym@hallevans.com>

**Sent:** Thursday, April 16, 2020 12:31 PM

**To:** Daniel D. Williams <williams@hbcboulder.com>; Michael Fairhurst <mfairhurst@kln-law.com>; Mark Silverstein <msilverstein@aclu-co.org>; David Maxted <dave@maxtedlaw.com>; Rebecca Wallace <rtwallace@aclu-co.org>; Lauren E. Groth <groth@hbcboulder.com>; Sara Neel <sneel@aclu-co.org>; David Lane <dlane@kln-law.com>; Jamie Hubbard <hubbard@sshlaw.com>; Andrew McNulty <amcnulty@kln-law.com>; Charlotte Scull <cscull@kln-law.com>; Darold Killmer <dkillmer@kln-law.com>

**Cc:** Ringel, Andrew D. <ringela@hallevans.com>; Peters, John F. "Jack" <petersj@hallevans.com>

**Subject:** RE: Weld County Jail Litigation - Conferral re Discovery Motion

Everyone:

It is now 12:31 PM. We anticipate having a conferral response for you by 1:30 PM. Please stand by and thank you.

Matthew

**Matthew J. Hegarty** | Member

[hegartym@hallevans.com](mailto:hegartym@hallevans.com)

Tel: 303-628-3418

**Hall & Evans, LLC**

1001 Seventeenth Street, Suite 300

Denver, CO 80202



COLORADO | MISSOURI | MONTANA | NEW MEXICO | UTAH | WYOMING

[website](#) | [bio](#) | [LinkedIn](#)

---

**From:** Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>

**Sent:** Wednesday, April 15, 2020 8:35 PM

**To:** Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlaw.com](mailto:hubbard@sshlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>; Darold Killmer <[dkillmer@kln-law.com](mailto:dkillmer@kln-law.com)>

**EXHIBIT A**

**Cc:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>

**Subject:** Re: Weld County Jail Litigation - Conferral re Discovery Motion

Daniel:

Thanks for your email. Earlier this evening we dutifully passed it onto client representatives. We anticipate having a substantive conferral response to you tomorrow afternoon prior to the 3:00 PM deadline you indicate below. Thank you very much and please have a good evening.

Matthew Hegarty  
Hall & Evans, L.L.C.

**Matthew J. Hegarty** | Member  
[hegartym@hallevans.com](mailto:hegartym@hallevans.com)  
Tel: 303-628-3418

**Hall & Evans, LLC**  
1001 Seventeenth Street, Suite 300  
Denver, CO 80202



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[website](#) | [bio](#) | [LinkedIn](#)

On Apr 15, 2020, at 6:49 PM, Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)> wrote:

Andrew – Rule 26(d)(1) allows the Court to order discovery prior to the Rule 26(f) conference. Of course, limited discovery in advance of a preliminary injunction hearing is routine, making your resistance to it in this case both surprising and disappointing. The Sheriff's resistance to the minimal discovery we have requested suggests he is afraid of the facts. Particularly given that we are in the midst of a public health crisis, let's move beyond that sort of maneuvering and focus on having all relevant facts come to light so that the Court can take any needed action to protect innocent people in the Sheriff's custody from being infected with a deadly disease.

Dan

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**From:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>

**Sent:** Wednesday, April 15, 2020 5:39 PM

**To:** Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>; Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlaw.com](mailto:hubbard@sshlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>; Darold Killmer <[dkillmer@kln-law.com](mailto:dkillmer@kln-law.com)>

**Cc:** Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>; Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>

**Subject:** RE: Weld County Jail Litigation - Conferral re Discovery Motion

Daniel:

**EXHIBIT A**

So I can understand the legal and procedural basis for your motion please provide the basis for a request for discovery prior to the Rule 26(f) conference and in advance of a preliminary injunction hearing. I would be greatly interested in the specific rule of civil procedure you are relying on and any cases that you have that allow discovery including an inspection of premises in this context. The sooner you can provide such information the more easily we can respond to your request on an informed basis.

Thank you in advance for your anticipated cooperation with this request.

Andrew

**Andrew D. Ringel** | Member  
[ringela@hallevans.com](mailto:ringela@hallevans.com)  
Tel: 303-628-3453

**Hall & Evans, LLC**  
1001 Seventeenth Street, Suite 300  
Denver, CO 80202

<image002.png>

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**From:** Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>

**Sent:** Wednesday, April 15, 2020 5:36 PM

**To:** Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>; Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sslhlaw.com](mailto:hubbard@sslhlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>; Darold Killmer <[dkillmer@kln-law.com](mailto:dkillmer@kln-law.com)>

**Cc:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>

**Subject:** RE: Weld County Jail Litigation - Conferral re Discovery Motion

Matthew:

Tomorrow we intend to file a motion seeking the following, which primarily are requests you have seen before:

1. A re-inspection of WCJ by our medical expert on Friday, April 24, using the same ground rules as the prior inspection;
2. A Daily report, from Saturday, April 11 through the date of the preliminary injunction hearing, of the total count in the isolation units, which we understand is currently just unit 11;
3. A Daily report, from Saturday, April 11 through the date of the preliminary injunction hearing, of the total count of inmates at the jail who have tested positive for COVID-19, and who are being treated as presumptively positive based on their symptoms; and

**EXHIBIT A**

4. Copies of all written policies and procedures issued concerning COVID-19, including any policies or procedures to protect inmates from COVID-19, with supplements to us as those policies are updated between now and the preliminary injunction hearing.

Although these information requests are quite minimal, you have either declined or ignored them in the past. Please let us know by 3:00 p.m. tomorrow whether Defendant will now agree to any of them, so that we can let the Court know whether our motion will be opposed.

Also, as you know, I have been asking for a call with you since Saturday to see where we can find points of agreement. For reasons we don't understand, you have not responded to any of those overtures. We remain of the view that proceeding in a collaborative manner would be in the best interests of all of our clients, so please let know if we can set a call.

Best regards, Dan

DANIEL D. WILLIAMS, Attorney at Law  
HUTCHINSON BLACK AND COOK, LLC  
921 Walnut Street | Suite 200 | Boulder, CO 80302  
tel 303.442.6514 | direct 303.441.7430 | fax 303.442.6593  
[Williams@hbcboulder.com](mailto:Williams@hbcboulder.com) | <http://www.hbcboulder.com>

**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

**EXHIBIT A**



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**From:** Michael Fairhurst <mfairhurst@kln-law.com>  
**Sent:** Thursday, April 9, 2020 8:40 PM  
**To:** Hegarty, Matthew J.  
**Cc:** Ringel, Andrew D.; Peters, John F. "Jack"; Mark Silverstein; David Maxted; Rebecca Wallace; Lauren E. Groth; Sara Neel; Daniel D. Williams; David Lane; Jamie Hubbard; Andrew McNulty; Charlotte Scull; Darold Killmer  
**Subject:** RE: Weld County Jail Litigation

Thanks for your response, Matthew, and no problem re: the small delay. We agree to the compromise you have described. So, it seems that we have nothing further to resolve with respect to tomorrow's inspection. I hope you have a nice night.

Best,  
Michael Fairhurst  
Killmer, Lane & Newman, LLP  
1543 Champa St, Suite 400  
Denver, CO 80202  
303-571-1000 Phone  
303-571-1001 Fax  
[www.kln-law.com](http://www.kln-law.com)  
[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)

---

**From:** Hegarty, Matthew J. <hegartym@hallevans.com>  
**Sent:** Thursday, April 9, 2020 7:55 PM  
**To:** Michael Fairhurst <mfairhurst@kln-law.com>; Mark Silverstein <msilverstein@aclu-co.org>; David Maxted <dave@maxtedlaw.com>; Rebecca Wallace <rtwallace@aclu-co.org>; Lauren E. Groth <groth@hcboulder.com>; Sara Neel <sneel@aclu-co.org>; Daniel D. Williams <williams@hcboulder.com>; David Lane <dlane@kln-law.com>; Jamie Hubbard <hubbard@sslhlaw.com>; Andrew McNulty <amcnulty@kln-law.com>; Charlotte Scull <cscull@kln-law.com>  
**Cc:** Ringel, Andrew D. <ringela@hallevans.com>; Peters, John F. "Jack" <petersj@hallevans.com>  
**Subject:** RE: Weld County Jail Litigation

Michael:

I apologize for the slight delay. I was tied up on yet another lengthy Zoom call on an unrelated matter and putting my daughter to bed, and only just now logged back on to check email. Zoom is very popular these days.

The defense is of the view that just because Dr. Franco-Paredes has no connection to the jail, does not mean he is "independent" in the truest sense. The defense assumes Dr. Franco-Paredes is not simply offering his services to Inmate Plaintiffs and their counsel for free. That said, the defense offers what it thinks is a reasonable compromise below:

- In 5(a) below, the first major clause previously read, "Defendant agrees to the following: the experts will be able to randomly select pods for inspection in consultation with each other and shall agree with each other, or else the pod will not be inspected;"
- In 5(a) below, the first major clause (right up until just before the phrase the experts will be able to inspect toilets) now reads, "Defendant agrees to the following: Inmate Plaintiffs' expert will be able to randomly select pods for inspection (being sure that at least two pods are inspected), but if Defendant's expert believes Inmate Plaintiffs' expert to be cherry-picking, Defendant's expert retains the right to require the inspection of pods include a third or fourth pod, to which Inmate Plaintiffs' expert agrees in advance;"
- In 5(a) below, the second and third clauses are unchanged.

**EXHIBIT B**

Please let us know whether you approve this modification and, after you approve, I will send around a PDF of the final agreed-upon inspection protocol. Thanks!

Matthew

**Matthew J. Hegarty** | Member

[hegarty@hallevans.com](mailto:hegarty@hallevans.com)

Tel: 303-628-3418

**Hall & Evans, LLC**

1001 Seventeenth Street, Suite 300

Denver, CO 80202



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[website](#) | [bio](#) | [LinkedIn](#)

---

**From:** Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>

**Sent:** Thursday, April 9, 2020 7:43 PM

**To:** Hegarty, Matthew J. <[hegarty@hallevans.com](mailto:hegarty@hallevans.com)>

**Cc:** Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlhlaw.com](mailto:hubbard@sshlhlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>; Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>

**Subject:** RE: Weld County Jail Litigation

Matthew,

Do you anticipate having a response tonight?

Thank you,

Michael Fairhurst

**Killmer, Lane & Newman, LLP**

1543 Champa St, Suite 400

Denver, CO 80202

303-571-1000 Phone

303-571-1001 Fax

[www.kln-law.com](http://www.kln-law.com)

[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)

---

**From:** Michael Fairhurst

**Sent:** Thursday, April 9, 2020 5:15 PM

**To:** Hegarty, Matthew J. <[hegarty@hallevans.com](mailto:hegarty@hallevans.com)>

**Cc:** Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlhlaw.com](mailto:hubbard@sshlhlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>; Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>

**Subject:** RE: Weld County Jail Litigation

Matthew,

We're getting close to complete agreement. The one remaining point of disagreement that we appear to have revolves around Plaintiffs' expert being able to choose the pod they inspect shortly before entering the area. It is Plaintiffs' inspection, so it appropriate for Plaintiffs' expert to retain the ability to choose which pods to visit. In addition, there's no sense in hiding the ball: A major concern of ours, should Plaintiffs' expert not be able to independently decide where to visit (within the physical parameters we've agreed upon) after arriving at the jail, is that jail officials may transfer people out of a pod or otherwise alter the jail's typical/actual response to COVID before the experts gain entry to the area. Defendant's expert does not have the same arm's length relationship with the jail that Plaintiffs' expert has (I don't mean to impugn Dr. Smith's character; I am simply saying that Dr. Smith was handpicked by the Defendant in the case, and the Defendant is being sued for conditions in the jail).

The main point of the inspection, from our perspective, is for an independent infectious disease expert, who has no connection to the jail, to meaningfully evaluate how the jail is addressing COVID. Of course, this requires accurate data that is representative of what is happening on the ground. Thus, all we are requesting at this point, beyond what you have committed to doing, is a process that is designed to preserve the integrity of the investigation and, by extension, integrity of the results. I trust that this is important to Defendant's medical expert as well.

Please let us know your thoughts on this one remaining issue. Thank you.

Michael Fairhurst  
**Killmer, Lane & Newman, LLP**  
 1543 Champa St, Suite 400  
 Denver, CO 80202  
 303-571-1000 Phone  
 303-571-1001 Fax  
[www.kln-law.com](http://www.kln-law.com)  
[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)

---

**From:** Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>

**Sent:** Thursday, April 9, 2020 4:38 PM

**To:** Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlaw.com](mailto:hubbard@sshlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>  
**Cc:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>  
**Subject:** RE: Weld County Jail Litigation

Michael:

Thanks again for your patience. Defendant's responses to the inquiries you raise below are in **blue and underlined bold** and appear after each of your responses in **unbolded red** to the extent a response is necessitated.

Happily, it looks like we are just about 100% agreed. I anticipate this email string will be PDFed and printed out up to and including your "I think this covers everything" line in your email of 3:26 PM MDT today such that there is an absence of ambiguity as to the parameters of the WCJ inspection protocol. Please reply back as soon as time allows and let us know if you agree with the points in this paragraph. Thanks!

Matthew

Matthew J. Hegarty | Member  
[hegartym@hallevans.com](mailto:hegartym@hallevans.com)

Tel: 303-628-3418

**Hall & Evans, LLC**  
1001 Seventeenth Street, Suite 300  
Denver, CO 80202



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[website](#) | [bio](#) | [LinkedIn](#)

---

**From:** Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>

**Sent:** Thursday, April 9, 2020 4:04 PM

**To:** Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlhlaw.com](mailto:hubbard@sshlhlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>

**Cc:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>

**Subject:** RE: Weld County Jail Litigation

Michael:

My pleasure. Thank you for your response as well. It has been communicated to client reps and we are waiting on authorization to provide answers to the inquiries you raise below in red. Thank you for your patience.

Matthew

**Matthew J. Hegarty** | Member  
[hegartym@hallevans.com](mailto:hegartym@hallevans.com)  
Tel: 303-628-3418

**Hall & Evans, LLC**  
1001 Seventeenth Street, Suite 300  
Denver, CO 80202



COLORADO | MISSOURI | MONTANA | NEW MEXICO | UTAH | WYOMING  
[website](#) | [bio](#) | [LinkedIn](#)

---

**From:** Michael Fairhurst <[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)>

**Sent:** Thursday, April 9, 2020 3:26 PM

**To:** Hegarty, Matthew J. <[hegartym@hallevans.com](mailto:hegartym@hallevans.com)>

**Cc:** Ringel, Andrew D. <[ringela@hallevans.com](mailto:ringela@hallevans.com)>; Peters, John F. "Jack" <[petersj@hallevans.com](mailto:petersj@hallevans.com)>; Mark Silverstein <[msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)>; David Maxted <[dave@maxtedlaw.com](mailto:dave@maxtedlaw.com)>; Rebecca Wallace <[rtwallace@aclu-co.org](mailto:rtwallace@aclu-co.org)>; Lauren E. Groth <[groth@hbcboulder.com](mailto:groth@hbcboulder.com)>; Sara Neel <[sneel@aclu-co.org](mailto:sneel@aclu-co.org)>; Daniel D. Williams <[williams@hbcboulder.com](mailto:williams@hbcboulder.com)>; David Lane <[dlane@kln-law.com](mailto:dlane@kln-law.com)>; Jamie Hubbard <[hubbard@sshlhlaw.com](mailto:hubbard@sshlhlaw.com)>; Andrew McNulty <[amcnulty@kln-law.com](mailto:amcnulty@kln-law.com)>; Charlotte Scull <[cscull@kln-law.com](mailto:cscull@kln-law.com)>

**Subject:** RE: Weld County Jail Litigation

Matthew,

Again, we appreciate your prompt and detailed response. Our replies to your specific points are below, in red. First, a few general points: (1) Dr. Krsak is not available to conduct an inspection at 10am tomorrow. Fortunately, Dr. Carlos

**EXHIBIT B**

Franco-Paredes, another infectious disease specialist, is available. His CV is attached. (2) Daniel Williams, counsel for Plaintiffs, plans to accompany Dr. Franco-Paredes, Dr. Smith, and a representative of the County Attorney's office for the entire inspection tomorrow.

- (1) Dr. Krsak shall be accompanied, at all times and during the entirety of all conversations and interviews, by both
  - (a) Defendant's independent medical expert, Valerie Smith, PhD, MPH, Weld County Communicable Disease Program Supervisor; and (b) a representative of the Weld County Attorney's Office. **That is fine.**
    - a. Each of these three individuals will have access to the same information through their eyes and ears. That is the only way to ensure true independence. **That is fine.**
    - b. Each of these three individuals will be allowed a pen and notepad but will not be permitted any device capable of making an audio recording or video recording, for security purposes. **That is fine.**
- (2) Each of these three individuals shall bring their own PPE, as much as they feel appropriate, so that the PPE supplies at the Weld County Jail are not diminished by reason of this inspection. **That is fine, with a small caveat: Dr. Franco-Paredes and Mr. Williams would like the ability to bring their own hand sanitizer with them during the inspection.**
  - a. Defendant agrees to allow Dr. Franco-Paredes and Mr. Williams to bring their own hand sanitizer so long as it is secured on their person at all times and is for their personal use only.
- (3) Dr. Krsak's conversations or interviews with current Weld County inmates—whether they be Inmate Plaintiffs, pretrial detainees, inmates who must carry out their sentences at the Weld County Jail, or otherwise—will not be confidential at all, and both Dr. Smith and the WCAO representative will be allowed to listen to all aspects of all such conversations or interviews. As you know, there is no federal physician-patient privilege in federal court where (as here) purely federal claims have been advanced, nor would Dr. Krsak as an expert retained by Inmate Plaintiffs have any physician-patient privilege with any such inmate under Colorado state law in any event. Thus, there is no privacy interest which your clients or any other inmate can assert in any such conversation or interview. **This is fine, mostly. However, to ensure we are clear: It is important that inmates have the ability to converse freely with the experts. Inmates should not be removed from the common areas, cells, etc. before the experts arrive. If an expert wishes to ask an inmate who they randomly encounter questions, they should be able to do so without restriction. Some information is private in nature, like personal health information, and is probably best discussed in the setting you described in the section that immediately follows. Other information, like sleeping and eating arrangements, is not inherently private and can be discussed in an open and public setting.**
  - a. As an accommodation to whomever of the current WCJ inmates or detainees wish to discuss their health information with these three individuals, the WCJ will provide a sanitized meeting room into which such inmates can be admitted one at a time along with these three individuals to ensure their health information is kept private from the rest of the jail during the discussions. Obviously, Defendant has no ability to control what the inmates do or do not discuss with each other outside the confines of this sanitized meeting room, but this seems the most reasonable approach under the circumstances. **Fine.**
  - b. Defendant agrees to the following: inmates and detainees will not be moved from common areas before the experts arrive unless they were already in transit or already on their permitted break from the current lockdown situation; the experts can freely ask questions of inmates and detainees apart from questions about personal health information (such as information about sleeping and eating arrangements) so long as the questions are audible to all inspection attendees and posed in English with responses requested in English; and if the inmates or detainees want to answer questions about personal health information or provide information about personal health information voluntarily, they will then be transitioned to the sanitized meeting room where they can speak with the experts about such questions.
- (4) These three individuals, during the entirety of the inspection and to ensure their own safety and security, shall be accompanied by a ranking officer of the WCSO Detentions Division. **Fine.**
  - a. As an accommodation to your clients (to the extent they wish to be interviewed) and to whomever of the other inmates or detainees wishes to be interviewed within the sanitized meeting room indicated above, which shall have a window allowing those outside to look in and observe even while the door is

**EXHIBIT B**

closed, the lieutenant shall cuff or otherwise reasonably restrain the interviewee, the lieutenant shall exit the room and allow the three inspecting individuals to enter, and the lieutenant shall close the door, but at all times the lieutenant shall be looking through the window to monitor the interview for the safety and security of the inspectors. **Fine.**

- (5) Dr. Krsak, Dr. Smith, and the WCAO rep—jointly and concurrently—shall be allowed to inspect the following areas of the Weld County Jail: intake/booking; inmate living areas (must inspect at least 2); medical observation unit (“MedObs”); all quarantine and med isolation units outside of MedObs; food prep area; inmate common areas (must inspect at least 2). **Much of this is okay, but we do have a few caveats and questions. First, the expert should have the ability to randomly choose which pods they’ll be visiting upon arrival, and should have the ability to choose any of them. Second, do common areas include toilets, showers, phones, and water fountains? Third, what is the medical observation unit? Is there another medical area that you did not mention, like an infirmary?**
  - a. Defendant agrees to the following: Inmate Plaintiffs’ expert will be able to randomly select pods for inspection (being sure that at least two pods are inspected), but if Defendant’s expert believes Inmate Plaintiffs’ expert to be cherry-picking, Defendant’s expert retains the right to require the inspection of pods include a third or fourth pod, to which Inmate Plaintiffs’ expert agrees in advance; the experts will be able to inspect toilets, showers, phones, and water fountains; and the WCJ does have an actual medical ward which is separate from the Medical Observation Unit which the inspecting group is free to tour together, but all members of the inspecting group should be aware this medical ward is limited in size so the WCSO did not utilize it long term for COVID-19 issues.
- (6) Dr. Krsak, Dr. Smith, and the WCAO rep—jointly and concurrently—shall be allowed to shadow and speak with two medical staff of their joint agreement. **Fine.**
- (7) Dr. Krsak, Dr. Smith, and the WCAO rep—jointly and concurrently—shall be allowed to shadow and speak with two Detentions Division personnel of their joint agreement. **Fine.**
- (8) No time limit is set for the inspection, although Defendant would respectfully request it be conducted as expeditiously as possible to minimize disruption of Jail operations. **Fine.**
- (9) The Sheriff, in his sole discretion, retains the ability to suspend the inspection, to alter the order of the inspection tour, or to rule certain areas off limits for inspection, but only where necessary to address any emergent security or safety issues within the Weld County Jail and where necessary to ensure the safety of these three individuals who will be jointly and concurrently inspecting the Jail. **Fine.**
  - a. Defendant is quite hopeful that due to the Jail currently being on lockdown, no such emergent security or safety issues will arise, but of course it is impossible to predict what inmates will do.
  - b. The Sheriff, upon reflection, has determined the size of the inspecting group necessitates the addition of a second WCSO Detentions Division officer for safety and security purposes. This should not pose an issue, and this second officer will abide by all protocols as the ranking officer will abide insofar as it concerns the sanitized meeting room and the officer’s need to vacate the room before the interview starts.

I think this covers everything. Please let us know your response to the points above. Thank you.

Sincerely,  
 Michael Fairhurst  
**Killmer, Lane & Newman, LLP**  
 1543 Champa St, Suite 400  
 Denver, CO 80202  
 303-571-1000 Phone  
 303-571-1001 Fax  
[www.kln-law.com](http://www.kln-law.com)  
[mfairhurst@kln-law.com](mailto:mfairhurst@kln-law.com)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-00977-PAB

THOMAS CARRANZA;  
JESUS MARTINEZ;  
RICHARD BARNUM;  
THOMAS LEWIS;  
MICHAEL WARD;  
COLBY PROPPES; and  
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

---

**DECLARATION OF CAPTAIN MATTHEW TURNER**

---

I, Captain Matthew Turner, being of lawful age and duly sworn under penalty of perjury pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I have personal knowledge of the matters set forth in this Declaration.
2. I currently serve as the Jail Captain for the Weld County Jail ("WCJ") County of Weld, State of Colorado. I have served in this position for four months.
3. Before beginning my tenure as the WCSO Jail Captain on January 1, 2020, I was employed with the Weld County Sheriff's Office ("WCSO") for eight (8) prior years and served in many positions: Corrections Officer (what is now called Detentions Deputy) and separately earned by Peace Officer Standards Training ("POST") certification; Public Information Officer Corporal; Detentions Division Shift Sergeant; Civil Unit Sergeant in

charge of civil service processors, animal control, and victim advocates; and Detentions Division Lieutenant.

4. I also earned an Associate of Arts in education from Front Range Community College in 2011 with a future goal to attain a Bachelor of Science in Criminal Justice from the University of Northern Colorado.

5. I am individually familiar with the protocols and processes the WCSO as a whole generated, implemented, and refined in response to the global, national, and local public health threat posed by the novel coronavirus ("COVID-19"), because I was personally involved in generating, implementing, refining, and approving such protocols and processes in consultation with a team of WCSO staff and local public health officials.

**UNDULY BURDENSOME NATURE OF SECOND INSPECTION OF WCJ**

6. When COVID-19 first began emerging as a potential concern for Weld County generally and the WCJ specifically, yet well before any outbreak of COVID-19 in Weld County proper or before the current minor outbreak within the WCJ, the WCSO worked with all Weld County local law enforcement entities and the 19th Judicial District judicial officers to try and limit the foot traffic within the WCJ, as much as reasonably practicable and within the bounds of statutorily required arrests and detentions.

7. Since March 13, 2020, the WCSO has permitted only essential tasks to occur within the WCJ—official law enforcement business and criminal justice business which is absolutely necessary to keep the wheels of criminal justice turning—encompassing of those tasks which if not accomplished potentially could violate the scope of constitutional criminal rights under the United States and Colorado Constitutions, specifically in connection with a pretrial detainee's criminal trial.



8. The WCSO's definition of "essential tasks" as articulated in the immediately preceding paragraph is even more restrictive than the definition of "critical business" in the late March 2020 Order of Governor Jared Polis and associated Amended Public Health Order of the Colorado Department of Public Health and Environment.

9. Since March 16, 2020, the WCSO also reduced deputy traffic and movement throughout the WCJ in an effort to diminish even the prospect of transmission of any communicable disease from one region of the WCJ's physical plant to another.

10. Since April 4, 2020, in the limited circumstances in which WCSO personnel have to move between units, all such persons must follow decontamination protocols at decontamination stations which are situated throughout the WCJ.

11. After the April 10, 2020, inspection, WCJ inmates and staff participated in the cleaning and sanitizing of each part of the WCJ the inspection group entered and exited.

12. Allowing a second inspection of the WCJ would be unduly burdensome to the WCSO given the substantial additional effort, cleaning and sanitizing, and staffing both before and after such an inspection, which such an inspection would necessitate.

13. Allowing a second inspection of the WCJ would be unduly burdensome given the fact it would take even further valuable personal protective equipment ("PPE") and sanitization supplies away from WCJ inmates and WCSO staff.

14. Allowing a second inspection of the WCJ would be unduly burdensome given the fact multiple WCSO personnel will need to be pulled from responsibilities elsewhere in the WCJ to supervise the inspection and provide safety and security to the inspection group, which (for reasons articulated) will necessitate even more WCSO personnel participating in the supervision, safety, and security of the inspection group.

**SUBSTANTIALLY DISRUPTIVE NATURE OF SECOND INSPECTION OF WCJ**

15. In connection with the April 10, 2020, inspection of the WCJ and during its progress, WCJ inmates and detainees were extremely curious as to what was going on vis-à-vis the inspection. Such inmates exited their cells in violation of the lockdown protocol, violated social distancing guidelines which WCSO personnel repeatedly have told them to observe, and did not listen to the pod deputies who issued contemporaneous directives to get back in their cells and observe social distancing.

16. In particular, multiple inmates within one unit which the inspection group entered reportedly screamed and yelled at the inspection group their entire time there.

17. During the April 10, 2020, inspection, the WCSO could only spare two (2) WCSO staff members to devote to the inspection, and even that was not enough because of the significant disruptions the inspection caused, a mere example of which is above.

18. To even more carefully ensure the inmates adhere to such guidelines and directives, another inspection of the WCJ would necessitate a significant uptick in WCSO staff being pulled away from their existing duties within the WCJ (particularly given the decrease in foot traffic), which will further disrupt WCJ operations.

19. Such inspections of the WCJ simply are not a normal task for the WCSO and its staff, necessitating multiple modifications to the WCJ in an effort to accommodate the inspection group while still attempting to ensure inmate health and safety.

20. In addition, WCJ inmates who either previously tested positive for COVID-19 as determined by a medical professional, or were designated by a medical professional as being “presumptively positive” for COVID-19, all of whom have been in isolation, may begin emerging from isolation protocols after navigating a further protocol for testing

negative for COVID-19. This will mean inmates will be out of their cells but still in small groups and still being directed to observe social distancing guidelines.

21. Allowing a second inspection of the WCJ would be substantially disruptive also given the prospect of WCJ inmates slowly being allowed such limited increases in freedom of movement, in groups of no more than nine (9) inmates, and potentially coming into contact with additional persons from outside the WCJ who may or may not be observing personal sanitation regimens and social distancing protocols themselves.

22. The WCSO desires to be extremely sensitive to the number of COVID-19 testing kits it has on hand and is continuing its already existing efforts to obtain more tests

23. In addition, as a result of continued decline in inmate population, the WCSO is beginning to be able to single-cell more and more inmates within the confines of the WCJ when able given physical plant limitations.

24. Allowing a second inspection of the WCJ would be substantially disruptive also given it is itself a public health risk due to the substantial steps which the WCSO has taken to limit inmate exposure to COVID-19 and the lack of assurance the WCJ has that any outside visitor, regardless of affiliation, is observing personal sanitation regimens and social distancing protocols themselves.

25. The last thing the WCSO wants to do is introduce an unknown element into the WCJ which could completely undermine the effective steps the WCSO has taken to plan for, slow, stop, and further guard against the spread of COVID-19.

I understand the statements written in this Declaration are given under penalty of perjury. All of the foregoing statements are true and correct to the best of my knowledge. Pursuant

to 28 U.S.C. § 1746 I declare, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct.

FURTHER DECLARANT SAYETH NAUGHT.

Dated and executed this 20th day of April, 2020.

*s/ Matthew Turner*

Matthew Turner, Jail Captain,  
Weld County Sheriff's Office