

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

Favian Busby and Michael Edgington, *on
their own behalf and on behalf of those
similarly situated*;

Petitioners-Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,
Shelby County Sheriff, and the Shelby County
Sheriff's Office,

Respondents-Defendants.

Case No. 20-cv-2359-SHL

**PETITIONERS-PLAINTIFFS' BRIEF IN OPPOSITION TO RESPONDENTS-
DEFENDANTS' MOTION TO DISMISS**

TABLE OF CONTENTS

INTRODUCTION	1
STANDARD OF REVIEW	2
ARGUMENT	2
I. This Court Has Jurisdiction to Hear Plaintiffs’ Claims.	2
A. Plaintiffs’ Claims Are Properly Brought Under 28 U.S.C. § 2241.	2
B. The PLRA Does Not Apply to Plaintiffs’ Claims for Habeas Corpus.	5
C. This Court May Entertain Plaintiffs’ Claims for Habeas Corpus.	6
II. To Vindicate Plaintiffs’ Rights This Court Must Intervene.	12
A. Plaintiffs’ Claims Entail Substantive Due Process Violations that Require This Court’s Review.	12
B. Habeas Relief Can be Granted in a Way that Protects the Public.	16
CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Ability Center of Greater Toledo v. City of Sandusky</i> , 385 F.3d 901, 907 (6 th Cir. 2004)	15
<i>Archer v. State</i> , 851 S.W.2d 157 (Tenn. 1993)	8
<i>Atkins v. Michigan</i> , 644 F.2d 543 (6th Cir. 1981)	4
<i>Avendano Hernandez v. Decker</i> , No. 20-cv-1589-JPO, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020).....	4
<i>Basank v. Decker</i> , No. 20-cv-2518-AT, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020).....	4
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979).....	13
<i>Benson v. State</i> , No. W2018-00967-CCA-R3-HC, 2019 WL 1388195 (Tenn. Crim. App. Mar. 26, 2019)	8
<i>Blair-Bey v. Quick</i> , 151 F.3d 1036 (D.C. Cir. 1998).....	6
<i>Burke v. Hall</i> , No. 3:19-cv-1108(AAT), 2020 U.S. Dist. LEXIS 17774 (M.D. Tenn. Feb. 4, 2020)	9
<i>Cameron v. Bouchard</i> , 2020 U.S. Dist. LEXIS 89083 (E.D. Mich. May 21, 2020)	passim
<i>Cameron v. Bouchard</i> , No. 20-10949, 2020 U.S. App. LEXIS 16741 (6th Cir. May 26, 2020).....	3, 5, 12
<i>Clark v. Lindamood</i> , No. 3:17-cv-0968(AAT), 2018 WL 346230 (M.D. Tenn. Jan. 10, 2018)	8
<i>Coleman v. Newsom</i> , 2020 U.S. Dist. LEXIS 62575 (E.D. Cal. Apr. 4, 2020)	6

<i>Coronel v. Decker</i> , No. 20-cv-2472-AJN, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020)	4
<i>Delk v. Atkinson</i> , 665 F.2d 90 (6th Cir. 1981)	4
<i>Edwards v. State</i> , 269 S.W.3d 915 (Tenn. 2008)	7
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994)	5
<i>Fazzini v. N.E. Ohio Corr. Ctr.</i> , 473 F.3d 229 (6th Cir. 2006)	6
<i>Francisco Hernandez v. Wolf</i> , No. 20-cv-617-THJ, 202 U.S. Dist. LEXIS 71421 (C.D. Cal. Apr. 1, 2020)	4
<i>Geeter v. Lesatz</i> , No. 5:17-cv-11510/18-cv-10994(JCO), 2018 WL 2064034 (E.D. Mich. May 3, 2018)	9
<i>Goar v. Civiletti</i> , 688 F.2d 27 (6th Cir. 1982)	7
<i>Greenwood v. Batts</i> , No. 2:16-cv-02867, 2018 U.S. Dist. LEXIS 115875 (W.D. Tenn. July 12, 2018)	9
<i>Handy-Clay v. City of Memphis, Tenn.</i> , 695 F.3d 531 (6th Cir. 2012)	2
<i>Helling v. McKinney</i> , 509 U.S. 25 (1993)	14
<i>Hernandez v. Sepanek</i> , No. 12-CV-51-HRW, 2013 WL 556378 (E.D. Ky. Feb. 11, 2013)	12
<i>Hogan v. Mills</i> , 168 S.W.3d 753 (Tenn. 2005)	8
<i>Howard v. Grinage</i> , 82 F.3d 1343 (6th Cir. 1996)	13
<i>I.L. through Taylor v. Knox Cty. Bd. of Ed.</i> , 257 F. Supp. 3d 946 (E.D. Tenn. 2017)	16

<i>J.H. v. Williamson Cty.</i> , 951 F.3d 709 (6th Cir. 2020)	13
<i>Johnson v. Luttrell</i> , No. W2006-01409-CCA-R3-HC, 2007 WL 700951 (Tenn. Crim. App. Mar. 6, 2007)	8
<i>Jovel v. Decker</i> , No. 12-cv-308-GBD, 2020 WL 1467397 (S.D.N.Y. Mar. 26, 2020)	4
<i>Kingsley v. Hendrickson</i> , 576 U.S. 389 (2015)	14
<i>Lee v. Jabe</i> , 989 F.2d 869 (6th Cir. 1993)	17
<i>Malam v. Adducci</i> , No. 20-10829-JEL, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020)	4, 14, 18
<i>Martinez-Brooks v. Easter</i> , No. 3:20-cv-00569, 2020 WL 2405350 (D. Conn. May 12, 2020)	5, 15
<i>McPherson v. Lamont</i> , No. 3:20-cv-534-JBA, 2020 WL 2198279 (D. Conn. May 6, 2020)	10, 12
<i>Money v. Pritzker</i> , No. 20-cv-2093/20-cv-2094-RMD, 2020 U.S. Dist. LEXIS 63599 (N.D. Ill. Apr. 10, 2020)	9
<i>O’Sullivan v. Boerckel</i> , 526 U.S. 838 (1999)	7
<i>Patton v. Bonner</i> , No. 2:19-cv-02344-TLP, 2020 U.S. Dist. LEXIS 74470 (W.D. Tenn. Apr. 28, 2020)	9
<i>Patton v. Tennessee</i> , No. W2018-01835-CCA-R3-HC, 2019 WL 1111151 (Tenn. Crim. App. Mar. 11, 2019)	8, 9
<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973)	3, 4
<i>Rafael L.O. v. Tsoukaris</i> , No. 20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020)	4
<i>Reaves v. Dep’t of Corr.</i> , 404 F. Supp. 3d 520 (D. Mass. 2019)	6

<i>Refunjol v. Adducci</i> , No. 2:20-cv-2099-SDM, 2020 WL 2487119 (S.D. Ohio May 14, 2020).....	4, 14
<i>Rose v. Lundy</i> , 455 U.S. 509 (1982).....	7, 12
<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	14
<i>Santana v. United States</i> , 98 F.3d 752 (3d Cir. 1996)	6
<i>Savino v. Souza</i> , No. 20-10617-WGY, 2020 WL 1703844 (D. Mass. Apr. 8, 2020).....	18
<i>Scott v. Parker</i> , No. 3:09-0252-TC, 2012 WL 1292432 (M.D. Tenn. Apr. 16, 2012).....	7
<i>Stack v. Boyle</i> , 342 U.S. 1 (1951).....	14
<i>Taylor v. State</i> , No. M2003-02954-CCA-R3-HC, 2004 WL 2636716 (Tenn. Crim. App. Nov. 15, 2004)	8
<i>Thakker v. Doll</i> , No. 20-cv-480-JEJ, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020)	4
<i>Triplett v. Deputy Warden</i> , 371 N.W.2d 862 (Mich. Ct. App. 1985).....	9
<i>Turner v. Tennessee</i> , 858 F.2d 1201 (6th Cir. 1988)	4
<i>Wershe v. Combs</i> , 763 F.3d 500 (6th Cir. 2014)	3
<i>Wilson v. Williams</i> , No. 20-1469, 2020 U.S. App. LEXIS 14291 (6th Cir. May 4, 2020).....	3, 5
<i>Wilson v. Williams</i> , No. 4:20-cv-00794-JSG, 2020 WL 1940882 (N.D. Ohio, Apr. 22, 2020)	3, 5, 19
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 55 U.S. 7 (2008).....	18

INTRODUCTION

COVID-19 is killing people at jails around the country who are at high risk of severe injury and/or death from the disease. The Shelby County Jail is no exception. On May 15, 2020, it was reported that 151 pretrial detainees and 66 staff at the Jail had tested positive for COVID-19, and a member of the Jail staff has died from the disease. But the Sheriff of Shelby County and the Sheriff's Office, disregarding the established law of this Circuit and the actions of federal judges across the country, argue that this Court is powerless to help. They are wrong. This Court, like others in this Circuit and across the country, should refuse to stand idly by in the face of the grave danger to the vulnerable population at the Jail.

Established law in this Circuit and from across the country, including from the U.S. Supreme Court, makes clear that this Court has jurisdiction to grant Mr. Busby, Mr. Edgington, and the classes they seek to represent, the relief they require. Their claims are properly brought under 28 U.S.C. § 2241, which is the only vehicle available for them to pursue the necessary relief of release or transfer from the Shelby County Jail. The Prison Litigation Reform Act ("PLRA") therefore does not apply. There is no impediment to this Court entertaining Plaintiffs' claims now regardless of the exaggerated federalism arguments Defendants have conjured in a last ditch attempt to avoid their obligations to the medically vulnerable people in their custody. Defendants cite no authority to the contrary. Conversely, the Sixth Circuit and the Supreme Court of the United States have blessed rulings granting the same relief Messrs. Busby and Edgington seek. Further, and in answer to the Court's questions during oral argument, the vindication of Plaintiffs' substantive due process and federal rights require this Court's review.

For these reasons, and for the reasons provided below, the Court should deny Defendants' Motion to Dismiss.

STANDARD OF REVIEW

In ruling on a motion to dismiss, a court “construe[s] the complaint in the light most favorable to the plaintiff, accept[s] its allegations as true, and draw[s] all reasonable inferences in favor of the plaintiff.” *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 538 (6th Cir. 2012) (citation omitted). A motion to dismiss must be denied if plaintiffs allege “facts that ‘state a claim to relief that is plausible on its face’ and that, if accepted as true, are sufficient to ‘raise a right to relief above the speculative level.’” *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

ARGUMENT

I. This Court Has Jurisdiction to Hear Plaintiffs' Claims.

A. Plaintiffs' Claims Are Properly Brought Under 28 U.S.C. § 2241.

The core of Mr. Busby and Mr. Edgington's claims is that they cannot be safely held at the Jail because social distancing is impossible due to the congregate nature of the facility; therefore, their “release is the only reasonable response.”¹ TRO Br. at 15. This is not a conditions-of-confinement case because there are no conditions of confinement in which Plaintiffs can be sufficiently safe. Instead, Plaintiffs' challenge goes to the validity of the fact their confinement. When “a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is

¹ The term “release” refers to the discharge of detained individuals from the physical confines of the Shelby County Jail, not necessarily release from all forms of custody. Release options may include, but are not limited to: supervised release (including through the use of GPS or other forms of location monitoring), halfway house residential placement, transfer to a hospital or other facility, or diversion to alternative community and treatment programs. *See* TRO Br. at 11 n.1.

entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.” *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Wershe v. Combs*, 763 F.3d 500, 504 (6th Cir. 2014) (same). As the Sixth Circuit has now held on two separate occasions, “[w]here a petitioner claims no set of conditions would be constitutionally sufficient, we construe the petitioner’s claim as challenging the fact of the confinement.” *Wilson v. Williams*, No. 20-1469, 2020 U.S. App. LEXIS 14291, at *4 (6th Cir. May 4, 2020); *Cameron v. Bouchard*, No. 20-10949, 2020 U.S. App. LEXIS 16741, at *4 (6th Cir. May 26, 2020) (citing *Adams v. Bradshaw*, 644 F.3d 481, 483 (6th Cir. 2011)).

Because Mr. Busby and Mr. Edgington challenge the validity of the fact of their confinement, not the conditions of their confinement, § 2241 is the proper vehicle for their claim. In *Cameron*, the district court concluded “that § 2241 is the proper vehicle for Plaintiffs to challenge the continued confinement of medically-vulnerable Jail inmates during the COVID-19 pandemic.” *Cameron v. Bouchard*, 2020 U.S. Dist. LEXIS 89083, at *34 (E.D. Mich. May 21, 2020). Likewise, in *Wilson* the district court found that, because “the only true effective remedy to stop the spread [of COVID-19] is to separate individuals—a measure that in our nation’s densely populated prisons is typically impossible . . . such actions ultimately seek to challenge the fact or duration of confinement.” *Wilson v. Williams*, No. 4:20-cv-00794-JSG, 2020 WL 1940882, at *5 (N.D. Ohio, Apr. 22, 2020). And, the “sole federal remedy” for a challenge to “to the very

fact” of confinement is “a writ of habeas corpus.” *Preiser*, 411 U.S. at 500. Federal courts around the country have granted habeas relief on the same basis.²

The Sixth Circuits’ holdings in *Wilson* and *Cameron* establish beyond cavil that habeas relief is available to pretrial detainees in precisely these circumstances and renders nonsensical Defendants’ unsupported and erroneous contention that the Circuit has “approved consideration of a pretrial § 2241 petition only in three exceptional circumstances.” MTD Br. at 8–9 (citing *Atkins v. Michigan*, 644 F.2d 543, 546–47 (6th Cir. 1981); *Delk v. Atkinson*, 665 F.2d 90, 93 (6th Cir. 1981), and *Turner v. Tennessee*, 858 F.2d 1201, 1204 (6th Cir. 1988)).³ In fact, § 2241 extends to any “individual in custody in violation of the Constitution or laws or treaties of the United States.” 18 U.S.C. § 2241. Because Mr. Busby and Mr. Edgington challenge the fact of their confinement, Defendants’ citations to cases regarding the applicability of § 2241 to conditions-of-confinement claims are irrelevant. *See* MTD Br. at 9.⁴ Mr. Busby and Mr. Edgington, and

² *See, e.g. Malam v. Adducci*, No. 20-10829-JEL, 2020 WL 1672662, at *3 (E.D. Mich. Apr. 5, 2020); *Refunjol v. Adducci*, No. 2:20-cv-2099-SDM, 2020 WL 2487119, at *17 (S.D. Ohio May 14, 2020); *Rafael L.O. v. Tsoukaris*, No. 20-cv-3481-JMV, 2020 WL 1808843 (D.N.J. Apr. 9, 2020); *Francisco Hernandez v. Wolf*, No. 20-cv-617-THJ, 202 U.S. Dist. LEXIS 71421 (C.D. Cal. Apr. 1, 2020); *Thakker v. Doll*, No. 20-cv-480-JEJ, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020); *Avendano Hernandez v. Decker*, No. 20-cv-1589-JPO, 2020 WL 1547459 (S.D.N.Y. Mar. 31, 2020); *Coronel v. Decker*, No. 20-cv-2472-AJN, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Basank v. Decker*, No. 20-cv-2518-AT, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Jovel v. Decker*, No. 12-cv-308-GBD, 2020 WL 1467397 (S.D.N.Y. Mar. 26, 2020).

³ These cases in fact explain that habeas relief is generally applicable to any person held in custody. *Atkins*, 644 F.2d 546, n.1 (finding “[p]retrial petitions . . . are properly brought under s. 2241, which applies to persons in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him.”); *Delk*, 665 F.2d at 93 (holding a person “who has been released on bail while awaiting trial is in ‘custody’ for the purposes of s. 2241”); *Turner*, 858 F.2d at 1204 (same).

⁴ Defendants’ argument that “a writ of habeas corpus is not the proper vehicle to bring a deliberate indifference claim,” MTD Br. at 10, misunderstands that “deliberate

other people at high risk of severe infection and/or death from COVID-19 cannot be safely housed at the Jail under any circumstances. As Plaintiffs’ medical experts have concluded, there is no acceptable alternative but release. *See* Goldenson Decl. ¶ 39; Fefferman Decl. ¶ 8; Griffin Decl. ¶ 13.⁵ Because there is no acceptable alternative but release, Plaintiffs challenge the validity of the fact of their confinement and their claims are properly brought under § 2241.

B. The PLRA Does Not Apply to Plaintiffs’ Claims for Habeas Corpus.

The PLRA does not apply to habeas claims. Defendants’ contention that Plaintiffs are subject to 18 U.S.C. § 3626 is wrong. Mr. Busby and Mr. Edgington’s proper invocation of § 2241 “forecloses any argument that the PLRA applies given its express exclusion of ‘habeas corpus proceedings challenging the fact or duration of confinement in prison’ from its ambit.” *Wilson*, 2020 U.S. App. LEXIS 14291, at *4 (quoting 18 U.S.C. § 3626(g)(2)); *Cameron*, 2020 U.S. App. LEXIS 16741, at *4 (same); *see also Martinez-Brooks v. Easter*, No. 3:20-cv-00569, 2020 WL 2405350, at *16 (D. Conn. May 12, 2020) (finding that the PLRA is inapplicable “unless the proceeding is a ‘civil action with respect to prison conditions,’” which “*does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.*”) (emphasis original).⁶

indifference” is a legal standard. *See Farmer v. Brennan*, 511 U.S. 825, 828 (1994) (“A prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment”); *see also Wilson*, 2020 WL 1940882, at *8 (finding respondents “deliberately indifferent” because they “altogether failed to separate [their] inmates at least six feet apart”); *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *66 (finding failure to release petitioners promptly is deliberate indifference).

⁵ “Goldenson Decl.” refers to the Declaration of Dr. Joe Goldenson dated May 20, 2020, “Fefferman Decl.” to the Declaration of Dr. Nina H. Fefferman dated May 19, 2020, and “Griffin Decl.” to the Declaration of Dr. Marie Griffin dated May 20, 2020.

⁶ Even if this was an action brought under 42 U.S.C. § 1983, Defendants’ analysis is wrong. That is because 18 U.S.C. § 3626 does not apply “to an order to transfer detainees out of a prison to correct the violation of a constitutional right where

The three out-of-Circuit cases on which Defendants rely do not affect the conclusion that the PLRA is inapplicable here.⁷ They certainly do not suggest, as Defendants imply, that § 3626 applies to habeas claims brought under § 2241. *See* MTD Br. at 12. Defendants’ error is clear from the language of the PLRA. To interpret § 3626 improperly to encompass habeas claims “would mean that a court could never order an inmate released unless a three-judge panel found by clear and convincing evidence that overcrowding was the cause of the violation. In other words, if any other reason caused the violation of an inmate’s constitutional rights, judges could not provide relief by releasing the inmate.” *Cameron*, 2020 U.S. Dist LEXIS 89083, at *72–73. That is not what Congress intended. *See id.*

C. This Court May Entertain Plaintiffs’ Claims for Habeas Corpus.

The Court may entertain Plaintiffs’ claims for habeas corpus because there is no available and adequate state corrective process to protect Plaintiffs’ rights. *See Fazzini v. N.E. Ohio Corr. Ctr.*, 473 F.3d 229, 236 (6th Cir. 2006) (finding failure to exhaust “available state” remedies “may be excused where pursuing such remedies would be futile

overcrowding is not the primary cause of the violation.” *Cameron*, 2020 U.S. LEXIS 89083, at *73; *see also Reaves v. Dep’t of Corr.*, 404 F. Supp. 3d 520, 522–24 (D. Mass. 2019). The PLRA also does not work to bar home confinement, which is not “release” but a form of pre-release custody. *See* 18 U.S.C. § 3624(g)(2)(A).

⁷ *Santana*, on which Defendants rely, supports Plaintiffs’ position. The Third Circuit held that the PLRA “explicitly excludes habeas corpus proceedings from its scope” and limits remedies in “conditions cases.” *Santana v. United States*, 98 F.3d 752, 754–55 (3d Cir. 1996). In *Blair-Bey*, the D.C. Circuit held that the “PLRA’s legislative history makes clear that Congress’s principal intent was to reduce frivolous litigation by prisoners challenging conditions of their confinement. . . . Nowhere in the PLRA’s legislative history is there any reference to cases challenging the fact or duration of confinement.” *Blair-Bey v. Quick*, 151 F.3d 1036, 1040 (D.C. Cir. 1998). *Coleman* was not a habeas case at all. It concerned a motion seeking modification of population reduction orders entered by three-judge district courts over a decade ago. *Coleman v. Newsom*, 2020 U.S. Dist. LEXIS 62575, at *6–11 (E.D. Cal. Apr. 4, 2020).

or unable to afford the petitioner the relief he seeks”); *Goar v. Civiletti*, 688 F.2d 27, 28–29 (6th Cir. 1982) (holding exhaustion is unnecessary if the remedy is “inadequate or cannot provide the relief requested”); *O’Sullivan v. Boerckel*, 526 U.S. 838, 847–48 (1999) (holding exhaustion is not required when a remedy in state court is “unavailable”). “Exhaustion is based on the assumption that the state remedies available to a prisoner are adequate and effective to vindicate federal constitutional rights. When state remedies become ineffective or inadequate, the rationale behind exhaustion is undercut.” *Scott v. Parker*, No. 3:09-0252-TC, 2012 WL 1292432, at *1 (M.D. Tenn. Apr. 16, 2012). Even if Tennessee state remedies were available and adequate, the exhaustion requirement should be waived in light of the unique threat posed by COVID-19. *See Rose v. Lundy*, 455 U.S. 509, 515–16 (1982) (holding the exhaustion requirement may be waived “where exceptional circumstances of peculiar urgency are shown to exist”).

First, whereas the federal habeas statutes permit this Court to review whether Plaintiffs are “in custody in violation of the Constitution,” 28 U.S.C. §§ 2241, Tennessee law precludes pretrial detainees from pursuing habeas claims and therefore accords Plaintiffs no such relief. “[H]abeas corpus under Tennessee law has always been, and remains a very narrow procedure.” *Edwards v. State*, 269 S.W.3d 915, 919 (Tenn. 2008) (quoting *Archer v. State*, 851 S.W.2d 157, 162 (Tenn. 1993)). Under Tennessee law, habeas corpus relief is only available in two circumstances: where “it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction, or that a defendant’s sentence of imprisonment or other restraint has expired.” *Archer*, 851 S.W.2d at 164; *see also Clark v. Lindamood*, No. 3:17-cv-0968(AAT), 2018 WL 346230, at *3 (M.D. Tenn. Jan. 10, 2018).

Thus, in Tennessee a pretrial detainee's habeas petition is dismissed as "premature" because there is no conviction or sentence to challenge. *See Benson v. State*, No. W2018-00967-CCA-R3-HC, 2019 WL 1388195, at *2 (Tenn. Crim. App. Mar. 26, 2019); *see also Patton v. Tennessee*, No. W2018-01835-CCA-R3-HC, 2019 WL 1111151 (Tenn. Crim. App. Mar. 11, 2019) (affirming decision of habeas court in summarily dismissing pretrial petition); *Johnson v. Luttrell*, No. W2006-01409-CCA-R3-HC, 2007 WL 700951, at *1 (Tenn. Crim. App. Mar. 6, 2007) (same); *Taylor v. State*, No. M2003-02954-CCA-R3-HC, 2004 WL 2636716, at *2 (Tenn. Crim. App. Nov. 15, 2004) (finding that a petitioner cannot attack the validity of a sentence with a habeas petition if they have not begun serving that sentence). Indeed, pretrial detainees would not even have the opportunity to be heard in state court because the "court may dismiss a habeas corpus petition without a hearing if the petition fails to establish that the challenged judgment is void." *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005) (citing Tenn. Code Ann. § 29–21–109). Plaintiffs here are consequently in the same constrained position as the plaintiffs in *Cameron*, who also lacked state habeas remedies, and not in the position of the plaintiffs in *Money*, who had recourse to state based habeas remedies.⁸ Defendants cite no authority to the contrary.⁹

⁸ In *Cameron*, plaintiffs could only bring state habeas claims to challenge "radical defects rendering a judgment or proceeding absolutely void." *Triplett v. Deputy Warden*, 371 N.W.2d 862, 780 (Mich. Ct. App. 1985); *see also Geeter v. Lesatz*, No. 5:17-cv-11510/18-cv-10994(JCO), 2018 WL 2064034, at *4 n.4 (E.D. Mich. May 3, 2018) (same). In *Money v. Pritzker*, No. 20-cv-2093/20-cv-2094-RMD, 2020 U.S. Dist. LEXIS 63599 (N.D. Ill. Apr. 10, 2020), on which Defendants rely (*see* MTD Br. at 5–6), the Illinois-based petitioners had an available state habeas remedy to pursue. *See* 735 Ill. Comp. Stat. Ann. 5/10-124 (providing for habeas relief if, "though the original imprisonment was lawful, nevertheless, by some act, omission or event which has subsequently taken place, the party has become entitled to be discharged").

⁹ The non-Tennessee case law on which Defendants rely is irrelevant and the three Tennessee cases they cite are inapposite. *Patton v. Bonner*, No. 2:19-cv-02344-TLP, 2020 U.S. Dist. LEXIS 74470 (W.D. Tenn. Apr. 28, 2020), involved a pending state

Second, because Defendants effectively concede that there is no state habeas remedy available to Plaintiffs, Defendants hazard that Plaintiffs could move the state trial court to alter their bond or other conditions of their release, *see* MTD Br. at 6, but such mechanisms are wholly ineffective and inadequate to protect the constitutional and statutory rights at risk in this case.¹⁰ Tennessee’s procedures for setting bail and modifying conditions of release are inadequate and ineffective because they do not consider the validity of the fact of Plaintiffs’ continued confinement in light of their high risk of severe infection and/or death from COVID-19. *See* Tenn. Code Ann. §§ 40-11-115, -118. The procedures for setting bail and modifying conditions of release do not consider whether the fact of Plaintiffs’ continued confinement amounts to unconstitutional punishment; they do not consider whether their continued confinement constitutes an unacceptable risk to Plaintiffs’ health and safety; and, they do not consider whether Plaintiffs’ continued confinement constitutes impermissible disability discrimination. Indeed, the procedures for setting bail and modifying conditions of release do not require any review of whether Plaintiffs are “in custody in violation of the Constitution,” as 28 U.S.C. §§ 2241 requires.¹¹

criminal prosecution and turned on *Younger* abstention. *Id.* at *4. The state trial court confirmed that habeas relief in Tennessee is limited to two narrow grounds. *See Patton*, 2019 WL 1111151, at *1. Neither *Burke v. Hall*, No. 3:19-cv-1108(AAT), 2020 U.S. Dist. LEXIS 17774 (M.D. Tenn. Feb. 4, 2020), nor *Greenwood v. Batts*, No. 2:16-cv-02867, 2018 U.S. Dist. LEXIS 115875 (W.D. Tenn. July 12, 2018) concern pre-trial detainees; they are about habeas petitions filed by federal inmates after sentencing.

¹⁰ Plaintiffs’ proposed relief contemplates weighing the violation to their constitutional and federal rights against any established risk of flight or danger to others. That is one approach to vindicating their rights, but consideration of their risk of flight or danger to others it is not an avenue to address the constitutional and disability claims raised in their Petition.

¹¹ Further, the size of the proposed class numbers in the hundreds, and Defendants have not even suggested that Tennessee’s trial courts would be prepared to hear and adjudicate hundreds of individual bail reduction motions taking into account class members’ medical vulnerabilities in the urgent manner necessary under the

The Tennessee Supreme Court’s Orders of March 13, March 25, and April 24 do not change this analysis, nor does the 30th Judicial District’s response to the Supreme Court’s March 25 Order, as neither modify the procedures for setting bail or modifying conditions of release to incorporate the necessary constitutional and federal law analysis required to address the violation to Plaintiffs’ rights. *See* Exs. A, B, C, and D.¹² The Orders of March 13 and March 25 merely state that bond-related matters can continue to be heard. *See* Exs. A and B at 1 (stating that exceptions to the “suspension of in-person court proceedings include . . . bond-related matters”). The March 25 Order directed “each judicial district” to “develop a written plan to affirmatively address issues regarding the incarceration of nonviolent offenders in furtherance of efforts to reduce the jail population, including but not limited to bond reductions or eliminations, deferred sentences, and suspended sentences. . . . by . . . March 30, 2020,” but provided no further guidance on what that was to contain, what action was required to address the issues, or what legal principles that were to inform the efforts to reduce the jail population. *Id.*

That the Tennessee Supreme Court’s Orders wrought no meaningful change in the manner in which judges set bail and modify conditions of release is apparent from Judge John W. Campbell’s cursory letter of March 27, 2020 in response to the Supreme Court’s March 25 Order.¹³ That letter makes clear that there is no available and adequate state

circumstances. *See McPherson v. Lamont*, No. 3:20-cv-534 (JBA), 2020 WL 2198279, at *7 (D. Conn. May 6, 2020) (noting that state courts would be unlikely to respond to the volume of emergency petitions required for class members to exhaust state law claims for relief and waiving § 2241 exhaustion requirement).

¹² “Ex. __” refers to the exhibits to the Declaration of Jonathan Silberstein-Loeb dated May 29, 2020.

¹³ The 30th Judicial District has not published a plan or any additional materials to the Tennessee State Courts website. *See* <https://www.tncourts.gov/Coronavirus>.

corrective process in the 30th Judicial District to protect Plaintiffs’ substantive constitutional habeas rights. *See* Ex. D. Indeed, the letter does not set forth any steps that the judiciary is taking to address the constitutional and federal violations of which Plaintiffs complain. Rather, it merely outlines steps taken by the District Attorney to “prevent jail overcrowding during the current health crisis.” Ex. D. Overcrowding is not the issue here. The issue is that Plaintiffs, and other people housed at the Jail who are at high risk of severe infection and/or death from COVID-19, cannot be safe in a congregate facility, particularly because they cannot practice social distancing.¹⁴

Third, the exhaustion requirement should be waived in light of the unique threat posed by COVID-19. Even if the Court somehow finds that Plaintiffs could have attempted the futile act of exhausting state-level remedies, Defendants are wrong to contend that this requires dismissal of Plaintiffs’ federal habeas claim. The requirement “was judicially created, it is not a statutory requirement and, therefore, not jurisdictional.” *Hernandez v. Sepanek*, No. 12-CV-51-HRW, 2013 WL 556378, at *3 (E.D. Ky. Feb. 11, 2013). Rather, a court should waive the exhaustion requirement “where exceptional circumstances of peculiar urgency are shown to exist.” *Rose*, 455 U.S. 515–16.

The COVID-19 pandemic is the “quintessential example of when unusual and exceptional circumstances exist” and in which “peculiar urgency” is required. *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *36-37; *see also Cameron*, 2020 U.S. App. LEXIS 16741,

¹⁴ In *Cameron*, the court explicitly noted that Michigan had, by executive order, granted judicial officers the authority to suspend or reduce jail sentences in light of the pandemic, and that the governor had issued an executive order requesting that jails and prisons consider actions to lower detainee populations. *See Cameron*, 2020 U.S. Dist. LEXIS 89083, at *36. Nonetheless, the court held that relief obtained via these processes were “not part of the ‘standard review process,’” and therefore did not need to be exhausted. *Id.* at *36-37

at *4 (finding a plaintiff need not exhaust state-court remedies in “unusual circumstances”). Yet, Defendants insist that, “[t]o fulfill the exhaustion requirement, a petitioner must have fairly presented his federal claims to all levels of the state appellate system, including the state’s highest court.” MTD Br. at 4. That is not what the law demands, and it would be futile to require it here. As the District of Connecticut recently concluded, “§ 2241’s exhaustion requirement should be waived in light of the extraordinary circumstances presented by the COVID-19 pandemic.” *McPherson*, 2020 WL 2198279, at *7.

Further delay in providing relief could mean the difference between life and death for Mr. Busby and Mr. Edgington and for the members of the Class and Subclass. The outbreak of COVID-19 at the Jail, the death of a staff member at the Jail, and the threat that this poses to the well-being of the Shelby County community generally, as documented in the declarations of Plaintiffs’ medical experts, establish beyond dispute that the threat of substantial harm is imminent. *See, e.g.* Goldenson Decl. ¶ 28 (“medically vulnerable persons at Shelby County Jail are at grave risk of death or serious illness”); Fefferman Decl. ¶ 11 (“Cases of infection occurring within a jail cause additional cases of infection, hospitalization and deaths in the wider community.”). Pretrial detention must not be permitted to become a death sentence.

II. To Vindicate Plaintiffs’ Rights This Court Must Intervene.

A. Plaintiffs’ Claims Entail Substantive Due Process Violations that Require This Court’s Review.

Plaintiffs’ continued detention, and that of the members of the Class and Subclass, violates their rights under the Fourteenth Amendment, and their rights under the ADA and the Rehabilitation Act, because there is no safe alternative to their confinement short of release. Because the constitutional violation arises from Plaintiffs’ confinement, and not

from the procedure that led to their confinement, the Court’s analysis should focus on the violation to Plaintiffs’ substantive due process and federal rights. *See Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996) (distinguishing procedural due process as the right “to be heard in a meaningful manner,” whereas substantive due process relates to preventing “governmental power from being ‘used for purposes of oppression’” (citations omitted)).

To conduct this analysis, the Court should first address the merits of Plaintiffs’ constitutional and federal law claims. Plaintiffs bring two distinct substantive due process Fourteenth Amendment claims, either of which may form the basis for the relief they seek. Under the first claim, the Court must look at whether, because Plaintiffs and members of the Class and Subclass are exclusively pretrial detainees, and because they are at high risk of severe infection and/or death from COVID-19, their continued detention is not reasonably related to a legitimate, non-punitive government purpose or excessive in relation to that purpose. *See Bell v. Wolfish*, 441 U.S. 520, 561 (1979); *J.H. v. Williamson Cty.*, 951 F.3d 709, 717 (6th Cir. 2020) (applying *Bell* test to pretrial detainee’s claim).¹⁵ And, because Plaintiffs are pretrial detainees, they need not show Defendants subjectively perceived facts from which to infer a substantial risk to Plaintiffs. *See Kingsley v. Hendrickson*, 576 U.S. 389, 392 (2015). Rather, it is enough that Plaintiffs are “exposed to a substantial risk of serious harm.” *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *53 (quoting *Amick v. Ohio Dep’t of Rehab. & Corr.*, 521 F. App’x 354, 361 (6th Cir. 2013)).

Plaintiffs’ second substantive due process claim is the Fourteenth Amendment equivalent of the Eighth Amendment’s prohibition against detention conditions that amount

¹⁵ The only two legitimate interests are preventing flight or danger to the community. *See Stack v. Boyle*, 342 U.S. 1, 8 (1951); *United States v. Salerno*, 481 U.S. 739, 744–45 (1987).

an unacceptable risk to health and safety. *See Helling v. McKinney*, 509 U.S. 25, 35 (1993)

Under that claim, Plaintiffs are exposed to a substantial risk of serious harm because of the congregate nature of the Jail, which houses inmates who share sinks, toilets, and showers, as well as eating, sleeping, and living spaces, all of which makes it an ideal environment for the spread of COVID-19. *See id.* at *54. The structure of the facility heightens the risk of transmission. “This, along with the fact that there is an active outbreak of COVID-19 at the Jail and the fact that COVID-19 is a highly infectious virus that poses a significant risk of severe illness and death, particularly for the medically vulnerable, renders the objective component easily satisfied.” *Id.* (citing *Wilson*, 2020 WL 1940882, at *8); *see also Prieto Refunjol v. Adducci*, No. 2:20-CV-2099-SDM, 2020 WL 2487119, at *26 (S.D. Ohio May 14, 2020) (finding that “where there is a highly infectious disease circulating throughout the jail, the community, the nation, and the world, these poor-quality conditions serve no legitimate purpose and have the effect of punishing the detainees, because it affords the detainees’ little ability to protect their own health.”); *Malam*, 2020 WL 1672662, at *12 (explaining that since “petitioner faces significant risk of death due to COVID-19,” “her continued confinement . . . is both unrelated and contrary to the government purpose of carrying out her removal proceedings.”).

If, however, under the second due process claim, the Court determines that Plaintiffs, notwithstanding that they are pretrial detainees, must also show that Defendants are subjectively indifferent to Plaintiffs’ safety, that requirement is still easily satisfied. There is no denying that Defendants subjectively perceived facts from which to infer substantial risk to Plaintiffs and there is no denying that Defendants drew that inference. Defendants concede as much and in any event the risk is obvious. Defendants

have disregarded this risk to Plaintiffs safety, and that of the members of the Class and Subclass, because, knowing of this substantial risk, Defendants have failed to provide an alternative to their continued confinement. For Plaintiffs and other detainees who are at high risk of severe infection and/or death from COVID-19, release is the only reasonable response.

The constitutional violation arises out of the fact of Plaintiffs' confinement, not the procedure that led to their confinement. As the *Cameron* court said: "Considering the weight of the public health evidence demonstrating the medically-vulnerable population's unique, specific, and life-threatening susceptibility to COVID-19—paired with the communal nature of jail facilities," "release" is the only "reasonable response." *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *63; *see also Martinez-Brooks*, 2020 WL 2405350, at *23. Plaintiffs do not dispute that the Sheriff must be permitted to exercise discretion in choosing among equally effective measures to protect inmates from serious risks, but choosing inevitably inadequate measures to the exclusion of a plainly superior one constitutes deliberate indifference. *See Martinez-Brooks*, 2020 WL 2405350, at *23. In light of Defendants' awareness of the deathly risk that COVID-19 poses to the medically-vulnerable population, Defendants' failure to make prompter, broader, and more meaningful use of their authority to release medically vulnerable detainees, although it is the only solution capable of adequately protecting them, constitutes deliberate indifference. *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *66.

Separately, and independent of the analysis of Defendants' constitutional violations, the Court may grant injunctive relief to the Subclass based on Defendant's discrimination against disabled detainees. Defendants argue that Plaintiffs "must show

prison officials took the challenged actions because of the inmate’s alleged disability”; that is, “because of their disabilities.” TRO Opp’n Br. at 14. But “there is nothing to indicate that a plaintiff must ever prove intentional discrimination—or deliberate indifference—under Title II and § 504.” *I.L. through Taylor v. Knox Cty. Bd. of Ed.*, 257 F. Supp. 3d 946, 969 (E.D. Tenn. 2017). Defendants effectively concede that they are treating people with disabilities as they treat everyone else. Failure to provide reasonable accommodations to ensure equal access to people with disabilities is discrimination. *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 907 (6th Cir. 2004).

Mr. Busby and the members of the Subclass are individuals protected by the ADA and the Rehabilitation Act. The ADA and the Rehabilitation Act impose affirmative obligations to make benefits, services, and programs available to people with disabilities, including by making accommodations to ensure that these programs are equally available to disabled people. The Subclass members are all at high risk of severe injury and/or death from COVID-19 by virtue of their disabilities. Absent reasonable “accommodation”—namely, the identification and release of all individuals who are at high risk of severe infection and/or death from COVID-19—they are and will continue to be denied equal access to the benefit of the Jail’s programs and services, including adjudication of their cases, safe preparation for these cases, and adequate medical and mental health care while in Jail. Because Defendants have failed to provide these reasonable accommodations, Plaintiffs are likely to succeed on their ADA and Rehabilitation Act claims.

B. Habeas Relief Can be Granted in a Way that Protects the Public.

Given the severe and unavoidable risks to Mr. Busby and Mr. Edgington, the Court can and should act quickly to implement a system for ordering their release and/or “enlargement” of custody and that of the members of the Class and Subclass.

“Enlargement,” a term used only in the context of habeas, is not release. The person remains in custody even as the place of custody is changed and thereby “enlarged” from a particular prison to a hospital, halfway house, a person’s home, or other setting. Enlargement is a provisional remedy that modifies custody by expanding the site in which it takes place. Federal judges have authority to release detainees in this manner while their habeas petitions are pending. *See Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993) (citing *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)); *see also Cameron*, 2020 U.S. Dist. LEXIS 89083, at *34.

In deciding whether to grant this emergency relief, the Court is directed to follow the well-known balancing test that governs preliminary relief, which includes weighing “the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008); *Malam v. Adducci*, No. 20-10829-JEL, 2020 WL 1672662, at *6-7 (E.D. Mich Apr. 5, 2020). Thus, this Court can weigh the public interest when granting temporary release to Plaintiffs and members of the Class and Subclass. Once the Court finds that Plaintiffs are likely to succeed on the merits of their constitutional and statutory claims, then it may turn to balancing those violations against the public interest. For Plaintiffs, and for members of the Class and Subclass, that balancing exercise should lead to the conclusion that they should be released because of the risks to their health from remaining incarcerated and the risks to the public posed by the Jail becoming a source of source of transmission and a drain on public health resources, but if the Court concludes, notwithstanding these risks, that the risk to the public safety from granting temporary release to certain individuals outweighs the other factors, the Court could deny them emergency relief.

Several such systems already exist. For example, a federal court in the District of Massachusetts has released, and continues to release, numerous immigration detainees on non-monetary bond conditions while their class habeas petition is pending. *See Savino v. Souza*, No. 20-10617-WGY, 2020 WL 1703844, at *8–9 (D. Mass. Apr. 8, 2020). In *Wilson*, the court ordered respondents to “identify, within one (1) day all members of the [medically-vulnerable] subclass” and to “evaluate each subclass member’s eligibility for transfer out of Elkton [prison] through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two (2) weeks.” *Wilson*, 2020 WL 1940882, at *10. The court also instructed that, in undertaking this evaluation, “Respondents will prioritize the review by the medical threat level.” *Id.* In *Cameron*, the court began to implement such a procedure by requiring the Oakland County Jail to provide the court and plaintiffs’ counsel with a list of medically vulnerable individuals, including inmate identification numbers, ages, any health vulnerabilities, as well as records detailing the instant charges or convictions and any criminal history of the individual. *Cameron*, 2020 U.S. Dist. LEXIS 89083, at *85. As the *Cameron* court explained, “the purpose of this order is to enable the Court to implement a system for considering the release on bond or other alternatives to detention in the Jail for each subclass member.” *Id.* This Court should impose a similar procedure here, and Plaintiffs have set forth such a procedure in their proposed order granting their Motion for a Temporary Restraining Order.

CONCLUSION

For the foregoing reasons the Court should deny Defendants’ Motion to Dismiss and grant Plaintiffs’ Motion for a Temporary Restraining Order.

Dated: May 29, 2020

Respectfully submitted,

/s/ Brice M. Timmons

Brice M. Timmons (Bar No. 29582)
Black McLaren Jones Ryland & Griffie,
A Professional Corporation
530 Oak Court Dr. Suite 360
Memphis, TN 38117
Telephone: (901) 762-0535
Facsimile: (901) 762-0527
btimmons@blackmclaw.com

Josh Spickler (Bar No. 021019)
Wesley Dozier (Bar No. 037735)
Just City
P.O. Box 41852
Memphis, TN 38174
Telephone: (901) 206-2226
josh@justcity.org

Steven John Mulroy (Bar No. 28831)
Bredesen Professor of Law
Cecil C. Humphreys School of Law,
University of Memphis
1 N. Front St.
Memphis, TN 38103
Telephone: (901) 603-8779
smulroy@memphis.edu

Andrea Woods
Amreeta S. Mathai
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2500
awoods@aclu.org
amathai@aclu.org

Zoe Brennan-Krohn*
American Civil Liberties Union
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0769
zbrennan-krohn@aclu.org

Maria Morris*
American Civil Liberties Union
915 15th Street N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 548-6607
mmorris@aclu.org

Thomas H. Castelli (Bar No. 24849)
Stella Yarbrough (Bar No. 33637)
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
Telephone: (615) 320-7142
tcastelli@aclu-tn.org
syarbrough@aclu-tn.org

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
Joseph Bial*
2001 K Street NW
Washington, D.C. 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 223-7420
jbial@paulweiss.com

Darren Johnson*
Jonathan M. Silberstein-Loeb
David Kimball-Stanley*
Adrienne Lee*
Avery Medjuck*
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
djohnson@paulweiss.com
jsilberstein-loeb@paulweiss.com
dkimball-stanley@paulweiss.com
alee@paulweiss.com
amedjuck@paulweiss.com

Attorneys for Plaintiffs

* Application for admission *pro hac vice*
forthcoming

CERTIFICATE OF SERVICE

I, Brice M. Timmons, certify that on May 29, 2020, I caused a true and correct copy of the foregoing document to be filed and served electronically via the ECF system. Notice of this filing will be sent by e-mail to all parties of record by operation of the Court's electronic filing system.

Respectfully submitted,

/s/ Brice M. Timmons

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

Favian Busby and Michael Edgington, *on
their own behalf and on behalf of those
similarly situated*;

Petitioners-Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,
Shelby County Sheriff, and the Shelby County
Sheriff's Office,

Respondents-Defendants.

Case No. 20-cv-2359-SHL

**DECLARATION OF JONATHAN M. SILBERSTEIN-LOEB IN SUPPORT OF
PETITIONERS-PLAINTIFFS' BRIEF IN OPPOSITION TO RESPONDENTS-
DEFENDANTS' MOTION TO DISMISS**

I, Jonathan M. Silberstein-Loeb, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.

1. My name is Jonathan M. Silberstein-Loeb. I am over the age of 18 and I am competent to make this declaration.

2. I am an associate at the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, and I am one of the counsel of record for Petitioners-Plaintiffs ("Plaintiffs").

3. I respectfully submit this Declaration in support of Plaintiffs' Brief in Opposition to Respondents-Defendants' Motion to Dismiss. The purpose of this Declaration is to identify certain documents relevant to Plaintiffs' Brief.

- a. Attached as Exhibit A is a true and correct copy of the Supreme Court of Tennessee's March 13, 2020 Order Suspending In-Person Court Proceedings, *In re: COVID-19 Pandemic*, No. ADM2020-00428.
- b. Attached as Exhibit B is a true and correct copy of the Supreme Court of Tennessee's March 25, 2020 Order Continuing Suspension of In-Person Court Proceedings and Extension of Deadlines, *In re: COVID-19 Pandemic*, No. ADM2020-00428.
- c. Attached as Exhibit C is a true and correct copy of the Supreme Court of Tennessee's April 24, 2020 Order Modifying Suspension of In-Person Court Proceedings and Further Extension of Deadlines, *In re: COVID-19 Pandemic*, No. ADM2020-00428.
- d. Attached as Exhibit D is a true and correct copy of a letter, dated March 27, 2020, from Administrative Judge John W. Campbell of the 30th Judicial District to the Supreme Court of Tennessee.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 29th day of May, 2020, in New York, New York.

/s/ Jonathan M. Silberstein-Loeb
Jonathan M. Silberstein-Loeb
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
jsilberstein-loeb@paulweiss.com

EXHIBIT A

FILED

03/13/2020

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: COVID-19 PANDEMIC

No. ADM2020-00428

ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS

In response to the COVID-19 pandemic, the Chief Justice of the Tennessee Supreme Court hereby declares a state of emergency for the Judicial Branch of Tennessee government and activates the following Continuity of Operations Plan for the courts of Tennessee. See Tenn. Const. Art. VI, § 1; Tenn. Code Ann. §§ 16-3-501 to 16-3-504 (2009); Moore-Pennoyer v. State, 515 S.W.3d 271, 276-77 (Tenn. 2017); Tenn. Sup. Ct. R. 49. First and foremost, the local and state courts of the State of Tennessee are open and will remain open under all circumstances, subject to the provisions of this order.

Under the constitutional, statutory, and inherent authority of the Tennessee Supreme Court, we adopt the following provisions. All in-person proceedings in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, are suspended from the close of business on Friday, March 13, 2020 through Tuesday, March 31, 2020, subject to the exceptions below.

Exceptions to this suspension of in-person court proceedings include, but are not limited to:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters and plea agreements for incarcerated individuals
- Civil and criminal jury trials that are in progress as of March 13, 2020
- Proceedings related to relief from abuse, including but not limited to orders of protection
- Proceedings related to emergency child custody orders
- Department of Children's Services emergency matters related to child protection
- Proceedings related to petitions for temporary injunctive relief
- Proceedings related to emergency mental health orders
- Proceedings related to emergency protection of elderly or vulnerable persons
- Proceedings directly related to the COVID-19 public health emergency
- Other exceptions as approved by the Chief Justice

The presiding judge or the designee of the presiding judge of each judicial district is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge.

Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. See Tenn. Code Ann. §§ 18-1-101 (2009); 18-1-105 (Supp. 2019). Nevertheless, all judges and court clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing. Any Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended until March 31, 2020. See, e.g., Tenn. R. Civ. P. 43.01.

If it becomes necessary to close judges' offices or court clerks' offices during the period of suspension, these offices shall remain accessible by telephone and email to the extent possible during their regular business hours. If available, drop boxes should be used for conventionally filed documents.

This order expressly does not prohibit court proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings.

Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire between March 13 and March 31, 2020 are hereby extended through April 6, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period between March 13 and April 6, 2020 are hereby extended through April 6, 2020. See Tenn. Code Ann. § 28-1-116 (2017). Deadlines, statutes of limitations, and statutes of repose that are not set to expire between March 13 and April 6, 2020 are not extended or tolled by this order.

Orders of protection and temporary injunctions that would otherwise expire between March 13 and March 31, 2020 are hereby extended until April 6, 2020.

This order applies statewide to all courts and court clerks' offices except administrative courts within the Executive Branch and federal courts and federal court clerks' offices located in Tennessee.

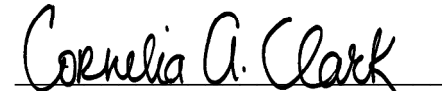
Under the terms of this order, the courts of Tennessee remain open, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19.

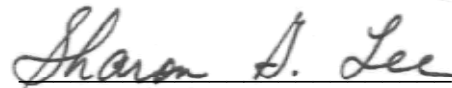
This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.

It is so ORDERED.

FOR THE COURT:


Jeffrey S. Bivins, Chief Justice


Cornelia A. Clark, Justice


Sharon G. Lee, Justice


Holly Kirby, Justice

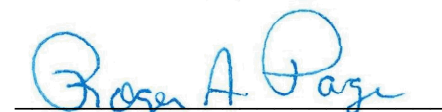

Roger A. Page, Justice

EXHIBIT B

FILED

03/25/2020

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: COVID-19 PANDEMIC

No. ADM2020-00428

**ORDER CONTINUING SUSPENSION OF IN-PERSON COURT PROCEEDINGS
AND EXTENSION OF DEADLINES**

On March 13, 2020, in response to the COVID-19 pandemic, the Chief Justice of the Tennessee Supreme Court declared a state of emergency for the Judicial Branch of Tennessee government and activated a Continuity of Operations Plan for the courts of Tennessee. See Tenn. Const. Art. VI, § 1; Tenn. Code Ann. §§ 16-3-501 to 16-3-504 (2009); Moore-Pennoyer v. State, 515 S.W.3d 271, 276-77 (Tenn. 2017); Tenn. Sup. Ct. R. 49. This state of emergency constitutes a “disaster” for purposes of Tenn. Sup. Ct. R. 49 and Tenn. Code Ann. § 28-1-116. In light of ongoing concerns, the Tennessee Supreme Court hereby continues the suspension of in-person court proceedings and the extension of deadlines as set forth in this order. We again emphasize that the local and state courts of the State of Tennessee are open and will remain open under all circumstances, subject to the provisions of this order.

Under the constitutional, statutory, and inherent authority of the Tennessee Supreme Court, we adopt the following provisions. All in-person proceedings in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, shall be suspended from the close of business on Friday, March 13, 2020, through Thursday, April 30, 2020, subject to the exceptions below.

Exceptions to this suspension of in-person court proceedings include, but are not limited to:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters, preliminary hearings for incarcerated individuals, and plea agreements for incarcerated individuals
- Proceedings related to relief from abuse, including but not limited to orders of protection
- Proceedings related to statutory order of protection hearings after entry of an ex parte order as necessary to satisfy any due process concerns

- Proceedings related to emergency child custody or visitation orders
- Proceedings related to the voluntary surrender of parental rights
- Settlements involving a minor or a person with a disability
- Department of Children's Services emergency matters related to child safety, placement, permanency, or federal funding for children in foster care
- Proceedings related to petitions for temporary injunctive relief
- Proceedings related to emergency mental health orders
- Proceedings related to emergency protection of elderly or vulnerable persons
- Proceedings directly related to the COVID-19 public health emergency
- Other exceptions as approved by the Chief Justice

The presiding judge or the designee of the presiding judge of each judicial district is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge. Judges and their staff shall ensure that social distancing and other such measures are strictly observed. For purposes of implementing procedural matters during this time, the provisions of Rule 18(c) of the Rules of the Tennessee Supreme Court are suspended to allow judges to issue general orders.

Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. See Tenn. Code Ann. §§ 18-1-101 (2009); 18-1-105 (Supp. 2019). Nevertheless, all judges and court clerks should minimize in-person contact by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing.

Any Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended through Thursday, April 30, 2020. See, e.g., Tenn. R. Civ. P. 43.01. With respect to plea agreements for non-incarcerated individuals, this suspension expressly applies to those provisions of Tenn. R. Crim. P. 11 which otherwise would require the proceeding to be in person in open court. See, e.g., Tenn. R. Crim. P. 11(b)(1) and (2), 11(c)(2)(A).

The presiding judge or the designee of the presiding judge of each judicial district shall develop a written plan to affirmatively address issues regarding the incarceration of nonviolent offenders in furtherance of efforts to reduce the jail population, including but not limited to bond reductions or eliminations, deferred sentences, and suspended sentences. The presiding judge or the designee of the presiding judge of each judicial district shall submit its plan to the Administrative Office of the Courts by the close of

business on Monday, March 30, 2020, absent an extension granted by the Chief Justice.

Judges' offices and court clerks' offices may limit in-person contact with the public during the period of suspension, but must remain functional. If it becomes necessary to close judges' or court clerks' physical offices during the period of suspension, these offices shall remain accessible by telephone, email and fax to the extent possible during regular business hours. If available, drop boxes should be used for conventionally filed documents.

This order expressly encourages and does not prohibit court proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings. Although some non-emergency matters will need to be rescheduled, judges are to continue to resolve matters that do not require in-person court proceedings. Court clerks are to work cooperatively and at the direction of the presiding judge of each judicial district to fulfill the clerks' obligation to facilitate continuing court function.

Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020. See Tenn. Code Ann. § 28-1-116 (2017). Deadlines, statutes of limitations, and statutes of repose that are not set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are not extended or tolled by this order.

With regard to notarizing documents at this time, attorneys and judges are encouraged to utilize the "Online Notary Public Act," Tenn. Code Ann. § 8-16-301, et seq., and the regulations promulgated by the Secretary of State at Sec. of State, Tenn. R. and Reg. 1360-07-03-.01. Additionally, with regard to court filings, declarations under penalty of perjury may be used as an alternative to a notary.

Given the increasing economic issues caused by this pandemic, no judge, clerk, or other court official shall take any action to effectuate an eviction, ejectment, or other displacement from a residence during the effective dates of this order based upon the failure to make a rent, loan, or other similar payment absent extraordinary circumstances as determined by a judge in a court of competent jurisdiction. Nothing in this order affects the obligations, terms, or conditions for payment under existing contracts. Judges also are encouraged to work with court clerks and local law enforcement to develop policies severely limiting or eliminating any new garnishments during this time.

Orders of protection and temporary injunctions that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020.

This order applies statewide to all courts and court clerks' offices except administrative courts within the Executive Branch and federal courts and federal court clerks' offices located in Tennessee.

Under the terms of this order, the courts of Tennessee remain open, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19. Judges should work with local law enforcement and other county officials to ensure that, to the extent possible, courthouses remain accessible to carry out essential constitutional functions and time-sensitive proceedings.

This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.

It is so ORDERED.

FOR THE COURT:

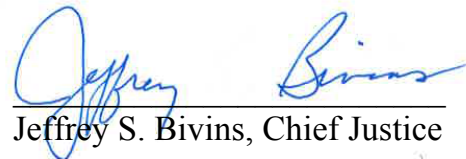
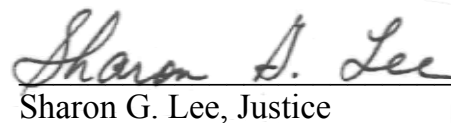
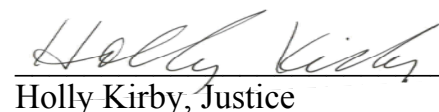
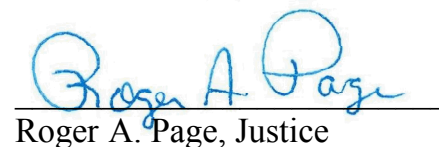

Jeffrey S. Bivins, Chief Justice
Cornelia A. Clark, Justice
Sharon G. Lee, Justice
Holly Kirby, Justice
Roger A. Page, Justice

EXHIBIT C

FILED

04/24/2020

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: COVID-19 PANDEMIC

No. ADM2020-00428

**ORDER MODIFYING SUSPENSION OF IN-PERSON COURT PROCEEDINGS
AND FURTHER EXTENSION OF DEADLINES**

On March 13, 2020, in response to the COVID-19 pandemic, the Chief Justice of the Tennessee Supreme Court declared a state of emergency for the Judicial Branch of Tennessee government and activated a Continuity of Operations Plan for the courts of Tennessee. See Tenn. Const. Art. VI, § 1; Tenn. Code Ann. §§ 16-3-501 to 16-3-504 (2009); Moore-Pennoyer v. State, 515 S.W.3d 271, 276-77 (Tenn. 2017); Tenn. Sup. Ct. R. 49. This state of emergency constitutes a “disaster” for purposes of Tenn. Sup. Ct. R. 49 and Tenn. Code Ann. § 28-1-116. On March 25, 2020, the Tennessee Supreme Court continued the suspension of in-person court proceedings and the extension of deadlines. Since that time, the State of Tennessee and its citizens have made progress in mitigating the risks associated with COVID-19 and preparing for a re-opening of various aspects of daily life. This includes a modification of the suspension of in-person court proceedings, with appropriate safeguards.

Under the constitutional, statutory, and inherent authority of the Tennessee Supreme Court, the prior suspension of in-person proceedings, except for jury trials, in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, shall be modified as set forth in this order. Unless otherwise noted herein, the provisions of this order shall remain in place through Sunday, May 31, 2020.

1) The suspension of jury trials shall remain in effect through Friday, July 3, 2020. Any exceptions must be based on extraordinary circumstances and approved by the Chief Justice.

2) Courts should continue to conduct as much business as possible by means other than in-person court proceedings. Courts are encouraged to continue and even increase the use of telephone, teleconferencing, email, video conferencing or other means that do not involve in-person contact. All of these methods should be the preferred option over in-person court proceedings.

3) All courts within a judicial district shall continue to operate under the guidelines and restrictions set forth in this Court's March 25, 2020 order until the Chief Justice has approved a written plan for the judicial district within which the court is located.

The presiding judge or the designee of the presiding judge of each judicial district, in coordination with the designated judge or other designee of the general sessions, juvenile, and municipal courts within each judicial district, shall develop a comprehensive written plan to gradually begin conducting in-person court proceedings (other than jury trials) in some non-emergency matters. Each plan should contain guidelines and restrictions designed to minimize to the greatest extent possible the risk of the spread of COVID-19 from in-person court proceedings. The written plans may include different guidelines and restrictions for different courts or counties within a judicial district. The written plans should include guidelines and restrictions addressing matters including but not limited to admission into the courthouse, limitation of the number of persons in the courtroom, staggering of hearing times, management of social distancing in the courthouse and in the courtroom, and handling of witnesses (e.g., having witnesses remain in their vehicles or placing them in separate rooms). The use of personal protection such as face masks, as well as appropriate use of disinfectants, is encouraged in courthouses to protect court personnel and the public. Screening measures such as touchless thermometers and health questions relevant to COVID-19 may be used for entry into courthouses. However, factors such as availability and cost of such measures should be taken into consideration before inclusion as mandatory requirements in a written plan. Alternatively, a written plan may consist of an election to continue to operate under the guidelines and restrictions set forth in this Court's March 25, 2020 order. The presiding judge or the designee of the presiding judge of each judicial district shall submit its written plan to the Administrative Office of the Courts for approval by the Chief Justice.

4) Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. See Tenn. Code Ann. §§ 18-1-101 (2009); 18-1-105 (Supp. 2019). Court clerks are to work cooperatively and at the direction of the presiding judge of each judicial district to fulfill the clerks' obligation to facilitate continuing court function. Nevertheless, all judges and court clerks should continue to minimize in-person contact by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing.

5) Any Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended through Sunday, May 31, 2020. See, e.g., Tenn. R. Civ. P. 43.01. With respect to plea agreements for non-incarcerated individuals, this suspension expressly applies to those provisions of Tenn. R. Crim. P. 11 which otherwise would require the proceeding to be in

person in open court. See, e.g., Tenn. R. Crim. P. 11(b)(1) and (2), 11(c)(2)(A). For purposes of implementing procedural matters during this time, the provisions of Rule 18(c) of the Rules of the Tennessee Supreme Court are suspended to allow judges to issue general orders.

6) Judges' offices and court clerks' offices may limit in-person contact with the public during the period of suspension, but must remain open for business. If it becomes necessary to restrict physical access to judges' or court clerks' offices during the period of suspension, these offices shall remain accessible by telephone, email and fax to the extent possible during regular business hours. If available, drop boxes should be used for conventionally filed documents.

7) Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire during the period from Friday, March 13, 2020, through Sunday May 31, 2020, are hereby extended through Friday, June 5, 2020. This extension does not apply to deadlines set forth in the Tennessee Rules of Appellate Procedure or the Rules of the Tennessee Supreme Court, except as otherwise provided by the orders of this Court entered March 27, 2020 (Order Suspending Board of Professional Responsibility's Proceedings and Extending Deadlines) (Order Regarding Continuing Legal Education), March 31, 2020 (Order Clarifying the Extension of Deadlines), and April 2, 2020 (Order Temporarily Modifying Certain Provisions of Tennessee Supreme Court Rule 7). This extension does not apply to deadlines set forth in pre-trial scheduling orders, but such deadlines remain subject to extension by the trial courts in their discretion. Statutes of limitations and statutes of repose that would otherwise expire during the period from Friday, March 13, 2020, through Sunday May 31, 2020, are hereby extended through Friday, June 5, 2020. See Tenn. Code Ann. § 28-1-116 (2017). Deadlines, statutes of limitations, and statutes of repose that are not set to expire during the period from Friday, March 13, 2020, through Sunday, May 31, 2020, are not extended or tolled by this order.

8) Attorneys and judges are encouraged to utilize the "Online Notary Public Act," Tenn. Code Ann. § 8-16-301, et seq., and the regulations promulgated by the Secretary of State at Sec. of State, Tenn. R. and Reg. 1360-07-03-.01. Additionally, Executive Order No. 26 issued by Governor Lee on April 9, 2020, addresses notary issues. With regard to court filings, declarations under penalty of perjury may be used as an alternative to a notary. The use of electronic signatures as provided under Rule 5B of the Tennessee Rules of Civil Procedure and Rules 46 and 46A of the Rules of the Tennessee Supreme Court is extended to any pleadings or documents to be filed or served by conventional means during the time that the state of emergency for the Judicial Branch remains in place.

9) Given the increasing economic issues caused by this pandemic, no judge, clerk, or other court official shall take any action to effectuate an eviction, ejectment, or other

displacement from a residence during the effective dates of this order based upon the failure to make a rent, loan, or other similar payment absent extraordinary circumstances as determined by a judge in a court of competent jurisdiction. Nothing in this order affects the obligations, terms, or conditions for payment under existing contracts. Judges also are encouraged to work with court clerks and local law enforcement to develop policies severely limiting or eliminating any new garnishments during this time.

10) Orders of protection and temporary injunctions that would otherwise expire during the period from Friday, March 13, 2020, through Sunday, May 31, 2020, are hereby extended through Friday, June 5, 2020.

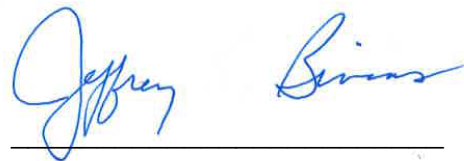
This order applies statewide to all courts and court clerks' offices except administrative courts within the Executive Branch and federal courts and federal court clerks' offices located in Tennessee.

Under the terms of this order, the courts of Tennessee remain open, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19. Judges should work with local law enforcement and other county officials to ensure that, to the extent possible, courthouses remain accessible to carry out essential constitutional functions and time-sensitive proceedings.

This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.

It is so ORDERED.

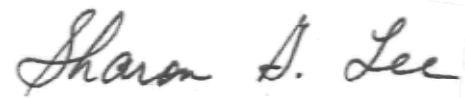
FOR THE COURT:



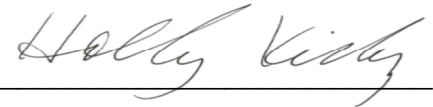
Jeffrey S. Bivins, Chief Justice



Cornelia A. Clark, Justice

A handwritten signature in black ink that reads "Sharon G. Lee". The signature is written in a cursive style with a horizontal line underneath.

Sharon G. Lee, Justice

A handwritten signature in black ink that reads "Holly Kirby". The signature is written in a cursive style with a horizontal line underneath.

Holly Kirby, Justice

A handwritten signature in blue ink that reads "Roger A. Page". The signature is written in a cursive style with a horizontal line underneath.

Roger A. Page, Justice

EXHIBIT D



THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

201 POPLAR
MEMPHIS, TENNESSEE 38103
PHONE (901) 222-3335
FAX (901) 222-3220

JW.CAMPBELL@SHELBYCOUNTYTN.GOV

JOHN WHEELER CAMPBELL
JUDGE OF DIVISION VI

March 27, 2020

To the Tennessee Supreme Court:

As per the Supreme Court Order dated March 25, 2020, outlined below are the steps being taken in the 30th Judicial District to prevent jail overcrowding during the current health crisis. These steps are being taken while not endangering public safety and keeping in mind the safety of the inmates in the Shelby County Jail.

1. Last week the District Attorney identified every existing jail information case with a time served or probation offer to expedite and dispose. The District Attorney's office prepared the informations, notified victims and got the cases ready for disposition the next day. The Criminal Court Clerk's office agreed to docket immediately. Typically this procedure could take months. The District Attorney delivered dozens of information cases to the clerk by Friday last week. This practice will continue in the future.
2. On new felony arrests, the District Attorney has a plan in place to dispose of felony cases by information in criminal court on same day as the arraignment in general sessions. Typically this could take months.
3. Senior Prosecutors in the District Attorneys office have been given a list of **every inmate in jail**. Working by criminal court division, they have been asked to identify any and all cases—that could be either safely, responsibly and reasonably ROR'd or disposed of for time served or probation.
4. The Memphis Police Department and the Shelby County Sheriff's Department are issuing citations for all misdemeanor arrests unless the defendant poses a threat to the community.
5. The District Attorney is pulling all bench warrants issued in general sessions court and conducting a review of what cases can be dismissed. For the time being, where appropriate, the warrants are to be withdrawn.
6. We are working with Sheriff to identify any at risk inmates and determine if they can be released.

In addition to the steps listed above, other policies have been put in place before the current health crises that have greatly reduced the jail population. These include:

1. The creation of a vertical prosecution model that links specific general sessions courts with specific criminal courts. This model allows the same team of prosecutors to control a case from arrest to disposition. This model allow cases to be screened more effectively and charging and disposition decisions made in a quicker fashion.
2. Since January of 2019 a Risk Assessment Tool has been adopted and used by Pre-trial Services to make bond recommendations on new arrests. This tool has led to more ROR bonds being set.
3. The District Attorney is no longer prosecuting DWLSCR cases unless the defendant is on a current revocation due to a DUI, Vehicular Assault or Vehicular Homicide. This alone resulted in 30,000 cases being dismissed.

For you information the jail population has been steadily decreasing since last year.

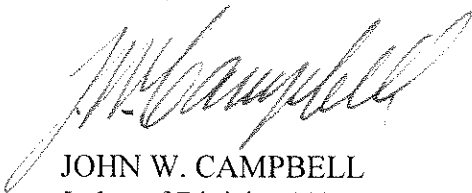
January 2019 - 2900 inmates in the Shelby County Jail

January 2020 - 2600 inmates in the Shelby County Jail

March 13, 2020 - there were 2100 inmates in the Shelby County Jail

March 26, 2020 - there are 1935 inmates in the Shelby County Jail

Sincerely,



JOHN W. CAMPBELL
Judge of Division VI
Administrative Judge
Criminal Court of Tennessee
30th Judicial District
Memphis, Tennessee 38103