UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CLIFTON BELTON, JR., JERRY BRADLEY, CEDRIC FRANKLIN, CHRISTOPHER ROGERS, JOSEPH WILLIAMS, WILLIE SHEPHERD, DEVONTE STEWART, CEDRIC SPEARS, DEMOND HARRIS, and FORREST HARDY, individually and on behalf of all others similarly situated, Plaintiffs, v. SHERIFF SID GAUTREAUX, in his official capacity as Sheriff of East Baton Rouge; LT. COL. DENNIS GRIMES, in his official capacity as Warden of the East Baton Rouge Parish Prison; CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE, Defendants.	Civil Action No. 3:20-cv-000278-BAJ-SDJ **Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief—Class Action** **IMMEDIATE RELIEF SOUGHT**

AMENDED CLASS ACTION COMPLAINT

1. Jails and prisons are rapidly becoming the epicenter of this country's fight against the novel coronavirus and its resulting disease, COVID-19. The rate at which this disease is ravaging the globe is unprecedented in modern society, and its impact is being felt acutely by imprisoned populations in Louisiana, the incarceration capital of America and an early hotspot for the virus.[1] Black people account for 55% of all COVID-19 deaths in Louisiana, even though they

[1] *Where are the US coronavirus hotspots?*, https://www.aljazeera.com/news/2020/03/coronavirus-hot-spots-200331175418853.html; The New York Times, *Louisiana Coronavirus Map and Case Count*, (May 22, 2020), https://www.nytimes.com/interactive/2020/us/louisiana-coronavirus-cases.html; Vera Institute of Justice, *Louisiana must overhaul its justice system practices to respond to COVID-19* (April 9, 2020), https://www.vera.org/downloads/publications/Coronavirus-Guidance-Louisiana-Justice-System.pdf (calling Louisiana "the incarceration capital of the world because, for nearly every year for more than two decades, it has had the highest incarceration rate in the country"); WDSU Digital Team, *Majority of COVID-19 Cases in Louisiana Prisons that Mass Test Are Asymptomatic*, WDSU6 News (May 22, 2020), https://www.wdsu.com/article/majority-

represent only 32% of the state's population;[2] these numbers are primed to be even more striking in Baton Rouge Parish, where Black people make up 47% of the residents.[3]

2. Hundreds of individuals caged inside the East Baton Rouge Parish Prison ("EBRPP" or "jail"[4])—overwhelmingly Black, poor, and medically vulnerable—are prohibited from meaningfully protecting themselves against this global pandemic. Almost all of these individuals—eighty-nine percent—have not been convicted of the crimes for which they are being detained and are presumed innocent.[5] There have been at least 93 confirmed COVID-19 cases in the EBRPP as of May 14, 2020,[6] but the jail's lack of meaningful testing leaves no doubt that this number is grossly undercounted.

3. As COVID-19 continues to gain a powerful foothold in the jail, people detained therein are at a significant risk of becoming infected and ultimately dying. Because of the actions and inactions of the Defendants, individuals locked inside this jail are forced to fight for the recognition of their humanity and for their very survival during this perilous and extraordinary time.

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of-covid-19-cases-in-louisiana-prisons-that-mass-test-are-asymptomatic/32634504# (noting that 317 women tested positive at facilities in St. Gabriel and Jetson).

[2] David Benoit, *Coronavirus Devastates Black New Orleans: 'This is Bigger Than Katrina,'* Wall St. J. (May 23, 2020), https://www.wsj.com/articles/coronavirus-is-a-medical-and-financial-disaster-for-blacks-in-new-orleans-11590226200.

[3] United States Census Bureau, *QuickFacts, East Baton Rouge Parish, Louisiana*, https://www.census.gov/quickfacts/eastbatonrougeparishlouisiana (last visited May 25, 2020).

[4] Although titled a prison, this facility is actually a jail that confines predominantly pretrial detainees. *See, e.g.*, Consol. Gov't of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 110, *available at* https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget (The parish prison "provides for the secure custody of all persons incarcerated pending disposition by the court system, transfer to other facilities, or completion of the court-ordered period of incarceration.").

[5] *See* Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), *available at* https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf.

[6] *See* Ex. 1, EBRPP COVID-19 Statistics (May 14, 2020).

4. Defendants' response to the COVID-19 crisis has been nothing short of constitutionally inadequate, even though they have been aware that it was "only a matter of time before coronavirus arrive[d] at the jail."[7] Defendants claim to be "operating under the guidelines set by DOC, the CDC and [Louisiana Health Department]."[8] But declarations from individuals in the jail flatly contradict that claim and show that officials responsible for operating the jail have failed to adequately respond to the obvious and urgent threats posed by this growing pandemic.[9]

5. The jail has made no efforts to implement the standard protective measures that medical experts have advised for all people. The jail does not practice or promote social distancing, does not adequately clean or disinfect common and high-touch areas, and otherwise leaves detained individuals without sufficient soap or masks to protect themselves; it provides inadequate medical care to detainees battling the coronavirus, and it has even stopped performing routine medical checks to track and treat transmissions of the virus, despite statements to the contrary in the media. The over 1,000 people still jailed at EBRPP continue to sleep less than three feet apart from each other; breathe the same contaminated air; share showers, toilets, and telephones; and congregate in enclosed spaces for mandated roll calls and pill calls.

6. But, perhaps most shockingly, the jail has chosen to warehouse detainees who test positive for or exhibit symptoms of COVID-19 in a building that has been condemned since 2018. Those individuals are confined in their cells for almost 24 hours every day without adequate access

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[7] Jacqueline DeRobertis & Lea Skane, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in jail*, The Advocate (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

[8] Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020).

[9] Notably, this is not the first time that public officials in Louisiana have lied to their constituents about the impact of COVID-19 on prisons and jails in the state. For example, although the state Department of Corrections reported that only 55 individuals at Angola had contracted COVID-19, 115 people actually tested positive for the virus. *See* Jerry Iannelli, *Louisiana's Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, The Appeal (May 1, 2020), https://theappeal.org/louisiana-doc-covid-19-data.

to the medical care they need.

7. In short, the jail forces the individuals in its care to endure unconstitutional conditions that deny them the precautions and protections necessary to mitigate against the risks of COVID-19, most critically the ability to socially distance from those around them.

8. Social distancing—the practice of maintaining at least six feet between any two people—is the "cornerstone" of preventing viral transmissions.[10] Public health experts agree that other protective measures are insufficient to contain the virus if social distancing cannot be achieved. Infectious disease physician and virologist Dr. Adam Lauring emphasized, "[i]f social distancing cannot meaningfully be practiced, then it is impossible to prevent the spread of infections."[11] Infectious disease physician Carlos Franco-Paredes, M.D., echoes Dr. Lauring's sentiments: "unless social distancing is . . . meaningfully implemented," protective "interventions are insufficient to interrupt the transmission of COVID-19."[12] In accord with "U.S. public health experts," National Institutes of Health Director Dr. Francis Collins, similarly remarked, "what we need most right now to slow the stealthy spread of this new coronavirus is a full implementation of social distancing."[13] And UC San Francisco epidemiologists Jeff Martin, MD, MPH, and George Rutherford, III, MD, make clear, "[s]ocial distancing is currently the most important factor we can control in the COVID-19 outbreak, and therefore critical" to "avoid catching the virus

[10] Ex. 3, Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 2 (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidancecorrectional-detention.html.

[11] Ex. 4, Declaration of Dr. Adam Lauring ¶ 13, *Russell v. Wayne Cty.*, No. 20-cv-11094 (E.D. Mich. May 4, 2020), ECF No. 1-15 ("Lauring Decl.").

[12] Ex. 5, Declaration of Dr. Carlos Franco-Paredes at 1, *Cameron v. Bouchard*, No. 2:20-cv-10949 (E.D. Mich. Apr. 30, 2020), ECF No. 42 ("Paredes Decl.").

[13] Dr. Francis Collins, *To Beat COVID-19, Social Distancing is a Must*, NIH Director's Blog (Mar. 19, 2020), https://directorsblog.nih.gov/2020/03/19/to-beat-covid-19-social-distancing-is-a-must/.

yourself and avoid passing it on."[14]

9. A mass outbreak of COVID-19 in the EBRPP is inevitable given the conditions in the facility and the communicability of the virus. Such an outbreak would further strain the limited resources in the state's healthcare system.[15] Accordingly, medical experts have stressed that urgent action to reduce jail populations is an essential public health priority to avoid skyrocketing infection and fatality rates within the jail and in the surrounding community.[16]

10. These experts have particularly stressed the importance of release for individuals who suffer from underlying medical conditions such as cardiac issues, asthma and other breathing difficulties, diabetes, hypertension, obesity, and blood disorders, among others, and who are thus particularly susceptible to severe illness or death upon contracting COVID-19.[17] For these individuals, the only adequate protective measure is release from the prison to shelter at home.[18]

11. Subjecting pretrial detainees to an unreasonable risk of illness and death constitutes impermissible punishment under the Fourteenth Amendment. And disregarding these known, obvious risks to needlessly expose people to a highly fatal infectious disease violates the Eighth and Fourteenth Amendment rights of the people jailed at the jail. Defendants' unconstitutional

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[14] Nina Bai, *Why Experts Are Urging Social Distancing to Combat Coronavirus Outbreak*, Univ. of Cal. S.F. (Mar. 14, 2020), https://www.ucsf.edu/news/2020/03/416906/why-experts-are-urging-social-distancing-combat-coronavirus-outbreak.

[15] Ex. 6, Declaration of Mark Stern ¶ 11, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or. Filed March 16, 2020), ECF No. 6 ("Stern Decl."); *see also* Ex. 7, Declaration of Dr. Jaimie Meyer ¶¶ 16, 22, *Velesaca v. Wolf*, No. 1:20-cv-01803-AKH (S.D.N.Y. Mar. 16, 2020), ECF No. 42 ("Meyer Decl."); Ex. 8, Declaration of Elizabeth Y. Chiao ¶ 28, *Russell v. Harris Cty.*, No. 4:19-cv-00226 (S.D. Tex. Mar. 27, 2020), ECF No. 32-2 ("Chiao Decl.").

[16] ACLU, *COVID-19 Model Finds Nearly 100,00 More Deaths Thank Current Estimates, Due to Failures to Reduce Jails*, https://www.aclu.org/sites/default/files/field_document/aclu_covid19-jail-report_2020-8_1.pdf ("Models projecting total U.S. fatalities to be under 100,000 may be underestimating deaths by almost another 100,000 if we continue to operate jails as usual . . . [D]eaths could be double the current projection due to the omission of jails from most public models.").

[17] *See, e.g.*, Ex. 9, Declaration of Dr. Fred Rottnek ¶ 61 ("Rottnek Decl."); Ex. 5, Paredes Decl. at 7-8.

[18] Ex. 4, Lauring Decl. ¶ 43; Ex. 6, Stern Decl. ¶¶ 12-13; Ex. 7, Meyer Decl. ¶¶ 38-39; Ex. 8, Chiao Decl. ¶¶ 41-42; Ex. 5, Paredes Decl. at 1.

actions place the vulnerable people in their custody, their staff, and the broader community and health care system at risk of widespread contagion.

12. People confined in jails and prisons must "be furnished with the basic human needs, one of which is 'reasonable safety,'" *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (citations omitted). Yet Petitioners/Plaintiffs (hereinafter, Plaintiffs), as well as the class and subclass they represent, all face imminent risk of serious injury or death from COVID-19 in the jail. In the midst of a public health crisis, the people confined in the jail have not been provided adequate safeguards against the severe threat of this novel coronavirus.

13. Because Defendants' actions and inactions constitute ongoing, systemic violations of Plaintiffs' constitutional rights, Plaintiffs seek class-wide relief requiring Defendants to take basic and necessary steps to safeguard the health of people confined in the jail who, due to the nature of their confinement, are both at heightened risk of infection and death and are unable to access the most basic necessary protections available to people outside the jail. Plaintiffs further request a life-saving writ of habeas corpus for all those who are medically vulnerable and at particularly grave risk of infection and death from COVID-19, for whom release from detention is the only viable method to protect them from potentially lethal harm.

JURISDICTION AND VENUE

14. This action arises under 42 U.S.C. § 1983, 28 U.S.C. § 2241, and 28 U.S.C. § 2201, *et seq*., as well as the Eighth and Fourteenth Amendments to the United States Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. § 2241, and 28 U.S.C. § 1651.

15. Venue is proper pursuant to 28 U.S.C. § 1391 because the events and omissions giving rise to these claims occurred and continue to occur in this judicial district.

PARTIES

16. PLAINTIFF CLIFTON BELTON, JR., a 60-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Belton has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined in the infirmary at the jail and was previously confined in Q11-12 and Q4-5, general population housing lines. Mr. Belton suffers from congestive heart failure, diabetes, and high blood pressure. He is largely confined to a wheelchair due to fluid in his lungs and the partial amputation of his right foot. He has had four open-heart surgeries in the past year, the most recent in January 2020, and he flat-lined twice on April 15, 2019 due to the fluid around his heart, a persistent condition. He represents the Class, the Pretrial Subclass, and the Medically Vulnerable Subclass.

17. PLAINTIFF JERRY BRADLEY, a 39-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Bradley has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the A1 line and was previously confined on the C01 line, two of the jail's COVID-19 solitary confinement lines. Mr. Bradley pled guilty and was sentenced to time served on his charges on April 6, 2020, thus making him eligible for immediate release. He tested positive for COVID-19 after he accepted the plea. He represents the Class and the Post-Conviction Subclass.

18. PLAINTIFF CEDRIC FRANKLIN, a 47-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Franklin has been in Defendants' custody at the East Baton Rouge Parish Prison, where he is serving his Department of Corrections sentence. He is currently confined on the F3 housing line, a general population line. Mr. Franklin was previously confined on the J1, central booking, M1, and Q5-6 housing lines. Mr. Franklin suffers from Type 2 Diabetes, high blood pressure, and blood clots in his legs.

He represents the Class, the Post-Conviction Subclass, and the Medically Vulnerably Subclass.

19. PLAINTIFF CHRISTOPHER ROGERS, a 29-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Rogers has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the F5 housing line, a general population line. Mr. Rogers was previously confined on the B3 solitary confinement line for COVID-19-positive detainees. Mr. Rogers plans to plead to time served on his charges—for which he has already served more than the maximum amount—and seek his immediate release from the jail once he is able to get into court. Mr. Rogers represents the Class and the Pretrial Subclass.

20. PLAINTIFF JOSEPH WILLIAMS, a 21-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Williams has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the B3 line, one of the jail's COVID-19 solitary confinement lines. Four days before he was moved to solitary confinement, the charges against Mr. Williams were dropped; he remains in the jail only on a parole hold. Mr. Williams represents the Class and the Pretrial Subclass.

21. PLAINTIFF WILLIE SHEPHERD, a 38-year-old Black man, lived in Cloquet, Minnesota before his detention in East Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Shepherd has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q3 housing line, a general population line. Mr. Shepherd was previously confined on the B3 line, one of the solitary confinement lines used by the jail for COVID-19-positive detainees. Mr. Shepherd suffers from high blood pressure. He represents the Class, the Pretrial Subclass, and the Medically Vulnerable Subclass.

22. PLAINTIFF DEVONTE STEWART, a 25-year-old Black man, currently resides

in Shreveport, Louisiana. At all times relevant to this Complaint, Mr. Stewart has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the B3 line, one of the jail's COVID-19 solitary confinement lines. He is confined in the jail only because of unaffordable cash bail. Mr. Stewart represents the Class and the Pretrial Subclass.

23. PLAINTIFF CEDRIC SPEARS, a 47-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Spears has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q11-12 line. Mr Spears was previously confined on the Q9-10 and Q5-6 lines, general population housing lines, and a solitary confinement line. He is in the jail only because of unaffordable cash bail. Mr. Spears represents the Class and the Pretrial Subclass.

24. PLAINTIFF DEMOND HARRIS, a 40-year-old Black man, currently resides in Baton Rouge, Louisiana. At all times relevant to this Complaint, Mr. Harris has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q11-12 line, a general population housing line. Mr. Harris was previously confined on the C01 and A1 solitary confinement lines for COVID-19-positive detainees; he did not have coronavirus when he was transferred onto those lines. He serves as a minister to the men in the jail. Mr. Harris represents the Class and Pretrial Subclass.

25. PLAINTIFF FORREST HARDY, a 31-year-old Black man, currently resides in Louisiana. At all times relevant to this Complaint, Mr. Hardy has been in Defendants' custody at the East Baton Rouge Parish Prison. He is currently confined on the Q9-10 line, a general population housing line. He is in the jail only because of unaffordable cash bail. Mr. Hardy represents the Class and the Pretrial Subclass.

26. DEFENDANT SHERIFF SID J. GAUTREAUX, III is an adult resident of

Louisiana. Gautreaux is the Sheriff of the East Baton Rouge Parish Sheriff's Office and is responsible for the hiring, training, supervision, discipline, and control of appropriate staff to maintain the care, custody, and control of prisoners in the custody of the East Baton Rouge Parish Sheriff's Office. He is responsible for all staffing at the jail. He is also responsible for the supervision, administration, policies, practices, customs, and operations of EBRPP. Gautreaux is a final policy maker who at times delegated policy making authority to other Defendants named in this lawsuit. At all pertinent times, Gautreaux was acting under color of law. He is liable both directly for the unconstitutional actions and vicariously for the state law actions complained of herein. Gautreaux is being sued in his official capacity as Sheriff of East Baton Rouge Parish.

27. DEFENDANT LIEUTENANT COLONEL DENNIS GRIMES is an adult resident of Louisiana. Defendant Grimes is the Warden of the jail, and as such is responsible for supervision, administration, policies, practices, customs, operations, training of staff, and operation of the jail. Grimes is a final policy maker and has been acting under color of law at all pertinent times. He is liable both directly for the unconstitutional actions and vicariously for the state law actions complained of herein. Grimes is being sued in his official capacity as Warden of the EBRPP

28. DEFENDANT CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE (CITY-PARISH) is a political entity capable of suing and being sued. The City-Parish contracts with CorrectHealth East Baton Rouge, LLC ("CorrectHealth") for the provision of medical and mental health care in the jail, including the jail's response to COVID-19, and oversees CorrectHealth's conduct in the jail. The City-Parish is responsible for funding operations and maintenance of the jail, including the food, clothing, medical and mental health treatment, and related expenses for people confined in the jail. The East Baton Rouge Parish Metropolitan

Council (Metro Council) is responsible for setting the policies of the City-Parish.

THE GRAVE RISK OF HARM POSED BY THE COVID-19 PANDEMIC REQUIRES AN EMERGENCY RESPONSE

29. The highly contagious novel coronavirus, and its resulting infection, COVID-19, are spreading at an alarming rate. Emphasizing "deep[] concern[] both by the alarming levels of spread and severity, and by the alarming levels of inaction," the World Health Organization has called for countries to take "urgent and aggressive action."[19]

30. The virus spreads easily through respiratory droplets and contact with people.[20] The virus can also be spread by contact with surfaces on which the virus is present.[21] Recent studies show that more than 50% of infected persons may never show symptoms, but can nevertheless transmit the virus to others.[22] As a result, confirmed cases of the virus are likely drastically understated.

31. Dr. Amir Moheb Mohareb, an expert in infectious diseases, explains that COVID-19 can be spread through airborne or aerosolized transmission and that "virus particles in small respiratory droplets . . . that are emitted by an infected person can remain suspended in the air and remain infective over several hours and over long distances."[23] He continues, "[p]athogens that

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[19] *See* World Health Org., *Director-General Opening Remarks* (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-mediabriefing-on-covid-19---11-march-2020; *see also* Bill Chappell, *Coronavirus: COVID-19 Is Now Officially A Pandemic*, *WHO Says*, NPR (Mar. 11, 2020), https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says.

[20] *See* Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads* (Apr. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.

[21] *Id.*

[22] Katherine Harmon Courage, *How People are Spreading Covid-19 Without Symptoms*, Vox (Apr. 22, 2020), https://www.vox.com/2020/4/22/21230301/coronavirus-symptom-asymptomatic-carrier-spread.

[23] Ex. 10, Expert Declaration of Dr. Amir Moheb Mohareb, *Mays v. Thomas*, No. 20-cv-2134 (N.D. Ill. Apr. 19, 2020), ECF No. 64-3 ("Mohareb Decl.").

travel via airborne transmission can infect persons even if they are wearing surgical or procedural masks." Buildings or facilities that do not have negative-pressure ventilation may be at risk of spreading aerosolized pathogens between rooms. Furthermore, "[a]erosols can be generated by a number of common events, including vigorous coughing, sneezing, use of certain nasal sprays or nebulizer treatments, and toilet flushing."[24] There is further reason to believe that SARS-CoV-2 can be transmitted via fecal-oral contact and that "[t]he identification of viable SARS-CoV-2 in stool of infected persons raises concern of airborne transmission via toilet flushing."[25] Finally, he declares, "[h]and hygiene and the provision of surgical masks are insufficient to prevent the spread of infection in a congregate setting."[26]

32. On January 21, 2020, the first confirmed COVID-19 case was diagnosed in the United States.[27] As of May 25, 2020, more than five million people have been diagnosed with COVID-19 worldwide, with more than a million new infections being confirmed in the two weeks preceding that date, and at least 342,000 deaths confirmed.[28] In the United States, more than 1.6 million people have been diagnosed, and over 98,000 deaths have been confirmed.[29] Louisiana has been one of the states hardest hit by this crisis.[30] Nationally, the most recent CDC projections

[24] *Id.* at 3-4.

[25] *Id.* at 4.

[26] *Id.* at 5.

[27] Derrick Bryson Taylor, *How the Coronavirus Pandemic Unfolded: a Timeline*, N.Y. Times (May 12, 2020), https://www.nytimes.com/article/coronavirus-timeline.html.

[28] World Health Org., *Coronavirus Disease(COVID-19) Situation Report-126* (May 25, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200525-covid-19-sitrep-126.pdf?sfvrsn=887dbd66_2; *Reported Coronavirus Cases Top 5 Million Worldwide*, N.Y. Times (May 21, 2010), https://www.nytimes.com/2020/05/21/world/coronavirus-world-news-live.html.

[29] Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* (May 22, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html.

[30] *See infra* ¶¶ 60-62.

indicate that approximately four million patients will be hospitalized in the United States with COVID-19, with more than 500,000 deaths over the course of the pandemic.[31]

33. Infected people—who may be asymptomatic and not even know they are infected—can spread the disease even through indirect contact with others.[32] Given that many people are asymptomatic transmitters and very few people have been tested,[33] the number of people diagnosed with COVID-19 reflects only a small portion of those infected.[34]

34. The virus poses a grave risk of severe illness, including lung tissue damage, sometimes leading to a permanent loss of respiratory capacity. It can also cause acute respiratory distress syndrome, affect cardiac functions (including the possibility of heart failure), lead to severe damage to other organs (including causing irreversible harm to the kidneys or neurologic injury),[35] and cause life-threatening blood clots.[36] Research suggests that COVID-19 can trigger

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[31] Liz Essley Whyte, *Scientists Say New, Lower CDC Estimates for Severity of COVID-19 Are Optimistic*, Nat'l Public Radio (May 22, 2020), https://www.npr.org/sections/health-shots/2020/05/22/860981956/scientists-say-new-lower-cdc-estimates-for-severity-of-covid-19-are-optimistic

[32] *See, e.g.*, Marilynn Marchione/AP, *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*, TIME (Mar. 11, 2020); Jiong Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 Emerging Infectious Diseases 6 (2020), https://doi.org/10.3201/eid2606.200412 (last visited May 23, 2020); *see also* Nathan W. Furukawa et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, 26 Emerging Infections Diseases 7 (2020), https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article.

[33] *See, e.g.*, Roni Caryn Rabin, *They Were Infected With the Coronavirus. They Never Showed Signs*, N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html; Aria Bendix, *A Person Can Carry and Transmit COVID-19 Without Showing Symptoms, Scientists Confirm*, Bus. Insider (Feb. 24, 2020), https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms; Rosa Flores et al., *2 Studies Show Many People Who Tested Positive for Covid-19 Displayed No Symptoms*, CNN (Apr. 25, 2020), https://www.cnn.com/2020/04/24/us/2-asymptomatic-coronavirus-studies/index.html.

[34] *See, e.g.*, Melissa Healy, *True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say*, L.A. Times (Mar. 10, 2020), https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA; Mike Stobbe, *More Evidence Indicates Health People Can Spread Virus*, AP News (Apr. 1, 2020), https://apnews.com/5c4992645fee551994325093858c14a4.

[35] Ex. 11, Declaration of Dr. Jonathan Louis Golob ¶ 7, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or. Filed March 16, 2020), ECF No. 5 ("Golob Decl.").

[36] Lydia Ramsey, *Blood Clots Are the Latest Life-Threatening Complication of the Coronavirus, but Doctors Aren't Sure How to Treat Them*, Bus. Insider (Apr. 19, 2020), https://www.businessinsider.com/coronavirus-blood-clot-

an over-response in the immune system,[37] resulting in death.[38] People over the age of 50 are particularly at risk (accounting for 74% of patients hospitalized), as are people with certain underlying conditions, most commonly, hypertension, obesity, chronic lung disease, diabetes mellitus, and cardiovascular disease.[39]

35. The experiences of persons infected with COVID-19 are "a lot more frightening" than the flu.[40] Suffering from acute respiratory distress syndrome has been compared to "essentially drowning in [one's] own blood."[41] Even relatively young people with few health problems can be "wiped out" by the virus, "like they've been hit by a truck," and, in some cases, "sudden[ly]" go into complete respiratory failure.[42]

36. Further, because COVID-19-related complications can develop rapidly, local hospitals are overwhelmed with high patient volumes and shortages in health care resources. Treatment for severe COVID-19 cases requires advanced medical support with highly specialized equipment, such as ventilators and oxygen assistance, and a team of qualified health care providers.

37. The current estimated incubation period is between two and fourteen days.[43] The national rate of death among those infected is about 1.3%. The comparable rate of death for the

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complications-in-severe-covid-19-treatment-debate-2020-4.

[37] Ex. 11, Golob Decl. ¶ 7.

[38] *Id.*

[39] Shiha Garg et al., *Hospitalization Rates and Characteristics of Patients Hospitalized With Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020*, Ctrs. for Disease Control & Prevention Morbidity & Mortality Weekly Report (Apr. 17, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm.

[40] *See, e.g.*, Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in His Young Patients*, ProPublica (Mar. 21, 2020), https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients.

[41] *Id.*

[42] *Id.*

[43] Ctrs. for Disease Control & Prevention, *Symptoms of Coronavirus* (May 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html.

seasonal flu is 0.1%.[44] Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity.[45]

38. Because it is unclear whether people who have recovered from COVID-19 are immune to reinfection,[46] and a vaccine appears more than one year away,[47] the only effective weapon against the virus is preventing new infections. According to health experts, the *only* guaranteed way to prevent new infections is social distancing: physically isolating oneself from any other person at a minimum distance of six feet. Dozens of the world's experts on fighting epidemics agree that extreme social distancing approximates the type of "total freeze"[48] on transmission that is vital to halting and reversing the spread of COVID-19. Epidemiologists say that "[i]f it were possible to wave a magic wand and make all Americans freeze in place for 14 days while sitting six feet apart . . . the whole epidemic would sputter to a halt."[49]

39. As a result, Governors, mayors, and local city and county officials—including those in Louisiana—have all urged the public to practice social distancing.[50] Forty-six states and the

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[44] Jake Ellison, *COVID-19: Study Reports 'Staggering' Death Rate in U.S. Among Those Infected Who Show Symptoms*, ScienceDaily (May 18, 2020), sciencedaily.com/releases/2020/05/200518144915.htm.

[45] Ex. 11, Golob Decl. ¶ 4

[46] Dr. Delaram J. Taghipour, *Questions Remain Over Whether COVID-19 Recovery Will Guarantee Immunity: Is Reinfection Still Possible*, ABC News (Apr. 12, 2020), https://abcnews.go.com/Health/questions-remain-covid-19-recovery-guarantee-immunity-reinfection/story?id=70085581.

[47] *E.g.*, James Gallagher, *Coronavirus Vaccine: When Will We Have One?*, BBC News (May 18, 2020), https://www.bbc.com/news/health-51665497.

[48] *E.g.*, Donald G. McNeil Jr., *The Virus Can Be Stopped, but Only With Harsh Steps, Experts Say*, N.Y. Times (Mar. 25, 2020), https://www.nytimes.com/2020/03/22/health/coronavirus-restrictions-us.html; *see also* Ctrs. for Disease Control & Prevention, *Social Distancing*, (May 6, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html.

[49] Donald G. McNeil Jr., *The Virus Can Be Stopped, but Only With Harsh Steps, Experts Say*, N.Y. Times (Mar. 22, 2020), https://www.nytimes.com/2020/03/22/health/coronavirus-restrictions-us.html.

[50] Assoc. Press, *11 Graphics That Officials Say Tell the Strong of Louisiana's Fight Against Coronavirus in May*, The Advocate (May 11, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_418bba9c-93ed-11ea-8311-135ae37e6259.html; *Michigan closes bars, stops restaurant dine-in, further limits gatherings*,

District of Columbia have ordered all businesses deemed nonessential to close or to operate under restrictions that allow for social distancing.[51] Three hundred sixteen million people in at least 42 states, three counties, nine cities, the District of Columbia, and Puerto Rico were urged (or ordered) to stay home.[52] Gatherings where it was impossible to maintain social distancing were cancelled across the country and the world.[53]

INCARCERATED PEOPLE AND CORRECTIONAL STAFF ARE AT HEIGHTENED RISK DURING THE COVID-19 PANDEMIC

40. Jail facilities become "ticking time bombs" in a pandemic, as "[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases."[54] Epidemiological research overwhelmingly "shows that mass incarceration raises contagion rates for infectious disease—both for people in jails, and for the community at large."[55]

WOODTV (Mar. 16, 2020), https://www.woodtv.com/health/coronavirus/whitmer-orders-bars-restaurants-to-close-due-to-virus-concerns/; Doug Mainwaring, *Governor Urges 'Social Distancing' Even Among Families at Home*, LifeSite (Apr. 3, 2020), https://www.lifesitenews.com/news/governor-urges-social-distancing-even-among-families-at-home; Christian Berthelsen, Elise Young, *N.J., N.Y. Urge Residents to Stay Put With Peak Approaching*, Bloomberg (Apr. 9, 2020), https://www.bloomberg.com/news/articles/2020-04-09/murphy-says-social-distancing-is-slowing-virus-spread-in-n-j; Laura Ziegler, *Act Like You Have The Virus, Kansas City Officials Urge As They Step Up Social Distance Enforcement*, KCUR (Mar. 30, 2020), https://www.kcur.org/post/act-you-have-virus-kansas-city-officials-urge-they-step-social-distance-enforcement#stream/0; Kendall Downing, *City, County Officials Urge Social Distancing Over Easter Holiday Weekend; City Braces for COVID-19 Budget Impact*, WMC5 (Apr. 8, 2020), https://www.wmcactionnews5.com/2020/04/08/city-county-officials-urge-social-distancing-over-easter-holiday-weekend-city-braces-covid-budget-impact/; *Many People Will Get COVID-19' Says Mayor Garcetti As He Urges LA To Practice Social Distancing, Self-Quarantine*, CBSN Los Angeles (Mar. 14, 2020), https://losangeles.cbslocal.com/2020/03/14/many-people-will-get-covid-19-says-mayor-garcetti-as-he-urges-la-to-practice-social-distancing-self-quarantine/.

[51] Eric Schumaker, *Here Are the States That Have Shut Down Nonessential Businesses*, ABC News (Apr. 3, 2020), https://abcnews.go.com/Health/states-shut-essential-businesses-map/story?id=69770806.

[52] Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which Cities and States Have Told Residents to Stay at Home*, N.Y. Times (Apr. 20, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html.

[53] *A List of What's Been Canceled Because of the Coronavirus*, N.Y. Times (Apr. 1, 2020), https://www.nytimes.com/article/cancelled-events-coronavirus.html.

[54] *See* St. Louis Univ., *"Ticking Time Bomb": Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), https://www.sciencedaily.com/releases/2006/09/060915012301.htm.

[55] Sandhya Kajeepeta & Seth J. Prins, *Why Coronavirus in Jails Should Concern All of Us*, The Appeal (Mar. 24,

41. These facilities are inextricably linked to public life: even with the jail's current restrictions on visitors, contractors, and vendors, the large number of staff members who keep the facility functioning pass between communities and the facilities multiple times daily, and, if infected, carry the virus with them. Similarly, rapid turnover of jail and prison populations means that people often cycle between these facilities and communities. Thus, the ability to control the spread of infection outside of facilities hinges on controlling infection and the spread of infection *inside* of these facilities. Put simply, jail health is public health.

42. According to Dr. Jaimie Meyer, an expert in public health in jails and prisons: "The risk posed by infectious diseases [such as COVID-19] in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected."[56] This is due to a number of factors, including:

a. The close proximity of individuals in those facilities;

b. Their reduced ability to protect themselves through social distancing;

c. The lack of necessary medical and hygiene supplies ranging from hot water, soap or hand sanitizer, to protective equipment;

d. Ventilation systems that encourage the spread of airborne diseases;

e. Difficulties quarantining individuals who become ill;

f. The enhanced susceptibility of the population in jails and prisons due to chronic health conditions;

g. The fact that incarcerated people, rather than professional cleaners, are often responsible for cleaning the facilities and are not given appropriate supplies; and

h. The fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic, as well as the loss of both

2020), https://theappeal.org/coronavirus-jails-public-health/.

[56] Ex. 7, Meyer Decl. ¶ 7.

medical and correctional staff to illness.[57]

43. Increased risk of transmission and infection also result from the constant cycling of people in and out of the jail (including staff),[58] limited access to medical care within the Jail itself, and ineffective screening procedures. Most people do not show symptoms for two to fourteen days while being contagious. Others never exhibit any symptoms at all. Thus, while screening for fevers and other symptoms associated with COVID-19 may stop *some* infected people from entering or transmitting the disease, it cannot catch many of those actively spreading the virus. The drastic social distancing measures that have been imposed across the country are designed to combat this exact problem. To be sure, by staying at home, we can limit our contact with other persons, even the asymptomatic. This option is unavailable in the Jail.

44. Any of the revolving door of Jail staff can be asymptomatically carrying and transmitting COVID-19, and the Jail has no means of stopping the spread of this disease.[59] At least 167 Department of Corrections staff members have tested positive for COVID-19,[60] and several high-level jail and prison officials across Louisiana have died from the virus, including the Warden and Medical Director at a state prison in Avoyelles Parish and a staff member at the

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[57] *See* Ex. 7, Meyer Decl. ¶¶ 7-19; *see also* Laura M. Maruschak et al., *Pandemic Influenza and Jail Facilities and Populations*, 99 Am. J. of Pub. Health S2 (2009) ("The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility."); *see also* Dr. Anne C. Spaulding, *Coronavirus and the Correctional Facility*, Emory Ctr. for the Health of Incarcerated Persons, (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

[58] *See* Peter Wagner & Emily Widra, *No Need to Wait for Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (Mar. 6, 2020), https://www.prisonpolicy.org/blog/2020/03/06/pandemic.

[59] *See* Linda So & Grant Smith, *In Four U.S. State Prisons, Nearly 3,300 Inmates Test Positive for Coronavirus -- 96% Without Symptoms*, Reuters (Apr. 25, 2020), https://www.reuters.com/article/us-health-coronavirus-prisons-testing-in/in-four-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUSKCN2270RX (noting that 95-96% of positive COVID-19 cases had no symptoms).

[60] La. Dep't of Public Safety & Corrs., *COVID-19 Staff Positives* (May 25, 2020, 11 a.m.), https://doc.louisiana.gov/doc-covid-19-testing/.

Louisiana State Penitentiary ("Angola").[61] On April 2, 2020, the American Correctional Officer Intelligence Network sent a letter to the National Governors Association describing the dire impact of COVID-19 on correctional officers and staff: "[O]fficers in Michigan, New York and New Jersey have died from COVID-19. They will not be the last. Hundreds more across the nation have tested positive and thousands face quarantine. Inmates in our custody are dying as a result of this virus."[62] The letter also referenced a survey of over 750 correctional officers and staff about the ways in which the COVID-19 virus is impacting prisons, jails, and juvenile detention facilities, in which almost 60% of respondents said that COVID-19-related hazards inside their facility remain unaddressed.[63]

45. Correctional officials around the country agree that particular care must be taken to stop the spread of COVID-19 within the nation's jails. Leann Bertsch, the Director of the North Dakota Department of Corrections and Rehabilitation, concluded that, "ignoring the health of those living and working inside the walls of our nation's correctional facilities poses a grave threat to us all," and that "putting public health first is the best, and only, way to effectively achieve [a department of corrections'] public safety mission during the COVID-19 pandemic."[64]

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[61] *See* WDSU Digital Team, *Warden, Medical Director of Louisiana Prison Die After Contracting Coronavirus, State Says*, WDSU6 News (Apr. 20, 2020), https://www.wdsu.com/article/2-new-covid-19-related-deaths-reported-by-louisiana-prison-system-1-inmate-1-employee/32214252; WDSU Digital Team, *Angola Prison Employee has Died of Coronavirus: Louisiana DOC*, WDSU6 News (Apr. 14,2020), https://www.wdsu.com/article/angola-prison-staff-member-has-died-of-coronavirus-louisiana-doc/32146836.

[62] Ltr. from One Voice & ACOIN to Nat'l Governors Ass'n (Apr. 2, 2020), https://drive.google.com/file/d/13euHXAPbSyVo1vkG9k1x7ymJCl_UJhTc/view.

[63] *Id*. at 2.

[64] Brie Williams & Leanne Bertsch, *A Public Health Doctor and Head of Corrections Agree: We Must Immediately Release People From Jails and Prisons*, The Appeal (Mar. 27, 2020), https://theappeal.org/a-public-health-doctor-and-head-of-corrections-agree-we-must-immediately-release-people-from-jails-and-prisons/.

46. On March 30, 2020, the Centers for Disease Control and Prevention (CDC) published guidance for correctional and detention facilities, including local jails.[65] The CDC recognized that incarcerated people are forced to exist "within congregate environments" that "heighten[] the potential for COVID-19 to spread once introduced."[66] Indeed, "[t]here are many opportunities for COVID-19 to be introduced into a correctional or detention facility" including "daily staff ingress and egress . . . transfer of incarcerated/detained persons between facilities and systems, to court appearances," as well as "high turnover" of "admit[ted] new entrants."[67] Accordingly, the CDC recommends that correctional facilities:

a. Post signage throughout the facility communicating COVID-19 symptoms and hand hygiene instructions, ensure such signage is understandable for non-English speaking people as well as those with low literacy, and provide clear information about the presence of COVID-19 cases within a facility and the need to increase social distancing and maintain hygiene precautions;

b. Ensure that sufficient stocks of hygiene supplies are on hand and available, and have a plan in place to restock as needed. Provide a no-cost supply of and access to soap to incarcerated/detained persons, sufficient to allow frequent hand washing. Provide Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing. Provide hand drying supplies, and alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions);

c. Provide running water, hand drying machines or disposable paper towels for hand washing, and tissues (providing no-touch trash receptacles for disposal);

d. Ensure that sufficient stocks of cleaning supplies are on hand and available, and have a plan in place to restock as needed, including tissues, cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19;

e. Ensure that sufficient stocks of PPE and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in

[65] Ex. 3, Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 2 (Mar. 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidancecorrectional-detention.html.

[66] *Id*.

[67] *Id*.

place to restock as needed if COVID-19 transmission occurs within the facility, including standard medical supplies for daily clinic needs, and recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls);

f. Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty;

g. Suspend co-pays for incarcerated people seeking medical evaluation for respiratory symptoms;

h. Even if COVID-19 cases have not been identified locally or inside, implement "intensified cleaning and disinfecting procedures" that clean and disinfect high-touch surfaces and objects "[s]everal times per day," and ensure adequate supplies to support intensified cleaning and disinfection practices;

i. Perform pre-intake screening and temperature checks for all new entrants, and implement daily temperature checks in housing units where COVID-19 cases have been identified;

j. If an individual has symptoms of COVID-19 (fever, cough, shortness of breath), require the individual to wear a face mask and place her under medical isolation; and

k. Implement social distancing strategies to increase the physical space between incarcerated people, ideally a distance of six feet "regardless of the presence of symptoms."

47. The CDC's guidance for jail administrators, however, is not a substitute for what is medically required to protect people's lives during a pandemic. Nor is it a repudiation of the CDC's scientific guidance that social distancing is required to stop the transmission of the virus.

48. The global path of the virus proves that jails and prisons are epicenters for transmission. Approximately one month into the pandemic in the province of Hubei, China, over half of the newly reported COVID-19 cases out of Wuhan were from jails.[68] In South Korea,

[68] Zi Yang, *Cracks in the System: COVID-19 in Chinese Prisons*, The Diplomat (Mar. 9, 2020), https://thediplomat.com/2020/03/cracks-in-the-system-covid-19-in-chinese-prisons/.

which has had tremendous success in slowing and stopping the spread of the virus, "the single largest COVID-19 outbreak and mortality cluster was from the Daenam Prison Hospital, where 101 inmates were infected and seven died."[69]

49. The coronavirus has started spreading inside other prisons, jails, and detention centers in the United States. Experts predict that a mass contagion is only a matter of time and that "[a]ll prisons and jails should anticipate that the coronavirus will enter their facility."[70]

50. Once the virus enters a jail or prison, the infection rate has been known to far exceed that of the broader community—by as much as 150%.[71] In mid-March, for example, the jail at Rikers Island in New York City had not had a single confirmed COVID-19 case. By March 30, 167 detainees, 114 correction staff and 20 health workers at Rikers tested positive for COVID-19; two correction staff members had died and multiple detainees had been hospitalized. Rikers now has a rate of infection that is nearly seven times higher than that in New York City and nine times higher than the rate in New York State[72]; over 30 times higher than the rest of America; and far higher than the infection rates of the most infected regions of the world.[73] More than 700 people

[69] Nancy Gertner & John Reinstein, *Compassionate Release Now for Prisoners Vulnerable to the Coronavirus*, Boston Globe (Mar. 23, 2020), https://www.bostonglobe.com/2020/03/23/opinion/compassionate-release-now-prisoners-vulnerable-coronavirus/.

[70] Nicole Wetsman, *Prisons and Jails Are Vulnerable to COVID-19 Outbreaks*, The Verge (May 7, 2020), https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap.

[71] Katie Park, Tom Meagher, & Weihua Li, *Tracking the Spread of Coronavirus in Prisons*, The Marshall Project (Apr. 24, 2020), https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons.

[72] *See* Jan Ransom & Alan Feuer, '*We're Left for Dead': Fears of Virus Catastrophe at Rikers Jail*, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html; Chris Hays, *Coronavirus Infection Rate in NYC Jails 7 Times the Rest of the City*, MSNBC (Mar. 26, 2020), https://www.msnbc.com/all-in/watch/coronavirus-infection-rate-in-nyc-jails-7-times-the-rest-of-the-city-81260101982; Scott Hechinger (@ScottHech), Twitter (Mar. 28, 2020, 7:21 PM), https://twitter.com/ScottHech/status/1244041855614029826/photo/1.

[73] *COVID-19 Infection Tracking in NYC Jails*, The Legal Aid Soc'y (updated May 1, 2020), https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/ (last visited May 3, 2020).

have tested positive for COVID-19, including more than 400 staff.[74] The Chief Medical Officer of Rikers has described COVID-19 infections as a "public health disaster unfolding before our eyes."[75] In his view, following CDC guidelines has not been enough to stem the crisis: "infections in our jails are growing quickly despite these efforts."[76]

51. The Cook County Jail, similarly, went from two confirmed COVID-19 cases on March 23 to more than 350 confirmed cases, 238 detainees and 115 staff members, two weeks later.[77] As of May 22, 2020, over 532 detainees and 418 jail staff contracted COVID-19, and seven detainees and three jail staff have died as a result.[78] Nurses at Cook County's Stroger Hospital have warned that the virus is a "growing beast" that threatens not only staff and people behind bars but all of Cook County.[79] An entire unit at Stroger Hospital has been converted into a space for treating COVID-19 cases from the Cook County jail, and the unit is rapidly reaching maximum capacity.[80]

52. An equally gruesome pattern is already devastating Louisiana's carceral system.

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[74] Asher Stockler, *More Than 700 People Have Tested Positive for Coronavirus on Rikers Island, Including Over 440 Staff*, Newsweek (Apr. 8, 2020), https://www.newsweek.com/rikers-island-covid-19-new-york-city-1496872.

[75] Meagan Flynn, *Top Doctor at Rikers Island Calls the Jail a 'Public Health Disaster Unfolding Before Our Eyes'*, Wash. Post (Mar. 31, 2020), https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread/.

[76] Ross MacDonald (@RossMacDonaldMD), Twitter (Mar. 30, 2020, 11:03 PM), https://twitter.com/rossmacdonaldmd/status/1244822686280437765?s=12 ("I can assure you we were following the CDC guidelines before they were issued. We could have written them ourselves. . . . [I]infections in our jails are growing despite these efforts.").

[77] Timothy Williams & Danielle Ivory, *Chicago's Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times (Apr. 8, 2020), https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html.

[78] Cook Cnty. Sheriff's Office, *COVID-19 Cases at CCDOC* (May 25, 2020), https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/; *cf.* Andy Grimm, *Cook County Jail director defends handling of COVID-19 outbreak*, Chi. Sun Times (Apr. 23, 2020), https://chicago.suntimes.com/coronavirus/2020/4/23/21233570/cook-county-jail-covid-19-outbreak-tom-dart.

[79] Shannon Heffernan, *Nurses Warn COVID-19 Cases At Cook County Jail Aren't Just Staying Behind Bars*, WBEZ, Chicago's NPR (Apr. 11, 2020), https://www.wbez.org/stories/nurses-warn-covid-19-cases-at-cook-county-jail-arent-just-staying-behind-bars/44cc1e46-693b-44cc-8a5a-347737966185.

[80] *Id.*

Even without considering infection and death rates from jails across the state—which account for about half of the Department of Corrections' population—Louisiana reported 273 positive cases as of April 30, 2020.[81] An additional 187 people in parish jails had contracted COVID-19 by April 22nd.[82] Less than one month later, Louisiana's prisons have 438 cases and 11 deaths.[83] In one prison, nearly every woman (192 out of 195) tested positive for COVID-19.[84]

53. For this reason, medical and public health experts have urged emergency action to fight the spread of COVID-19 in jails and other carceral facilities, including decarceration, improved access to medical care, compliance with CDC guidelines, and more.[85] Medical experts explain that the need for action is urgent given that "[t]he window of opportunity is rapidly narrowing for mitigation of COVID-19"—outbreaks are measured in "a matter of days, not weeks," with this type of novel virus.[86]

54. Medical experts have emphasized that urgent action in the jails is an essential public health priority because outbreaks will place incredible strain on regional hospitals and health

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[81] Jerry Iannelli, *Louisiana's Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, The Appeal (May 1, 2020), https://theappeal.org/louisiana-doc-covid-19-data.

[82] *Id.*

[83] The Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (May 22, 2020), https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.

[84] Assoc. Press, *At Louisiana Prison, 192 out of 195 Inmates Test Positive for COVID-19*, MarketWatch (May 5, 2020), https://www.marketwatch.com/story/louisana-prison-unit-has-192-of-195-inmates-test-positive-for-covid-19-2020-05-05.

[85] *See, e.g.*, Brad Lander, *Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus*, Medium (Mar. 12, 2020), https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-totake-more-aggressive-action-to-fb75f0b131c2; Letter from Faculty Members of the Johns Hopkins Bloomberg School of Public Health, School of Nursing, and School of Medicine to Governor Larry Hogan (Mar. 25, 2020), https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf; Ex. 6, Stern Decl. ¶ 11; Ex. 12, Declaration of Dr. Ranit Mishori ¶ 46, *Coreas v. Bounds*, No. 8:20-cv-00780 (D. Md., filed Mar. 24, 2020), ECF No. 2-3 ("Mishori Decl."); Ex. 13, Declaration of Robert B. Greifinger ¶ 13, *Dawson v. Asher*, Case No. 2:20-cv-00409-JLR-MAT (D. Or., filed Mar. 16, 2020), ECF No. 4 ("Greifinger Decl.").

[86] Ex. 12, Mishori Decl. ¶ 46.

centers. Experts, like Dr. Meyer, make clear that "[r]educing the size of the population in jails and prisons can be crucially important to reducing the level of risk both for those within those facilities and for the community at large."[87]

55. Public health experts, including Dr. Gregg Gonsalves,[88] Ross MacDonald,[89] Dr. Marc Stern,[90] Dr. Oluwadamilola T. Oladeru and Adam Beckman,[91] Dr. Anne Spaulding,[92] Homer Venters,[93] and Josiah Rich[94] have all strongly cautioned that people booked into and held in jails are likely to face serious, even grave, harm due to the outbreak of COVID-19.

56. According to Dr. Stern, "taking immediate and concerted efforts to implement preventive steps, as well as reducing the population to the lowest number possible prioritizing those who are elderly or have underlying medical conditions defined by the CDC, will increase public safety via reducing public health risk."[95]

57. In response to this need for immediate action, jails and prisons nationwide[96] have

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[87] Ex. 7, Meyer Decl. ¶ 37.

[88] Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, The Ct. Mirror (Mar. 11, 2020), https://cutt.ly/BtRSxCF.

[89] Craig McCarthy & Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming,'* N.Y. Post (Mar. 19, 2020), https://cutt.ly/ptRSnVo.

[90] Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Washington Ass'n of Sheriffs & Police Chiefs (Mar. 5, 2020), https://cutt.ly/EtRSm4R.

[91] Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America's Incarcerated Population – and How to Ensure It's Not Left Behind*, HealthAffairs Blog (Mar. 10, 2020), https://cutt.ly/QtRSYNA.

[92] Anne C. Spaulding, MD MPDH, *Coronavirus COVID-19 and the Correctional Jail*, Emory Ctr. for the Health of Incarcerated Persons (Mar. 9, 2020), https://www.prisonlegalnews.org/media/publications/Emory_CHIC_Coronavirus_and_the_Correctional_Facility_2020.pdf.

[93] Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother Jones (Mar. 12, 2020), https://cutt.ly/jtRSPnk.

[94] Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, The Guardian (Mar. 13, 2020), https://cutt.ly/itRSDNH.

[95] Ex. 6, Stern Decl. ¶ 13.

[96] Internationally, governments have also responded to the threat posed by COVID-19 by releasing people from incarceration. In Iran, more than 80,000 people were temporarily released from prison to protect them and to protect

released people, in order to prevent community outbreaks of severe illness and death from COVID-19. For example, Los Angeles County, California has released more than 3,500 people;[97] New York released more than 1,600 people;[98] New Jersey 1,000 people;[99] Cuyahoga County, Ohio more than 900 people.[100]

58. States and other local jurisdictions have also made changes to existing carceral policies in response to the COVID-19 pandemic, including eliminating medical co-pays for incarcerated people and waiving fees for phone calls and video communication.[101] Others have required facilities to distribute and make available sanitation supplies and hand sanitizer to everyone who is incarcerated, arranged for the immediate evaluation and treatment of anyone with symptoms, and enacted screening procedures for everyone who enters the jail or prison.[102]

59. Over the past two weeks, multiple courts have also acknowledged the severe and

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the community from propagation of an outbreak. *See* Parisa Hafezi, *Iran Temporarily Frees 85,000 From Jail Including Political Prisoners*, Reuters (Mar. 17, 2020), https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M. In Ethiopia, more than 4,000 people were pardoned and released from incarceration to help prevent the spread of COVID-19. *See* Bukola Adebayo, *Ethiopia Pardons More Than 4,000 Prisoners to Help Prevent Coronavirus Spread*, CNN (Mar. 26, 2020), https://www.cnn.com/2020/03/26/africa/ethiopia-pardons-4000-prisoners-over-coronavirus/index.html.

[97] CBS Los Angeles, *Los Angeles, Ventura County Jails Releasing Inmates To Cut Risk Of Coronavirus Exposure* (May 3, 2020), https://losangeles.cbslocal.com/2020/04/15/coronavirus-jails-releasing-inmates-los-angeles-county-ventura-county/.

[98] Rosa Goldensohn, *COVID-Sick at Rikers On $1 Bail – And A Parole Violation*, The City (Apr. 27, 2020), https://thecity.nyc/2020/04/rikers-island-early-release-sought-amid-coronavirus-soread.html.

[99] Tracey Tulley, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times (Mar. 23, 2020), https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html.

[100] Ronnie Dahl, *Will Reduced Crowding at Cuyahoga County Jail Continue after the Coronavirus Crisis?*, 19 News (May 3, 2020), https://www.cleveland19.com/2020/04/23/will-reduced-crowding-cuyahoga-county-jail-continue-after-coronavirus-crisis/.

[101] *See, e.g.*, Jessica Miller, *Utah Jailers Say They're Proud of Their Coronavirus Response, Reject Lawsuit*, The Salt Lake Tribune (Apr. 28, 2020), https://www.sltrib.com/news/2020/04/27/utah-jailers-say-theyre/; *see also* Prison Policy Initiative, *Responses to the COVID-19 Pandemic* (May 22, 2020), https://www.prisonpolicy.org/virus/virusresponse.html.

[102] *See, e.g.*, Indiana Dep't of Corr., *Preparedness and Response Plan (Adult and Juvenile)* 5–8 (2020), https://www.in.gov/idoc/files/IDOC%20Pandemic%20Response%20Plan%203-3-2020.pdf#response%20plan.

urgent threats posed by COVID-19 and have accordingly ordered the release of detained and incarcerated persons.[103]

THE COVID-19 PANDEMIC HAS REACHED EAST BATON ROUGE PARISH AND SWIFT ACTION IS NEEDED TO PREVENT A MASS OUTBREAK IN THE JAIL

60. Louisiana has been one of the "hotspots" of coronavirus in the United States and—with approximately 37,000 confirmed cases and more than 2,500 deaths—the state currently ranks sixth in the country for its fatality rate.[104] As of May 19th, East Baton Rouge Parish has led the state with more than 1,150 positive cases of coronavirus diagnosed since May 1, 2020 and about 9% of the state's total deaths.[105] These figures were "roughly twice" that of the next closest

[103] *See, e.g.*, *Cameron v. Bouchard*, No. 20-10948, 2020 WL 2569868 (E.D. Mich. May 21, 2020); Judgment, *Dada v. Witte*, No. 1:20-cv-00458-DDD-JPM (W.D. La. May 22, 2020), ECF No. 24; TRO & Order to Show Cause at 10, *Castillo et al. v. Barr*, No. 5:20-cv-00605 (C.D. Cal. Mar. 27, 2020), ECF No. 32 (ordering petitioners be released from immigration detention in light of COVID-19 and noting "the risk of infection in immigration detention facilities – and jails – is particularly high"); *United States v. Garlock*., No. 18-cr-00418-VC-1, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (ordering, sua sponte, extension of convicted defendant's surrender date and noting "[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided"); *Xochihua-Jaimes v. Barr*, 798 F. App'x 52, 52 (9th Cir. 2020) (ordering, sua sponte, that petitioner be immediately released from immigration detention "[i]n light of the rapidly escalating public health crisis [related to COVID-19], which public health authorities predict will especially impact immigration detention centers"); *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 WL 1295155, *2 (S.D.N.Y. Mar. 19, 2020) (granting motion for reconsideration of defendant's bail conditions and releasing him from jail to home confinement, explaining that "the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent" and that "inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop"); *In re. Extradition of Toledo Manrique*, No. 19-mj-71055-MAG-1 (TSH), 2020 WL 1307109, at *2 (N.D. Cal. Mar. 19, 2020) (ordering release on bond despite government assertions that facility has preparedness plan in place and no cases have been confirmed).

[104] *Where are the US coronavirus hotspots?*, https://www.aljazeera.com/news/2020/03/coronavirus-hot-spots-200331175418853.html; Dan Swenson et al., *Coronavirus in Louisiana*, nola.com (May 22, 2020), https://www.nola.com/news/coronavirus/article_7cb2af1c-6414-11ea-b729-93612370dd94.html; *Death rates from coronavirus (COVID-19) in the United States as of May 22, 2020, by state*, statista.com (May 22, 2010), https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/; Oliver Laughland & Lauren Zanolli, *A Virus Stalks a County with One of the Highest Death Rates in US: 'People are Dropping Like Flies*,*'* The Guardian (Apr. 7, 2020), https://www.theguardian.com/us-news/2020/apr/07/cancer-alley-coronavirus-reserve-louisiana.

[105] *See* Holly Duchmann, *East Baton Rouge Parish leads state in new coronavirus cases in May*, Greater Baton Rouge Business Report (May 19, 2020), https://www.businessreport.com/newsletters/east-baton-rouge-parish-leads-state-in-new-coronavirus-cases-in-ma; Dan Swenson et al., *Coronavirus in Louisiana*, nola.com (May 25, 2020), https://www.nola.com/news/coronavirus/article_7cb2af1c-6414-11ea-b729-93612370dd94.html.

Parish.[106] As of May 21, 2020, 3,319 total people have been diagnosed with COVID-19 in East Baton Rouge Parish, with 225 confirmed deaths.[107] Portions of the state have an infection rate that is more than double that of New York City, an epicenter of the virus in this country.[108]

61. Black people have accounted for 55% of all COVID-19 deaths in Louisiana, even though they represent only 32% of the state's population.[109] Approximately 47% of East Baton Rouge Parish is Black,[110] and the jail is largely comprised of area residents.[111]

62. Distressingly, since the Governor's stay-at-home order ended on May 15, 2020,[112] Louisiana's newly reported coronavirus cases skyrocketed by more than 327% in one day, from May 20th to May 21st.[113] A mass outbreak of COVID-19 in any of Louisiana's jails or prisons, including the East Baton Rouge Parish Prison, would further strain the limited resources of state's healthcare system.

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[106] Holly Duchmann, *East Baton Rouge Parish leads state in new coronavirus cases in May*, Greater Baton Rouge Business Report (May 19, 2020), https://www.businessreport.com/newsletters/east-baton-rouge-parish-leads-state-in-new-coronavirus-cases-in-may.

[107] Reveille Staff Report, *Louisiana Coronavirus Update*, Reveille.com (May 26, 2020). https://www.lsureveille.com/coronavirus/louisiana-coronavirus-update-37-040-positive-cases-2-560-covid-19-related-deaths/article_01bc9da4-6716-11ea-bf77-2b29230adfbc.html.

[108] Oliver Laughland & Lauren Zanolli, *A Virus Stalks a County with One of the Highest Death Rates in US: 'People are Dropping Like Flies*,*'* The Guardian (Apr. 7, 2020), https://www.theguardian.com/us-news/2020/apr/07/cancer-alley-coronavirus-reserve-louisiana.

[109] David Benoit, *Coronavirus Devastates Black New Orleans: 'This is Bigger Than Katrina*,*'* Wall St. J. (May 23, 2020), https://www.wsj.com/articles/coronavirus-is-a-medical-and-financial-disaster-for-blacks-in-new-orleans-11590226200.

[110] United States Census Bureau, *QuickFacts, East Baton Rouge Parish, Louisiana*, https://www.census.gov/quickfacts/eastbatonrougeparishlouisiana (last visited May 25, 2020).

[111] Grace Toohey, *East Baton Rouge Parish Jails People at Rates Far Higher than New Orleans and Lafayette: Here's Why*, The Advocate (Sept. 14, 2019), https://www.theadvocate.com/baton_rouge/news/courts/article_aa68a582-c45b-11e9-8439-a7110c42fa80.html (noting that the EBRPP "detain[s] the most local inmates among Louisiana's six most populous parishes).

[112] Assoc. Press, *11 Graphics that Officials Say Tell the Strong of Louisiana's Fight Against Coronavirus in May*, The Advocate (May 11, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_418bba9c-93ed-11ea-8311-135ae37e6259.html.

[113] The New York Times, *Louisiana Coronavirus Map and Case Count*, (May 22, 2020), https://www.nytimes.com/interactive/2020/us/louisiana-coronavirus-cases.html.

63. In light of the impending pandemic, the Governor of Louisiana declared a public health emergency on March 11, 2020[114] and a state of emergency on March 16, 2020[115] in response to the rapidly growing presence of COVID-19 in Louisiana. The Governor also issued a stay-at-home order on March 22, 2020[116] that was extended to May 15, 2020.[117] During that time, although Louisiana's citizens could venture out to purchase groceries and engage in other essential activities, individuals were mandated to maintain social distancing and avoid gatherings of more than 10 people.[118]

64. The Governor's May 15th order moving Louisiana to Phase One of reopening does not reflect a major change from the state's previous practices.[119] Citizens are still required to practice social distancing, and all non-essential businesses must enforce a strict twenty-five percent occupancy limit.[120]

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[114] State of Louisiana, Exec. Dep't, Proclamation No. 25 JBE 2020, *Public Health Emergency-COVID-19* (Mar. 11, 2020), https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf.

[115] State of Louisiana, Exec. Dep't, Proclamation No. JBE 2020-30, *Additional Measures for COVID-19 Public Health Emergency* (Mar. 16, 2020), https://www.gov.louisiana.gov/assets/Proclamations/2020/30-JBE-2020-Public-Health-Emergency-COVID-19-additional-measures.pdf.

[116] State of Louisiana, Exec. Dep't, Proclamation No. 33 JBE 2020, *Additional Measures for COVID-19 Stay at Home* (Mar. 22, 2020), https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf.

[117] State of Louisiana, Exec. Dep't, Proclamation No. 52 JBE 2020, *Renewal of State Emergency for COVID-19 Extension of Emergency Provisions* (Apr. 30, 2020), https://gov.louisiana.gov/assets/Proclamations/2020/52-JBE-2020-Stay-at-Home-Order.pdf

[118] *Id.*

[119] State of Louisiana, Exec. Dep't, Proclamation No. 58 JBE 2020, *State of Emergency for COVID-19 Phase 1 of Resilient Louisiana* (May 14, 2020), https://gov.louisiana.gov/news/PhaseOne. Notably, this order states: "All individuals who are at higher risk of severe illness from COVID-19 should stay at home, unless travelling outside the home for an essential activity…Those individuals who are at higher risk of severe illness, as designated by the Centers for Disease Control (CDC) are those with conditions such as asthma, chronic lung disease, compromised immune system (including from smoking, cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS or use of corticosteroids or other immune weakening medications), diabetes, serious heart disease (including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and hypertension), chronic kidney disease undergoing dialysis, liver disease, or severe obesity or those who are 65 or older or living in a nursing home or long-term care facility."

[120] *Id.*

65. On March 12, 2020, the Sheriff suspended all visitation, volunteer programs, and tours of the Parish Prison "indefinitely"[121] and discontinued all non-emergent off-site trips.[122] These restrictions remain in effect despite the Phase One reopening.

66. On March 17, 2020, just hours before the first reported case of COVID-19 in the Parish, Baton Rouge officials, including Defendant Sheriff Sid Gautreaux, held a press conference to inform the public they were ready.[123] Defendant Gautreaux admitted that it was only a matter of time before COVID-19 got into the jail.[124] He further admitted that a single case inside the facility could spread rapidly and that the jail's close confines made social distancing all but impossible.[125] Gautreaux announced a number of steps taken at the jail, including the troubling decision to open wings of the jail that had been closed—indeed, condemned—for years in order to house COVID-19-positive individuals.[126] Gautreaux promised to "change things on a daily basis" as more information came in and as the situation developed.[127] As COVID-19 spread into

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[121] East Baton Rough Sheriff's Office, *Message From The Sheriff* (last visited May 26, 2020), https://www.ebrso.org/ (explaining, from March through sometime in or around May 2020 that the jail was closed to visitors "indefinitely," but recently indicating that "Visitation at the EBR Parish Prison will remain suspended until recommended by CDC and the LA Department of Corrections."); WAFB9, *Visitation Policies Impacted by COVID-19* (last updated Mar. 23, 2020) https://www.wafb.com/2020/03/13/visitation-policies-impacted-by-covid-/

[122] State of Louisiana, Louisiana Dep't of Public Safety & Corr., *Coronavirus (COVID-19) Response* (Mar. 12, 2020), https://doc.louisiana.gov/wp-content/uploads/2020/03/3.13.20-Coronavirus-Inmate-Notification-of-Visiting.pdf.

[123] WBRZ Channel 2, *Watch Live: Mayor-President Sharon Weston Broome Provides EBR Residents with an Update on the Parish's Response to the Coronavirus Pandemic* (Mar. 17, 2020, 1:20 p.m.), https://www.facebook.com/watch/?v=281500782819991.

[124] Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in jail*, The Advocate (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

[125] Paul Braun, *Louisiana Considers Early Release Of Some Inmates Among Measures To Reduce COVID-19 Outbreak*, 89.9 WWNO New Orleans Public Radio (Mar. 17, 2020), https://www.wwno.org/post/louisiana-considers-early-release-some-inmates-among-measures-reduce-covid-19-outbreak.

[126] *Id.*

[127] WBRZ Channel 2, *Watch Live: Mayor-President Sharon Weston Broome Provides EBR Residents with an Update on the Parish's Response to the Coronavirus Pandemic* at 3:49 (Mar. 17, 2020, 1:20 p.m.),

jail, however, Defendants failed to keep this promise.

67. Defendants well know that people incarcerated in the Jail face a significant risk of exposure to COVID-19. The CDC, the LDH-OPH, the Chief Justice of the Louisiana Supreme Court, the Parish Mayor-President,[128] medical experts, and various advocates[129] have repeatedly alerted the community and Defendants to the imminent risk of serious harm and death,[130] and the preventive measures necessary to protect against the further spread of COVID-19. Indeed, the Defendant Sheriff himself even admitted in mid-March that "it's only a matter of time before coronavirus arrives in the jail."[131]

68. On March 25, 2020, the Mayor-President held a conference call with representatives from the East Baton Rouge Parish Prison Reform Coalition, the Warden's Office, the Sheriff's Office, the Health Director for the Prison, and the District Attorney and the Public Defender's Office to review procedures for addressing the COVID-19 pandemic.[132] The Mayor-President's comments included an acknowledgment that "[m]ost people in the parish prison have

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https://www.facebook.com/watch/?v=281500782819991, beginning at 3:49.

[128] Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in the jail*, The Advocate (Mar. 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html ("implor[ing]" community members to practice social distancing because "[w]e're talking about life or death issues here").

[129] *See, e.g.*, Vera Institute of Justice, *Louisiana must overhaul its justice system practices to respond to COVID-19* (April 9, 2020), available at https://www.vera.org/downloads/publications/Coronavirus-Guidance-Louisiana-Justice-System.pdf.

[130] These deaths touched Corrections officials closely. In April, the Warden and Medical Director at the state prison in Avoyelles Parish died of COVID-19-related conditions, as recognized by Department of Corrections Secretary James LeBlanc. *See* WDSU Digital Team, *Warden, Medical Director of Louisiana Prison Die After Contracting Coronavirus, State Says*, WDSU (Apr. 20, 2020), https://www.wdsu.com/article/2-new-covid-19-related-deaths-reported-by-louisiana-prison-system-1-inmate-1-employee/32214252.

[131] Lea Skene & Jacqueline DeRobertis, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in the jail*, The Advocate (Mar. 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html.

[132] Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020)

not been convicted and [are] innocent until proven guilty," and that "[w]e have a duty to look out for their well-being."[133]

69. On April 2, 2020, the Chief Justice of the Louisiana Supreme Court sent an open letter to Louisiana's District Judges—including those in the 19th Judicial District Court in Baton Rouge—highlighting the importance of "minimiz[ing] the number of people detained in jails" and asking the judges to assess "all detainees" with an eye toward modifying conditions of detention; she specifically called, for example, for the release of individuals charge with misdemeanors, non-violent offenses, and city holds, and for the reduction of bail for individuals charged with other criminal matters.[134] The Chief Justice warned that "[a]n outbreak of COVID-19 in our jails would be potentially catastrophic for jail staff, the families of jail staff, and inmates" and "[t]he decisions that [Judges] make will have a significant impact on our communities and our state and will save lives."[135]

70. On April 8, 2020, the Louisiana Department of Health's Office of Public Health (LDH-OPH) issued official recommendations regarding prisons and detention centers to the Department of Public Safety and Corrections.[136] LDH-OPH recommended several measures that it concluded were "necessary to help control and prevent further spread of COVID-19, . . . a serious and imminent threat to the public health," and to avoid "overwhelm[ing] the state's medical facilities." *Id.* The thirteen bullet-pointed recommendations in the letter include activities such as providing soap for hand-washing or alcohol-based sanitizers, screen individuals suspected of having COVID-19 by a trained emergency medical personnel and "transport anyone you think

[133] Ex. 14, Mayor Broome West's Comments.

[134] Ex. 15, LA Sup. Ct. Letter at 1-2 (Apr. 2, 2020).

[135] *Id.*

[136] *See* Ex. 16, LDH Office of Public Health Guidance (Apr. 8, 2020).

might have COVID-19 to a healthcare facility," provide appropriate personal protective equipment to all staff and inmates, isolate sick individuals away from all other individuals in medically appropriate housing units, daily cleaning for surfaces, and ensure that all individuals in the facility "maintain a distance of at least 6 feet from each other" or "reduce the size of the jail population . . . to comply with this recommendation." *Id.* This memo was rescinded within hours without explanation or alternative guidance being issued.

71. For years, Baton Rouge policymakers have acknowledged that the old part of the jail—which was condemned and closed before this pandemic—is unfit for the safe detention of people and the provision of health care. In 2015, Sheriff Gautreaux told the Parish's Metro Council the "old part of the prison is really in deplorable condition. We have issues with ventilation; with plumbing. Really it's laid out in the old way, that poses a problem from a safety standpoint for the safety of the inmates in the prison . . . ."[137] He concluded that the current facility is "not adequate for providing health care" and admitted the "if [investigators from the federal Department of Justice] came in that prison today, they would shut half of it down."[138] The Metro Council also heard that Dr. Rani Whitfield, who had worked in the jail for 16 years, witnessed a "significant decline in care to patients" due to underfunding and understaffing.[139] Councilwoman Banks-Daniel presciently described the health care situation in the jail as "catastrophic."[140]

72. An assessment of the jail's health care system by Health Management Associates ("HMA"), commissioned by the Baton Rouge Metro Council, confirmed that the health "care

[137] Ex. 17, City of Baton Rouge/Parish of East Baton Rouge, Jan. 14, 2015 Metro. Council Mtg., Items 13P and Q Part 1 (filed in traditional manner).

[138] *Id.*

[139] Ex. 18, City of Baton Rouge/Parish of East Baton Rouge, Aug. 26, 2015 Metro. Council Mtg. 28:10, Item 9 Part I and II (filed in traditional manner).

[140] *Id.* at 51:39.

provided is episodic and inconsistent"[141] and that only about 36% of the needed doctor positions were filled.[142] HMA highlighted the jail's "notably deficient" physical plant and "inadequate medical units, dental suites, infirmary space, [and] . . . medical/MH screening space."[143] HMA concluded to the Metro Council that "[a]ny solution will be more expensive than the current system";[144] HMA believed that the Parish's investment in the jail's health care system would need to double from approximately $five million in 2016 to $ten million.[145] Rather than make the necessary investment, the City/Parish's "solution" was to outsource health care to a private, for-profit company, CorrectHealth.[146] The total increase for the jail's health care budget when the City/Parish hired CorrectHealth was only 12%.[147]

73. The result has been nothing short of catastrophic. CorrectHealth failed to increase staffing levels for health care workers at the jail; instead, the company decreased them.[148] Not surprisingly, the death rate at the jail—which was already high compared to the national average—continued to climb under CorrectHealth's management and now far exceeds the national mortality

[141] Ex. 19, Health Mgm't Assocs. Final PowerPoint at 24.

[142] *Id.* at 12.

[143] *Id.* at 23.

[144] *Id.* at 30.

[145] Ex. 20, Health Mgm't Assocs. Draft PowerPoint at 27.

[146] Ex. 21, CorrectHealth Contract.

[147] *Compare* Consol. Gov't of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 146, *available at* https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget (budgeting $4,860,230 for medical services at the jail in 2016), *with* Ex. 21, CorrectHealth Contracts (contract providing CorrectHealth with $5,292,429.96 to provide medical services in the jail).

[148] *Compare* Consol. Gov't of the City of Baton Rouge & Parish of East Baton Rouge, Louisiana, *Annual Operating Budget For the Year Beginning January 1, 2016* at 66, 146-47, https://www.brla.gov/DocumentCenter/View/3632/2016-City-Parish-Budget (funding 36 FTE, including 20 LPN positions, and contract services for "medical director, a physician, a dentist, a psychiatrist, a psychiatric nurse practitioner, an infectious disease physician, an x-ray technician, oral surgery, and ophthalmology services") *with* Ex. 21, CorrectHealth Contract (providing a total of 38.9 FTE, including .5 FTE medical director and no other doctor level services).

rate.[149]

74. Advocates have long protested against the health care crisis in the jail, and they redoubled their efforts in light of the COVID-19 pandemic. Several national and local organizations—including Court Watch NOLA, The Bail Project, The Promise of Justice Initiative, VOTE, Advancement Project, and the East Baton Rouge Parish Prison Reform Coalition—circulated a letter to the state district court and city judges on March 20, 2020 calling for "decisive, bold action" to release detainees and reduce the Prison population.[150]

75. They followed up with a letter to the Sheriff, District Attorney, and district and city court judges (cc-ing the Mayor-President, Police Chief, and Parish Prison Warden) demanding "immediate and drastic action to protect incarcerated people from COVID-19" and highlighting the "close quarters, unsanitary conditions, a population that is more vulnerable to COVID-19, and the large number of people that cycle through the criminal justice system."[151] "The safest way to ensure that EBRPP does not become a vector for COVID-19's spread is to reduce the number of people who are incarcerated."[152] The advocates also called for compliance with the CDC and other health guidelines, the release of vulnerable populations and pre-trial detainees immediately, education for detainees and staff about how to protect themselves from COVID-19, free access to

[149] *See, e.g.*, Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison*, Promise of Justice Initiative (July 2018), *available at* https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf; *see also* Ex. 22, Expert Report of Dr. Jeffrey Schwartz at 6, *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-cv-656-JWD-EWD (M.D. La. 2018), ECF No. 172-1 (noting the extremely high mortality rate at the jail of "three times the national average" since CorrectHealth took over responsibility for health care at the jail).

[150] *See* Advocates' Ltr. to Judges (Mar. 20, 2020), *available at* https://bailproject.org/wp-content/uploads/2020/03/east-baton-rouge-parish-prison-covid-19.pdf.

[151] *See* Ltr. from East Baton Rouge Parish Prison Reform Coalition to Sheriff Sid Gautreaux, available at https://promiseofjustice.org/wp-content/uploads/2020/03/COVID-19-Prevention-and-Protection-in-East-Baton-Rouge-Parish-Prison.pdf.

[152] *Id.*

hygiene supplies, and the development a plan for appropriately housing individuals suspected of being infected with coronavirus that did not include lockdown.[153] On this final point, advocates highlighted the "substantial, serious mental harm" caused by lockdowns, which can "exacerbate[e] feelings of stress and anxiety amongst those in custody" and "cause serious, persistent, sometimes permanent damage" while failing to account for viral transmissions by staff or the need for increased medical access during symptomatic periods.[154] "The way we treat the most vulnerable at this critical point in time will not only reveal much about our community but will directly impact the safety of all of us . . . ."[155]

76. On April 22, 2020, the East Baton Rouge Parish Prison Reform Coalition published a community-driven public health plan for addressing the pandemic in the jail, including recommendations to provide testing of everyone detained in or employed by the jail[156] and to refrain from using lockdown solitary confinement.[157] On May 18, 2020, the Louisiana Stop Solitary Coalition also sent a letter to the Governor's Healthcare Equity Task Force to express concern over the use of lockdown solitary confinement by the Louisiana Department of Corrections. The Coalition asked that the administration release significantly larger numbers of people from prisons and jails and immediately refrain from using lockdown as a form of medical

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[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] The need for mass testing is obvious. For example, when the approximately 200 women detained at Elayn Hunt Correctional Center in St. Gabriel, Louisiana, were tested for the virus, about 85% tested positive, yet about three quarters of the confirmed cases were asymptomatic. Lea Skene, *85% of Inmates in St. Gabriel Women's Prison Got Coronavirus but Most Showed No Symptoms*, The Advocate (May 6, 2020, 4:01 PM), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_2c551b72-8fbb-11ea-849a-e390bbc57059.html?utm_medium.

[157] Ex. 23, East Baton Rouge Parish Prison Reform Coalition, *You Can't Manage Health Care from a Jail: A Community-Driven Public Health Approach to COVID-19 at the East Baton Rouge Parish Prison* (Apr. 2020).

isolation.[158]

77. In late April, the Jail declined a donation of N-95 masks for the people detained at the parish prison by a community organization, Voice of the Experienced ("VOTE"), asserting that they did not need the masks.[159]

78. On March 28, 2020, the jail detected its first detainee with COVID-19.[160] The second would come a day later.[161] By April 9, 2020, there were eight positive coronavirus cases in the East Baton Rouge Parish Prison, and four detainees had been sent to Our Lady of the Lake Hospital for severe medical issues from the coronavirus.[162] And by May 14, 2020, the jail reported that 93 detainees tested positive for the virus.[163] As of April 5, 2020, three Sheriff's deputies tested positive, and at least one Sheriff's deputy who had direct contact with detainees had died from the virus.[164]

DEFENDANTS' RESPONSES TO THE COVID-19 PANDEMIC ARE CONSTITUTIONALLY DEFICIENT AND PLACE THE PEOPLE IN ITS CUSTODY AT HEIGHTENED RISK

79. The East Baton Rouge Parish Prison is designed to hold 1,594 people. The majority—about 89%—of detainees confined in the jail are there pretrial.[165] The jail also holds

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[158] Ex. 24, Ltr. from La. Stop Solitary Coalition to Members of the Prison Subcommittee of the Governor's Healthcare Equity Task Force re: Alternatives to Solitary and Camp J During COVID-19 (May 18, 2020).

[159] *See* Ex. 25, E-mail from Rev. Alexis Anderson to Darryl Gissel (Apr. 25, 2020).

[160] Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/.

[161] *Id.*

[162] Ex. 26, EBRPP COVID-19 Update (Apr. 9, 2020).

[163] Ex. 1, EBRPP COVID-19 Statistics (May 14, 2020).

[164] Lea Skene, *East Baton Rouge Deputy—"A Dedicated Public Servant"—Dies from Coronavirus, Sheriff Says*, The Advocate (Apr. 5, 2020), https://www.theadvocate.com/baton_rouge/news/ coronavirus/article_27ecdcac-7759-11ea-9ab3-e72613b104ed.html.

[165] *See* Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-

individuals on work-release (both pretrial and post-conviction) and post-conviction detainees serving sentences with the Department of Corrections. Currently, the jail confines 1,235 people. Individuals in the Sheriff's custody are also held in jails across the state, which serve as overflow facilities when the jail is overcapacity.[166]

80. Despite the repeated urgent calls to reduce jail populations and implement basic protective measures, Defendants have failed to take sufficient steps to do either. And Defendants are woefully unprepared and incapable of taking the necessary precautions to protect and provide adequate medical treatment for the people currently confined in the jail in the face of this unprecedented, life-threatening public health crisis.

81. Policymakers, including the Defendants, instead established *de facto* policies of detaining people in unconstitutional conditions of confinement and denying adequate health care to detainees. The failure to provide adequate living conditions and health care is not an unintended error but the predictable result of a *de facto* policy that denies detainees adequate health care, ensuring the suffering and even potential deaths of Plaintiffs from COVID-19.[167]

A. The East Baton Rouge Parish Prison is Not Fit to Hold Human Beings

82. The EBRPP is a dilapidated warehouse of caged humanity. The jail was built in 1965, with no substantive renovations since the 1980s, and the A, B, and C wings have been condemned since 2018 due to a constellation of conditions that made it impossible to keep people safe.[168] Even the parts of the facility that are not condemned are crumbling and decrepit. The

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Prison-Final.pdf.

[166] Ex. 26, City of Baton Rouge/Parish of East Baton Rouge, Feb. 25, 2015 Metro. Council Mtg. 00:23, Item 13 Part I (filed in traditional manner).

[167] *See Shepherd v. Dallas Cty.*, 591 F.3d 445, 449 (5th Cir. 2009).

[168] *See* Lea Skene, *Officials close three wings at aging East Baton Rouge Prison because of safety concerns*, The Advocate (Dec. 31, 2018), https://www.theadvocate.com/baton_rouge/news/article_56230150-0315-11e9-b84f-

buildings where people are housed are in terrible condition. The roof leaks, the walls and floors are filled with mold and rust, the showers and toilets are broken or bug-infested on many of the housing lines ("lines), the windows are so dirty that detainees cannot see out of some of them, and rats have overrun some dorm areas, requiring detainees to sleep with their food to prevent it from being eaten by vermin. On some lines, the walls are streaked with blood and other bodily fluids. The bars on the housing lines are "gunked up with mold, juice, spit, and old food."[169]

83. The jail has a long and ignoble history of medical issues and poor medical care, and it has one of the highest death rates—largely related to medical neglect—of all jails in the country.[170] The jail is responsible for the wrongful deaths of numerous men and women.[171] All this before a pandemic that threatens a fatality rate of epic proportions.

84. Since mid or late March, the facility has been closed to visitors—including attorneys—and the people confined inside this facility have limited access to their loved ones and the outside world.

B. Critical Social Distancing, Sanitation, and Precautionary Protections are Not Possible in the Jail's Quarantined Housing Lines

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97327cf57814.html ("Three wings of the East Baton Rouge Parish Prison were closed in 2018 because of safety concerns for both guards and inmates")

[169] Ex. 4 to Pls.' Emergency Mot. for TRO and Prelim. Inj. ("TRO"), Declaration of Forrest Hardy ¶ 15 ("Hardy Decl.").

[170] Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), *available at* https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf.

[171] *See generally O'Quin v. Gautreaux*, No. 14-98-BAJ-SCR, 2015 WL 1478194 (M.D. La. 2015); *Lewis ex rel. Johnson v. E. Baton Rouge Parish*, No. 16-352-JWD-RLB, 2017 WL 2346838 (M.D. La. 2017); *Cleveland v. Gautreaux*, No. 15-744-JWD-RLB, 2018 WL 3966269 (M.D. La. 2018); *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-656-JWD-EWD, 2018 WL 4517461 (M.D. La. 2018); Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison*, Promise of Justice Initiative (July 2018), https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf; *see also* Ex. 22, Expert Report of Dr. Jeffrey Schwartz at 6, *Zavala v. City of Baton Rouge/Parish of E. Baton Rouge*, No. 17-cv-656-JWD-EWD (M.D. La. 2018), ECF No. 172-1 (noting the extremely high mortality rate at the jail of "three times the national average" since CorrectHealth took over responsibility for health care at the jail).

85. Since on or around March 28, 2020, all of the general population "housing lines" in which detainees are confined ("lines") have been "quarantined." The detainees are not permitted to leave their quarantined housing lines for any reason, except to obtain emergency medical care or when they are moved to the solitary confinement lines used for coronavirus patients. They cannot go to court, and several detainees have missed court dates that otherwise would have allowed them to walk free. They are also prevented from going to the meal hall, outdoor recreation spaces, or anywhere else in the facility. All life happens on their lines.

86. General population housing lines are made up of either or two large dorm rooms filled with bunk beds or a row of cells that house approximated two to four people, along with a communal "day room" and a multi-person bathroom. There is no way to socially distance on these lines, even with population reductions spurred by the pandemic. The dorm-style housing lines can hold between 24 and approximately 100 people in each dorm room.

87. Detainees sleep in bunks that are no more than a few feet apart, or in some cases only a couple inches apart.[172] The aisles between the rows of beds are only wide enough for two people to pass at once. The individuals on these lines cannot be six feet apart while they are sleeping or moving around these dorm rooms.

88. Detainees spend most of their days in the day rooms on each line and cannot socially distance here either. During shift change and roll call, which happens twice a day and lasts for up to an hour each time, detained people are all required to be in the day room, often clumped around the door waiting for guards to call their names. The twice-a-day "pill call" is much the same: detained men and women are required to line up one closely behind the other in

[172] *See* Ex. 3 to TRO, Declaration of Christopher Lee Rogers Decl. ¶ 49 ("We have to climb into our beds from the foot of the bed" because they are so close together).

the day room to receive their prescribed medications—for conditions such as high blood pressure, diabetes, HIV, and mental health needs—from CorrectHealth's nurses. They have to take their medications in front of her, without the opportunity to wash their hands first.

89. During the rest of the day, detainees cannot leave their housing line and often congregate in the day room to watch television—their primary source of information about the coronavirus—talk on the telephone with their lawyers or family, or eat. The day rooms do not have enough seating to hold everyone on the line, and the seating available forces people to be within six feet of each other when they watch TV, eat, or otherwise spend their days in the communal space.

90. The furniture in the day rooms is bolted to the floor, so individuals detained in these facilities cannot move the tables or chairs to create more distance.

91. Jail officials refused to accept donated N95 masks from local non-profit VOTE to protect against the spread of the disease.[173] The jail initially handed out masks to the people it detained. These masks were made of a flimsy material, but the jail made the detainees use one for several days at a time. The jail did not replace torn or dirty masks—neither of which are sufficient to prevent the spread of the disease. Shortly thereafter, the jail largely stopped handing out masks, even to the men suspected of having the coronavirus, and instead provided thin cloth bandanas to all the people in its custody. Guards collect these bandanas from the detainees only about once a week to launder them before redistributing them. But the laundry facilities use only the speed wash setting to clean these items.

92. The lines are not sufficiently cleaned. In lieu of cleaning themselves, guards pick detainees to clean the housing lines throughout the jail. At least one Plaintiff was picked to clean

[173] *See* Ex. 25, E-mail from Rev. Alexis Anderson to Darryl Gissel (Apr. 25, 2020).

some of the COVID-19 solitary confinement units and developed COVID-19 symptoms two days later; he was then sent to solitary confinement for his symptoms.

93. Guards bring limited cleaning supplies onto the lines. Often, these supplies are just a mop and bucket with water; about two to three times a week, guards might dilute some cleaning solution into the water, but that solution often is not bleach. Detainees are required to mop the floors, and they try to clean other surfaces with rags torn from old towels. But those surfaces get so many touches throughout the day that they do not stay clean for long. The tables where people eat, for example, are littered with food particles throughout the day. These high-touch communal surfaces are not and cannot be cleaned between uses and, even after they are cleaned, they do not stay clean for long.

94. The bathrooms are also cleaned, at most, once a day, even though all the detainees share the same facilities. This cleaning has little effect, though, as the shower area is covered in mold and scum so thick the men can scrape it off the wall with their fingernails even after the shower has been cleaned. On some lines, upwards of 80 men have to share 5 showers and 5 toilets.

95. It is not possible to maintain adequate social distance in the bathrooms. Toilets, sinks, and showerheads are so close that the detainees can touch each other while using them. None of the toilets in the jail have lids to contain splashes or particulate matter.

96. Detained individuals also share the limited number of telephones on the lines, and the telephones are not cleaned between uses. Without chemicals or cleaning wipes, the detainees do their best to wipe the heavily used phones on their uniforms or clean them with soap and water. But this is insufficient, and detainees are left to put a sock on the phone (and sometimes also on their hands) to attempt to protect themselves from transmission of the virus.

97. The jail is supposed to provide each detainee with one bar of soap, one roll of toilet

paper, a toothbrush, and toothpaste every week. At least during the pandemic, however, the jail has sometimes failed to meet this obligation or to provide each detainee with all of the required supplies. Detainees do not receive any supplies to help them fight transmission of the virus; the soap they receive is only deodorant soap, and is not effective against the virus.[174] In addition to washing their bodies, detainees had to use soap and water to clean their areas, their bandanas, and sometimes the telephone because they could not get adequate cleaning supplies for these purposes from the guards. As a result, their bars of soap generally did not last the full week, and detainees had to supplement with provisions purchased from the commissary with funds loved ones put into their jail accounts.

98. Guards feed the detainees on their housing lines during quarantine. Food for the detainees is cooked by other detainees in an unsanitary kitchen. The smell of spoiled food pervades the kitchen, and old food is crusted onto the serving area, on the counter, and on the walls. Guards let the kitchen workers clean the hot box, where warm food is stored, with the same broom they use to sweep the floor.

99. During the coronavirus pandemic, guards wheel cold food onto each housing line in a cart that the guards then use to collect the trash from the line. The guards wear the same gloves to hand food to everyone on the line and on other lines. Sometimes, the guards do not wear masks or gloves on the line at all, most recently noting that such protections were no longer necessary.

100. Jail staff do not provide detainees with sufficient information about the coronavirus, its symptoms, or how to protect themselves from the virus. On the Q9-10 lines, guards even turned off the television when news about the coronavirus came on. Jail staff keep information from

[174] Ex. 9, Rottnek Decl. ¶¶ 17, 42.

detainees about coronavirus in the facility and in the community, and they do not instruct detainees on proper handwashing or mask-wearing techniques.

C. Defendant City of Baton Rouge (through CorrectHealth) Provides Inadequate Medical Care to Prevent the Transmission of COVID-19

101. The first detainee at the jail was hospitalized for coronavirus on March 28, 2020 and the second followed the very next day.[175] Staff left the man on the Q11-12 line until he was so sick he could barely walk.

102. At that time, Defendants told the public they were checking every detainee's temperature in an effort to combat coronavirus.[176] But Defendants did not start universal temperature checks until sometime in early or mid-April, after the first death and after numerous men put in sick calls for COVID-19-related symptoms. Even then, Defendant CorrectHealth chose to check only temperatures, rather than examining a broader list of COVID-19 symptoms. Nurses completed temperature checks during pill call, forcing potentially sick men to stand close in line to other men in the dorm. Social distancing is not possible during pill call.

103. If an individual had an elevated temperature—supposedly over 100.4 degrees Fahrenheit[177]—CorrectHealth employees were supposed to test him or her and directed that the detainee be moved off the line, even before any test results came back. But CorrectHealth employees did not ensure that the individuals were moved immediately, and guards often left the individuals on the line around their peers for various amounts of time, sometimes as long as twelve

[175] Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/.

[176] Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020); Rachel Thomas, Nick Gremillion, & Kiran Chawla, *2 EBR Inmates Test Positive for COVID-19; Wing of Prison Quarantined*, WAFB9 (Mar. 30, 2020), https://www.wafb.com/2020/03/31/ebr-inmate-tests-positive-covid-after-reported-drug-overdose-wing-prison-quarantined/.

[177] Ex. 2, E-mail from Darryl Gissel to Jennifer Harding (Apr. 1, 2020).

hours.

104. CorrectHealth employees have not continued to check temperatures through the present, however. They stopped universal temperature checks in late April or early May and have reverted to checking only individuals who display coronavirus symptoms. Even then, they regularly choose to leave men with elevated temperatures on the housing line until they are too sick to be ignored, in violation of the CDC's guidelines. They do not provide these men with any treatment for coronavirus on the lines; they often are unable to access even over-the-counter medications such as Tylenol or Mucinex, which the jail stocks.

105. The jail stopped testing detainees for coronavirus about a week before they stopped taking temperatures. The only individuals they currently test are those who are so sick that they are moved off the line to the solitary confinement lines.

106. Individuals who need medical care beyond their regular medication or temperature checks are required to complete a sick call form, even if they need more emergent care. Detainees have to request sick call forms from the guards before they can submit them. Sometimes, these requests are met with violence by jail staff.[178] Other times, it takes up to a couple days for nurses to respond.

107. Other times, detainees remain on the line—visibly sick to all—without any attention from the medical staff. Nurses often do not come on the housing lines except during pill call, and jail staff ignore symptoms such as coughing. They respond only when someone is too sick to get out of their bed. Jail staff has started bringing sick people onto the housing lines and

[178] *See, e.g.,* Zoe Tillman, *A Video Shows A Sheriff's Deputy Choking An Inmate. The Inmate Says He Faced Retaliation For Repeatedly Asking For Medical Care*, BuzzFeedNews (Apr. 16, 2020), https://www.buzzfeednews.com/article/zoetillman/video-louisiana-inmate-choked-coronavirus (showing video footage of a sheriff's deputy choking a handcuffed detainee until he became unconscious and Defendant Grimes claiming the force used was not excessive).

will leave the men for a few hours or overnight until it is obvious that the person is too sick and—in the jail's estimation—needs to be moved to lockdown.

108. Upon information and belief, guards, nurses, and other staff at the facility do not undergo regular testing, even as they move about in a community that has a significant outbreak of COVID-19.

D. Defendants' Solitary Confinement Lines Do Not Constitute Acceptable Medical Isolation

109. Individuals who have or are suspected of having COVID-19 are moved to a solitary confinement line in the A, B, or C wings, the same wings of the old jail that were condemned and shut down in 2018. Upon information and belief, the jail did not repair or deep clean these lines before they moved detainees onto them. The lines remain filthy and unsafe. In addition to the conditions that plague the rest of the jail, these lines are covered in black mold; are home to large rats and spiders; have showers that leak water down the hallway; and have only questionably potable water in the cells. Individuals detained on solitary confinement lines are not permitted to leave their lines for any reason.

110. Individuals on the A, B, and C lines are confined in small, often poorly ventilated units with either one or four-person cells. Detainees on the B line often share their cells with one or two other people, and the beds in those cells are less than four feet apart, making it impossible to maintain a distance of at least six feet. The cells on each of these lines are separated by thin metal walls, but the front of the cells have bars that allow for the consistent circulation of ambient air. Men can reach out of the bars on the front of their cells and into the cells next to them; they pass hygiene supplies, books, and food up and down the line this way.

111. Detainees in solitary confinement are locked in their cells by the guards for approximately 23 hours per day. Some individuals get as little as 15 minutes out of their cell each

day to shower and call their loved ones. The solitary confinement lines have no access to televisions or radios. Guards beat up, mace, or threaten men who seek extra time out of their cells to shower or make phone calls. After they've finished giving every detainee their turn out of their cells, the guards often leave the lines entirely—sometimes for hours at a time—and detainees have to beat on the door or kick their walls to get the guards' attention if they need it.

112. The same concerns regarding social distancing, sanitation, and protections against transmission that exist on the quarantined general population lines are present in the solitary confinement lines as well.

113. As in the quarantined general population lines, all detainees on a solitary confinement line share the same shower and telephone. But these amenities are generally not cleaned between each use—even though many of the men on the line are sick—and may not even be cleaned every day. Detainees put a sock over the phone to protect themselves when they call their loved ones or their attorneys. The showers on most of these lines are so cold that they're unusable, and men often have to bathe in the sinks in their cells.

114. The limited cleaning supplies provided by the guards (a mop, bucket, water, and occasional diluted, unidentified non-bleach chemicals) are insufficient to properly sanitize their living spaces. Detainees are not allowed to use these cleaning supplies in their individual cells. At one point, guards on the C01 line provided each detainee with just one paper towel to wipe down mattresses that were previously used by COVID-19-positive detainees.

115. The people detained on solitary confinement lines are not permitted access to the jail's commissary, where they could purchase hygiene supplies and more or better food. Instead, these individuals have to depend on the state-issued supplies of one bar of soap, one roll of toilet paper, a toothbrush, and toothpaste no more than once a week. At least during the pandemic, the

jail failed to meet this obligation consistently and completely—often missing weeks or missing one or more of the required items. Those individuals detained around other sick people had to conserve their soap and hygiene products, as the bars of soap they received would often last only a short period of time. In addition to washing their bodies, detainees had to use soap and water to clean their cells, their bandanas, and sometimes the telephone because they could not get adequate cleaning supplies for these purposes from the guards.

116. In short, the solitary confinement lines that Defendants use to warehouse people who have contracted COVID-19 or are displaying symptoms commensurate with the virus are incredibly punitive and indistinguishable from the lines used for disciplinary segregation.

117. Social scientists uniformly document that solitary confinement, even for a period of days or weeks can have profound psychological and physical effects, such as a heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic fatigue (including lack of energy and lack of initiative to accomplish tasks), nightmares, heart palpitations, and fear of impending nervous breakdowns. Other documented effects include obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic depression, feelings of overall deterioration, as well as suicidal ideation. Individuals in prolonged solitary confinement frequently fear that they will lose control of their anger, and thereby be punished further.

118. Although persons sent to the A, B, and C solitary confinement lines have cell- and/or line-mates, being locked up around the clock—particularly in the cramped conditions in the jail's solitary confinement lines—does not necessarily compensate for the feelings of isolation and disorientation that these individuals frequently experience. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1265, 1299-30 (N.D. Cal. 1995).

E. The City/Parish, through CorrectHealth, and the Jail Fail to Provide COVID-19-Positive Detainees With Even Remotely Adequate Medical Care for the Virus in Solitary Confinement

119. Proper medical care is not provided to people even when they are placed on the COVID-19 solitary confinement lines. CorrectHealth nurses do not regularly check detainees' breathing patterns, evaluate other symptoms, offer breathing treatments, or provide access to negative pressure rooms. Nurses do not always even take the temperatures of the individuals in solitary confinement, either.

120. The only medical care the CorrectHealth nurses and the jail staff provide to coronavirus patients is Tylenol, Mucinex or some other sinus pills, Vitamin C, and sometimes Gatorade. Nurses hand these out during once or twice daily pill calls, but provide no other care for the coronavirus.

121. Defendant CorrectHealth's nurses also often reject other requests for medical care that they receive from the men on these solitary confinement lines during pill call or through a sick call, noting on at least one occasion that they do not have the resources to provide that care during the pandemic.

122. Medical emergencies in solitary confinement require that detainees pound on the door to the line or kick the walls in their cells to get the guards' attention. Sometimes, the guards respond after about fifteen to twenty minutes; sometimes, they do not respond at all. Guards screen all medical issues first and make the decision to call the medical staff if they believe it necessary. Sometimes, detainees have to ask their families to call the Warden or medical department to get any medical attention in solitary confinement. Nurses appear scared to come on the lines, physically running away as soon as they finished pill call, and some get mad at the detainees for seeking their assistance.

123. Guards and nurses do not always wear proper protective equipment, including masks, gloves, and body suits, when interacting with the detainees on the solitary confinement lines.

124. Detainees can be moved off the line and back to their quarantined lines after two negative tests in a row. Many men have trouble meeting that requirement due to the conditions in which they are housed, and some men have spent over a month on solitary confinement to date.[179] This is even more concerning because the solitary confinement lines include individuals who have documented medical vulnerabilities, including high blood pressure, diabetes, HIV, and other conditions.

IMMEDIATE RELEASE IS THE ONLY RESPONSE THAT SERVES PUBLIC HEALTH, COMMUNITY SAFETY, AND THE INDIVIDUAL SAFETY OF EACH CLASS MEMBER

125. Immediate release of medically vulnerable individual Plaintiffs, as well as the subclass of medically vulnerable people they represent, remains a necessary public health intervention.[180]

126. Given the size of the jail, the configuration of its cells, and staffing, the jail population must be significantly decreased to ensure adequate social distancing. In this unique moment, release *enhances* the safety of the community and is necessary to protect the Plaintiff's own health and safety. Plaintiffs must be able to exercise self-protective measures in a sanitary,

[179] In early April, Defendant Gatreaux and Defendant Warden also directed the transfer of sick COVID-19 positive patients to the Louisiana State Penitentiary, an infamous prison better known by the name Angola. Defendants halted this practice around mid-April, after sending the largest number of men from a single facility; more than 10 men from the jail remain at Angola today. *Cf.* Jacqueline DeRobertis & Lea Skane, *East Baton Rouge Sheriff: It's only a matter of time before coronavirus arrives in jail*, The Advocate (March 17, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_be4301c6-6887-11ea-b794-ab2c5dcccad8.html; Jerry Iannelli, *Louisiana's Data on Coronavirus Infections Among Prisoners is Troubled and Lacks Transparency*, The Appeal (May 1, 2020), https://theappeal.org/louisiana-doc-covid-19-data.

[180] *See, e.g.*, Ex. 27, Declaration of Dr. Susan Hassig ¶¶ 3-14; Ex. 9, Rottnek Decl. ¶¶ 10-12, 27-34, 61-64; *see also supra* n.17.

disinfected space and to maintain social distance from other community members to flatten the curve of the virus's spread and protect themselves from infection.

127. Release is needed not only to prevent irreparable harm to members of the medically vulnerable subclass, but also to sufficiently reduce the incarcerated population at the jail to ensure proper social distancing necessary to reduce transmission for all class members and the wider public. Because of the speed at which COVID-19 spreads and the danger it poses, immediate release is both necessary and the least intrusive intervention to ensure Class Members are provided medically and constitutionally sufficient treatment.

128. If immediate action is not taken to dramatically reduce the population of the jail, all people who remain incarcerated will be at grave and unacceptable risk of contracting COVID-19—a serious and potentially life-threatening illness. People confined in prisons and jails must "be furnished with the basic human needs, one of which is 'reasonable safety,'" *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (citations omitted), which is virtually impossible given the realities of the COVID-19 pandemic and the limitations inherent in the Jail.

129. With confirmed COVID-19 cases and deaths amongst staff and detainees, an outbreak within the facility has already begun. To meaningfully reduce the risk of serious illness and death, the jail population must be reduced drastically. After reviewing declarations from detainees detailing conditions inside the jail, Dr. Fred Rottnek, [credentials], asserted that "[s]ince social distancing is impossible at present, the only effective means of reducing risk of infection for medically vulnerable populations is their release from jail or prison."[181] He further stated that, "[f]rom a public health perspective, it is my strong opinion that there is no way short of release to

[181] Ex. 9, Rottnek Decl. ¶ 57.

protect the medically vulnerable from grave risk of imminent infection and death."[182] Tulane University Professor Dr. Susan Hassig, MPH, DrPH, similarly stated, "If the jail does not have the space to implement these most basic of virus spread suppression methods, the jail needs to decrease the size of the detainee population . . . . The persons at greatest risk, those with the aforementioned pre-existing medical conditions, should be prioritized for release to family or friends."[183]

130. Medical experts specializing in correctional health similarly share Dr. Hassig's urgent recommendations to dramatically reduce the population of detention centers, jails, and prisons. Dr. Ranit Mishori, Senior Medical Consultant for Physicians for Human Rights and an expert in correctional health issues, has concluded that "[r]eleasing people from incarceration is the best and safest way to prevent the spread of disease and reduce the threat to the most vulnerable incarcerated people" and that "[i]mmediate release is crucial for individuals with chronic illnesses or other preexisting conditions."[184] Release is "both necessary and urgent" given that "[t]he window of opportunity is rapidly narrowing for mitigation of COVID-19."

131. Dr. Jonathan Giftos, the former Medical Director for Correctional Health Services at Rikers Island, concluded that, "the only way to really mitigate the harm of rapid spread of coronavirus in the jail system is through depopulation, releasing as many people as possible with a focus on those at highest risk of complication."[185]

132. Other correctional medical and public health experts have also urged the release of people from incarceration given the heightened risk of transmission and infection, including Dr.

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[182] *Id.* ¶ 63.

[183] Ex. 27, Hassig Decl. ¶ 42

[184] Ex. 12, Mishori Decl. ¶ 46.

[185] '*Recipe for disaster:' The spread of corona virus among detained populations*, MSNBC (Mar. 18, 2020), https://www.msnbc.com/all-in/watch/-recipe-for-disaster-the-spread-of-coronavirus-among-detained-populations-80947781758.

Marc Stern (the former Assistant Secretary for Health Care at the Washington State Department of Corrections),[186] Dr. Robert B. Greifinger (former manager of medical care for people incarcerated in the New York State prison system and current federal court monitor of medical care in three large county jails),[187] a group of doctors who work in New York City's jails, hospitals and shelters,[188] as well as a group of more than 200 Johns Hopkins faculty in public health, bioethics, medicine, and nursing.[189]

133. These experts have opined that unless social distancing can be achieved, it is impossible to protect public and individual health. Release is thus necessary under the Constitution to respond to this unprecedented coronavirus pandemic.

134. Releasing people from the jails would also reduce the burden on regional hospitals and health centers.

CLASS ACTION ALLEGATIONS

135. The Named Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action under Federal Rule of Civil Procedure 23(b)(2).

136. The class that Plaintiffs seek to represent is defined as all current and future persons held at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic ("Jail Class").

137. Plaintiffs also seek to represent the following three subclasses:

a. The "Pretrial Subclass" is defined as: "All current and future persons detained at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic

[186] Ex. 6, Stern Decl. ¶¶ 10-12, 14.

[187] Ex. 13, Greifinger Decl. ¶ 13.

[188] Brad Lander, *Doctors in NYC Hospitals, Jails, and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus*, Medium (Mar. 12, 2020), https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-totake-more-aggressive-action-to-fb75f0b131c2.

[189] Letter from Johns Hopkins faculty to Governor Hogan (May 4, 2020), https://bioethics.jhu.edu/wp-content/uploads/2019/10/JohnsHopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf.

who have not yet been convicted of the offense for which they are currently held in the jail."

b. The "Post-Conviction Subclass" is defined as: "All current and future persons detained at the East Baton Rouge Parish Prison during the course of the COVID-19 pandemic who are have been sentenced to serve time in the jail or who are otherwise in the jail as the result of an offense for which they have already been convicted."

c. The "Medically Vulnerable Subclass" is defined as: "All members of the Jail Class who are also over the age of sixty-five, or who, regardless of age, experience an underlying medical condition that places them at particular risk of serious illness or death from COVID-19, including but not limited to (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g., bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

138. This action is brought and may properly be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the requirements of numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a).

139. As of May 21, 2020, the jail confined over 1,235 people, all of whom are eligible members of the Jail Class. Therefore, the class and subclasses meet the numerosity requirement of Federal Rule of Civil Procedure 23(a).

140. The subclasses are also too numerous for joinder of all members to be practicable. Presumptively innocent pretrial detainees constitute approximately 89% of all people in the jail.[190] The Pretrial Subclass thus includes over 1,000 people, and the Post-Conviction Subclass includes

[190] Shanita Farris & Andrea Armstrong, *Dying in East Baton Rouge Parish Prison* at 12, The Promise of Justice Initiative (July 2018), *available at* https://promiseofjustice.org/wp-content/uploads/2019/07/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf.

over 100 people, by the most conservative estimates. Demographic data regarding the health of correctional populations indicates that well over 30% of detained people suffer from at least one condition rendering them medically vulnerable.[191] Thus, the medically vulnerable subclass likely contains hundreds of people as well.

	Prevalence of health condition by population			
Health condition	Jails	State prisons	Federal prisons	United States
Ever tested positive for Tuberculosis	2.5%	6.0%		0.5%
Asthma	20.1%	14.9%		10.2%
Cigarette smoking	n/a	64.7%	45.2%	21.2%
HIV positive	1.3%	1.3%		0.4%
High blood pressure/hypertension	30.2%	26.3%		18.1%
Diabetes/high blood sugar	7.2%	9.0%		6.5%
Heart-related problems	10.4%	9.8%		2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

Health conditions that make respiratory diseases like COVID-19 more dangerous are far more common in the incarcerated population than in the general U.S. population. Pregnancy data come from our report, Prisons neglect pregnant women in their healthcare policies, the CDC's 2010 Pregnancy Rates Among U.S. Women, and data from the 2010 Census. Cigarette smoking data are from a 2016 study, Cigarette smoking among inmates by race/ethnicity, and all other data are from the 2015 BJS report, Medical problems of state and federal prisoners and jail inmates, 2011-12, which does not offer separate data for the federal and state prison populations. Cigarette smoking may be part of the explanation of the higher fatality rate in China among men, who are far more likely to smoke than women.

141. Joinder is impracticable because the class members are numerous; the class is fluid due to the inherently transitory nature of pretrial incarceration; and the class members are incarcerated and low-income, which limits their ability to institute individual lawsuits. Certifying this class supports judicial economy.

142. Common questions of law and fact exist as to all members of the class. The Named Plaintiffs seek common declarative and injunctive relief concerning whether Defendants' policies, practices, and procedures violate the constitutional rights of the class members. These common questions of fact and law include, but are not limited to:

a. Whether the conditions of confinement at the Jail since the beginning of the COVID-19 pandemic amount to constitutional violations;

[191] Peter Wagner & Emily Widra, *No need to wait for pandemics: The public health case for criminal justice reform*, Prison Policy Initiative (Mar. 6, 2020), www.prisonpolicy.org/blog/2020/03/06/pandemic/.

b. What measures Defendants implemented in the Jail in response to the COVID-19 crisis;

c. Whether Defendants' use of solitary confinement meets the requirements for medical isolation;

d. Whether Defendants' practices during the COVID-19 pandemic exposed people confined at the Jail to a substantial risk of serious harm; and

e. Whether Defendants knew of and disregarded a substantial risk of serious harm to the safety and health of the class.

143. Named Plaintiffs' claims are typical of the class members' claims. The injuries that the Named Plaintiffs have suffered due to Defendants' unconstitutional course of conduct are typical of the injuries suffered by the class. All class members seek the same declaratory and injunctive relief.

144. The Named Plaintiffs are adequate representatives of the class because their interests in the vindication of the legal claims they raise are entirely aligned with the interests of the other class members, each of whom has the same constitutional claims. There are no known conflicts of interest among members of the proposed class, and the interests of the Named Plaintiffs do not conflict with those of the other class members.

145. Plaintiffs are represented by counsel with experience and success in litigating complex civil rights matters in federal court. The interests of the members of the class will be fairly and adequately protected by the Named Plaintiffs and their attorneys.

146. Because the putative class challenges Defendants' system as unconstitutional through declaratory and injunctive relief that would apply the same relief to every member of the class, certification under Rule 23(b)(2) is appropriate and necessary.

147. A class action is the only practicable means by which the Named Plaintiffs and class members can challenge the Defendants' unconstitutional actions and obtain the necessary immediate declaratory and injunctive relief sought for themselves and all other members of the class.

CLAIMS FOR RELIEF

COUNT I: Declaratory and Injunctive Relief for Violation of the Fourteenth Amendment (42 U.S.C. § 1983)

Pretrial Subclass versus All Defendants

148. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

149. Under the Fourteenth Amendment, corrections officials are required to provide for the reasonable health and safety of persons in pretrial custody. *Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (the state has an "unquestioned duty to provide adequate . . . medical care" for detained persons). Individuals who have not been adjudged guilty of a crime cannot be subject to punishment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). A condition of detention amounts to impermissible punishment when "it is not reasonably related to a legitimate goal," if it is "excessive" in relation to a legitimate goal," or if it is otherwise "arbitrary or purposeless." *Wolfish*, 441 U.S. at 539. Due process claims brought by pretrial detainees under the Fourteenth Amendment are evaluated under an objective standard,[192] and where, as here, Plaintiffs bring a constitutional challenge under a conditions of confinement theory, a person in detention need not demonstrate the defendant's subjective or malicious intent to punish. *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009). Members of the Pretrial Subclass are not required to show that Defendants are subjectively aware of a substantial risk of serious harm due to COVID-19, although

[192] *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 2472-73 (2015).

if such a showing is required that standard is met under the circumstances presented here. *Hare v. City of Corinth, Miss*., 74 F.3d 633, 644 (1996) (5th Cir. 1996).

150. The Jail has neither the capacity nor the ability to comply with public health guidelines to prevent an outbreak of COVID-19 and cannot provide for the safety of the Jail Class or the Pretrial Subclass. Defendants' actions and inactions result in the confinement of members of the Jail Class and the Pretrial Subclass in a facility where they do not have the capacity to test for, treat, or prevent COVID-19 outbreaks, which violates Plaintiffs' rights to treatment and adequate medical care.

151. Defendants violate Plaintiffs' due process rights by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease. Plaintiffs face a serious risk of intense pain, illness, lasting bodily damage, and ultimately, death in the Jail due to the Defendants' insufficient measures to prevent the spread of infection. That risk of illness and death renders their conditions excessive in relation to any legitimate government interest.

152. Defendants established *de facto* policies denying Plaintiffs health care and adequate protections from COVID-19. The policies are not reasonably related to a legitimate governmental objective and are causing the violation of the Jail's pretrial detainees' constitutional rights. Accordingly, Defendants, as supervisors, direct participants, and policy makers for the East Baton Rouge Parish Prison, have violated and are violating the rights of the Jail Class and the Pretrial Subclass under the Fourteenth Amendment.

COUNT II: Declaratory and Injunctive Relief for Violation of the Eighth Amendment (42 U.S.C. § 1983)

Post-Conviction Subclass versus All Defendants

153. Plaintiffs incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

154. Under the Eighth Amendment, as applicable to States and their political subdivisions through the Fourteenth Amendment, post-convicted persons in carceral custody have a right to be free from cruel and unusual punishment. As part of that right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. *See, e.g.*, *Estelle*, 429 U.S. at 104; *DeShaney*, 489 U.S. at 200.

155. As part of this right, the government must provide incarcerated persons with reasonable safety and address serious medical needs that arise in jail. Deliberate indifference to the serious risk COVID-19 poses to members of the Jail Class, and particularly members of the Medically Vulnerable Subclass, violates this right.

156. Plaintiffs, and the class they represent, suffer a substantial risk of serious harm to their health and safety due to the presence of, and spread of, COVID-19.

157. Defendants know of and are failing to abate the serious risks that COVID-19 poses to Plaintiffs, including severe illness, permanent physical damage, and death. These risks are well-established and obvious to Defendants.

158. Defendants are subjecting Plaintiffs to conditions of confinement that increase their risk of contracting COVID-19, for which there is no known vaccine, treatment, or cure. Due to the conditions at the jail, Plaintiffs are unable to take steps to protect themselves—such as social distancing, accessing medical attention or testing, or washing their hands regularly—and Defendants have failed to provide adequate protections or mitigation measures. Defendants act

with deliberate indifference towards Plaintiffs by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease.

159. As a result of Defendants' unconstitutional actions, Plaintiffs are suffering irreparable injury.

160. Accordingly, Defendants, as supervisors, direct participants, and policy makers for the East Baton Rouge Parish Prison, have violated and are violating the rights of the Jail Class and Post-Conviction Subclass under the Eighth Amendment.

Count III: Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241

Medically Vulnerable Subclass versus All Defendants

161. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

162. Because the Medically Vulnerable Plaintiffs and subclass seek release in light of the immediate and urgent risks to their health and lives, there is no other available remedy that could protect their rights.

163. Defendants are holding Plaintiffs in custody in violation of the Fourteenth Amendment (applicable to pretrial detainees) and the Eighth Amendment (applicable to post-conviction detainees). Both amendments forbid exposing Plaintiffs to a severe risk of death, pain, or permanent severe injury, and no options available to Defendants at this time will adequately mitigate that risk to the Medically Vulnerable Subclass other than release from custody.

164. Section 2241(c)(3) allows this court to order the release of people like Plaintiffs who are held "in violation of the Constitution." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("It is clear, not only from the language of §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon

the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody."). Habeas confers "broad discretion in conditioning a judgment granting habeas relief . . . 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C 2243). That authority includes an order of release, *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), so as "to insure that miscarriages of justice . . . are surfaced and corrected." *Harris v. Nelson*, 395 U.S. 286, 291 (1969). Release is appropriate where, as here, there are no set of conditions under which an individual can be constitutionally detained, and the petitioner is thus "challenging the fact, not conditions, of her confinement."[193]

COUNT IV: Declaratory and Injunctive Relief for Violation of the Fourteenth Amendment (42 U.S.C. § 1983)

Medically Vulnerable Subclass versus All Defendants

165. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

166. The Medically Vulnerable Plaintiffs and subclass seek release in light of the immediate and urgent risks to their health and lives. There is no other available remedy that could protect their rights.

167. Defendants are holding Plaintiffs in custody in violation of the Due Process Clause of the Fourteenth Amendment (applicable to pretrial detainees) and the Eighth Amendment (applicable to post-conviction detainees) to the Constitution of the United States. Both amendments forbid exposing Plaintiffs to a severe risk of death, pain, or permanent severe injury. At this time, with respect to the Medically Vulnerable Subclass, no options are available to Defendants that will adequately mitigate that risk other than removing the Plaintiffs from custody

[193] *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *3 (E.D. Mich. Apr. 5, 2020), as amended (Apr. 6, 2020); *accord Dada v. Witte*, No. 1:20-cv-00458-DDD-JPM (Report and Recommendation) (adopted May 22, 2020); *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *4 (S.D. Tex. Apr. 17, 2020).

at the Jail.

168. Accordingly, Plaintiffs are entitled to be transferred to a form of custody that does not expose them to an unconstitutional risk of substantial harm, including a transfer to home confinement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Putative Class Members respectfully request that the Court:

A. Certify the proposed class and subclasses;

B. Enter a declaratory judgment that Defendants are violating Named Plaintiffs' and Class Members' constitutional rights by failing to adequately safeguard their health and safety in the midst of a potential outbreak of a contagious, infectious disease;

C. Enter a temporary restraining order, preliminary injunction, and permanent injunction, and/or writ of habeas corpus requiring Defendants to immediately release all Medically Vulnerable Plaintiffs and Subclass Members or transfer them to home confinement;

D. Enter an order requiring, during the COVID-19 pandemic, that Defendants:

1. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
2. Provide adequate spacing of six feet or more between people incarcerated, so that social distancing can be accomplished;
3. Ensure that each incarcerated person receives, free of charge: (1) an individual supply of liquid hand soap and paper towels sufficient to allow frequent hand

washing and drying each day, and (2) an adequate supply of disinfectant hand wipes or other products effective against the virus that causes COVID-19 for daily cleanings;

4. Ensure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;
5. Provide an adequate stock of daily cleaning supplies, such as sponges, brushes, disinfectant hand wipes, and/or disinfectant products effective against the virus that causes COVID-19;
6. Provide sufficient disinfecting supplies, free of charge, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones, tablets, tables, bathrooms, seating, and door handles) between each use;
7. Provide daily access to clean showers and clean laundry, including clean personal towels and washrags for each shower;
8. Require that all Jail staff wear personal protective equipment, including masks and gloves, when interacting with any person or when touching surfaces in cells or common areas;
9. Require that all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
10. Take each incarcerated person's temperature daily (with a functioning, properly operated, and sanitized thermometer) to identify potential COVID-19 Infections.
11. Conduct immediate testing for anyone displaying known symptoms of COVID-19 and who has potentially been exposed to infection;

12. Ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials, phone and video calls with loved ones, communications with counsel, and personal property;
13. Respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
14. Waive all medical co-pays for those experiencing COVID-19-related symptoms; and
15. Cease and desist retaliatory disciplinary action in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

E. If immediate release is not granted on the basis of this Petition alone, expedite review of the Petition, including oral argument, via telephonic or videoconference if necessary;

F. Enter an order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

G. Order such other and further relief as this Court deems just, proper, and equitable.

Respectfully submitted, this 27th day of May, 2020.

/s/ David J. Utter
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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020 a copy of the foregoing was sent to all parties via electronic mail upon the following:

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/s/ *David J. Utter*
David J. Utter

EXHIBIT 1

EBRPP Covid-19 Statistics

5/14/2020

Total Number of patients tested at EBRPP	
Initial Positive	93
Initial Negative	59
Total	**152**
Repeat Positive	14
Repeat Negative	33
Total	**47**
Location of Patients Covid-19 +	
EBRPP Now +	21
OLOL	0
Hunt	1
Angola	13
Released	23
Total	**58** (35 still po
Total Number of Test Performed	
Initial Total	152
Repeat Total	47
Total	**199**

EXHIBIT 2

---------- Forwarded message ---------
From: **Darryl Gissel** <DGISSEL@brla.gov>
Date: Wed, Apr 1, 2020 at 6:11 PM
Subject: FW: Prison Issues
To: jenniferharding@vote-nola.org <jenniferharding@vote-nola.org>
CC: Sherie Phillips Thomas <info@lahealthcareinstitute.com>

Jennifer,

The Mayor held a conference call on March 25th with representatives from the East Baton Rouge Parish Prison Reform Coalition, the Warden's Office, the Sheriff's Office, The Health Director for the Prison, the District Attorney and the Public Defender's Office to review procedures in place to address the COVID-19 Pandemic. Sherie Thomas with the Coalition is going to reach out to you to review her notes from the conference call. The Mayor requested the call be set up so that the advocate groups received knowledge of the health care protocols in addition to efforts to reduce the population. We will work on expanding the communications.

I will do my best to respond based on my notes from the call. I have attached 6 pages of notes from my call file. Feel free to reach out to me with any questions/concerns by phone/text, 225/252-0779 or 225/955-5116 or email . As you will see below the protocols are fluid based on the changes in guideliens and situational issues.

1. The warden, his staff and prison medical are all operating under the guidelines set by DOC, the CDC and LHD. These guidelines are being monitored and update as changes are issued. I have attached my notes from the conference call which outline the procedures that were in place on March 25 and are still in place. Inmates showing symptoms are sent for testing following the community guidelines. It should be noted that testing is only being done throughout Baton Rouge if symptoms indicate the need for testing which include fever of 100.4 or more, shortness of breath / respiratory issue. Correct Health's protocols have been reviewed by an outside party, Dr Godbee, who is the medical director for our Emergency Medical Service (EMS). In addition Dr O'Neal the Chief Medical Officer and Infection Prevention Specialist with OLOL is working with the prison team on mitigation efforts . They are making on going changes to their protocols. …just got notice of some testing changes which include 24 hr turnaround on testing kits.

2. Any tested persons testing positive and sick with severe respiratory problems are being sent to the Lady of Lake Hospital . Any person that test positive but not having respiratory issues are going to Angola for housing and medical treatment in their COVID response unit. (Some persons test positive with little or no issues.)

3. These plans are included in the notes attached. The prison has been on lock down… see timeline attached. We have now have two confirmed cases. Both cases appeared after persons were sent to OLOL for treatment for non COVID -19 related issues. A press release on the first case is attached. This has required sections of the facility be placed on quarantine. Medical checks are being done twice daily including twice daily temperature checks. In addition Medical call is available 24 hrs a day. Contingency plans are in place should a large scale outbreak occur. The individuals who have tested positive are in medical units outside of the prison.

4. We are working with the prison daily to make certain that they have needed PPE for their staff.

5. Due to the prison lockdown individuals are allowed 2 free phone calls per week in addition to their regular calls during this period so they can stay in touch with family. The Public Defender's Hotline does provide information for family members, etc. They are coordinating this to give information including medical. In addition the warden's office does notify family members if their loved ones tests positive and also if they are moved for care. The warden also responds to family inquires. I will be working with Casey Hicks in the Sheriff's Office to have them highlight the Public Defenders hotline on their website.

Darryl Gissel

Chief Administrative Officer

Office of the Mayor-President

222 St. Louis Street, 3rd Floor

Baton Rouge, La 70802

(225) 389-5103

--
Sherie Phillips Thomas
President

HEALTHCARE INSTITUTE

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(225) 258-7466-Fax

MAYOR BROOME'S COMMENTS

March 25, 2020

Every person who comes into the jail is screened for symptoms of COVID-19. If they have symptoms, they are sent to area hospital for further evaluation. It is critical to us that anyone with symptoms is isolated from the rest of the people in the jail. We are doing what we can to protect our vulnerable citizens both inside and outside the parish prison

Also, as you will hear from Sheriff Gautreaux, law enforcement in East Baton Rouge Parish is taking steps to reduce the number of people housed at the jail. For certain crimes they are issuing summons rather than making arrests.

We have put these protocols in place to protect our citizens. Most people in the parish prison have not been convicted and our innocent until proven guilty. We have a duty to look out for their well-being.

Darryl Gissel

From: Darryl Gissel
Sent: Wednesday, March 25, 2020 1:15 PM
To: Phillis Ragusa
Subject: 3PM Call
Attachments: Prison Call.docx

The Sheriff, Warden and Assistant Warden at the prison have instituted many procedures and protocols during the crisis including restricted movement inside prison except for recreation, feeding, medical and legal reasons; suspension of family, volunteer and tour visitation; following CDC guidelines; repeated disinfecting of all prison areas; cleaning of equipment and the facility; washing of hands by all in prison; wearing of gloves by both staff and inmate workers; limited outside contact and recent suspension of all on site, non-contact visitation by officials, legal and bondsman except by non-contact for those approved by Warden; all off site trips that are non-emergency terminated; 2 -10 minute free phone calls for inmates per week based on the prisonlock down; inmates provided info on COVID 19. Screening checklist and temperature taking implemented at all perimeter gates and central booking; continued daily communications with DA, POD and courts; video capabilities tested and used for both legal and medical off-site providers; no surrender by bondsman; daily meetings and briefings with all supervisory staff, Sheriff and participating on DOC/LA Sheriff's Association conference calls; reviewing daily prison count; monitoring temperatures of all newly received inmates housed in isolation from the General Population until deemed safe to do so; special housing unit opened for mental health prisoners separate from others but allows for open living environment to combat depression while offering social living skills.

Darryl Gissel
Chief Administrative Officer
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Baton Rouge, La 70802
(225) 389-5103

WARDENS COVID -19 TIMELINE

Date	Action Taken
Wednesday, March 11, 2020	1. All User Email from Sheriff sent -- provided educational information to employees on CDC recommendations for their personal protection, resource to protect their families and EBRSO next steps
Thursday, March 12, 2020	Warden instructs all to frequently disinfect all areas.
Friday, March 13, 2020	Suspension of Visitation, Volunteer Programs and Tours of the Parish Prison.
	All official, legal, medical and bondsmen limited to non-contact.
	All off-site, non-emergent trips discontinued.
	Case by case basis consideration and approval must be given by Warden for all trips by Transportation Dept.
	Free calls provided to inmates, information regarding COVID 19 provided to inmates
	Screening Checklist for Coronavirus implemented at all Perimeter Gates and Central Booking Sally Port.
Monday, March 16, 2020	Continued communication with Courts regarding present inmate population, charges, bonds, medical considerations.
Tuesday, March 17, 2020	Courtroom Security and Transportation send officers to assist Shift at Parish Prison with taking inmates out to Recreation.
	Tested video court capability with 19th JDC
Wednesday, March 18, 2020	Suspension of all on site, non-contact visitation of off-site official, legal, and medical persons. All business and evaluations are done by videoconferencing and/or telemedicine equipment.
	No Surrenders of Bondsmen are being accepted.
	Established protocol for incoming inmates to monitor them for 2 days in Central Booking, then 3 days at J1 (males) and S04 (females) before approving for assignment into the population.
Thursday, March 19,2020	Established protocol for inmates to call attorneys from their dorms.
	Two tents erected at Parish Prison for the possible use in decontamination of any living areas.
Friday, March 20, 2020	Tour of Downtown Jail by Major and Captains to gather supply list if the event of the need to open the facility.
	Met with Medical Staff of Parish Prison and Work Release Facility to Update them o the latest news from the Dept. of Corrections.
	Met with all Supervisors to update them on news from the Sheriff.

CORRECT HEALTH

- EBRPP is in contact with the LDH regarding ALL infectious disease at the EBRPP.
- Reentry efforts are started as soon as the individual has been identified as having a need. We work with Capital Area and several other agencies to provide timely and adequate discharge plans.
- Use of multi-language monitors are throughout the housing facilities. We use the guidelines from the LDH and the CDC to inform and educate the inmates.
- Warden Grimes and the Health Administrator are answering calls daily from family members concerned about their loved one.
- Intake screening is down greater than 60% from last month. All incoming offenders as well as the officers are screened outside the jail. New intakes are isolated form the general population for 14 days. They are monitored daily for symptoms.
- Inmates on lock down are seen twice daily by medical and every 15 minutes by corrections.
- ERBPP is reporting to the LDH and the DOC all suspected cases of Covid 19. In conjunction with these departments, we have a plan in place to test those individuals. Those departments are notified prior to release of anyone suspected of having the virus.
- All transportation and movement is being heavily scrutinized by corrections and the healthcare staff.
- All copays for medical services have been suspended.
- EBRPP will share information with any healthcare agency provided it complies with HIPPA Guidelines.
- Correcthealth has reached out to Dr. Dan Godbee, Director of EMS to coordinate services.

Darryl Gissel

From: Casey Rayborn Hicks <CRHicks@EBRSO.ORG>
Sent: Monday, March 30, 2020 7:44 PM
To: Darryl Gissel; Sharon Weston Broome
Subject: EBR Prison Inmate Overdoses and Later Tests Positive for Coronavirus- Wing of Prison Quarantined

SHERIFF
East Baton Rouge Parish
Post Office Box 3277
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East Baton Rouge Sheriff's Office
News Advisory

FOR IMMEDIATE RELEASE: March 30, 2020

EBR Sheriff Prison Inmate Taken to the Hospital for Drug Overdose
Tests Positive for COVID-19
Prison Section Quarantined and Monitored

An EBR Parish Prison inmate was taken to the hospital late Saturday afternoon after a suspected drug overdose. Prison medical began immediately performing CPR on the inmate and administered Narcan before EMS transported him to the hospital. After admission, hospital staff administered a COVID-19 test in an abundance of caution. Prison administration was notified that the inmate tested positive at approximately 11:25 last night.

Prison administration immediately began CDC quarantine protocol for both the line the inmate was placed on and the adjoining line. Ninety-four inmates on the two lines are currently quarantined in an abundance of caution. The prison staff brings all food and commissary to the quarantined inmates. They also have access to phones and have been given additional free phone calls. They continue to have daily recreation time within their quarantined area. They are also practicing the 6-feet social distancing recommendation. As per CDC protocol, medical staff is taking all of the inmates' temperature twice a day. At this time, no inmates have a fever or are presenting symptoms of the virus.

The entire prison is following CDC sanitation procedures and all inmates have been provided additional cleaning and hygiene products and have access to information from staff, pamphlets and instructional videos (in Spanish and English). All medical and prescription fees have been waived

during this pandemic. The EBR Public Defender's office has a hotline setup for concerned family members: (225) 389-3150 extension: 159 or email: admin@opdbr.org
In addition to giving inmates extra free phone calls to family the warden has made all calls to legal counsel free.

Since the declaration of this emergency related to the spread of COVID-19 anyone entering the prison facility is medically screened and has their temperature taken before entry.

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EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CLIFTON BELTON, JR., JERRY BRADLEY, CEDRIC FRANKLIN, CHRISTOPHER ROGERS, JOSEPH WILLIAMS, WILLIE SHEPHERD, DEVONTE STEWART, CEDRIC SPEARS, DEMOND HARRIS, and FORREST HARDY, individually and on behalf of all others similarly situated, Plaintiffs, v. SHERIFF SID GAUTREAUX, in his official capacity as Sheriff of East Baton Rouge; LT. COL. DENNIS GRIMES, in his official capacity as Warden of the East Baton Rouge Parish Prison; CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE, Defendants.	Case No. 3:20-cv-000278-BAJ-SDJ

DECLARATION OF DR. FRED ROTTNEK

I. Background and Qualifications

1. My name is Fred Rottnek, MD, MAHCM. I am a Professor of Medicine in the Saint Louis University School of Medicine, Professor in the Physician Assistant Program at the Doisy College of Health Sciences, and Professor in the Center for Health Law Studies in the School of Law. I am the Director of Community Medicine in the Department of Family and Community Medicine and the Program Director of the Addiction Medicine Fellowship. I am board-certified in Family Medicine and Addiction Medicine, and I am a certified Correctional Health Care Physician through the National Commission on Correctional Health Care.

2. I am a board-certified family physician and certified correctional health care physician with over 15 years of experience practicing correctional health care in Saint Louis County, Missouri.

3. I was the lead physician and medical director of the Saint Louis County (Missouri) Jail for over fifteen years, from June 2001 through September 2016. In this role, contracted through the Saint Louis County Department of Health, I saw patients three days/week, took call on average 16 days/month, and participated in the leadership teams that were responsible for the health and well-being of inmates, correctional medicine staff, correctional staff, and visitors to the jail, which is located in the Buzz Westfall Justice Center as well as Juvenile Detention in the Family Courts of Saint Louis County. In addition to policies regarding patient care and custody of medically-fragile inmates, I participated in the development of policies regarding institutional safety. Examples of the latter include standard operating procedures on complex patients in the medical and psychiatry infirmary, hygiene and cleaning protocols during the initial outbreak of MRSA in the early 2000's, and safety and emergency protocols related to the institutional lockdown following Michael Brown's shooting death in Ferguson, MO, in August 2015.

4. At a large urban jail, during my years in this role, I was responsible for directing the medical care and supporting the correctional medicine staff in the care of a daily census of patients that varied from 900 to 1400, as well as annual intake screenings of 30,000 to 34,000 arrestees. The Saint Louis County Jail was (and is) the only jail in the State of Missouri that meets standards for accreditation by the American Correctional Association. Juvenile Detention is accredited by the National Commission on Correctional Health Care.

5. My bio, attached as Exhibit A, includes a brief description of my education and relevant experience.

6. My C.V., attached as Exhibit B, has a full list of my honors, experience, and publications.

7. I am donating my time reviewing materials and preparing this report. Any live testimony I provide will also be provided pro bono.

8. I have testified as an expert at trial or by deposition once in the past 3 years.

9. I have contributed my experience in this field, and emerging science related to COVID-19 in a letter I wrote to the Supreme Court of Missouri, and to declarations that I submitted in *Swain v. Junior*, No. 2020-cv-21457 (So. Dist. Fla., Apr. 5, 2020) and *Feltz v. Regalado*, No. 18-cv-00298 (D. Okla. June 6, 2018), stating the threat COVID-19 posed to inmates in prisons and jails, detailing the impossibility of jails and prisons meeting the Center for Disease Control's guidelines, and supporting the release of medically vulnerable people.

II. Heightened Risk of Epidemics in Jails and Prisons

10. Based on my review of information from the CDC, National Commission on Correctional Health Care (NCCHC), and the National Institute of Corrections (NIC) on COVID-19, my experience working in primary care and public health in both jail and juvenile detention settings, my review of the relevant medical literature, my review of the Plaintiffs' declarations, and my review of photos of the facility from other pre-COVID-19 jail inspections, it is my professional judgment that the COVID-19 pandemic will have a

devastating and lethal impact on the lives of both incarcerated individuals and prison personnel in East Baton Rouge Parish, and result in a medical emergency that could overwhelm local medical infrastructure.

11. For a jail or prison located in a community where COVID-19 is spreading, there are no steps that administrators can take to ensure that the disease will not enter and spread through the facility and back out to the community. Ideally, a detention facility should strictly follow CDC guidelines for mitigating the risk to inmate and staff populations and the general public.[1] However, these measures are designed to manage and mitigate—not eliminate—the increased risk to jail or prison populations.[2] Due to the nature of prison facilities, even if the CDC measures were precisely adhered to, inmates would remain at substantially higher risk than the average person in a community where an outbreak occurs.[3] Moreover the presence of a prison in a community would continue to increase the risk to all community members, even if CDC guidelines were strictly followed.

12. The presence of a correctional facility poses a grave threat to the health and safety of Parish residents, as an ongoing outbreak in a jail or prison could limit the ability of health professionals to contain, mitigate, and treat the spread of COVID-19. In my professional opinion, jails and prisons are particularly under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, and the East Baton Rouge Parish Prison is no exception. It is my professional judgment, based on the materials and experience identified above, *see supra* ¶10, that the Parish Prison is under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which has already resulted in harm to detained individuals, correctional staff, and potentially the broader community. The reasons for this conclusion are detailed in the following points.

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

[2] *See* Matthew J. Akiyma, et al., *Flattening the Curve for Incarcerated Population—Covid-19 in Jails and Prisons*, The New Engl. J. of Med. (Apr. 2, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2005687 ("Irrespective of . . . interventions [to limit the number of people entering and leaving jails], infected persons—including staff members—will continue to enter correctional settings . . . . A recent SARS-CoV-2 outbreak among cruise-ship passengers and crew in Yokohama, Japan, provides a warning about what could soon happen in correctional settings."); CDC Interim Guidance ("The integration of [multiple] components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help *reduce the risk* of transmission and severe disease from COVID-19.") (emphasis added)

[3] Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 8, 1047-1055 (Oct. 15, 2007), https://academic.oup.com/cid/article/45/8/1047/344842 (identifying factors that make jails inherently dangerous with respect to infectious disease); Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 16, 2020), https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html ("It is not a matter of if, but when, this virus breaks out in jails and prisons").

III. Jails and Prisons Cannot Implement Adequate Prevention, Containment, and Mitigation Strategies

13. COVID-19 is a highly infectious and easily communicable disease.[4] The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing), but survives on inanimate surfaces for up to three days. The latest medical information indicates people are most contagious when they are actively symptomatic, but it is still possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. The CDC recommends people maintain a distance of 6 feet between them and anyone else in order to avoid contact with the disease.

14. COVID-19 prevention strategies necessitate both containment and mitigation. In addition to social/physical distancing, containment requires intensive hand washing practices, disinfection, and aggressive cleaning of surfaces, and identifying and isolating people who are ill. Moreover, the use of appropriate personal protective equipment (PPE) is necessary for those tasked with decontaminating surfaces and interacting with potentially infected individuals.[5] The CDC recommends mitigation strategies such as social distancing and closing communal spaces (schools, workplaces, etc.) to protect those most vulnerable to the disease.[6]

15. Jails and prisons are unable to adequately implement containment strategies. During an infectious disease outbreak, most people in the community can protect themselves by washing their hands. Unfortunately, inmates have limited opportunities to maintain optimal hygiene through handwashing and showering as recommended by the CDC. In general, the more restricted the level of housing, the more barriers and inmate has to proper hygiene. Many jails and prisons charge inmates money for hand soap or other personal hygiene products. Most facilities also ban the use of alcohol-based antibacterial hand sanitizer. Further, under CDC guidance, high-touch surfaces (doorknobs, light switches, etc.) should be cleaned and disinfected several times a day with bleach or other approved cleansers, and the cleaner should use disposable gloves to prevent virus spread.[7] That said, many jails and prisons place limitations on the amount of cleaning supplies available to inmates and also have insufficient staff available to clean, particularly during a public health pandemic like this. Spaces within jails and prisons are often poorly ventilated and share HVAC systems, which facilitates and accelerates the spread of diseases through aerosolized droplets.

16. Jails and prisons are also unable to practice effective mitigation strategies. Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person-to-person.[8] When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are far greater than normal. As

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[4] Coronavirus (COVID-19), CDC, https://www.cdc.gov/coronavirus/2019-ncov/index.html.
[5] *Id*.
[6] *Id.*
[7] *Disinfecting Your Facility if Someone is Sick*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html
[8] *Active Case Finding for Communicable Diseases in Prisons,* 391 The Lancet 2186 (2018), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext

such, when jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. The CDC suggests that jails and prisons implement social distancing strategies such as staggering meals, moving all bunks six feet apart, and limiting the distance inmates need to be transported to access medical care.[9] From my professional experience, these distancing strategies will be difficult if not impossible for most jails and prisons to implement.

17. The latest guidance from the CDC suggests that jails and prisons have a long list of hygiene supplies, cleaning supplies, PPE, and medical supplies on hand and available.[10] For example, the CDC recommends facilities provide liquid soap, as harsh bar soap can irritate the skin and reduce handwashing. The CDC also recommends jails and prisons have enough face masks to require every individual displaying COVID-19 symptoms to wear one. In my professional experience, it is unlikely most jails and prisons have or reasonably could obtain the required supplies to comply with this guidance.

IV. Jails and Prisons Cannot Adequately Treat Those Infected

18. To prevent transmission of droplet-borne infectious diseases, people who are infected and symptomatic should be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms and, in my experience, many jails and prisons have none. This makes both containing the illness and caring for those who have become infected much more difficult.

19. In my opinion, administrative or disciplinary segregation, or solitary confinement, of those who may be infected is not an effective disease containment strategy. The detrimental mental health effects of solitary confinement are well-known.[11] Studies show the isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death.[12] Solitary confinement is also an ineffective way to prevent transmission of the virus to others, because of the aforementioned lack of negative pressure rooms, and because correctional staff will still have to come within close proximity to check on these individuals. Moreover, placing inmates in solitary confinement will place a greater burden on already limited staff and resources. Per NCCHC guidelines, correctional facilities are responsible for meeting the medical and mental health needs of people in solitary or restrictive housing--particularly those with acute medical and mental health needs--which includes regular access to medicine and mental health treatment.[13] Put simply, solitary confinement will not solve the problem.

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

[10] *Id*.

[11] David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health 18, 18 (2015).

[12] Metzner & Fellner, Solitary *Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Academy Psychiatry and Law 104–108 (2010).

[13] *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions,* National Institute of Justice, https://www.ncjrs.gov/pdffiles1/nij/250321.pdf (Nov. 2016).

20. During an infectious disease outbreak, a containment strategy requires that caregivers for people who are ill must have access to adequate PPE supplies. According to NCCHC guidance, jails and prisons must have adequate PPE, including gloves, masks, and respirators, eye protectors, gowns, uniforms, and shoe covers.[14] In my experience, jails and prisons are already under-equipped with medical supplies. A pandemic only exacerbates the shortage. These institutions just simply do not have sufficient PPE for increasing cases of COVID-19 among people who are incarcerated and staff who are required to care for those people, increasing the risk for everyone in the facility of a widespread outbreak.

21. Jails and prisons typically house inmates with chronic conditions, particularly in men, that were not well controlled prior to incarceration. Many of these chronic conditions are contained in the list of diagnoses provided by the CDC that would describe an inmate as being medically vulnerable
    - Asthma
    - Chronic kidney disease being treated with dialysis
    - Chronic lung disease, such as emphysema and COPD
    - Diabetes
    - Hemoglobin Disorders, including sickle cell anemia
    - Immunocompromised persons, including those with HIV/AIDS
    - Liver disease, including hepatitis
    - People aged 65 years and older
    - Serious heart conditions, including past myocardial infarctions, and congestive heart failure
    - Severe obesity

    In my judgment, I would add inmates that have diagnosis that require regular medication administration and lab monitoring, such as inmates with
    - Neurological conditions, such as epilepsy
    - Serious mental illness (those that severely impact daily functioning), such as schizophrenia, bipolar affective disorder, major depression

22. Jails and prisons are often poorly equipped to diagnose infectious disease outbreaks. Most jails and prisons lack urgent or emergent access to testing equipment, laboratories, and ventilators, which means that they will be slow to adequately diagnose and address the outbreak.

23. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. It is unlikely jails or prisons will have adequate staff or PPE to safely transport individuals to these facilities and sit with the individuals while there.

[14] *Covid-19 Coronavirus: What You Need to Know in Corrections*, NCCHC, https://www.ncchc.org/covid-resources.

V. A COVID-19 Outbreak in a Jail or Prison Creates Dangerous Staffing Shortages

24. Absenteeism can pose a substantial safety and security risk. As an outbreak spreads through jails, prisons, and communities, medical personnel, and correctional staff will become sick and stop reporting to work. There is a physical limit to how much overtime other correctional staff can work to make up for lost employees.

25. In my experience, jails and prisons are already dangerously understaffed both in terms of correctional healthcare providers and correctional staff.[15] Many jails and prisons do not have 24-hour on-site health professionals. A shortage of doctors or nurses onsite will impact the already limited ability to conduct testing, treat symptoms, and recommend care for sick individuals. Further, as health systems inside facilities are taxed with COVID-19, people with other serious physical or mental health conditions may not be able to receive the medical care they need for these conditions.

26. A staffing shortage for correctional staff will greatly impact the ability of a facility to respond to a COVID-19 outbreak, as guards or supervisors need to facilitate prevention measures, transport inmates to medical, rearrange housing, and conduct many other non-routine tasks. Moreover, a staffing shortage for correctional staff also creates an unacceptable general risk of danger to inmates and other staff members in a facility.

VI. Contagious Disease Outbreaks in Jails and Prisons is a Public Health Nightmare

27. Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more acute than in the community at large. In my experience, past epidemics have taken a greater toll on jails and prisons even when the outbreak is of a disease with available vaccines and medication. For example, during the H1N1-strain flu outbreak in 2009 (known as the "swine flu"), jails and prisons experienced a disproportionately high number of cases. In 2002, an outbreak of MRSA in a Missouri prison caused significant health problems.[16] And currently, jails and prisons across the United States are experiencing COVID-19 outbreaks. In New York, as of May 15, 2020, 362 inmates and 1,300 Department of Corrections workers in Rikers Island have tested positive for COVID-19, and officials report that they expect the numbers to rise. Deaths due to COVID-19 in the Wayne County Jail in Detroit include one of the jail commanders, a deputy in the medical unit, the jail system's medical director, and another staff physician. And while these numbers are startling, they are almost certainly an underreporting, since jails and prisons have an extraordinarily difficult time finding and purchasing tests. These numbers reinforce the infectivity among correctional workers, medical staff, and vendors who return to their homes and neighborhoods at the end of their shift and may unknowingly spread the virus to others who are medically vulnerable.

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[15] *See*, *e.g.*, Kurt Erickson, *Parson Calls for More Downsizing in Missouri Prison System*, St. Louis Post-Dispatch (Jan. 20, 2020).

[16] Tyrabelidze, et al. *Personal Hygiene and Methicillin-resistant Staphylococcus aureus Infection*, 12 Emerg. Infect. Dis. 422.

28. To deal with a pandemic, society at large can increase resources and take emergency measures, like adding hundreds of hospital beds in a new facility. Jails and prisons have real and hard limitations of space, staffing, and supplies. It is unlikely most jails or prisons will be able to reasonably put into place sufficient resources to address an outbreak. While Baton Rouge Mid-City hospital recently reopened to accommodate the increase in the number of patients with COVID-19 diagnoses, the addition of patients overflowing from EBRPP will further stress resources and staffing realities.

VII. Risk of COVID-19 in the East Baton Rouge Parish Prison

29. In preparing this report I have reviewed the declarations of the Plaintiffs, Belton, Bradley, Franklin, Rogers, Williams, Shepherd, Stewart, Spears, Harris, and Hardy in this case.

30. Based on my professional experience, my review of the relevant literature, and my review of the Plaintiffs' declarations, it is my professional judgment that the East Baton Rouge Parish Prison is under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail staff, and the broader community. The reasons for this conclusion are detailed as follows.

31. COVID-19 is a highly infectious and easily communicable disease.[17] The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but survives on inanimate surfaces for up to three days. The latest medical information indicates people are most contagious when they are actively symptomatic, but now the CDC is recommending people wear masks in public settings because people can transmit the virus days before they start to show symptoms. The CDC recommends people maintain a distance of 6 feet between them and anyone else in order to avoid contact with the disease. If this distance cannot be maintained, CDC recommended people wear masks to provide a barrier from people expelling droplets in breathing, coughing, and conversation.[18] Plaintiff Franklin's declaration details housing practices in several units of the jail, including central booking. In all these settings, social distancing is impossible.

32. Jails and prisons by their nature are unable to adequately implement prevention and containment strategies, and despite local administrators' planning, the East Baton Rouge Parish Prison is no different. To reduce the risk posed by jails and prison, COVID-19 prevention strategies necessitate both containment and mitigation.

33. Containment requires intensive hand washing practices, decontamination and aggressive, frequently scheduled and as-needed cleaning of surfaces, and identifying and isolating people who are ill. Moreover, the use of appropriate personal protective equipment (PPE) is necessary for those tasked with decontaminating surfaces and interacting with potentially infected individuals.[19] The CDC recommends mitigation strategies such as social

[17] Coronavirus (COVID-19), CDC, https://www.cdc.gov/coronavirus/2019-ncov/index.html.
[18] Coronavirus Disease 2019: Recommendations for Cloth Face Covers, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html.
[19] Coronavirus (COVID-19), CDC, https://www.cdc.gov/coronavirus/2019-ncov/index.html.

distancing and closing communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease.[20]

34. As mentioned above, jails and prisons typically house inmates with chronic conditions, particularly in men, that were not well controlled prior to incarceration. CorrectHealth and the East Baton Rouge Sheriff's Office have consistently emphasized the prevalence of preexisting conditions within the incarcerated population that often have gone untreated or even undiagnosed. These CDC-designated conditions are listed above.

Inadequate Testing and Screening

35. Substantial mitigation of the COVID-19 risk would require appropriate screening and available testing for all inmates, staff, and others entering the facility, but thorough testing is not possible given resource constraints, and the screening conducted is not meaningful.

36. Comprehensive testing is a critical component of containing the spread of the virus and to ascertaining the severity of the outbreak.

37. Detainees in the jail have consistently reported an inability to obtain testing even when they show COVID-19 symptoms. For example, Plaintiff Rogers, reports that he remained on a non-COVID-19 unit even though he was symptomatic for days and had reported his symptoms (headaches and body aches) to jail staff. He later tested positive for COVID-19. Rogers Decl. ¶ 8-9. In another example, Plaintiff Spears attests that detainees exhibiting severe symptoms remained in their unit for 10-12 hours before being moved or being tested for COVID-19. Spears Decl. ¶ 27. Plaintiff Williams reports being sent to the COVID-19 isolation unit without having been tested. Williams Decl. ¶ 12. Plaintiff Hardy reports that people with fevers were often left on a regular housing unit until shift change; only then were they transferred to an isolation unit. Hardy Decl. ¶ 12. Stewart, similarly, was symptomatic for weeks, and nurses took no steps to assist him; he later tested positive for COVID-19. Stewart Decl. ¶ 5. Plaintiff Harris reports after a nurse took his temperature, he registered a fever, but then a normal temperature on immediate repeat. Despite this inconsistency, and without a test, he was sent to the COVID-19 housing unit immediately. Harris Decl. ¶6. He wasn't tested for the virus until about 8 days later. *Id.* at ¶12. He reports he ended up testing negative. *Id.* With this set of test results, all the other men on the unit tested positive and were sent to Angola. *Id.* at ¶13. After about 5 days of being the only person on the unit—with no media—seven new inmates with symptoms of the virus, and who eventually tested positive, were brought to the unit. *Id.* at ¶¶14-15Plaintiff Harris was not given a mask despite the symptoms and test results of others. *Id.* at ¶16. His second test, approximately four days after the arrival of this second group, was positive. He ultimately spent 35 days in lockdown. *Id.* at ¶19. Similarly, plaintiff Franklin reports being placed in a COVID-19 isolation unit the day he was tested for the virus. Franklin Decl.¶ 30.

[20] *Id.*

38. I see no evidence that jail administrators have performed epidemiological surveillance of staff or inmates, and it appears that only isolated tests have been performed for diagnosing based on symptoms. In an April study of four large prisons (in Arkansas, North Carolina, Ohio, and Virginia), 3,277 inmates out of 4,693 tested for coronavirus (70%) tested positive, and only 4% of these inmates reported symptoms. Since viral shedding (the means by which a person shares the virus) occurs for weeks prior to any symptoms—and more people never show symptoms—administrators need to know the COVID-19 status of the population for housing decisions and other mitigation and staff concerns.

39. One Plaintiff, Hardy, attests that guards have stopped testing people unless they exhibit severe symptoms of COVID-19. Hardy ¶ 11. It is imperative that COVID-19 tests are done to determine active cases of infection through viral testing, e.g., currently limited to PCR (polymerase chain reaction tests) and antigen testing. Antibody tests currently available are less reliable and only indicate if a person developed antibodies after exposure to the virus.

40. Jail staff are doing temperature checks of detainees and in some cases sending detainees to COVID-19 units before even administering a test. Williams Decl. ¶ 6-7. Taking detainees' temperature and screening for symptoms is ineffective against the spread of COVID-19. Infected people typically show no symptoms for 2-14 days and some never become symptomatic, even though they may be spreading the disease during that time through the methods outlined above. [21]

Other Containment Measures

41. Common areas and high-touch surfaces, such as phones and doors, are not cleaned by the jail staff. At most, Plaintiffs attest that guards pour diluted solution on the floors on the facility. For example, Plaintiffs Williams, Bradley, Shepherd, and Stewart report that guards do not clean the phones, door knobs, showers, or toilets, forcing many Plaintiffs to clean those things themselves and to use socks as gloves or as phone coverings. Williams Decl. ¶ 20-25; Bradley Decl. ¶ 14; Shepherd Decl. ¶ 16-18; Stewart Decl. ¶ 20-21. Plaintiff Franklin details substandard living conditions—both structural and custodial—throughout the various housing units he occupied. He also comments on the large rats and unhygienic conditions for which he was irregularly given inadequate cleaning supplies. Franklin Decl. ¶¶ 22, 37. Failure to properly sanitize common areas and high-touch surfaces, such as the phones that detained individuals heavily use, seriously increases the risk of the spread of COVID- 19 and demonstrates the failure to take the most fundamental precautions for preventing the spread of the disease. CDC provides guidance for these processes, which include the following:
    - Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
    - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).

[21] *See CDC Guidance* https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

- Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19external icon as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
- Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use

42. Plaintiffs are not given the supplies necessary to clean their own cells or personal spaces, even after testing positive for COVID-19. Williams Decl. ¶ 20; Rogers Decl. ¶ 27; Bradley Decl. ¶ 10. The jail provides only deodorized soap, which is not a disinfectant. Soap is required for personal hygiene and effective, frequent handwashing. But commercial deodorized soap is not a disinfectant and does not kill COVID-19. Plaintiff Harris states he was given no PPE, no cleaning supplies, and he was unable to access supplemental hygiene supplies while on his 35-day COVID-19 lockdown. Harris Decl. ¶¶ 16, 23. The CDC provides a list of agents than can effectively kill COVID-19.

43. Guards and other jail staff do not regularly wear protective gear, as outlined by the CDC. Multiple Plaintiffs, like Williams, Rogers, Hardy, and Shepherd, report seeing guards who were not wearing masks, gloves, or other protective equipment. Williams Decl. ¶ 26; Rogers Decl. ¶ 35; Hardy Decl. ¶ 21; Shepherd Decl. ¶ 22. The jail also failed to give Plaintiffs, even COVID-19-positive Plaintiffs, adequate protective equipment; they are instead given thin bandanas. Rogers Decl. ¶ 36. While bandanas are certainly better than nothing as a barrier, they are considered "homemade masks" by the CDC and are not considered PPE. They should only be used as a crisis capacity strategy.

44. Plaintiffs who test positive for COVID-19 are held in portions of the jail that were previously closed due to their conditions. Williams Decl. ¶ 7. Plaintiffs reported seeing rats and spiders throughout the units. Plaintiff Harris provides clear descriptions of disrepair, dirt, and rust in units C01 (the COVID-19+ containment/lockdown unit) and A1. Harris Decl. ¶¶ 8, 28.

45. Plaintiffs report mold and rust throughout the jail and have seen leeches and roaches coming from the bathroom drains. Spears Decl. ¶ 5-7, 10. And the showers are not cleaned consistently. Rogers reports that the showers were cleaned at the end of each day but not between uses. Rogers Decl. ¶27. Hardy and Shepherd report that guards, in lieu of properly cleaning the showers, pour solution on the ground every two or three weeks. Hardy Decl. ¶18; Shepherd Decl. ¶17. They should be cleaned after each use. No cleaning supplies are provided to inmates for frequent cleaning of showers.

46. Multiple Plaintiffs report being held in open-dormitory-style units, some with upwards of 100 people, and sleep on bunk beds with just a couple feet of distance between them. Williams Decl.¶ 4; Hardy Decl. ¶5-6; Spears Decl. ¶17; Spears Decl. ¶19-20; Bradley Decl. ¶ 4; Shepherd Decl. ¶ 5. Given this layout and crowded environment in which individuals are held, it is impossible to provide an environment where social distancing can take place, depriving individuals of being able to use the most important CDC-recommended measures to protect themselves.

47. Plaintiffs in COVID-19 units are held either in single person cells or in cells with up to three other people. Shepherd Decl. ¶ 8; Stewart Decl. ¶ 13. Plaintiffs attest that these cells have thin walls on the sides, bars on the front, and are so close to one another that detainees can reach into the cell next to them. This open bar architecture allows aerosolized droplets to suspend in the air and move back and forth among cells. The CDC clearly defines the need for cohorting people based on infection and time of diagnoses. Inmates with confirmed positives should not be housed with people with suspected positives. Inmates who are cohorted should continue to wear masks.

48. Staff and detainees require education about the virus, its spread, and rationale for new behaviors and routines. Detainees testify that they have not been informed of, and are not aware of, the need for disease prevention measures, or the substance of recommended measures. Officers do not provide consistent information to the inmates. Almost all information inmates get is from the television. Rogers Decl. ¶ 33; Hardy Decl. ¶ 23. Plaintiff Spears reports that the officers turn off the television if news about coronavirus or COVID-19 is broadcasted. Spears Decl. ¶ 30. Some cite that an officer will occasionally bring in a newspaper to share. Williams Decl. ¶ 19. One plaintiff noted that he may have seen one sign about COVID-19, but that such signs were not ubiquitous. Spears Decl. ¶ 29.

49. Even before the COVID-19 crisis, the jail staff struggled to provide adequate medical care. Now, with the threat of the virus's spread through the jail population, it is questionable whether the jail medical unit is equipped to address both underlying chronic conditions of individuals and the outbreak of COVID-19 in the jail. During a pandemic, isolation, quarantine, and cohorting are housing strategies, they are not a substitute for medical care. The declarations of the Plaintiffs do not approximate the guidance provided by the National Commission on Correctional Care—the national accrediting agency of medical services in correctional institutions. EBRPP states that it maintains this accreditation. Plaintiff Franklin details the delay in medication management, including insulin injections, following the COVID-19 outbreak in EBRPP. These delays not only result in erratic blood sugars readings, they could promote potentially lethal hypoglycemic (low blood sugar) or hyperglycemic (high blood sugar) states. Moreover, when housed in Central Booking, Franklin reports he had to remind the nurses of his medication, frequency, and dosing. They apparently didn't have a medication log. Franklin Decl. ¶¶ 11-12.

50. For individuals in these facilities, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.

51. The neglect of individuals with acute conditions and serious chronic health conditions under ordinary circumstances is also strongly indicative that the facilities are ill-equipped to identify, monitor, and treat a COVID-19 epidemic. Plaintiffs' declarations attest to neglect of their medical conditions due to the additional demands on staff as a result of the severity of COVID-19. When the medical unit is strained both due to potential understaffing and/or additional burden from potential COVID-19 patients, it is unlikely that it will be able to provide the care necessary for those with medical needs associated with conditions other than COVID- 19.

52. The jail is ill-equipped to handle the current COVID-19 outbreak. Plaintiffs' declarations attest that the infirmary that sick people have to share showers, toilets, sinks, and other common areas. Plaintiffs report inconsistent and inadequate supplies of personal hygiene supplies. Many rely on commissary to bridge the gaps between distribution of soap from the institution.

53. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected. Plaintiffs and others held in the jail have serious medical vulnerabilities, including diabetes, asthma, COPD, HIV/AIDS, and other chronic respiratory conditions. An outbreak in East Baton Rouge Parish Prison would be disastrous for plaintiffs, correctional officers, medical staff, and members of Baton Rouge Parish. Many of the plaintiffs have chronic health conditions. When the conditions worsen due to lack of routine access to career, e.g., Plaintiff Franklin with insulin-dependent type 2 diabetes, their susceptibility for COVID-19 infection increases. Franklin Decl. ¶¶ 4, 11.

54. The plaintiffs consistently report lack of social distancing—actually the impossibility of social distancing in most housing settings-- lack of hygiene supplies and cleaning supplies, lack of routine scheduled and as-needed cleaning, and inconsistent medical care due to new and increased demands on correctional and medical staff. This combination of condition puts medically vulnerable inmates at an extremely high risk of infection, as well as the potential for permanent lung damage and death. The only way to effectively reduce this risk is the release of medically vulnerable inmates.

55. Proper response to a COVID-19 outbreak in a jail setting necessarily includes identifying all of the people held in the jail's custody who are medically vulnerable. This task is critical for several reasons, and the daily updating of the list and locations of high-risk patients is critical to basic outbreak management. Creating a real-time list of high-risk patients allows for:
    - Identification of high-risk patients who are eligible for release from detention
    - Implementing of active surveillance, special housing arrangements, and other protective measures for high-risk patients who are not ill
    - Implementing enhanced surveillance and protective measures for high-risk patients who are in a quarantine setting, or who develop symptoms of COVID-19
    - Development and implementation of re-entry plans of care and support with community partners for high-risk patients.

VIII. Visiting Facility

56. While we are currently experiencing personal health crises and public health emergencies related to COVID-19, experts share the opinion that the pandemic will extend well into 2022. In jails and prisons, this requires a different mindset in housing and processes,

because, currently, social distancing, the greatest tool in mitigating the spread of coronavirus, is impossible.

57. Since social distancing is impossible at present, the only effective means of reducing risk of infection for medically vulnerable populations is their release from jail or prison. For others who are less susceptible to death from COVID-19, jails and prisons must take measures to decrease the spread of the virus; this is key not only for the health and well-being of the inmates, but also for the correctional and medical staff, their families, and their communities.

58. The CDC has very clear guidance for the management of COVID-19 in correctional and detention facilities. The declarations I have reviewed and the photos I have seen of the EBRPP indicate that the jail is not adhering to many of these guidelines. This must change in order to promote the health of all stakeholders in East Baton Rouge Parish—in both the current emergency and in the long-term health of the community. I have had a unique career in homeless healthcare, correctional health care, and addiction medicine. I have experience and maintain interest in respectfully and productively working with the court to develop measures to ensure safety and promote health of stakeholders in correctional facilities. In addition to my experience outlined above, I am currently working with the stakeholders in the City of St. Louis, Missouri, to safely reopen the courts.

59. In order to get a well-informed understanding of how the EBRPP can make long-term measures to decrease risk of harm, I would need to do an inspection of these facilities. I am available to do so in the coming weeks. Areas and items of inspection would include the following:
    - Places
        - All buildings
        - All lobbies, including public and inmate
        - Intake
        - Infirmary
            - Medical
            - Psychiatric
        - Medical clinic
        - Pods/Housing
            - General population
            - Housing units of all the plaintiffs
            - Special COVID-19 Housing
            - Quarantine units, including J1
            - Showers/Toilets
            - Common areas
        - Dining areas and kitchen
        - Laundry facilities
        - Visitation areas
        - Conveyance vehicles

- PPE (and education materials), inventory, availability, education regarding use, and processes
    - Inmates
    - Correctional staff
    - Medical staff
    - Others (vendors, etc.)
- Cleaning supplies (as well as signage and education materials)
    - Availability
    - Supplies
    - Cleaning schedules
- HVAC
    - Observation of ventilation in all the areas above
    - Negative pressure isolation rooms
    - Movement of air in high traffic areas
- Observation of behaviors (and education materials about signs and symptoms of COVID-19, social distancing, use of PPE, use of cleaning and hygiene supplies,)
    - Adequate physical distancing
    - Use of PPE
    - Cleaning in high use areas (phones, common areas)
    - Cleaning in individual cells or bed areas
    - Processes and compliance for entering and leaving building
    - Processes and compliance for moving around in building

60. Records that would be useful for me to analyze to move forward include the following items. The records, policies, and registries are maintained in facilities accredited by the NCCHC and should not be burdensome to produce.
    a. EBRPP Records
        i. Processes that have been developed to respond to the current COVID-19 pandemic, including
            1. Treatment, housing, and management of inmates
            2. Housing policies
            3. Testing policies of inmates, staff, vendors, and any other people entering EBRPP
            4. Social distancing guidance, PPE, cleaning, and hygiene guidance for inmates, staff, vendors, and any other people entering EBRPP
            5. Updates in communication with CorrectHealth regarding provision of healthcare, management of sick call, and housing of inmates in quarantine and those who test positive for COVID-19
        ii. Signage and education materials that are currently posted in the facility
        iii. ER runs from 2/1/2020 to 5/26/2020 compared to ER run from 2/1/2019 to May 26, 2019
        iv. COVID-19 tests administered
            1. To inmates and staff

2. Broken down by viral vs. antibody tests

b. CorrectHealth Records
   i. Mortality reviews of inmates who have died since 2/1/2020
   ii. Registry of inmates vulnerable for COVID-19 infection
      1. Asthma
      2. Chronic kidney disease being treated with dialysis
      3. Chronic lung disease, such as emphysema and COPD
      4. Diabetes
      5. Hemoglobin Disorders, including sickle cell anemia
      6. Immunocompromised persons, including those with HIV/AIDS
      7. Liver disease, including hepatitis
      8. People aged 65 years and older
      9. Serious heart conditions, including past myocardial infarctions, and congestive heart failure
      10. Severe obesity
      11. Neurological conditions, such as epilepsy
   iii. Serious mental illness (those that severely impact daily functioning), such as schizophrenia, bipolar affective disorder, major depression
   iv. Registry of inmates enrolled in chronic care clinics (part of NCCHC accreditation)
   v. Sick call and sick call responses since 2/1/2020
   vi. Pharmacy inventory and fill records
   vii. Daily infirmary census since 2/1/2020
   viii. Daily infirmary new admissions since 2/1/2020
   ix. Contracts with East Baton Rouge Parish for CorrectHealth'

XI. Conclusions

61. For the reasons above, it is my professional judgment that individuals placed in the East Baton Rouge Parish Prison are at a significantly higher risk of infection with COVID-19 as compared to the population in the community, given the procedural and housing conditions in the facilities, and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis), permanent lung damage, and even death.

62. Reducing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those who are housed and those who work within those facilities. Masks and other facial coverings do not supersede the need for social distancing.

63. From a public health perspective, it is my strong opinion that there is no way short of release to protect the medically vulnerable from grave risk of imminent infection and death. Jails and prisons will remain incubators of coronavirus until there is adequate

testing, routine testing, and appropriate mitigating strategies—the most important being social distancing—throughout the facility for all stakeholders. If these inmates are released, they have an opportunity to practice social distancing—something they cannot do while incarcerated—and more effectively engage in other behaviors recommended by the CDC. Until these measures are in place, all people entering and exiting the facility become vectors to bring the virus back to their homes, their neighborhoods, and the community at large.

64. Although mitigation and containment strategies are vital, they are merely one piece of the puzzle. The lower the jail or prison population, the more effective these strategies will be. Fewer people in a facility means best practices will be more effective, fewer community resources will be needed, and other inmates and correctional staff will be safer. And the community of Baton Rouge will achieve a safer, swifter recovery and fewer, less severe repeated outbreaks.

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

Dated: May 26, 2020

St. Louis, MO

Fred Rottnek, MD

Fred Rottnek, MD, MAHCM

EXHIBIT 15

Supreme Court
STATE OF LOUISIANA
400 ROYAL STREET
SUITE 1190
New Orleans
70130-8101

CHIEF JUSTICE
BERNETTE JOSHUA JOHNSON

JUDICIAL ADMINISTRATOR
SANDRA A. VUJNOVICH

TELEPHONE: (504) 310-2550
FAX: (504) 310-2587

April 2, 2020

To the Louisiana District Judges:

Thank you for all that you are doing during this crisis to mitigate the spread of COVID-19 throughout our state. Experts estimate the rate of spread of COVID-19 in Louisiana will be one of the highest in the nation. The decisions that you make will have a significant impact on our communities and our state and will save lives.

Louisiana has a significantly higher-than-average parish jail population. An outbreak of COVID-19 in our jails would be potentially catastrophic for jail staff, the families of jail staff, and inmates. Therefore at this time, it is important to safely minimize the number of people detained in jails where possible. In order to restrict the potential spread of this contagion through jails, I ask that each judge in her/his criminal division, and in conjunction with prosecutors, public defenders and sheriffs, conduct a comprehensive and heightened risk-based assessment of all detainees (except those who have been convicted of felony offenses and remanded to the Department of Corrections) in accordance with the following guidelines:

1. For those charged with misdemeanor crimes, other than domestic abuse battery, favor a nominal bail amount, or a release on recognizance order – with, of course, a notice to appear on a future date;

2. For those convicted of a misdemeanor crime, consider modification to a release and supervised probation or simply time-served;

3. For those charged with a non-violent offense, consider a reduced bail obligation or a release on recognizance order with, of course, a notice to appear on a future date;

4. For those charged in other criminal matters, re-examine the nature of the offense and criminal history, if any, to determine if any bail revisions are appropriate;

5. Where the Department of Probation and Parole requests a revocation of probation and it is within your discretion to revoke, please confer with Probation and Parole to determine whether there is an alternative to detention, especially with technical violations;

6. For those being held due to an outstanding warrant "hold" from another judicial district or jurisdiction, please request prosecutors and a designated sheriff's deputy promptly communicate with that jurisdiction to determine whether the underlying reason for the hold is sufficiently minor (e.g., a minor traffic offense, failure to pay money obligations, failure to return a rental movie) such that release can be effected or whether the detainee can be immediately transferred;

7. Please suggest to law enforcement that, whenever practicable, they issue summons and citations on misdemeanor crimes and non-violent offenses in lieu of arrest, with a notice to appear on a future date.

During this very challenging time, the health of thousands of people is dependent on you, the District Judges of Louisiana. I commend the way that many of you have already been pursuing ways to minimize outbreaks of COVID-19 in jails. This letter is to provide guidance on further comprehensive, heightened risk-based assessments in this unprecedented and challenging time.

Thank you for your valuable service to your community and our state. Please take good care of yourselves and your families!

Sincerely,

Bernette J. Johnson

Chief Justice Bernette J. Johnson

EXHIBIT 16

John Bel Edwards
GOVERNOR

Stephen R. Russo, JD
INTERIM SECRETARY

State of Louisiana

Louisiana Department of Health
Office of Public Health

TO: **DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS and OFFICE OF JUVENILE JUSTICE**

FROM: **LDH OFFICE OF PUBLIC HEALTH**
Jimmy Guidry, M.D. *Jimmy Guidry, M.D.*
State Health Officer

RE: **COVID-19; recommendations regarding prisons and juvenile detention centers**

DATE: **April 8, 2020**

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the COVID-19 outbreak a "public health emergency of international concern" (PHEIC). On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency (PHE) for the United States, effective January 27, 2020. Pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760, *et seq.*, a state of public health emergency resulting from the outbreak of "coronavirus disease 2019" (COVID-19) was declared to exist in the entire State of Louisiana by Proclamation Number 25 JBE 2020.

In the days since the referenced declaration of the state of the public health emergency in the state, the COVID-19 outbreak in Louisiana has expanded significantly. The number of reported cases and deaths is expected to rise significantly in the state in the coming weeks. Additional measures are necessary to protect the health and safety of the public. The measures recommended herein are in line with the best guidance and direction from the U.S. Centers for Disease Control and Prevention, and are necessary because of the ability of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its propensity to attach to surfaces for prolonged periods of time.

The Louisiana Department of Health - Office of Public Health (LDH-OPH) expressly finds that the measures recommended herein are necessary to help control and prevent further spread of COVID-19, a communicable, contagious, and infectious disease that represents a serious and imminent threat to the public health. If the following measures

are not taken, said infectious disease could spread within correctional and detention centers which would overwhelm the state's medical facilities and which would cause further spread to the citizens of the State of Louisiana.

Pursuant to the powers vested in the State of Louisiana – Office of Public Health by L.R.S. 40:1 *et seq.*, **I do hereby make the following recommendations**:

Correctional and detention centers should take safe and adequate measures to ensure that the COVID-19 coronavirus disease shall not spread within its facilities. Specifically, correctional and detention centers should:

- Practice proper hand hygiene. Wash hands with soap and water for at least 20 seconds.

- If soap and water are not readily available and illicit drugs are not suspected to be present, use an alcohol-based hand sanitizer with at least 60% alcohol; this protocol applies to all staff, visitors, and inmates.

- Refrain from touching faces with unwashed hands; this protocol applies to all staff, visitors, and inmates.

- Have a trained Emergency Medical Service/Emergency Medical Technician (EMS/EMT) assess and transport anyone you think might have COVID-19 to a healthcare facility.

- Ensure only trained personnel wearing appropriate personal protective equipment (PPE) have contact with individuals who have or may have COVID-19.

- Separate sick individuals from other individuals in the facility, this is known as isolation. Isolate a sick individual in a specific "sick room" if possible, and away from other individuals in the facility. Use a separate bathroom, if available.

- Wear a facemask when around sick individuals at the facility.

- Cover coughs and sneezes. Cover the mouth and nose with a tissue when coughing or sneezing. Throw used tissues in a lined trash can, then immediately wash hands with soap and water for at least 20 seconds.

- Wash hands often with soap and water for at least 20 seconds. This is especially important after blowing nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.

- Avoid sharing personal items. Do not share dishes, drinking glasses, cups, eating utensils (after using these items, wash them thoroughly with soap and water or put in the dishwasher), towels, or bedding with other individuals in the facility.

- Clean high-touch surfaces in the isolation area ("sick room" and bathroom) every day while wearing a mask. Clean and disinfect high-touch surfaces in other areas of the facility every day. High-touch surfaces include, remote controls, counters, tabletops, doorknobs, bathroom fixtures, toilets phones, keyboards, and tablets.

- Immediately clean and disinfect areas that may have blood, stool, or body fluids on them with household cleaners and disinfectants: Clean the area or item with soap and water or another detergent if it is dirty. Then, use a household disinfectant. Be sure to follow the instructions on the label to ensure safe and effective use of the product. Many products recommend keeping the surface wet for several minutes to ensure germs are killed. Many also recommend precautions such as wearing gloves and making sure you have good ventilation during use of the product.

- Ensure that all inmates at correctional and detention centers, staff, and visitors maintain a distance of at least 6 feet from each other. If said distance cannot be maintained within the current prison population and if following all of the above referenced protocols does not protect correctional and detention staff, visitors, and inmates, then OPH recommends that correctional and detention centers work with the District Courts, the Public Defender's Office, and District Attorney's Office to reduce the size of the jail population of the least non-violent inmates in order to comply with this recommendation.

Thank you for that all that you are doing in this crisis to mitigate the spread of COVID-19 throughout the State of Louisiana.

Sources: www.ldh.la.gov; www.cdc.gov

Sincerely,

Jimmy Guidry, M.D.

Jimmy Guidry, MD
State Health Officer
Louisiana Department of Health

EXHIBIT 20

EXHIBIT “L”

HEALTH MANAGEMENT ASSOCIATES

June 8, 2016

Report and Recommendations
Clinical Operations at East Baton Rouge Parish Prison

Linda Follenweider, MS, PhDc, CNP, Jack Beck, MD & Karen Batia, PhD

HMA engaged to analyze clinical operations (medical, oral health and behavioral health services) compared to Louisiana and national corrections standards (ACA and NCCHC)

- Staffing
- Pharmacy
- Medication
- Administration
- Quality improvement and performance
- Records
- Utilization of specialty services
- Treatment of communicable diseases and chronic care
- Suicide prevention
- Mortality reviews

Methodology

- Onsite visit February 23 – 25, 2016
- Interviews with
  - William Daniel, Chief Administration Officer, Office of the Mayor-President
  - John Price, Assistant Chief Administrative Officer, Office of the Mayor-President
  - Chad Guillot, Interim Administrator, Emergency Medical Services
  - Dennis Grimes, Warden EBR Parish Prison
  - Rintha Simpson, Interim Responsible Health Administrator, Emergency Medical Services
  - Dr. Bridges, Medical Director
  - Dr. Whitfield, Primary Care Provider
  - Dr. Leggio, Dentist
  - Dr. Blanche, Psychiatrist
  - Kristy Perry, Psych NP
  - B. Stine, RN
  - Lisa Burns, LCSW
  - Capital Area LMSW (Jessica)
  - Tracy Washington, LPN
  - EBR Parish Prison detainees (approximately 15)

Methodology

- Documentation Reviewed
  - EMS Prison Medical Overview 2/16
    - EBR Parish Prison 2014 actual/2015 budget
    - Contracts (medical director, physicians, CAHSD), job descriptions
    - EMS protocols content dated 1995 – 2005
  - EBR Parish Prison Inmate Rules and Regulations (rev 10/15)
  - Disciplinary Procedures (1/16)
  - Use of Force (1/16)
  - Classification Procedures (1/16)
  - Medical Intake and Orientation (7/12)
  - Medication expenditure reports 2015 (by patient and facility)
- CorEMR electronic medical records
  - Reviewed individual patient records (sample based on patient permission and specific diagnoses)
  - Available reports generated by CorEMR

East Baton Rouge Context

- EBR Parish Prison census has been increasing since 2005
- Daily census consistently is at capacity >1500 with additional detainees housed at other facilities
  - Increased numbers of misdemeanants reported
- Migration of people relocating after Hurricane Katrina may have contributed to increased census at EBR Parish Prison
- Consultant engaged to assess legal processes
- Previous HMA report proposed set of diversion programs to help reduce number of people with behavioral health issues enter the EBR Parish Prison

East Baton Rouge Context

- Earl K Long (public/charity medical center) closed in 2013
  - Previously provided majority specialty consultation, emergency department care, diagnostic testing, and inpatient care prior to closure
  - As a result increased volume of referrals and procedures are made to Charity Hospital in New Orleans
    - Significant amount of Correctional Officer time for transportation required
    - Financial impact
    - Difficult to access specialty services, non-emergency inpatient care, and diagnostic testing
- Our Lady of the Lake (OLOL), now the main referral site for emergency inpatient services and emergency department visits

National Standards Focus

- Access to Care
  - Screening and Assessment
- Quality of Care
- Clinical Care
  - Disease Management
  - Chronic Care Management
  - Comprehensive and Continuity of Care
- Medical and Administrative Leadership

Strengths of Current Health Care System at EBR Parish Prison

- Adoption of CorEMR
  - Powerful tool with significant health management and data capabilities
- Pharmacy management
- LCSW screens and triages requests for psychiatric provider assessment and medication management
  - Helps identify priority detainees for follow-up
  - Documentation details needs and plan

EBR Parish Prison Patient Vignette

EBR Parish Prison Health Services Work Flow

Central Booking Health Screen (Corrections Officer)

- Are you taking prescribed medication?
- Are you under the care of a doctor?
- Do you need to see a doctor?
- Officer may request LPN assessment
- People with obvious medical needs are transported out for medical clearance

Initial Health Screening (LPN)

- Structured screening tool based on detainee response and LPN observation
- Includes Brief Jail Mental Health Screen
- Routine medical screen for chronic health issues and current medications
- TB test placed

Medical and Mental Health Assessment

(If Health Screen identifies need)

- Medical assessments completed by physicians
- Mental health assessment completed by EMS LCSW and referred to psychiatric provider if needed
- Dental services requested if required
- Follow-up appointments based on identified need

Medication Passed and Health Service Request Review (LPN)

- LPNs pass medications 3 times a day
- During medication pass LPNs may identify need for medical or MH follow-up and request via CorEMR
- Detainees request sick slips which are reviewed and triaged nightly by LPN if follow-up needed scheduled in CorEMR

EBR Parish Prison Health Services Overview

- Annual budget $5M
- Administrative medical authority and health staff provided by Emergency Medical Services (EMS)
  - Responsible administrative leader
  - Nursing
    - 1.0 FTE RN
    - 2.0 FTE Director of Nursing (vacant)
    - 5.0 FTE LPN Supervisors
    - 20.0 FTE LPN (6 vacant)
  - Mental Health
    - 1.0 FTE LCSW

EBR Parish Prison Health Services Overview

Professional Services Contracts with the City-Parish

- Total 0.7 FTE medical providers
  - 0.3 FTE Medical Director
  - 0.3 FTE Primary Care Physician
  - 0.1 FTE HIV Physician
- Total 0.50 psychiatric providers
  - 0.3 FTE Psychiatrist
  - 0.2 FTE Psychiatric Nurse Practitioner
- 0.20 FTE Dentist
- 2.20 Capital Area mental health staff (1.8 Social Worker and 0.40 Peer Specialist)
- 0.10 X-Ray technician
- Contract Pharmacy Services (CPS) provides medications
- Complex extractions, basic eye exams and ultrasound services as needed

Access to Care

EBR Parish Prison

- Approximately 88% of detainees receive Initial Health Screen
  - Validated substance withdrawal screen not included
  - Data collected regarding who has not been screened is not considered reliable
  - Screens may not be completed until 24 – 36+ hours after entering the facility resulting in potential to miss prescribed medications
  - Inconsistent screening practices by LPNs

Standard of Care

- All detainees receive a health screen or assessment within 4-6 hours
  - Conduct health screens within Central Booking area
  - Consider switching to Correctional Mental Health Screen (validated tool for both men and women, differentiates urgent and routine follow-up indicated, and for use by Corrections Officers and health staff)
  - Consider including the Clinical Institute Withdrawal Assessment of Alcohol and Opiate Withdrawal Scale(s) (CIWA-Ar and COWS)
  - Assure standard screening process and review consistent use of tool
  - Improve tracking process and data for completion of screens

Access to Care

EBR Parish Prison

- Health service requests (sick call slips) must be requested from Corrections Officer
  - Requests are between 16% and 33% of national rates based on number of detainees
  - Majority of detainees are not offered follow-up medical visits based on health service request
  - In January 2016 approximately 17 nurse sick call visits were performed (1.1% of daily census) significantly below expected utilization

Standard of Care

- Place sick call slips in common areas easily accessible to detainees
- Data should be gathered to collect number of health service requests received daily, number triaged within 24 hours, number prioritized, documented, numbers sorted to nurse or provider visits, and number of follow-up visits completed

Access to Care

EBR Parish Prison

- Wait times for health care follow-up varies
- Inadequate staffing based on detainee volume and expected service demand
  - 30% nurse vacancies
  - 0.70 FTE medical providers
  - 0.50 FTE psychiatric providers
  - 2.20 FTE mental health staff providing community referrals and limited counseling and therapeutic support
  - 1.0 FTE LCSW dedicated to therapeutic interventions

Standard of Care

- Triage access to health professionals based on health acuity and schedule providers to ensure daily coverage
- Staffing best practices
  - Market rate salaries
  - Increase RN FTE
  - 2.0 FTE medical providers required based on volume
  - 1.2 FTE psychiatric providers required based on volume
  - Realign mental health staff resources to provide services on-site that includes discharge planning

Access to Care

EBR Parish Prison

- Inadequate staffing based on detainee volume and expected service demand (continued)
  - Physicians completing routine assessments
  - LPNs completing clerical tasks
- Long waits for specialty care

Standard of Care

- Ensure staff work at the top of their license
  - Nurse Practitioners complete medical assessments
  - Physicians see medically complex patients and provide chronic care services
  - Clerical duties performed by administrative staff
- Increase Dentist FTE
  - Consider hiring dental assistant or hygenist
- Contract with specialty providers, partner with medical residency and local hospitals

Quality of Care

EBR Parish Prison

- Routine staffing is held to review mental health cases once per month attended by the Warden, social workers and administrative staff
- CorEMR data fields and reports not populated or routinely reviewed

Standard of Care

- Clinical health staff meetings held once per month, complex medical and behavioral health cases reviewed, quality metrics reviewed and improvements needed identified
  - Document meetings and distribute minutes to health care staff
  - Utilize trend data and quality performance reports to benchmark plan of corrections
- Populate CorEMR data fields and distribute pertinent reports monthly to health care staff

Quality of Care

EBR Parish Prison

- Utilization and outcome data is not collected, distributed or used to identify potential quality improvements
- Formal critical incident and death reviews are not conducted

Standard of Care

- Implement a quality dashboard
  - Collect utilization and outcome metrics on a regular basis
  - Review results in health staff meetings
  - Develop Plan, Do, Study Act (PDSAs) to implement and test improvements
- Institute formal critical incident and death reviews within 30 days of incident
  - Implement any indicated practice or policy changes based on review
  - Debrief lessons learned with providers and staff
  - Document review

Quality of Care

EBR Parish Prison

- Peer review of health care providers are not conducted
- Training on health care issues is provided on an inconsistent basis to health staff and corrections officers

Standard of Care

- Annual peer review of health care providers is conducted
  - Clinical care reviewed
  - Observations and any recommendations are documented and shared with the provider
- Conduct consistent training and determine standard curriculum
  - Health care staff annual training to include CPR, suicide assessment, response to sexual abuse
  - Corrections Officers training at minimum every two years to include signs and symptoms of mental health issues and withdrawal from substances, suicide prevention

Clinical Care

EBR Parish Prison

- Health care provided is episodic and inconsistent
  - Reliant on having received an initial screen rather than consistent and comprehensive processes in place
- Limited routine health care and access to medical staff is resulting in avoidable emergency transfer to external health services
  - 43 detainees sent to OLOL January 2016 (costs TBD)
- Chronic care program not in place based on chart review

Standard of Care

- Standardize routine and comprehensive assessment, initiate disease management and chronic care treatment
- Institute chronic care program that follows national clinical guidelines

Clinical Care

EBR Parish Prison

- Mental health and substance abuse services and interventions are limited due to facility lay out and staff resources

Standard of Care

- Within current facility mental health patients should be placed in cohorted housing units that would enhance the ability of the limited MH staff to monitor, visit, counsel and provide group programing to this high risk population and allow security to assign correctional officers with additional training in the management of the mentally ill to these units
  - Realign how CAHSD staff are being utilized
  - Consider implementation of Screening Brief Intervention and Referral to Treatment (SBIRT)

Clinical Care

EBR Parish Prison

- Documentation and utilization of CorEMR is inconsistent and not all providers enter notes into the electronic health record
  - Documentation primarily notes medications prescribed with few exceptions outside of LCSW documentation
- Lab results are scanned into the record and often not available when the patient is seen by the provider

Standard of Care

- Require all health care staff and providers to document in the electronic health record
- Develop standard documentation expectations that include diagnoses, treatment plan, and communications needed to be relayed to Corrections Officers to promote health and safety of patients
- Link LabCorp results directly into CorEMR so get automatically uploaded into the health record and results are available at time patient is seen

Clinical Care

EBR Parish Prison

- Inconsistent administration of prescribed medications
  - 22% missed medications (based on CorEMR documentation)
- Excessive use of Seroquel for treatment of insomnia
  - Second most prescribed medication (293 unique prescriptions) second only to Ibuprofen

Standard of Care

- Medication missed documentation should clarify reasons for "not present" and be tracked
  - Critical medications missed should be administered at subsequent pass
- Most medications prescribed twice daily, consider reducing medication passage to twice a day and minimize TID medications
- Literature questions "safety and efficacy" of use of Seroquel for insomnia treatment (Park, 2013)
  - Seroquel has been removed from corrections medication formularies due to risk of abuse and expense with minimal clinical disruption noted (Tamburello et al, 2012)

Medical and Administrative Leadership

EBR Parish Prison

- Interim administrative leader in place dividing time with other duties
- Medical Director serves as a spokesperson and is not involved in operational, supervisory, monitoring, or quality improvement activities

Standard of Care

- Hire dedicated, full-time Responsible Health Authority (RHA) with experience managing large medical practice or correctional health care facility
  - RHA needs to have the authority to manage day to day operations and work with medical director to ensure clinical standard of care
- Medical Director or responsible physician provides medical and clinical leadership, interface with operations and RHA
  - Actively manage standard of clinical care, quality improvement activities, and critical incident and death reviews

Medical and Administrative Leadership

EBR Parish Prison

- Policies, protocols and standards of care are not
  - Accessible to staff or distributed
  - Updated or kept current
  - Tailored to the EBR Parish Prison facility

Standard of Care

- Update and draft critical policies, protocols and procedures at minimum once per year
  - Add clinical guidelines to assess alcohol and other drug use and withdrawal standards of care
  - Add quality plan
- Reinstitute regular administrative and clinical staff meetings
  - Review standards of care, policies, protocols and procedures and distribute meeting minutes

Immediate Priority Recommendations

1) Hire a full-time administrative leader (RHA)
   a. Consider engaging an interim leader who has external perspective and can view the current health care delivery and systems without historical bias or perspective
2) Dedicated staff person focused on instituting a quality program
   a. Develop Quality Plan
   b. Implement Quality Dashboard, collection of data and provide reports to providers
   c. Implement Plan, Do, Study, Act (PDSA) cycles to promote delivery improvement and create a "culture of quality"

Overall Recommendations

Determine who and how health care services will be provided at EBR Parish Prison given current volume at the facility budget to provide comparable corrections health care services needs to double from $5M to $10M annually

- In-house management will require interim leadership with assertive plan to overhaul the current services
- Explore contracting with local hospital, health care delivery system or academic medical center
- Explore possible contracted vendor
- Any of these options will require
  - Clarity on expected standards of care to be in place
  - Proposed budget and allocation of resources
  - Detailed staffing plan, job descriptions and productivity expectations
  - Quality and outcome metrics expected and results to be achieved

EXHIBIT 21

EXHIBIT “M”

HEALTH SERVICES AGREEMENT

THIS HEALTH SERVICES AGREEMENT (hereinafter referred to as "AGREEMENT") by and between the EAST BATON ROUGE PARISH GOVERNMENT, LOUISIANA and the CITY of EAST BATON ROUGE (hereinafter collectively referred to as "PARISH"), the SHERIFF of EAST BATON ROUGE PARISH, LOUISIANA (hereinafter referred to as "SHERIFF"), and CORRECTHEALTH EAST BATON ROUGE, LLC (hereinafter referred to as "COMPANY"), is entered into as of the 21st day of December, 2016, to be effective as set forth in Paragraph 6.1, below.

WITNESSETH:

WHEREAS, under the provisions of Louisiana Revised Statutes 15:703, the PARISH is charged by law with the responsibility for obtaining and providing reasonably necessary medical care for inmates or detainees of the EAST BATON ROUGE PARISH PRISON, located at 2867 Brig. General Isaac Smith, Baton Rouge, LA 70807, (hereinafter called "FACILITY") and,

WHEREAS, PARISH desires to provide for health care to inmates in accordance with applicable law; and,

WHEREAS, under the provisions of Louisiana Revised Statutes 15:703(B), the PARISH desires to enter into this Agreement with COMPANY to promote this objective; and,

WHEREAS, COMPANY is in the business of providing correctional healthcare services under contract and desires to provide such services for the PARISH under the express terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter made, the parties hereto agree as follows:

ARTICLE I: HEALTH CARE SERVICES

1.1 General Engagement. PARISH hereby contracts with COMPANY to provide healthcare services to inmates of the FACILITY. This care is to be delivered to individuals under the custody and control of the SHERIFF at the FACILITY, and COMPANY enters into this Agreement according to the terms and provisions herein.

1.2 Scope of General Services. The responsibility of COMPANY for the healthcare of an inmate commences with the commitment of an inmate to the FACILITY. COMPANY shall provide on a regular basis, except for elective or cosmetic surgery or dental care, reasonable professional medical, mental health, dental, and related health care and administrative services for the inmates, regularly scheduled sick call, nursing care, regular provider care, pharmaceuticals (utilizing 340b), on- site diagnostics (laboratory and radiology), on-site emergency medical care, medical records management, and administrative support services. COMPANY will not be financially responsible for the cost of ambulance services, out-patient and in-patient hospitalizations, or any out-of-facility healthcare services.

1.3 Specialty Care Services. When non-emergency specialty care is required and cannot be rendered on-site at the FACILITY, COMPANY shall make arrangements with Sheriff for the transportation of the inmates in accordance with Section 1.8 of this Agreement for off-site healthcare services. PARISH will be financially responsible for the cost of all off-site healthcare services.

1.4 On-Site Emergency Services. COMPANY shall provide on-site emergency medical care, as medically necessary.

1.5 Injuries Incurred Prior to Incarceration; Pregnancy. COMPANY will not be financially responsible for the cost of any medical treatment for health care services provided to any inmate prior to the inmate's commitment into the custody of the FACILITY. Furthermore, COMPANY is not financially responsible for the cost of services outside the FACILITY for any medical treatment or for healthcare services provided to medically stabilize any inmate presented at booking with a life threatening injury or illness or in immediate need of emergency medical care.

Once it has been determined by COMPANY's intake medical personnel that the inmate has been medically stabilized and has been accepted by Sheriff's personnel into the custody of the FACILITY, COMPANY will, commencing at that point, then become financially responsible for the cost of all treatment for health care services rendered on-site at the FACILITY. An inmate shall be considered medically stabilized when the patient's medical condition no longer requires immediate emergency medical care or outside hospitalization, and when any and / or all applicable medical clearances have been provided to the COMPANY personnel, so that the inmate can reasonably be housed inside the FACILITY.

It is expressly understood that COMPANY shall not be responsible for medical costs associated with the medical care of any infants born to inmates. COMPANY shall provide health care services to inmates up to, during, and after the birth process, but health care services provided to an infant following birth, other than those services that may be delivered in the FACILITY prior to transport to a hospital, will not be the financial responsibility of COMPANY. In any event, COMPANY shall not be responsible for the costs associated with the performing or furnishing of elective abortions.

1.6 Inmates outside the Facility. The health care services contracted in the Agreement are intended only for those inmates in the actual physical custody of the SHERIFF in the FACILITY. This does not include inmates who are under guard in facilities outside of the FACILITY. Such inmates are not to be included in the daily population count. No person(s), including those who are in any outside hospitals who are not under guard, shall be the financial responsibility of COMPANY with respect to the payment or the furnishing of their health care services.

The cost of medical services provided to inmates who become ill or are injured while on such temporary release, work release, or escape status will not be the responsibility of COMPANY. However, inmates on work detail who are supervised by Sheriff's personnel

and become injured will be the responsibility of COMPANY as long as they are returned to the FACILITY to be treated by COMPANY personnel or are referred to the hospital by COMPANY personnel. These inmates must be part of the daily census count.

Persons in the physical custody of other public safety or other law enforcement/penal jurisdictions at the request of PARISH are likewise excluded from the population count and are not the responsibility of COMPANY for the furnishing of or payment for health care services.

1.7 Elective Medical Care. COMPANY is not responsible for providing elective medical care to inmates, unless expressly contracted for by the PARISH. For purposes of the Agreement, "elective medical care" means medical care, which, if not provided, would not cause definite harm to the inmate's well-being.

1.8 Transportation Services. To the extent any inmate requires off-site non-emergency health care treatment including, but not limited to, hospitalization care and specialty health care services, the Sheriff's Office will, upon prior request by COMPANY, provide transportation as reasonably available. When medically necessary, COMPANY shall arrange for emergency ambulance transportation of inmates. COMPANY will communicate to security staff transporting the inmate, all medical related accommodations and needs pertaining to the inmate scheduled for transport, including instructions while en route or specific health precautions. COMPANY must advise of the type of facility and location to allow for the provision of adequate security for the inmate at the receiving facility.

ARTICLE II: PERSONNEL

2.1 Staffing. COMPANY shall provide medical and support personnel reasonably necessary for the rendering of health care services to inmates at the FACILITY, as identified on Exhibit A, which is attached hereto. Some services may be provided via tele-medicine, at the discretion of COMPANY.

2.2 Licensure, Certification and Registration of Personnel. All personnel provided or made available by COMPANY to render services hereunder shall be licensed, certified or registered, in their respective areas of expertise as required by applicable Louisiana law, and comply with PREA standards as applicable and meet the standards outlined by the Nation Commission on Correctional Health Care and the Louisiana Basic Jail Guidelines abiding by filing requirements for medical compliance.

2.3 PARISH's Satisfaction with Health Care Personnel. If the Corrections Department Head and/or Warden of the FACILITY becomes dissatisfied with any health care personnel provided by COMPANY hereunder, or by any independent contractor, subcontractor or assignee, COMPANY, in recognition of the sensitive nature of correctional services, shall following receipt of written notice from the Corrections Department Head and/or Warden of the FACILITY of the grounds for such dissatisfaction and in consideration of the reasons therefore, exercise its best efforts to resolve the problem. If the problem is not resolved satisfactorily to the Corrections Department Head and/or Warden of the

FACILITY, COMPANY shall remove or shall cause any independent contractor, subcontractor, or assignee to remove the individual about whom the Corrections Department Head and/or Warden has expressed dissatisfaction. Should removal of an individual become necessary, COMPANY will be allowed reasonable time, prior to removal, to find an acceptable replacement, without penalty or any prejudice to the interests of COMPANY. All personnel provided or made available by the COMPANY shall meet the security qualifications for admittance to the Facility as set forth by the Warden, and comply with the Facility's policy restricting contraband. Failure to comply with the foregoing will result in the immediate denial of admittance or removal from the Facility of that COMPANY staff member. Additionally, COMPANY shall abide and comply with established policy and procedures for the Facility as established by the SHERIFF. In the event the Warden determines that an employee of COMPANY fails to meet security qualifications for admittance to the FACILITY or has violated the FACILITY'S contraband policy, above, that employee will immediately be banned from entering the facility. The COMPANY will not be allowed reasonable time prior to removal to find a replacement.

2.4 Use of PARISH Personnel and Inmates in the Provision of Health Care Services. PARISH personnel and/or inmates shall not be employed or otherwise engaged by either COMPANY or PARISH in the direct rendering of any health care services.

2.5 Subcontracting and Delegation. In order to discharge its obligations hereunder, COMPANY may engage certain health care professionals as independent contractors rather than as employees. PARISH consents to such subcontracting or delegation. As the relationship between COMPANY and these health care professionals will be that of independent contractor, COMPANY will not be considered or deemed to be engaged in the practice of medicine or other professions practiced by these professionals. COMPANY will not exercise control over the manner or means by which these independent contractors perform their professional medical duties. However, COMPANY shall exercise administrative supervision over such professionals necessary to insure the strict fulfillment of the obligations contained in this Agreement.

2.6 Discrimination. During the performance of this Agreement, COMPANY, its employees, agents, subcontractors, and assignees agree as follows:

a. None will discriminate against any employee or applicant for employment because of race, religion, color, gender or national origin, except where religion, gender or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.
b. In all solicitations or advertisements for employees, each will state that it is an equal opportunity employer.
c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of the section.

ARTICLE III: REPORTS AND RECORDS

3.1 Medical Records. COMPANY shall cause and maintain complete and accurate medical records for each Inmate who has received health care services, which records shall be owned by and be the property of the PARISH. COMPANY agrees to, as soon as practicable, begin maintaining all inmate medical records in a digital or electronic format, utilizing the Parish's Electronic Health Record system, and to cooperate with PARISH in any efforts by PARISH to convert inmate medical records to a digital or electronic format.

Each medical record will be maintained in accordance with applicable laws and the PARISH policies and procedures. The medical records shall be kept separate from the inmate's confinement record. A complete legible copy of the applicable medical records shall be available at all times to PARISH as custodian of the person of the patient. Medical records shall be kept confidential. Subject to applicable law regarding confidentiality of such records, COMPANY shall comply with all laws and PARISH policy with regard to access by inmates and PARISH personnel to medical records. No information contained in the medical records shall be released by COMPANY except as provided by PARISH policy, by a court order, or otherwise in accordance with the applicable law. COMPANY shall, at its own cost, provide all medical personnel necessary to maintain the medical records. At the termination of this Agreement, all medical records shall be delivered to and remain with the PARISH. However, PARISH shall provide COMPANY with reasonable ongoing access to all pertinent medical records even after the termination of this Agreement for the purposes of defending or investigating litigation.

3.2 Regular Reports by COMPANY to PARISH. COMPANY shall provide to PARISH, on a date and in a form mutually acceptable to COMPANY and PARISH, reports relating to services rendered under this Agreement.

3.3 Inmate Information. Subject to the applicable State law, in order to assist COMPANY in providing the best possible health care services to inmates, PARISH will provide COMPANY with information pertaining to inmates that COMPANY and PARISH mutually identify as reasonable and necessary for COMPANY to adequately perform its obligations hereunder. The COMPANY will advise the Warden if an inmate poses a health care threat to other inmates or security staff. The Warden may consult with health services staff prior to taking the following actions involving inmates who are chronically ill, physically disabled, geriatric, mentally ill or developmentally disabled:

a. Housing assignments.
b. Program assignments.
c. Disciplinary measures/sanctions.
d. Transfers to other facilities.

3.4 COMPANY Records Available to PARISH with Limitations on Disclosure. COMPANY shall make available to PARISH, at PARISH's request, records, documents and other papers relating to the direct delivery of health care services to Inmates hereunder. PARISH understands that written operating policies and procedures employed by COMPANY in the performance of its obligations hereunder are propriety in nature and will remain the

property of COMPANY and shall not be disclosed without written consent. Information concerning such may not, at any time, be used, distributed, copied or otherwise utilized by PARISH, except in connection with the delivery of health care services hereunder, or as permitted or required by law, unless such disclosure is approved in advance writing by COMPANY. Propriety information developed by COMPANY shall remain the property of COMPANY.

3.5 PARISH Records Available to COMPANY with Limitations on Disclosure. During the term of this Agreement and for a reasonable time thereafter, PARISH will provide COMPANY at COMPANY's request, PARISH's records relating to the provision of health care services to inmates as may be reasonably requested by COMPANY or as are pertinent to the investigation or defense of any claim related to COMPANY's conduct. Consistent with applicable law, PARISH will make available to COMPANY such inmate medical records as are maintained by PARISH, hospitals and other outside health care providers involved in the care or treatment of inmates (to the extent PARISH has any control over those records) as COMPANY may reasonable request. Any such information provided by PARISH to COMPANY that PARISH considers confidential shall be kept confidential by COMPANY and shall not, except as may be required by law, be distributed to any third party without the prior written approval of the PARISH.

ARTICLE IV: SECURITY

4.1 General. COMPANY and the PARISH understand that adequate security services are essential and necessary for the safety of the agents, employees, and subcontractors of COMPANY as well as for the security of inmates and FACILITY personnel, consistent with the correctional setting. The Sheriff's personnel will take all reasonable steps to provide sufficient security to enable COMPANY to safely and adequately provide the health care services described in this Agreement. It is expressly understood by the Sheriff s Office and COMPANY that the provision of security and safety for the COMPANY personnel is a continuing precondition of COMPANY's obligation to provide its services in a routine, timely, and proper fashion. This provision, however shall not be considered to and shall not be construed to be a waiver of any defense, including sovereign or official immunity, to any claim against the Sheriff's Office by an inmate, employee of company or any other person in anyway whatsoever. The SHERIFF from time to time conducts emergency drills for the safety and security of the inmates and staff at the Facility. The COMPANY shall participate as required in such drills.

4.2 Security During Transportation Off-Site. The Sheriff's Office personnel will provide prompt and timely security as medically necessary and appropriate in connection with the transportation of any inmate between the FACILITY and any other location for off-site services as contemplated herein.

ARTICLE V: OFFICE SPACE, EQUIPMENT, INVENTORY AND SUPPLIES

5.1 General. PARISH agrees to provide COMPANY with reasonable and adequate office and medical space, facilities, telephone equipment with dedicated line in the medical area, and secured internet access (minimum speeds 3MB down/3MB up) with a static public IP address as required for high definition telehealth and / or the operation and access to the Electronic Health Record. This connection will be for sole and exclusive use by the medical staff. The Sheriff will be responsible for ensuring that the FACILITY's Jail Management Software appropriately integrates with the Electronic Health Record for patient demographics and location purposes, only. Further, PARISH will cooperate with COMPANY in ensuring that the installation of the secured internet access is sufficient to allow for unencumbered access by the medical staff and operational remote support from the COMPANY corporate office IT staff for the COMPANY line of business applications.

PARISH will pay for the utilities (gas, electric, water, phone lines, long distance telephone service, and internet access, as described above). Further, PARISH will provide for all capital (greater than $500) medical equipment. PARISH will provide for necessary maintenance and housekeeping of the office space and medical facilities.

COMPANY will pay for all medical and office supplies, biohazardous waste removal, and non-capital (less than $500) medical equipment.

5.2 Delivery of Possession. At the commencement of service by COMPANY an inventory of all supplies, medical and office equipment as described herein will be completed in writing by PARISH personnel. This inventory will be reviewed and approved in writing by the authorized agent of the PARISH as well as the COMPANY. PARISH will provide to COMPANY beginning on the date of commencement of this Agreement, possession and control of all medical and office equipment and supplies in place at the FACILITY's health care unit. At the termination of this or any subsequent Agreement, COMPANY will return to the PARISH possession and control all supplies, medical and office equipment, in working order, reasonable wear and tear accepted, which were in place at the FACILITY's health care unit prior to the commencement of services under this Agreement. Any such return will require written confirmation, executed by the PARISH personnel, for proper acceptance.

ARTICLE VI: TERM AND TERMINATION OF AGREEMENT

6.1 Initial Term. The initial term of this Agreement will be January 1, 2017 through December 31, 2017. This Agreement is renewable for two one-year annual terms, subject to the terms of the Agreement, unless either party delivers written notice of non-renewal to the other party at least one hundred and twenty (120) days prior to the expiration of the then-existing term.

6.2 Termination. This Agreement may be terminated as otherwise provided in this Agreement or as follows:

a. Termination by Agreement. In the event that the PARISH and COMPANY mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.
b. Termination by Cancellation. This Agreement may be canceled, without cause, by either the PARISH or the COMPANY upon hundred and twenty (120) days prior written notice in accordance with Section 9.3 this Agreement.
c. Termination for Cause. The PARISH may terminate this contract for cause based upon the failure of the COMPANY to comply with the terms and/or conditions of the Agreement, or failure to fulfill its performance obligations pursuant to this Agreement, provided that the PARISH shall give the COMPANY written notice specifying the COMPANY's failure. If within thirty (30) days after receipt of such notice, the COMPANY shall not have either corrected such failure or, in the case of failure which cannot be corrected within (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the PARISH may, at is option, place the COMPANY in default and the Agreement shall terminate on the date specified in such notice.

6.3 Responsibility for Inmate Health Care. Upon termination of this Agreement, all responsibility for providing health care services to all inmates, including inmates receiving health care services at sites outside the FACILITY, will be transferred from COMPANY to PARISH. In addition, upon the termination of this Agreement, PARISH will be responsible for all billing related activity as it relates to off-site healthcare claims, regardless of the date of service for the off-site healthcare. COMPANY will provide adjudication for off-site healthcare claims as requested by the PARISH for the last month of service of this Agreement.

ARTICLE VII: COMPENSATION

7.1 Base Compensation and Per Diem Compensation. PARISH will pay COMPANY an annual base of $5,292,429.96. Payments will be $ $441,035.83 per month. This compensation level assumes an average inmate population of 1500 inmates per day as measured each month. Should the average daily inmate population be more than 1500 for two (2) consecutive months, the PARISH agrees to compensate COMPANY an additional $2.90 per inmate per day for each inmate in excess of 1500. In addition, should the average daily inmate population increase by 20% or more, the parties agree to negotiate in good faith for increased compensation to COMPANY for additional healthcare services and staffing.

COMPANY will invoice PARISH during the month prior to the month of service. PARISH agrees to pay COMPANY within thirty (30) days of receipt of the invoice. In the event this agreement should terminate on a date other than the end of a calendar month, compensation to COMPANY will be prorated accordingly for the shortened month.

7.2 Inmates from Other Jurisdictions. Healthcare rendered within the FACILITY to inmates from jurisdictions other than PARISH, and housed in the FACILITY pursuant to written contracts between PARISH and such other jurisdictions or the State of Louisiana, or by

statute will be the responsibility of COMPANY but as limited by this Agreement. Healthcare that cannot be rendered within the FACILITY will be arranged by COMPANY and the costs of such care subject to reimbursement by the other jurisdiction, the State of Louisiana, or the PARISH. This Section does not apply to sentenced felons awaiting transfer to State facilities or inmates housed in the FACILITY on ex parte orders. COMPANY shall directly bill other jurisdictions for onsite professional healthcare fees, supplies, tests and medications. COMPANY will forward other bills for offsite healthcare and program support services provided to other jurisdictions housing inmates in the FACILITY. A nominal standard fee schedule will be utilized and is available upon request. PARISH agrees to assist COMPANY with these billing activities, as required by either a new or changed FACILITY.

7.3 Change in Standard of Care or Scope in Services. The price in Section 7.1, above reflects the scope of services as outlined herein and the current adequate and reasonable standard of care with regard to health care services and the current FACILITY. Should the PARISH build a new FACILITY or substantially change the existing FACILITY, PARISH agrees to negotiate in good faith with COMPANY for services and compensation.

Further, should there be any change in or modification of inmate distribution, standards of care, scope of services, cost of goods or services or available workforce pool, any statute, rule or regulation is passed or any order issued or any statute or guideline adopted that results in material increase in costs, the increased costs related to such change of modification are not covered in this Agreement and will be negotiated with the PARISH.

7.4 Late Payments. The PARISH shall pay COMPANY interest on all undisputed payments hereunder that are not paid within sixty (60) days from date due, as specified in Section 7.1, above. Interest shall accrue from the date the original payment was due at a rate of one percent (1%) per month until the payment is made in full.

7.5 Annual Renewals. Beginning one (1) year from the effective date in Section 6.1, above (hereinafter referred to as the "anniversary date"), and on each subsequent anniversary date, the compensation paid to COMPANY, including the base compensation and the per diem rate, as specified in Section 7.1, shall be adjusted by the changes in the Consumer Price Index-Wage Earners and Clerical Workers (CPI-W), Medical Care Component (MCC) for the Southern Region of the United States for the previous twelve (12) months. Percentage changes shall not exceed five percent (5%) upwards or downwards in any one year of the contract.

ARTICLE VIII: LIABILITY AND RISK MANAGEMENT

8.1 Insurance. COMPANY shall secure and maintain at its expense such insurance that will protect it from claims under the Workmen's Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of services under this Agreement. All certificates of insurance shall be furnished to the PARISH and shall provide that insurance shall not be cancelled without notice of

cancellation given to the Parish of East Baton Rouge, in writing, on all of the required coverage provided to East Baton Rouge Parish. All notices will name COMPANY, and identify the Council Resolution approving the terms of this Agreement. The PARISH may examine the policies at any time and without notice.

a) All policies and certificates of insurance of the firm shall contain the following clauses:

i) COMPANY insurers will have no right of recovery or subrogation against the PARISH and SHERIFF.

ii) The PARISH and SHERIFF shall be named as additional insured as regards to general liability and automobile liability with respect to negligence by COMPANY.

iii) The insurance company(ies) issuing the policy or policies shall have no recourse against the PARISH and SHERIFF for payment of any premiums or for assessments under any form of policy.

iv) Any and all deductibles in the below described insurance policies shall be assumed by and be at the sole risk of COMPANY.

b) Prior to the execution of this Agreement COMPANY shall provide at its own expense, proof of the following insurance coverage required by the contract to the PARISH by insurance companies authorized to do business in the State of Louisiana. Insurance is to be placed with insurers with an A.M. Best rating of no less than A:VI.

i) In the event COMPANY hires workers within the State of Louisiana it shall obtain Worker's Compensation Insurance. As required by Louisiana State Statute exception; employer's liability shall be at least One Million Dollars ($1,000,000.00) per occurrence when work is to be over water and involves maritime exposures, otherwise this limit shall be no less than Five Hundred Thousand Dollars ($500,000.00) per occurrence.

ii) Commercial General Liability insurance with a Combined Single Limit of at least One Million Dollars ($1,000,000.00) per occurrence for bodily injury and property damage. This insurance shall include coverage for bodily injury and property damage.

iii) Business Automobile Liability insurance with Combined Single Limit of One Million Dollars ($1,000,000.00) per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include for bodily injury and property damage the following coverage.

iv) COMPANY shall enroll in the Louisiana Patient's Compensation Fund and maintain Professional Liability/Medical Malpractice Insurance coverage limits as set forth by the Louisiana Patient's Compensation Fund, covering COMPANY and any personnel eligible for such insurance coverage by virtue of their status as a health care provider in accordance with La R.S. 40:1299.41 et seq.

c) All policies of insurance shall meet the requirements of the PARISH prior to the commencing of any work. The PARISH has the right but not the duty to approve all insurance policies prior to commencing of any work. If at any time any of the said policies shall fail to meet the requirements as set forth herein or if any of the companies issuing COMPANYS policies hereunder fails to meet or maintain an AM Best Rating of no less than A:VI, COMPANY shall promptly obtain a new policy, submit the same to the PARISH for approval and submit a certificate thereof as provided above.

d) Upon failure of COMPANY to furnish, to deliver and maintain such insurance as above provided, the contract, at the election of the PARISH, may be forthwith declared suspended, discontinued or terminated. Failure of COMPANY to take out and/or to maintain insurance shall not relieve COMPANY from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligation of COMPANY concerning indemnification.

8.2 Indemnification. COMPANY shall indemnify, defend and hold PARISH and SHERIFF harmless from and against any and all claims against PARISH and SHERIFF arising out of COMPANY's performance of its obligations hereunder; provided, however, that COMPANY will not be responsible for any claim arising out of the PARISH or SHERIFF for their employee or agent preventing an inmate from receiving medical care ordered by COMPANY or its agent or the SHERIFF in failing to promptly present an ill or injured inmate to COMPANY for treatment. This provision, however, shall not be considered and shall not be construed to be a waiver of any defense, including sovereign or official immunity, to any claim against PARISH or SHERIFF by an inmate, employee of company or any other person in any way whatsoever. Further, the COMPANY will look to its own insurance for recovery of any or the foregoing losses and shall waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including COMPANY's respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance.

ARTICLE IX: MISCELLANEOUS

9.1 Independent Contractor Status. The parties acknowledge that COMPANY is an independent contractor engaged to provide medical care to Inmates at the FACILITY under the direction of COMPANY management. Nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer-employee relationship, or a joint venture relationship between the parties.

9.2 Court Appearance by COMPANY Employees. In the event COMPANY's personnel are required to devote time with regard to litigation or threatened litigation by or on behalf of PARISH this shall be part of their service time pursuant to this agreement. PARISH shall be responsible for reasonable costs of substitute personnel to fill positions, which would be vacant due to such court or trial appearance requirements.

9.3 Notice. Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to the other person at any other address as may be designated in writing by the parties:

(a) PARISH: City-Parish of East Baton Rouge
Attn: Office of Mayor-President
222 St. Louis Street
Baton Rouge, LA 70802

(b) COMPANY: CorrectHealth East Baton Rouge, LLC
ATTN: Carlo A. Musso M.D.
3384 Peachtree Road, NE, Suite 700
Atlanta, GA 30326

(c) SHERIFF: East Baton Rouge Sheriff's Office
Attn: Warden Dennis Grimes
2867 General Isaac Smith
Scotlandville, LA 70807

Notices shall be effective upon receipt regardless of the form used.

9.4 Entire Agreement. This Agreement constitutes the entire agreement of the parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and agreements that have been made in connection with the subject matter hereof. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. All prior negotiations, agreements and understandings with respect to the subject matter of this Agreement are superseded hereby.

9.5 Amendment. This Agreement may be amended or revised only in writing and signed by all parties.

9.6 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be constructed to be, a waiver of any subsequent breach of the same or other provision hereof.

9.7 Other Contracts and Third-Party Beneficiaries. The parties acknowledge that COMPANY is neither bound by nor aware of any other existing contracts to which PARISH is a party and which relate to the providing of medical care to inmates at the FACILITY. The parties agree that they have not entered into this Agreement for the benefit of any third person or persons, and it is their express intention that the Agreement is intended to be for their respective benefit only and not for the benefit of others who might otherwise be deemed to constitute third-party beneficiaries hereof.

9.8 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

9.9 Cooperation. On and after the date of this Agreement, each party shall, at the request of the other, make, execute and deliver or obtain and deliver all instruments and documents and shall do or cause to be done all such other things which either party may reasonably require to effectuate the provisions and intentions of this Agreement.

9.10 Time of Essence. Time is and shall be of the essence of this Agreement.

9.11 Authority. The parties signing this Agreement hereby state that they have the authority to bind the entity on whose behalf they are signing.

9.12 Binding Effect. This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns.

9.13 Cumulative Powers. Except as expressly limited by the terms of this Agreement, all rights, power and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

9.14 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Louisiana, except as specifically noted.

(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, by and through their duly authorized officers, the day, month and year given below

EAST BATON ROUGE PARISH, LOUISIANA

By: _____
Title: MAYOR-PRESIDENT
Print Name: Melvin L. "Kip" Holden
Date: 12-21-16

CORRECTHEALTH EAST BATON ROUGE, LLC ("COMPANY")

By: _____
Title: CHIEF LEGAL OFFICER
Print Name: STACY M. SCOTT
Date: 12-20-16

SHERIFF OF EAST BATON ROUGE PARISH, LOUISIANA

By: _____
Title: Sheriff
Print Name: Sid J. Gautreaux, III
Date: 12-27-16

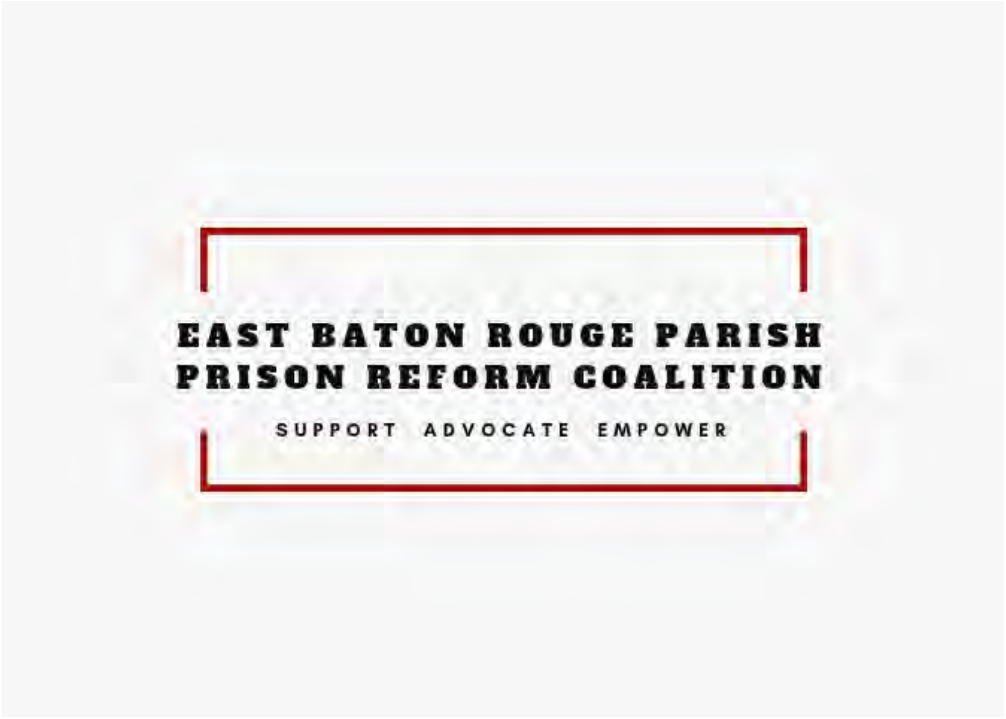
Approved by:
William B. Daniel IV, PE
Chief Administrative Officer

APPROVED
PARISH ATTORNEY'S OFFICE

EXHIBIT A - STAFFING

East Baton Rouge Parish Prison		
STAFFING MATRIX		
Personnel	**FTE**	**Hours/Week**
Medical Providers		
Medical Director	0.50	20
Nurse Practitioner	1.00	40
Mental Health Providers		
Psychiatrist	0.20	8
Nurse Practitioner - Mental Health	0.60	24
Licensed Clinical Social Worker	1.00	40
Dental Providers		
Dentist	0.20	8
Management		
Health Services Administrator	1.00	40
Director of Nursing	1.00	40
CQI / Infection Control Coordinator	1.00	40
Administrative Assistant	1.00	40
Intake		
LPN AP	2.10	84
LPN PA	2.10	84
Clinic		
RN House Supervisor AP	2.10	84
RN House Supervisor PA	2.10	84
LPN D	1.00	40
Infirmary		
LPN AP	4.20	168
LPN PA	4.20	168
CT AP	2.10	84
CT PA	2.10	84
Medication Administration		
LPN AP	8.40	336
Medical Records		
Supervisor Medical Records / IT Support	1.00	40
Totals	**38.90**	**1556**

EXHIBIT 23



You Can't Manage Health Care from a Jail

A Community-Driven Public Health Approach to COVID-19 at the East Baton Rouge Parish Prison

Executive Summary

To the Mayor-President and the Metropolitan Council of East Baton Rouge Parish:

The East Baton Rouge Parish Prison Reform Coalition (EBRPPRC) respectfully presents this report on the life-threatening challenges in medical care at the East Baton Rouge Parish Prison; challenges that have been greatly enhanced by the COVID-19 crisis. We are grateful for all the work being done by the East Baton Rouge Office of the Public Defender, the District Attorney's Office, the assorted law enforcement agencies, and the courts of East Baton Rouge Parish in their collective efforts to decarcerate as many citizens as possible during this pandemic. But even with these efforts - which have resulted in increased summons over arrest and the release of more than 700 incarcerated people, removing them from harm's way - there are still over 1300 individuals housed at the jail and hundreds still working in the facility as employees and vendors. Failure to continue efforts to decarcerate will result in unnecessary risk to the community as a whole. This is a public health crisis.

Prior to the current crisis, the EBRPPRC called attention to the substantial health care issues that exist in the jail. Those challenges have not been resolved and it is imperative for the Parish to take the lead in managing them directly as well as the added crisis of COVID-19. A widespread outbreak in the jail would be a public health crisis that could overwhelm the Parish's health care capacity. In the past, the East Baton Rouge Parish Sheriff's Office (EBRSO) has been quick to point out (correctly) that the responsibility for the medical care of those incarcerated at the Parish Prison lies with City-Parish, not the EBRSO. In a statement made to the Metropolitan Council on 1/14/15, EBR Sheriff Sid Gautreaux stated "it's up to City-Parish to provide [for] the medical needs of these individuals". That was true then and has an added importance now that we are in the midst of a public health crisis that requires a coordinated response.

The EBRPPRC recognizes that the Parish's current health services agreement with CorrectHealth LCC cannot adequately address this pandemic and certainly does not provide the resources or expertise to manage the increasing number of COVID patients at the jail. Since responsibility for health care resides with the Parish, this report is intended to propose steps the Parish can take to meet an unprecedented storm impacting thousands of East Baton Rouge families. Suggestions are collected from a variety of sources: criminal justice advocates, public health experts, governmental guidance, and the experiences of currently and formerly incarcerated people and their families.

In past discussions with both Parish and prison personnel, the EBRPPRC expressed concern over the weakness of the facilities infectious disease protocol and the current plan to address the pandemic. The following areas need to be specifically addressed:

1. Baseline COVID-19 testing of all those housed at the jail as well as staff

As of April 20th, 2020, there have only been 91 tests administered at the East Baton Rouge Parish Prison. Of those 91 tests, 62 have been positive - over ⅔ of all tests are positive. With over 1,300 individuals at the jail, and a limited number of beds/oxygen/ventilators available, it is critical to understand the current status of those housed and working in the facility. People at the prison obviously have limited ability to self-isolate, making the risk of widespread infection even greater. A recently leaked video shows an EBRSO deputy choking a man from a state work release program - which is in a separate building than the main prison, administered by EBRSO. Leaving aside the ensuing controversy around the deputy's treatment of that man, the video clearly shows that there is movement of correctional staff between all areas of the facility, at least in some circumstances. It is well-known that asymptomatic individuals can still transmit the virus. Baseline testing of all people at EBRPP, whether they are pretrial, serving a State sentence, or are staff is needed to ensure that proper precautions are taken.

2. Following the CDC and LDH protocols for medical isolation

East Baton Rouge Parish Prison has a long and deadly history with lockdown/solitary confinement. Currently, lockdown solitary confinement is the protocol being utilized instead of medical isolation. The recent deaths of Jonathan Fano and Shaheed Claiborne while in solitary confinement are still unresolved, and the Coalition believes it is crucial that there is an appropriate location for medical isolation staffed by those who have experience in managing such a facility. The United States military has offered trained personnel to staff such sites around the country. There are a number of facilities that might be an adequate place to medically isolate people currently at the parish prison: the parish-owned, and currently unoccupied, 300-bed portion of the former Woman's Hospital; Celtic Studios; as well as available hotel and motel space should all be considered. Failure to remove COVID positive individuals from the jail can result in raised tensions leading to attacks by staff or other incarcerated people. It puts at risk of transmission all those who are in contact with staff and vendors. This is a public health crisis. Prisons are not facilities designed to mitigate or accommodate such a crisis. Staffing needs and emergency situations require movement of people through different areas of the facility.

3. Create a viable "step down" program in accordance with CDC and LDH protocols

After receiving care and recovering from the most serious symptoms of the virus people will still need medical supervision and a clean, isolated, location when released from the hospital. The East Baton Rouge Parish Prison is not the place to provide this step down care. Current CorrectHealth staffing levels are not intended to provide ongoing care to what could be hundreds of individuals who, although they no longer need hospitalization, are still medically fragile or still able to transmit the disease. The level of supervision to ensure a full recovery is more appropriately provided in medical monitoring stations of the kind currently being operated in New Orleans and Baton

Rouge. This is a public health crisis - plans to provide security and monitoring have to accommodate health care needs, not vice versa.

4. Independent monitoring

Even before the pandemic, the EBRPPRC has frequently asked the Parish to comprehensively and independently monitor the health care provided at the Parish Prison and to publicly report the results of that monitoring. The critical issues with routine health care services that already existed at the jail will continue, and likely worsen, during this crisis. To ensure the preparedness of our local healthcare providers, to alleviate the anxiety of the community whose loved ones are incarcerated, and to maintain transparency and accountability there should be daily reporting and analysis of the overall health care situation at the jail. While such reporting might be constrained by confidentiality and logistic limitations, the Parish must make some effort to make the public aware of what is happening in the jail. There is an undeniable public interest in this information and the EBRPPRC encourages the Parish to find ways to make it available in a timely manner. Rampant spread among those at the Parish Prison (who are limited in their ability to self-isolate and many of whom have underlying health issues) could be enough to test the capacity of our local hospitals. If the Department of Corrections continues to bring COVID-positive people to Angola (and then to a Baton Rouge hospital if they require serious care) this will put further strain on our local capacity. This impacts every single member of the community.

Conclusion

The EBRPPRC has assembled recommendations made in various letters, guidance, reports, etc. that pertain to COVID in prisons and jails. The original documents are cited and linked to where possible. This list is by no means exhaustive, but we encourage the Parish to fully embrace its responsibility to provide health care to those in the jail and to the extent possible mitigate the spread of COVID among those who are incarcerated. The decisions made must be motivated first by an interest in the health, safety, rights, and dignity of our incarcerated community members. That is the Parish's responsibility. The EBRSO's plans for security and supervision must conform to Parish's public health needs and must demonstrate the same flexibility and willingness to adapt that is being asked of all of us in this unprecedented time.

Included in this report are links to federal financial resources that might be able to fund some if not all of the costs associated with a plan that ensures the best health outcomes possible for every member of our community. The EBRPPRC is thankful for the opportunity to be part of the solution and we urge the Parish to move forward with a comprehensive plan that promotes recovery in the most medically appropriate manner.

Recommendations

Relevant Recommendations from RE: Temporary Release/Furlough, Federal Funding, and Technical Assistance for Jails April 11th, 2020:

1. "We request that you **refrain from the use of lockdown or solitary confinement as methods to achieve medical isolation** because, as noted by doctors and health officials, these methods may exacerbate the spread.3 Detainees may be dissuaded from reporting symptoms of the virus if they believe the response will be punitive; this may also be the case when they know they could potentially be sent to Camp J at Angola if they admit they are feeling ill".4
2. "There is still an opportunity to slow the spread of the virus, "flatten the curve," and prevent unnecessary deaths. The quickest and least expensive way our state can avoid a catastrophe is for **each parish jail to access immediately available federal funding to facilitate the individual assessment, release, supervision, electronic monitoring, and/or home confinement options for detainees in your care**. Last week, the Bureau of Justice Assistance announced formula grants15 that can be drawn down during this emergency to support a broad array of justice system responses to COVID-19. While the State is allocated $9.7 million for this purpose, cities, townships, and parishes can apply for an *additional* $5 million in funding (allocations ranging in size from $33,000 to $1 million depending on population). Applications are due by May 29th. Due to Louisiana's partnership with The Pew Charitable Trusts on justice reinvestment, staff from that organization are available to assist local law enforcement in applying for the funds."16
3. "In the event that a given jail cannot meet CDC guidelines without the use of solitary or lockdown, is unable to supervise detainees at home through local federal funding opportunities, and cannot utilize temporary release or furlough, we ask that you relocate detainees to a building where social distancing and compliance with public health guidelines is possible. Under a state of emergency, the Governor can **transition the management of local state-owned facilities to the temporary authority of the state, engage the Louisiana National Guard to maintain site control and provide medical services, and utilize the state-based federal funding to employ medical professionals to care for individuals with COVID**."18

Relevant Recommendations from **Civil Rights Groups Call on Southern Authorities to Address COVID-19 Crisis in State**

and Local Jails, Prisons and Juvenile Facilities April 9th, 2020

1. **Take Precautionary Measures to Protect the Health of Incarcerated People**. All correctional and detention facilities should fully adhere to the CDC Guidelines, which include guidance for operational preparedness for possible COVID-19 transmission within the facility, prevention of the spread of COVID-19 and management of confirmed and suspected cases of COVID-19 infection. These guidelines include, without limitation, social distancing, intensified cleaning and disinfection and screening of intake, visitors and staff. As part of these guidelines, incarcerated people should be provided with ready access to soap, clean water, tissues and cleaning supplies, as well as personal protective equipment as necessary. Incarcerated people and correctional staff in these facilities should also be educated about the virus, its symptoms and measures they can take to minimize their risk of contracting or spreading the virus. Plans should be in place to ensure adequate staffing levels in the event of an outbreak. Importantly, widespread testing of incarcerated people and staff for COVID-19 should be implemented immediately.
2. **Provide Access to Appropriate Medical Care in Medically Appropriate Settings. I**ncarcerated people who test positive for COVID-19 should be released to an external healthcare facility where they can receive the potentially lifesaving care they deserve. Moreover, people exposed to COVID-19 should be moved to a medically appropriate setting outside of the often unsanitary and unsafe conditions of many Southern jails, prisons and detention centers. All of these facilities should have a plan in place to humanely separate symptomatic patients from the general population, implementing a non-punitive medical quarantine where appropriate.
3. **Make Transparent, Public Disclosures About the Covid-19 Pandemic in All Correctional Facilities, Including Any Racial Disparities.** Incarcerated people have loved ones in communities to which most of them will one day return. Likewise, corrections staff are part of larger communities that are directly impacted by any COVID-19 infection in the facilities where they work. Accordingly, any COVID-19 related policies affecting incarcerated populations and corrections staff should be clearly and readily communicated to the public, as well as the incarcerated people themselves. Moreover, state and local governments should collect and make public data regarding the morbidity and mortality of the virus in incarcerated populations, including racial demographics. These policies and data should be disseminated via a public website with daily updates and disclosures to local, state and federal health authorities.

Relevant Recommendations from Louisiana Department of Health Memo **COVID-19; recommendations regarding prisons and juvenile detention centers** April 8th, 2020

1. "Have a trained Emergency Medical Service/Emergency Medical Technician (EMS/EMT) assess and transport anyone you think might have COVID-19 to a healthcare facility."

Relevant Recommendations from **Re: COVID 19 Prevention and Protection in East Baton Rouge Parish Prison** March 19th, 2020

1. **"Screening and Testing of the People in Your Custody.** The plan must include guidance, based on the best science available, on how and when to screen and test people in your facilities for the virus."
2. **"Housing and Treatment of Persons Exposed to or Ill With COVID-19.** The plan must describe how and where people in the detention system will be housed if they are exposed to the virus, become sick with it, or are at high risk if exposed to it. Healthcare providers should consult with local or state health departments to determine whether patients meet criteria for a Persons Under Investigation (PUI) status. Providers should immediately notify infection control personnel at their facility and the nearest hospital if they suspect COVID-19 in a patient. Courses of treatment for anyone exposed to or ill with COVID-19 must be evidence-based, available immediately, and in compliance with scientifically- based public health protocols."
3. **"Data Collection:** The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. The correctional system must be part of this process. The same information that is tracked in the community must be tracked in facilities. The plan should include mechanisms for providing timely data to state, local, and federal health authorities."

Relevant recommendations from **Re: COVID 19 Prevention and Protection in Louisiana Facilities** March 16th, 2020

1. **Avoid Lockdowns**. Although corrections staff may be tempted to reflexively cut off visitation and increase the use of solitary confinement to control the spread of COVID-19, any system or facility-wide lock-down or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the

> best science available and should be as limited as possible in scope and duration to ensure the health and safety of individuals in custody. Prolonged lockdowns can inflict substantial, serious mental harm on incarcerated populations, exacerbating feelings of stress and anxiety amongst those in custody who are deprived of regular contact with their friends and family. International experts consider prolonged solitary confinement to be torture; it can cause serious, persistent, sometimes permanent damage to mental health. Moreover, unnecessary lockdowns and solitary confinement do nothing to mitigate the risk of COVID-19 exposure from the daily influx of facility staff, vendors, medical professionals, and others. Finally, when locked down or held in solitary confinement, people may not be able to alert staff promptly if they experience symptoms of COVID-19, increasing the risk of contagion.

Full Document: The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings

Full Document: Louisiana must overhaul its justice system practices to respond to COVID-19

EXHIBIT 24

LOUISIANA STOP SOLITARY COALITION

VIA ELECTRONIC MAIL

May 18, 2020

Shelina Davis, MPH, MSW – CEO LPHI, Chair
sdavis@lphi.org

Michael McClanahan – State President NAACP
mwmcclanahan@yahoo.com

Erica Rogers, RN New Orleans
info@mybraveheart.org

Frederick L. Thomas – Commander/Captain at East Baton Rouge Sheriff's Office
web_burbank@ebrso.org

Connie Arnold, MD Shreveport
carnol@lsuhsc.edu

L. Faye Grimsley, PhD, CIH, MSPH
fgrimsle@xula.edu

RE: Alternatives to Solitary and Camp J During COVID-19.

Dear Members of the Prison Subcommittee of the Governor's Healthcare Equity Task Force:

Thank you for agreeing to serve on the Prison Subcommittee of the Governor's Healthcare Equity Task Force, and for all you are doing to slow the spread of COVID-19 in our communities. The decisions you make and the policies you recommend will impact the lives of tens of thousands of Louisianans who are among the most vulnerable to contracting and dying from COVID-19. We, the Louisiana Stop Solitary Coalition, would like to take this opportunity to weigh in on critical health policy issues impacting incarcerated adults and children in Louisiana, particularly as it relates to the use of solitary confinement, including the dire need to significantly reduce the numbers of vulnerable people who are incarcerated so that social distancing and proper sanitation can be achieved and lives saved. The Louisiana Stop Solitary Coalition (LSSC) is a group of nearly 200 solitary survivors, family members of incarcerated people, faith leaders, community members, and advocates across the state committed to ending the use of long-term solitary confinement in Louisiana by 2028.

Use of Camp J and Lockdown

We are extremely concerned about the plan announced in March by the Department of Corrections to transfer and house prisoners and detainees at Camp J and the use of lockdown across facilities as the primary methods for containing the spread of COVID-19. Prior to the pandemic, LSSC was fully invested in working with DOC toward implementation of the Vera report[1] and engaging with them in preparation for the 2020 legislative session. We believed trust was built between us around the issue of solitary, and were consequently devastated to learn of the re-opening of Camp J. The closure of Camp J communicated to the currently and formerly incarcerated people of Louisiana - in a way that only actions, not mere words, can do - that the DOC was committed to putting the past behind us and moving forward to a future where alternatives to segregation were possible. Additionally, multiple state and local facilities are using extended lockdown, including where large numbers of people close to their release date are housed, which surprises us because we appreciated the DOC's pre-COVID responsiveness in curtailing the use of lockdown in jails. We know that extended lockdown and isolation is in use from the hundreds of calls we receive at our respective organizations.

Medical Isolation v. Solitary/Lock-Down

Doctors and health officials have described the differences between medical isolation and solitary and noted that the use of punitive methods for those with COVID-19 or its symptoms may exacerbate the spread of the virus.[2] Incarcerated people may be dissuaded from reporting symptoms of the virus if they believe the response is transfer to Camp J or lockdown of their unit if they admit they are feeling ill. Lockdown and solitary also decrease the interaction of staff with prisoners, allowing symptoms to accelerate to dangerous levels before the facility can take proper precautions. As stated best by several corrections officials in a recent webinar, *there is no public safety without public health*.[3] For these reasons, we ask that the administration immediately **refrain from use of lockdown or solitary - including the use of Camp J - to achieve medical isolation**.

Reduce Prison and Jail Populations

Louisiana is only as healthy as our most vulnerable people. Doctors and Professors from Tulane and Louisiana State University,[4] clinicians and medical students,[5] and public health experts[6] have

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[1] *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Louisiana Department of Public Safety and Corrections, and Progress Toward Implementation*, May 2019, https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-ldps.pdf.

[2] David Cloud, et.al., *The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings*, AMEND, April 9, 2020 https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

[3] *COVID-19 and Prisons: Centering Human Dignity Across Decarceration, Reentry, and Operations*, VERA Institute of Justice, https://www.vera.org/research/covid-19-and-prisons.

[4] *Public Health Letter to Governor Edwards*, (March 27, 2020), https://www.scribd.com/document/453999944/Public-Health-Letter-to-Gov-Edwards.

[5] Marcia Glass, *Health Care Professionals Demand the Reduction of Orleans Jail Population*, Medium (March 31, 2020), https://medium.com/@marciaglass/health-care-professionals-demand-the-reduction-of-orleans-jail-population-40eac4348778.

[6] *An open letter regarding COVID-19 and jails in Orleans Parish, Louisiana*, (March 25, 2020), https://sph.tulane.edu/open-letter-covid19-jail.

reiterated the national guidance from the CDC[7] about preventing the spread of this virus through social distancing and sanitation methods. I am sure everyone on the Prison Subcommittee is well aware of, and may have even participated in drafting, that guidance. All advise that a drastic reduction of incarcerated populations is required to achieve the CDC's recommendations.

We agree with the health experts and medical professionals referenced above that the best method for achieving proper social distancing and sanitation - and thus obviate the need for the use of lockdown and solitary - is to **release significantly larger numbers of people from prisons and jails**. These requests have already been communicated to the administration by the advocacy community, and do not require reiteration here.[8] We will note that this is a bipartisan issue, with Americans for Prosperity calling for strategic reductions in jail and prison populations,[9] Right on Crime encouraging steering clear of solitary confinement,[10] and recent polls demonstrating bipartisan support with 63% of voters supporting the release of people from jails and prisons to stop the spread of COVID-19, and 72% supporting clemency for elderly, incarcerated people.[11]

There is still an opportunity to slow the spread of the virus, "flatten the curve," and prevent unnecessary deaths. The quickest and least expensive way Louisiana can avoid a catastrophe is **to access immediately available federal funding to facilitate the individual assessment, release, supervision, electronic monitoring, and/or home confinement options for prisoners**. The Bureau of Justice Assistance has announced formula grants that can be drawn down during this emergency to support a broad array of justice system responses to COVID-19.[12] Louisiana is allocated $9.7 million for this purpose and cities, townships, and parishes can apply for an *additional* $5 million in funding (allocations ranging in size from $33,000 to $1 million depending on population). Applications are due by May 29th. Due to Louisiana's partnership with The Pew Charitable Trusts on justice reinvestment, staff from that organization are available to assist in applying for the funds.[13]

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[7] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[8] *Covid-19 Prevention and Protection in Louisiana Facilities, available at:* https://www.splcenter.org/sites/default/files/coalition_letter_to_governor_edwards_re_covid_19_prevention_and_protection_in_louisiana_facilities.pdf*; Covid-19 is a juvenile justice crisis; community demands action now!, available at:* https://www.fflic.org/events*;* and *Temporary Release/Furlough, Federal Funding, and Technical Assistance for Jails*, *available at*: https://8b94b7da-de55-42fa-aa27-bc457a433590.filesusr.com/ugd/c581f9_d5da3d1abdc04c6b8cf0927668beed52.pdf.

[9] Letter of Recommendations of Mark Holden, Americans for Prosperity, https://mk0xituxemauaaa56cm7.kinstacdn.com/wp-content/uploads/2020/04/AFP-CJR-COVID-Recommendations-Letter.pdf.

[10] Levin, Marc, *Don't Let Covid-19 Spread the Use of Solitary Confinement*, *available at:* https://theresurgent.com/2020/04/17/dont-let-covid-19-spread-use-of-solitary-confinement/.

[11] ACLU Poll Shows Wide-Ranging Support for Releasing Vulnerable People from Jails and Prisons, March 30, 2020, https://www.aclu.org/press-releases/aclu-poll-shows-wide-ranging-support-releasing-vulnerable-people-jails-and-prisons.

[12] Coronavirus Emergency Supplemental Funding Program Solicitation FY 2020 Formula Grant Solicitation, https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/bja-2020-18553.pdf.

[13] Please contact Terry Schuster, Manager at the Public Safety Performance Project, Office phone: 202.540-6437, Mobile: 512.468.4486, Email: tschuster@pewtrusts.org.

Use of Alternative Sites to Relocate Infected Prisoners

In the event that the DOC or a given jail cannot meet CDC guidelines without the use of solitary or lockdown, is unable to supervise prisoners at home through federal funding opportunities, and cannot utilize temporary release or furlough, we ask that you recommend that prisoners be relocated to a building where social distancing and compliance with public health guidelines is possible. First and foremost, we encourage coordination with the **Medical Monitoring Station in the New Orleans Convention Center**[14] and the Station in development in Baton Rouge. Additionally, under a state of emergency, the Governor can **transition the management of local state-owned facilities to the temporary authority of the state, engage the Louisiana National Guard to maintain site control and provide medical services, and utilize the state-based federal funding to employ medical professionals to care for individuals with COVID**.[15] These actions are not unprecedented.[16] Not too long ago, FEMA used the publicly-financed Zephyr Stadium as a rescue location for Hurricane Katrina survivors.[17] A review of the 5 parishes identified as "Tier I" by justice reinvestment reveals available locations with sufficient amenities to ensure hygienic and safe living conditions for individuals needing treatment or quarantine.[18] The majority of these facilities are local convention centers or recreation or community centers.

Conclusion

As the most incarcerated state in the world, Louisiana *will not flatten the curve without serious attention to our incarcerated populations.* In summary, we urge you to make the following recommendations: close Camp J, refrain from the use of lockdown, release more people, and transfer people who are sick to Medical Monitoring Stations and hospitals. The hot days of summer are coming and the conditions at Camp J will only worsen. Indeed, the lack of central air in many Louisiana prisons and jails could spell disaster for the further spread of COVID-19 if sufficient measures are not immediately taken to adhere to CDC guidelines for social distancing and sanitation.

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[14] Louisiana National Guard Public Affairs Office, *Louisiana National Guard increases its response force and mission support*, April 10, 2020, https://bossierpress.com/louisiana-national-guard-increases-its-response-force-and-mission-support/.

[15] The Governor has this authority under the declaration of a "public health emergency" by Proclamation 25 JBE 2020 (March 11, 2020) and by statutory authority of La. R.S. 29:724(D)(3), (4), (7). The Governor's authority to call forth the National Guard is found under La. R.S. 29:7(A)(1)(a), (e) which allows him, with or without a state of emergency, to request National Guard assistance to provide for emergency preparedness or assist civil authorities and to specifically assist civil authorities in guarding prisoners.

[16] Matt Hickman, *From parking garages to parks, these are the pop-up medical facilities of the COVID-19 pandemic*, March 31, 2020, https://archpaper.com/2020/03/covid-19-hospital-conversions/.

[17] *See* http://www.davehoekstra.com/wp-content/uploads/2014/03/NEW-ORLEANS-BASEBALL.pdf.

[18] Caddo: Shreveport Convention Center; St. Tammany: The Harbor Center, Furhmann Auditorium, Bogue Falaya Hall, Fontainebleau State Park, Slidell Municipal Auditorium, Mandeville Community Center, Bush Community Center, Fendlason Community Center, Lacombe Activity Center, Pearl River Activity Center; East Baton Rouge: Chaneyville Community Center, Charles R. Kelly Community Center, Dr. Leo S. Butler Community Center, Dr. Martin Luther King, Jr. Community Center, Jewel J. Newman Community Center, Capitol Park Event Center, Wanham Community Center, Old Woman's Hospital, Celtic Studios (publicly-financed project); Jefferson: Alario Event Center, Pontchartrain Convention & Civic Center, Jedco Conference Center, Gretna Community Center, Fischer Senior Community Center, Bridge City Community Center, Marrero Senior and Community Center, Harvey Community Center, Dorothy B. Watson Community Center, Hazel Rhea Hurst Community Center, J.C. Simmons Community Center, Woodmere Community Center; Orleans: Gallier Hall, Morris F.X. Jeff, Sr. Municipal Auditorium, Murray Henderson Community Clinic, St. Bernard Recreation Center, Treme Recreation Community Center, Stallings Recreation Center, Lyons Recreation Center.

Another vision of how Louisiana weathers this crisis is possible. We are not permanently on the path of New York, Chicago, or Ohio.[19] We have time to change course, but it is very little time. The LSSC is committed to navigating this crisis with this Task Force and Subcommittee and providing you with technical or other assistance to reduce prison populations. Whether it be identifying and eliminating barriers to release like municipal detainers, out-of-parish warrants, or probation/parole holds and technical violations; researching additional publicly financed projects and state-owned properties near prisons for establishing Medical Monitoring Stations; applying for federal funding; or continuing to convince the public of the need to address the impending crisis in our prisons and jails in order to flatten the curve, we stand ready to assist you and ensure that every parish in Louisiana navigates the spread of this virus with minimal community impact.

Signed,

Vanessa Spinazola
Executive Director, Justice & Accountability Center of Louisiana
Louisiana Stop Solitary Coalition
www.lastopsolitary.org

[19] Megan Crepeau and Jason Meisner, *Second inmate at Cook County Jail dies of COVID-19, and the family of the first files lawsuit*, April 10, 2020, https://www.chicagotribune.com/coronavirus/ct-coronavirus-cook-county-jail-inmate-dies-20200410-po2oc6czfnd3lhdqphpawsnpwy-story.html; *Coronavirus in Ohio: More than 1,800 inmates at Marion Correctional test positive*, April 19, 2020, https://www.dispatch.com/news/20200419/coronavirus-in-ohio-more-than-1800-inmates-at-marion-correctional-test-positive; and *Coronavirus spread at Rikers is a 'public health disaster', says jail's top doctor*, April 1, 2020, https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster.

EXHIBIT 25

From: Rev. Anderson <preachisliteracy@hotmail.com>
Sent: Saturday, April 25, 2020 1:00 PM
To: Darryl Gissel
Subject: Re: Refusal of donation of N-95 Masks

Dear Darryl:

Thank you for your speedy response. We firmly believe the N-95 masks are more appropriate for individuals who don't have the ability to socially distance themselves in an active Coronavirus hot zone. There is no organization better able to speak factually to the risk than those who have experienced it.

We firmly believe the donation will go towards saving lives. We are increasing concerned with the parish's continued lack of a sense of urgency regarding the containment protocols.

East Baton Rouge Parish Prison continues to increase in positive test results and yet no commitment to baseline testing. Orleans Parish Prison is doing baseline testing because they know the projectory is going up.

We are asking the parish to please stop treating this facility as business as usual.
We can save lives if we move aggressively towards understanding the actual risk rather than waiting for what is already happening in every jail and prison in the country.

This is not a public safety crisis this is a public health crisis. Please treat it like the house is on fire because it is and our friends and loved ones including deputies and vendors are in that house.

Rev. Alexis Anderson
Executive Director
PREACH
Member
East Baton Rouge Parish Prison Reform Coalition

From: Darryl Gissel <DGISSEL@brla.gov>
Sent: Saturday, April 25, 2020 11:30 AM
To: Rev. Anderson <preachisliteracy@hotmail.com>
Subject: Re: Refusal of donation of N-95 Masks

We did deliver 1,500 cloth mask which are washable
to the prison. I will follow up on this for response

Sent from my iPhone

On Apr 24, 2020, at 10:48 PM, Rev. Anderson <preachisliteracy@hotmail.com> wrote:

Dear Darryl:

We were truly disheartened to learn that VOTE's generous and sorely needed donation of N-95 masks for the use of those housed in the East Baton Rouge Parish Prison was declined.

Given the fact that the masks will provide some degree of safety in a facility where those housed don't have the ability to social distance and where currently only those who are quarantined, receive any protection, is extremely troubling.

Public health should trump all other concerns. The Department of Corrections is able to accept a donation so it appears that public safety and security are not the issue. The Coalition is requesting that the parish would investigate this issue.

Our loved ones who are currently housed in the jail are primarily pre-trial and all are human beings worthy of having their public safety and health protected. We believe this donation is a win for everyone.

As the jail continues to be a Coronavirus hot spot whose positive tests continue to increase daily, the no cost opportunity to embrace CDC and LDH guidance would seem to be a win for all.

As we continue to await the results of the Shaheed Claiborne investigation and look forward to resolution of this pandemic we believe insuring that proper protective gear is provided is most imperative during this season.

We look forward to the Mayor's response.

Respectfully submitted,

Rev. Alexis Anderson
Executive Director
PREACH
Member
East Baton Rouge Parish Prison Reform Coalition

From: Darryl Gissel <DGISSEL@brla.gov>
Sent: Thursday, April 16, 2020 11:30 AM
To: Chris Csonka <ccsonka@ebrcjcc.org>
Cc: Sherie Phillips Thomas <info@lahealthcareinstitute.com>; Rev. Anderson <preachisliteracy@hotmail.com>
Subject: Report on Health Care

Please send out to committee members

Darryl Gissel
Chief Administrative Officer

Office of the Mayor-President
222 St. Louis Street, 3rd Floor
Baton Rouge, La 70802
(225) 389-5103

EXHIBIT 27

Declaration of Susan E. Hassig, MPH, DrPH

1. I am Susan E. Hassig, MPH, DrPH, Associate Professor of Epidemiology, Director of the MPH Program in Epidemiology, Tulane School of Public Health and Tropical Medicine, New Orleans, LA. I have conducted research and taught in the subject area of infectious diseases epidemiology for over 30 years. This time period spans the major epidemic threats of HIV, SARS, H1N1 (2009), influenza, Zika, Ebola, and now COVID-19. I base my declaration on the knowledge and experience I have gained in those years regarding the dynamics of spread in infectious disease and what steps can be taken to minimize or eliminate that spread in populations.

2. The virus that causes the COVID-19 disease is a novel (new) pathogen to the human race. As such, we are all susceptible to infection. Infection with this virus moves easily from person to person in **two basic ways**: **direct**, by close (within 6 feet) contact between an infected and an uninfected person, with infection occurring by the inhalation of infected droplets or aerosols from the infected person's mouth while talking, shouting, singing, coughing, sneezing, etc.; and **indirect,** by the contamination of surfaces in the environment (tabletops, handrails, doorknobs, etc.) by an infected person via direct deposition of infected respiratory droplets or secretions to the surfaces, or by indirect deposition from the contaminated hands of the infected person. An uninfected person who then touches these same surfaces with their hands and subsequently touches their face (mouth, nose, eyes) can then become infected. Each newly infected person can become infectious to others in a matter of days, with or without presenting with symptoms, and may remain infectious for a week or more.[1]

3. There is no vaccine or medication to prevent infection from COVID-19. In order to limit the spread of the disease, the CDC and other health agencies recommend the following: washing hands frequently, keeping shared surfaces clean, covering a cough with a disposable tissue or the inside of your elbow, staying away from other people if you are sick, and finally wearing a mask in all public environments.[2] However, the cornerstone of the CDC's guidance is social distancing—remaining at least 6 feet away from all other persons and generally avoiding congregate spaces, which is necessary even if individuals practice all the other preventative measures.[3] Therefore by definition, persons confined in correctional facilities are at risk of coronavirus infection because they are unable to

[1] *How COVID-19 Spreads*, Centers for Disease Control and Prevention, April 13, 2020, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html
[2] How to Protect Yourself & Others, Centers for Disease Control and Prevention, April 13, 2020, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html
[3] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, March 23, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

implement distancing behaviors independently. They must rely on the facility to house them in a manner that conforms to that distancing guidance.

4. While we are all equally susceptible to infection with COVID-19 if we are exposed, some members of the population are more vulnerable and at elevated risk of very serious outcomes, up to and including death, if infected. These include persons 65+ years of age with or without pre-existing conditions and persons **of any age** with any of a number of chronic health conditions, including but not limited to: hypertension and other cardiovascular disease, obesity, diabetes, asthma, other chronic lung diseases, chronic kidney or liver disease due to any cause, and suppressed immune systems for any reason.[4]

5. The CDC has promulgated guidance for correctional and detention facilities.[5] This guidance appears to form the basis for the East Baton Rouge Parish Prison's response to this pandemic. However, it is my position that this guidance is, at best, the bare minimum and is not stringent enough to actually achieve the goal of keeping both staff and detainees safe from the virus. Anything less than 6 ft distancing is inadequate, and even that is not sufficient in the absence of universal face covering and frequent surface disinfection. The threat of coronavirus as it relates to correctional facilities is most reasonably divided into two parts: preventing introduction of the virus into the center population, and preventing the spread of coronavirus within the center once it is introduced.

6. To prevent the transmission of the virus in the correctional facility setting, the first thing that must change is the mindset of the facility. The assumption should be that the virus is already present in the facility, as borne out by the detection of confirmed COVID cases in most local correctional facilities.[6] A system of disinfection by staff, equipped with appropriate personal protective equipment (PPE) and cleaning materials, must be established on a daily basis for all living areas, especially those used in common. The cleaning should be vigorous and occur as frequently as possible, especially in common areas. Facilities should be cleaned multiple times per shift, and particularly between use of common areas by different groups of prisoners, since the virus can survive for extended periods of time on different surfaces.[7]

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[4] *People Who Are at Higher Risk for Severe Illness*, Centers for Disease Control and Prevention, April 15, 2020, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html

[5] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, March 23, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[6] https://www.wdsu.com/article/majority-of-covid-19-cases-in-louisiana-prisons-that-mass-test-are-asymptomatic/32634504#

[7] van Doremalen N, Morris D, Bushmaker T et al., Aerosol and Surface Stability of SARS-CoV-2 as compared with SARS-CoV-1. New Engl J Med (2020)

7. The CDC's Interim Guidance states that "whenever possible, all staff and detainees should maintain a distance of six feet from one another." However, the use of "whenever possible" does not comport with scientific consensus on this matter. It is my scientific opinion that all persons detained in the facility should be, **at all times**, no closer than 6 ft from any other detainee. This translates to ~144 sq ft per detainee for those held in some kind of congregate setting. Bunk beds should not be used, as the vertical separation would not meet the 6 ft buffer, and would place the person on the lower bunk at risk of exposure from an infected upper bunk inhabitant. If individuals are held in individual spaces with solid walls, the sq ft needs may be lower, but any open (barred) cell wall setting would still require 144 sq feet/detainee. This space is needed to provide the physical buffer zone to reduce the risk of droplet spread between detainees. If detainees move out of their living spaces for meals, medical care, access to phones, etc. all persons should be masked and maintain 6 ft of separation during movement and at the destination.

8. The Interim CDC Guidance also recommends screening only new entrants to a detention center.[8] However, it is my opinion that detainees should be temperature and symptom screened twice daily, morning and evening, as the clinical status of a COVID infected person can change quickly, and we know that shedding increases as symptoms emerge. Twice daily screenings are particularly important in correctional facilities, where staff come and go between the facility and the community daily. Anyone presenting with fever or other symptoms consistent with coronavirus should be immediately removed to medical isolation, consisting of a private, well-ventilated and sanitary environment, preferably in a medical setting, for further evaluation, including testing for flu and coronavirus. Medical follow-up should be provided based on the findings of the testing. Any detainee who was in close contact with the symptomatic individual without a face covering should also be placed in individual quarantine, also a private, well-ventilated and sanitary environment, for observation for a period of 14 days. A quarantined detainee should be medically monitored twice a day for development of symptoms and tested prior to being released back into the general population. However, proper isolation will only slow, rather than stop, the spread of COVID-19 in congregative environments as many COVID-19 carriers are contagious even before they experience symptoms.[9]

9. Cohort quarantining, as mentioned in the CDC Guidance, and as implemented in the case of the East Baton Rouge Parish Prison (EBRPP) in groups ranging from 40-100 inmates,

[8] Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention, March 23, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.
[9] Wei WE, Li Z, Chiew CJ, Yong SE, Toh MP, Lee VJ. Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020. MMWR Morb Mortal Wkly Rep 2020;69:411–415. DOI: http://dx.doi.org/10.15585/mmwr.mm6914e1

does not meet the most basic necessity of distance between detainees to prevent further transmission of the virus in the cohort. In the absence of appropriate distancing of at least 6 feet apart at all times within the cohort, additional infections will occur, expanding the number of infected detainees (and likely staff as well), amplifying the virus in the facility, and should not be utilized. It is once again critical to remember that this virus is extremely contagious and is shed by infected individuals prior to the presence of symptoms.[10] Any cohorting that mixes individuals with different status related to COVID infections (e.g., infected, suspected/under investigation or awaiting test results, exposed and unexposed) will only serve to increase the likelihood of expanded transmission.

10. If the jail does not have the space to implement these most basic of virus spread suppression methods, the jail needs to decrease the size of the detainee population to fit the physical spacing needed to prevent transmission. The persons at greatest risk, those with the aforementioned pre-existing medical conditions, should be prioritized for release to family or friends, to make room within the facility to maintain safe distancing. If the number of detainees in the jail after release of the most vulnerable still does not allow for adequate distancing, then additional detainees should be released to achieve it. Movement of detainees between jails or other correctional facilities is not advised, as this may introduce infection into additional facilities and increase the chance of uncontrolled community spread in facilities in which COVID-19 is already present.

11. The CDC Guidance states that "facilities should quarantine all new entrants for 14 days before they enter the general population."[11] However, to reduce the likelihood of introduction and spread of the virus into a specific jail, NO new detainees should be introduced to any existing jail population unless social distancing conditions (above) can be maintained, and any new detainee(s) have cleared a 14-day individual quarantine period at the destination facility. This quarantine would apply to any new arrival, irrespective of their COVID status. Any transfer of any detainee known or suspected of infection should NOT occur, except to release them to an external health care facility or an official isolation center set up outside of the correctional facility to care for such persons. Transfer to a different correctional facility which does not meet basic requirements for the provision of sound medical care, as has occurred at EBRPP in the

[10] Kimball A, Hatfield KM, Arons M, James A, et al., Asymptomatic and Presymptomatic SARS-CoV-2 Infections in Residents of a Long-Term Care Skilled Nursing Facility — King County, Washington, March 2020. MMWR, 3 April 2020, 69(13);377–381; Guoqing Qian, Naibin Yang, Ada Hoi Yan Ma, et. al, *A COVID-19* Transmission within a family cluster by presymptomatic infectors in China, Clinical Infectious Diseases, ciaa316, https://doi.org/10.1093/cid/ciaa316

[11] Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention, March 23, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

past, should not occur.[12] The transport process in and of itself often places both detainees and accompanying staff in potentially risky proximity (less than 6 feet in all directions) to one another, potentially enabling viral transmission, and should be minimized or avoided until local social distancing restrictions are modified or lifted altogether.[13]

12. All jail staff should be screened for fever and cough daily, and for illness in household members/recent close contacts upon arrival for their duty shift. Ill staff should return home and not return to work until symptoms have ceased for at least 24 hours. The CDC guidance states, "cloth face coverings should be worn by detainees and staff (when PPE supply is limited) to help slow the spread of COVID-19." Since community and asymptomatic spread is established throughout the country and N-95 masks are needed in health care settings, all staff should wear cloth or surgical masks, or other fabric face coverings while on duty to reduce the possibility of spread from staff members to others, since they move in the community when not at work. However, it must be remembered that cloth face coverings, unlike N-95 masks, are not sufficient to prevent infection in the wearer,[14] but rather serve as a "source reduction," reducing the likelihood of widespread viral shedding by the wearer. While at work, staff should also maintain at least 6 ft separation from each other and detainees, whenever possible, for added protection against infection.

13. No visitors should be allowed to physically enter the facility, but a mechanism to facilitate safe, remote contact with counsel and family should be maintained.

14. Importantly, the CDC Guidance does not mandate testing; however, the State of Louisiana has begun a process of testing state facilities, and local jails around the state are beginning to follow suit.[15],[16] Early studies have found that the false negative rate of COVID-19 tests is approximately 30 percent.[17] These figures suggest both that testing is insufficient at the jail and that the true number of COVID-19 carriers may be orders of

[12] https://jjie.org/2020/04/27/desperate-louisiana-prisoners-say-wardens-staff-not-following-coronavirus-rules/
[13] Liew MF, Siow WT, Yau YW, See KC. Safe patient transport for COVID-19. Crit Care. 2020;24(1):94. Published 2020 Mar 18. doi:10.1186/s13054-020-2828-4
[14] Rengasamy S, Eimer B, Shaffer RE. Simple respiratory protection—evaluation of the filtration performance of cloth masks and common fabric materials against 20-1000 nm size particles. Ann Occup Hyg 2010 Jun 28;54(7):789-98
[15] Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention, March 23, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.
[16] https://www.wdsu.com/article/majority-of-covid-19-cases-in-louisiana-prisons-that-mass-test-are-asymptomatic/32634504#
[17] Yang Yang, Minghui Yang, Chenguang Shen, et al., Evaluating the accuracy of different respiratory specimens in the laboratory diagnosis and monitoring the viral shedding of 2019-nCoV infections, medRxiv 2020.02.11.20021493; doi: https://doi.org/10.1101/2020.02.11.2002149

magnitude higher.[18] This certainly suggests that the current guidance in use by the jail is inadequate to prevent and contain COVID-19 infections in their facility. Much more aggressive and effective action must be taken to reduce the threat of coronavirus to both detainees and staff in the jail. I have reviewed the following declarations from individuals currently in, or previously in the EBRPP: Joseph Williams, Christopher Rogers, Clifton Belton, Forest Hardy, Cedric Spears, Jerry Bradley, Cedric Franklin, and Willie Shepherd. Taking these declarations as true, it is abundantly clear to me that EBRPP is adhering to neither the spirit nor the letter of the CDC Guidance, and thus is placing the facility staff and inmates at elevated and unnecessary risk of infection with coronavirus and all of the potential consequences of that infection.[19]

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

Susan Hassig

Susan E. Hassig, MPH, DrPH

Date: May 25, 2020

[18] Justin D Silverman, Nathaniel Hupert, Alex D Washburne, Using ILI surveillance to estimate state-specific case detection rates and forecast SARS-CoV-2 spread in the United States, medRxiv 2020.04.01.20050542; doi: https://doi.org/10.1101/2020.04.01.20050542

[19] Williams Decl.; Rogers Decl.; Belton Decl.; Hardy Decl.; Spears Decl.; Bradley Decl.; Franklin Decl.; Shepherd Decl.