

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.

On Application to Vacate the Stay of the
United States Court of Appeals for the Fifth Circuit

RESPONDENTS' OPPOSITION TO APPLICATION TO VACATE FIFTH CIRCUIT STAY OF PRELIMINARY INJUNCTION

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INTRODUCTION

This is a suit by two prison inmates who believe that a prison's adherence to the federal Centers for Disease Control's pandemic-response guidelines violates the Eighth Amendment's prohibition on cruel and unusual punishment.

Since early March—before the President declared a national emergency, and before the Governor of Texas declared a statewide disaster—the Texas Department of Criminal Justice (TDCJ) has worked diligently to protect its prisons from the coronavirus pandemic. TDCJ has developed comprehensive policies to prevent or mitigate the spread of COVID-19. It has continuously updated those policies to respond to changing circumstances and emerging medical information. TDCJ's COVID-19 response has not only complied with federal recommendations set out by the CDC for correctional institutions, but has in many ways has exceeded them. At all times, TDCJ has prioritized the safety of TDCJ staff and inmates.

Yet to Plaintiffs and the district court, that is not good enough to satisfy the Eighth Amendment. In granting Plaintiffs' request for a preliminary injunction, the district court issued a laundry list of commands that it viewed as a better approach. It issued its injunction even though Plaintiffs sued without even attempting to invoke grievance procedures, and even though they have not plausibly stated an Eighth Amendment violation. And the injunction itself violates the Prison Litigation Reform

Act in multiple ways: it grants relief as to unexhausted claims; it requires TDCJ to act far beyond what the Constitution requires; and it grants global relief far beyond what is necessary to redress these two Plaintiffs' alleged injuries.

Because of these serious errors, and because the injunction irreparably harms Defendants by preventing them from adapting in real time to an evolving public-health emergency, the Fifth Circuit properly stayed the district court's injunction pending appeal. It ordered Defendants' appeal to be expedited and issued an extraordinarily compressed briefing schedule leading up to oral argument on June 4.

Twelve days elapsed. Then, on May 4, almost two weeks after the Fifth Circuit's stay order, and four days before Defendants' opening Fifth Circuit brief was due, Plaintiffs filed this emergency application, claiming they need emergency relief because they are irreparably harmed every day that the preliminary injunction is not in effect.

The Court should deny their application and leave the Fifth Circuit's stay undisturbed. Plaintiffs have not shown any irreparable harm because there is no evidence that TDCJ's COVID-19 measures are inadequate, nor is there any evidence that the district court's laundry list of commands will protect them any better than what Defendants are already doing. Indeed, if Plaintiffs really faced ongoing irreparable harm, they would not have waited 12 days to seek relief.

Moreover, Plaintiffs cannot defend the preliminary injunction on the merits. Their claims fail before they even begin because they never availed themselves of the grievance process necessary to exhaust their claims. Nor have they stated an Eighth Amendment violation, since Defendants have responded vigorously to protect TDCJ staff and inmates from the pandemic threat. That is the opposite of deliberate indifference. And in any event, the district court clearly erred in granting classwide relief without certifying a class and in ordering measures neither required by the Constitution nor necessary to redress Plaintiffs' alleged injuries.

No one denies that the COVID-19 pandemic creates a threat of serious harm, but the record establishes that Defendants have acted diligently, guided by federal recommendations, to address that threat. The Fifth Circuit correctly stayed the preliminary injunction, and it has taken extraordinary steps to decide the merits of Defendants' appeal as soon as possible. The application should be denied.

STATEMENT OF THE CASE

1. Since the novel coronavirus began to spread across the United States in March, TDCJ has consistently acted swiftly and decisively, in accordance with federal guidelines and medical experts' recommendations, to protect prison staff and inmates from infection.

TDCJ's COVID-19 mitigation strategy began on March 11, 2020, days before the President declared a national state of emergency, and

days before the Governor of Texas issued a statewide disaster declaration. *See In re Abbott*, 954 F.3d 772, 779 (5th Cir. 2020). At the outset, TDCJ instituted a meticulous screening process for all prison visitors to reduce the possibility that an outsider might introduce infection to the prison community. Resp. Exh. 1 at 4, 6. And it immediately ramped up efforts to educate inmates and the public about the growing epidemic. *Id.*

Two days later, on March 13, TDCJ suspended all prison visitation entirely. That same day, TDCJ officials established lines of communication with leading governmental authorities and health experts, including the U.S. Centers for Disease Control and Prevention (CDC), the Texas Department of State Health Services, and TDCJ's university health care providers, to ensure that TDCJ had the latest information and recommendations to protect prison staff and inmates. *Id.* at 4. TDCJ's Health Services Director also held daily conference calls with university health care providers at UTMB and Texas Tech University and regional and unit-level medical staff. *Id.* And since March 16, TDCJ has conducted a daily briefing conference call with agency leadership. *Id.*

Since the COVID-19 virus was detected in March 2020, the directors of the State's Correctional Managed Health Care Committee (CMHCC) have worked to develop a policy to respond to the disease in the State's prison system. Resp. Exh. 2 at 2. The directors of CMHCC are Dr. Lannette Linthicum, Director of TDCJ's Health Services Division; Dr.

Owen J. Murray, Vice President of Offender Care Services, UTMB Correctional Managed Care; and Dr. Denise DeShields, Executive Medical Director at the Texas Tech University Health Sciences Center. *Id.* In consultation with other medical experts, the directors of CMHCC developed a policy designed to follow the CDC's guidance on COVID-19. *Id.*

The directors adopted CMHC Infection Control Policy B-14.52 on March 20, 2020. *Id.* That same day, TDCJ waived all medical copays for prison inmates. Resp. Exh. 1 at 4. After Policy B-14.52 was adopted, the university medical directors—Dr. Murray and Dr. DeShields—held conference calls with TDCJ officials to review the policy and answer questions. Resp. Exh. 2 at 3. Among other measures, the policy directed that all units take the following steps:

- Have medical staff educate offenders and staff on how COVID-19 is transmitted, signs and symptoms of COVID-19, treatment, and prevention of transmission;
- Educate staff and inmates on how to prevent the spread of the disease;
- Encourage handwashing with soap and water for 20 seconds or, if soap and water is unavailable, use hand sanitizer with at least 60% alcohol;
- Encourage cough etiquette (Cover coughs or sneezes with a tissue then throw the tissue in the trash. Otherwise, cough inside of your elbow);
- Avoid touching eyes, nose, and mouth with unwashed hands;
- Avoid close contact (<6 feet) with people who are sick or suspected of being sick;
- Stop handshakes;

- Disinfect common areas and surfaces that are often touched with a 10% bleach solution;
- 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;
- Post a sign at the entrance, so that high risk people can elect not to enter the unit if COVID-19 occurs;
- Evaluate the need to minimize offender movement.
- Triage inmates with COVID-19 symptoms as soon as possible.
- Isolate offenders with suspected or confirmed COVID-19;
- Quarantine those who have come into contact with an inmate suspected of having COVID-19;
- Screen all incoming inmates and other persons for symptoms of COVID-19;
- Curtail offender transportation except when absolutely required.
- Provide personal protective equipment to staff and to offenders required to perform duties for which staff should be provided the same personal protective equipment, except that offenders should not be provided with hand sanitizer;
- Contact the TDCJ Office of Public Health if health care providers feel that testing should be considered;
- Provide daily reports of COVID-19 to the TDCJ Office of Public Health.

Resp. Exh. 3.

Three days later, on March 23, 2020, TDCJ received new guidance from the CDC, *see* Exh. 14, and updated policy B.14-52 accordingly. Policy B.14-52, as amended to reflect CDC guidelines, went into effect on March 27. Resp. Exh. 1 at 3. TDCJ has continued to monitor the latest available information and update policy B.14-52. On April 15, the day

before the preliminary injunction hearing, TDCJ updated policy B.14-52 to account for the CDC's updated guidance on face masks. Resp. Exh. 3 at 4. It also provided detailed guidelines on intake quarantines, *id.*, and added new requirements for inmates in medical isolation due to exposure to COVID-19, *id.* at 5-6. The updates also include guidelines for handling staff who may have been exposed to COVID-19. *Id.* at 10-11. And the updated guidance added further precautions when transporting inmates and additional recommendations regarding personal protective equipment. *Id.* at 11-14.

TDCJ has taken additional steps to ensure the safety of inmates and staff from the spreading pandemic. For example, since April 6, the Pack Unit has made extra soap available to inmates at no cost to facilitate frequent handwashing. Declaration of Robert Herrera at 2 (ECF No. 35) (sealed) [Hereinafter Herrera Dec.]. Inmates have daily access to clean face towels, but they do not receive disposable hand towels because they are cost-prohibitive and can damage the plumbing system if flushed. *Id.*

Moreover, on April 8, 2020, TDCJ ordered the precautionary medical lockdown of any unit in which an offender or employee tested positive for COVID-19. Resp. Exh. 1 at 7. Under precautionary lockdown, the unit is closed to everyone except correctional staff and employees assigned to the unit. *Id.* Precautionary lockdown continues until 14 days after the last inmate or employee tests positive for COVID-19. *Id.* On April 13, 2020, TDCJ halted all offender transfers from county jails. *Id.*

The Pack Unit has also provided cloth masks to offenders. Inmates aged 65 and older were given cloth masks on April 14. On April 15, the Pack Unit issued cloth masks to all offenders. Inmates exchange their masks every day so that masks can be washed. Herrera Dec. 4. Since April 15, the Pack Unit has provided all inmate janitors with clean masks and gloves for each shift. *Id.* at 3.

Unfortunately, no corner of society has been spared from the coronavirus pandemic, including the prison system. But when coronavirus has reached Texas prisons, TDCJ has acted promptly to address infections and prevent outbreaks. On April 11, Leonard Clerkly, an inmate at the Wallace Pack Unit, died after being taken to the hospital after experiencing difficulty breathing. At approximately 5:30 p.m. on April 13, TDCJ learned that Mr. Clerkly tested positive for COVID-19. Resp. Exh. 1 at 8.

TDCJ immediately placed the Pack Unit on precautionary lockdown. During precautionary lockdown, transportation of inmates to or from the Pack Unit has stopped except in cases of medical emergency. *Id.* Offender movement within the Pack Unit has stopped except for medical emergencies and scheduled showers. Herrera Dec. at 3. Inmates no longer eat in the dining hall or line up at the pill window to receive medication; instead, meals and medications are delivered to inmates in their housing areas. Inmates no longer go to the recreation yard, *id.* at 5, or to common areas to watch television, *id.* at 6.

Since April 14, Mr. Clerkly's dorm has been placed under medical restriction to separate and restrict the movement of inmates who may have been exposed to COVID-19. *Id.* at 4. The 53 inmates in the dorm have been given masks, and medical staff check their temperature twice per day. *Id.* And at TDCJ's request, the University of Texas Medical Branch administered COVID-19 tests to all inmates who resided in Mr. Clerkly's dorm. Resp. Exh. 1 at 8.

2. Plaintiffs are two inmates in TDCJ's custody. Plaintiff Laddy Valentine is serving a 25-year sentence for child sexual abuse, indecent child contact, and several counts of aggravated sexual assault. *See* TDCJ Offender Information Details, <https://bit.ly/2WhotVX>. Plaintiff Richard Elvin King is serving a life sentence for multiple murders committed in 1989. TDCJ Offender Information Details, <https://bit.ly/3fyAnT5>. Both are housed at the Wallace Pack Unit, a geriatric prison unit that currently houses 1,248 inmates, 827 of whom are aged 65 and over. Herrera Dec. 2. The prison includes a robust full-time medical staff. *Id.*

Dissatisfied with TDCJ's extensive safety and mitigation measures, on March 30, 2020, Plaintiffs filed this lawsuit on behalf of themselves and a putative class of all current and future inmates in the Pack Unit. Exh. 5 ¶ 62. Plaintiffs sought a declaration 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." Exh. 5 ¶ 97. Plaintiffs also

alleged that TDCJ intentionally discriminated against them on account of their disabilities, in violation of the Americans with Disabilities Act and the Rehabilitation Act, by denying reasonable accommodations, including: “[a]ccess to alcohol-based hand sanitizer”; “cleaning supplies for each housing area, including cleaning supplies containing bleach”; “antibacterial hand soap and hand towels to facilitate handwashing”; “[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 “[s]ocial distancing measures in the cafeteria, pill line, and other locations where prisoners are required to congregate.” Exh. 5 ¶ 82.

In their complaint, Plaintiff sought a temporary restraining order and injunctive relief, much of which involved safety measures already in place at the Pack Unit. For example, Plaintiffs sought an order requiring Defendants to:

- 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" 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.

Exh. 5 ¶ 96. Much of the relief Plaintiffs sought involved safety measures already in place at the Pack Unit. *See supra* pp. 5-7.

Plaintiffs filed this lawsuit and sought injunctive relief without first availing themselves of TDCJ's grievance process. *See* Resp. Exh. 4; *see also* Exh. 4 at 15. The Prison Litigation Reform Act, however, required Plaintiffs to exhaust their administrative remedies before filing any federal complaint. *See* 42 U.S.C. § 1997e(a). Plaintiffs have never alleged that they were unaware of or unable to understand TDCJ's grievance process. Instead, they chose to bypass the grievance process entirely and proceed straight to federal court. They did not seek any administrative remedy through TDCJ's grievance process until after they had filed their complaint. *See* Resp. Exh. 4. Plaintiff Valentine filed a grievance on April 1, 2020, based on "lack of hand sanitation and cleaning supplies." *Id.* Plaintiff King filed a grievance on April 2, 2020, claiming that "Classification continues to move offenders from other units to the Pack Unit during the coron[a]virus pandemic." *Id.*

3. The district court held a telephonic hearing on Plaintiffs' motion for a preliminary injunction on April 16, 2020. *See* Exh. 4 at 4; Exh. 10. At 9:57 p.m. that evening, Resp. Exh. 7, the district court entered a preliminary injunction, ordering "all Defendants, their agents, representatives, and all persons or entities acting in concert with them" to do the following:

- 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.

Exh. 2 at 2-4. As set out earlier (at 5-8), and as the district court acknowledged, Exh. 4 at 24, many of the measures ordered in the preliminary injunction were already required by TDCJ policy, including "access to soap, tissues, gloves, masks, regular cleaning, signage and education, quarantine of new prisoners, and social distancing during transport."

The next morning, Defendants moved the district court to stay its injunction pending appeal. The district court denied a stay pending appeal, but it ordered a temporary five-day stay “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.” Exh. 3. Later that afternoon, Defendants filed a motion to stay pending appeal in the Fifth Circuit. Resp. Exh. 5 at 5.

The district court entered a Memorandum and Order on April 20, explaining its reasons for granting “emergency injunctive relief, in the form of protective health measures that help prevent transmission of the coronavirus.” Exh. 4 at 1. Although it recognized that “the measures ordered in the preliminary injunction largely overlap with TDCJ’s COVID-19 policy requirements and recommendations,” Exh. 4 at 23, the district court nevertheless found that Plaintiffs were substantially likely to prevail on the merits of their Eighth Amendment claim. The district court did not rely only on Defendants’ response to the COVID-19 pandemic; it also looked to “[p]ast actions and conduct” in a separate lawsuit, specifically, “Defendants’ failure to live up to the commitments they voluntarily assumed in the settlement of the related case of *Cole v. Collier*.”

Exh. 4 at 20.¹ The court concluded that Defendants had acted with deliberate indifference because their efforts to respond to the COVID-19 pandemic did not “reasonably abate the risk of COVID-19 transmission.” Exh. 4 at 20. The district court did not address Plaintiffs’ ADA claim. Exh. 4 at 15.

The district court held that Plaintiffs’ claims were not barred for failure to exhaust administrative remedies under the PLRA, despite their admitted failure to seek administrative relief before filing suit. Exh. 4 at 15. The district court reasoned that administrative remedies were not “available” given the pandemic’s “alarming speed.” Exh. 4 at 16.

4.a. On April 22, 2020, the Fifth Circuit granted Defendants’ motion to stay the preliminary injunction pending appeal. It found that Defendants were likely to prevail on appeal for multiple reasons. In particular, it held that Plaintiffs “have not shown a ‘substantial risk of serious harm’ that amounts to ‘cruel and unusual punishment.’” Exh. 1 at 6. In addition, it held that “the district court committed legal error in its application of *Farmer v. Brennan*.” *Id.* These errors made Plaintiffs’ Eighth Amend-

¹ *Cole v. Collier* was a class action lawsuit, filed in 2014, based on allegations of excessive heat in housing areas at the Pack Unit. *See* Exh. 5 at 21-22. That lawsuit was settled in 2018. *Id.* at 22. The district judge who issued the preliminary injunction in this case also presided over *Cole v. Collier*.

ment claims untenable. The Fifth Circuit also noted two obstacles to relief under the PLRA: Plaintiffs failed to exhaust administrative remedies, *id.* at 10-13; and the preliminary injunction was overbroad, going “well beyond the limits of what the PLRA would allow even if the Plaintiffs had properly exhausted their claims,” *id.* at 13.

In its order granting a stay pending appeal, the Fifth Circuit ordered the appeal to be expedited and heard at the next available oral argument setting. Shortly thereafter, the Court ordered Defendants to submit their opening brief on May 8, 2020; Plaintiffs to submit their response brief on May 18, 2020; and Defendants to submit a reply brief on May 22, 2020. The Court then set this appeal for oral argument on June 4, 2020. *See* Resp. Exh. 5 at 6.

b. Twelve days after the Fifth Circuit entered its stay pending appeal, on May 4, Plaintiffs filed this emergency application to vacate the Fifth Circuit’s stay. They filed this application four days before the deadline for Defendants’ opening brief in the Fifth Circuit.² Plaintiffs’ emergency application does not explain why they waited twelve days to seek relief in this Court.

² Because Defendants’ response to this application was due on the same day as the deadline for Defendants’ opening brief on appeal, Defendants were forced to seek an extension in the Fifth Circuit. Defendants’ Fifth Circuit brief is now due on May 11. *See* Resp. Exh. 5 at 7.

c. The next day, on May 5, the Fifth Circuit issued a directive to Defendants to provide the following information on May 11 and every ten days thereafter until the scheduled argument on June 4:

(1) Names of offenders and staff, if any, who have tested positive for or have been diagnosed as infected with the COVID-19 virus; give the dates of such test results or diagnosis and whether such infected persons have been hospitalized or have died.

(2) The date and extent and result of any further testing for COVID-19 virus of offenders and staff in his unit;

(3) What additional steps have been taken since the evidentiary hearing in district court on April 16, 2020 by defendants to protect inmates and staff from COVID-19 infection; also state any steps the defendants plan to take and when such future steps will be taken.

Resp. Exh. 6.

ARGUMENT

To vacate the Fifth Circuit’s stay, Plaintiffs must make three showings. First, they must show that their rights “may be seriously and irreparably injured by the stay.” *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers); accord *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., concurring); *id.* at 507 (Breyer, J., dissenting). Second, they must show that the Fifth Circuit was “demonstrably wrong in its application of accepted standards in deciding to issue the stay.” *Id.* Third, they must show that the case “could and very likely would be reviewed

here upon final disposition in the court of appeals.” *Id.* The application fails to make any of these required showings.

I. The Applicants Face No Threat of Serious or Irreparable Injury from the Stay Pending Appeal.

To vacate the Fifth Circuit’s stay, Plaintiffs must demonstrate that the stay will cause them serious or irreparable injury. *Coleman*, 424 U.S. at 1304. The likelihood of irreparable harm must be judged “in light of” preventative measures already in place. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22-23 (2008). That is, Plaintiffs must show that they will suffer irreparable harm “in the absence of an injunction.” *Id.* Plaintiffs cannot make that showing for at least two reasons: (1) there is no evidence that the district court’s preliminary injunction will be more successful against the spread of COVID-19 than what Defendants are already doing; and (2) Plaintiffs’ own litigation conduct confirms that there is neither an emergency nor a threat of irreparable harm that justifies this Court’s intervention.

A. Even if Plaintiffs could show that the Fifth Circuit’s application of the governing standard was incorrect, and they cannot, *see infra* Part II(A), their request to vacate the stay would fail because there is no evidence that the district court’s injunction will be any more effective in stopping the spread of COVID-19 than Defendants’ existing and evolving measures. Plaintiffs speculate that if the stay remains in effect, the

Pack Unit may suffer an outbreak of COVID-19. App. 7-8. And they contend that the preliminary injunction includes measures the district court found “necessary to protect the status quo: ‘Plaintiffs and proposed class members remaining alive and free from serious illness stemming from COVID-19.’” App. 8 (quoting Exh. 4 at 29). But Plaintiffs’ argument assumes, without foundation, that the district court’s preferred measures will be sufficient to prevent the spread of COVID-19 in the Pack Unit.

The record does not support that assumption because it does not show that measures in the preliminary injunction would prevent the spread of COVID-19 in the Pack Unit. Their medical experts, for instance, merely opined that more should be done. But they could not guarantee that additional measures would guarantee the safety of inmates any more than Defendants can guarantee that any particular measures will be one hundred percent effective. *See, e.g.*, Exh. 10 at 16 (acknowledging that available tests “all have problems with them” and that “nasal swabs . . . take[] several days to come back and have a 40 percent false-negative rate”).

There is no basis to infer that the lack of a preliminary injunction *creates* an additional risk of harm to Plaintiffs because there is no evidence that the preliminary injunction would *reduce* the existing threat of harm any more than measures implemented by TDCJ. Because there is no evidence that the preliminary injunction would further reduce the baseline risk of harm from COVID-19, Plaintiffs cannot show that they

face a risk of irreparable harm “in the absence of an injunction.” *Winter*, 555 U.S. at 22-23.

Moreover, the Fifth Circuit is actively monitoring this case pending oral argument. It has directed Defendants to report new developments every ten days. Resp. Exh. 6. Given that oversight, this Court’s involvement is especially unwarranted.

B. Plaintiffs’ own litigation conduct effectively concedes that there is neither an emergency nor a threat of irreparable harm that justifies this Court’s involvement. The Fifth Circuit stayed the district court’s injunction on April 22. Exh. 1. Twelve days elapsed before Plaintiffs filed this application. When parties face a true emergency that only this Court can resolve, they proceed expeditiously; they do not wait 12 days to say so. *See Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2085 (2017) (per curiam) (noting emergency cert petition and requests for stay and expedited relief were filed one day after adverse decision below); *see also California v. Texas*, No. 19-840 (U.S.) (Jan. 21, 2020) (denying motion for emergency expedited consideration after petitioners waited 16 days after adverse decision to seek Supreme Court relief).

Defendants’ conduct proves that when a party faces a true emergency, it seeks relief promptly. The district court entered its preliminary injunction at 9:57 p.m. on April 16. Resp. Exh. 7. Within 24 hours, De-

fendants had filed a motion in district court to stay the preliminary injunction pending appeal and, after the district court denied that motion, an emergency stay application in the Fifth Circuit. Resp. Exh. 5 at 5.

By contrast, Plaintiffs waited almost two weeks to seek to vacate the Fifth Circuit's order. And they timed their filing to fall four days before the deadline for Defendants' Fifth Circuit merits brief, all but assuring that Defendants would be required to draft their Fifth Circuit merits brief and this response brief concurrently. By proceeding that way, Plaintiffs have shown that there is neither a true emergency nor any real risk of irreparable harm absent this Court's involvement.

II. The Court of Appeals Correctly Applied the Governing Standards.

Plaintiffs have failed to demonstrate that the Fifth Circuit's stay is demonstrably wrong under the governing standard. Courts consider four factors to decide a motion for stay pending appeal:

(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). A stay pending appeal “simply suspends judicial alteration of the status quo.” *Id.* at 429. In this case, the status quo is that Defendants are responding to a rapidly developing pandemic using their best efforts—guided by medical experts and CDC

recommendations—to prevent the spread of COVID-19 to inmates and prison staff while maintaining safety and security in prison facilities. Under the status quo, prison officials may exercise discretion to respond to changing circumstances and allocate available resources to combat the COVID-19 pandemic without rigid court-ordered procedures backed by the threat of contempt. Each of the *Nken* factors confirms that this state of affairs should be preserved during the appeal.

A. The State is likely to succeed on all claims.

1. Plaintiffs’ claims are foreclosed because they failed to exhaust administrative remedies under the PLRA.

Plaintiffs acknowledge that TDCJ provides a grievance process and that they ignored that process until after filing suit. *See* Exh. 1 at 11. Plaintiffs now claim that administrative remedies were not “available” because the grievance process might not provide immediate relief. But dissatisfaction with the process does not mean that remedies are unavailable, particularly when Plaintiffs contributed to the supposed delay. Defendants have searched in vain for any case in which a prisoner was permitted to sue without even attempting to exhaust prison remedies. *See* Exh. 1 at 15 (Higginson, J., concurring) (“I agree that Appellants have demonstrated a substantial likelihood of success on their claim 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.”). Straightforward application of the PLRA requires the district court to reject Plaintiffs’ claims.

The PLRA requires that an inmate exhaust all available administrative remedies *before* filing suit. 42 U.S.C. § 1997e(a). This Court has made clear that the exhaustion requirement applies to all suits regarding prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002), and that “unexhausted claims cannot be brought in court,” *Jones v. Bock*, 549 U.S. 199, 211 (2007). The exhaustion requirement is statutory, and the statute provides no exception for “special circumstances.” *See Ross v. Blake*, 136 S. Ct. 1850, 1856-57 (2016); *see also See Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (in a case seeking injunctive relief to address “current” prison conditions, inmates are not “free to bypass adequate internal prison procedures and bring their health and safety concerns directly to court”); Exh. 1 at 12.

This Court has recognized one exception to the exhaustion requirement: Plaintiffs need not exhaust administrative remedies if such remedies are not “available.” *Ross*, 136 S. Ct. at 1858; *see, e.g., Rinaldi v. United States*, 904 F.3d 257, 268 (3d Cir. 2018) (“[T]he onus falls on the inmate to show that such remedies were unavailable to him.”). In *Ross*, this Court outlined just three situations in which a prisoner can show that the administrative remedy process is “unavailable”: (1) “when (despite what regulations or guidance materials may promise) it operates as a simple dead end-with officers unable or consistently unwilling to

provide any relief to aggrieved inmates”; (2) when “some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it”; and (3) “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Ross*, 136 S. Ct. at 1859-60; Exh. 1 at 11.

The district court flouted *Ross* and created a new exception to the exhaustion requirement. It held that Plaintiffs did not even have to attempt to exhaust administrative remedies because it was possible that the administrative process could take too long to resolve their grievances. Exh. 4 at 16-18. Since Plaintiffs failed to file their grievances until after they filed suit, the district court reasoned, prison officials would “not [be] required to respond . . . until May 11 and May 12, 2020.” Exh. 4 at 17. To the district court, the administrative process resembled what *Ross* referred to as a “dead end.” *See* 136 S. Ct. at 1859.

The district court’s reasoning fails out of the gate because it was *Plaintiffs* that waited to file their grievances until after they sued. The Pack Unit began taking precautions against the spread of COVID-19 on March 11, Resp. Exh. 1 at 4, 6, and the Governor declared a state-wide disaster on March 13, yet Plaintiffs did not file grievances until April 1 and 2, respectively, Resp. Exh. 4. Plaintiffs chose to forgo administrative remedies in favor of gathering experts and preparing for litigation, creating the very timeline relied on by the district court to excuse them

from exhausting.³ It was Plaintiffs, not the process, that created the delay. Allowing their own clear-eyed and counseled choices to excuse their failure to exhaust would eviscerate the PLRA’s exhaustion requirement.⁴

In any event, this Court did *not* hold in *Ross* that the question whether an administrative remedy is “available” depends on the speed at which an inmate can complete the administrative remedy process. Rather, “availability” turns on whether the grievance process is “capable of use” by inmates to obtain “some relief”:

As we explained in *Booth*, the ordinary meaning of the word ‘available’ is ‘capable of use for the accomplishment of a purpose,’ and that which ‘is accessible or may be obtained.’ . . . Accordingly, an inmate is required to exhaust those, but only those, grievance procedures that are ‘capable of use’ to obtain ‘some relief for the action complained of.’

136 S. Ct. at 1858-59 (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)). The question, therefore, is whether TDCJ and the Pack Units’ grievance system is “capable” of providing “some relief” in response to Plaintiffs’ concerns relating to COVID-19.

³ Plaintiffs filed three expert declarations on April 2, Resp. Exh. 8 at 4, the same day as King’s grievance and one day after Valentine’s, Resp. Exh. 4.

⁴ See Exh. 16 ¶ 25 (Valentine averring that he spoke his attorneys before they filed suit).

This Court has made clear that *Ross*’s “dead end” test is limited to circumstances where the administrative process creates no “potential” for the inmate to obtain relief. *See id.* Only “[w]hen the facts on the ground demonstrate that *no such potential* exists” does an inmate have “no obligation to exhaust the remedy.” *Id.* (emphasis added). In applying that test in *Ross*, the Court made clear that as long as there was some “potential” for an inmate to obtain some relief through a prison’s administrative remedy process, the remedy was available. *Id.* at 1862 (considering whether “Maryland’s standard grievance procedures potentially offer relief to Blake or, alternatively, did the IIU investigation into his assault foreclose that possibility?”).

An administrative remedy is not “unavailable” merely because it will not provide the inmate’s requested relief as soon as he wants it. “[A]s long as ‘the administrative process has authority to take *some action* in response to a complaint, [even if] not the remedial action an inmate demands,’ administrative remedies are ‘available.’” *Muhammad v. Mayfield*, 933 F.3d 993, 1000-01 (8th Cir. 2019) (quoting *Booth*, 532 U.S. at 737-38, 741). Plaintiffs presented no evidence that the timelines governing TDCJ’s administrative exhaustion process foreclosed any relief. *See* Exh. 1 at 11-12. Rather, the district court merely assumed that Defendants would (1) take 40 days to respond to Plaintiffs’ grievances and (2) deny all relief. The district court relieved Plaintiffs’ of their burden of proof, a legal error fatal to its preliminary injunction.

The only substantive precedent the district court relied on was an out-of-circuit case decided before *Ross*, and that case cuts against Plaintiffs. *See* Exh. 4 at 18 (citing *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171 (7th Cir. 2010)). *Fletcher* did not hold that any prisoner claiming imminent danger is exempt from exhausting administrative remedies. *Fletcher* instead suggested that, where there are *no* administrative remedies that can redress an immediate danger to inmate health or safety, administrative remedies are unavailable. 623 F.3d at 1173. But *Fletcher* found that the plaintiff there had grievance procedures available to him, which the plaintiff did not exhaust. *Id.* at 1175. So the court held that the plaintiff’s claim was barred. *Id.* The counterfactual that *Fletcher* raised in dicta—a law prohibiting the prison from responding in time, *see* 623 F.3d at 1174—may make a process unavailable, *see* Exh. 1 at 11-12. But Plaintiffs did not suggest, and the district court did not find, anything that would prohibit prison officials from offering some relief to address Plaintiffs’ grievances. *See id.*

What is more, the evidence before the district court conclusively showed that Plaintiffs *could* receive some relief. *See id.* at 13 n.2. On April 1, Plaintiff Valentine filed a grievance complaining of “lack of hand sanitation and cleaning supplies.” Resp. Exh. 4. Less than a week later, on April 6, prison officials began providing increased access to hand soap—prisoners may “receive extra soap upon request, at no cost to them, as needed to facilitate frequent handwashing.” Herrera Dec. at 2.

The Pack Unit has also provided prisoners access to “a spray bottle of a disinfectant cleaner . . . to use if they wish to clean their housing area more frequently.” *Id.* at 3. And King confirmed in the preliminary injunction hearing that he is able to clean his housing area any time he wants to. Exh. 10 at 79. On April 2, King complained that prisoners from other units were being moved into the Pack Unit. Resp. Exh. 4. But even before his grievance, TDCJ “minimized transfers between units based upon agency needs on a case by case basis” and implemented procedures to screen for COVID-19. Resp. Exh. 1 at 5. A TDCJ-wide policy implemented March 20 provided that “[i]n general, offender transportation must be curtailed, except for movement that is absolutely required, such as for release, bench warrant, medical emergencies, etc.” Resp. Exh. 3 at 12. And since April 14, the day after Mr. Clerkly tested positive for COVID-19, all transfers in or out of the Pack Unit have ceased. Herrera Dec. at 3. These are just a few of the actions taken by Defendants and other State officials, under the guidance of the CDC and medical professionals to address dangers caused by the COVID-19 pandemic. *See* Resp. Exh. 1; Resp. Exh. 3; *see also supra* pp. 5-8.

This evidence highlights why exhaustion is necessary. As the Supreme Court has explained, exhaustion under the PLRA serves two primary purposes: (1) it gives the agency an opportunity to investigate and correct its own mistakes before being haled into federal court; and (2) it promotes efficiency, as “[c]laims generally can be resolved much more

quickly and economically in proceedings before an agency than in litigation in federal court.” *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). The COVID-19 pandemic has rapidly evolved, and the State’s response has evolved with it. *See* Resp. Exh. 1; Resp. Exh. 2 at 3-5. Many of the allegations in Plaintiffs’ complaint do not reflect the current conditions at the Pack Unit. *Compare* Exh. 5 at 15-17 (complaining that the Pack Unit is not posting signs about warning about COVID-19, reducing prisoner contact, educating prisoners, or reducing inmate movement); *with* Herrera Dec.; Resp. Exh. 3. And instead of bringing complaints concerning possible violations of those new policies to the attention of prison officials, Plaintiffs first raised them shortly before and at the preliminary injunction hearing. That sequence is antithetical to the PLRA’s exhaustion requirement.

2. Defendants are likely to prevail on Plaintiffs’ Eighth Amendment Claims.

Defendants are likely to succeed on Plaintiffs’ Eighth Amendment claims because the record proves that Defendants have been anything but deliberately indifferent to the risk of harm posed by the COVID-19 pandemic. To prove that prison conditions violate the Eighth Amendment, a plaintiff must show (1) “that he is incarcerated under conditions posing a substantial risk of serious harm,” and (2) that the defendant prison official has acted with “‘deliberate indifference’ to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The district

court's conclusion that Plaintiffs were likely to prevail on their Eighth Amendment claims was erroneous because it failed to require a showing of deliberate indifference to the harm posed by the COVID-19 pandemic.

The district court found a likelihood of success based only on the existence of a substantial risk of serious harm. It stated that “[t]he government has a constitutional duty to protect those it detains from conditions of confinement that create ‘a substantial risk of serious harm.’” Exh. 4 at 18 (quoting *Farmer v. Brennan*, 511 U.S. at 834). But the quoted passage from *Farmer* pertains only to the first element of an Eighth Amendment claim: “the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.” 511 U.S. at 834. To establish liability, an inmate must make an additional showing of “‘deliberate indifference’ to inmate health or safety.” *Id.* Plaintiffs’ focus on the Fifth Circuit’s discussion of *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), similarly misses the point; that discussion had nothing to do with the district court’s legal error in departing from the standard of liability articulated in *Farmer v. Brennan*. See Exh. 1 at 7. The district court erred because it elided the second step of the Eighth Amendment analysis. As the Fifth Circuit held, the district court erred because it treated failure to eliminate the risk of harm as proof of deliberate indifference. See Exh. 1 at 7-8. That legal error alone supports the Fifth Circuit’s conclusion that Defendants are likely to prevail on appeal.

The district court did not find that the Defendants’ response to the COVID-19 pandemic was not reasonable; it found that Defendants could have taken additional steps that would also be reasonable. For instance, the district court did not find that Defendants failed to provide adequate signage to advise Plaintiffs how to protect themselves against COVID-19. Instead, it explained that its order to “give an oral presentation or show an educational video” provided a reasonable measure to abate the risk that other inmates might not understand the existing signs. Exh. 4 at 24.

The district court faulted Defendants for “[t]heir lack of willingness to take extra measures, including measures as basic as providing hand sanitizer and extra toilet paper,” citing this failure to take “extra measures” as evidence of “deliberate indifference toward their vulnerability.” Exh. 4 at 26. But the decision not to provide alcohol-based hand sanitizer to prisoners is consistent with the CDC’s Interim Guidance, which recommends cleaning hands with alcohol-based hand sanitizer “[i]f soap and water are not available” and “where security concerns permit.” Exh. 14 at 8, 17. The Pack Unit has provided inmates with unlimited soap since April 6. Herrera Dec. 2. And the record does not support Plaintiffs’ claim—or the district court’s finding—that TDCJ materials “instruct inmates to use hand sanitizer.” App. 15. The cited materials merely reflect the CDC’s guidance to use hand sanitizer if soap and water are not available. *See* Herrera Dec. Exh. 3. Nor does the record show

that Defendants refused to provide extra toilet paper; it showed only that one plaintiff had tried unsuccessfully to get additional toilet paper at an unspecified time. *See* Exh. 10 at 65:23-24. If anything, that is further proof of failure to exhaust, *see supra* Part II(A)(1), as Plaintiffs do not suggest that they have ever pursued administrative remedies to obtain extra toilet paper.

The district court also went out of its way to discount the measures Defendants have taken in response to the COVID-19 pandemic. It dismissed unquestionably effective measures—such as screening employees for COVID-19 symptoms, waiving inmate copays, suspension of visitation, masks for prison staff, and unlimited access to soap—as “so essential that they have become ubiquitous.” Exh. 4 at 21. Worse, it counted Defendants’ efforts to adapt to the rapidly evolving COVID-19 pandemic against them, implying that “many of the measures” adopted by Defendants were somehow suspect because they “were not implemented until after the commencement of this lawsuit, and some were not adopted until the day before this Court’s evidentiary hearing.” Exh. 4 at 21. At the same time, the district court faulted Defendants for their failure to present “plans or intent to create plans” for “expanding testing, triaging available tests, coordinating early release to reduce prison populations, or enacting new measures after precautionary lockdown is lifted.” Exh. 4 at 14. Thus, in the district court’s view, taking additional steps to manage the COVID-19 pandemic after an inmate’s death is

somehow proof of deliberate indifference, as is failure to present plans at a preliminary injunction hearing to take additional steps in the future. That view bears no resemblance to this Court's Eighth Amendment jurisprudence.

The district court's mandate to test every Pack Unit inmate for COVID-19 illustrates the errors in its Eighth Amendment analysis. The district court ordered unit-wide testing because it believed it was "necessary for abating a substantial risk of serious harm to Pack Unit inmates." Exh. 4 at 26. The district court's preference for this extra measure is not shared by the CDC, which has advised that "[n]ot everyone needs to be tested for COVID-19"⁵ and which has left the decision to test individual inmates to the judgment of medical staff. *See* Exh. 14 at 22. And to the extent that Defendants had tested Pack Unit inmates for COVID-19, including all inmates who shared the deceased inmate's dorm, the court dismissed that effort because it had "not been notified of any results of those tests." Exh. 4 at 21.

Ultimately, the district court found a likely violation of the Eighth Amendment not because Plaintiffs proved that Defendants were deliberately indifferent to the risk posed by the COVID-19 pandemic but because Defendants failed to prove that they had eliminated the risk of

⁵ *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-test-ing/testing.html>.

COVID-19 infection to Plaintiffs and members of the uncertified class. As the district court put it: “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.” Exh. 4 at 25. As if to prove the point, the district court found that failure to prevent an inmate’s death provided evidence of deliberate indifference. Exh. 4 at 22 (“Mr. Clerkly’s death also suggests a conscious disregard of substantial risk.”). That suggests strict liability—far beyond even the negligence standard that this Court conclusively rejected in *Farmer*, 511 U.S. at 835. The Fifth Circuit correctly identified this legal error and concluded that Defendants are likely to succeed on the merits of their appeal.

3. The preliminary injunction violates the PLRA.

The district court’s injunction is also plainly overbroad. Basic principles of equity provide that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (emphasis added). The PLRA provides that injunctive relief “with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs” and that relief must be “narrowly drawn.” 18 U.S.C. § 3626(a)(1)(A). The district court recited those restrictions, Exh. 2 at 1, but its preliminary injunction is not “narrowly drawn” in any sense. There are only two plaintiffs here. Yet the district court effectively

granted classwide—without certifying a class. That was not necessary, let alone “narrowly drawn,” to provide relief to Plaintiffs.

B. The State will suffer irreparable injury if the status quo is altered.

The preliminary injunction irreparably injures Defendants because it thwarts their ability to operate the Pack Unit and constrains their ability to respond to an evolving pandemic in real time. The Texas Legislature has charged TDCJ with the duty to operate the State’s prison system. *See* Tex. Gov’t Code ch. 501. The preliminary injunction interferes with that delegation of authority by substituting the district court’s judgment for the judgment of prison officials. That alone constitutes irreparable injury to the State. *See, e.g., Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018); *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)). That injury is pronounced here, as “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)).

Defendants have worked diligently to address the harms posed by COVID-19 in exceedingly difficult circumstances, with available infor-

mation and medical guidance changing on a daily basis. There is no evidence that the measures required by the preliminary injunction will be any more effective against the COVID-19 pandemic than the measures already put in place by Defendants. But the preliminary injunction creates a clear risk: if the measures turn out to be ineffective, or if more effective measures become available, Defendants cannot change course. They are tied to specific measures backed by the threat of contempt. Stripping state officials of discretion to adapt to changing circumstances is an irreparable injury in itself, and it may inflict further injury by making their response to the COVID-19 pandemic less effective. It is no answer to say that the district court might be willing to modify its injunction. An injunction that “prevents TDCJ from responding to the COVID-19 threat without a permission slip from the district court . . . constitutes irreparable harm.” Exh. 1 at 10.

Especially during a public-health crisis, Defendants must have discretion to use their professional judgment in operating the Pack Unit. The State’s police powers are at their apex during a public-health emergency. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29 (1905); *In re Abbott*, 954 F.3d 772 (5th Cir. 2020). And judicial review is appropriate only if a measure designed “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.” 197 U.S. at 29. Absent such a

clear violation, courts may not second-guess state officials' efforts to combat the emergency. "It 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.* at 30. Plaintiffs did not show, and the district court did not find that Defendants' efforts to respond to the pandemic have "no real or substantial relation" to the protection of inmates' health and safety or that they are "beyond all question, a plain, palpable invasion" of Plaintiffs' constitutional rights. *Id.* at 29-30.

The district court flatly refused to heed this Court's instruction in *Jacobson*. Instead, it saw the COVID-19 pandemic as a reason to give even less deference to state officials. It concluded, "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." Exh. 4 at 31. The district court dismissed *Jacobson* in a footnote, finding that it "does not apply to the instant case," because "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." Exh. 4 at 31 n.3. But in drawing that distinction, the district court did exactly what *Jacobson* forbids: it "usurped the power of state authorities by passing judgment on the wisdom and efficacy of those emergency measures." *In re Abbott*, 954 F.3d

at 795. The district court’s failure to respect the principles of federalism reflected in *Jacobson* irreparably injures Defendants.

C. The stay does not create a threat of irreparable injury to the plaintiffs.

Maintaining the stay does not create a threat of injury to Plaintiffs. As explained above, Plaintiffs have not shown that existing measures are so deficient that the absence of additional court-ordered measures creates additional risk of irreparable harm. Nor have they shown that the court-ordered measures will be any more effective than existing measures at the Pack Unit. That they waited 12 days after the Fifth Circuit’s stay to seek relief in this Court confirms that they face no real emergency or risk of irreparable harm. *See* Part I, *supra*.

D. Maintaining the stay serves the public interest.

The additional stay factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. For the reasons stated in Part II(B), *supra*, the Fifth Circuit’s stay serves the public interest.

III. The Applicants Have Not Shown that this Court Is Likely to Review the Decision Below.

The Applicants cannot show that this Court is likely to grant a writ of certiorari to review the Fifth Circuit’s judgment. That is always a difficult showing to make. *See Certain Named and Unnamed Non-Citizen Children v. Texas*, 448 U.S. 1327, 1331 (1980) (Powell, J., in chambers) (noting that only in “exceptional” cases will a litigant be able to show,

before decision by the court of appeals, that this Court is likely to grant certiorari). Here, the stay of a preliminary injunction order is a poor vehicle to review the question presented. Moreover, Plaintiffs fail to identify any split of authority among the circuit courts, drastically reducing the chances that the Court would grant certiorari. Plaintiffs concede that they seek error correction. *See* App. 7. But this Court does not grant certiorari to correct errors, especially not in highly fact-bound cases like this one.

CONCLUSION

The Court should deny the application to vacate the stay.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that this document has been filed with the clerk of the Court and served by electronic mail and Federal Express on May 8, 2020, on counsel of record in this case.

/s/ Kyle D. Hawkins

KYLE D. HAWKINS

Solicitor General

Counsel for Respondents

Exhibit List

1. Declaration of Oscar Mendoza
 2. Declaration of Dr. Lannette Linthicum
 3. Texas Department of Criminal Justice Policy B-14.52 (Apr. 15, 2020)
 4. Affidavit of Frances Gattis
 5. Docket Sheet, *Valentine v. Collier*, No. 20-20207 (5th Cir.)
 6. Court Directive, *Valentine v. Collier*, No. 20-20207 (5th Cir. May 5, 2020)
 7. Apr. 16, 2020 email docket notification for *Valentine v. Collier*, No. 4:20cv1115 (S.D. Tex.)
 8. Docket Sheet, *Valentine v. Collier*, No. 4:20cv1115 (S.D. Tex.)
- *Declaration of Robert Herrera and attachments, cited in Respondents' brief, is under seal and not included in this filing.

Exhibit 1

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

LADDY CURTIS VALENTINE, et al.,

Plaintiffs,

v.

BRIAN COLLIER, et al.

Defendants.

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CIVIL ACTION NO. 4:20-CV-01115

DECLARATION OF OSCAR MENDOZA

Pursuant to 28 U.S.C. § 1746, I, Oscar Mendoza, declare as follows:

1. “My name is Oscar Mendoza. I am over 18 years of age, of sound mind, have never been convicted of a felony or crime of moral turpitude, and can make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the Deputy Executive Director of the Texas Department of Criminal Justice (“TDCJ”). I have held this position since August 2016. I began my employment with the TDCJ in 1979 as a correctional officer. I have held uniformed correctional positions of Sergeant, Lieutenant, Captain, and Major. Additionally, I have served as an assistant warden of two prisons and warden of six prisons. I served as a regional director within the Correctional Institutions Division (CID), where I was responsible for the administrative, operational, and management oversight of 11 prisons and eight wardens. I also served as deputy director for Management Operations with the CID of TDCJ, the division with direct responsibility to manage and operate TDCJ’s various prison units to include the Pack Unit. Further executive level promotions include serving as Division Director for Administrative Review & Risk Management and Division Director for the Private Facility Contract Monitoring/Oversight Division. In my role as Deputy Executive Director, I help to oversee the daily operations and oversight of the TDCJ, including the CID, and I report directly to

TDCJ's Executive Director. In my role as Deputy Executive Director and in prior leadership roles I have also been involved in and continue to be involved in regular interaction with correctional agency managers from other states, including through the American Correctional Association, Texas Corrections Association, CoreCivic, and Management & Training Corporation.

3. Since the onset of the detection and spread of the COVID-19 virus in Texas in March 2020, I have been involved with others in TDCJ agency leadership in helping to formulate and direct TDCJ's preparation and response to the impact of the virus on, among others, the offender population within the facilities operated within the CID. That involvement has included input into TDCJ's operational responses to the COVID-19 outbreak in Texas, both in terms of the formulation and implementation of TDCJ policies and protocols generally and specific involvement in working with CID staff including unit wardens with respect to that response. My involvement in that response process has continued to today.

4. In response to the detection and spread of the COVID-19 virus in Texas, TDCJ implemented operational changes that were set out in a new coronavirus policy, B-14.52, Coronavirus Disease 2019 (COVID-19) developed by the Correctional Managed Health Care Committee ("CMHC") as part of the CMHC's Infection Control Manual. The CMHC and its medical professionals develop the Infection Control Manual for use by TDCJ in its operations. The new CMHC policy was numbered B-14.52 and was issued by the CMHC effective March 20, 2020. Upon the issuance of policy B-14.52 by CMHC, TDCJ directed its unit personnel to put in place the operational requirements (including requirements for enhanced cleaning and sanitation protocols, signage, education, screening, use of personal protective equipment ("PPE"), and medical isolation or restriction for confirmed or potential exposures) set out in the policy for the units under their direct supervision, including the Pack Unit.

5. Following the issuance of policy B-14.52 by the CMHC, the Center for Disease Control (“CDC”) issued guidance specifically directed to correctional institutions. The CDC guidance is dated March 23, 2020. A true and correct copy of that publicly available guidance reviewed by TDCJ management, including myself, is attached to this declaration as **Attachment 1**.

6. Following CDC’s issuance of this guidance to correctional institutions regarding response to the COVID-19 outbreak, the CMHC updated policy B-14.52 in a revised policy issued effective March 27, 2020. Upon the issuance of the updated policy B-14.52 by CMHC, TDCJ directed its unit personnel to put in place the operational requirements set out in the policy (including requirements for enhanced cleaning and sanitation protocols, signage, education, screening, use of PPE, and medical isolation or restriction for confirmed or potential exposures) for the units under their direct supervision, including the Pack Unit.

7. CMHC has made an additional update to policy B-14.52, issued effective April 2, 2020. Upon the issuance of the updated policy B-14.52 by CMHC, TDCJ again directed its unit personnel to put in place the operational requirements set out in the policy (including requirements for enhanced cleaning and sanitation protocols, signage, education, screening, use of PPE, and medical isolation and restriction for confirmed or potential exposures) for the units under their direct supervision, including the Pack Unit.

8. CMHC has updated policy B-14.52 effective April 15, 2020. TDCJ will again direct its unit personnel to put in place the operational requirements set out in this most recent version of the policy.

9. In addition to directing CID unit personnel to implement the operational changes set out in policy B-14.52 in response to the COVID-19 outbreak in Texas, TDCJ also took the following precautionary steps with respect to the operation of TDCJ units, even prior to the time CMHC

issued the initial version of policy B-14.52 and prior to the time that there was any indication of COVID-19 directly affecting TDCJ facilities or its employees:

- 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 Standards), 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 for use by TDCJ employees 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. To date, TDCJ has distributed 527 two-liter bottles, 577 one gallon jugs, and 173-pint bottles of hand sanitizer, 356,000 bars of soap; 276,988 cloth face masks; 47,121 face shields, and 92,682 plastic gowns in its facilities in response to the COVID-19 outbreak.
- 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.

- 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.

10. In addition to taking the above steps and directing CID unit personnel to implement the operational changes set out in policy Section B-14.52 to response to the COVID-19 outbreak in Texas, TDCJ has taken additional steps to address the onset of coronavirus cases affecting TDCJ offenders and staff, including the following:

- TDCJ distributed PPE and hand sanitizer to various units, including the Pack Unit.
- Effective April 8, 2020, TDCJ management directed that any TDCJ unit in which an offender resides or TDCJ employee works that experiences a positive COVID-19 test will be placed on precautionary medical lockdown. This precautionary lockdown limits the movement of offenders within the unit and facilitates observation measures to appropriately monitor suspected spreading of the virus and allows facility management to respond accordingly. Units remain on lockdown for the later of 14 days as of the time of lockdown or a period of 14 days after any additional positive cases are detected. During this time, only unit assigned correctional staff and employees are permitted access on the unit.
- Effective April 13, 2020, TDCJ halted all offender intake from county jails.

11. TDCJ placed the Pack Unit on precautionary medical lockdown on April 14, 2020, following the receipt by TDCJ on April 13, 2020 at approximately 5:30 p.m. of a positive test result obtained during an autopsy performed on an offender who had been taken from the Pack Unit to a local hospital, where he expired. Upon request from TDCJ, health officials from the University of Texas Medical Branch (“UTMB”)—a health care provider under contract with TDCJ—already has administered COVID-19 tests to the offenders who resided in the same dormitory as the offender whose autopsy resulted in the positive test.

12. As soap and water are available on TDCJ units, hand sanitizer is not distributed to the offender population due to security concerns. In accordance with CMHC 14.52, units are encouraging handwashing with soap and water for at least 20 seconds (suggested by CDC guidelines as well.) There is no mandate or requirement by CDC or TDCJ policy to provide the offender population access to hand sanitizer. CDC guidelines clearly outlines “if soap and water are not available,” which is not an issue for TDCJ as unlimited soap and adequate water is available for proper handwashing.

13. It is my further understanding that a position is being advanced in the litigation, among others, that all offenders at Pack Unit be tested for COVID-19. COVID-19 tests are determined by TDCJ-Pack Unit’s medical provider, UTMB, not by TDCJ.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2020.”


Oscar Mendoza

Exhibit 2

(CMHCC), and I work with TDCJ's contracted university healthcare providers to ensure that quality health care services are provided to incarcerated offenders in the custody of TDCJ.

4. Since the onset of the detection and spread of the COVID-19 virus in Texas in March 2020, I have worked with the joint medical directors, Dr. Owen J. Murray, D.O., MBA, Vice President Offender Care Services, UTMB Correctional Managed Care (CMC) and Dr. Denise DeShields, M.D., Executive Medical Director, Texas Tech University Health Sciences Center (TTUHSC) CMC to develop Policy B-14.52, Coronavirus Disease 2019 (COVID-19). The joint medical directors have also consulted with Dr. Janak Patel, M.D. Dr. Patel is the Director, Department of Infection Control and Healthcare Epidemiology at UTMB. In addition, the joint medical directors also consulted with Dr. Philip Keiser, M.D., UTMB Professor of Infectious Disease and Galveston County Public Health Authority. Dr. Keiser also is a member of the CMHCC.

5. CMHC Infection Control Policy B-14.52 was initially developed by a joint subcommittee of UTMB, TTUHSC and TDCJ Health Services staff. The subcommittee was chaired by Dr. Stephanie Zepeda, PharmD. The subcommittee members developed CMHC Infection Control Policy B-14.52 to adhere to guidance issued by the U.S. Centers for Disease Control and Prevention (CDC) for the management of COVID-19. The subcommittee's work product was forwarded to the three joint medical directors for review and approval, since the CHMCC was unable to meet due to the disaster declaration related to COVID-19.

6. Dr. Zepeda is a Doctor of Pharmacy and graduated Summa Cum Laude from the University of Houston College of Pharmacy in 1997. Dr. Zepeda completed a post-graduate Pharmacy Practice residency with an emphasis in Managed Care with the University of Houston and TFCJ in 1998. Dr. Zepeda began her career as a clinical pharmacist with the University of Houston College of Pharmacy serving the TDCJ. She joined UTMB Correctional Managed Care as a

pharmacy clinical practice specialist in 2000 as the Assistant Director of Pharmacy. Dr. Zepeda was selected as the Director of Pharmacy for UTMB Correctional Managed Care in May 2006. Dr. Zepeda is responsible for providing operational and financial oversight for UTMB CMC Pharmacy Services.

7. All three joint medical directors are credentialed health professionals. The three medical directors include myself, Dr. Owen J. Murray, and Dr. Denise DeShields. Dr. Murray is the Vice President, Correctional Managed Care for UTMB. Dr. Murray graduated from the Chicago College of Osteopathic Medicine in 1988 and completed the Family Practice Residency Program at Michigan State University. Dr. Murray spent four years working in the Cook County Jail and the Illinois Department of Corrections. Dr. Murray received his MBA from the University of Houston Clear Lake and has been employed by UTMB for the past 25 years. Dr. DeShields is the Executive Medical Director of the TTUHSC's Correctional Managed Health Care Program. Dr. DeShields received her medical degree from Tufts University School of Medicine and specializes in family medicine. Dr. DeShields has served as the Executive Director, Managed Care, for the Texas Tech University Health Science Center since 1996 (24 years).

8. After review and careful consideration, each of the three joint medical directors approved adoption and implementation of CMHC Infection Control Policy B-14.52 on March 20, 2020. Once the policy was adopted, it was placed on the CMC intranet for wide dissemination to unit based staff, the policy was also placed in the Correctional Managed Health Care Infection Control Policy Manual and posted on the TDCJ website. Each university medical director (i.e. Dr. Murray and Dr. DeShields) held conference calls with each of their respective regions to review the policy and answer questions. A true and correct copy of the policy adopted on March 20, 2020, is attached to this declaration as **Attachment A**.

9. Three days later, on March 23, 2020, the CDC issued “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. The subcommittee reviewed this interim guidance issued by the CDC and recommended changes to CMHC Infection Control Policy B-14.52 to ensure that policy and practices were consistent with the guiding principles issued by the CDC. The medical directors approved the revisions recommended by the subcommittee and the revised version of CMHC Infection Control Policy B-14.52 was adopted and implemented on March 27, 2020. Once the revised policy was approved, it was included in the Correctional Managed Health Care Infection Control Policy Manual and widely disseminated via the CMC intranet. It was also made available on the TDCJ website. Dr. Murray and Dr. DeShields held conference calls with each of their respective regions to review the policy and answer questions. A true and correct copy of the revised policy adopted and effective on March 27, 2020, is attached to this declaration as **Attachment B**.

10. The subcommittee recommended updates to CMHC Infection Control Policy B-14.52, which were approved by the three medical directors for adoption and implementation in CMHC Infection Control Policy B-14.52, effective April 2, 2020. Once the updated policy was approved, it was included in the Correctional Managed Health Care Infection Control Policy Manual and widely disseminated via the CMC intranet. It was also made available on the TDCJ website. Dr. Murray and Dr. DeShields held conference calls with each of their respective regions to review the policy and answer questions. A true and correct copy of the revised policy adopted and effective on April 2, 2020, is attached to this declaration as **Attachment C**.

11. Thereafter, the subcommittee recommended additional updates to CMHC Infection Control Policy B-14.52 that were approved by the three medical directors and implemented on April 15, 2020. This latest version of the policy is in the process of being disseminated to the field

and it will be included in the Correctional Managed Health Care Infection Control Policy Manual and made available on the TDCJ website. The university medical directors will hold conference calls with their respective regions to review the policy changes and answer questions. A true and correct copy of the revised policy adopted and effective on April 15, 2020, is attached to this declaration as **Attachment D**.

12. As Director of the TDCJ Health Services Division, I have worked to help educate and advise TDCJ staff regarding the requirements and implementation of CMHC Infection Control Policy B-14.52.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2020.”

A handwritten signature in cursive script, reading "Lannette Linthicum", written in black ink.

Dr. Lannette Linthicum, MD, FACP

Exhibit 3

CMHC INFECTION CONTROL MANUAL	Effective Date: 4/15/2020	NUMBER: B-14.52 Page 1 of 37
	Replaces: 4/2/2020	
	Formulated: 3/20/2020	
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.

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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,

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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

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- 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.

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- 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

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- 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

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- 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

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Medium Risk	Travel from an area of sustained transmission <u>without</u> 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:

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- 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

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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

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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 not 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.

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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.

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- 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
Infirmery	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

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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

- When performing procedure or care that may generate respiratory aerosols
- 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

- Diagnostic testing should be prioritized based on clinical features and epidemiologic risk.
- 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

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hospitalization		
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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).

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- 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

- 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
- 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>
- 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>
- 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>
- 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>
- 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).

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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



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.



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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

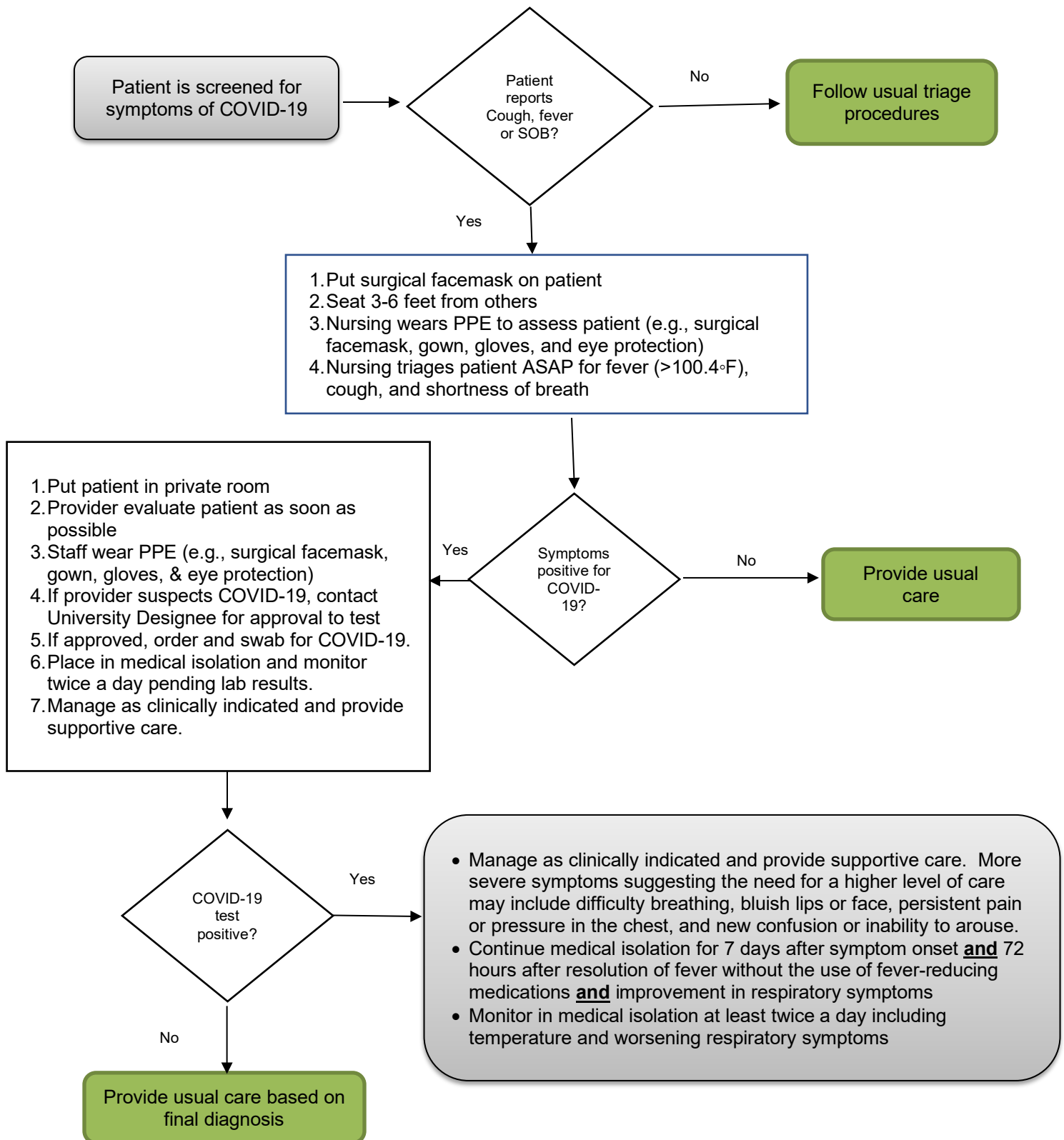
Visitors

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

Medical Triage

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°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

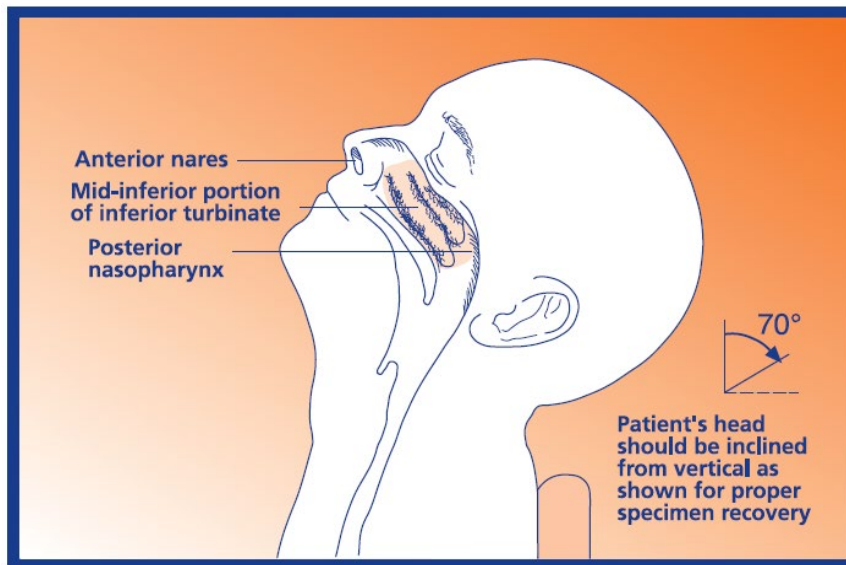
******Contact Lisa Wilson, Carrie Culpepper, or Mike Parmer******

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® Nasopharyngeal 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.



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



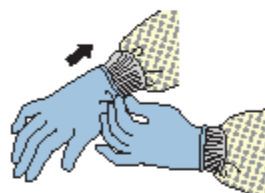
3. GOGGLES OR FACE SHIELD

- 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



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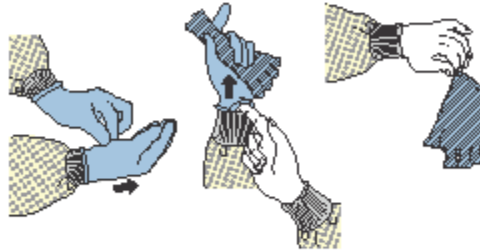
HOW TO SAFELY REMOVE PERSONAL PROTECTIVE EQUIPMENT (PPE)

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

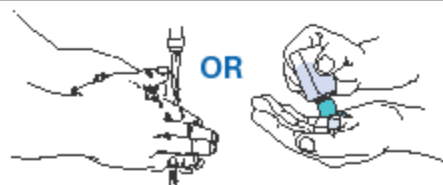


4. MASK OR RESPIRATOR

- 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



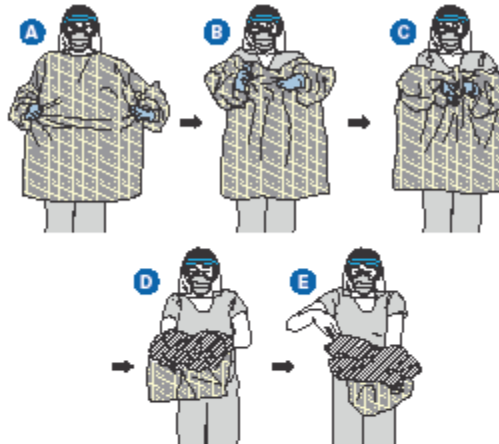
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HOW TO SAFELY REMOVE PERSONAL PROTECTIVE EQUIPMENT (PPE) EXAMPLE 2

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

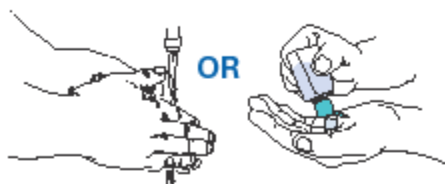


3. MASK OR RESPIRATOR

- 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**



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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 United 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-19 in 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.

Alert Stage	Medical Department	Security	Offender Management					
			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

Alert Stage	Medical Department	Security	Offender Management					
			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

Alert Stage	Medical Department	Security	Offender Management					
			Housing	Feeding/Showering	Recreation	Transportation	Work/School	Visitation
	resolution of fever without the use of fever-reducing medications <u>and</u> 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.	

Alert Stage	Medical Department	Security	Offender Management					
			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 <u>and</u> 72 hours after resolution of fever without the use of fever-reducing medications <u>and</u> 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 <u>and</u> 72 hours after resolution of fever <u>and</u> 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 4

AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF WALKER §

BEFORE ME, the undersigned authority, on this day personally appeared Frances Gattis, who, being by me duly sworn, deposed as follows:

My name is Frances Gattis, and I am a Deputy Division Director of the Administrative Review and Risk Management Division of the Texas Department of Criminal Justice (TDCJ), a governmental agency. My duties include overseeing the management of the Offender Grievance department. I am executing this affidavit as part of my assigned duties and responsibilities. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

The Texas Department of Criminal Justice stores information about offender grievances in its mainframe database. The entries of such records are made and stored as a regularly conducted activity and regular practice of the TDCJ, and were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

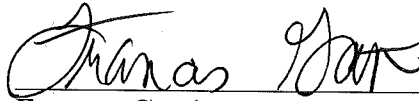
I have searched, or have caused a search to be conducted, for grievances filed by offenders Laddy Valentine, TDCJ #01782033, and Richard King, TDCJ #00516700.

Laddy Valentine has filed one (1) grievance during the past three years (note: records retention for grievances is only three years), and it was filed on April 1, 2020. The summary of the grievance in the Mainframe database states that Mr. Valentine "claims he is filing for lack of hand sanitation and cleaning supplies." The TDCJ's deadline to respond to offender Valentine is May 11, 2020, unless the TDCJ seeks an extension as permitted by the Offender Grievance Operations Manual.

Richard King has filed six (6) grievances during the past three years (note: records retention for grievances is only three years). The most recent grievance was filed April 2, 2020. The summary of the grievance in the Mainframe database states that Mr. King "claims Classification continues to move offenders from other units to the Pack Unit during the coronavirus [sic] pandemic." The TDCJ's deadline to respond to offender King is May 12, 2020, unless the TDCJ seeks an extension as permitted by the Offender Grievance Operations Manual. Prior to this April 2nd grievance, the most recent grievance filed by offender King was filed and closed in 2018.

I declare under penalty of perjury that the foregoing is true and correct.

"Further Affiant sayeth not."



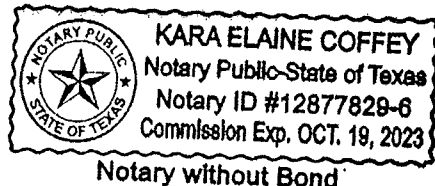
Frances Gattis

Deputy Division Director

Administrative Review and Risk Management

Texas Department of Criminal Justice

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned notary public, on the 15th day of April, 2020.



NOTARY PUBLIC, STATE OF TEXAS

Kara Elaine Coffey
Notary's Printed Name

My Commission Expires:

10/19/23

Exhibit 5

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 20-20207
Nature of Suit: 3550 Prisoner - Civil Rights
 Laddy Valentine, et al v. Bryan Collier, et al
Appeal From: Southern District of Texas, Houston
Fee Status: Fee Paid

Docketed: 04/17/2020

Case Type Information:

- 1) Prisoner w/ Counsel
- 2) State
- 3) Civil Rights

Originating Court Information:

District: 0541-4 : [4:20-CV-1115](#)
Court Reporter: Johnny Sanchez, Court Reporter
Originating Judge: Keith P. Ellison, U.S. District Judge
Date Filed: 03/30/2020
Date NOA Filed:
 04/17/2020

Date Rec'd COA:
 04/17/2020

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
Related	20-30276	20-20207	04/27/2020	

Panel Assignment: Not available

LADDY CURTIS VALENTINE
 Plaintiff - Appellee

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 Email: jkeville@winston.com
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RICHARD ELVIN KING
 Plaintiff - Appellee

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 (see above)

Brandon W. Duke
 Direct: 713-651-2600
 [COR NTC Retained]

(see above)

Jeff S. Edwards
Direct: 512-623-7727
[NTC Retained]
(see above)

v.

BRYAN COLLIER
Defendant - Appellant

Kyle Douglas Hawkins
Direct: 512-936-1700
Email: kyle.hawkins@oag.texas.gov
[COR LD NTC Government]
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Office of the Solicitor General
P.O. Box 12548 (MC 059)
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Austin, TX 78701

Jason R. LaFond
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Office of the Attorney General
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ROBERT HERRERA
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Kyle Douglas Hawkins
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TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Defendant - Appellant

Kyle Douglas Hawkins
Direct: 512-936-1700
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(see above)

Christin Audrey Cobe-Vasquez

Direct: 512-463-2080

[NTC Government]

(see above)

Matthew Hamilton Frederick, Deputy Solicitor General

Direct: 512-936-6407

[COR NTC Government]

(see above)

Jason R. LaFond

Direct: 512-936-2221

[COR NTC Government]

(see above)

LADDY CURTIS VALENTINE; RICHARD ELVIN KING,

Plaintiffs - Appellees

v.

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

Defendants - Appellants

04/17/2020	 2 pg, 29.91 KB	PRISONER CASE WITH COUNSEL docketed. NOA filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [20-20207] (ABT) [Entered: 04/17/2020 11:56 AM]
04/17/2020	 4 pg, 122.34 KB	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [9295677-2] Initial AA Check Due satisfied.. Transcript order due on 05/04/2020 for Appellants Bryan Collier, Robert Herrera and Texas Department of Criminal Justice [20-20207] (ABT) [Entered: 04/17/2020 12:11 PM]
04/17/2020	 1 pg, 107.27 KB	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [20-20207] (Kyle Douglas Hawkins) [Entered: 04/17/2020 02:03 PM]
04/17/2020		APPEARANCE FORM FILED by Attorney(s) Kyle Douglas Hawkins for party(s) Appellant Bryan Collier Appellant TDCJ Appellant Robert Herrera, in case 20-20207 [20-20207] (ABT) [Entered: 04/17/2020 02:13 PM]
04/17/2020	 25 pg, 187.13 KB	OPPOSED MOTION for stay pending appeal [9296029-2] and for temporary administrative stay immediately while it considers this motion [9296029-3]. Ruling is requested by: 04/22/2020. Date of service: 04/17/2020. Response/Opposition due on 04/27/2020. [20-20207] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ for stay pending appeal [9296029-2] Ruling is requested by: 04/22/2020, for expedited ruling on [9296029-3]. Date of service: 04/17/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Hawkins, Vasquez [20-20207] (Kyle Douglas Hawkins) [Entered: 04/17/2020 03:55 PM]
04/17/2020	 1 pg, 107.36 KB	APPEARANCE FORM for the court's review. Lead Counsel? No. [20-20207] (Jason R. LaFond) [Entered: 04/17/2020 04:39 PM]
04/17/2020	 617 pg, 8.82 MB	EXHIBITS IN SUPPORT of Motion for stay pending appeal [9296029-2] filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ. Date of Service: 04/17/2020 [20-20207] (CAG) [Entered: 04/17/2020 04:42 PM]
04/17/2020	 2 pg, 104.75 KB	COURT ORDER- IT IS ORDERED that plaintiffs-appellees be directed to file a response to the emergency motion for stay no later than Sunday, April 19, 2020, at 8:00 p.m. Any reply by appellants is due no later than Monday, April 20, 2020, at 8:00 p.m [9296029-2], [9296029-3] (MBC) [Entered: 04/17/2020 07:39 PM]
04/18/2020	 0 pg, 0 KB	MOTION AND/OR DOCUMENT UNDER TEMPORARY SEAL pending a ruling by the court filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ This document is opposed. Date of service: 04/18/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellant: Hawkins; US mail - Attorney for Appellant: Vasquez [20-20207] (Kyle Douglas Hawkins) [Entered: 04/18/2020 06:26 PM]
04/18/2020	 5 pg, 92.2 KB	OPPOSED MOTION filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ to place Exhibit 23 under seal to motion to stay [9296215-2]. [20-20207] (MBC) [Entered: 04/18/2020 08:08 PM]
04/19/2020	 45 pg, 494.2 KB	RESPONSE/OPPOSITION [9296248-1] to the Motion for stay pending appeal filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera in 20-20207 [9296029-2], Motion for extraordinary relief filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera in 20-20207 [9296029-3] Reply to Response/Opposition due on 04/20/2020. [20-20207] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Mr. Laddy Curtis Valentine and Mr. Richard Elvin King [9296248-1] to the Motion for stay pending appeal filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [9296029-2], Motion for extraordinary relief filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [9296029-3] Date of Service: 04/19/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Hawkins, Vasquez. [20-20207] (Brandon W. Duke) [Entered: 04/19/2020 07:46 PM]
04/20/2020		APPEARANCE FORM FILED by Attorney(s) Jason R. LaFond for party(s) Appellant Bryan Collier Appellant TDCJ Appellant Robert Herrera, in case 20-20207 [20-20207] (CAG) [Entered: 04/20/2020 11:30 AM]
04/20/2020	 35 pg, 533.05 KB	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees Mr. Richard Elvin King and Mr. Laddy Curtis Valentine Date of Service: 04/20/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Hawkins, LaFond; US mail - Attorney for Appellant: Vasquez [20-20207] (Brandon W. Duke) [Entered: 04/20/2020 04:58 PM]
04/20/2020	 0 pg, 0 KB	SEALED EXHIBIT IN SUPPORT of Motion for stay pending appeal [9296029-2] filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ Date of Service: 04/18/2020 [20-20207] (ABT) [Entered: 04/20/2020 05:05 PM]
04/20/2020	 2 pg, 114 KB	AMENDED COURT ORDER granting opposed Motion to place exhibit 23 in support of the motion to stay pending appeal under seal filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera. . [9296215-2] [20-20207] (ABT) [Entered: 04/20/2020 05:08 PM]
04/20/2020	 162 pg, 1.27 MB	REPLY filed by [9297222-1] to the Response/Opposition filed by Appellees Mr. Richard Elvin King and Mr. Laddy Curtis Valentine in 20-20207 [9296248-2], to the Motion for stay pending appeal filed by Appellants

Mr. Bryan Collier, TDCJ and Mr. Robert Herrera in 20-20207 [[9296029-2](#)]Reply to Resp/Opp due deadline satisfied.. [20-20207]

REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: REPLY filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [9297222-1] to the Response/Opposition filed by Appellees Mr. Laddy Curtis Valentine and Mr. Richard Elvin King [[9296248-2](#)], to the Motion filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [[9296029-2](#)], to the Motion filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ [[9296029-3](#)]. Date of Service: 04/20/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Hawkins, LaFond; US mail - Attorney for Appellant: Vasquez. [20-20207] (Kyle Douglas Hawkins) [Entered: 04/20/2020 07:50 PM]

04/22/2020  18 pg, 252.6 KB

NON DISPOSITIVE PUBLISHED OPINION FILED. Judge: EHJ , Judge: SAH , Judge: ASO; granting Motion for stay pending appeal filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [[9296029-2](#)]; granting Motion for extraordinary relief filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [[9296029-3](#)]; expediting the appeal [9299026-3] [20-20207] (NFD) [Entered: 04/22/2020 03:52 PM]

04/22/2020  1 pg, 107.35 KB

APPEARANCE FORM for the court's review. Lead Counsel? No. [20-20207] (Matthew Hamilton Frederick) [Entered: 04/22/2020 05:01 PM]

04/23/2020 

APPEARANCE FORM FILED by Attorney(s) Matthew Hamilton Frederick for party(s) Appellant Bryan Collier Appellant TDCJ Appellant Robert Herrera, in case 20-20207 [20-20207] (SDH) [Entered: 04/23/2020 08:58 AM]

04/23/2020  1 pg, 85.77 KB

LETTER OF ADVISEMENT. Reason: advising counsel the deadline for ordering transcripts has been updated due to the court's order expediting this matter [20-20207] (ABT) [Entered: 04/23/2020 10:07 AM]

04/27/2020  1 pg, 83.71 KB

CASE TENTATIVELY calendared for oral argument for the week of 06/01/2020. [20-20207] (GAM) [Entered: 04/27/2020 07:53 AM]

04/27/2020  4 pg, 204.63 KB

ATTORNEY TRANSCRIPT ORDER form filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJfor the Court to process. Date of service: 04/27/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Frederick, Hawkins, LaFond; US mail - Attorney for Appellant: Vasquez. [20-20207] (Jason R. LaFond) [Entered: 04/27/2020 09:03 AM]

04/27/2020 

TRANSCRIPT ORDER received from Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ. DETAILS: Transcript Order: Court Reporter: Johnny Sanchez, Proceeding Type and Date: Telephone Conference 04/02/2020 , Telephone Conference 04/06/2020 , Telephone Conference 04/13/2020 , Telephone Conference 04/14/2020. Transcript Order ddl satisfied. Ct. Reporter Acknowledgment due on 04/28/2020 for Johnny Sanchez, Court Reporter. Electronic Filing Processed: [[9301033-2](#)] [20-20207] (JMW) [Entered: 04/27/2020 10:36 AM]

04/28/2020 

TRANSCRIPT FILED IN DISTRICT COURT Transcript Order: Court Reporter: Johnny Sanchez, Dt. Filed in Dist. Ct: 04/28/2020 Ct. Reporter Acknowledgment deadline canceled [20-20207] (JMW) [Entered: 04/28/2020 10:48 AM]

04/28/2020 

URGENT - PLEASE EXPEDITE - ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 4:20-CV-1115. Electronic ROA due on 04/28/2020. [20-20207] (JMW) [Entered: 04/28/2020 11:01 AM]

04/28/2020 

ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [20-20207] (CMB) [Entered: 04/28/2020 03:38 PM]

04/28/2020  4 pg, 126.17 KB

BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 05/08/2020 for Appellants Bryan Collier, Robert Herrera and Texas Department of Criminal Justice.. Appellee's Brief due on 05/18/2020 for Appellees Richard Elvin King and Laddy Curtis Valentine.. Reply Brief due on 05/22/2020 for Appellants Bryan Collier, Robert Herrera and Texas Department of Criminal Justice. [20-20207] (JMW) [Entered: 04/28/2020 03:45 PM]

04/29/2020 

CASE CALENDARED for oral argument on Thursday, 06/04/2020 in New Orleans in the En Banc Courtroom -- AM session. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars. PLEASE NOTE: Argument could be heard via video or audio conferencing, converted to submission on the briefs and record on file, or rescheduled to a later date. [20-20207] (GAM) [Entered: 04/29/2020 12:23 PM]

04/30/2020  5 pg, 52.15 KB

UNOPPOSED MOTION filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ to view and obtain sealed document. Date of service: 04/30/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Frederick, Hawkins, LaFond; US mail - Attorney for Appellant: Vasquez [20-20207] (Kyle Douglas Hawkins) [Entered: 04/30/2020 12:46 PM]

05/04/2020  2 pg, 124.49 KB

COURT ORDER granting Motion to view and obtain sealed document filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [[9304363-2](#)] [20-20207] (CAG) [Entered: 05/04/2020 09:31 AM]

05/04/2020  7 pg, 58.04 KB

UNOPPOSED MOTION to extend time to file brief as appellant [9306399-2] until 05/11/2020, to extend time to file brief of appellee [9306399-3] until 05/19/2020, to extend time to file reply brief [9306399-4] until

05/22/2020. Date of service: 05/04/2020 [20-20207]

REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellants Mr. Bryan Collier, Mr. Robert Herrera and TDCJ to extend time to file brief as appellant until 05/11/2020 [9306399-2]. Date of service: 05/04/2020 via email - Attorney for Appellees: Duke, Edwards, Keville; Attorney for Appellants: Frederick, Hawkins, LaFond; US mail - Attorney for Appellant: Vasquez [20-20207] (Kyle Douglas Hawkins) [Entered: 05/04/2020 06:41 PM]

05/05/2020

 
2 pg, 107.69 KB

COURT ORDER granting Motion to extend time to file appellant's brief filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [\[9306399-2\]](#) A/Pet's Brief deadline updated to 05/11/2020 for Appellants Bryan Collier, Robert Herrera and Texas Department of Criminal Justice; granting Motion to extend time to file appellee's brief filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [\[9306399-3\]](#) E/Res's Brief deadline updated to 05/19/2020 for Appellees Richard Elvin King and Laddy Curtis Valentine; granting Motion to extend time to file reply brief filed by Appellants Mr. Bryan Collier, TDCJ and Mr. Robert Herrera [\[9306399-4\]](#) Reply Brief deadline updated to 05/22/2020 for Appellants Bryan Collier, Robert Herrera and Texas Department of Criminal Justice [20-20207] (CCR) [Entered: 05/05/2020 02:27 PM]

05/05/2020

 
2 pg, 80.8 KB

COURT DIRECTIVE ISSUE requesting a letter to the clerk addressing the above questions on May 11th and thereafter every ten days until scheduled argument on June 4, 2020. Counsel for plaintiffs may respond if they disagree with any of the reported facts by defendants. (IN DETAIL) Counsel should file the letter as a Response/Opposition due on 05/11/2020. [20-20207] (CAG) [Entered: 05/05/2020 04:36 PM]

05/05/2020

 
1 pg, 136.39 KB

APPEARANCE FORM received from Mr. Brandon W. Duke for Mr. Richard Elvin King and Mr. Laddy Curtis Valentine for the court's review. Lead Counsel? No. [20-20207] (Brandon W. Duke) [Entered: 05/05/2020 05:29 PM]

05/05/2020

 
1 pg, 136.09 KB

APPEARANCE FORM received from Mr. John R. Keville for Mr. Richard Elvin King and Mr. Laddy Curtis Valentine for the court's review. Lead Counsel? Yes. [20-20207] (John R. Keville) [Entered: 05/05/2020 05:31 PM]

05/06/2020



APPEARANCE FORM FILED by Attorney John R. Keville for Appellee Richard Elvin King in 20-20207, Attorney John R. Keville for Appellee Laddy Curtis Valentine in 20-20207 [20-20207] (MRW) [Entered: 05/06/2020 02:47 PM]

05/06/2020



APPEARANCE FORM FILED by Attorney Brandon W. Duke for Appellee Richard Elvin King in 20-20207, Attorney Brandon W. Duke for Appellee Laddy Curtis Valentine in 20-20207 [20-20207] (MRW) [Entered: 05/06/2020 02:49 PM]

05/06/2020

 
2 pg, 79.38 KB

COURT DIRECTIVE ISSUED. Because the responses from counsel may contain confidential medical information, those responses must be placed under seal when received. [9308069-2]. Counsel must use the temp seal event to comply with the court's 05/05/2020 directive. [20-20207] (CAG) [Entered: 05/06/2020 03:21 PM]

☒ **Documents and Docket Summary**☐ **Documents Only**☐ **Include Page Numbers**Selected Pages: Selected Size:

Totals reflect accessible documents only and do not include unauthorized restricted documents.

PACER Service Center			
Transaction Receipt			
5th Circuit - Appellate - 05/08/2020 08:26:55			
PACER Login:	osgoag2017	Client Code:	
Description:	Docket Report (full)	Search Criteria:	20-20207
Billable Pages:	5	Cost:	0.50

Exhibit 6

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 05, 2020

Mr. Matthew Hamilton Frederick
Office of the Solicitor General
for the State of Texas
209 W. 14th Street
Austin, TX 78701

Mr. Kyle Douglas Hawkins
Office of the Attorney General
Office of the Solicitor General
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548

Mr. Jason R. LaFond
Office of the Attorney General
Office of the Solicitor General
209 W. 14th Street
7th Floor
Austin, TX 78701

No. 20-20207 Laddy Valentine, et al v. Bryan Collier, et
al
USDC No. 4:20-CV-1115

Dear Counsel:

The Court has directed counsel for defendants to give the Court updates on new facts developing in this rapidly evolving COVID-19 pandemic as it relates to inmates and staff in the Wallace Pack Unit.

(1) Names of offenders and staff, if any, who have tested positive for or have been diagnosed as infected with the COVID-19 virus; give the dates of such test results or diagnosis and whether such infected persons have been hospitalized or have died.

(2) The date and extent and result of any further testing for COVID-19 virus of offenders and staff in this unit;

(3) What additional steps have been taken since the evidentiary hearing in district court on April 16, 2020 by

defendants to protect inmates and staff from COVID-19 infection; also state any steps the defendants plan to take and when such future steps will be taken.

The defendants' updates should be by letter to the clerk addressing the above questions on May 11th and thereafter every ten days until the scheduled argument on June 4, 2020. Counsel for plaintiffs may respond if they disagree with any of the reported facts by defendants.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, reading "Christina A. Gardner".

By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

cc: Mr. Brandon W. Duke
Mr. Jeff S. Edwards
Mr. John R. Keville
Mr. Christin Cobe Vasquez

Exhibit 7

LaFond, Jason

From: DCECF_LiveDB@txs.uscourts.gov
Sent: Thursday, April 16, 2020 9:58 PM
To: DC_Notices@txsd.uscourts.gov
Subject: Activity in Case 4:20-cv-01115 Valentine et al v. Collier et al Preliminary Injunction

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

SOUTHERN DISTRICT OF TEXAS

Notice of Electronic Filing

The following transaction was entered on 4/16/2020 at 9:57 PM CDT and filed on 4/16/2020

Case Name: Valentine et al v. Collier et al

Case Number: [4:20-cv-01115](#)

Filer:

Document Number: [40](#)

Docket Text:

PRELIMINARY INJUNCTION ORDER(Signed by Judge Keith P Ellison) Parties notified.(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

Christin Cobe Vasquez christin.vasquez@oag.texas.gov, James.Rheams@oag.texas.gov, Jason.LaFond@oag.texas.gov, Jeffrey.Farrell@oag.texas.gov, joan.gillette@oag.texas.gov, LED_Docket@oag.texas.gov, Matthew.Frederick@oag.texas.gov, Ruben.Zapata@TDCJ.TEXAS.GOV

Jeffrey S Edwards jeff@edwards-law.com, david@edwards-law.com, greg@edwards-law.com, michael@edwards-law.com, mike@edwards-law.com, scott@edwards-law.com, willy@edwards-law.com

John R Keville jkeville@winston.com, ECF_Houston@winston.com, ijackson@winston.com, john-keville-1413@ecf.pacerpro.com, mlrodriguez@winston.com, rsmith@winston.com

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

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=4/16/2020] [FileNumber=33330366-0] [a86210d1049e60a41f920c5153f9ae460e131681e205f6b35b0805be668ae40dcd8810eba98f232b1677a774337a33d9a41415d6e30cdb2e86af472accbb1fd5]]

Exhibit 8

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:20-cv-01115**

Valentine et al v. Collier et al
Assigned to: Judge Keith P Ellison
Cause: 28:1983 Civil Rights

Date Filed: 03/30/2020
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Laddy Curtis Valentine

represented by **Brandon W. Duke**
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John R Keville
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ATTORNEY TO BE NOTICED

Plaintiff

Richard Elvin King

represented by **Brandon W. Duke**
(See above for address)
ATTORNEY TO BE NOTICED

Jeffrey S Edwards
(See above for address)
ATTORNEY TO BE NOTICED

John R Keville
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Bryan Collier

represented by **Christin Cobe Vasquez**
Office of the Attorney General
PO Box 12548
Austin, TX 78711
512-463-2080
Fax: 512-370-9996
Email: christin.vasquez@oag.texas.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Robert Herrera

represented by **Christin Cobe Vasquez**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Texas Department Of Criminal Justice

represented by **Christin Cobe Vasquez**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor Plaintiff

John Balentine

represented by **David R Dow**
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LEAD ATTORNEY
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ATTORNEY TO BE NOTICED

Intervenor Plaintiff

Tony Egbuna Ford

represented by **David R Dow**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey R. Newberry

(See above for address)
ATTORNEY TO BE NOTICED

Intervenor Plaintiff

Ruben Gutierrez

represented by **David R Dow**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey R. Newberry
 (See above for address)
ATTORNEY TO BE NOTICED

Intervenor Plaintiff

Travis Green

represented by **David R Dow**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey R. Newberry
 (See above for address)
ATTORNEY TO BE NOTICED

Intervenor Plaintiff

Joe Luna

represented by **David R Dow**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey R. Newberry
 (See above for address)
ATTORNEY TO BE NOTICED

Intervenor Plaintiff

William Michael Mason

represented by **David R Dow**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey R. Newberry
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/30/2020	<u>1</u>	COMPLAINT against Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice (0541-24491139) filed by Laddy Curtis Valentine, Richard Elvin King. (Attachments: # <u>1</u> Civil Cover Sheet)(Keville, John) (Entered: 03/30/2020)
03/30/2020	<u>2</u>	ORDER - By agreement of the judges, this action is hereby TRANSFERRED to the docket of Judge Keith P. Ellison. (Signed by Judge Kenneth M Hoyt) Parties notified. (sanderson, 4) (Entered: 03/30/2020)

03/31/2020	<u>3</u>	NOTICE of Setting as to <u>1</u> Amended Complaint/Counterclaim/Crossclaim etc.. Parties notified. Telephone Conference set for 4/2/2020 at 03:30 PM by telephone before Judge Keith P Ellison, filed. (arrivera, 4) (Entered: 03/31/2020)
03/31/2020	<u>4</u>	Request for Issuance of Summons as to Bryan Collier, Robert Herrera, filed.(Keville, John) (Entered: 03/31/2020)
03/31/2020	<u>5</u>	NOTICE of Appearance by Jeff Edwards, Scott Medlock, Michael Singley, and David James on behalf of Richard Elvin King, Laddy Curtis Valentine, filed. (Edwards, Jeffrey) (Entered: 03/31/2020)
03/31/2020	<u>6</u>	NOTICE of Appearance by Denise Scofield, Michael T. Murphy, Brandon W. Duke, Benjamin D. Williams, Robert L. Green, Corinne Stone Hockman on behalf of Richard Elvin King, Laddy Curtis Valentine, filed. (Duke, Brandon) (Entered: 03/31/2020)
03/31/2020	<u>7</u>	MOTION for Writ of Habeas Corpus ad testificandum for appearance of Richard King by telephone by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 4/21/2020. (Attachments: # <u>1</u> Proposed Order)(Edwards, Jeffrey) (Entered: 03/31/2020)
03/31/2020	<u>8</u>	MOTION for Writ of Habeas Corpus ad testificandum for appearance of Laddy Valentine by telephone by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 4/21/2020. (Attachments: # <u>1</u> Proposed Order)(Edwards, Jeffrey) (Entered: 03/31/2020)
03/31/2020	<u>9</u>	Writ of Habeas Corpus ad Testificandum Issued as to Richard King for Telephonic Hearing on 4/2/20 @ 3:30 pm (Signed by Judge Keith P Ellison), filed.(sanderson, 4) **** certified copy of Writ provided to USM (Entered: 03/31/2020)
03/31/2020		***Set Hearings : Telephone Motion Hearing set for 4/2/2020 at 03:30 PM before Judge Keith P Ellison (sanderson, 4) (Entered: 03/31/2020)
03/31/2020	<u>10</u>	Writ of Habeas Corpus ad Testificandum Issued as to Laddy Curtis Valentine for Telephonic Hearing on 4/2/20 @ 3:30 pm (Signed by Judge Keith P Ellison), filed. (sanderson, 4) **** certified copy of Writ provided to USM (Entered: 03/31/2020)
04/01/2020	<u>11</u>	Summons Issued as to Bryan Collier, Robert Herrera. Issued summons delivered to plaintiff by NEF, filed.(hlerma, 4) (Entered: 04/01/2020)
04/02/2020	<u>12</u>	DECLARATION of Jeremy D. Young, MD, MPH re: <u>1</u> Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/02/2020)
04/02/2020	<u>13</u>	DECLARATION of Robert L. Cohen, MD re: <u>1</u> Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/02/2020)
04/02/2020	<u>14</u>	DECLARATION of Eldon Vail re: <u>1</u> Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/02/2020)
04/02/2020	<u>15</u>	NOTICE of Appearance by Christin Cobe Vasquez and Jeffrey E. Farrell on behalf of Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. (Cobe Vasquez, Christin) (Entered: 04/02/2020)
04/02/2020	<u>16</u>	DECLARATION of Joseph C. Gathe, MD re: <u>1</u> Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/02/2020)
04/02/2020	<u>17</u>	Opposed MOTION to Transfer Case to Judge Hoyt or, in the Alternative, Place Case Into the Court's Random Assignment System by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 4/23/2020. (Attachments: # <u>1</u> Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/02/2020)
04/02/2020		Minute Entry for proceedings held before Judge Keith P Ellison. TELEPHONE CONFERENCE held on 4/2/2020. Plaintiffs to respond to <u>17</u> Motion to Transfer Case by

		tomorrow afternoon. Appearances:Mike Murphy, Cynthia Burton, Brandon Duke, Eric Milton, Denise Scofield, Kristen Worman, Scott Medlock, Jeff Farrell, Michael Singley, Shanna Molinare, Eric Nichols, David James, Christin Cobe Vasquez, Jeffrey S Edwards, Brandon W. Duke, John R Keville.(Court Reporter: J. Sanchez)(Law Clerk: J. Zhang), filed.(arrivera, 4) (Entered: 04/20/2020)
04/03/2020	<u>18</u>	RESPONSE in Opposition to <u>17</u> Opposed MOTION to Transfer Case to Judge Hoyt or, in the Alternative, Place Case Into the Court's Random Assignment System, filed by Richard Elvin King, Laddy Curtis Valentine. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Duke, Brandon) (Entered: 04/03/2020)
04/03/2020	<u>19</u>	REPLY in Support of <u>17</u> Opposed MOTION to Transfer Case to Judge Hoyt or, in the Alternative, Place Case Into the Court's Random Assignment System, filed by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice. (Cobe Vasquez, Christin) (Entered: 04/03/2020)
04/06/2020	<u>20</u>	MEMORANDUM AND ORDER denying <u>17</u> Opposed MOTION to Transfer Case to Judge Hoyt or, in the Alternative, Place Case Into the Court's Random Assignment System (Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 04/06/2020)
04/06/2020	<u>21</u>	ORDER. Telephone Conference set for 4/6/2020 at 04:00 PM by telephone before Judge Keith P Ellison(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 04/06/2020)
04/06/2020		Minute Entry for proceedings held before Judge Keith P Ellison. TELEPHONE CONFERENCE held on 4/6/2020. Parties reported on steps already taken by Defendants at Pack Unit to prevent spread of novel coronavirus. Plaintiffs currently awaiting additional information from Defendants. Follow-up telephonic conference set for 4/10/2020. Appearances:Mike Murphy, Cynthia Burton, Brandon Duke, Eric Milton, Denise Scofield, Kristen Worman, Scott Medlock, Jeff Farrell, Michael Singley, Shanna Molinare, Eric Nichols, David James. Christin Cobe Vasquez, Brandon W. Duke, John R Keville.(Court Reporter: J. Sanchez)(Law Clerk: J. Zhang), filed.(arrivera, 4) (Entered: 04/07/2020)
04/07/2020	<u>22</u>	NOTICE of Setting. Parties notified. Telephone Conference reset for 4/13/2020 at 11:00 AM by telephone before Judge Keith P Ellison, filed. (arrivera, 4) (Entered: 04/07/2020)
04/13/2020		Minute Entry for proceedings held before Judge Keith P Ellison. TELEPHONE CONFERENCE held on 4/13/2020. Court heard updates from parties on agreed changes. Application for TRO taken under advisement. Appearances: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) (Entered: 04/15/2020)
04/14/2020	<u>23</u>	NOTICE of Setting. Parties notified. Telephone Conference set for 4/14/2020 at 03:30 PM by telephone before Judge Keith P Ellison, filed. (arrivera, 4) (Entered: 04/14/2020)
04/14/2020	<u>24</u>	MOTION for Writ of Habeas Corpus ad testificandum for appearance of Richard King by telephone by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 5/5/2020. (Attachments: # <u>1</u> Proposed Order)(Edwards, Jeffrey) (Entered: 04/14/2020)
04/14/2020	<u>25</u>	MOTION for Writ of Habeas Corpus ad testificandum for appearance of Laddy Valentine by telephone by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 5/5/2020. (Attachments: # <u>1</u> Proposed Order)(Edwards, Jeffrey) (Entered: 04/14/2020)
04/14/2020	<u>26</u>	Writ of Habeas Corpus ad Testificandum Issued as to Richard King, TDCJ #00516700 for Telephone Conference on 4/16/20 at 1:30 p.m. (Signed by Judge Keith P Ellison), filed.

		(rguerrero, 4) (Entered: 04/14/2020)
04/14/2020	27	Writ of Habeas Corpus ad Testificandum Issued as to Laddy Curtis Valentine, TDCJ #01782033 for Telephone Conference on April 16,2020 at 1:30 p.m. (Signed by Judge Keith P Ellison), filed.(rguerrero, 4) (Entered: 04/14/2020)
04/14/2020		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.(arri vera, 4) (Entered: 04/15/2020)
04/15/2020	28	MEMORANDUM <i>Regarding Authorities for Reduction of Inmate Population</i> by Richard Elvin King, Laddy Curtis Valentine, filed.(Duke, Brandon) (Entered: 04/15/2020)
04/15/2020	29	MOTION to Modify Protective Order in the Cole v. Collier Litigation by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 5/6/2020. (Attachments: # 1 Exhibit 1 - COVID-19 TDCJ Update (April 14, 2020), # 2 Proposed Amended Protective Order)(Edwards, Jeffrey) (Entered: 04/15/2020)
04/15/2020	30	AO 435 TRANSCRIPT REQUEST by TDCJ/Christin Cobe Vasquez for Transcript of Telephone Conferences, April 13th and April 14, 2020, Hon. Judge Keith Ellison. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Cobe Vasquez, Christin) (Entered: 04/15/2020)
04/15/2020	31	DECLARATION of Laddy Valentine re: 1 Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/15/2020)
04/15/2020	32	DECLARATION of Richard King re: 1 Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/15/2020)
04/15/2020	33	PROPOSED ORDER <i>Temporary Restraining Order</i> re: 1 Amended Complaint/Counterclaim/Crossclaim etc., filed.(Duke, Brandon) (Entered: 04/15/2020)
04/15/2020	34	Unopposed MOTION to Seal Exh F to Dfs Resp to Pltfs Mtn TRO by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 5/6/2020. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/15/2020)
04/15/2020	35	SEALED EXHIBITS <i>to DE 34</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. (Attachments: # 1 Exhibit F1, # 2 Exhibit F2, # 3 Exhibit F3, # 4 Exhibit F) (Cobe Vasquez, Christin) (Entered: 04/15/2020)
04/15/2020	36	RESPONSE <i>in Opposition to Plaintiff's Application for a Temporary Restraining Order</i> , filed by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C-1, # 4 Exhibit Exhibit C-2, # 5 Exhibit Exhibit C-3, # 6 Exhibit Exhibit C-4, # 7 Exhibit Exhibit C-5, # 8 Exhibit Exhibit D-1, # 9 Exhibit Exhibit D-2, # 10 Exhibit Exhibit E, # 11 Proposed Order Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/15/2020)
04/15/2020	37	RESPONSE to 28 Memorandum <i>Plaintiffs' Memorandum Regarding Authorities For Reduction of Inmate Population</i> , filed by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice. (Attachments: # 1 Exhibit Exhibit A)(Cobe Vasquez, Christin) (Entered: 04/15/2020)

04/15/2020	39	ORDER granting 34 Motion to Seal Exhibit F to Defendants' Response to Plaintiffs' Application for Temporary Restraining Order..(Signed by Judge Keith P Ellison) Parties notified.(rguerrero, 4) (Entered: 04/16/2020)
04/16/2020	38	Corrected Exhibit C, Attachment B to <i>Defendants' Response In Opposition to Plaintiffs' Application for a Temporary Restraining Order</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed.(Cobe Vasquez, Christin) (Entered: 04/16/2020)
04/16/2020	40	PRELIMINARY INJUNCTION ORDER(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 04/16/2020)
04/17/2020	41	AO 435 TRANSCRIPT REQUEST by Valentine, King/Brandon Duke for Transcript of 04/16/2020. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Duke, Brandon) (Entered: 04/17/2020)
04/17/2020	42	AO 435 TRANSCRIPT REQUEST by Valentine, King/Brandon Duke for Transcript of April 13 and April 14, 2020. Expedited (7 days) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Duke, Brandon) (Entered: 04/17/2020)
04/17/2020	43	AO 435 TRANSCRIPT REQUEST by TDCJ/Christin Cobe Vasquez for Transcript of Telephone Conference, 04/06/2020, Judge Keith Ellison. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Cobe Vasquez, Christin) (Entered: 04/17/2020)
04/17/2020	44	AO 435 TRANSCRIPT REQUEST by TDCJ/Christin Cobe Vasquez for Transcript of Telephonic Hearing, 04/16/2020, Judge Keith Ellison. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Cobe Vasquez, Christin) (Entered: 04/17/2020)
04/17/2020	45	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 40 Preliminary Injunction by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice (Filing fee \$ 505, receipt number 0541-24561957), filed.(Cobe Vasquez, Christin) (Entered: 04/17/2020)
04/17/2020	46	Opposed EMERGENCY MOTION(Motion Docket Date 5/8/2020.), MOTION to Stay <i>Pending Appeal</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. (Cobe Vasquez, Christin) (Entered: 04/17/2020)
04/17/2020	47	ORDER granting 46 five- day stay of Preliminary Injunction Order.(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 04/17/2020)
04/17/2020	48	REPLY to 1 Amended Complaint/Counterclaim/Crossclaim etc. , filed by Richard Elvin King, Laddy Curtis Valentine. (Duke, Brandon) (Entered: 04/17/2020)
04/17/2020	49	Order of USCA re: 45 Notice of Appeal, ; USCA No. 20-20207. It is ordered that plaintiffs-appellees be directed to file a response to the emergency motion for stay no later than Sunday, April 19, 2020, filed.(JenniferLongoria, 1) (Entered: 04/20/2020)
04/20/2020	50	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 45 Notice of Appeal,. Fee status: Paid. Reporter(s): J. Sanchez, filed. (Attachments: # 1 Notice of Appeal) (mperez, 1) (Entered: 04/20/2020)
04/20/2020		Appeal Review Notes re: 45 Notice of Appeal,. Fee status: Paid. The appeal filing fee has been paid or an ifp motion has been granted.Hearings were held in the case. DKT13 transcript order form(s) due within 14 days of the filing of the notice of appeal. Number of DKT-13 Forms expected: 1, filed.(mperez, 1) (Entered: 04/20/2020)
04/20/2020	51	MEMORANDUM AND ORDER re: 40 Preliminary Injunction Order(Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Main Document 51 replaced on 4/21/2020)

		(arrivera, 4). (Entered: 04/20/2020)
04/22/2020	52	AO 435 TRANSCRIPT REQUEST by TDCJ/Christin Cobe Vasquez for Transcript of Telephone Conference, 04/02/2020, before Judge Keith Ellison. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Cobe Vasquez, Christin) (Entered: 04/22/2020)
04/22/2020	53	MOTION to Dismiss <i>Pursuant to Rule 12(b)</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 5/13/2020. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/22/2020)
04/22/2020	54	MOTION for Leave to File Excess Pages by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 5/13/2020. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/22/2020)
04/22/2020	55	MOTION to Dismiss 54 MOTION for Leave to File Excess Pages <i>Defendants Supplemental Motion to Dismiss Pursuant to Rule 12(b)</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 5/13/2020. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/22/2020)
04/23/2020	56	ORDER granting 54 Motion for Leave to File Excess Pages.(Signed by Judge Keith P Ellison) Parties notified.(ShoshanaArnow, 4) (Entered: 04/23/2020)
04/24/2020	57	MOTION for Appointment of Counsel by Laddy Curtis Valentine, filed. Motion Docket Date 5/15/2020. (Attachments: # 1 Cover Letter, # 2 Envelope)(dnoriega, 1) (Entered: 04/24/2020)
04/24/2020	58	Opposed MOTION to Compel Emergency Identification of Second COVID-19 Case at the Pack Unit by Richard Elvin King, Laddy Curtis Valentine, filed. Motion Docket Date 5/15/2020. (Attachments: # 1 Exhibit 1 - Letter from J. Keville (April 17, 2020), # 2 Exhibit 2 - KBTX, Grimes County confirms another COVID-19 case at Pack Unit, # 3 Exhibit 3 - Email from C. Vasquez, # 4 Exhibit 4 - April 14, 2020 Hearing Transcript, # 5 Exhibit 5 - April 16, 2020 Hearing Transcript, # 6 Exhibit 6 - CDC, People who are at High Risk for Severe Illness, # 7 Exhibit 7 - Estimates of the severity of coronavirus disease 2019, # 8 Exhibit 8 - Grimes County, Eighth and Ninth Cases Confirmed for Grimes County, # 9 Proposed Order)(Edwards, Jeffrey) (Entered: 04/24/2020)
04/24/2020	59	NOTICE of Setting as to 58 Opposed MOTION to Compel Emergency Identification of Second COVID-19 Case at the Pack Unit. Parties notified. Motion Hearing set for 4/27/2020 at 01:00 PM in by telephone before Judge Keith P Ellison, filed. (arrivera, 4) (Entered: 04/24/2020)
04/27/2020	60	RESPONSE in Opposition to 58 Opposed MOTION to Compel Emergency Identification of Second COVID-19 Case at the Pack Unit, filed by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 04/27/2020)
04/27/2020	61	Order of USCA Per Curiam re: 45 Notice of Appeal, ; USCA No. 20-20207. 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, filed. (EdnitaPonce, 1) (Main Document 61 replaced on 4/28/2020) (EdnitaPonce, 1). (Entered: 04/27/2020)
04/27/2020	62	DKT13 TRANSCRIPT ORDER REQUEST by TDCJ/Christin Cobe Vasquez. Transcript is already on file in Clerks office regarding Telephone Conference, 04/02/20, 04/06/20, 04/13/20, 04/14/20, and 04/16/20. (No transcript is needed). Court Reporter/Transcriber: Johnny Sanchez. This order form relates to the following: Telephone Conference,, 45

		Notice of Appeal, Telephone Conference,, Scheduling Conference,, Telephone Conference,,, filed. (Cobe Vasquez, Christin) (Entered: 04/27/2020)
04/27/2020	63	DKT13 TRANSCRIPT ORDER REQUEST by Jason R. LaFond. This is to order a transcript of Telephone Conference on 4/2/20, 4/6/20, 4/13/20, and 4/14/20 before Judge Ellison. Court Reporter/Transcriber: Johnny Sanchez. This order form relates to the following: 45 Notice of Appeal,, filed.(EdnitaPonce, 1) (Entered: 04/28/2020)
04/27/2020		Minute Entry for proceedings held before Judge Keith P Ellison. MOTION HEARING held on 4/27/2020. Argument heard on 58 Plaintiffs' Motion to Compel. Motion is taken under advisement. Appearances:Corinne Hockman, Cynthia Burton, Michael Murphy, Jeff Farrow, Kristen Worman, Denise Scofield, Michael Singley, David James. Christin Cobe Vasquez, Jeffrey S Edwards, Brandon W. Duke, John R Keville.(Court Reporter: J. Sanchez)(Law Clerk: J. Zhang), filed.(arrivera, 4) (Entered: 05/07/2020)
04/28/2020	64	APPEAL TRANSCRIPT re Telephone Conference held on April 2, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party: Christin Vasquez. This transcript relates to the following: 52 AO435 Transcript Request,. Release of Transcript Restriction set for 7/27/2020., filed. (jsanchez,) (Entered: 04/28/2020)
04/28/2020	65	APPEAL TRANSCRIPT re Telephone Conference held on April 6, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party: Christin Vasquez. This transcript relates to the following: 62 Appeal Transcript Request,. Release of Transcript Restriction set for 7/27/2020., filed. (jsanchez,) (Entered: 04/28/2020)
04/28/2020	66	APPEAL TRANSCRIPT re Telephone Conference held on April 13, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party: Christin Vasquez. This transcript relates to the following: 62 Appeal Transcript Request,. Release of Transcript Restriction set for 7/27/2020., filed. (jsanchez,) (Entered: 04/28/2020)
04/28/2020	67	APPEAL TRANSCRIPT re Telephone Conference held on April 14, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party: Christin Vasquez. This transcript relates to the following: 62 Appeal Transcript Request,. Release of Transcript Restriction set for 7/27/2020., filed. (jsanchez,) (Entered: 04/28/2020)
04/28/2020	68	APPEAL TRANSCRIPT re Telephone Conference held on April 16, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party: Christin Vasquez. This transcript relates to the following: 62 Appeal Transcript Request,. Release of Transcript Restriction set for 7/27/2020., filed. (jsanchez,) (Entered: 04/28/2020)
04/28/2020	69	ORDER. (Signed by Judge Keith P Ellison) Parties notified.(arrivera, 4) (Entered: 04/28/2020)
04/28/2020		Electronic record on appeal certified to the Fifth Circuit Court of Appeals re: 45 Notice of Appeal, USCA No. 20-20207, filed.(scastillo, 1) (Entered: 04/28/2020)
04/28/2020		Electronic Access to Record on Appeal Provided re: 45 Notice of Appeal, to Matthew Frederick, Kyle Hawkins, Jason LaFond. Attorneys of record at the Circuit may download the record from the Court of Appeals . (USCA No. 20-20207), filed.(scastillo, 1) (Entered: 04/28/2020)
04/28/2020	70	AO 435 TRANSCRIPT REQUEST by TDCJ/Christin Cobe Vasquez for Transcript of Motion Hearing on 4/27/20 before Judge Ellison. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Johnny Sanchez, filed. (Cobe Vasquez, Christin) (Entered: 04/28/2020)
04/29/2020	71	Notice of Filing of Official Transcript as to 66 Transcript - Appeal, 67 Transcript - Appeal, 68 Transcript - Appeal, 65 Transcript - Appeal, 64 Transcript - Appeal,. Party notified, filed. (jdav, 4) (Entered: 04/29/2020)

04/30/2020	72	TRANSCRIPT re: Telephone Conference held on April 27, 2020 before Judge Keith P Ellison. Court Reporter J. Sanchez. Ordering Party Christin Vasquez Release of Transcript Restriction set for 7/29/2020., filed. (jsanchez,) (Entered: 04/30/2020)
05/01/2020	73	Notice of Filing of Official Transcript as to 72 Transcript. Party notified, filed. (jdav, 4) (Entered: 05/01/2020)
05/01/2020	74	NOTICE of Appearance by David R. Dow on behalf of John Balentine, Tony Egbuna Ford, Ruben Gutierrez, Travis Green, Joe Luna, William Michael Mason, filed. (Dow, David) (Entered: 05/01/2020)
05/01/2020	75	NOTICE of Appearance by Jeffrey R. Newberry on behalf of John Balentine, Tony Egbuna Ford, Travis Green, Ruben Gutierrez, Joe Luna, William Michael Mason, filed. (Newberry, Jeffrey) (Entered: 05/01/2020)
05/01/2020	76	MOTION to Intervene by John Balentine, Tony Egbuna Ford, Travis Green, Ruben Gutierrez, Joe Luna, William Michael Mason, filed. Motion Docket Date 5/22/2020. (Attachments: # 1 Exhibit Complaint)(Dow, David) (Entered: 05/01/2020)
05/04/2020	77	Order of USCA re: 45 Notice of Appeal, ; USCA No. 20-20207. It is Ordered that appellants unopposed motion to view Sealed Documents is granted, filed.(dbenavides, 1) (Entered: 05/04/2020)
05/05/2020	78	Transmittal Letter on Appeal re: 45 Notice of Appeal,. The sealed electronic record on CD is being sent to Kyle D. Hawkins (counsel for defendants) via regular mail. (USCA No. 20-20207), filed. (EdnitaPonce, 1) (Entered: 05/05/2020)
05/06/2020	79	RESPONSE in Opposition to 29 MOTION to Modify Protective Order in the Cole v. Collier Litigation, filed by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 05/06/2020)
05/07/2020	80	NOTICE of Setting. Parties notified. Status Conference set for 5/8/2020 at 11:00 AM in by telephone before Judge Keith P Ellison, filed. (arrivera, 4) (Entered: 05/07/2020)
05/07/2020	81	Opposed MOTION to Stay <i>Discovery</i> by Bryan Collier, Robert Herrera, Texas Department Of Criminal Justice, filed. Motion Docket Date 5/28/2020. (Attachments: # 1 Proposed Order)(Cobe Vasquez, Christin) (Entered: 05/07/2020)
05/08/2020	82	REPLY in Support of 29 MOTION to Modify Protective Order in the Cole v. Collier Litigation, filed by Richard Elvin King, Laddy Curtis Valentine. (Edwards, Jeffrey) (Entered: 05/08/2020)
05/08/2020	83	CERTIFICATE OF INTERESTED PARTIES by Richard Elvin King, Laddy Curtis Valentine, filed.(Keville, John) (Entered: 05/08/2020)
05/08/2020	84	JOINT DISCOVERY/CASE MANAGEMENT PLAN by Richard Elvin King, Laddy Curtis Valentine, filed.(Duke, Brandon) (Entered: 05/08/2020)

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