

United States Courts  
Southern District of Texas  
FILED

June 25, 2020

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

David J. Bradley, Clerk of Court

LADDY CURTIS VALENTINE,  
RICHARD ELVIN KING, on  
behalf of themselves and  
all other similarly situated  
WALLACE PACK UNIT TDCJ  
prisoners, et al.,

Plaintiffs,

VS.

BRYAN COLLIER, ROBERT  
HERRERA, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, (TDCJ),  
Defendants.

CIVIL ACTION NO. 4:20cv1115  
(to be supplied by the Clerk)

\*On remand from the FIFTH CIRCUIT,  
VALENTINE I, Apr. 22, 2020, and  
VALENTINE II, June 5, 2020, as  
VALENTINE V. COLLIER, 956 F. 3d 797  
(5th Cir.).

ALVARO LUNA HERNANDEZ,  
ANDRE A. CARROTHERS, JOSE CALLES  
on behalf of themselves and all  
other similarly situated TDCJ  
prisoners on all TDCJ prisons  
beyond the WALLACE PACK UNIT of  
the TDCJ as sub-classes, et al.,

Plaintiff-Intervenors,

VS.

BRYAN COLLIER, EXECUTIVE DIRECTOR,  
DIRECTOR, TDCJ; LORIE DAVIS,  
DIRECTOR, TDCJ, JIMMY S. SMITH,  
WARDEN, JAMES V. ALLRED UNIT,  
TDCJ, DENISE SHIELDS, EXECUTIVE  
MEDICAL DIRECTOR, TEXAS TECH  
HEALTH SCIENCE CENTER, CORRECT-  
IONAL MANAGED HEALTH CARE  
(TTUHSC-CMHC), TIMOTHY  
WASHINGTON, 121 BUILDING MAJOR,  
AND THE ALLRED UNIT CLASSIFICA-  
TION COMMITTEE, et al.,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_  
(to be supplied by the Clerk)

PLAINTIFF-INTERVENOR'S MOTION TO INTERVENE

PLAINTIFF-INTERVENOR'S MOTION TO INTERVENE,  
FOR ORDER ENLARGING CLASS ACTION CERTIFICATION  
DEFINING ADDITIONAL SUB-CLASSES, FOR ORDER  
APPOINTING SEPARATE CLASS COUNSEL TO REPRESENT  
SUB-CLASSES, ALTERNATIVELY, TO ORDER CURRENT CLASS  
COUNSEL TO FAIRLY, ADEQUATELY REPRESENT THE  
INTERESTS OF ALL TDCJ PRISONERS, NOT ONLY THOSE  
INCARCERATED AT WALLACE PACK UNIT, BY FILING AN  
AMENDED COMPLAINT ON BEHALF OF THE ENTIRE CLASS TO  
CORRECT SAID PLEADING DEFICIENCIES, AND FOR ENTRY  
OF FINDINGS OF FACT ON THIS PLEADING, ALL  
PURSUANT TO RULES 23(a)(b)(c)(d), AND  
24(a)(b)(c), FEDERAL RULES OF CIVIL PROCEDURE,  
WITH BRIEF IN SUPPORT

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TO THE HONORABLE KEITH ELLISON, JUDGE OF SAID COURT:

ALVARO LUNA-HERNANDEZ, ANDRE A. CARROTHERS, AND JOSE CALLES,  
hereinafter "Plaintiff-Intervenors," file this pro se motion to intervene  
in this civil action pursuant to Rules 23, and 24, et seq., FRCP. for  
their unconditional right to intervene, complaining of current class  
counsel's legal representation of the entire class as unfair, and  
inadequate to protect their rights, claims, defenses and interests, and  
would respectfully show this Honorable Court the following:

I.

PROCEDURAL HISTORY OF THE CASE

1. On March 30, 2020 JEFF EDWARDS, EDWARDS LAW OFFICE, AUSTIN,  
TEXAS, filed this civil rights complaint characterized as a "class  
action" on behalf of original plaintiffs LADDY CURTIS VALENTINE, RICHARD  
ELVIN KING, purporting to represent all disabled and high-risk inmates  
incarcerated at the WALLACE PACK UNIT, against TDCJ, BRYAN COLLIER, and  
ROBERT HERRERA, Warden of the Wallace Pack Unit. The complaint alleged  
violations of the EIGHTH AMENDMENT'S prohibition against cruel and  
unusual punishment, and of the AMERICANS WITH DISABILITIES ACT pertaining  
to the TDCJ's response to the spread of the deadly CORONAVIRUS COVID 19

pandemic at the WALLACE PACK UNIT. The complaint sought a preliminary and permanent injunction. id.

2. On April 16, 2020 this Court held a hearing on the prisoners' request for a preliminary injunction, and, thereafter "[i]ssued a reticulated preliminary injunction against the executive director of the Texas prison system and the warden of one of its prisons," and

~~ordered that the prisoners be permitted to mitigate the spread of the COVID~~

JUNE 18, 2020

Office of the Clerk  
U.S. District Court  
Southern District of Texas  
Houston Division  
P.O. Box 61010  
Houston, TX 77208-1010

United States Courts  
Southern District of Texas  
FILED

JUN 25 2020

David J. Bradley, Clerk of Court

RE: VALENTINE V. COLLIER, 956 F. 3d 797 (5th Cir. 2020),  
on remand to this Court, JUNE 5, 2020 VALENTINE II,  
CIVIL ACTION NO. (unknown)(to be supplied by the Clerk)  
PLAINTIFF INTERVENOR'S MOTION TO INTERVENE (SUB-CLASSES)

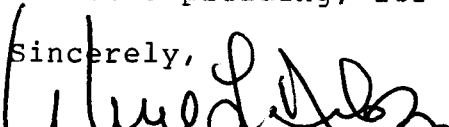
Dear Clerk of the Court:

Prospective Plaintiff-Intervenors do not know, nor now have access to the original CIVIL ACTION NUMBER the class action litigation, above referenced, assigned by this Office, although intervenors know of the FIFTH CIRCUIT decisions in Valentine I, Valentine II (vacating preliminary injunction and remanding case for trial on the permanent injunction request), respectively on April 22, 2020 and June 5, 2020. As putative class members, or sub-classes, Plaintiff Intervenors have a vested interest in this civil action and their health, safety and lives are in grave danger by the deliberate indifference of Texas prison officials, and the unfair, and inadequate legal representation they are receiving from current appointed class counsel JEFF EDWARDS, to their discriminatory exclusion. In this regard, please supply the assigned CIVIL ACTION NUMBER to the enclosed PLAINTIFF=INTERVENOR'S MOTION TO INTERVENE, and present immediately to the HONORABLE KEITH ELLISON, U.S. DISTRICT JUDGE assigned to the case.

By copies of this cover letter, a set of the same is this day being delivered to representative parties in interest in the case, as noted below in Austin, Texas, for their information.

Thank you for your time and prompt attention to this important and urgent matter. If possible, please supply the civil action number to the case, and file stamp the cover page 1 of the returned enclosed pleading, for my records.

Sincerely,



p. 3, & note 3, CIRCUIT JUDGE W. EUGENE DAVIS, urging this Court to "consider holding the trial sooner than [July 13, 2020] if possible." (5th Cir. June 5, 2020)(concurring in the judgment).

1.

5. This motion to intervene is being timely filed with this Court.

## II.

### PLAINTIFF-INTERVENORS

6. Plaintiff-Intervenor ALVARO LUNA-HERNANDEZ, currently imprisoned at the JAMES V. ALLRED UNIT in Iowa Park, Wichita County, Texas, TDCJ # 255735, is a 68 year old Chicano serving lengthy prison terms out of Alpine, Brewster County, Texas for various felony criminal offenses. He suffers from chronic hypertension, and has been in consecutive restrictive housing since August 2002. His initial parole eligibility review date is set as July 2021. See Offender Information Details, TDCJ, <https://offender.tdcj.texas.gov/OffenderSearch/offenderDetail.action>.

7. Plaintiff-Intervenor ANDRE A. CARROTHERS, imprisoned at ALLRED UNIT, TDCJ # 1295158, is serving a life sentence out of Fort Worth, Tarrant County, Texas. He is of Black and Caucasian parentage and is 48 years old. He suffers from diabetes, hypertension, glaucoma, exercise-induced asthma, previously diagnosed with mental disabilities. His current parole eligibility review date is set as September 2033.

8. Plaintiff-Intervenor JOSE CALLES imprisoned at ALLRED UNIT, TDCJ # 2253388, is of Mexican and El Salvador parentage. He is serving a 7

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1. Plaintiff-Intervenors respectfully ask this Court to construe this motion-in-intervention papers liberally, than formal pleadings drafted by lawyers under the "pro se" standard of reviewing such papers in order to achieve substantial justice under Fisher v. Texas, 169 F. 3d 295 (5th Cir. 1993), and Haines v. Kerner, 404 U.S. 519 (1972).

year prison term out of Houston, Harris County, Texas. He suffers from chronic depression, is under psychotropic medications and care, and endures chronic pain from gun-shot wounds received in the past, at times immobilizing him physically. He will discharge his sentence in June 2023. CALLES cannot speak, read, write nor understand English, although the nature of these pleadings have been translated to him in detail in Spanish, including the legal consequences of his perjury declaration, below [written in English and in Spanish]. SEE PERJURY DECLARATIONS, p. 16.

9. Plaintiff-Intervenors have not filed this pleading in order to seek a "reprieve" from their prison cell, nor to "travel" to Houston before this Court but instead to see that justice is served. They respectfully suggest, in the event their testimony is needed, for the Court to order TDCJ ALLRED UNIT prison officials to set up the teleconferencing video/audio system available to the prison, connected to the courtroom of this Honorable Court, in lieu of their physical presence.

### III.

**UNCONDITIONAL RIGHT TO INTERVENE, AND THE  
INADEQUACY OF THE CURRENT LEGAL REPRESENTATION  
BY CURRENT CLASS COUNSEL TO PROTECT THEIR RIGHTS,  
CLAIMS, INTERESTS AND DEFENSES, ABOVE AND BEYOND  
THE NARROW AND SELFISH "CLASS" COVERING ONLY  
WALLACE PACK UNIT INMATES AND CREATING INHERENT  
"INJUSTICES" TO THE REST OF THE SUB-CLASSES  
PLAINTIFF-INTERVENORS SEEK TO REPRESENT**

10. Plaintiff-Intervenors LUNA-HERNANDEZ, CARROTHERS, and CALLES file their timely motion invoking their unconditional right to intervene in this civil action under the provisions of Rule 23(d)(iii), and 24(a)(1)(2), FRCP in that they, in good faith, believe that current "class counsel" is not fairly nor adequately representing their rights, claims,

defenses and interests, above and beyond those facing the putative class as previously defined by this Court, as TDCJ prisoners incarcerated at the PACK UNIT, although, as will be shown below, there are thousands of other similarly situated TDCJ prisoners confined in other prison units facing different treatment and conditions but related to the same COVID 19 pandemic that threatens their health, safety and lives; and that:

"(1) the class is so numerous that joinder of all members in impracticable;

(2) there are questions of law and fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class, and

(b) (1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests...  
RULE 23(a)(1)-4, (b)(A)(B), FRCP.

11. Therefore, prospective Plaintiff-Intervenors consider current class counsel not protecting their rights, claims, defenses and interests, although the TDCJ is claiming that their responses to the COVID 19 is "prison-wide," See Valentine, 959 F. 3d 7979, conditions vary from unit to unit, and to assume that TDCJ prison conditions are all similar to those at the PACK UNIT is unfounded, and erroneous; and any permanent injunction under the pretext of being "on behalf of the class" as a whole would be erroneous, unfair and unjust as applied to other similarly situated TDCJ prisoners on other prison units not the WALLACE PACK UNIT and those conditions they face as described by the FIFTH CIRCUIT in Valentine v. Collier, 956 F. 3d 797, that do not apply specifically to

other similarly situated "sub-classes," especially to non-English speaking class members as JOSE CALLES, and the ongoing racially discriminatory, and retaliatory manner in which TDCJ'S response to COVID 19 is being applied and administered by ALLRED UNIT prison officials "hidden" from the eyes and ears of this Court. See Valentine v. Collier, 956 F. 3d 797 (confining the reach of this Court's original preliminary injunction order to cover ".....all PACK UNIT inmates [.] This is a class injunction that applies to all inmates - disabled and non-disabled alike - in the Pack Unit;" See also Valentine v. Collier, vacating, remanding case for permanent injunction proceedings)(CIRCUIT JUDGE DAVIS specifically defining the numerical number of inmates at Pack Unit, and their specific conditions of housing and "comorbidities they suffer"). id.

11. Therefore, Plaintiff-Intervenors ask this Court to consider the following facts and circumstances related to questions of the unfair and inadequacy of their current legal representation in being, for all practical purposes excluded from protections under the Court's original definition as representative class members and the need to further enlarge on said definition under "sub-classes," as applicable, as the Court so decides; under expedited emergency fashion:

A.

**INADEQUACY OF THE CURRENT LEGAL REPRESENTATION  
OF THE ENTIRE CLASS OF PRISONERS INCARCERATED ON  
ALL TDCJ PRISON UNITS, NOT MERELY ON PACK UNIT,  
AND THE NEED TO ENLARGE THE CLASS TO DEFINE  
ADDITIONAL "SUB-CLASSES" AS PROPOSED HERE**

12. For example, Plaintiff-Intervenor LUNA-HERNANDEZ contacted

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2. The "data" of the reported COVID 19 infections and prisoner deaths noted by the FIFTH CIRCUIT in Valentine v. Collier, supra, is ever-changing specially in light of the rise of COVID 10 infections and deaths on all TDCJ prison units, specially in WICHITA COUNTY, TEXAS, where the JAMES V. ALLRED UNIT is located. See <http://www.kfdx-3.com>; [www.nbc.com](http://www.nbc.com) (JUNE 18, 2020 televised broadcasts). Now see, [www.tdcj.texas.state.gov/COVID 19 UPDATES](http://www.tdcj.texas.state.gov/COVID%2019%20UPDATES).

Class Attorney JEFF EDWARDS in April 2020, protesting the current conditions and the retaliatory treatment ALLRED UNIT prison officials, specially 12 Building Major TIMOTHY WASHINGTON, sending EDWARDS the original grievances Intervenor had filed beginning on MARCH 15, 2020, GRIEVANCE # 2020091109, rejected as an "emergency grievance" by ALLRED GRIEVANCE INVESTIGATOR II TRACI COOKE as a "Illegible/Incomprehensive" grievance, returned on MARCH 16, 2020 unprocessed. In said grievance Intervenor protested the unsanitary, filthy conditions in restrictive housing cellblock areas that posed serious threats to the health, safety and lives of the prisoner class against COVID 19 virus-spread. 3. Therefore, LUNA-HERNANDEZ adequately exhausted the mandatory "exhaustion requirement" of the PRISON LITIGATION REFORM ACT ("PLRA"), making the entire class action ripe for court resolution, the FIFTH CIRCUIT found the original class representatives in Valentine v. Collier had failed to do before filing suit, making the suit "premature," in the words of the FIFTH CIRCUIT. Valentine, 956 F. 3d 797 (relying on Rose v. Blake, 136 S.Ct. 1850 (2016)). CIRCUIT JUDGE DAVIS in his concurring opinion in Valentine II, AT SLIP OP. p. 3, & note 2, of June 5, 2020 suggested this Court "[s]hould resolve the apparent factual dispute concerning when Plaintiff Valentine sought administrative relief and whether TDCJ offered any emergency grievance procedures to the inmates." id. Thus, failure of this Court to allow intervention, and disallow enlargement of applicable "sub-classes" sought here would give TDCJ an unfair advantage in support of their argument for "dismissal"

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3. Upon rejection of his MARCH 15, 2020 COVID 19 GRIEVANCE at the unit level, LUNA-HERNANDEZ complained to the CHIEF GRIEVANCE ADMINISTRATOR in Huntsville, TX, who reversed the unit decision, ordering TRACI COOKE to "accept as original" but STEP 1, 2 grievance # 2020091109 was subsequently denied. CLASS COUNSEL JEFF EDWARDS HAS THE ORIGINAL STEP 1, STEP 2 GRIEVANCES and this Court should compel him to produce them before the Court immediately, and the Court address these apparent unethical matters attributed to Class Counsel JEFF EDWARDS and his legal team in this case. id.

for failure to exhaust. Consequently, not only is "exhaustion" an ongoing issue in this case, but the totality of the circumstances, and actions and omissions by Class counsel JEFF EDWARDS testifies to the inadequacy of his legal representation on behalf of the entire class, involves unethical conduct by him, that all contravenes the letter and spirit of Rule 23(a)(b)(c)(d)(e)(f)(g) and (h) provisions, all to the detriment of the entire class, the original class and any sub-classes to be defined by this Court. This Court has an independent duty to protect the interests of the entire class, enter findings of fact and remedy said deficiencies where the class is being inadequately represented. See e.g. Gates v. Cook, 234 F. 3d 221, 228-30 (5th Cir. 2000)(holding substitution of class counsel was warranted in light of present counsel's poor performance and poor relationship with class members); accord: Kincade v. General Tire & Rubber CO., 635 F. 2d 501, 508 (5th Cir. 1981).

13. This Court should, therefore, immediately schedule a live-in-court hearing on this motion to intervene pursuant to Rule 23(g) (A), and (B) [permitting court to "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class"]. *id.*

B.

CURRENT CONDITIONS OF CONFINEMENT AT ALLRED UNIT,  
AND THE DISCRIMINATORY, RETALIATORY, DANGEROUS RISKS  
THE UNREPRESENTED SUB-CLASS FACE ON THE COVID 19  
PANDEMIC, THE PRISON'S DELIBERATE INDIFFERENCE OF HOUSING  
QUARANTINE-AFFECTED INMATES WITH NON-AFFECTED ONES, IN  
VIOLATION OF ALL MEDICAL PROTOCOLS AND GUIDELINES, AND  
USE OF 12 BUILDING F POD, A SECTION, AS A WEAPON TO  
PENALIZE EXERCISE OF CONSTITUTIONAL RIGHTS AGAINST  
COVID 19 COMPLAINTS, AND DISCRIMINATORY APPLICATION OF  
COVID 19 TESTING AGAINST NON-ENGLISH SPEAKING INMATES

14. FURTHER, Plaintiff Intervenor, in support of their motion, would respectfully show this Court as follows:

(A) ALLRED UNIT WARDEN JIMMY S. SMITH, 12 BUILDING MAJOR TIMOTHY WASHINGTON, DENISE SHIELDS, UNIT MEDICAL DIRECTOR and the UNIT CLASSIFICATION COMMITTEE. their agents and employees, are using 12 Bldg. F POD, A SECTION, 1 and 2 tiers in restrictive housing, comprising of 14 single cells from 1 to 14 through [7 cell is an interview one], designated as "quarantine quarters" for housing prisoners under "medical quarantine" who may have been exposed or tested positive to the COVID 19 infection/virus, and are being housed<sup>4</sup> with other prisoners such as LUNA-HERNANDEZ who has tested "negative." However, conditions in F POD A SECTION remain unsanitary, filthy. and the ventilation system in all cells is interconnected to all 14 cells, through the unit air conditioning/heating system that connects all 12 Building, all 6 Restrictive Housing pods, A through F, [F designated as a disciplinary segregation pod], being used also as "overflow" for severely crowded conditions, including an insufficient staff, TDCJ readily has admitted publicly exists, which strain all other services to prisoners. Said ventilation system provides for the possibility of COVID 19 virus spreading "air borne" via the ventilation system, exacerbated by cells with no open windows for circulation of fresh air, a air conditioning and heating system that is grossly inadequate; and the repeated pattern and practice of prison guards', almost daily, use of chemical agents to quell disturbances, or other acts of disobedience by prisoners, such as jacking food slots, or refusing to exist cells, or recreation areas such as the dayroom that is located in front of 1 tier cells on 1 row;<sup>5</sup> the totality of these 6. conditions and the unsanitary "paper trays" thrown out on the tiers, used by inmates on "quarantine" pose a certain high-risk of easy spread

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4. LUNA-HERNANDEZ tested negative for the virus on June 10, 2020. CARROTHERS has not yet received his COVID 19 test results. CALLES was discriminatorily denied testing due to his language inability. id.

5. Use of chemical agents induce coughs, sneezes, teary eyes, runny nose and discharge of other bodily fluids; more dangerously in front of cells where food trays are being sorted out for cell distribution in cells 1 through 14. The "deliberate indifference" found lacking by the FIFTH in Valentine I, II under Farmer v. Brennan, 511 U.S. 825 (1994) on "substantial risk of serious harm" is established by these ALLRED UNIT policies.

6. On JUNE 18, 2020 the surveillance camera will show that "paper trays" discarded by the prisoner in cell # 8, after he eats off of them, remained on the tier for hours, posing serious spread of the COVID 19 virus, as cell # 8 is under "quarantine." THIS COURT SHOULD IMMEDIATELY COMPEL THE TDCJ TO PRODUCE SAID JUNE 18, 2020 SURVEILLANCE VIDEO FOOTAGE, CRITICAL ELECTRONIC EVIDENCE THAT IS SELF-PROVING. id.

of COVID 19, in violation of all protocols and guidelines as applied to prisons. See INTERIM GUIDANCE ON MANAGEMENT OF CORONAVIRUS DISEASE 2019 (COVID 19) IN CORRECTIONAL AND DETENTION FACILITIES, Centers for Disease Control and Prevention (CDC); as alleged adopted by TDCJ to abate and control the spread of the virus, but only in word, and not in actual deed. See e.g. Gillespie v. Crawford, 838 F. 2d 47, 50 (5th Cir. 1978)(inadequate prison ventilation system constitutes cruel and unusual punishment under "totality of circumstances:)).

(B) 12 Building F Pod is a known designated disciplinary segregation cellblock, where conditions are more punitive than in the rest of the regular cellblocks, A through E Pods. ALLRED UNIT prison officials have been using F Pod, A, B and C Sections to house "overflow" of prisoners that cannot be housed on regular cellblocks, due to gross overcrowding in the prison. It is also been used in a discriminatory and retaliatory manner by 12 Bldg. Major Timothy Washington, and his "cell assignment crew," to house "litigious prisoners" such as LUNA-HERNANDEZ, repeatedly using false ~~pre~~texts (overflow) to penalize for exercise of constitutional rights, and for protesting against unlawful prison conditions, including against COVID 19 conditions, as spelled out in LUNA-HERNANDEZS' Grievance # 2020091109, March 15, 2020, referenced above A. page 8, infra. The unit's own "cell assignment records" would show that no other ALLRED UNIT prisoner has been singled out for assignment, and re-assignment to 12 F Pod disciplinary segregation, since OCTOBER 2019, than LUNA-HERNANDEZ, and this "merry-go-round" of discriminatory housing is part of prison officials' "campaign of harassment" against LUNA-HERNANDEZ as reprisals for his exercise of legal rights, that has included filing legitimate grievances complaining against institutional racism, other unlawful prison conditions and mistreatment, assisting other prisoners with their legal matters, filing lawsuits against the prison, and his outside supporters such as JOHN S. DOLLEY, JR., of the CENTRAL TEXAS ABC PARALEGAL PROJECT advocacy group, Austin, Texas, filing "citizens complaints" against such abuses, oppression, with the TDCJ OFFICE OF OMBUDSMAN in Huntsville, TX. that unit prison officials must account for, aggravating them. Moreover, TDCJ "travel records" and "classification" and other prison records indicate LUNA-HERNANDEZ as a

former "Ruiz witness" [Ruiz v. Estelle, 503 F. Supp. 1265], and a prolific jailhouse lawyer and human rights activist known nationally and internationally for his history of activism, both outside and inside prison walls. See. JAILHOUSE LAWYERS: PRISONERS REPRESENTING PRISONERS VS. THE USA, by Mumia Abu Jamal, 2009, City Lights Publishing; See also Hernandez v. Estelle, 788 F. 2d 1154 (5th Cir. 1989). See also <http://www.certaindays.org>; [www.thejerichomovement.com/listofpoliticalprisoners.html](http://www.thejerichomovement.com/listofpoliticalprisoners.html); [www.nycabc.com](http://www.nycabc.com); [www.partisandefense.org](http://www.partisandefense.org); and UTUBE, [www.davidrovics.com](http://www.davidrovics.com); [songs.of.social.significance.com](http://songs.of.social.significance.com); #Free Alvaro. Now:net; #325.nostate.net; See GRIEVANCE #'s 2018008347, Oct. 23, 2017; #202009423, Apr. 29, 2020 (pending STEP 2 appeal at this filing); Now see Cruz v. Beto, 603 F. 2d 1178 (5th Cir. 1978)(former TDCJ prison director DR. GEORGE BETO's policies of discriminatory housing of disfavored "jailhouse lawyers" to penalize them for filing suits against the prison, and barring Attorney FRANCES JALET CRUZ from the prison as punishment for maintaining a 'clientele' of prisoners held illegal); Ruiz v. Estelle, 503 F.Supp. 1265 (TDCJ's long history of "hostilities against writ writers," a policy that continues unabated today, See also PRISON LEGAL NEWS, [www.prisonlegalnews.org](http://www.prisonlegalnews.org)/TDCJ reports on RAMSEY UNIT prison guards planting "screw drivers" in prisoners' property to justify disciplinary actions against them). See also [www.houstonchron.com](http://www.houstonchron.com).

(C) PLAINTIFF INTERVENOR JOSE CALLES was approached by a white, English-speaking officer on or about June 4, 2020 about taking the COVID 19 test. CALLES, not understanding a word of English, paused to attempt to make sense of what the officer was telling him, then all of a sudden the officer walked away, and noted in his "COVID 19 testing list" that CALLES had "refused," as documented in medical files. CALLES was automatically placed under "quarantine" for 14 days, ending on JUNE 19, 2020; he was also charged with a disciplinary infraction, a case that was later dismissed when, at attempted service by SGT. JOHN EWING, CALLES' neighbor, LUNA-HERNANDEZ, notified the prison official that CALLES does not understand, speak English and the guard just walked away. The UNIT MEDICAL DEPARTMENT well knows that CALLES is a non-English

speaking inmate, and of a "sub-class" of many similarly situated ALLRED UNIT prisoners, and others throughout the entire TDCJ prison system with a language inability, and COVID 19 testing is being applied as to them in a racially discriminatory manner, although the Texas Legislature while deferring to the TDCJ on the "perogatives of prison policies," under Chapter 501, TEXAS GOV'T CODE, as noted by the FIFTH CIRCUIT in Valentine, 956 F. 3d 797, id. TDCJ is prohibited from maintaining racially discriminatory policies and practices as related to dispensing of medical treatment and services, to include the settlement agreement permanent injunction entered into by the representative parties in the class action litigation entitled Lamar v. Coffield [referenced in Ruiz v. Estelle, 503 F.Supp. 1265]. See e.g. Ruiz v. McKaskle, 724 F. 2d 1149 (5th Cir. 1989)(notice to Ruiz non-English speaking class members given in Spanish). Therefore, this "sub-class" of MEDICALLY VULNERABLE LANGUAGE INABILITY TDCJ PRISONERS are being racially discriminated against, not only by the TDCJ, but by current class counsel as similarly situated non-English speaking inmates, all to their detriment, class action litigation and TDCJ prison policies and practices that violate their constitutional rights to adequate medical care and treatment, and to the equal protection of the laws, and to due process of law guaranteed them under the EIGHTH and FOURTEENTH AMENDMENTS to the U.S. Constitution, and RULES 23, 24, FRCP, of which this Court must remedy here. See e.g. Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886); Lee v. Washington, 390 U.S. 333 (1968); Lamar v. Coffield; CHAPTER 501, TEX. GOV'T CODE.

#### IV.

REQUEST FOR A HEARING, FOR PROTECTIVE ORDERS,  
AND FOR REFERRAL OF ALLEGATIONS OF FEDERAL CRIMINAL  
CIVIL RIGHTS VIOLATIONS BY ALLRED UNIT MADE BY THE  
COURT TO THE FBI'S CRIMINAL CIVIL RIGHTS DIVISION,  
AND THE U.S. ATTORNEY'S OFFICE FOR INVESTIGATION

15. Plaintiff-Intervenors request a hearing, for protective order against retaliation for exercise of federal law rights, and for referral of alleged violations of federal law to the FBI, U.S. Attorney's Office for investigations under 18 USC §§ 241, 242 [conspiracy, violation of federal rights]. Intervenors request entry of findings of fact by the Court here. See United States v. Lanier, 520 u.s. 259 (1987).

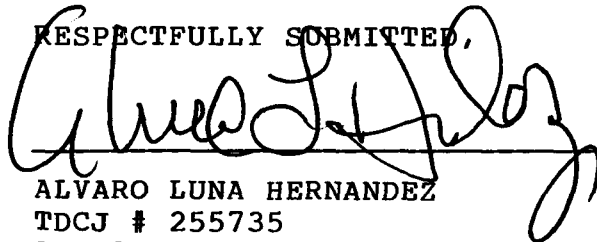
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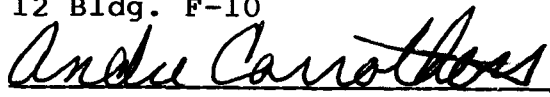
CONCLUSION

18. WHEREFORE, PREMISES CONSIDERED, PLAINTIFF INTERVENORS LUNA-HERNANDEZ, CARROTHERS, CALLES, and the "sub-classes" they represent of similarly situated TDCJ prisoners fighting for their lives against COVID 19 infections, and death, forced to live under unsanitary, filthy cells, unable to maintain "social distancing" or cleanliness of their cells, and tiers, all face threats to their health, safety and lives by their jailers who have amply demonstrated in this Court, in the FIFTH CIRCUIT, and in the U.S. SUPREME COURT their deliberate indifference to prisoners' lives, and their recalcitrance of their historical, ongoing pattern and practice of defying the mandates of the U.S. Constitution's prohibition against infliction of cruel and unusual punishments, and of lawful orders of the federal judiciary, the current class certification order excludes for their protections, making this petition in intervention fair, just and necessary to protect all prisoners in the TDCJ., not only those at the WALLACE PACK UNIT, as truth, law and equal justice under the law demands.

JUNE 18, 2020

RESPECTFULLY SUBMITTED,

  
ALVARO LUNA HERNANDEZ  
TDCJ # 255735  
12 Bldg. F-10

  
ANDRE A. CARROTHERS  
TDCJ # 1295158  
12 Bldg. F-09

  
JOSE CALLES  
TDCJ # 2253388  
12 Bldg. F-11

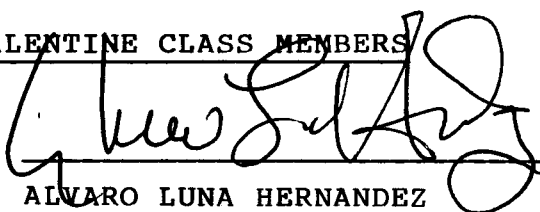
JAMES V. ALLRED UNIT  
2101 FM 369 NORTH  
IOWA PARK, TEXAS 76367-6568

PLAINTIFF-INTERVENORS PRO SE 7/

CERTIFICATE OF SERVICE

I, PLAINTIFF INTERVENOR ALVARO LUNA HERNANDEZ, do hereby certify that a true and correct copy of the above and foregoing MOTION TO INTERVENE AND SUPPORT PERJURY DECLARATIONS have this day, the 18th day of JUNE, 2020, been mailed, postage prepaid, to the following parties in interest:

- KEN PAXTON  
TEXAS ATTORNEY GENERAL  
Law Enforcement Defense Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
ATTORNEY FOR TDCJ DEFENDANT PRISON OFFICIALS
- JEFF EDWARDS  
Edwards Law Office  
1101 E. 4th Street  
Austin, Texas 78702-1908  
ATTORNEY FOR ORIGINAL VALENTINE CLASS MEMBERS

  
ALVARO LUNA HERNANDEZ

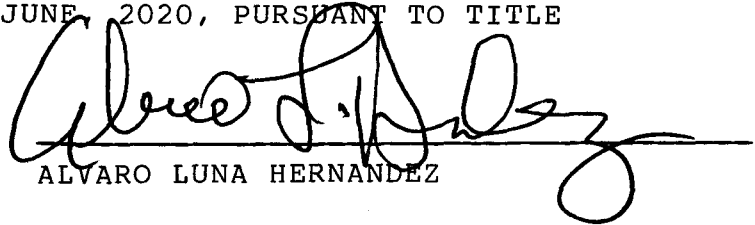
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7. Plaintiff Intervenor ALVARO LUNA-HERNANDEZ is the original author of this motion to intervene.

DECLARATIONS UNDER PENALTY OF PERJURY  
OF PLAINTIFF-INTERVENORS: ALVARO LUNA-HERNANDEZ,  
ANDRE A. CARROTHERS, AND JOSE CALLES  
ALVARO LUNA HERNANDEZ

I, ALVARO LUNA-HERNANDEZ, currently incarcerated at the ALLRED UNIT of the TDCJ under # 255735, as Plaintiff Intervenor here, do declare under penalty of perjury that the above and foregoing factual statements contained herein are true and correct.

EXECUTED THIS 18TH DAY OF JUNE, 2020, PURSUANT TO TITLE  
28 USC SECTION 1746.



ALVARO LUNA HERNANDEZ

ANDRE A CARROTHERS

I, ANDRE A. CARROTHERS, currently incarcerated at the ALLRED UNIT of the TDCJ under # 1295158, as Plaintiff Intervenor here, do declare under penalty of perjury that the above and foregoing factual statements contained herein are true and correct.

EXECUTED THIS 18TH DAY OF JUNE, 2020, PURSUANT TO TITLE  
28 USC SECTION 1746.



ANDRE A. CARROTHERS

JOSE CALLES

I, JOSE CALLES, currently incarcerated at the ALLRED UNIT of the TDCJ under #2253388, as Plaintiff Intervenor here, do declare under penalty of perjury that the above and foregoing factual statements contained herein are true and correct.

SPANISH TRANSLATION:

Yo, JOSE CALLES, presentemente encarcelado en la Unida ALLRED de el TDCJ abajo de numero 2253388, como demandante intervencionista, declaro abajo de pena de castigo por perjurio, que mis comentarios presentados relacionados a mi person, son verdaderos y correctos.

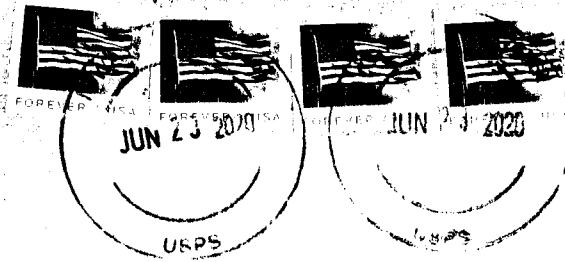
EXECUTED THIS 18TH DAY OF JUNE, 2020, PURSUANT TO TITLE  
28 USC SECTION 1746.

EJECUTADO ESTE 18o DE JUNIO, DEL AÑO 2020, ABAJO DE TITULO  
28 USC SECCION 1746.



JOSE CALLES

ALVARO DUNA HERNANDEZ  
TDCJ # 2850735  
JAMES V. ALLRED UNIT  
2101 FM 369 NORTH  
IOWA PARK, TEXAS 76367-6568



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HOUSTON, TEXAS 77208-1010

United States Courts  
Southern District of Texas  
FILED

JUN 25 2020

David J. Bradley, Clerk of Court

