IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

HANNAH WEIKERT
JENNIFER HERMANNS
TERRENCE LACEY
SEAN NELSON
JEAN-JOSEPH LE CHIFFRE
GILBERT TRUJILLO,

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

v.

BILL ELDER, Sheriff of El Paso County, Colorado, in his official capacity,

Defendant.

MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND EXPEDITED HEARING

Plaintiffs, by and through undersigned counsel and on behalf of the putative class, respectfully move for a temporary restraining order and preliminary injunction to ensure that they are adequately protected from contracting COVID-19 and adequately evaluated, treated, and monitored for COVID-19 if they become sick.[1] In support, Plaintiffs state:

I. INTRODUCTION

[1] On Friday morning December 11, 2020, counsel for Plaintiffs gave notice of their intent to file this action to the counsel for Defendant in compliance with Fed.R.Civ.P. 65 and D.C.COLO.LCivR 65.1. In accordance with D.C.COLO.LCivR 7.1, counsel for Defendant indicated that Defendant opposes the relief sought herein. Undersigned counsel hereby certifies that a copy of this Motion, as well as the Complaint and accompanying papers, are being served on counsel for Defendant contemporaneously with them being filed with the Court.

To the shock of a community well-accustomed to diligent mask-wearing to prevent the spread of COVID-19, weeks ago this November it emerged that the El Paso County Criminal Justice Center ("El Paso County Jail" or "Jail") was not only failing to provide masks to all inmates or to require mask-wearing in the facility, the Jail had been ***prohibiting*** inmates from wearing masks in their housing wards.[2] (Ex. H, Adkins Decl. ¶ 5; Ex. O, Thomas Decl. ¶ 10; Ex. L, Williams Decl. ¶ 2; Ex. B, Weikert Decl. ¶ 5; Ex. P, Dobbins Decl. ¶ 3; Ex. I, Gantt Decl. ¶ 4.) By that time, the facility was in the midst of a skyrocketing outbreak in which over 1000 inmates and over 100 staff members had already become infected.[3]

Epitomizing the Jail's failed response to the pandemic, Jail staff told people suffering that the jail's plan was to let the virus "run its course." (Ex. Q, Murry Decl. ¶ 6; Ex. D, Lacey Decl. ¶ 9.) This "let nature take its course" response to unsafe, potentially deadly jail conditions violates the inmates' constitutional rights. *Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994) (jails must protect inmates from "substantial risk of serious harm"). The Jail remains a facility in crisis, causing unspeakable and widespread suffering to Plaintiffs and the class, who face the ongoing threat of COVID-19 infection and inadequate monitoring and treatment when they become sick.

Contrary to guidelines established by the Centers for Disease Control and Prevention (CDC) and National Institutes of Health (NIH), the Jail fails to implement basic, necessary COVID-19 precautions pursuant to public health guidelines: failing to separate those positive or suspected positive for COVID-19 from those who are negative; failing to quarantine new

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[2] Olivia Prentzel et al, *El Paso County jail staff, inmates cite lack of masks in COVID-19 outbreak that became one of the largest in the state*, The Gazette (Nov. 14, 2020 updated Dec. 3, 2020), https://gazette.com/premium/el-paso-county-jail-staff-inmates-cite-lack-of-masks-in-covid-19-outbreak-that/article_b1bec9be-25f9-11eb-9f87-8799f955bbc6.html.

[3] Colorado Department of Public Health, *COVID OB Weekly Report 12 2 2020*://drive.google.com/file/d/1UQtl20evO-R1YNGqVgqZCSgM7Fgh_TU_/view (last accessed December 8, 2020).

intakes; failing to identify and protect the medically vulnerable; failing to ensure that all inmates and staff wear masks; and failing to adequately evaluate, monitor, and treat those suffering from COVID-19. These infirmities caused the out-of-control outbreak in the jail and continue to jeopardize Plaintiffs' health and lives.

The jail's failure to protect those in its custody is not only constitutionally infirm, it is inexcusable. Long before this outbreak, the CDC was publishing guidelines for COVID-19, including protocols specific to jails and prisons.[4] Over the spring and summer of 2020, courts across the nation recognized the need to protect inmates in jails, granting injunctive relief where jails and other facilities failed to adequately respond to COVID-19. *See, e.g., Carranza v. Reams*, No. 20-CV-00977-PAB, 2020 WL 2320174, at *15 (D. Colo. May 11, 2020) (granting in part preliminary injunction relating to an outbreak in the Weld County jail); *Criswell v. Boudreaux*, No. 120CV01048DADSAB, 2020 WL 5235675, at *26 (E.D. Cal. Sept. 2, 2020) (granting preliminary injunction in part, including for failure to provide or require masks); *Banks v. Booth*, No. 20-cv-849-CKK, 2020 WL 3303006, at *16 (D.D.C. June 18, 2020) (granting in part preliminary injunction including ordering compliance with certain CDC guidelines), *appeal docketed*, No. 20-5216 (D.C. Cir. July 22, 2020); *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 694 (C.D. Cal. May 26, 2020) ("mandating compliance with the CDC Guidelines in the Jail serves the public interest"). Defendant Elder was on notice that one of these injunctions was granted here in Colorado against the Sheriff of Weld County for failing to protect the inmates in his jail.[5]

[4] CDC, *Interim Guidance on Management of Coronavirus Disease (COVID-19) in Correctional and Detention Facilities*, (Oct. 21, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[5] *See* ACLU letter to all elected Sheriffs, "Re: Sheriffs' duty to protect high risk inmates from COVID-19," June 23, 2020, available at https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/2020-06-23-Sheriffs-ACLU.pdf (last accessed Dec. 12, 2020).

Defendant Elder is well-aware of COVID-19's dangers and the necessary basic precautions to take in jail. Yet he has failed to act accordingly, leading to a massive COVID-19 outbreak in his Jail, and subjecting Plaintiffs and class members to an unjustifiable and substantial risk of serious harm to their health and to their lives. Injunctive relief is necessary to prevent immediate irreparable harm.

II. REQUEST FOR RELIEF

Plaintiffs ask this Court to order Defendant Elder to implement a system-wide process to rectify the violation of Plaintiffs' constitutional rights and protect them from COVID-19, including:

a. Inmates and staff must be required to wear masks at all times. To allow inmates to wear masks at all times, each inmate must be issued at least two cloth masks, such that when one mask is being washed daily, another mask can be worn. Alternatively, inmates may be issued disposable masks which are replaced at the frequency recommended by the mask manufacturer.

b. COVID-19 positive and suspected COVID-19 positive inmates must be isolated from other inmates, with cohorting used sparingly for COVID-19 positive inmates, and no cohorting used for suspected COVID-19 positive inmates.

c. Newly admitted inmates must be screened to determine if they are medically vulnerable, and all inmates arriving at the jail should be tested for COVID-19 upon arrival if possible.

d. The jail should engage in regular prevalence testing to screen for COVID-19 outbreaks at the jail.

e. Newly admitted inmates who do not test negative for COVID-19 upon arrival at the jail must be quarantined in a transition unit for at least 14 days prior to being moved to a general population unit in the jail.

f. During the quarantine period for newly admitted inmates, the medically vulnerable newly admitted inmates must be placed in single cells to the maximum extent feasible to prevent exposure from other inmates of the transition unit.

g. After leaving the transitional unit, medically vulnerable inmates should be housed and kept separate from other inmates to the maximum extent feasible, so that they do not come into contact with COVID-19 positive inmates.

h. Routine cleaning practices for all hard-metal and other non-porous surfaces must be strictly followed, including for toilets, sinks, showers, tables, telephones, and other areas of the jail. Inmates must be afforded access to cleaning supplies to wipe the surfaces down with cleaners or disinfecting wipes sufficient to eliminate the virus.

i. Inmates must be afforded adequate supplies of soap for basic hygiene and hand-washing multiple times per day.

j. Each COVID-19 positive inmate must be evaluated by medical personnel. Symptomatic inmates must have individual treatment plans consistent with medical best practices. Each COVID-positive inmate must be examined daily, with vital signs taken, to determine if their condition is worsening, and if changes are required for the inmate's treatment plan.

k. Symptomatic inmates must be afforded treatment consistent with medical best practices, including access to pain relievers and other needed medication without undue delay.

l. All inmates must be afforded ongoing access to clean drinking water from a fountain or other water faucet that does not require the inmate to drink from sinks used for handwashing. Likewise, inmates require access to both hot and cold water so that they can have proper nutrition by using hot water for food preparation such as for soup packets.

m. All inmates must be provided accurate, up-to-date educational materials and information regarding controlling the spread of COVID-19.

III. FACTUAL BACKGROUND

A. Evolving Knowledge of the Coronavirus and the Corresponding Response

In early 2020, the COVID-19 virus arrived in the United States and created a nationwide health crisis. Fear about the virus exploded as hospital rooms began filling with infected patients. Schools and workplaces closed, concerts and sporting events were cancelled, and some areas implemented stay-at-home orders. Scientists knew little about how COVID-19 was transmitted. There was an early emphasis on surface transmission while conflicting messages were issued to the public about mask wearing and other preventative measures.

Through the spring and summer of 2020, scientists learned more about SARS-CoV-2 (the virus that causes COVID-19). Studies revealed the primary risk of transmission was airborne.[6] The prevalence of asymptomatic carriers and transmission through these carriers became well-known.[7] Importantly for this case, the scientific community coalesced around the importance of mask wearing for preventing spread of the virus.[8]

As a society, we largely adjusted our practices in response to the emerging knowledge about the COVID-19 virus. We limited social contact and focused on being outdoors where airborne transmission was more limited. Sanitizing products appeared at the entrance to public spaces. Facial coverings became the norm. In fact, on July 17, 2020 Colorado implemented a state-wide mask mandate requiring facial coverings in all indoor public spaces. Where facial coverings were impractical, strict capacity limitations were imposed to prevent close contact between unmasked people. By that time, multiple published studies showed the importance of mask wearing for preventing the spread of COVID-19.[9]

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[6] *See, e.g.*, Zhang, Renyi, "Identifying airborne transmission as the dominant route for the spread of COVID-19," Proceedings of the National Academy of Sciences (first published June 11, 2020), available at https://www.pnas.org/content/117/26/14857 (last accessed Dec. 12, 2020).

[7] *See, e.g.*, Zhao, Hongjun, "COVID-19: asymptomatic carrier transmission is an underestimated problem," Cambridge University Press Public Health Emergency Collection (published online June 11, 2020), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7322154/ (last accessed Dec. 12, 2020).

[8] "CDC Now Recommends Americans Consider Wearing Cloth Face Coverings in Public," National Public Radio (April 3, 2020), available at https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826219824/president-trump-says-cdc-now-recommends-americans-wear-cloth-masks-in-public (last accessed Dec. 12, 2020).

[9] *See, e.g.*, "Visualizing Speech-Generated Oral Fluid Droplets with Laser Light Scattering," New England Journal of Medicine (April 15, 2020), available at: https://www.nejm.org/doi/full/10.1056/NEJMc2007800 (last accessed Dec. 12, 2020); Nancy Leung, *et al.*, "Respiratory virus shedding in exhaled breath and efficacy of face masks," Nature Medicine (April 3, 2020), available at: https://www.nature.com/articles/s41591-020-0843-2#Sec3 (last accessed Dec. 12, 2020); Wei Lyu and George Wehby, "Community Use of Face Masks and COVID-19: Evidence from a Natural Experiment of State Mandates in the US,"

B. Incarcerated individuals are particularly vulnerable to infection from COVID-19.

The overwhelming consensus of public health authorities and experts is that inmates have a particular vulnerability to COVID-19.[10] (Ex. A, *Expert Report of Carlos Franco-Paredes, M.D., M.P.H.*, ¶¶ 26-33.) Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by droplets through coughing and sneezing. When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are greater. Infectious diseases, particularly airborne diseases such as COVID-19, are more likely to spread rapidly between individuals in correctional facilities. (*Id.*) According to data released by the Bureau of Prisons, the infection rate inside jails and prisons is nearly five times higher than the infection rate in the general public in the United States.[11]

COVID-19 Rate of Infection for Various Populations

Location	Cases	Population	Infections/ 1,000 People	Infection Rate as Percent of Population
BOP Imprisoned Population	15,237[2]	140,733[3]	108.27	10.8269%
United States	7,504,116	330,412,610[4]	22.71	2.2711%
China	90,678[5]	1,394,015,977[6]	0.07	0.0065%
Italy	330,263[7]	62,402,659[8]	5.29	0.5292%

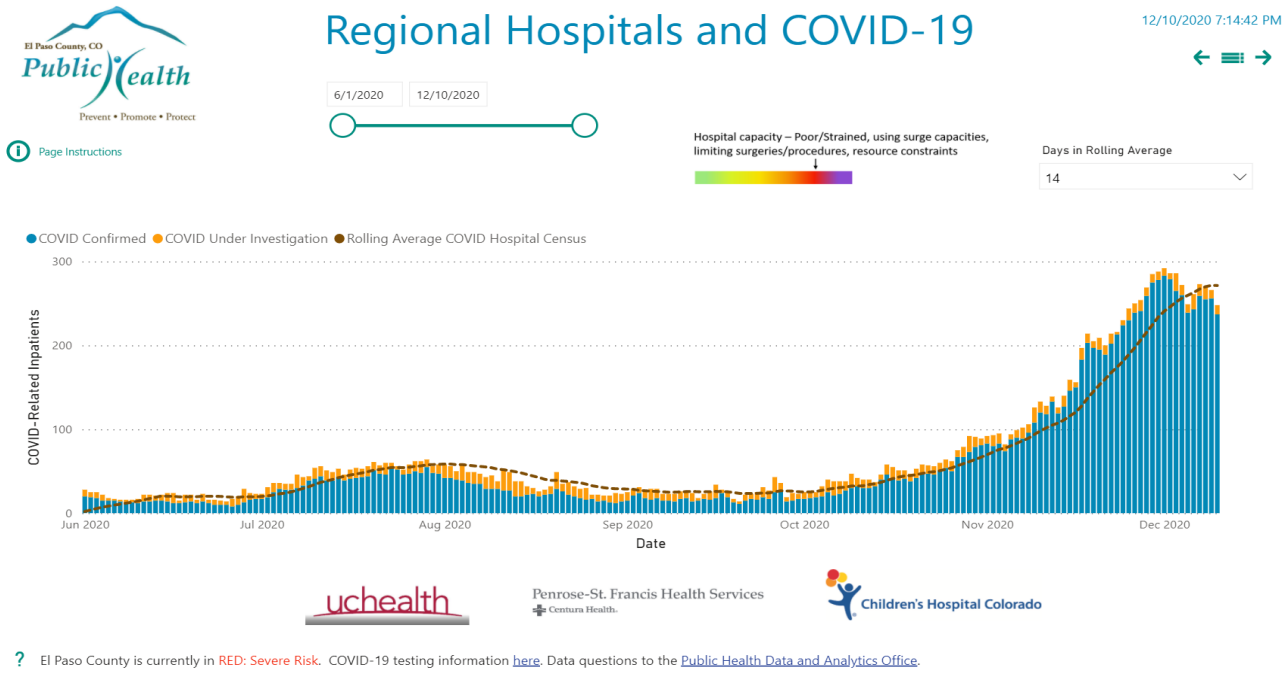
	BOP has an infection rate X times higher
Compared to the United States	4.77
Compared to China	1664.44
Compared to Italy	20.46

Health Affairs (June 16, 2020), available at https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00818 (last accessed Dec. 12, 2020).

[10] *See, e.g.*, Laura Hawks, M.D. *et al.*, "COVID-19 in Prisons and Jails in the United States," JAMA Intern Med. (April 28, 2020), available at https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765271 (last accessed Dec. 12, 2020).

[11] BOP-Reported Positive Tests for COVID-19 Nationwide, Federal Defenders of NY (https://federaldefendersny.org/) (last visited Dec. 10, 2020).

Jails also lack adequate medical care infrastructure to address the spread of infectious disease, like COVID-19, and to treat high-risk people in custody. Health units are not equipped with sufficient emergency medical equipment, such as oxygen tanks, nasal cannulae, and oxygen face masks, to respond to an outbreak of patients with respiratory distress. For these reasons, among others, experts have warned that "widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate."[12] Jails rely on outside community hospitals to provide more advanced and intensive medical care and, in El Paso County, these outside facilities are nearing capacity themselves.[13]



[12] "COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses" (March 23, 2020), available at: https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions1.pdf; *see also* "Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions," Health Affairs Blog, March 26, 2020, available at https://www.healthaffairs.org/do/10.1377/hblog20200324.784502/full/.

[13] El Paso County Public Health, Public Health Data and Analytics (available at https://www.elpasocountyhealth.org/covid19data-dashboard) (last visited Dec. 10, 2020).

C. CDC and Public Health Protocols for COVID-19 Prevention, Monitoring, and Treatment in a Carceral Setting

Operators of carceral facilities are not left stranded in their quest to manage COVID-19 inside jails and prisons. Near the beginning of the pandemic, the CDC issued guidance specifically tailored to preventing the spread of COVID-19 inside jails and detention centers and managing an outbreak.[14] This guidance is updated routinely as new studies are published and scientific knowledge improves. For crowded residential facilities like the El Paso County Jail, which currently houses approximately 1200 people, the CDC recognizes that strict procedures must be implemented to prevent spread and ensure adequate monitoring and treatment. In this setting, among other things, the CDC protocols call for:

- Universal mask-wearing, whether the wearer is positive or negative for the virus, including the provision of at least two washable masks. (Mask-wearing both stops spread of COVID-19 combined with other precautions, and further protects the wearer, reducing transmission and reducing the chances of symptomatic infection.).
- Medical isolation of all inmates positive for COVID-19 from other inmates pursuant to cohorting protocols;
- Medical isolation of all inmates symptomatic or suspected positive for COVID-19;
- A 14-day quarantine for all new intakes into a facility;
- Immediate testing for anyone potentially exposed to COVID-19, followed by an appropriate quarantine;

[14] *See generally* Guidance for Correctional & Detention Facilities, Center for Disease Control and Prevention (available at https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html) (last accessed December 10, 2020).

- Identification and protection of persons medically vulnerable to serious illness or death from COVID-19 pursuant to CDC guidelines;
- Immediate evaluations of persons symptomatic for COVID-19, including an assessment for medical vulnerabilities, individualized treatment according to treatment guidelines, and daily monitoring of symptoms;
- Minimizing movement of inmates inside the facility and minimizing interactions between inmates living in different housing units.

CDC's guidance encourages jails to provide special accommodations for persons at increased risk for severe complications from COVID-19, including older inmates and inmates with certain medical conditions. (Ex. A, Franco-Paredes Decl. ¶ 34.) The reasons for this special care are well known. Studies show older people are more likely to develop severe COVID-19 illness resulting in hospitalization or death.[15] Persons age 50-64 are 4 times more likely to be hospitalized, and 30 times more likely to die from COVID-19, compared to a younger control group; persons age 65-74 are 5 times more likely to be hospitalized, and 90 times more likely to die, compared to that same control group; and so on.

People of any age who have one of the following conditions are also at high risk of serious complications: cancer; chronic kidney disease; chronic obstructive pulmonary disease (COPD); heart conditions; immunocompromised state from solid organ transplant; obesity (BMI of 30 or higher); severe obesity (BMI of 40 or higher); pregnancy; sickle cell disease; smoking; type 2 diabetes mellitus.[16] (Ex. A, Franco-Paredes Decl. ¶ 12.) The CDC also recognizes that not

[15] CDC, *Older Adults*, available at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html (last accessed Dec. 10, 2020).

[16] CDC, *People with Certain Medical Conditions*, available at: https://www.cdc.gov/coronavirus/ 2019-ncov/need-extra-precautions/people-with-medicalconditions.html?

enough is known about how many pre-existing conditions may increase the risk of severe complications from COVID-19. As such the CDC recommends that special care be given to individuals of any age with the following conditions: asthma (moderate to severe); cerebrovascular disease; cystic fibrosis; hypertension or high blood pressure; immunocompromised state from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medications; neurologic conditions such as dementia; liver disease; overweight (BMI of 25 or greater); pulmonary fibrosis; thalassemia; type 1 diabetes mellitus. (Ex. A, Franco-Paredes Decl. ¶ 13.)

Due to the range of vulnerabilities to this deadly virus, individual assessments for medical vulnerabilities are imperative to ascertain whether a particular medical condition or combination of conditions in a given individual creates heightened risk of mortality and serious illness to COVID-19. In such cases, even if the condition or combination of conditions are not on the CDC list, the individual may be considered medically vulnerable and require the same heightened protections.[17]

D. Defendant Elder Refuses to Implement Policies that Comply With Basic COVID-19 Protocols

The laissez-faire attitude, to just let COVID-19 "run its course," flies in the face of science and shows Defendant Elder has abdicated his constitutional duty to the inmates in his care. Defendant Elder's policies have not only failed to slow the spread of COVID-19 in his facility, they have actively promoted infection of the inmates, with catastrophic results.

CDC_AA_refVal= https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last accessed Dec. 10, 2020).

[17] CDC, *People with Certain Medical Conditions*, available at: https://www.cdc.gov/coronavirus/ 2019-ncov/need-extra-precautions/people-with-medicalconditions.html? CDC_AA_refVal= https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last accessed Dec. 10, 2020).

The most blatant example of Defendant Elder's disregard for the safety of inmates in his care was exposed in November 2020, in the midst of an outbreak that has already led to over 1000 inmates and staff members testing positive for COVID-19. Observers were shocked when it was revealed that, not only was the jail refusing to provide masks to inmates, Jail staffers actually prohibited inmates from wearing masks while inside their housing wards and would not allow inmates to wear makeshift masks they made out of sheets and underwear to try to protect themselves.[18] (Ex. H, Adkins Decl. ¶ 5; Ex. O, Thomas Decl. ¶ 10; Ex. L, Williams Decl. ¶ 2; Ex. B, Weikert Decl. ¶ 5; Ex. P, Dobbins Decl. ¶ 3; Ex. I, Gantt Decl. ¶ 4.) Most housing wards hold 70-80 people and the Jail's policies make social distancing impossible. (Ex. P, Dobbins Decl. ¶ 10; Ex. J, Kershaw Decl. ¶ 2; Ex. E, Nelson Decl. ¶ 9; Ex. D, Lacey Decl. ¶ 12.) This prohibition on mask wearing in a close contact setting is directly contrary to CDC guidance and runs afoul of commonsense.

Indeed, even after it has become clear that his Jail is in the midst of a massive outbreak of COVID-19, Defendant Elder has refused to implement even the most basic of the CDC's recommended COVID-19 protocols. The Jail's ongoing failures, documented by current inmates as of the time of this filing, include:

- Failure to provide sufficient masks and enforce mask wearing. Until recently, inmates were provided with masks only when they were travelling to or from court of when moving in the hallways outside their wards. (Ex. O, Thomas Decl. ¶ 10; Ex. C, Hermanns Decl. ¶ 5; Ex. H, Adkins Decl. ¶ 5.) Inmates report that, after the National Guard was

[18] Olivia Prentzel et al, *El Paso County jail staff, inmates cite lack of masks in COVID-19 outbreak that became one of the largest in the state*, The Gazette (Nov. 14, 2020 updated Dec. 3, 2020), available at: https://gazette.com/premium/el-paso-county-jail-staff-inmates-cite-lack-of-masks-in-covid-19-outbreak-that/article_b1bec9be-25f9-11eb-9f87-8799f955bbc6.html (last accessed Dec. 9, 2020).

brought in, they recently each received one mask that they can keep with them in their wards. (Ex. F, Le Chiffre Decl. ¶ 18; Ex. L, Williams Decl. ¶ 12; Ex. Q, Murray Decl. ¶ 8.) However, they cannot get a second mask if their masks break and they cannot keep the blue hospital masks that they get when being transported around the facility. (Ex. G, Trujillo Decl. ¶ 14). Masks are not washed regularly by the staff and, when the inmates take it upon themselves to wash their single mask in the sink, they inmates have no protection. (Ex. L, Williams Decl. ¶ 12; Ex. F, Le Chiffre Decl. ¶ 18; Ex. I, Gantt Decl. ¶ 16; Ex. E, Nelson Decl. ¶ 7.) Moreover, the Jail still does not enforce mask wearing and reports show that many inmates and staff are frequently seen without masks or wearing masks improperly (e.g., without covering their nose) throughout the facility. (Ex. M, Dimas Decl. ¶ 4; Ex. O, Thomas Decl. ¶ 11; Ex. I, Gantt Decl. ¶ 16; Ex. F, Le Chiffre Decl. ¶ 18.)

- Failure to separate inmates with positive test results. Inmates with obvious COVID-19 symptoms and positive test results remain in their housing wards with non-infected inmates. (Ex. L, Williams Dec. ¶ 5; Ex. M, Dimas Decl. ¶ 13; Ex. K, Aleksa Decl. ¶ 5; Ex. B, Weikert Decl. ¶ 6.) Gilbert Trujillo, who has not yet contracted COVID-19, was moved into a two-man cell with an inmate who was positive for COVID-19 and symptomatic. He was so scared to live this close to his COVID-positive cellmate that Trujillo laid in bed covering his face with his bed sheet and then claimed to be suicidal so he would be moved to a different cell. (Ex. G, Trujillo Decl. ¶¶ 6-7.) Even as the recent COVID-19 outbreak grew, the Jail refused (and continues to refuse) to meaningfully segregate COVID-19 positive inmates from others. (Ex. F, Le Chiffre Decl. ¶ 20; Ex. I, Gantt Decl. ¶ 20; Ex. E, Nelson Decl. ¶ 12; Ex. D, Lacey Decl. ¶ 9; Ex. G, Trujillo Decl.

¶ 16.) Jail staffers are covering up this shortcoming, falsely telling family members that COVID-positive inmates are housed separately from those yet to be infected. (Ex. N, Fain Decl. ¶ 5.)

- Failure to quarantine new intakes into the facility. As new inmates are admitted to the Jail, some are given a rapid test and, within days, are placed into a general population housing pod. (Ex. G, Trujillo Decl. ¶ 3.) The Jail knows these rapid tests miss about 40% of COVID infections, but it does not observe the standard 14-day quarantine period, a failure that endangers both the newly admitted inmates and the longer term residents. (Ex. R, October 27, 2020 Email from UCHealth; Ex. J, Kershaw Decl. ¶ 2; Ex. H, Adkins Decl. ¶ 19; Ex. M, Dimas Decl. ¶ 14; Ex. K, Aleksa Decl. ¶ 9; Ex. Q, Murray Decl. ¶ 10; Ex. I, Gantt Decl. ¶ 10; Ex. G, Trujillo Decl. ¶ 4.) Austin Williams, a 62-year-old with type 2 diabetes and high blood pressure, reports having a new cellmate every day for the first month he was at the Jail; each of his cellmates had come in straight from the streets and none was tested for COVID-19. (Ex. L, Williams Decl. ¶¶ 1, 3.) One Plaintiff reports having nine different cellmates since he was detained at the end of August 2020; some of whom had been arrested and booked into the Jail within days of being placed in his cell. (Ex. F, Le Chiffre Decl. ¶ 13.)
- Failure to identify and protect older inmates and those who are otherwise medically vulnerable. The Jail makes little to no effort to identify individuals at higher risk for severe complications from COVID-19. (Ex. L, Williams Decl. ¶ 1; Ex. F, Le Chiffre Decl. ¶ 22.) For example, Jean-Joseph Le Chiffre has type 2 diabetes and high blood pressure—conditions that make him at high risk for serious complications—but has been housed with others positive for COVID-19. (Ex. F, Le Chiffre Decl. ¶¶ 17-22.) No inmate

reports a screening process upon intake or at any other point that would allow the Jail to segregate all persons who are at higher risk for complications from the virus. Absent knowledge of which inmates are at higher risk, the Jail cannot possibly make appropriate accommodations to ensure those inmates are protected from infection. (*See* Ex. A, Expert Decl. of Dr. Carlos Franco-Paredes ¶ 44(g).)

- Failure to allow adequate social distancing. The Jail is densely populated. After a brief decline early in the pandemic, the Jail's population has been consistently rising, with a current daily population hovering above 1200.[19] Many inmates live in housing wards of approximately 70-80 people and sleep only a few feet away from others in open bays of 8-10 inmates. (Ex. B, Weikert Decl. ¶ 4; Ex. M, Dimas Decl. ¶ 2; Ex. I, Gantt Decl. ¶ 2; Ex. C, Hermanns Decl. ¶ 4; Ex. G, Trujillo Decl. ¶ 4.) In the day room, tables are a couple feet apart and people sit shoulder to shoulder to eat. (Ex. J, Kershaw Decl. ¶ 3.) Jail staff continues to regularly conduct "shake downs" during which they force all 80 inmates in the ward (many maskless) to congregate in a room that is less than 15 feet by 12 feet. (Ex. E, Nelson Decl. ¶ 9.) Jail staff does not encourage social distancing but, even if they did, social distancing is impossible under these conditions, making it even more important to enforce mask wearing. (Ex. F, Le Chiffre Decl. ¶ 18; Ex. O, Thomas Decl. ¶ 12; Ex. L, Williams Decl. ¶ 13.)
- Failure to consistently or adequately evaluate, monitor, and treat those experiencing COVID-19 symptoms. Inmates experiencing symptoms commonly associated with COVID-19 are frequently not evaluated and are left unmonitored by the Jail staff.

[19] The ACLU has been receiving weekly updates on the population at El Paso County Jail. The latest update reported that the El Paso County Criminal Justice Center was housing 1227 persons on December 10, 2020.

Medical checks are rare, even when an inmate is symptomatic, and treatment is basically non-existent. (Ex. P, Dobbins Decl. ¶ 5; Ex. L, Williams Decl. ¶ 7; Ex. C, Hermanns Decl. ¶¶ 8-9; Ex. I, Gantt Decl. ¶ 9.) COVID-positive inmates have to affirmatively seek out medical attention and, even then, sometimes do not receive a response or any attention for weeks. (Ex. L, Williams Decl. ¶¶ 6-7; Ex. H, Adkins Decl. ¶ 13; Ex. D, Lacey Decl. ¶¶ 5-12.) In fact, one inmate who, prior to the recent outbreak, was having his vitals monitored daily, stopped receiving his daily monitoring *after* he tested positive for COVID-19. (Ex. H, Adkins Decl. ¶ 15.) Deannie Aleksa tested positive for COVID-19 in early November and has been experiencing symptoms since then. After multiple requests for medication and monitoring, she was finally given Tylenol. No one actively monitored her health, asked about her symptoms or took her oxygen level until December 8, 2020, approximately six weeks after she first began experiencing symptoms. (Ex. K, Aleksa Decl. ¶¶ 3-7.)

- Failure to inform and educate inmates on COVID exposure and risks. Inmates at the Jail report getting a COVID-19 test and never receiving their results. (Ex. O, Thomas Decl. ¶ 8; Ex. F, Le Chiffre Decl. ¶ 16; Ex. H, Adkins Decl. ¶ 12; Ex. E, Nelson Decl. ¶¶ 4, 12; Ex. D, Lacey Decl. ¶ 7; Ex. G, Trujillo Decl. ¶ 16.) Inmates left in the dark as to their status are unable to self-quarantine or take steps to protect those around them. Moreover, the Jail fails to provide basic educational materials about how the virus is spread and the importance of mask wearing. (Ex. O, Thomas Decl. ¶ 14; Ex. F, Le Chiffre Decl. ¶ 12.)
- Failure to provide adequate food and water. Since late October, the Jail has served the inmates only three meals of cold food each day. (Ex. B, Weikert Decl. ¶ 12; Ex. I, Gantt Decl. ¶ 18; Ex. E, Nelson Decl. ¶ 11.) Hannah Weikert, who is pregnant, was getting

extra food prior to the recent COVID outbreak, but is now being denied access to the food necessary to keep herself and her baby healthy. (Ex. B, Weikert Decl. ¶ 12.) The Jail is also denying inmates regular access to clean drinking water, despite medical staff encouraging COVID-positive inmates to drink 8-10 glasses of water a day. Jail staff regularly turns off fountains in the bays as "punishment." (Ex. D, Lacey Decl. ¶¶ 4, 12; Ex. E, Nelson Decl. ¶ 11; Ex. M, Dimas Decl. ¶ 12.)

- Failure to provide sanitary living conditions or allow proper hygiene. Common use areas and items such as telephones and drinking fountains are not cleaned or sanitized regularly. (Ex. G, Trujillo Decl. ¶ 8; Ex. L, Williams Decl. ¶ 10; Ex. B, Weikert Decl. ¶¶ 4, 9; Ex. I, Gantt Decl. ¶ 2; Ex. E, Nelson Decl. ¶ 6.) Deputies deny inmates access to the cleaning products used to sanitize common areas. (Ex. H, Adkins Decl. ¶ 6; Ex. G, Trujillo Decl. ¶ 8.) Toilets routinely back up or overflow; one bay that houses 80 men only has two working toilets. (Ex. Q, Murray Decl. ¶ 9; Ex. D, Lacey Decl. ¶ 4; Ex. F, Le Chiffre Decl. ¶ 14.) Soap is unavailable for days at a time. (Ex. M, Dimas Decl. ¶ 11; Ex. B, Weikert Decl. ¶ 9; Ex. E, Nelson Decl. ¶ 6.)

On these facts, Plaintiffs petition the Court for issuance of an injunction requiring Defendant Elder to meet his constitutional obligation to protect inmates in his Jail from serious risk of harm.

IV. DEFENDANT'S DELIBERATE INDIFFERENCE TO THE SERIOUS HARM CAUSED BY COVID-19 WARRANTS AN IMMEDIATE INJUNCTION

Plaintiffs are pretrial detainees and post-conviction inmates in the custody of the El Paso County Jail whose health and lives are in jeopardy due to the jail's failure to protect them from COVID-19, and failure to adequately evaluate, treat, and monitor them when they become infected. Without urgent action, countless inmates will continue to become infected. Some may

die in the coming weeks, and all will suffer. Plaintiffs ask the Court to grant injunctive relief that will protect them from unreasonable exposure to COVID-19, and that will ensure they are adequately evaluated and treated for COVID-19 if they become infected, consistent with established CDC and NIH guidelines.

Courts are empowered to grant temporary restraining orders and preliminary injunctions in class actions regardless of whether the class has yet been certified. *See Carranza*, 2020 WL 2320174, at *6 n.6.; *Simer v. Rios*, 661 F2d 655, 658 (7th Cir. 1981) (granting temporary restraining order within days of action's filing). A plaintiff seeking interim injunctive relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Planned Parenthood Ass'n of Utah v. Herbert*, 828 F.3d 1245, 1252 (10th Cir. 2016). "[W]here the moving party has established that the three 'harm' factors tip decidedly in its favor, the 'probability of success' requirement is relaxed[.]" *Star Fuel Marts, LLC v. Sam's East, Inc.*, 362 F.3d 639, 652-53 (10th Cir. 2004).

Once a plaintiff demonstrates entitlement to interim relief, courts have broad power to fashion equitable remedies to address constitutional violations in jails and prisons. *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978). Although courts must "be sensitive to the State's interest[s]" in imprisonment, courts "must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners [and] . . . may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." *Brown v. Plata*, 563 U.S. 493, 511 (2011); *Plata v. Brown*, 2013 WL 3200587, *8 (N.D. Cal., June 24, 2013) (directing removal of prisoners at risk of contracting Valley Fever

from prisons where the risk of contracting it was high). As noted by Chief Judge Brimmer when granting an injunction against the Sheriff of Weld County in *Carranza*, "[a]lthough the Court acknowledges defendant's interest in retaining discretion to administer the Jail, '[c]ourts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.'" 2020 WL 2320174, at *11 (quoting *Brown v. Plata*, 563 U.S. 493, 511 (2011).

Injunctive relief is necessary because the danger here—infection by a contagious disease, ensuing harm, suffering, long-term injury, and potential death—is the quintessential irreparable harm. *Edmisten v. Werholtz*, 287 F. App'x 728, 732-35 (10th Cir. 2008) (holding that evidence that health will "deteriorate irreparably" absent relief is sufficient to support issuance of injunctive relief); *see also Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wisc. 2001) ("[P]ain, suffering and the risk of death constitute 'irreparable harm' sufficient to support a preliminary injunction in prison cases."). There is also an overwhelming public interest in limiting the spread of COVID-19, both to minimize further infections among inmates, jail staff, and the broader community, and to reduce strain on overwhelmed health systems. And, in light of the global COVID-19 pandemic, the balance of equities and public interest weigh heavily in favor of protecting these vulnerable inmates.

A. Plaintiffs Are Likely To Succeed on the Merits.

Plaintiffs are likely to establish that their conditions of confinement place them at substantial risk of harm from COVID-19, in violation of their Eighth and Fourteenth Amendment rights and parallel rights under the Colorado Constitution.[20] Cases in Colorado and nationwide

[20] Art. II, Section 20 prohibits the infliction of "cruel and unusual punishments." Colo. Const. art. II, § 20; Art. II, Section 25 guarantees due process of law.

support granting relief where a facility fails to comply with CDC guidelines or other generally accepted practices for reducing the spread of the virus. *See, e.g.*, *Carranza*, 2020 WL 2320174, at *14; *Criswell v. Boudreaux*, No. 20CV1048-DAD-SAB, 2020 WL 5235675, at *26 (E.D. Cal. Sept. 2, 2020) (ordering jail to adopt a mask policy "including the provision of masks to inmates and requirements for the wearing of masks.); *Hernandez Roman v. Wolf*, 829 F. App'x 165, 172 (9th Cir. 2020) (affirming in part injunction where facility was aware of risks, including failure to provide adequate masks, but "had not remedied the conditions."); *Castillo v. Barr*, 2020 WL 1502864, at *1 (C.D. Cal. Mar. 27, 2020) (granting TRO and finding that the immigration detainee petitioners were likely to suffer irreparable harm from COVID-19 when they were not kept six feet apart from other detainees); *Banks v. Booth*, No. CV 20-849 (CKK), 2020 WL 3303006, at *9 (D.D.C. June 18, 2020), *appeal docketed*, No. 20-5216 (D.D.C. July 22, 2020); *Kaur v. U.S. Dep't of Homeland* Sec., No. 2:20-cv-03172, 2020 WL 1939386, at *3 (C.D. Cal. April 22, 2020); *Doe v. Barr*, No. 20-cv-02141, 2020 WL 1820667, at *1, 9 (N.D. Cal. Apr. 12, 2020); *Bent v. Barr*, No. 19-cv-06123, 2020 WL 1812850, at *1–2 (N.D. Cal. Apr. 9, 2020); *Thakker v. Doll*, No. 20-cv-0480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020); *Basank v. Decker*, 449 F. Supp. 3d 205, 213 (S.D.N.Y. 2020) ("The risk that Petitioners will face a severe, and quite possibly fatal, infection if they remain in immigration detention constitutes irreparable harm warranting a TRO.").

i. *Monell* Liability is Proper Against the Sheriff in his Official Capacity.

Defendant Elder, as the final decisionmaker regarding the operation of the jail, may be sued in his official capacity. A county may be liable under § 1983 where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc.*

Servs., 436 U.S. 658, 690 (1978). The three elements of a *Monell* claim are "(1) official policy or custom, (2) causation, and (3) state of mind." *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 769 (10th Cir. 2013).

Here, each element is clearly met. **First**, as elected Sheriff, Defendant Elder sets policy for the jail such that his actions may be attributable to the County. *See, e.g., Carranza,* 2020 WL 2320174, at *6 (ruling Sheriff has "final policymaking authority with respect to the Jail").

Second, the jail's policies with respect to COVID-19 prevention and treatment are "closely related" to the exposure to and infection from COVID-19, the harm claimed by Plaintiffs in violation of their constitutional rights, so causation is also clear. *Id.* at *7 (quoting *Schneider*, 717 F.3d at 770).

Third, the requisite state of mind for Defendant Elder is established under either an objective or subjective standard. For a municipal liability claim of "deliberate indifference," the Court applies "an objective standard which is satisfied if the risk is so obvious that the official should have known of it." *Barney v. Pulsipher*, 143 F.3d 1299, 1307 n.5 (10th Cir. 1998) ("Deliberate indifference ... is defined differently for Eighth Amendment and municipal liability purposes."); *see also Carranza*, 2020 WL 2320174, at *7. Here, any reasonable Sheriff would know—and Defendant Elder has known and does know—that failure to protect Plaintiffs from COVID-19 can result in infection, suffering, and death, as further discussed below.

ii. Defendant Violated Plaintiffs' Eighth and Fourteenth Amendment Rights

Plaintiffs are likely to establish that their conditions of confinement in the jail place them at substantial risk of infection with COVID-19, prolonged suffering, and possible death, in violation of their respective state and federal constitutional rights. The Supreme Court has long held that when state officials "strip [inmates] of virtually every means of self-protection and

foreclose[] their access to outside aid, [they] are not free to let the state of nature take its course." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). "The [Eighth] Amendment ... requires that inmates be furnished with the basic human needs, one of which is 'reasonable safety.'"[21] *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

An Eighth Amendment violation is shown where (1) objectively, the harm plaintiffs complain of is sufficiently "serious" to merit constitutional protection, and (2) defendant acted with deliberate indifference to a substantial risk to plaintiffs' health or safety. *Farmer*, 511 U.S. at 834. Plaintiffs easily meet both prongs. Defendant's practices clearly show deliberate indifference to a substantial risk of serious harm.

1. Harm from COVID-19 Is Sufficiently Serious

Courts across the nation have recognized that COVID-19 is sufficiently "serious" to merit constitutional protection under the Eighth and Fourteenth Amendments. *See, e.g., Carranza*, 2020 WL 2320174, at *7; *Torres v. Milusnic*, No. 20-cv-4450-CBM-PVC(x), 2020 WL 4197285, at *9 (C.D. Cal. July 14, 2020) ("Petitioners show they are at substantial risk of exposure to COVID-19, which is inconsistent with contemporary standards of human decency."); *Cameron v. Bouchard*, No. 20-10949, 2020 WL 1929876, at *2 (E.D. Mich. Apr. 17, 2020), *as modified on reconsideration*, 2020 WL 1952836 (E.D. Mich. Apr. 23, 2020) ("It cannot be disputed that COVID-19 poses a serious health risk to Plaintiffs and the putative class [consisting of current and future jail detainees].").

[21] Although the Fourteenth Amendment applies to pretrial detainees and the Eighth Amendment applies to those post-conviction, the Tenth Circuit applies an "identical" analysis in either scenario, so Plaintiffs do the same here. *Carranza*, 2020 WL 2320174, at *7 n. 9 (quoting *Lopez v. LeMaster*, 172 F.3d 756, 759 n.2 (10th Cir. 1999)).

This rationale is well supported. Courts have long recognized that infectious diseases with less severe health risks are considered "serious harm" for Eighth Amendment purposes. In *Helling v. McKinney*, 509 U.S. 25 (1993), the Supreme Court recognized that "deliberate indifference to the exposure of inmates to a serious, communicable disease" would violate the Eighth Amendment, even if a prisoner currently shows no serious symptoms. *Id*. at 33. The Tenth Circuit similarly recognized that the risk of exposure to a life-threatening communicable disease implicates the Eighth Amendment. *Loftin v. Dalessandri*, 3 F. App'x 658, 663 (10th Cir. 2001) (risk of exposure to tuberculosis satisfied "serious harm" standard).

COVID-19 is "an extremely infectious and potentially deadly virus," that has killed nearly 300,000 people in the United States alone. (Ex. A, Franco-Paredes Decl. ¶ 8.) Plaintiffs are likely to prevail on their claim that Defendant Elder is exposing them to a sufficiently substantial risk of serious harm to implicate the Eighth Amendment.

2. Defendant Elder Knew of the Serious Risk Posed by COVID-19

Having established the potential harm is sufficiently serious, Plaintiffs are likely to succeed in showing that Sheriff Elder is and has been deliberately indifferent to that harm.

The record shows Elder was well aware of the risks associated with COVID-19 and the effectiveness of some preventions, such as mask wearing. Defendant Elder made numerous public statements about the importance of mask-wearing and other precautions, including stating "wearing a mask will slow the spread of COVID-19 and save lives." *See, e.g.*, July 16, 2020 post of the El Paso County Sheriff's Office Facebook page. Elder further claimed in a public video to constituents the next day: "We follow this [mask] order inside the Sheriff's Office, we have for several months at this point," as he held up his own mask and indicated the importance of

wearing it, demonstrating he knew the importance of mask-wearing to prevent infection. *Id.*, video available at https://perma.cc/GQ9K-9HZZ (last accessed Dec. 10, 2020).

Defendant Elder also knew the virus had made its way into his Jail, and with deadly results. A 41-year-old deputy serving under Defendant Elder died of COVID-19 in April 2020. This deputy worked in the intake area of the jail and interacted with countless others, including inmates. In the wake of his death, multiple other staff members tested positive.[22] He also knew that protective equipment should be used in the Jail to manage COVID-19. On November 3, 2020, early in the current outbreak, Elder was informed that all staff should have "full PPE" – defined as "eye covering, KN95 mask and rubber gloves" – if they were around COVID-positive inmates; Defendant Elder responded that this was "good information." (Ex. S.)

Additionally, Governor Polis issued Executive Orders that put Defendant on subjective notice of the risk posed from COVID-19 and the importance of mask-wearing and other precautions to stop the spread and protect people. "The potential spread of COVID-19 in facilities and prisons poses a significant threat to prisoners and staff who work in facilities and prisons[.]"[23] Defendant surely was aware of this order from the Governor. Defendant was also aware of Governor Polis' statewide mask order on July 16, 2020, as he posted about it on Facebook on July 16 and 17, 2020, as discussed above.

Sheriff Elder was specifically informed about the risks of COVID-19 in jails, and the importance of following CDC protocols, by letters sent to him from the ACLU on March 26,

[22] *El Paso Co. Deputy Jeff Hopkins passing determined to be in the line of duty*, KOAA (Apr. 14, 2020), available at: https://www.koaa.com/news/covering-colorado/el-paso-co-deputy-jeff-hopkins-passing-determined-to-be-line-of-duty-death.

[23] State of Colorado, Executive Order D 2020 016, March 25, 2020, at pg. 1, available at https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view.

2020,[24] and June 23, 2020.[25] He was even provided Chief Judge Brimmer's preliminary injunction order from *Carranza v. Reams* on June 23, further instructing him of the importance of complying with CDC guidelines.

No reasonable person in Defendant Elder's position could deny knowledge of the risks associated with COVID-19. The evidence is undeniable that, prior to the Jail's outbreak that started in October 2020 (and is still ongoing), there were "longstanding, pervasive, well-documented" risks from failing to address COVID-19. *Farmer v. Brennan*, 511 U.S. 825, 842 (1994). As one court noted, "the seriousness of the threat posed by COVID-19—and the particular vulnerability of elderly individuals as well as those with certain preexisting medical conditions—are so well known that it would be implausible to suggest that prison officials are unaware of this risk." *Martinez-Brooks v. Easter*, No. 3:20-cv-00569, 2020 WL 2405350, at *21 (D. Conn. May 12, 2020).

Given all of the above, Plaintiffs can easily show Defendant Elder has actual and constructive knowledge of the serious risk COVID-19 poses to inmate health and safety.

3. Defendant Failed to Take Steps to Protect Inmates from the Serious Risks Associated with COVID-19

Plaintiffs are likely to succeed in showing that, despite knowing the serious of exposure to COVID-19, Defendant Elder failed to take constitutionally adequate measure to protect inmate health and safety. Conditions inside the Jail show Defendant was and is deliberately indifferent to this risk.

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[24] Letter To Colorado Sheriffs Regarding COVID-19, ACLU OF COLORADO (March 26, 2020), available at: https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Sheriff-Letter-3-26-2020.pdf.

[25] Letter To Colorado Sheriffs Regarding COVID-19, ACLU OF COLORADO (June 23, 2020), available at https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/2020-06-23-Sheriffs-ACLU.pdf.

First, in the contagious disease setting, exposing non-infected incarcerated people to contagious individuals constitutes deliberate indifference. *See, e.g., Duvall v. Dallas Cnty., Tex.*, 631 F.3d 203, 208 (5th Cir. 2011) (upholding a finding of unconstitutional conditions of confinement where officials continued to house inmates in a facility despite the existence of an extensive MRSA outbreak); *Laureau v. Manson*, 651 F.2d 96, 98–99 (2d Cir. 1981) (upholding finding of unconstitutional conditions of confinement where healthy prisoners were housed with physically ill cellmates).

COVID-19 is rampant throughout the Jail but, instead of implementing policies designed to manage the outbreak and protect inmates, Defendant has decided to just let the outbreak "run its course." (Ex. Q, Murray Decl. ¶ 6; Ex. D, Lacey Decl. ¶ 9.) The Jail is doing nothing to protect COVID-negative inmates; inmates with obvious COVID-19 symptoms and positive test results remain in the same housing wards with non-infected persons. (Ex. F, Le Chiffre Decl. ¶ 20; Ex. I, Gantt Decl. ¶ 20; Ex. E, Nelson Decl. ¶ 12; Ex. D, Lacey Decl. ¶ 9; Ex. G, Trujillo Decl. ¶ 16.) As new arrests occur, the Jail is not following any meaningful quarantine protocol; rather, new admittees are moving into the bays (likely with both COVID-negative and COVID-positive inmates) within days of their arrival. (Ex. J, Kershaw Decl. ¶ 2; Ex. H, Adkins Decl. ¶ 19; Ex. M, Dimas Decl. ¶ 14; Ex. K, Aleksa Decl. ¶ 9; Ex. Q, Murray Decl. ¶ 10; Ex. I, Gantt Decl. ¶ 10; Ex. G, Trujillo Decl. ¶ 4.) Even when new admittees show obvious signs of being COVID-positive, they are placed in the normal bays. (Ex. Q, Murray Decl. ¶ 10.) Jail staff exhibiting symptoms are still showing up for work, coughing and sneezing on inmates without a mask. (Ex. Q, Murray Decl. ¶ 4.) This failure to protect non-infected persons alone constitutes deliberate indifference.

Second, a systemic failure in inmate processes and procedures can serve as a basis for Eighth Amendment liability for deliberate indifference. *Quintana v. Santa Fe Cty. Bd. of Commissioners*, 973 F.3d 1022, 1033–34 (10th Cir. 2020) ("deficient medical intake protocol" may lead to municipal liability); *Feliciano v. Gonzales*, 13 F. Supp. 2d 151, 208-09 (D.P.R. 1998) (defendant's "inability . . . to properly isolate cases of active tuberculosis," the "insufficient medical dormitory beds," the failure to "fully screen incoming inmates," and the failure to "provide for a sick call system that ensures access to care and that is capable of effectively handling emergencies" constituted deliberate indifference).

From March of 2020 through the summer and into the fall, it was well-known and documented that policies requiring mask-wearing, allowing for isolation and quarantine protocols, and maintaining high levels are hygiene are necessary to prevent the spread of COVID-19 in jails. (Ex. A, Dr. Franco-Paredes Decl. ¶ 40.) Yet Defendant not only refused to provide masks to inmates until recently, his staff took masks away and disciplined inmates who tried to protect themselves with facial coverings. (Ex. L, Williams Decl. ¶ 2; Ex. O, Thomas Decl. ¶ 10; Ex. M, Dimas Decl. ¶ 3; Ex. F, La Chiffre Decl. ¶ 11.) As discussed above, inmates exhibiting symptoms are not segregated from healthy inmates and new admittees are introduced into the general population. These are systemic failures that show deliberate indifference.

Because Defendant Elder had "actual and constructive notice" of the risks of failing to act diligently, his failure to implement policies and procedures to prevent the spread of COVID-19 is deliberate indifference. *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998); *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372, 381 (7th Cir. 2017) (municipal liability regarding the "institution itself"; jury could find entity had "actual knowledge that, without protocols for

coordinated, comprehensive treatment, the constitutional rights of chronically ill inmates would sometimes be violated" (cite omitted)).

Third, Defendant Elder made deliberate decisions that are putting inmates in his Jail at risk. As late as October and even into November, inmates were denied access to masks and forbidden from wearing makeshift masks in their housing units. Sheriff Elder was simultaneously advocating the use of masks to prevent COVID-19 transmission to the public and refusing to allow inmates to protect themselves by wearing masks. And this situation could have been easily remedied. Sheriff Elder was granted $13.6 million dollars in federal funds under the CARES act for the specific purpose of COVID-19 protection. (Ex. T, Press Release Issued by Defendant Elder on June 16, 2020.) But rather than spend approximately .05% of these funds on purchasing 10,000 reusable masks (more than two for every inmate and Jail staff member), Defendant Elder chose to spend his CARES act money on projects such as renovating the staff locker room and remodeling a training facility.

Defendant Elder's callous attitude towards the safety of inmates under his care when he knows of the serious risk from COVID-19 is the very definition of deliberate indifference. Plaintiffs are therefore likely to succeed on the merits of their claim that Defendant Elder violated the Eighth and Fourteenth Amendments of the United State Constitution. For the same reasons, and because "the Colorado Constitution provides more protection for our citizens than do similarly or identically worded provisions of the United States Constitution," *People v. Young*, 814 P.2d 834, 842 (Colo. 1991), Plaintiffs also are likely to succeed on Counts III and IV of the Complaint, which allege that Defendant Elder has violated and is violating their more expansive rights under the Colorado Constitution.

B. Plaintiffs are likely to suffer irreparable harm absent injunctive relief.

"[A] showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." *DTC Energy Group, Inc. v. Hirschfeld*, 912 F.3d 1263, 1270 (10th Cir. 2018); *Carranza*, 2020 WL 2320174, at *10 (risk of irreparable harm shown where plaintiffs are "not only confined in close quarters, but some inmates in the Jail have already contracted COVID-19."). "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, "'[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary,'" *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995)); *see also Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (holding that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm" while affirming grant of preliminary injunction in prison conditions case).

The Tenth Circuit has held that a harm that cannot be remedied monetarily after a final judgment is sufficient to establish a likelihood of irreparable harm in support of injunctive relief. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) (holding that there is a showing of irreparable harm when the "harm cannot be compensated after the fact by monetary damages"); *see also Padilla v. U.S. Immigration & Customs Enforcement*, 387 F. Supp. 3d 1219, 1231 (W.D. Wash. 2019) (recognizing that "substandard physical conditions, [and] low standards of medical care" in immigration detention constitute irreparable harm justifying injunctive relief); *Indep. Living Cent. of S. California, Inc. v. Shewry*, 543 F.3d 1047, 1050 (9th

Cir. 2008) (recognizing that Medi-Cal beneficiaries would suffer irreparable harm where new policy would limit beneficiaries' access to "much-needed pharmaceuticals").

Given the grave danger posed by COVID-19, courts across the country have concluded that correctional facilities' failure to ameliorate the risks of COVID-19 constitutes irreparable harm. *See, e.g.*, *Criswell*, 2020 WL 5235675, at *26; *Castillo*, 2020 WL 1502864, at *1 (granting TRO and finding that the immigration detainee petitioners were likely to suffer irreparable harm from COVID-19 when they were not kept six feet apart from other detainees); *Banks*, No. 20-cv-849-CKK, 2020 WL 3303006, at *16 ("The Court concludes that Plaintiffs' risk of contracting COVID-19 and the resulting complications, including the possibility of death, is the prototypical irreparable harm.").

El Paso County's ongoing failure to provide conditions ensuring CDC-compliant precautions for COVID-19 not only risks irreparable harm to Plaintiffs, but nearly guarantees it. *Jones'El*, 164 F. Supp. 2d at 1123 ("[P]ain, suffering and the risk of death constitute irreparable harm sufficient to support a preliminary injunction in prison cases." (internal quotation marks omitted)). Even for those who survive infection, there may be a prolonged suffering and injury, including the need for extensive rehabilitation, neurological damage, and the loss of respiratory capacity. *Cole v. Collier*, No. 4:14-CV-1698, 2017 U.S. Dist. LEXIS 112095, at *141-42 (S.D. Tex. July 19, 2017) (holding plaintiffs had demonstrated irreparable injury where there was evidence that "[t]hose who experience heat stroke [from a lack of air conditioning in their prison cell] but do not die are at risk of being permanently disabled").

C. The balance of equities favors immediately stopping the spread of COVID-19 in the jail and adequately treating those who are sick.

The balance of equities weighs in favor of ordering COVID-19 precautions consistent with CDC guidance. *See, e.g.*, *Carranza*, 2020 WL 2320174, at *11 ("the balance of equities

weighs in plaintiffs' favor"). In evaluating this factor, the Court must "balance the competing claims of injury, which involves considering the effect on each party of the granting or withholding of the requested relief." *Shvartser v. Lekser*, 308 F. Supp. 3d 260, 267 (D.D.C. 2018). Here, the equities in favor of protecting Plaintiffs from COVID-19 and its ensuing harm carry extraordinary heft in comparison with the minimal cost and burden imposed on the jail. *Carranza*, 2020 WL 2320174, at *11. Moreover, "[t]he balance of equities and public interest tilt heavily Plaintiffs' favor when contemplating compliance with the CDC Guidelines" regarding COVID-19. *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 693 (C.D. Cal. 2020).

> As the Central District of California explained in granting a TRO in a similar case:
>
> The balance of the equities tip sharply in favor of the Petitioners. The Petitioners face[] irreparable harm to their constitutional rights and health. Indeed, there is no harm to the Government when a court prevents the Government from engaging in unlawful practices.

Castillo, 2020 WL 1502864, at *1. Here too, other than the relatively minimal administrative burden, there is no identifiable "harm" to Defendant. This burden is far outweighed by what is at stake to Plaintiffs and the public if no TRO is issued.

Even from the Sheriff's perspective, the equities weigh in favor of granting relief. A temporary restraining order and preliminary injunction will not "substantially injure other interested parties." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297. Granting the motion will bring order to the jail's operation: "compliance with CDC guidelines promotes the orderly administration of jails."*Ahlman v. Barnes*, 445 F. Supp. 3d 671, 693 (C.D. Cal. 2020). Any costs incurred through compliance are not only justified, they cannot reasonably be complained about by Defendant Elder given that his office was granted $13.6 million in federal funding under the CARES Act to address COVID-19.

The relief sought will help protect Defendant Elder's staff, their families, and the community at large by reducing COVID-19 infection in the facility. Not only have approximately 1000 inmates become infected, over 100 staff have as well, and one deputy died early in the pandemic. While the inmates are confined to the Jail, the staff comes and goes on a daily basis. Lowering COVID-19 infection rates inside the Jail reduces transmission from inmate to staff, thereby benefitting the staff members and everyone with whom those staff members come into contact. Clearly, preventing infection by implementing compliance with CDC guidelines is to the benefit of all.

D. The public has a strong interest in stopping the spread of COVID-19, both within the El Paso County Jail and the community.

"It is always in the public interest to prevent the violation of a party's constitutional rights." *Awad*, 670 F.3d at 1131; *Carranza*, 2020 WL 2320174, at *11. Because Plaintiffs can demonstrate that their constitutional rights have been violated, granting injunctive relief is in the public interest. That interest alone is sufficient to weigh in favor of injunctive relief.

Here, however, the public has an additional independent and overwhelming interest in preliminary relief that would require Defendant to take action to minimize the spread of COVID-19. Reducing spread of COVID-19 in the jail will reduce spread into the community and the families of staff, as well as freeing up public health resources and hospital beds. As Chief Judge Brimmer concluded in *Carranza*, "minimizing the exposure of inmates with pre-existing vulnerabilities furthers public health, which is a matter of public interest." *Carranza*, 2020 WL 2320174, at *11 (citing *Castillo*, 2020 WL 1502864, at *6 (noting that "[t]he public has a critical interest in preventing the further spread of the coronavirus") and *Banks*, 2020 WL 1914896, at *12 ("No man's health is an island")); *Criswell*, 2020 WL 5235675, at *24 ("preventing a

COVID-19 outbreak in the Jails benefits the public by preventing further spread of the virus in the community and burden on local healthcare facilities.").

E. Defendant Should be Ordered to Comply with CDC and NIH Guidance

The above discussions shows Plaintiffs are entitled to preliminary injunctive relief to immediate stop the harm caused by Defendant Elder's deliberate indifference to the serious risk of COVID-19 infection in the jail. The principal relief requested by Plaintiffs is simple—Plaintiffs seek only to have Defendant Elder comply with the CDC guidance on managing the COVID-19 pandemic in a carceral setting.

Even before the COVID-19 pandemic, courts were relying on published public health protocols to evaluate whether jails were respecting inmate constitutional rights. Published public health protocols do not create constitutional rights, but courts rely on them to inform whether a health risk was well known and how a facility should reasonably respond to a known risk. *See Mata v. Saiz*, 427 F.3d 745, 757-59 (10th Cir. 2005) (held that "[w]hile published requirements for health care do not create constitutional rights, such protocols certainly provide circumstantial evidence that a prison health care [worker] knew of a substantial risk of serious harm."); *Howell v. Evans*, 922 F.2d 712, 719 (11th Cir. 1991) ("contemporary standards and opinions of the medical profession also are highly relevant in determining what constitutes deliberate indifference to medical care."); *Ferguson v. Bd. of Cty. Commissioners*, No. CV 11-1001 WPL/CG, 2013 U.S. Dist. LEXIS 202824, at *54 (D.N.M. Apr. 2, 2013) (relying on CDC guidance that MRSA was a serious risk in a carceral setting).

In *Hernandez v. Cty. of Monterey*, the court relied on CDC guidelines (and defendant's failure to follow that guidance) in granting a preliminary injunction based on a jail's failure to adequately stop the spread of tuberculosis in its facility. 110 F. Supp. 3d 929, 943 (N.D. Cal.

2015). The court stated that "known noncompliance with generally accepted guidelines for inmate health" such as the CDC guidelines related to tuberculosis, "strongly indicates deliberate indifference to a substantial risk of serious harm" and, therefore, "[a]t least since the CDC released its guidelines…. Defendants' policies and practices fell below the constitutional standard of care [because] Defendants have known about the risks of harm but have not changed their practices." *Id*.

The novelty of the current pandemic makes it even more imperative to look to published public health protocols like the CDC guidance. Local officials running jails and prisons across the country cannot reasonably be expected to stay abreast of all of the scientific studies regarding COVID-19 prevention and treatment. Nor can they be expected to understand how to best translate that highly-technical scientific knowledge into best practices for a carceral setting. That's what the CDC is for, and why the CDC publishes updated guidance to jails. Its experts are devoted to applying the developing science to different situations—including jails and prisons—and adjusting its recommended protocols.

Courts across the country have recognized the importance of the CDC guidelines in the current pandemic. *See, e.g.*, *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 694 (C.D. Cal. May 26, 2020) ("mandating compliance with the CDC Guidelines in the Jail serves the public interest") One court—seemingly astounded at the facility's failure to follow basic CDC protocols—put the burden on defendant to explain why they were not complying with CDC COVID-19 guidelines given "the extraordinary threat to life and safety posed by rapid spread of the virus." *Costa v. Bazron*, 464 F. Supp. 3d 132, 142 (D.D.C. 2020) ("a failure to comply with CDC guidance requires some explanation grounded in professional judgment.")

The CDC guidelines are well recognized as the authoritative protocols in how COVID-19 should be managed in a jail setting and, where those standards are being ignored, courts are ordering injunctive relief. *See Carranza*, 2020 WL 2320174, at *12 ("the Court will order defendant to identify those individuals who are, according to the CDC guidelines, at a high risk of serious illness or death from COVID-19"); *Fraihat v. U.S. Immigration & Customs Enforcement*, 445 F. Supp. 3d 709, 744 (C.D. Cal. 2020), order clarified, No. EDCV191546JGBSHKX, 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020) (analyzing whether conditions in the detention center allowed compliance with "mandated" CDC recommendations); *Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 5646138, at *2 (S.D. Tex. Sept. 21, 2020) (ordering interim relief where detention facility was not following CDC guidance on cohorting).

The relief requested by Plaintiffs here does not break new ground. Plaintiffs simply ask the Court to order Defendant Elder to comply with published guidance from the CDC and the NIH, well established protocols for preventing the spread of COVID-19 and for treating the illness, and to comply with related well-established basic public health measures. The El Paso County Criminal Justice Center should not be permitted to continue endangering inmate health and safety by failing to take even these basic measures.

V. THE COURT SHOULD NOT REQUIRE A BOND FOR INDIGENT PLAINTIFFS AND THIS MATTER OF PUBLIC INTEREST

Under Rule 65(c) of the Federal Rules of Civil Procedure, district courts have discretion to determine the amount of the bond accompanying a preliminary injunction, and this includes the authority to set a nominal bond. In this case, the Court should waive bond because Plaintiffs are indigent, the requested interim relief is in the public interest, and the injunction is necessary to vindicate constitutional rights. *See Carranza*, 2020 WL 2320174, at *14 (declining to require a bond where plaintiffs were indigent and compliance with the order would not cause significant

damages to defendant). Indigent plaintiffs "ordinarily should not be required to post a bond under Rule 65(c)." *Bass v. Richardson*, 338 F. Supp. 478, 490 (S.D.N.Y. 1971); *see also* 11A *Fed. Prac. & Proc.* § 2954 (noting that *Bass* "seems correct and has been followed by other courts"); *Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002) ("minimal bond amount should be considered" in public interest case); *Pocklington v. O'Leary*, 1986 WL 5748, at *2 (N.D. Ill. May 6, 1986) ("[B]ecause of [a prisoner's] indigent status, no bond under Rule 65(c) is required."); *Complete Angler, L.L.C. v. City of Clearwater*, 607 F.Supp.2d 1326, 1335 (M.D. Fla. 2009) ("Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.").

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for emergency interim relief should be granted in its entirety.

Dated: December 13, 2020

Respectfully submitted,

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Counsel for Plaintiffs

Weikert et al. v. Elder
Motion for Temporary Restraining Order and Preliminary Injunction
Exhibit List

A	Declaration of Dr. Carlos Franco-Paredes
B	Declaration of Hannah Weikert
C	Declaration of Jennifer Hermanns
D	Declaration of Terrance Lacey
E	Declaration of Sean E. Nelson
F	Declaration of Jean-Joseph LeChiffre
G	Declaration of Gilbert Trujillo
H	Declaration of Patrick Adkins
I	Declaration of James Hunter Gantt
J	Declaration of Kem Kershaw
K	Declaration of Deannie Aleksa
L	Declaration of Austin Williams
M	Declaration of Claudia Dimas
N	Declaration of Jamie Fain
O	Declaration of Bryan Thomas
P	Declaration of Alan Dobbins
Q	Declaration of Iyan Murray
R	UC Health Email
S	Email to Sheriff Elder
T	EPSO Press Release re CARES Act Funds

DECLARATION OF CARLOS FRANCO-PAREDES, M.D., M.P.H.

I, Carlos Franco-Paredes, M.D., M.P.H., declare under penalty of perjury that the following is true and correct to the best of my knowledge:

Qualifications

1. I am an Associate Professor of Medicine at the University of Colorado. I work in the Department of Medicine, Division of Infectious Diseases. I also serve as the Director of the Infectious Diseases Fellowship Program for the University of Colorado, Anschutz Medical Center. As Director, I supervise the training of medical students, internal medicine residents, and infectious disease fellows. Additionally, I teach a course at the University of Colorado, School of Medicine on caring for underserved populations, including immigrants and the incarcerated population/Attached is my curriculum vitae.

2. I received my M.D. from La Salle University School of Medicine, Mexico City, Mexico. I completed my internal medicine residency and infectious disease fellowship at Emory University School of Medicine. I also hold a Masters in Public Health in global health, with a concentration on the dynamics of global infectious disease epidemics and pandemics, from the Rollins School of Public Health, Emory University.

3. From 2006 to 2010, I served as a consultant with the World Health Organization, Geneva, Switzerland, where I participated in the development of a global action plan for the deployment of pandemic influenza vaccine.

4. As an infectious disease clinician, I have twenty years of relevant experience. I have participated in the medical care of individuals detained at the Aurora, Colorado, immigration detention facility. I have performed second-opinion medical evaluations for patients in the custody of the Department of Homeland Security, Immigration and Customs Enforcement (ICE).

Experience with COVID-19

5. I have first-hand experience treating patients with COVID-19. At the University of Colorado, Anschutz Medical Center, I have provided direct patient care to more than 200 patients with COVID-19, both in the medical ward and the intensive care unit. Many of these patients required intensive care management and mechanical ventilator support, and many have died.

6. I have served as an expert in COVID-19 related lawsuits across the country. I have written facility inspection reports that were submitted to various courts, and have testified to provide my expert opinions. In connection with COVID-19 cases, I have conducted the following detention facility inspections:

a.	Weld County Jail, Colorado[1]	April 10, 2020
b.	Oakland County Jail, Michigan	April 23, 2020
c.	Weld County Jail, Colorado	April 24, 2020
d.	Miami-Dade County Metro West, Florida[2]	April 27, 2020
e.	Prince George's County Jail, Maryland[3]	May 6, 2020
f.	Prince George's County Jail, Maryland	May 7, 2020
g.	Juvenile Detention Centers, Louisiana[4]	May 27, 2020
h.	Los Angeles County Jail, Men's Central	June 22, 2020
i.	Los Angeles County Jail, Twin Towers Correctional	June 22, 2020
j.	Los Angeles County Jail, Inmate Reception Center	June 22, 2020
k.	Los Angeles County Jail, Century Regional	June 24, 2020
l.	Los Angeles County Sheriff's Department	June 24, 2020
m.	Los Angeles County Jail, North County Correctional	June 25, 2020
n.	Los Angeles County Jail, Pitchess North	June 25, 2020
o.	Los Angeles County Jail, Pitchess South	June 25, 2020
p.	Cook County Jail, Illinois[5]	July 22, 2020

7. I have written and published on the topics of infectious disease pandemics and epidemics, particularly influenza. I have 223 scientific publications in peer-reviewed journals, 12 of which are recent publications on the impact of COVID-19 on minorities, in correctional facilities, and in immigration detention centers.[6] I have also written a textbook on infectious diseases (2016 Elsevier-Academic Press).

Analysis

COVID-19 Cases and Deaths in the United States

8. The novel coronavirus, SARS-CoV-2, is the causal pathogen that causes COVID-19, an extremely infectious and potentially deadly virus. The United States has the largest number of cases and deaths in the world, with over 15 million cases and

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[1] I provided expert testimony to this Court at a preliminary injunction hearing concerning the Weld County Jail. *See Carranza et al. v. Reams*, No. 20-cv-00977-PAB-SKC.

[2] *See Swain et al. v. Junior et al.*, 1:20-cv-21457-KMW/EGT (S.D. Fla. Apr. 4, 2020).

[3] I was appointed by the Honorable Paula Xinis, District Judge for the United States District Court for the District of Maryland.

[4] *See J.H. et al. v. Edwards et al.*, 3:20-cv-00293-JWG/EWD (M.D. La. May 14, 2020).

[5] *See Mays et al. v. Dart*, 1:20-cv-2134-RWG/MDW (N.D. Ill. Apr. 3, 2020).

[6] https://pubmed.ncbi.nlm.nig.gov/?term=franco-paredes+c&sort=pubdate.

over 292,000 deaths as of early December 2020.[7] There is presently no cure for COVID-19. COVID-19 has created a global health crisis that has led to the adoption and implementation of unprecedented mitigation strategies around the world, including the canceling of public events, closing schools and businesses, and lockdowns.

9. There are at least two safe and highly effective vaccines to protect against infection and severe disease caused by COVID-19. The United States will begin the deployment of these vaccines prioritizing high-risk populations.

10. The catastrophic consequences of the current COVID-19 pandemic are due to two major factors: (a) the transmissibility of the infection and (b) the severity of the disease in the human population.

11. The U.S. Centers for Disease Control and Prevention (CDC) has promulgated guidance on the individuals who are most likely to become severely ill, meaning that they require hospitalization, intensive care, use of a ventilator to help them breathe, and/or heightened risk of death.[8] This higher risk group includes older adults and people with underlying medical conditions (i.e., "medically vulnerable" individuals).[9]

12. People with the following underlying medical conditions are considered at increased risk of severe illness and death should they be infected with SARS-CoV-2:

a. Cancer;
b. Chronic kidney disease;
c. Chronic obstructive pulmonary disease (COPD);
d. Immunocompromised from solid organ transplant;
e. Obesity (with a body mass index (BMI) of 30+);
f. Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies;
g. Sickle cell disease;
h. Type II diabetes mellitus.

13. People with the following underlying medical conditions may be at an increased risk for severe illness from COVID-19:

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[7] https://coronavirus.jhu.edu/map.html.

[8] Coronavirus Disease 2019 (COVID-19), People at Increased Risk, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html.

[9] *See* Coronavirus Disease 2019 (COVID-19), Older Adults, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html; *id.*, People with Certain Medical Conditions, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.

a. Asthma (moderate to severe);
b. Cerebrovascular disease (affecting blood vessels and blood supply to the brain);
c. Cystic fibrosis;
d. Hypertension;
e. Immunocompromised from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or other immune-suppressing medications;
f. Neurologic conditions, such as dementia;
g. Liver disease;
h. Pregnancy;
i. Pulmonary fibrosis (having damaged or scarred lung tissue);
j. Smoking;
k. Thalassemia;
l. Type I diabetes mellitus.

14. The cumulative rate of COVID-19 infection in the United States is 1,925 cases per 100,000 people with an overall case fatality rate of 57 per 100,000.[10]

15. In the United States, the COVID-19-associated hospitalization rate among patients identified through the Coronavirus Disease 2019 (COVID-19)-Associated Hospitalization Surveillance Network (COVID-NET) has been as high as 4.6 per 100,000 population. Hospitalization rates increase with age, with a rate of 0.3 in persons aged 0-4 years, 0.1 in those aged 5-17 years, 2.5 in those aged 18-49 years, 7.4 in those aged 50-64 years, and 13.8 in those aged ≥ 65 years. Rates were highest among persons aged 65 years or older, ranging from 12.2 in those aged 65-74 years to 17.2 in those aged 85 years or older. More than half (54.4%) of hospitalizations occurred among men; COVID-19-associated hospitalization rates were higher among males than females (5.1 versus 4.1 per 100,000 population, respectively).[11]

16. Approximately 90% of hospital admissions due to COVID-19 have occurred among individuals with underlying medical conditions. The most commonly reported underlying medical conditions of patients with COVID-19 were hypertension (49.7%), obesity (48.3%), chronic lung disease (34.6%), diabetes mellitus (28.3%), and cardiovascular disease (27.8%). Among patients aged 18-49 years, obesity was the

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[10] Coronavirus Disease 2019 (COVID-19), CDC COVID Data Tracker, "Compare Trends in COVID-19 Cases and Deaths in States in the US Reported to CDC," Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#compare-trends.

[11] Garg S, Kim L, Whitaker M, et al. Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 — COVID-NET, 14 States, March 1–30, 2020. MMWR Morb Mortal Wkly Rep 2020;69:458–464. DOI: http://dx.doi.org/10.15585/mmwr.mm6915e3.

most prevalent underlying condition, followed by chronic lung disease (primarily asthma) and diabetes mellitus. Among patients aged 50-64 years, obesity was most prevalent, followed by hypertension and diabetes mellitus; and among those aged 65 years or older, hypertension was most prevalent, followed by cardiovascular disease and diabetes mellitus.[12]

17. For people with risk factors, COVID-19 can severely damage lung tissue, which requires an extensive period of rehabilitation, and in some cases, can cause long-term respiratory dysfunction. There is preliminary evidence that persons with COVID-19, who are recovering from a severe version of the disease and who developed extensive pulmonary disease including Acute Respiratory Distress Syndrome (ARDS), may have long-term sequelae similar to other infectious pathogens evolving in a similar pattern including long-term cognitive impairment, psychological morbidities, neuromuscular weakness, pulmonary dysfunction, and reduced quality of life.

18. The full description of the pathogenesis of COVID-19 remains to be completely elucidated. However, there is clinical evidence that, in addition to severe lung injury associated to this viral infection, some persons may also develop myocardial involvement that appears to be the result of either direct viral infection or the immune response to SARS-CoV-2. From the published case reports, myocarditis caused by this viral pathogen is associated with congestive heart failure, cardiac arrhythmias, and death. Similar to other viral myocarditis, most patients may develop long-term myocardial damage. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and permanent heart failure that limits exercise tolerance and the ability to work.

19. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. These complications can manifest at an alarming pace. Among persons infected with SARS-CoV-2 and who develop severe COVID-19, systemic inflammation is associated with adverse outcomes. Evidence has shown that the use of corticosteroids does not provide a benefit; rather, corticosteroids may be more likely to cause harm when administered to persons with ARDS caused by COVID-19.

20. Similar to influenza infection, acute lung injury and ARDS are most likely caused by the respiratory epithelial membrane dysfunction leading to ARDS. The resultant tissue hypoxia is responsible and potential concomitant bacterial sepsis contribute to multi-organ dysfunction and death. If a patient with COVID-19 develops

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[12] Killerby ME, Link-Gelles R, Haight SC, et al. Characteristics Associated with Hospitalization Among Patients with COVID-19 — Metropolitan Atlanta, Georgia, March–April 2020. MMWR Morb Mortal Wkly Rep 2020;69:790–794. DOI: http://dx.doi.org/10.15585/mmwr.mm6925e1.

myocarditis, cardiogenic shock caused by fulminant myocarditis may also contribute to the overall occurrence of multiple organ failure.

21. There is thought to be a correlation between SARS-CoV-2 viral load, the amount of measurable virus in a standard volume of material (usually either blood or plasma), and severity of COVID-19 disease, mortality, and COVID-19-related ARDS. In one study, based on samples collected through nasopharyngeal reverse transcription-polymerase chain reaction (RT-PCR) testing, mean viral load significantly differed between patients who survived COVID-19 versus those who died by the end of the study period.[13] Even controlling for other variables—such as, age, sex, asthma, atrial fibrillation, coronary artery disease, chronic kidney disease, chronic obstructive pulmonary disease, diabetes, heart failure, hypertension, stroke, and race—a significant independent association remained between viral load and mortality; that is, the analysis revealed "a significant difference in survival probability between those with high viral load . . . and those with low viral load[.]"[14] Using data from samples collected through bronchoalveolar lavage performed on COVID-19 patients with COVID-19-related ARDS who required ventilation, another study determined that "alveolar viral load at the onset of ARDS is tightly correlated with subsequent clinical worsening, especially in terms of hypoxemia [the decrease in oxygen pressure in the blood]."[15]

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[13] Elisabet Pujadas et al., *SARS-CoV-2 viral load predicts COVID-19 mortality*, THE LANCET (Aug. 6, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30354-4/fulltext.

[14] Elisabet Pujadas et al., *SARS-CoV-2 viral load predicts COVID-19 mortality*, THE LANCET (Aug. 6, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30354-4/fulltext; *see also* Reed Magleby et al., *Impact of SARS-CoV-2 Viral Load on Risk of Intubation and Mortality Among Hospitalized Patients with Coronavirus Disease 2019*, Clinical Infectious Diseases: An Official Publication of the Infectious Diseases Society of America (June 30, 2020), at 4, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7337625/pdf/ciaa851.pdf ("**Conclusions:** Admission SARS-CoV-2 viral load among hospitalized patients with COVID-19 independently correlates with the risk of intubation and in-hospital mortality. Providing this information to clinicians could potentially be used to guide patient care.").

[15] Mathieu Blot et al., *Alveolar SARS-CoV-2 viral load tightly correlated with severity in COVID-19 ARDS*, Clinical Infectious Diseases (Aug. 8, 2020), at 4, https://doi.org/10.1093/cid/ciaa1172. One study determined that "diagnostic viral load is higher in nonhospitalized patients and has a significant inverse correlation with duration of [COVID-19] symptoms." Kimon V. Argyropoulos et al., *Association of Initial Viral Load in Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Patients with Outcome and Symptoms*, THE AMERICAN JOURNAL OF PATHOLOGY, at 1885 (July 2, 2020), https://ajp.amjpathol.org/article/S0002-9440(20)30328-X/fulltext. The authors further concluded that "viral loads are inversely correlated with disease severity." *Id.* That said,

22. The COVID-19 pandemic continues to cause many cases and deaths in the United States. Of the global burden from COVID-19, a quarter of these cases and 24% of all deaths have occurred in the U.S.[16]

23. The number of COVID-19 cases is unlikely to slow down. There have been at least six documented cases of COVID-19 reinfection.[17] In at least two of the documented reinfection cases, the patients suffered worse disease outcomes at reinfection than at first infection.[18] These reinfection cases demonstrate there is extremely limited knowledge about how long natural immunity against the novel coronavirus lasts and that the immunity acquired by natural infection cannot be relied on to confer herd immunity, as "not only is this strategy lethal for many but also it is not effective."[19] Accordingly, the risk of reinfection does exist, though there continues to be significant unanswered questions about that risk at this time.[20]

24. COVID-19's most common symptoms are fever, cough, and shortness of breath. Serious cases can require invasive measures to manage respiratory function, including the use of highly specialized equipment like ventilators, life support machines

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the study acknowledge that its limitations included "that the analyzed cohort was predominantly composed of nonhospitalized patients and only a small subset of patients exhibited severe COVID-19 infection" and that "viral loads were only obtained from the upper respiratory tract using nasopharyngeal swabs and at a single point in time." *Id*. at 1886. "[A]dditional synchronous and longitudinal sampling from other sources, such as lower respiratory tract and bronchoalveolar lavages (in intubated patients), would have been important comparator to have." *Id*.

16 https://coronavirus.jhu.edu/map.html.

17 Threat Assessment Brief, *Reinfection with SARS-CoV-2: public health response*, European Centre for Disease Prevention and Control (Sept. 21, 2020), at 2-3.

18 Akiko Iwasaki, *What reinfection means for COVID-19*, THE LANCET (Oct. 12, 2020), https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30783-0/fulltext.

19 Akiko Iwasaki, *What reinfection means for COVID-19*, THE LANCET (Oct. 12, 2020), https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30783-0/fulltext.

20 In the documented cases of reinfection, genomic sequencing of the first infection and the second made it possible to determine that reinfection was the likeliest culprit. However, other public health professionals have noted that "[t]he absence of comprehensive genomic sequencing of positive cases in the USA and worldwide [in the instance of first infection] limits the advances in public health surveillance needed to find these cases." Richard L. Tillett et al., *Genomic evidence for reinfection with SARS-CoV-2: a case study*, The Lancet (Oct. 12, 2020), https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30764-7/fulltext.

(extracorporeal membrane oxygenation), and acute kidney dialysis machines (continuous hemofiltration).[21]

25. The coronavirus epidemic has created a high demand for ventilators and resulted in short supply around the world.[22] The pandemic has also led to serious shortages of other medical supplies, such as personal protective equipment and diagnostic testing supplies.[23]

COVID-19 in Correctional Facilities

26. The current outbreaks of the novel coronavirus SARS-CoV-2 inside of correctional facilities across the United States highlight the ease of transmission of COVID-19 inside these facilities. Numerous public health officials have recognized that outbreaks of contagious diseases are more common in correctional settings than in communities at large.[24]

27. Detention and incarceration of any kind requires large groups of people to be confined together in a tight space. To contain the spread of the disease in such a setting, infection prevention protocols must be meticulously followed.

28. The number of private rooms in a typical jail or prison facility is insufficient to comply with the recommended airborne/droplet isolation guidelines. These infection prevention protocols include "social distancing" measures, where individuals maintain a distance of at least six feet from each other, mask wearing, and frequent hand-washing

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[21] Coronavirus Disease 2019 (COVID-19), "Symptoms," Centers for Disease Control, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html.

[22] Kulish et. al, *The U.S. Tried to Build a New Fleet of Ventilators. The Mission Failed.*, N.Y. Times (Mar. 29, 2020), https://www.nytimes.com/2020/03/29/business/coronavirus-us-ventilator-shortage.html.

[23] *See* Andrew Jacobs, et al., *'At War With No Ammo': Doctors Say Shortage of Protective Gear Is Dire*, N.Y. Times (Mar. 19, 2020), https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html; Association for Molecular Pathology, SARS-CoV-2 Testing Survey Results (May 2020), https://www.amp.org/advocacy/sars-cov-2-survey/.

[24] *See* David Reuter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/; Bianca Malcolm, *The Rise of Methicillin-Resistant Staphylococcus aureus in U.S. Correctional Populations*, J. Correctional Health Care (May 13, 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3116074/; Stephanie M. Lee, *Nearly 900 Immigrants Had The Mumps In Detention Centers In The Last Year*, Buzzfeed News (Aug. 29, 2019), https://www.buzzfeednews.com/article/stephaniemlee/mumps-ice-immigrant-detention-cdc.

and other good hygiene practices. These protocols apply to both incarcerated and non-incarcerated individuals. In the carceral setting, these protocols would require, for example, that individuals sleep one person per cell, rather than in shared cells. These measures are necessary to prevent spread of COVID-19 among otherwise healthy people and are imperative for high-risk individuals.

29. Another consideration complicated by the carceral setting is the ability of the novel coronavirus to survive for extended periods of time on materials that are highly prevalent in prisons, such as metals and other non-porous surfaces. Current outbreak protocols require frequent disinfection and decontamination of all surfaces of the facility, which is difficult given the large number of incarcerated individuals, frequent interactions between incarcerated persons and staff, and regularity with which staff move in and out of the facility.

30. The risk for widespread contagion is exacerbated by the fact that staff, contractors, and vendors all pass between communities and correctional facilities, and each group can bring infectious diseases into and back out of those facilities. Additionally, correctional facility populations are constantly turning over, with about 200,000 people nationwide flowing into and out of jails every week.[25] Each entrant potentially carries COVID-19 into the facility's established population. One study using data from the Cook County Jail found that jail cycling is a significant predictor of coronavirus infection, accounting for 55% of the variance in case rates across zip codes in Chicago and 37% in Illinois generally, with case rates much higher in zip codes with higher rates of arrest and released inmates.[26]

31. These factors are made worse by the fact that it is difficult to identify and isolate individuals who are infected, who may suffer from only mild symptoms, or who may be entirely asymptomatic while still carrying and spreading the disease. Indeed, the CDC estimates that compared to outbreaks of influenza where transmission occurs predominately by symptomatic cases, more than 40% of SARS-CoV-2 transmissions occur prior to symptom onset.[27] Transmission by asymptomatic or pre-symptomatic cases in crowded prisons is much higher due to the frequency of exposure among inmates and assessed by the basic reproductive rate of coronavirus infection (R_0).

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[25] Fight Against Coronavirus, The Marshall Project (Mar. 31, 2020), https://www.themarshallproject.org/2020/03/31/why-jails-are-so-important-in-the-fight-against-coronavirus.

[26] Eric Reinhart & Daniel Chen, *Incarceration And Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook County Jail*, 39 Health Aff. 8, at 3, https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2020.00652.

[27] COVID-19 Pandemic Planning Scenarios, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html (last updated May 20, 2020)

32. Further, there are reports that disciplinary segregation or solitary confinement are being used as a disease containment strategy. This is not effective. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement is also an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms, air continues to flow outward from the rooms to the rest of the facility. Incarcerated people may also perceive quarantine as punitive, or as a living arrangement that allows fewer privileges than their regular housing, so incarcerated people may be deterred from self-reporting symptoms to staff. As a result, they may remain in congregate settings while infected, potentially transmitting infections to others.

33. The unique attributes of correctional facilities also make it challenging to adopt and implement mitigation efforts that are necessary to safeguard the communities in which these facilities are situated. Because prisons are enclosed environments—much like cruise ships and nursing homes, both of which have proven susceptible to COVID-19 outbreaks. The social distancing, which has been a hallmark of the U.S.'s COVID-19 mitigation efforts, requires heightened diligence in the carceral setting. Absent intentional intervention, incarcerated people share close living quarters and bunk beds, dining halls, bathrooms, showers, telephones, libraries, and other common areas, each presenting dangerous opportunities for transmission. Spaces within correctional facilities are poorly ventilated, further promoting the spread of the disease. Inmates do not typically have access to sufficient soap and alcohol-based sanitizers to engage in the kind of frequent hand washing recommended throughout the rest of the country.[28] Staff and inmates only sporadically clean or sanitize high-touch surfaces like door handles, light switches, or telephones.

34. The current CDC guidance on "Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" recommends ensuring separate physical locations to isolate (1) individuals with confirmed COVID-19 (individually or cohorted), (2) individuals with suspected COVID-19 (individually, not cohorted), and (3) close contacts of those with confirmed or suspected COVID-19 (ideally individually, though cohorted if necessary).[29] The necessity for cohorting may be

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[28] *See, e.g.*, Timothy Williams, et al., *As Coronavirus Spreads Behind Bars, Should Inmates Get Out?*, N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html (explaining that in some correctional facilities "Even as a visitor . . . if you want to wash your hands, you've got to walk out and go into another building to do it.").

[29] Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention,

minimized, however, through population thinning measures. Given documented studies demonstrating a significant independent statistical relationship between SARS-CoV-2 viral load and disease severity, need for mechanical ventilation intervention, and mortality, cohorting may be a necessary tactic, but should be used sparingly, as it comes with great risk of increasing risk to this already vulnerable population group.

35. Responding to COVID-19 outbreaks in correctional facilities calls for highly trained staff to correctly and quickly institute and enforce isolation and quarantine procedures, and requires training on the appropriate utilization of personal protective equipment. It is essential that nursing and medical staff be trained in infection control prevention practices, implementing triage protocols, and the medical management of suspected, probable, and confirmed cases of coronavirus infection. This same personnel has to be prepared to initiate the management of patients with severe COVID-19 disease.

36. Given the dearth of testing and underreporting of cases, including hospitalizations, these numbers likely dramatically understate the problem. In some areas, jails and prisons have seen infection rates nine times higher than the broader community.[30]

37. As of December 10, 2020, the COVID Prison Project reports 251,720 COVID-19 cases among people incarcerated with 1,630 deaths of incarcerated individuals. In only eight months, COVID-19 has caused more deaths than the total number of prisoners executed in death row in 44 years. In Colorado, more than 5500 cases have been reported among incarcerated individuals with 14 documented deaths. Additionally, more than 1,000 correctional officers have also tested positive[31].

Opinion

38. I have been asked to review the Complaint in this matter and Declarations from Hannah Weikert, Jamie Fain, Alan Dobbins, Austin Williams, Claudia Dimas, Deannie Aleksa, James Hunter Gnatt, Jennifer Hermanns, Kem Jernshaw, and Patrick Adkins. Based on these materials, I have been asked to provide my opinions regarding medically necessary interventions to control the spread of COVID-19 at the El Paso county jail, and to properly manage COVID-19 positive populations at the jail.

39. As an infectious disease clinician with a public health degree in the dynamics of infectious disease epidemics and pandemics, I am concerned about the spread of

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https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Oct. 27, 2020).

[30] Fight Against Coronavirus, The Marshall Project (Mar. 31, 2020), https://www.themarshallproject.org/2020/03/31/why-jails-are-so-important-in-the-fight-against-coronavirus.

[31] COVID Prison Project. https://covidprisonproject.com/data/data-v2/ (accessed: December 7, 2020)

COVID-19 at the El Paso county jail. Likewise, I am concerned about the insufficient medical care of persons who are COVID-19 positive and the ineffective population management response at the El Paso county jail.

40. The outbreak recently reported at the El Paso county jail, which is the worst jail outbreak to date in the entire State of Colorado, is not surprising given the lack of precautions taken by the jail. Three characteristics of the management of this jail stand out as contributors to the crisis at that facility. First, the lack of an effective policy to require the use of masks by all inmates and staff allows the virus to spread rapidly throughout the jail. Second the failure to segregate COVID-19 positive inmates from others leads to easy transmission of the disease. Third, the failure to screen and quarantine persons entering the jail for at least two weeks after arrival allows for outbreaks at the jail to continue.

41. It is my professional opinion that the conditions at the El Paso county jail do not allow for appropriate infection control protocols and will make the current COVID-19 pandemic worse.

42. Based on the Complaint and inmate Declarations, El Paso county jail is not following proper medical protocols for the care and treatment of COVID-19 positive inmates. Not only must such inmates be isolated from other inmates, they must be treated for their COVID-19 symptoms. Failure to treat COVID-19 symptoms leads to unnecessary suffering by patients, as well as complications from the disease to and including death. Allowing the rapid spread of COVID-19 among inmates "to let the disease run its course" has shown to consume financial resources and result in preventable hospitalizations, deaths, and human suffering. Most infected individuals will survive the infection, but ignoring the risks of allowing clusters of transmission of the coronavirus unchecked represents an unfair practice and a major public health failure.

43. It is my professional opinion that the El Paso county jail does not follow proper protocols for the treatment of persons experiencing illness as a result of COVID-19 infection.

44. In my professional opinion, the following measures should be put in place immediately to control the outbreak of COVID-19 at the El Paso county jail, to prevent further outbreaks, and to treat persons experiencing illness as a result of COVID-19 infection:

a. Inmates and staff must be required to wear masks at all times. To allow inmates to wear masks at all times, each inmate must be issued at least two cloth masks, such that when one mask is being washed daily, another mask can be worn. Alternatively, inmates may be issued disposable masks which are replaced at the frequency recommended by the mask manufacturer.

b. COVID-19 positive and suspected COVID-19 positive inmates must be isolated from other inmates as described above, with cohorting used

sparingly for COVID-19 positive inmates, and no cohorting used for suspected COVID-19 positive inmates.

c. Newly admitted inmates must be screened to determine if they are medically vulnerable, and all inmates arriving at the jail should be tested for COVID-19 upon arrival if possible.

d. The jail should engage in regular prevalence testing to screen for COVID-19 outbreaks at the jail.

e. Newly admitted inmates who do not test negative for COVID-19 upon arrival at the jail must be quarantined in a transition unit for at least 14 days prior to being moved to a general population unit in the jail.

f. During the quarantine period for newly admitted inmates, the medically vulnerable newly admitted inmates must be placed in single cells to the maximum extent feasible to prevent exposure from other inmates of the transition unit.

g. After leaving the transition until, medically vulnerable inmates should be housed and kept separate from other inmates to the maximum extent feasible, so that they do not come into contact with COVID-19 positive inmates.

h. Routine cleaning practices for all hard-metal and other non-porous surfaces must be strictly followed, including for toilets, sinks, showers, tables, telephones, and other areas of the jail. Inmates must be afforded access to cleaning supplies to wipe the surfaces down with cleaners or disinfecting wipes sufficient to eliminate the virus.

i. Inmates must be afforded adequate supplies of soap for basic hygiene and hand-washing multiple times per day.

j. Each COVID-19 positive inmate must be evaluated by medical personnel. Symptomatic inmates must have individual treatment plans consistent with medical best practices. Each COVID-positive inmate must be examined daily, with vital signs taken, to determine if their condition is worsening, and if changes are required for the inmate's treatment plan.

k. Symptomatic inmates must be afforded treatment consistent with medical best practices, including access to pain relievers and other needed medication without undue delay.

l. All inmates must be afforded ongoing access to clean drinking water from a fountain or other water faucet that does not require the inmate to drink from sinks used for handwashing. Likewise, inmates require access to both hot and cold water so that they can have proper nutrition by using hot water for food preparation such as for soup packets.

m. All inmates must be provided accurate, up-to-date educational materials and information regarding controlling the spread of COVID-19.

Dated: December 11, 2020

Carlos Franco Paredes, M.D., M.P.H.
Associate Professor of Medicine
Division of Infectious Diseases
Department of Medicine
Division of Infectious Diseases
Program Director, Infectious Disease Fellowship
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Carlos Franco-Paredes, MD, MPH
Curriculum Vitae

Revised: 12/13/2020

PERSONAL INFORMATION

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CURRENT PROFESSIONAL POSITION AND ACTIVITIES:

- Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus and Infectious Diseases (July 2018 - ongoing).
- Fellowship Program Director, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus (March 2019- present).

EDUCATION

1989-1995	M.D. - La Salle University School of Medicine, Mexico City, Mexico
1996-1999	Internship and Residency in Internal Medicine, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA
1999-2002	Fellowship in Infectious Diseases, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA
1999-2002	Fellow in AIDS International Training and Research Program, NIH Fogarty Institute, Rollins School of Public Health, Emory University, Atlanta, GA
1999-2002	Master's Degree in Public Health (M.P.H.) Rollins School of Public Health, Emory University, Atlanta, GA, Global Health Track
2001-2002	Chief Medical Resident, Grady Memorial Hospital, Emory University School of Medicine, Atlanta, GA
2006	Diploma Course in Tropical Medicine, Gorgas. University of Alabama, Birmingham and Universidad Peruana Cayetano Heredia, Lima Peru

CERTIFICATIONS

1999-2020	Diplomat in Internal Medicine American Board of Internal Medicine (Recertification 11/2010-11/2020)
2001-present	Diplomat in Infectious Diseases, American Board of Internal Medicine, Infectious Diseases Subspecialty (Recertification 04/2011-04/2021)
2005-present	Travel Medicine Certification by the International Society of Travel Medicine
2007-present	Tropical Medicine Certification by the American Society of Tropical

Medicine – Diploma in Tropical Medicine and Hygiene - DTMH (Gorgas)

EMPLOYMENT HISTORY:

- 2002 - 2004 - Advisor to the Director of the National Center for Child and Adolescent Health and of the National Immunization Council (NIP), Ministry of Health Mexico; my activities included critical review of current national health plans on vaccination, infectious diseases, soil-transmitted helminthic control programs; meningococcal disease outbreaks in the jail system, an outbreak of imported measles in 2003-2004 and bioterrorism and influenza pandemic preparedness. I represented the NIP at meetings of the Global Health Security Action Group preparation of National preparedness and response plans for Mexico including the national response to SARS-CoV-1 in 2003-2004
- 2005 – 2011- Co-Director Travel Well Clinic, Emory University
  Emory Midtown Hospital
- 2004- 8/2009 -Assistant Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 3/2008-10/2009 Consultant WHO, HQ, Geneva, Influenza Vaccine
- 9/2009- 3/2011 Associate Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 1/2007 – 3/2011 Assistant Professor of Public Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA
- 4/2011 –5/2013 - Associate Professor of Public Health in Global Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA
- 2010 - WHO HQ Consultant for a 4-month-period on the Deployment of H1N1 influenza vaccine in the African Region, Jan to March 2010, Switzerland Geneva, WHO HQ 2010 sponsored by John Snow Inc. USAID, Washington, D.C.
- 2014-2015 - Consultant International Association of Immunization Managers, Regional Meeting of the Middle Eastern and North African Countries and Sub Saharan Africa, held in Durban South Africa, Sept 2014; and as rapporteur of the Inaugural Conference, 3-4 March 2015, Istanbul, Turkey.
- 3/2011- 5/2017 - Phoebe Physician Group –Infectious Diseases Clinician Phoebe Putney Memorial Hospital, Albany, GA.
- 5/2015 - 9/2015 - Consultant Surveillance of Enteric Fever in Asia (Pakistan, Indonesia, Bangladesh, Nepal, India) March 2015-October 2015.
- June 19, 2017-June 31, 2018–Visiting Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver, Anschutz Medical Campus
- June 2004- present - Adjunct Research Professor of Pediatrics de la Direccion de Investigación, Hospital Infantil de México, Federico Gómez, México City, México. Investigador Nacional Nivel II, Sistema Nacional de Investigadores (12/2019); SNI III Sistema Nacional de Investigadores (1/2020-); Investigador Clínico Nivel E,

Sistema Nacional de Hospitales

HONORS AND AWARDS

1995 Top Graduating Student, La Salle School of Medicine, Mexico City, Mexico
1997 Award for Academic Excellence in Internal Medicine, EUSM
1999 Alpha Omega Alpha (AOA) House staff Officer, EUSM
2002 Pillar of Excellence Award. Fulton County Department of Health and Wellness Communicable Disease Prevention Branch, Atlanta GA
2002 Emory University Humanitarian Award for extraordinary service in Leadership Betterment of the Human Condition the Emory University Rollins School of Public Health
2002 Winner of the Essay Contest on the Health of Developing Countries: Causes and Effects in Relation to Economics or Law, sponsored by the Center for International Development at Harvard University and the World Health Organization Commission on Macroeconomics Health with the essay "*Infectious Diseases, Non-zero Sum Thinking and the Developing World"*
2002 *"James W. Alley"* Award for Outstanding Service to Disadvantaged Populations, Rollins School of Public Health of Emory University May 2002. Received during Commencement Ceremony Graduation to obtain the Degree of Masters in Public Health
2006 Golden Apple Award for Excellence in Teaching, Emory University, SOM
2006 Best Conference Award Conference, "*Juha Kokko*" Best Conference Department of Medicine, EUSM
2007 "*Jack Shulman*" Award Infectious Disease fellowship, Excellence in Teaching Award, Division of Infectious Diseases, EUSM
2007 Emerging Threats in Public Health: Pandemic Influenza CD-ROM, APHA's Public Health Education and Health Promotion Section, Annual Public Health Materials Contest award
2009 National Center for Preparedness, Detection, and Control of Infectious Diseases. Honor Award Certificate for an exemplary partnership in clinical and epidemiologic monitoring of illness related to international travel. NCPDCID Recognition Awards Ceremony, April 2009. CDC, Atlanta, GA
2012 The ISTM Awards Committee, directed by Prof. Herbert DuPont, selected the article "Rethinking typhoid fever vaccines" in the Journal of Travel Medicine (Best Review Article)
2012 Best Clinical Teacher. Albany Family Medicine Residency Program
2018 Outstanding Educator-Teaching Award – Infectious Diseases Fellowship, Division of Infectious Diseases, University of Colorado, Anschutz Medical Center, Aurora Colorado
2020 Colorado University School of Medicine Professionalism Award. Office of Faculty Affairs. University of Colorado School of Medicine (Dec 2020).

EDITORSHIP AND EDITORIAL BOARDS

2007-Present Associate/Deputy Editor PLoS Neglected Tropical Disease

Public Library of Science
2020-Present Editorial Board, Tropical Medicine and Infectious Diseases (https://www.mdpi.com/journal/tropicalmed/editors)
2017-2018 Deputy Editor, Annals of Clinical Microbiology and Antimicrobials BMC
2007-2019 Core Faculty International AIDS Society-USA -Travel and Tropical Medicine/HIV/AIDS

UNIVERSITY OF COLORADO COMMITTEES

2019- Division of Infectious Diseases, Executive Committee
2020- Search Committee Director of Diversity, Equity and Inclusion School of Medicine, University of Colorado

INTERNATIONAL COMMITTEES

2018- Member of the Examination Committee of the International Society of Travel Medicine. Developing Examination Questions and Proctoring the Certificate in Traveler's Health Examination
2018- Proctor Certificate of Traveler's Health Examination (CTH) as part of the International Society of Travel Medicine– 12th Asia-Pacific Travel Health Conference, Thailand 21-24 March 2019
2018- Proctor Certificate of Traveler's Health Examination (CTH), Atlanta, GA, September, 2019

PRESENTATIONS AT NATIONAL/INTERNATIONAL MEETINGS

2017- Meeting of the Colombian Society of Infectious Diseases, August 2017: Discussion of Clinical Cases Session, Influenza, MERS-Coronavirus, Leprosy, Enteric Fever
2018 – Cutaneous Mycobacterial Diseases, Universidad Cayetano Heredia, Lima, Peru, Mayo 2018
2018 – Scientific Writing Seminar, ACIN, Pereira, Colombia, August 2-4, 2018
2019 – First International Congress of Tropical Diseases ACINTROP 2019. March 21, 2019, Monteria, Colombia, Topic: Leishmaniasis.
2019 – One Health Symposium of Zoonoses, Pereira Colombia, August 16-17, 2019, Topic: Zoonotic Leprosy.
2019 – Congress Colombian Association of Infectious Diseases (ACIN), Topic: Leprosy in Latin America, Cartagena, Colombia, August 21-24, 2019
2019 – World Society Pediatric Infectious Diseases, Manila Philippines, November 7-9, 2019 – Tropical Medicine Symposium: Diagnosis, Treatment, and Prevention of Leprosy.
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 26, 2019, Oral Transmission of Leprosy Symposium
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 27, 2019, Leprosy Situation in the Americas.
2020- The Sentencing Project. The Public Health and Public Safety Foundations for Broad Prison Depopulation in a Pandemic May 20th Speakers: Carlos Franco-Paredes, MD, Associate Professor of Medicine-Infectious Disease at University of Colorado; Sonja Starr, Henry M. Butzel Professor of Law at the University of Michigan; and Sam Lewis, Executive

Director of the Anti-Recidivism Coalition in California Moderator: Nazgol Ghandnoosh, The Sentencing Project.

2020- Immigration and Medical Experts Address COVID-19 Outbreak at the Aurora Contract Detention Facility. Press Call Thursday, October 29, 2020. Speakers: Nicole Murad, Colorado Executive Committee Chair, American Immigration Lawyers Association (AILA). Liz Jordan, Director, Immigration Detention Accountability Project at the Civil Rights Education and Enforcement Center, Counsel on Fraihat litigation. Laura Lunn, Managing Attorney, Detention Program at the Rocky Mountain Immigrant Advocacy Network (RMIAN). Dr. Carlos Franco-Paredes, MD-MPH, Associate Professor of Medicine, Division of Infection Diseases at the University of Colorado

2020 – Congreso Internacional de Medicina Interna. Presentacion: Vacunacion en Adultos, August 29, 2020.

2020 – Ciclo de Videoconferencias. Hospital Infantil de Mexico, Federico Gomez, Terapias Antivirales and Antiinflamatorias para COVID-19.

2020 - IDWeek- Tropical Medicine Clinical Cases, October 22. Panelist.

2020 – ACINVIR. Congreso de Virologia, Asociacion Colombiana de Infectologia, November 2020.

Arbovirus: Virus del Oeste del Nilo.

2020 - Congreso de Infectologia de CentroAmerica y del Caribe. Topic: Management of Neurocysticercosis, November 20

2020 – Presentation Challenges in the Medical Care of Detained Immigrants at the Aurora Detention Facility, in collaboration with the Denver Health Human Rights Clinic, November 20 – Colorado Healthcare Foundation (CHEF). https://youtu.be/f8plliniK9U

2020- The Crime Report. Justice and the Pandemic Webinar series. Center on Media Crime and Justice at John Jay College. Presentation-Webinar Decarceration due COVID-19 (Dec 2, 2020). https://thecrimereport.org/justice-and-the-pandemic/

PUBLICATIONS

BOOKS:

- **Franco-Paredes C**, Santos-Preciado JI. Neglected Tropical Diseases in Latin America and the Caribbean, *Springer-Verlag,* 2015. ISBN-13: 978-3709114216 ISBN-10: 3709114217.

- **Franco-Paredes C**. Core Concepts in Clinical Infectious Diseases, Academic Press, Elsevier, March 2016. ISBN: 978-0-12-804423-0.

BLOG PUBLICATION:

- **Franco-Paredes C**, Vrolijk A, Ogundipe E. Imprisoned on the COVID-19 Death row. Blog *BMJ Medical Humanities.* https://blogs.bmj.com/medical-humanities/2020/11/02/imprisoned-on-the-covid-19-death-row/

OpEDs:

- The Inside Sources. Ghandnoosh N, **Franco-Paredes C** (09-13-2020). The CDC's role in the urgent health crisis in jails, prisons, and detention centers. https://www.insidesources.com/the-cdcs-role-in-the-urgent-health-crisis-in-jails-prisons-and-detention-centers/.

- Colorado Sun. **Franco-Paredes C**. (03-29-2020). https://coloradosun.com/2020/03/29/colorado-immigrant-detention-coronavirus-geo-opinion/Westword.

- Denver Post. Krsak M, Henao-Martinez AF, **Franco-Paredes C** (05-29-2020). https://www.denverpost.com/2020/05/29/guest-commentary-immunity-passports-coronavirus-discrimination/

- Colorado Politics. **Franco-Paredes C** (07-13-2020) https://www.coloradopolitics.com/opinion/feedback-gardner-gives-daca-a-cold-shoulder/article_db0057ba-c40c-11ea-96f5-abd086b57334.html

RESEARCH ORIGINAL ARTICLES (clinical, basic science, other) in refereed journals:

1. Del Rio C, **Franco-Paredes C**, Duffus W, Barragan M, Hicks G. Routinely Recommending HIV Testing at a Large Urban Urgent-Care Clinic – Atlanta, GA. *MMWR Morbid Mortal Wkly Rep* 2001; 50:538-541.

2. Del Rio C, Barragán M, **Franco-Paredes C**. *Pneumocystis carinii* Pneumonia. *N Engl J Med* 2004; 351:1262-1263.

3. Barragan M, Hicks G, Williams M, **Franco-Paredes C**, Duffus W, Del Rio C. Health Literacy is Associated with HIV Test Acceptance. *J Gen Intern Med* 2005; 20:422-425.

4. Rodriguez-Morales A, Arria M, Rojas-Mirabal J, Borges E, Benitez J, Herrera M, Villalobos C, Maldonado A, Rubio N, **Franco-Paredes C**. Lepidopterism Due to the Exposure of the Moth *Hylesia metabus* in Northeastern Venezuela. *Am J Trop Med Hyg* 2005; 73:991-993.

5. Rodriguez-Morales A, Sánchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. White Blood Cell Counts in *Plasmodium vivax*. *J Infect Dis* 2005; 192:1675-1676.

6. Franco-Paredes C, Nicolls D, Dismukes R, Kozarsky P. Persistent Tropical Infectious Diseases among Sudanese Refugees Living in the US. *Am J Trop Med Hyg* 2005; 73: 1.

7. Osorio-Pinzon J, Moncada L, **Franco-Paredes C.** Role of Ivermectin in the Treatment of Severe Orbital Myiasis Due to *Cochliomyia hominivorax*. *Clin Infect Dis* 2006; 3: e57-9.

8. Rodriguez-Morales A, **Franco-Paredes C**. Impact of *Plasmodium vivax* malaria during Pregnancy in Northeastern Venezuela. *Am J Trop Med Hyg* 2006; 74:273-277.

9. Rodriguez-Morales A, Nestor P, Arria M, **Franco-Paredes C**. Impact of Imported Malaria on the Burden of Malaria in Northeastern Venezuela. *J Travel Med* 2006; 13:15-20.

10. Rodríguez-Morales A, Sánchez E, Vargas M, Piccolo C, Colina R, Arria M, **Franco-Paredes C.** Is anemia in *Plasmodium vivax* More Severe and More Frequent than in *Plasmodium falciparum? Am J Med* 2006; 119:e9-10.

11. Hicks G, Barragan M, **Franco-Paredes C**, Williams MV, del Rio C. Health Literacy is a Predictor of HIV Knowledge. *Fam Med J* 2006; 10:717-723.

12. Cardenas R, Sandoval C, Rodriguez-Morales A, **Franco-Paredes C**. Impact of Climate Variability in the Occurrence of Leishmaniasis in Northeastern Colombia. *Am J Trop Med Hyg* 2006; 75:273-7.

13. Franco-Paredes C, Nicolls D, Dismukes R, Wilson M, Jones D, Workowski K, Kozarsky P. Persistent and Untreated Tropical Infectious Diseases among Sudanese Refugees in the US. *Am J Trop Med Hyg* 2007; 77:633-635.

14. Rodríguez-Morales AJ, Sanchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. Hemoglobin and haematocrit: The Threefold Conversion is also Non Valid for Assessing Anaemia in *Plasmodium vivax* Malaria-endemic Settings. *Malaria J* 2007; 6:166.

15. Franco-Paredes C, Jones D, Rodriguez-Morales AJ, Santos-Preciado JI. Improving the Health of Neglected Populations in Latin America. *BMC Public Health* 2007; 7.

16. Kelly C, Hernández I, **Franco-Paredes C**, Del Rio C. The Clinical and Epidemiologic Characteristics of Foreign-born Latinos with HIV/AIDS at an Urban HIV Clinic. *AIDS Reader* 2007; 17:73-88.

17. Hotez PJ, Bottazzi ME, **Franco-Paredes C**, Ault SK, Roses-Periago M. The Neglected Tropical Diseases of Latin America and the Caribbean: Estimated Disease Burden and Distribution and a Roadmap for Control and Elimination. *PLoS Negl Trop Dis* 2008; 2:e300.

18. Tellez I, Barragan M, Nelson K, Del Rio C, **Franco-Paredes C**. *Pneumocystis jiroveci* (PCP) in the Inner City: A Persistent and Deadly Pathogen. *Am J Med Sci* 2008; 335:192-197.

19. Rodriguez-Morales AJ, Olinda, **Franco-Paredes C**. Cutaneous Leishmaniasis Imported from Colombia to Northcentral Venezuela: Implications for Travel Advice. *Trav Med Infect Dis* 2008; 6(6): 376-9.

20. Jacob J, Kozarsky P, Dismukes R, Bynoe V, Margoles L, Leonard M, Tellez I, **Franco-Paredes C**. Five-Year Experience with Type 1 and Type 2 Reactions in Hansen's Disease at a US Travel Clinic. *Am J Trop Med Hygiene* 2008; 79:452-454.

21. Delgado O, Silva S, Coraspe V, Ribas MA, Rodriguez-Morales AJ, Navarro P, **Franco-Paredes C**. Epidemiology of Cutaneous Leishmaniasis in Children and Adolescents in Venezuela. *Trop Biomed*. 2008; 25(3):178-83.

22. Franco-Paredes C, Lammoglia L, Hernandez I, Santos-Preciado JI. Epidemiology and Outcomes of Bacterial Meningitis in Mexican Children: 10-Years' Experience (1993-2003). *Int J Infect Dis* 2008; 12:380-386.

23. Pedroza A, Huerta GJ, Garcia ML, Rojas A, Lopez I, Peñagos M, **Franco-Paredes C**, Deroche C, Mascareñas C. The Safety and Immunogenicity of Influenza Vaccine in Children with Asthma in Mexico. *Int J Infect Dis* 2009; 13(4): 469-75.

24. Museru O, **Franco-Paredes C**. Epidemiology and Outcomes of Hepatitis B Virus Infection among Refugees Seen at U.S. Travel Medicine Clinic: 2005-2008. *Travel Med Infect Dis* 2009; 7: 171-179.

25. Rodriguez-Morales AJ, Olinda M, **Franco-Paredes C**. Imported Cases of Malaria Admitted to Two Hospitals of Margarita Island, Venezuela: 1998-2005. *Travel Med Infect Dis* 2009: (1): 48-45.

26. Kelley CF, Checkley W, Mannino DM, **Franco-Paredes C**, Del Rio C, Holguin F. Trends in Hospitalizations for AIDS-associated *Pneumocystis jiroveci* Pneumonia in the United States (1986-2005). *Chest* 2009; 136(1): 190-7.

27. Carranza M, Newton O, **Franco-Paredes C**, Villasenor A. Clinical Outcomes of Mexican Children with Febrile Acute Upper Respiratory Infection: No Impact of Antibiotic Therapy. *Int J Infect Dis* 2010; 14(9): e759-63.

28. Museru O, Vargas M, Kinyua M, Alexander KT, **Franco-Paredes C,** Oladele A. Hepatitis B Virus Infection among Refugees Resettled in the U.S.: High Prevalence and Challenges in Access to Health Care. *J Immigrant Minor Health* 2010;

29. Moro P, Thompson B, Santos-Preciado JI, Weniger B, Chen R, **Franco-Paredes C.** Needlestick injuries in Mexico City sanitation workers. *Revista Panamericana de Salud Pública/Pan American Journal of Public Health* 2010; 27 (6): 467-8.

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9. Franco-Paredes C, Santos-Preciado JI. Introduction of Antimicrobial Agents in Poor-Resource Countries: Impact on the Emergence of Resistance. In: Antimicrobial Resistance in Developing Countries. Ed. Byarugaba DK, Sosa A. Springer Science & Business Media, 2010.

10. Hidron A, **Franco-Paredes C**. American Trypanosomiasis. Chagas'Disease. In: Eds: Kozarksy P, Magill A, Shlim D. Yellow Book: Health Information for Travelers 2011-2012. Centers for Disease Control and Prevention, Elsevier Ltd, 2011. ISBN: 978-0-7020-3481-7.

11. Franco-Paredes C, Hochberg N. General Approach to the Returned Traveler. In: Eds: Kozarksy P, Magill A, Shlim D. Yellow Book: Health Information for Travelers 2011-2012, Centers for Disease Control and Prevention, Elsevier Ltd, 2011. ISBN: 978-0-7020-3481-7.

12. Franco-Paredes C. Asymptomatic Screening of the Returned Traveler. In: Eds: Kozarksy P, Magill A, Shlim D. Yellow Book: Health Information for Travelers 2011-2012, Centers for Disease Control and Prevention, Elsevier Ltd, 2009. ISBN: 978-0-7020-3481-7.

13. Hochberg N, **Franco-Paredes C**. Emerging Infections in Mobile Populations. In: Emerging Infections 9. Ed. Scheld WM, Grayson ML, Hughes JM. American Society of Microbiology Press 2010. ISBN. 978-1-55581-525-7.

14. Franco-Paredes C, Chagas Disease (American Trypanosomiasis). In: Farrar J, Hotez P, Junghanss T, Kang G, Lalloo D, White NJ. Manson's Tropical Medicine 23rd Edition, Elsevier, London, U.K., 2014.

15. Franco-Paredes C, Keystone J. Fever in the Returned Traveler**.** In: Empiric, Antimicrobial Therapy and Vaccines (www.antimicrobe.org). Yu VL, et al (Ed). ESun Technologies, Pittsburgh, PA, 2014.

16. Franco-Paredes C. *Mycobacterium leprae* (Leprosy). In: Antimicrobial Therapy and Vaccines (www.antimicrobe.org). Yu VL, et al (Ed). ESun Technologies, Pittsburgh, PA, 2015.

17. Franco-Paredes C, Albrecht H. Anisikasis In: Antimicrobial Therapy and Vaccines (www.antimicrobe.org). Yu VL, et al (Ed). ESun Technologies, Pittsburgh, PA, 2015.

18. Franco-Paredes C. Illness and Death in the Universe. In: Narrative Medicine Anthology. Ed: Tom Janisse. The Permanente Press, Oakland, California, Portland Oregon, 2016. pp. 23-25. ISBN: 978-0-9770463-4-8.

19. Villamil-Gomez W, Reyes-Escalante M, **Franco-Paredes C.** Severe and complicated malaria due to *Plasmodium vivax*. In: Current Topics in Malaria. Ed: Rodriguez-Morales AJ. ISBN 978-953-51-2790-1, Print ISBN 978-953-51-2789-5. InTechOpen 2016.

20. Franco-Paredes C. Mycobacterial Infections of the Central Nervous System. In: The Microbiology of the Central Nervous System Infections. Ed. Kon K, Rai M. Elsevier 2018. ISBN 978-0-12-813806-9.

21. Franco-Paredes C. Leprosy. In: Neglected Tropical Diseases. Drug Discovery and Development. Ed: Swinney D, Pollastri M. Wiley-VCH Verlag GmbH & Co. KGaA, 2019.

22. Franco-Paredes C, Henao-Martinez AJ. Legal Perspectives in Travel Medicine. In: Eds: Kozarksy P, Weinberg M. Yellow Book: Health Information for Travelers 2019-2020, Centers for Disease Control and Prevention, Elsevier Ltd, 2011. ISBN: 978-0-7020-3481-7.

23. Franco-Paredes C. Prevención de la transmisión. In: Guerrero MI, Hernández CA y Rodríguez G Editores La lepra: una enfermedad vigente. Centro Dermatológico Federico Lleras Acosta Bogotá DC, Colombia. Panamericana Formas e Impresos. 2019. p. 309-322.

24. Henao-Martinez AF, **Franco-Paredes C**, Suarez JA. Chagas Disease (American Trypanosomiasis). In: Farrar J, Hotez P, Junghanss T, Kang G, Lalloo D, White NJ. Manson's Tropical Medicine 24rd Edition, Elsevier, London, U.K., In Press.

Published Abstracts in Peer-Reviewed Journals:

1. Kleinschmidt-DeMasters B, Hawkins K, **Franco-Paredes C**. Non-tubercular mycobacterial spinal cord abscesses in an HIV plus male due *M. haemophilum*. J *Neuropathol Experim Neurol* 2018; 77(6): 532.

2. Pate A, **Franco-Paredes C**, Henao-Martinez A. Cryptococcal meningitis: A comparison of clinical features and outcomes by HIV Status. *Open Forum Infect Dis* 2019; Oct 6 (Suppl 2): S629-S630. PMC6809090.

3. Chastain DB, Henao-Martinez AF, **Franco-Paredes C**, Young H. EECVID

FORMAL TEACHING

Medical Student Teaching

2001 - 2002 Clinical Methods, Emory University School of Medicine
2001 - 2002 Clinical Instructor Harvey Cardiology Course, Emory University School of Medicine
2001 - 2002 Problem-Based Learning for Second year Medical Students, EUSM

2005-2011 Clinical Methods Preceptor, ECLH
2006-2008 Medical Spanish - Instructor for M2, EUSM
2006-2007 Directed Study on Social Determinants of Infectious Diseases for M2 students (Lindsay Margolis and Jean Bendik), EUSM
2007-2011 Instructor - Global Health for M2 Students, EUSM
2007-2008 Presentation-Case Discussion – Social Determinants of Diseases – Coordinated by Dr. Bill Eley – Emory School of Medicine New Curriculum.
2018- Small Group: Parasitic Diseases, Microbiology Course for First Year Medical Students, University of Colorado, Anschutz Medical Center.
2019- MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite
2019- Class Global Health and Underserved Populations of the New SOM CU Curriculum. Course Co-Director. Pilot Class (Jan 6-Jan 17, 2020).
2020- MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite

Graduate Programs

2006-2011 Professor - GH511 (Global Health 511) International Infectious Diseases Prevention and Control, Rollins School of Public Health
2009-2011 Professor – GH500 D – Key Issues in Global Health, Career MPH Program
2006-2011 Thesis Advisor to students Global Health Track – Hubert Department of Global Health, Rollins School of Public Health of Emory University
2008-2011 Coordinator International Exchange between Rollins School of Public Health and National Institute of Public Health, Cuernavaca, Mexico – Supported by the Global Health Institute of Emory University
2018-2020 Global Health and Underserved Populations, University of Colorado, School of Medicine

Residency and Fellowship Program:

2004-2011 Resident Report – Noon Conferences Emory Crawford Long Hospital and Grady Memorial Hospital
2004-2011 Didactic Lectures on Parasitic Diseases and Non-tuberculous mycobacterial diseases for Internal Medicine Residents and Infectious Disease Fellows
2005-2008 Coordinator Journal Club Infectious Disease Division
2005-2011 Travel Medicine Elective, Internal Medicine Residents
2005 Grand Rounds – EUH - Department of Medicine: "Travel Medicine"
2006 Grand Rounds – ECLH – Department of Medicine: "Malaria"
2008 Grand Rounds - ECLH – Department of Medicine: "Leprosy"
2008-2011 Journal Club Coordinator, Internal Medicine Residency Program – ECLH
2009 Grand Rounds - EUH – Department of Medicine: "Leprosy a Modern Perspective of an Ancient Disease"
2009 Grand Rounds – Pulmonary and Critical Care Division – Neglected Tropical Diseases of the Respiratory Tract, June 16, 2009

2017 Grand Rounds – Leprosy, University of Colorado, Anschutz Medical Center, Division of Infectious Diseases, December 2017

2017 Grand Rounds – Infections associated with Secondary Antiphospholid Syndrome, University of Colorado, Anschutz Medical Center, Division of Rheumatology,

2018 Didactic Session – Travel Medicine (Pretravel and Postravel) Infectious Diseases Fellowship Anschutz Medical Center, Division of Infectious Diseases

2017- Infectious Diseases Fellows Clinic, University of Colorado, Anschutz Medical Center, IDPG.

2019 Invited Speaker: Travel Medicine, Pretravel/Postravel Care, Physician Assistant Program, September 12, 2019, University of Colorado, Anschutz Medical Center

Other categories:

2000-2002 Physician Assistant Supervision during Fellowship/Junior Faculty, Emory University

2004-2007 Mentoring of four College Students to enter into Medical School (Emory, Southern University, and Dartmouth):
Lindsay Margolis 2004-Emory University
Michael Woodworth 2005 – Emory University
Peter Manyang 2007 – Southern University
Padraic Chisholm 2007 – Southern University/Emory University

2009-2011 Project Leader. Partnership – Emory Global Health Institute – University-wide - Emory Travel Well Clinic and is titled Hansen's disease in the state of Georgia: A Modern Reassessment of an Ancient Disease". http://www.globalhealth.emory.edu/fundingOpportunities/projectideas.php. Students: 5 MPH students (RN/MPH, MD/MPH)

2017- Infectious Diseases Fellowship Program, University of Colorado, Anschutz Medical Center. Teaching activities Inpatient and outpatient (ID Fellows Weekly Clinic)

2019- Infectious Diseases Fellowship Program Director
University of Colorado, Aurora Colorado

Supervisory Teaching:

Ph.D. students directly supervised:
Global Health, Rollins School of Public Health - PhD Task Force Member – 2007-2009
Residency Program:
Emory University: Internal Medicine Residents and Infectious Disease Fellows Supervision – Inpatient Months – 3-4 months per year on Grady Wards. I participated in the presentation and discussion of clinical cases, and discussion of peer-reviewed journal with medical students, residents, and fellows. Overall evaluations: Outstanding Teacher. (Anna Von 2005-2006; Seth Cohen 2008, Susana Castrejon 2007; Lindsay Margoles 2007-2008; Jean Bendik 2006-2008; Meredith Holtz 2007-2008)
University of Colorado, Anschutz Medical Center (since June 2017- present). Case discussion in infectious diseases during clinical rounds inpatient services (ID Gold, ID Blue, ID Orthopedics).

2004-2009 Thesis advisor – MPH Students – Hubert Department of Global Health – Concentration Infectious Diseases: Brenda Thompson 2004; Katrina Hancy 2004; Trina Smith 2006; Melissa Furtado 2007-2008; Oidda Museru 2008-2009; Hema Datwani 2010; Ruth Moro 2010; Talia Quandelacy 2010
2015 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins Schoolf of Public Health, Emory University, Atlanta GA
2017 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins School of Public Health, Emory University, Atlanta GA
2019 - Project Mentorship – Diffuse lepromatous leprosy. Undergraduate Student, University of Colorado, Boulder. Mikali Ogbasselassie. Project was carried out in Collaboration with the Dermatology Center of the Hospital General de Mexico.
Poster presentation by Mikali Ogbasselassie September 22, 2019, UMBC, Baltimore, Maryland.
2020 – Case Conference COVID-19. Nine sessions.
2020 – ECHO Case Conference July 29 – COVID-19 and Primary Care Providers
2020 – DOM Grand Rounds, University of Colorado, Anschutz Medical Center: May 27, 2020. Structural Determinants of COVID-19 in the U.S. Presenters: Shanta Zimmer, Katherine Dickinson, Lilia Cervantes, Carlos Franco-Paredes
https://www.youtube.com/watch?v=FhefH4JKKYI&feature=youtu.be;
https://www.youtube.com/watch?v=FhefH4JKKYI&feature=youtu.be
2020 – DOM Grand Rounds, University of Colorado, Anschutz Medical Center: Sept 30, 2020. The Triumph of Despair: Structural Racism and Health Inequities.
https://www.youtube.com/watch?v=bTYPvPIR8ow&feature=youtu.be.
2020 – UUT School of Medicine – Structural Racism, November 4, 2020.
2020 – VuMEDI VuMedi proposes the title of your talk: COVID-19 Update: How Does the Insufficiency of the CDC Guidance in Jails and Prisons Affect Distribution of Coronavirus? Is Depopulating Facilities the Only Way to Protect the Medically Vulnerable?

Activities during the COVID-19 Pandemic targeting protecting vulnerable groups living in the US including outbreaks of COVID-19 in Jails/Prisons/ICE Detention centers/community reintegration facilities (i.e. hallway houses)

Court-appointed in-person inspections in facilities with outbreaks of COVID-19 in collaboration with civil rights attorneys from ACLU and Civil Right Corps. Goal to improve conditions in jails and prisons and to promote decarcelation:

Jail Inspection Weld County Jail April 10, 2020 (Thomas Carranza et al vs. Steven Reams).
Jail Inspection Weld County Jail April 24, 2020 (Thomas Carranza et al vs. Steven Reams).
Jail Inspection Prince George's County Jail, Maryland, May 6, 2020 (Court Appointed, Federal Judge, Paola Xinis, Maryland)
Jail Inspection Prince George's County Jail, Maryland, May 7, 2020 (Court Appointed, Federal Judge, Paola Xinis, Maryland)
Jail Inspection Oakland County, Jail, Pontiac Michigan April 23, 2020
Jail Inspection LA county jail system, Men Central Jail (MCJ) June 27, 2020
Jail Inspection LA county jail system, Twin Towers (TT) June 27, 2020

Jail Inspection LA county jail system, Inmate Reception Center (IRC) June 27, 2020
Jail Inspection LA county jail system, Centennial Detention Facility, June 29, 2020
Inspection Compton Courthouse (Criminal), June 29, 2020
Jail Inspection LA county jail system, North County Correctional Facility (NCCF) June 30, 2020
Jail Inspection LA county jail system, Pitchess North Facility, June 30, 2020
Jail Inspection LA county jail system, Pitchess South Facility (NCCF) June 30, 2020

Declarations- Affidavits
L.A. County Jail (04-01-2020)
West Metro Detention Center, Florida
Florence, Arizona, Prison, Arizona
Office Juvenile Justice (OJJ) Louisiana (Court hearing with Federal Judge, June 3 and 4).
Minnesota, Department of Corrections
Minnesota, BOP Waseca

Advocacy Letters – Declarations- Court Hearings:

1. Dean Williams – Executive Director of the Colorado Department of Corrections, Governor Jared Polis and correctional leaders. https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Letter-C-Franco-Paredes-MD.pdf
   I have kept in direct communication with Mr. Williams to provide recommendations regarding release of prisoners, testing strategies, and population management at Sterling Prison in Colorado.
2. Letter to CDC. https://www.drugpolicy.org/sites/default/files/cdc-letter-decarceration_0.pdf
3. Letter New Jersey Senator Melendez to Department of Homeland Security https://www.menendez.senate.gov/download/letter-dhs-ice-release-vulnerable-detainees-covid-19
4. The Justice Project, New Orleans, LA. Depopulation of Juvenile Detention Centers in Louisiana
5. Amicus Brief Re: Covid-19 Cook County Jail.
6. Declarations – Amicus Brief/Habeas Corpus on behalf of multiple detainees in ICE Detention Centers in collaboration with the following groups:
   a. Colorado Public Defenders Office
   b. Colorado Federal Public Defenders Office
   c. Southern Poverty Law Center
   d. Rocky Mountain Advocacy Immigration Network
   e. Otay Mesa Detention Center Release Project – Alotro Lado
   f. Civil Rights Clinic, University of Texas School of Law
   g. Transgender Law Center, New York.
   h. Civil Rights Education and Enforcement Center
   i. Heartland Alliance
   j. Resist Law
   k. American Gateways
   l. Colorado People's Alliance

m. Hilltop Public Solutions
n. ACLU Minnesota
    1. Department of Corrections
    2. FDI Waseca, Bureau of Prisons

Opinion Editorials:

Related Articles in Magazines and Newspapers COVID-19

Westword
https://www.westword.com/news/petition-asks-supreme-court-to-help-lower-colorado-jail-population-11680821

Reuters
https://www.reuters.com/article/us-health-coronavirus-usa-detention-insi/as-pandemic-rages-u-s-immigrants-detained-in-areas-with-few-hospitals-idUSKBN21L1E4

Mother Jones
https://www.motherjones.com/politics/2020/03/ice-is-ignoring-recommendations-to-release-immigrant-detainees-to-slow-the-spread-of-coronavirus/

Expansion
https://expansion.mx/mundo/2020/04/06/centros-de-detencion-de-migrantes-en-eu-una-bomba-de-tiempo-ante-la-pandemia.

Mother Jones
https://www.motherjones.com/politics/2020/04/a-doctor-on-ices-response-to-the-pandemic-you-could-call-it-covid-19-torture/

ACLU Colorado
https://aclu-co.org/doingmypartco/
Westword
https://www.westword.com/news/petition-asks-supreme-court-to-help-lower-colorado-jail-population-11680821

Theappeal.org
https://theappeal.org/colorado-supreme-court-fails-to-protect-state-residents-as-coronavirus-grows-exponentially-in-jail/

The Gazette
https://gazette.com/opinion/guest-column-how-covid-19-underscores-the-consequences-of-mass-incarceration/article_d5f389ce-80c1-11ea-a978-9f1fe73dc0a2.html.

The Daily Tribune

https://www.dailytribune.com/news/coronavirus/federal-judge-to-consider-dismissing-lawsuit-more-changes-at-oakland-county-jail-due-to-covid/article_34314ff1-9620-5a90-a546-f2f4c0f92a4f.html

COVID-19 parole informational guide for sponsors
https://pennstatelaw.psu.edu/sites/default/files/IJP_SIFI%20COVID-19%20Pro%20Se%20Parole%20Request%20Information%20Packet%20ENG%20MAR%202020-final%20web.pdf

Letter New Jersey Senator Melendez to Department of Homeland Security
https://www.menendez.senate.gov/download/letter-dhs-ice-release-vulnerable-detainees-covid19

The Washington Post
https://www.washingtonpost.com/local/public-safety/federal-judge-orders-inspection-of-pr-georges-jail-after-inmates-worried-about-coronavirus-sue/2020/05/01/349436fe-8bc1-11ea-9dfd-990f9dcc71fc_story.html

Michigan Radio NPR
https://www.michiganradio.org/post/i-fear-i-may-die-here-inmates-oakland-county-jail-plead-help-lawsuit

The Crime Report
https://thecrimereport.org/2020/04/23/is-dysfunctional-migrant-health-care-fueling-infections/

Witness L.A.
https://witnessla.com/searing-new-law-suit-describes-la-county-jail-conditions-that-are-an-incubator-for-death/

Detroit Free Press
https://www.freep.com/story/news/local/michigan/2020/05/05/wayne-county-jail-coronavirus-lawsuit-medically-vulnerable-inmates/3076656001/

The Washington Post
https://www.washingtonpost.com/local/public-safety/prince-georges-jail-must-plan-to-test-more-inmates-for-covid-19-federal-judge-orders/2020/05/11/b989a420-93b4-11ea-9f5e-56d8239bf9ad_story.html

Denver Post
https://www.denverpost.com/2020/05/15/coronavirus-covid-testing-colorado-jails/

Community Radio for Northern Colorado (KUNC)
https://www.kunc.org/post/colorado-big-prison-and-small-rural-community-share-coronavirus-outbreak#stream/0

The New York Times
https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html

The Sentencing Project
https://twitter.com/SentencingProj/status/1280602751173644290?s=20

Reuters
https://www.reuters.com/article/us-health-coronavirus-immigration-detent/u-s-immigration-officials-spread-coronavirus-with-detainee-transfers-idUSKCN24I1G0

Colorado Newsline
https://coloradonewsline.com/2020/11/25/as-covid-19-tears-through-colorado-prisons-and-jails-testing-protocols-continue-to-lag/

Univisión-Primer Impacto
https://www.univision.com/shows/primer-impacto/queremos-su-ayuda-y-su-apoyo-inmigrantes-en-centro-de-detencion-le-imploran-al-presidente-electo-joe-biden-que-los-libere-video

Refugee Stories and Documentaries:

CNN 2006
https://www.youtube.com/watch?v=XrhmtVtvZ80

If We Knew Their Stories (Refugee health documentary) 2007
https://www.youtube.com/watch?v=UV86iWr7TFw

DECLARATION OF HANNAH WEIKERT

I, Hannah Weikert, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Hannah Weikert and I am currently incarcerated in the El Paso County Jail. I am held pre-trial on identity theft charges. I cannot afford to pay bond to be released.

2. I am 13-weeks pregnant. I have had severe asthma since I was a baby and I have been hospitalized for asthma several times in the past. I have been prescribed a steroid to take daily and nebulizer to use daily for my asthma, and I have an emergency inhaler at home. I have not gotten the steroid, nebulizer, or inhaler while I'm in the jail. I am also a smoker and I am considered obese—my body mass index is somewhere between 38.9 and 41, depending on fluctuations in my weight. Due to my underlying conditions, I am at high risk for a negative outcome from COVID-19.

3. I entered the jail on September 29, 2020. An intake officer took my temperature but did not ask me about whether I was having COVID symptoms and he did not test me for COVID. I was housed in Alpha ward for three days and then put directly into ward E-1.

4. In E-1, I was housed in a bay with ten other inmates, who slept on bunk beds within a few feet of where I slept. I could touch my arms out to the people who sleep in bunks next to mine. The common phones and tables on ward E-1 were cleaned at night but not in between uses. Most deputies did not allow me to clean phones and tables when I asked. There was soap in the bathroom but when we ran out, it would take days for the deputies to refill the soap.

5. People on my ward started coming down with COVID-19 symptoms in October and November. Before November, we had no masks and were prohibited from wearing masks on the ward.

6. In the end of October or beginning of November, the National Guard came into the jail and began testing everyone on my ward for COVID-19. Anyone who tested positive stopped being tested. I was tested nine times because I got a few negative test results. Seven out of the ten people on my bay tested positive. At this point, I was sleeping within a few feet of COVID-positive inmates. Even though I had tested negative and even though I am high risk because I am pregnant and have asthma, the jail still did nothing to move me away from the people who tested positive.

7. At some point in November, I started getting fevers. Every time my fever got high, I broke out in hives all over my body. I also had bad headaches and I lost my sense of taste and smell. I had difficulty breathing and would wheeze for air. On one of my COVID-19 tests, I tested positive. A deputy told me at some point in mid-November that I had tested positive. There were both positive and negative inmates on E-1.

8. I only got a mask after the National Guard starting testing everyone. This was way too late. I got one cloth mask. I wash my mask myself to ensure that it's clean.

9. On November 24, 2020, I was moved from ward E1 to ward F4, a ward where most everyone has COVID-19. On ward F4, I am housed within a few feet of others; common areas and surfaces are not regularly cleaned and sometimes not even cleaned at night; and we continue to have soap shortages in the bathroom. When I was moved, I was nervous that I would be re-exposed to COVID-19.

10. I have not been seen by a doctor and nobody has taken my oxygen levels. The deputies come around to our bunk beds to take our temperature, usually once at night and once in the morning when their shifts change. That's how I confirmed that I had fever numerous times.

11. I have kited for Benadryl for my hives, an inhaler for my wheezing, and Tylenol for my fevers. I never got Bendaryl, and when I complained about my hives, the jail staff told me to shower. I also never got an inhaler. I did get Tylenol on days when I had a high fever, but it often took the jail staff hours to provide me with it and I would suffer with severe chills and sweats until I received it.

12. Before the COVID-19 outbreak in the jail, I received extra food because I am pregnant. Once the COVID-19 outbreak began, however, I stopped getting extra food. While I was experiencing COVID symptoms, I was getting cold cereal and sandwiches that were not filling. These were the same meals that everyone else was getting. The jail never resumed providing me with extra food and I am concerned that I am not being fed enough during my pregnancy.

13. On Saturday, November 28, 2020, a woman was brought into F4 who had not been there before. A deputy told me and the other inmates that she had COVID-19 and had come from the hospital. This woman collapsed the same day she arrived, and after some inmates put her into her assigned bed, which was right near mine, she began moaning and screaming and seemed unable to breathe. Me and other inmates kept trying to get this woman medical help. I sat her up in bed to try to help her. We asked the deputies and nurses for help and we filed grievances. Nobody came to help her. That night, the deputies finally called an ambulance. I watched the paramedics put an oxygen tube down her throat. I think I saw her die, and I later

learned from a deputy that she did die. I am really upset by this experience and the lack of medical attention provided at this jail.

14. Between December 1st and 3rd, I started feeling really sick again. I am now wheezing and coughing once again. I have hives again all over my body and my eyes are swollen. I kited medical on Wednesday, December 2, asking for Tylenol, an inhaler, and Benadryl. I got a response, scheduling me for a sick call.

15. On December 3 at around 8 PM, when the deputy took my temperature, I learned that I had a high fever of 102.9. I asked the deputy to help me repeatedly. A nurse came to give me Tylenol the next morning at 4:30 AM, over eight hours after I got the high fever.

16. On December 4, I woke up freezing every few hours during the night. I slept through the deputies taking my temperature and do not know whether I still had the high fever. I did not get any Tylenol. I fear that my symptoms are still getting worse and that I will continue to have high fever and not get any medication or basic monitoring.

17. On December 8, I saw a nurse who said that I might have strep throat. I kited that day, asking for another COVID test, because I think I could still be having COVID symptoms.

18. New people are still being brought onto the ward and some of them told me that they had not been quarantined before being brought into the ward. The jail has not separated people who are negative for the virus from those who are positive and the new inmates come right onto the same bays with people who are experiencing symptoms. The jail continues to move people between pods. I remain concerned that new inmates will continually expose me to COVID-19 and perhaps to higher viral loads. I am also concerned that the jail is exposing new inmates to COVID-19, since many of us who are already in the ward still have it.

19. I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Hannah Weikert via a video visit on December 9, 2020 and that she certified that the information contained in this declaration was true and correct to the best of her knowledge. I am unable to meet in-person with Ms. Weikert as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF JENNIFER HERMANNS

I, Jennifer Hermanns, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Jennifer Hermanns and I am currently incarcerated in the El Paso County Jail. I am 41-years-old. I have moderate asthma and have been hospitalized in the past as a result. I am prescribed inhalers, which I have not gotten in the jail. I also have a condition called chronic granulomatous disease (CGD), which it makes it difficult for my body to fight infections. I also have breast cancer and am a smoker. Due to these underlying conditions, I am at high risk for a negative outcome from COVID-19.

2. I entered the jail on September 17, 2020. I knew I was negative for COVID-19 when I entered the jail because I had just recently had knee surgery and I got a COVID-19 test before I got that surgery.

3. The jail staff took the mask I had with me when I was arrested and didn't give me a new mask. The intake staff took my temperature and asked if I had COVID symptoms. I did not have fever or symptoms. They didn't test me for COVID before putting me onto a ward.

4. I was put into the Alpha ward for a day and a half when I arrived, and then moved to directly to ward E-3. I was housed there in a bay with five bunk beds, and ten people who slept within a few feet of me. There was no social distancing on the ward – when sleeping, using the common areas, and using the bathrooms, we were very close to one another.

5. I did not receive a mask from the jail to wear on the ward. I got a mask to wear when I was transported to court or when I was moving around the jail to do my laundry job, but when I returned to my ward, the deputies took my mask away.

6. I started feeling sick on around October 25, 2020. That day, I woke up achy and with a headache, which I still have to this day. I also then began coughing, had chest congestion, lost my sense of taste and smell, and had a runny nose.

7. Around the same time, my ward, E-3, was put on lockdown. This meant that we needed to stay in our bays for 23 hours a day with only one hour out. I felt really bad for the people in my bay. I was really close to them for almost all hours of the day and I thought I was inevitably going to give whatever sickness I had to them.

8. I tested positive for COVID-19 after getting tested by the National Guard on November 1, 2020. My symptoms were getting really bad in early November, but nobody monitored me or asked me about my symptoms. The most the deputies did was that around November 8, they starting taking my temperature once at night and once in the morning when they changed shifts.

9. I kited asking for medicine and for my oxygen levels to be monitored because I am asthmatic. I got cough syrup in response, but only for a few days. I got no other medication. The jail responded to my kite regarding checking my oxygen levels and said that staff would check my vital signs for five days. The nurse checked my vital signs for two days and then stopped. The jail staff never checked my oxygen levels after that.

10. On November 3, I was moved to ward E-2. On around November 7, everyone in ward E-2 with me was moved to F-4. The jail staff said that they needed to fix the cameras in E-2 and that's why they were moving us. We were extremely sick with COVID when we were moved.

11. I was issued one mask by the guards. I wash my mask myself to ensure that it's clean and to ensure that I have a mask at all times that I need it. Staff on my ward usually wear their masks, but they sometimes pull their masks down when talking to us.

12. The jail continues to mix people who are negative and positive for COVID. Some inmates who are being brought into my ward have told me that they came from intake without being quarantined. The jail continues to move people between wards.

13. I am still experiencing body aches, headaches, coughing fits, and I still do not fully have my sense of smell and taste back. I am wheezing at night, and the people in my bay told me I am keeping them up at night by wheezing. I fear that my symptoms are getting worse, and that with no basic monitoring, I could get really sick again.

14. On November 28, 2020, a woman who was very sick was brought into my ward in a wheelchair and she died here. She was struggling to breathe and was crying and screaming for help on the day that she arrived. A deputy told us that she had COVID-19 and had come from the hospital. Me and other inmates kept trying to get this woman medical help and asked a deputy to get her to the medical unit. Nobody helped her. The deputy told us that she ended up passing away.

15. I am concerned that if I continue to suffer COVID-19 symptoms and become in dire need of medical attention like that woman did, I won't get any medical help in here.

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

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Jennifer Hermanns via a video visit on December 9, 2020 and that she certified that the information contained in this declaration was true and correct to the best of her knowledge. I am unable to meet in-person with Ms. Hermanns as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF TERRANCE LACEY

I, Terrance Lacey, declare the following based on my personal knowledge. I am submitting this declaration in support of a class action lawsuit on behalf of inmates in the El Paso County Jail.

1. My name is Terrance Lacey and I am currently incarcerated in the El Paso County Jail. I am 59-years-old. I have chronic obstructive pulmonary disease (COPD), lung cancer, asthma and a history of pulmonary embolism, which it makes it difficult for my lungs to fight off infection. My blood pressure is chronically low due to my pulmonary comorbidities. I contracted COVID-19 while in the jail and am still suffering symptoms from the virus and its effects on my lungs.

2. I turned myself into the jail on September 23, 2020 and am awaiting extradition to Kentucky. I did not test positive for COVID-19 until November 10, 2020. Despite being at such high risk of contracting or even dying from COVID-19 due to my extremely weak lungs, the jail took no steps to protect me from the virus.

3. I was put into general population without any quarantine period when I arrived at the jail. I have been forced to live in close quarters with inmates who have tested positive for the virus and are symptomatic. I was moved from unit to unit almost every week and was sleeping with a different bunkmate every time I moved. In each unit, I was housed in a bay with five bunk beds, and ten people who slept within six feet of me.

4. The hygiene conditions in our bays are dismal. I have moved between many units since I arrived and in one of them there were at least 90 inmates to only two working toilets. The bathrooms are not cleaned and are covered in mildew and dirt. Deputies also regularly turn off access to clean drinking water from the fountains in the bays as punishment and we are forced to

drink out of the bathroom sink where many inmates are spitting, coughing, or blowing their noses into the sink.

5. I started to feel severely sick in mid-October. I was feeling symptoms of COVID-19 including nausea, migraines, and a fluctuating fever and my condition worsened every week. I felt a constant banging in my chest and described my pain level to medical staff at a level 10. I cannot speak without wheezing.

6. I asked for a mask multiple times and was only given a mask when I went to court. Even then, I only received the mask for the transport period and had to throw the mask away when I returned to my housing unit. I was prohibited from wearing a mask when I entered the court room or came back to the jail. I did not receive a mask for regular use from the jail until October 31, 2020, the day before the National Guard came to test the entire facility for COVID-19.

7. Despite the fact that I was tested for COVID-19 when the National Guard came on November 1, 2020, I was not told my test results until I submitted a kite on November 24, 2020 asking why COVID-19 positive inmates were not being segregated from negative inmates. I received a response on November 25, 2020 stating I had tested positive on November 10, 2020. I was one of the only people who had to affirmatively ask for my test results despite being extremely high risk.

8. Despite having symptoms that were getting really bad the week of October 19, 2020 and informing deputies and medical staff, nobody monitored me or asked me about my symptoms. I told deputies that the banging in my chest was a pain level 10 and I couldn't get out of bed due to the pain. On October 25, 2020, I fainted, fell backwards, and cut the back of my head open while I was standing up waiting in line at the nurse's cart for one of my inhaler

treatments. I most likely fainted due to the interaction of the COVID-19 virus and my comorbid conditions which resulted in low oxygen levels. I did not receive any medical monitoring or vital checking before or after this incident.

9. After the National Guard did testing on November 1, 2020 and the outbreak was confirmed, the jail was still not separating COVID-19 positive inmates from negative inmates. They were not even separating symptomatic inmates from negative inmates. On November 14, 2020, during a visit to the nurse's cart for my inhaler treatments, the nurse told me the Jail's plan was to "let COVID-19 run its course like anything else." This caused me severe anxiety and distress.

10. I kited on November 24, 2020 asking why the jail did not segregate positive inmates from negative inmates and was told that "medical is not in charge of inmate movement from unit to unit." There are still new people coming into my bay every single day without any quarantine period.

11. I filed an emergency grievance on November 26th, asking the jail to follow CDC recommendations and the medical standard of care and stating that the jail has failed to protect me from COVID-19 and failed to deal properly with inmates who contracted COVID-19. The jail responded but I was unable to file an appeal to their response because I was locked out of the kiosk.

12. I kited on November 29, 2020 explaining that my chest was exploding with pain and asking why no one was monitoring my blood pressure and was told that my request for monitoring blood pressure was approved and that I would have my blood pressure checked every morning for 2 weeks. I did not know I needed to ask for my vital signs to be monitored. Even worse, medical told me I should "make sure" to drink 8-10 glasses of water per day to regulate

my blood pressure. The only water available to inmates in my housing unit is from contaminated, shared bathroom sinks. I am currently housed in unit G3 and just last week, out the 80 people in the unit, only 6 inmates were wearing masks. Masks are still not required.

13. I am still experiencing severe chest pain, body aches, headaches, coughing fits, and I still cannot breathe or speak without wheezing. I have a history of pulmonary embolism and my symptoms are getting worse. Since I contracted COVID-19 and it has further weakened my already compromised system, I fear that with no basic monitoring, I could get really sick again. I also fear that since my pulmonary system has been weakened by the virus, if I suffer another pulmonary embolism, I may not survive this time.

14. I affirm under penalty of perjury that the foregoing is true to the best of my knowledge.

I, Asma Kadri Keeler, certify that I reviewed the information contained in this declaration with Terrance Lacey via a video visit on December 9, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Lacey as a result of the COVID-19 pandemic. *See Fenty v. Penzone,* No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton,* No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Asma Kadri Keeler
Asma Kadri Keeler, Esq.
ACLU of Colorado

DECLARATION OF SEAN EDWARD NELSON

I, Sean Edward Nelson, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Sean Edward Nelson and I am incarcerated in the El Paso County Jail, awaiting trial in my criminal case. I am 38 years old and I have advanced cell lung cancer, blood clots in my lungs, and congestive heart failure. Due to my underlying conditions, I am at high risk for a negative outcome from contracting COVID-19.

2. I was extradited to the jail from Oklahoma on November 6, 2020. While in Oklahoma custody, I was in isolation and had no reason to believe I was exposed to COVID-19. When I arrived at the jail on November 6, 2020, I believe I was COVID-19 negative.

3. Within a week after I arrived at the jail, I began having severe headaches, bowel movement issues, severe coughing episodes, along with a fever and chills. I was also extremely tired and had trouble breathing. It felt like someone was constantly sitting on my chest. I was told I could have cough syrup but had to make a specific request for it. I was tested for the coronavirus on November 13, 2020.

4. It took almost two weeks before I received the results of my COVID-19 test. I submitted a kite on November 15, 2020 asking for the results of my test. The jail responded to that kite by saying I could not receive my test results until I left the jail and I was not found on any "list" that showed a positive result. Then, the jail sent another kite on November 24, 2020 stating that I was "found" on the positive list and I had indeed tested positive for COVID-19.

5. I am currently housed in ward G-4 but have been moved frequently since I arrived and even after I tested positive for COVID-19. The wards I have been housed in have an

upstairs and downstairs and they are open and have no doors. Each ward has eight bays: four on the top floor and four on the bottom floor. Each bay contains five bunk beds and eight to ten people sleep in each bay. I am only a few feet away from the people who sleep in my bay. Social distancing is impossible. When we are not locked down, I stay away from the day room and in my bunk as much as possible to try and maintain distance, especially when eating. There are currently almost 80 people in my ward.

6. The sanitary conditions in my unit are dismal. The ward's common phones and tables are cleaned at the end of the night, but not throughout the day, and only by inmates. The bathrooms are cleaned at the end of the night and only by inmates. If people do not feel like cleaning, they won't and the bathrooms often go weeks without being cleaned. The showers have black mold falling off the ceiling and the soap dispensers often do not work. I fear that the sanitary conditions in the bathrooms expose us to transfer of COVID-19 and other viruses.

7. I did not receive a mask when I went through intake at the jail. I received one mask almost a week after I had entered the jail. I still only have one mask and the jail does not wash the mask. Deputies in other wards where I was housed previously told me that guards would pick up our masks in the evening for cleaning and return a clean mask in the morning. Since arriving at G4, I have not had a deputy or other jail staff offer to come to pick up my mask at night for cleaning in over 2 weeks. I can only wash my mask with hand soap in the bathroom, but the bathrooms frequently run out of soap or the dispensers do not work. After I wash my one mask by myself, I am unable to wear it until it dries. I am left without a mask for hours at a time—I have no choice.

8. Because mask wearing is not enforced and social distancing is nearly impossible, I try to stay in my bunk as much as I can during my bay's designated out time so I am not around other inmates. There is still no requirement that inmates or staff properly wear their masks.

9. Jail staff still regularly conduct "shake downs" where they require all 80 inmates in our ward to congregate into a room that is less than 15 feet by 12 feet, while deputies search through out bunks for contraband. Inmates are not required to wear masks while we wait in this room and social distancing is impossible.

10. Regardless of testing positive for COVID-19 and having advanced cell lung cancer and other underlying medical conditions, no one is monitoring my health. I have to go to the nurse cart every day and ask for someone to take my blood pressure. Deputies sometimes take inmate temperatures at their shift change but no other vital signs are checked.

11. When the COVID-19 outbreak started in the jail, the jail also stopped serving hot meals. We got cold food and sandwiches three times a day, and it was barely enough food. We are still only receiving three cold meals a day. Additionally, our access to clean drinking water from the fountains in the bays and day rooms is inconsistent and we are only able to drink water out of the unsanitary bathroom sinks.

12. The jail continues to mix people who are negative and positive for COVID-19. People from the street are brought into my ward without being quarantined. The jail continues to move people between wards. There are at least 1-5 new people coming into G4 every single day. Just last week, a new person came into G4 and told us he was tested for COVID-19 but not given his results nor was he isolated for any period before being sent to G4.

13. I am scared that I will die in here without any protection. Every day I feel like I am fighting for my life.

14. I affirm under penalty of perjury that the foregoing is true to the best of my knowledge.

I, Asma Kadri Keeler, certify that I reviewed the information contained in this declaration with Sean Nelson via a video visit on December 9, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Nelson as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Asma Kadri Keeler
Asma Kadri Keeler, Esq.
ACLU of Colorado

DECLARATION OF JEAN-JOSEPH LE CHIFFRE

I, Jean-Joseph Le Chiffre, declare the following based on my personal knowledge:

1. My name is Jean-Joseph Le Chiffre, and I have been detained pretrial in the jail since August 28, 2020. As I start to write, I know my greatest difficulty will be to convince you that what is told here is not a glimpse into Dante's Inferno, but the realities of COVID-19 in the El Paso County Jail.

2. After booking, I was placed in a holding cell with five other maskless men who had been arrested that same morning. I recall looking out of the holding cell window, at the Deputies and staff enjoying the safety of their personal protective gear, and then seeing my maskless reflection staring back at me.

3. Shortly thereafter, I was interviewed by a staff member regarding possible COVID-19 exposures. I pointed to the filthy holding cell, and advised her that it might very well have been my most risky exposure. I then had my temperature taken . . . normal, and was cleared for my next destination. Before I was moved along, I reminded her that some people with COVID do not present with a temperature, and that asymptomatic carriers could still spread the virus. She said nothing.

4. I was then issued one stained pillowcase, one thin greyish sheet, and a thread-bare cotton blanket covered in strangers' hair. I was issued a thin blue mask for walking through the hallways, but I had to discard it when I got to the housing ward.

5. I was deposited in "Bravo," also known as the "Fish Tank." This "Fish Tank" is used to observe new pretrial detainees in order to determine if any behavioral issues exist that would require segregation. The cell itself was tragic, with a putrid green-brown scum coating the

toilet and sink. I was told that inmates are solely responsible for cleaning their cells, and given the short-term nature of "Fish Tank" observation, the prior inmates hadn't bothered. My cellmate was writhing on the lower bunk, sweating, and groaning. Assuming that he had COVID-19, I banged on the door and pleaded for help. After what seemed like an eternity, the guard came over to me. I asked for a mask for my own protection. I was not given the courtesy of a response. I was left with no alternative but to crawl onto the top bunk, wrap my head in the sheet, pull my blanket over any exposed part of my body, and try not to breathe too deeply.

6. I would soon learn that inmates' use of masks was limited entirely to hallway transport and court transport. The jail required that inmates deposit masks in the garbage before entering a housing unit. The deputies threatened disciplinary measures against inmates who refused to throw their masks away.

7. Eighteen hours later, my cellmate was removed, and I was unlocked for a short time. After cleaning the cell's messy toilet, I went to the shower because I felt like the virus was crawling all over my skin. The shower . . . no amount of boiling water could ever clean those surfaces, but it was my only choice. After that, I stepped into my filthy jumpsuit (we are given one to last 7-12 days). When I got back, I had a new cellmate who had just been booked.

8. Later that day, I was told to pack up my meager belongings because I was going to "Charlie." Having never been in jail before, I naively thought "Charlie" was on the medical staff, and that I would finally receive a COVID test. What I did not appreciate is that "Charlie" is not a doctor; it is just another ward. I was given another thin blue mask and escorted through the hallways, with my dirty sheet, blanket, and pillowcase wrapped up in a sorry bundle.

9. "Charlie" houses approximately 100 inmates, locked down for 22 hours, with a meager 2 hours out in the open day room. Social distancing is not encouraged; fights are

commonplace. Upon entry, I was forced to throw my mask away . . . for "security reasons." No masks allowed, no hand sanitizer, and no social distancing. The ward smelled like a chicken coop, raw sewage, and 200 unwashed feet.

10. Around day three, I was moved once again to another ward, "Alpha 3," and was given a thin blue mask again for my walk through the hallways. I couldn't understand the logic behind all of this movement, unless the jail was involved in a "herd immunity" experiment and needed to increase the COVID-19 exposure throughout the entire facility.

11. In this ward I had yet another new cellmate. Worried about possible exposure, I fashioned a make-shift mask out of a t-shirt. I was told that the use of a mask in the ward would give me a ticket to "the Hole": confinement, usually solitary, with 23 hours locked down and 1 hour out. In retrospect, that might not be so bad. At least I could practice social distancing.

12. On my first day in this new ward, I saw that the jail had put up three posters from El Paso County discussing COVID-19. The first poster discussed the basic structure of the virus and how it works inside the body. The second poster discussed symptoms of an infection. The third poster discussed C.D.C. recommendations for prevention, or so the title suggested. But it was incomplete; the bottom two thirds had been cut off. I supposed it would have discussed social distancing, wearing a mask, washing and sanitizing hands, etc. Regardless, in these conditions it was impossible for us to comply with C.D.C. recommendations.

13. When my cellmate was removed to the Hole for discipline, I met cellmate number five. He had been arrested and booked 24 hours earlier. But soon he was transferred somewhere else, too. During my pretrial detention, I've had nine different cellmates.

14. Regarding the facility itself, the jail is filthy. Utterly filthy. For one example of many, on nearly a daily basis, a toilet overflows into a cell, and the slope of the floor drains it out

into the open day room, where inmates exercise, use the phones, have video visits, eat, and socialize (without distancing). Worse yet, occasionally one toilet will back up and sewage will then bubble up from neighboring cells, flooding those cells as well, and creating a reservoir of raw sewage in the day room. While some are let out when this happens, others of us are kept locked up in our sewage-swamped cells. A few inmates are dispatched with buckets and mops—but no soap or disinfectant--to clean up the tide. Most of the sewage is spread into a fine film across the floor, where the water eventually evaporates but a fine dusty residue remains. I worry about the virus spreading through the filth.

15. Finally, on Nov. 1, 2020, after the El Paso County Jail could no longer cover up the growing number of COVID-19 cases, in came the National Guard to test all around.

16. Since the National Guard tested us, I have been tested seven more times. I presume I have tested negative each time, because people who test positive aren't retested. They put stickers on people's doors to distinguish the ones who are already known to have the virus from the ones who haven't yet tested positive. Still, I can't trust that the jail will ever tell me if I am positive for COVID. They have refused to give me copies of my medical records or even communicate to me my results. The most I have ever been told was by a sergeant, who merely said, "no news is good news."

17. Around November 4th, a few days after I was tested by the National Guard, I got very sick. My diabetic and overweight cellmate got sick first, with difficulty breathing. We were on lockdown together for 21 hours a day in a 6 foot by 11 foot cell, with no masks. I had a fever of 101.1, and for about three days, I had a splitting headache and my body felt like my tendons and muscles were ripping apart. My roommate didn't get tested again for the virus, so his results must have turned up positive the first time. But they tested me about four more times while I was

living with him. They kept us in the same cell for about two weeks even though, presumably, I was testing negative and he was already positive. After that, I was transferred again, this time back to Charlie.

18. The jail finally issued each of us a single, ill-fitting cloth mask a little under a week after the National Guard came through. The ear loops are so big I had to find an alternative way to fasten the mask behind my head to keep it on. I need to clean my mask myself in my sink, which means I can't use it while I'm cleaning it or until it has dried. Even though we now each have a mask, the majority of inmates do not wear them, and no one enforces the use of masks in the open day rooms. I also see staff failing to wear their masks or pulling their masks down to talk. And the deputies continue not to encourage social distancing in the facility.

19. In very early November, an inmate in the cell next to mine was disciplined for refusing to submit to a COVID test. His punishment was being sent to the Hole, where he was on lockdown for several days with an inmate who was positive. He told me about it through our wall when he got back.

20. There is still no meaningful segregation of positive and negative inmates. Four days ago, I got a new cellmate who had only been off the streets for 2 days. I am in a "pool" of 25 inmates who go out into the common area at the same time, and less than a handful of us have still not tested positive for the virus. I hear some of the others coughing and complaining of headaches.

21. Even though there is a "segregation pool" that is not supposed to interact with other inmates, an inmate from that pool used to deliver breakfast to the rest of our cells in the morning at 5:30 AM. He would enter my cell and handle my food tray, most of the time without gloves on. The "segregation pool" inmates are out from 2 to 3 PM when the rest of us are in our

cells, but they use all the same things—phones, exercise equipment, etc.—that the rest of us use, with no sanitation in between. Plus, there are plenty of positive inmates on the ward who are not in the "segregation pool" at all.

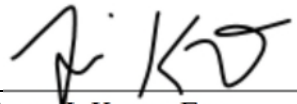
22. I am negative for the coronavirus, and I want to remain negative. I am 55 years old, I have high blood pressure, and I have type 2 diabetes—my latest A1C level was 7.8% or so. I know that my age and health put me at high risk of getting severely ill or even dying from COVID-19. But the jail refuses to house vulnerable people like me in an area that is COVID-19 free. I am scared to death.

23. The fear, loathing, and despair in jail are palpable, with two attempted suicides occurring on November 14, 2020. Many of us feel that death by COVID-19 is a likelihood.

24. In March, 2020, Colorado abolished the death penalty. The El Paso County jail apparently did not get that message.

25. I affirm under penalty of perjury that the foregoing is true, to the best of my knowledge.

I, Anna I. Kurtz, certify that I reviewed the information contained in this declaration with Jean-Joseph Le Chiffre via a video visit on December 11, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Le Chiffre because of the COVID-19 pandemic. *See Fenty v. Penzone,* No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton,* No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).



Anna I. Kurtz, Esq.
American Civil Liberties Union of Colorado

DECLARATION OF GILBERT TRUJILLO

I, Gilbert Trujillo, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Gilbert Trujillo and I am currently incarcerated in the El Paso County Jail on a parole hold. I am 29-years-old and have Hepatitis C. I am scared that I will get COVID-19 in this jail.

2. I entered the jail on November 26, 2020. I knew I was negative for COVID-19 when I entered the jail because I had just recently gotten tested before I arrived. I got tested because my mom, who I lived with, was exposed to someone who tested positive. Thankfully, me and my mom were both negative.

3. At intake, the jail staff took my temperature and asked if I had any COVID symptoms. I did not have fever or symptoms. They also tested me for COVID. They did a rapid test, and then another test. I asked the guard about the rapid test and he said I tested negative. I never found out what the second test said. I got one cloth mask at intake.

4. From intake, I was put in ward F-2. In ward F-2, I lived in a bay with ten other inmates, who were in very close proximity to me. There were five bunk beds in the bay. I was within a few feet from others when I slept and when we were in lockdown. I was also in close proximity to other people when in the day room, using the phones, and using the bathrooms.

5. I was nervous about the COVID outbreak at the jail and spoke to my bay-mates about it. They were nervous about it too. One of my bay-mates pointed out to me people on the ward who he said had tested positive for COVID, so I tried to stay away from those people and turn my head from them when they were talking to me. I shared common areas and a common

bathroom with approximately 70 people on my ward, so it was not always possible for me to avoid these people.

6. On Saturday, November 28, I was moved to ward D-2. Nobody told me why I was being moved. In D-2, I lived in a cell with someone who told me he had tested positive for COVID. He said that he had felt feverish, had stomach aches, and had lost his sense of taste and smell before I got to the cell. He was sleeping a lot when I was in the cell with him; I think he was still recovering. I was on lockdown in D-2 and therefore I had to be right next to my COVID-positive cellie all day long (except for the one hour when I was allowed out). I was really upset that I was being housed with someone who had tested positive. I would sit in my bed with my sheets over my face to try to protect myself from getting the virus. I also put in a grievance about being housed with someone who tested positive.

7. I was so nervous about living with a COVID-positive person that I told the deputies I was suicidal. On Tuesday, December 1, I was moved to the bottom floor of A-3, where the suicidal inmates are housed. I shared a cell with someone who said he was negative for COVID. No masks are allowed on this floor.

8. An inmate who I knew from ward D-2 was living on the top floor of A-3 when I was put on the bottom floor of the ward. During his recreation time, he was allowed to come to the open area on the bottom floor of A-3. One day, while he was out of his cell and my floor was on lockdown, he came to the window of my cell and told me that that he was housed in the top floor of A-3 because he had tested positive for COVID. He told me that everyone on the top floor of A-3 had COVID. This made me really nervous. Even though the top and bottom floors of A-3 were let out of our cells at different times, nobody wiped anything down after people from the top floor used the common tables, phones, and showers on the unit. The common

tables, phones, and showers were dirty and unsanitary, and I was nervous because people with COVID were using these items. I asked the deputies for a rag and cleaning supplies to wipe down the tables, phones, and showers, but the deputies refused to provide any cleaning supplies to me.

9. On Wednesday, December 2, I was moved to ward C-2. I was put in a cell with a person who said he had tested positive for COVID and who kept sniffling. I told the deputy I was feeling suicidal again and asked to be moved back to A-3. I was moved back after a few hours to A-3.

10. On Friday, December 4, I was moved back to ward F-2, where I had been housed initially. I am currently living in ward F-2. In ward F-2, I continue to remain within a few feet of my bay-mates at night and when in lockdown. There is no social distancing on the ward.

11. On Sunday, December 6, a new person was moved into my bay. In the middle of the night, he was vomiting and a deputy brought him a trash can to his bed so that he could vomit into it. On Monday, December 7, he was vomiting all morning. He didn't seem like he was coming off of drugs like other people who I've seen on the ward – he seemed to have flu-like symptoms and I thought he probably had COVID. He slept in the bunkbed next to mine and was a few feet away from me when we slept. At one point when I was supposed to be eating on my bunk bed due to lockdown, he was throwing up right next to me. This person was moved out of the bay that same day and I don't know where he went.

12. Also, around the same time, on either December 6 or 7, a person who came straight from intake and was put on F-2 with us was coughing and hacking all over the place. He was not in my bay, but he was in my ward, and I was near him when we were not on lockdown

and when allowed to use the common areas. I think he also might have had COVID. He was moved out of the ward a day or two after he arrived.

13. Even though these people have been moved out, I fear that it might be too late. Since they were already having symptoms in close proximity to me, I could have been exposed to the virus. I am scared that this will keep happening since COVID-19 is spreading so quickly in the jail.

14. I was issued one cloth mask by the guards. The strings on my mask broke on December 8 or 9, 2020, so I asked a deputy for a new mask. The deputy said he could not give me a new one because there are not enough masks for everyone to have a second mask. I had to improvise a jerry-rigged repair so that my mask stays on. One time, when I went to medical, I was given a blue hospital mask for when I was transported there, but when I got back to the ward, the deputy took that mask away. I asked to keep it but the deputy said no.

15. I try to always wear my mask for protection, but almost no inmates wear their masks on ward F-2. Some jail staff tell inmates to wear their masks if they are not wearing them, but other deputies don't say anything at all. Staff members have different masks than we do and their masks provide much better protection than ours do. Still, some jail staff take their masks off to talk to inmates. The deputies don't come around to collect our masks and wash them. I wash my mask myself to ensure that it's clean and to ensure that I have a mask at all times that I need it.

16. The National Guard has tested me for COVID-19 three times since I've been in general housing. The last time I was tested for COVID was on December 11, 2020. The National Guard only tests some people on ward F-2, but not others. They are testing about half of the people on the ward. It's my understanding that they are only testing people who are

negative. It worries me that only half of the ward is getting tested because this means that the other half of the ward likely already had a positive test result and I am living in close proximity to COVID-positive people. Also, some people refuse to get tested and there are no repercussions for those people. I haven't ever been told of my test results, but I assume that I am negative because I continue to get tested.

17. I am on the cleaning team for my ward, and I am in charge of scrubbing the bathrooms at night. The bathrooms can get really dirty since all of us use the same bathrooms. I keep asking for a new mophead, since I've been using the same one for the past week, but I have not gotten one. I hope I'm not just spreading more germs around.

18. I fear that I will get COVID-19 because of the jail's improper precautions. There are people in my ward in their seventies, and I'm really scared for them too.

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

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Gilbert Trujillo via a video visit on December 11, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Trujillo as a result of the COVID-19 pandemic. *See Fenty v. Penzone,* No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton,* No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF PATRICK ADKINS

I, Patrick Adkins, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Patrick Adkins and I have been incarcerated in the El Paso County Jail since May 2019. I am waiting to be transferred to the DOC.

2. I am 64 years old. I am obese and have a body mass index of 33; I have heart failure; and I have sleep breathing issues. I use an oxygen machine at night as a result. Due to my underlying conditions, I am at high risk for a negative outcome from COVID-19.

3. I am housed in ward E-4 of the El Paso County Jail, the only ward (beside the medical unit) with electrical outlets for people like me, who have breathing machines. Because this is the only housing unit where people with breathing machines can reside aside from the medical unit, the jail knew that me and others on my unit had underlying medical conditions that put us at higher risk if we were exposed to COVID-19. Nevertheless, I feel as though the jail failed to protect us.

4. The COVID-19 pandemic began while I was in the El Paso County Jail, and prior to the outbreak in the jail, I was nervous about a potential outbreak due to the jail's policies. For example, since the COVID-19 pandemic began, new inmates have been brought directly onto our ward from the street or after only a few days (usually 2-4 days) of isolation. New inmates have been assigned bunk beds right next to mine, and I have been within a few feet of these new inmates when at the communal table of the ward, when talking on the phones, or when using the bathroom or shower. The jail's practice of bringing in new inmates from the street made me

nervous prior to the outbreak because I was scared that the new inmates would bring COVID-19 into the ward and expose me, and I had no means of protecting myself.

5. Moreover, I was nervous because not only did the jail not provide us with masks when the pandemic began, but masks were *prohibited* on the ward. We were given masks when we were being transported to court or to the medical unit, but as soon as we got back to the ward, the deputies took our masks away. When me and other inmates asked the deputies if we could keep our masks, the deputies told us we could not have masks on the ward, with no explanation.

6. I did everything I could to prevent myself and other inmates from getting COVID. I tried to clean the communal phones, tables, kiosks, visiting booths, and door knobs four times a day every day, starting in March. These were frequently touched surfaces so I wanted to play my part in ensuring my safety and the safety of others. There were times, however, when deputies would not allow me to use the cleaning supplies kept behind their desks.

7. On April 1, 2020, I learned that a deputy from the El Paso County Jail died from COVID-19. Nobody told us about it – I found out from the news.

8. I filed a grievance on April 3, 2020 about the practice of the jail placing inmates from the street onto ward E-4 without requiring those inmates to quarantine. I told the jail that this was dangerous especially because many people on my unit, including myself, are at high risk for a negative COVID-19 outcome. I filed another grievance along these same lines on August 9, 2020. I got responses to my April and August grievances saying that the jail was following recommendations from the Health Department and in the August response, the response stated that the jail would "proceed as we have [been]." I filed an appeal to my August grievance, asking for the Health Department recommendations that the jail was supposedly relying on and stating that CDC recommendations are that people quarantine for 14 days, and that this was

necessary "particularly as masks are prohibited in the wards." I got a response to this appeal saying that inmates get a "COVID screening" when they enter the jail and don't go into the housing if they present symptoms, have been tested and are awaiting results, or if they say they have been exposed. The jail said they would "continue to house inmates based on housing plans that have been put in place." This response was inadequate because as I told the jail in my grievances, many people with COVID-19 are asymptomatic and still contagious, and it is not enough to take peoples' temperatures and ask a couple of questions before housing them with us.

9. The jail really messed up. They continued to bring in new inmates into our ward without quarantining them. Just as I feared, people on my ward started getting sick in late September.

10. I started feeling very sick in mid-October. I had chills and night sweats; I had chest pain; and I was coughing and had a runny and bloody nose. I also lost my sense of smell. I had a bad headache that lasted for about ten days. I was extremely weak. I could not stand up for more than five minutes a time. When I stood up, I felt like I was going to pass out, and I needed to lay back down.

11. The jail only started providing us with masks to wear on the ward on October 27, after the COVID-19 outbreak began on my ward. It was too little, too late.

12. I was tested for COVID-19 at the end of October but the jail did not provide me with my results. I was told I needed to put in a kite to find out my results. But I was so weak that I could not even get up to file a kite. On November 5, I finally had enough energy to get up and file a kite to ask if I was positive. In response, I learned that I was. I learned from other inmates that virtually everybody on my ward was positive as well.

13. On November 6, 2020, I submitted a grievance asking to be examined and treated for COVID-19. I wrote in my grievance that due to my age, heart failure, and sleep breathing issues, I was at high risk, yet the jail had not examined or treated me. The jail responded six days after I filed my grievance, saying "if you have symptoms, you must kite medical to be seen." I appealed the grievance that same day, saying I was at high risk and that medical should examine me and determine what treatment I need. As of December 9, 2020, I have not gotten a response to this appeal.

14. I was not monitored, examined, or treated for my COVID-19 symptoms until after I submitted a kite and saw a nurse on November 26, who gave me an antibiotic for a nasal infection.

15. Before the COVID outbreak, a nurse checked my vital signs every day because I was on the "DOC vital signs" list – a list of people who are going to be transferred to the DOC. The nurse would check my oxygen levels, take my heart rate, and take my temperature. A week or so after the outbreak on our ward started, the nurses stopped taking my oxygen and heart rate and stopped doing so for the other inmates on the DOC vital signs list. For about ten to fourteen days, nobody took my oxygen levels or heart rate. At some point, deputies started taking our temperatures twice a day.

16. On November 13, the deputies moved all of the inmates out of my ward so that the jail could fix the cameras on the ward. I went without my oxygen machine for eight days while housed in a ward with no electrical outlets. At this point, I was still having some difficulty breathing and nasal issues. Eight days later, I was moved back into ward E-4.

17. My lungs are still sore, my chest still hurts and burns, my sense of smell is intermittent, and my thinking is muddled. I was never tested for COVID-19 again. I fear that

my symptoms could get worse, and that with no basic monitoring or treatment at the jail, I could get really sick.

18. Me and the other inmates on my wards were given one mask by the guards. I wash my own mask to ensure that my mask is clean and that it only has my germs on it. Some deputies are still not enforcing the rule that people must wear masks and over the half of the people in my ward don't wear their masks.

19. People from the street are still brought into my ward without quarantining. One person was put on my bay on December 6, and he told me that he first entered the jail on December 4, so he could not have quarantined. The jail continues to move people between wards. There is no enforcement of social distancing at all, even though the jail is intermingling people on the ward with new inmates and people who have been in different wards.

20. I fear new inmates will re- expose me to COVID-19 and perhaps to higher viral loads. I fear for my health and safety because I am already high risk and my body has been significantly weakened by getting COVID-19 once already.

21. I declare under penalty of perjury that the foregoing is true, to the best of my knowledge.

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Patrick Adkins via a video visit on December 9, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Adkins as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF JAMES HUNTER GANTT

I, James Hunter Gantt, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is James Hunter Gantt and I am incarcerated in the El Paso County Jail, awaiting trial on drug charges. I am 27 years-old and I have asthma and Hepatitis C. I almost died from pneumonia three years ago and I've had bronchitis multiple times. Due to my underlying conditions, I am at high risk for a negative outcome from COVID-19.

2. I am housed in ward G-3. The ward has an upstairs and downstairs and it is open and has no doors. The ward has nine bays: five on the top floor and four on the bottom floor. Each bay contains four or five bunk beds and eight to ten people sleep in each bay. I am only a few feet away from the people who sleep in my bay. When on lockdown, I eat within a few feet of the others on my bay. The ward's common phones and tables are cleaned at the end of the night, but not throughout the day. The bathrooms are cleaned at the end of the night by inmates, but never in between. There are only six bathroom stalls, which all 75 of us on my ward share. I worry that the common areas and bathrooms are not clean.

3. Prior to the COVID-19 outbreak on my ward, I never got any instructions from jail staff on how to stay safe from the virus. Nobody ever asked me about my underlying medical conditions that put me at high risk.

4. Prior to the outbreak, I tried to make a mask out of a sheet and other inmates tried to make masks out of underwear, but the deputies told us we were not allowed to cover our faces and the improvised masks were contraband.

5. In the first week of November, I began coughing severely, had fever, chills, delusions, and no appetite. I was also extremely tired and had trouble breathing. I could barely

walk because I was so sick. The National Guard tested me for COVID-19 on November 2 and I got a positive test result on November 4. I learned from the other inmates on my ward that almost everyone else had COVID as well. I am still having some trouble breathing and chest pains.

6. When I told a nurse that I didn't feel well, the nurse started laughing. When I told a deputy that my chest was burning, the deputy told me to "stop being a pussy."

7. I've been talking to my mom and telling her what's going on. She told me she called a jail deputy and he informed her that I could walk up to the medical cart and get medicine there. But when I tried to go up to the medical cart, I wasn't allowed any medicine.

8. I submitted a kite for medication and to be seen by a doctor, but it takes at least five days to get an answer to a kite. I did not even get an answer within five days. After the five day period, I was told I would be seen by a nurse but I did not see her for a few more days after that. My symptoms were really bad and I was hoping to get medical attention sooner.

9. After I submitted my kite and after my mom called the jail many times, I finally saw a nurse. The nurse told me that my oxygen saturation levels were very low. But all the nurse did for me was give me Tylenol and cough syrup. Nobody ever monitored my symptoms or checked my oxygen saturation levels after the nurse visit.

10. Many other inmates are not as lucky as I am because their moms are not calling the jail. Many inmates have not gotten any medication at all; most have not seen a nurse; and I don't know a single inmate who has seen a doctor.

11. My mom told me that she spoke to Chief Deputy Brad Shannon, and that he told her that jail staff have full protective gear, inmates were being segregated based on whether they

were positive and negative, and that the inmates' temperatures were being taken twice a day. But none of this was true when Deputy Shannon said it, and most of it still isn't true.

12. First of all, jail staff does not have adequate PPE and some jail staff did not even know about the outbreak until the inmates told them about it.

13. Second, positive and negative inmates are being housed together. When I tested positive on November 4, for example, six people out of 75 people on my ward tested negative. These people were not moved out of the ward until November 12, 2020, over a week after the large majority of people got positive test results on the ward.

14. Additionally, during the first week of November, when a large majority of people on the ward had COVID, people were coming off of the street who did not test positive for COVID yet and were placed directly into ward G3. One young 21-year-old kid was brought onto my ward on either November 8 or 9, 2020 and another person was brought into my ward on November 12. These new inmates told me that jail staff asked them questions at intake on whether they'd been having symptoms or were exposed to COVID before coming to jail, and even though they answered no and had no temperature, they were still brought onto our ward. These people were tested a few days after being placed into our ward and they tested positive. When I asked a deputy why the jail continued to move in negative people into the unit, the deputy told me "we are doing the best we can with housing" and "not to worry about it."

15. Third, jail staff did not start taking temperatures of inmates until Monday, November 9 or Tuesday, November 10, even though Deputy Shannon told my mom they were taking our temperatures earlier than that.

16. I did not get a mask until after the National Guard tested us. I was only given one cloth mask. The deputies at first collected our masks at night and washed them all together.

When they washed the masks, I had no other mask to wear. The jail staff returned the masks to us in the morning. I am now handwashing my mask to ensure I am able to fully clean it and to ensure that I have it at all times that I need it. The deputies do not require inmates to wear masks, and many people are not wearing them. I still wear my mask always. Some staff members do not wear their masks to cover their noses, and some pull down their masks often below their mouths when talking to us.

17. After I got COVID-19, my jumpsuit, which I wear every day, did not get washed for three weeks.

18. When the COVID outbreak started in the jail, the jail also stopped serving hot meals. We got cold food and sandwiches three times a day, and it was barely enough food.

19. My mom called various media outlets and reported on what I told her. On November 6, 2020, a sergeant threatened to send me to an isolated area of the jail called the "old side" because my mom was calling the media and ratting out the jail.

20. The jail continues to mix people who are negative and positive for COVID. People from the street are brought into my ward without being quarantined. I have been asking these new inmates if they've been quarantined before coming onto the ward. They tell me they have not been quarantined. One inmate told me he was arrested the day before he was moved into our ward.

21. I affirm under penalty of perjury that the foregoing is true to the best of my knowledge.

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with James Hunter Gantt via a video visit on December 9, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Gantt as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF KEM KERSHAW

I, Kem Kershaw, declare the following based on my personal knowledge:

1. My name is Kem Kershaw and I am a Vietnam-era veteran currently incarcerated in the El Paso County Jail ("CJC"). I am being held on a $10,000 bond I cannot afford. I am 64 years old and I suffer from chronic obstructive pulmonary disease (COPD), advanced prostate cancer, Hepatitis-C, a herniated disc, and other back problems. I have had inner cavity cardiac surgery. I contracted COVID-19 while in the jail. I know that my age and medical conditions make me particularly at risk from this virus.

2. I have been held at CJC on and off since August of 2020 and have been held on my current bond since November 15, 2020. When I entered the jail this latest time, the jail tested me for COVID-19, but they put me in a holding cell with six other people while we waited on our test results. They took me to a cell with one other person overnight, but the next day, even after testing negative, they brought me to a pod with 70-80 other inmates. Most of those people had tested positive, but I was forced to be around them.

3. The jail has done nothing to prevent people from catching COVID. It is impossible to social distance. We sleep in bunk beds in bays of 10 people. The bays are different sizes, but they average 10 by 24 feet. This means that we are often within feet of each other, and the farthest apart we sleep is about 4 feet. In the day room, the eating tables are about 2 to 4 feet apart, and people sit shoulder to shoulder at tables.

4. I did not test positive for COVID-19 until November 20th. Despite being medically vulnerable, I was forced to live in close quarters with inmates who had tested positive and were

symptomatic. In every pod that I have been placed, anywhere from 70-90% of the other inmates have had COVID. It seemed to me that they were trying to kill me.

5. We did not have masks that we could wear in our pods until November. We have to hand-wash these masks ourselves with bars of soap. There is still no requirement to wear masks—it seems to me that nine out of ten people do not wear their masks. Because social distancing is impossible, I was so scared of catching COVID-19 that since finally getting a mask I have slept with my mask on every night.

6. There is no regimented sanitation at all. The facilities are not sterilized between use. The tables are cleaned once a day by inmates, not by anyone professional, and not between every use. The kiosks and phones are not cleaned between use. There is mold on the floors of the showers. The 70-80 people in my pod share two toilets and one urinal, and we share communal toilet paper rolls. The sinks don't always have hot water.

7. I am particularly troubled by the inability for indigent people like myself to get access to medical care in this facility. The jail has not provided anyone in my pod with basic treatment. Those who test positive are not treated any differently from those who test negative. For weeks after testing positive, I didn't know my results. They don't talk to us. They refuse to give us answers. Once you test positive, they stop talking to you.

8. I am experiencing symptoms, including loss of my sense of taste and smell, difficulty breathing, and painful headaches. I was never evaluated for my symptoms.

9. I filed several grievances regarding the conditions described in this affidavit, but I didn't get any treatment for more than two weeks after testing positive. I do not feel like the jail staff have any regard for our health. I am scared every day. I worry that I could catch the virus again and get even worse symptoms. It could kill me.

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

I, Rachel Z. Geiman, certify that I reviewed the information contained in this declaration with Kem Kershaw via a video visit on December 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Kershaw as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Rachel Z. Geiman
Rachel Z. Geiman, Esq.
Maxted Law LLC

DECLARATION OF DEANNIE ALEKSA

I, Deannie Aleksa, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Deannie Aleksa and I am currently incarcerated in the El Paso County Jail. I am 54-years-old. I have COPD and a heart condition that put me at high risk for a negative outcome from COVID-19.

2. When I was first booked in jail on September 19, 2020, I first spent one night in the A ward and then was moved ward E-3. I was housed in E-3 for 30-45 days.

3. I began feeling sick at the end of October when I was still living in ward E-3. I was achy and had a migraine; I was weak and could barely walk the stairs in my ward; my chest hurt and I felt dehydrated. One morning, when I woke up, I was really dizzy and I blacked out. I woke up a few minutes later, but was still extremely dizzy. My bay-mates went over to the deputy to ask for help. A deputy put me in a wheelchair and brought me down to the medical unit. A nurse told me that I had a urinary tract infection and gave me antibiotics.

4. On October 31 at night, I was moved to ward E-2. There were about 80 people on this ward when I got there. I got tested by the National Guard the next day, November 1. I tested positive for COVID-19 around November 3 and realized it was not a urinary tract infection that was making me so sick.

5. The jail staff announced that almost everyone on my ward tested positive for COVID when I did. Only 23 people out of 85 on the ward tested negative on November 3. A few days later, those who had tested negative were tested again and only 11 out of the 23 were negative. Then, a few days later, only 9 people out of the 11 tested negative. No steps were ever

taken to prevent those who were negative from getting the virus. Those who were negative continued to sleep within six feet of inmates who had COVID.

6. On around November 7, 2020, when most of the unit was sick with COVID, everyone from E-2 was moved to F-4 because the jail said that they needed to fix the cameras in E-2.

7. When I kited for medication to treat my COVID-19 symptoms, I got Tylenol. Nobody monitored my health, asked me about my symptoms, or took my oxygen levels until December 8, after I had filed numerous kites and grievances.

8. I got one cloth mask for the first time on November 4, 2020 after the National Guard came in to test us. The deputies told us that they would collect our masks at night, wash them, and give them back to us, but they never came around to collect the masks. On December 8, the deputies came around to collect and wash our masks for the first time. I had been washing my mask in the sink before this.

9. The jail continues to mix people who are negative and positive for COVID. The jail continues to move people between wards. People from the street are brought into my ward without being quarantined, usually three times a week. Someone came onto the ward on Thursday, November 19th. Ten to twelve inmates came into the ward on November 24th. Someone new came into my bay on December 9, 2020. I ask new inmates whether they have been quarantined before they come onto the ward, and they tell me that they just got arrested and they have not been quarantined. I fear that these inmates will bring in COVID-19 to the ward again or expose me to higher viral loads. I also worry that they will be exposed to COVID-19 from someone who is already on the ward.

10. I still have aches, pains, and headaches. I am very weak and it's hard for me to get up the stairs. I have still not been seen by a doctor. I fear that my symptoms are getting worse and I am not getting basic monitoring or medical attention.

11. On November 28, 2020, a woman who, according to the deputies had COVID, was brought into my ward in a wheelchair and died here. She was moaning for help and nobody helped her. The deputy told us that she ended up passing away. I am afraid that deputies will ignore me, like they did to her, if my symptoms keep getting worse.

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

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Deannie Aleksa via a video visit on December 9, 2020 and that she certified that the information contained in this declaration was true and correct to the best of her knowledge. I am unable to meet in-person with Ms. Aleksa as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF AUSTIN WILLIAMS, JR.

I, Austin Williams, Jr., declare the following based on my personal knowledge:

1. My name is Austin Williams, Jr., and I have been in the custody of the El Paso County jail since September 18th. I have been housed in the Delta 1 ward since I got here. I was previously serving an older sentence through ComCor, a halfway house, and I am now awaiting transfer to the Department of Corrections. I am 62 years old, and I have type 2 diabetes and high blood pressure. I am signed up in the jail as needing chronic care services for these conditions. Even though my age and health put me at such high risk of getting severely ill or even dying from COVID-19, the jail did nothing at all to protect me from contracting the virus.

2. Until about a month ago, the deputies wouldn't even let us wear masks to protect ourselves. Guys would get masks for court and when they got back to the ward, they'd be told they had to throw their masks out. It didn't make any sense.

3. On top of that, I was given a new cellmate every day for the first month I was in here. Each of them had come in right off the streets without getting tested for the virus and without spending any days quarantined. Knowing I was so vulnerable to COVID-19, I pleaded with the guards to room me with someone who would be sticking around for a while instead of locking me in with a new stranger and a new chance of exposure every single day—but they didn't listen. I'm sure that's why I got sick.

4. When the National Guard finally came through the jail to test us in late October, I didn't need them to tell me I had the virus. For days, my head had been pounding, I'd had terrible chills, and my body ached so badly I couldn't get out of bed most of the time—I just stayed wrapped up in my blanket. I was nauseated and had to force myself to eat little packets of

soup, and I had diarrhea. My chest hurt from coughing so much. So it was no surprise when the nurse came to my cell to tell me I was positive.

5. After they tested us for the virus, I was moved into the top tier of my ward with other people who were sick. I was told I would be on "quarantine" for 14 days, but that was just what they called our wing on the top tier. We were still in the same ward with people who were negative, all breathing the same air and using the same common spaces.

6. The nurse who told me I was positive told me that if I wanted any medicine, I had to kite medical for it. She didn't tell me what kind of medicine would help or what I could do to feel better. She just said I should report my symptoms at the kiosk. I kited medical that day, but I didn't hear back for another three weeks. In all that time, the jail didn't give me any kind of treatment—nothing—even though they knew I was positive and symptomatic. Some days, if I was lucky, another inmate would be willing to share some aspirin they'd managed to get from commissary. All I could do for myself consistently was drink a lot of water.

7. I felt terrible for about a week. But there was one day my symptoms really shook me. It started around 10 in the morning. I couldn't look at the light; it hurt too much. My head felt like it was going to explode. I was sure I was going to have a stroke or a heart attack. I triggered the emergency light on my cell and desperately called a deputy over to tell him I was having a health emergency. He told me I'd have to wait until it was time to go down to the afternoon medicine cart, which doesn't come until 2 or 2:30 PM. So I was just left in my cell while the hours passed, my emergency light still on. When it was finally time to go down to the cart, I was so weak I couldn't stand. The nurse had to take my blood pressure while I was sitting down on the staircase. It was dangerously high: 220/210. The last time my blood pressure had been that high, I was in this same jail, before I received my prior sentence to the DOC. That

time, I was rushed to the ER at Memorial Hospital. This time, the medical cart nurse called someone on the phone and, when she hung up, she told me nothing could be done for me until a doctor prescribed me clonidine. I was sent back to my cell. I couldn't believe it; I was terrified. No one even came to check on me. It was two days before I got the clonidine.

8. About three weeks after I tested positive and kited for medicine at the kiosk, I was finally called down to the medical unit, and they gave me some Tylenol and cough syrup. I was warned that if I kept saying I still had symptoms, the jail would put me "back on quarantine." I didn't really know what she meant, since my housing situation had never changed.

9. When I first arrived at the jail, the medical cart nurse would take my vitals every afternoon because I needed chronic care services and because I was expected to be transferred to DOC custody. But when the outbreak happened, the check-ups stopped. They said none of us were going anywhere anyway. The deputies occasionally came by our cells with temperature guns, but even that stopped whenever we were on lockdown.

10. I share my cell with one roommate, who also tested positive for the virus. He still hasn't gotten back his sense of smell. We eat, sleep, and use the toilet in our cell. If we want anything cleaned, we have to clean it ourselves, but we can't have supplies unless a deputy gives them to us during the two hours we're allowed out. And when we're on lockdown, we can't access any cleaning supplies or even shower. We don't have any hand sanitizer. I've never seen the deputies disinfect the phones or other common surfaces, and we don't even have a trusty in the ward to clean out there. Sometimes, if the deputies are willing, they'll let out some inmates who volunteer to clean.

11. The air in our ward was down for three weeks in November. It finally got turned on again recently. There was no circulation in the ward that whole time, and it was unbearably

hot. I worried about how easy it would be for the virus to spread without the air on.

12. They finally gave us masks at the beginning of November. I got a single cloth mask and I have to clean it on my own using hand soap at my sink. I don't think that gets it really clean, and whenever I wash it, I can't wear it until it's dry again.

13. I wear my mask because I know I'm vulnerable and could get horribly sick if I'm not careful. Most people don't wear their masks, and no one enforces any mask rules. And when we're out in the common area during the day, there's no social distancing at all. I feel like wearing my mask is all I can do to protect myself in here.

14. I haven't gotten any information or instructions from the jail about how to keep myself safe from reinfection with COVID-19. Since the National Guard came through, I haven't been retested for the virus. I still have body aches, and I'm constantly worried I'll get badly sick again. I don't want to have a heart attack or a stroke because the jail is not taking precautions to protect the people in here from COVID-19.

15. I affirm under penalty of perjury that the foregoing is true, to the best of my knowledge.

I, Anna I. Kurtz, certify that I reviewed the information contained in this declaration with Austin Williams, Jr. via a video visit on December 9, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Williams because of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

Anna I. Kurtz, Esq.
American Civil Liberties Union of Colorado

DECLARATION OF CLAUDIA DIMAS

I, Claudia Dimas, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Claudia Dimas, and I was incarcerated in the El Paso County Jail from July 19, 2020, until my parole hold was lifted and I was released on November 19, 2020. I am 51-years-old. I came down with COVID-19 while in the jail.

2. When I entered the jail on July 19, 2020, I was initially housed in the Alpha section of the jail, a more restrictive unit. In August, I was moved to ward E-2. There were about 80 people housed in ward E-2. The ward had a downstairs and upstairs. There were four bays on the first floor and five bays on the second floor, and in each bay, there were five bunk beds where ten people slept. I slept within a few feet of the nine inmates in my bay. The bays did not have doors, and all inmates shared common areas when we were allowed out of our bays. There was no social distancing on the ward.

3. Prior to the COVID-19 outbreak, the jail gave us masks when we were being transported to the medical unit or court, but when we got back to our wards, the deputies took our masks away. Me and other inmates tried to make an improvised masks by pulling our collars over our faces. The guards would not allow us to do this. They gave no reason why.

4. Jail staff did not take any steps to prevent an outbreak before it occurred. As I mentioned, there was no social distancing and masks were prohibited in the ward. Additionally, medical staff often did not wear masks over their noses and mouths, and some medical staff didn't wear gloves, touching one inmate after another without disinfecting their hands.

5. Also, when we had court dates, the jail staff would pack us into a transport van, and about 15 women would go in the van and then be held together in one of the court's holding cells prior to our court hearings. We were given masks when we were transported and when put in the holding cell, but we remained in very close proximity while in there. The holding cell had an open toilet and sink that we'd all share. We were given our meals in that holding cell and all ate within close proximity of one another without our masks on. Handcuffs that were used during transport were not disinfected. Ironically, when in the courtroom, the guards sat us six feet apart from each other, even though when we were out of sight of the judge, we were on top of one another.

6. At the end of October, one of the guards told me that there was a "flu" going around. A nurse told me there was a "crud" going around. I was offended by these comments because I knew jail staff was referring to COVID-19, a deadly disease, that they were downplaying.

7. Sure enough, just around this time, I began coughing and having trouble breathing. I felt weak and I had a horrible headache that lasted for two weeks. I lost my sense of smell and taste. On November 1, when the National Guard came in to test inmates, I tested positive.

8. On November 4, when one deputy came into the ward to start her shift, an inmate told the deputy she had tested positive. The deputy became angry because the jail had not informed her that many people on the ward tested positive.

9. Everyone on my ward got one mask that same day—November 4, 2020. At this point, we already knew that some people on the ward tested positive. The masks were too late.

10. On November 6, 2020, an inmate who was on my ward but had tested negative was moved into my bay, even though everyone in my bay was COVID-positive.

11. On November 7, all of the inmates in my ward, E-2, were moved to ward F-4, due to a new video system being put in place in E-4. Most women were extremely sick the day we were moved. Also, ward F-4 had broken soap dispensers that only got fixed on November 12, 2020.

12. I had put in several kites and my sister and parents called the jail asking for me to get medical attention after I tested positive. On November 10, I finally started getting Tylenol and cough syrup. I got Tylenol and cough syrup for a few days. I asked to see a doctor but never saw one. I was never monitored and aside from temperature checks, my vital signs were not taken. My kite asking for extra fluids was denied – I was told to drink from the sinks in the bathroom, which were not clean.

13. By November 13, only 27 inmates out of approximately 80 on ward F-4 were negative. Everyone else was positive. Those who were negative remained in the ward with those of us who had COVID. There was no social distancing – bunk beds were within six feet of each other. Instead of moving the people who were negative out of the ward, the jail tested those people every three days, until there were only approximately 7 people who were negative on the ward.

14. While most of us on the ward had COVID, people from the street were still being brought into the ward without being quarantined. The jail also continued to move people into our ward from other wards.

15. I washed my mask myself to ensure that I got to keep my own mask. The jail did not enforce the mask requirement. Some inmates did not wear their masks or did not wear them

over their nose and mouths. Staff also did not always wear their masks or wear them appropriately. It was hit or miss.

16. I was really scared while in the El Paso County Jail. I felt like I was brought in there for a death sentence. No one cared. One deputy told me and other inmates that we would all get COVID and we should just grin and bear it. I am thankful that I got released when I did; otherwise, I don't know what would have happened to me.

17. I declare under penalty of perjury that the foregoing is true, to the best of my knowledge.

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Claudia Dimas over the phone on December 8, 2020, that she reviewed an email copy of it on December 9, 2020, and that she certified that the information contained in this declaration was true and correct to the best of her knowledge. I am unable to meet in-person with Ms. Dimas as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF JAMIE FAIN

I, Jaime Fain, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Jamie Fain and my son, James Hunter Gantt ("Hunter") is incarcerated in the El Paso County Jail, awaiting trial on drug charges. Hunter is 27 years-old and he has underlying medical conditions that make him more at risk for a negative outcome from COVID-19: he has asthma and Hepatitis C; he almost died from pneumonia three years ago; and he's had bronchitis multiple times.

2. I talk to my son regularly on the phone. In the first week of November, my son was coughing severely over the phone when I spoke to him, and he told me he had fever, chills, delusions, and no appetite. He said he was tested for COVID-19 by the National Guard and he got a positive test result on November 4. He is still complaining about having trouble breathing.

3. I am really worried about my son. When he first got sick, I called a Chief Deputy in El Paso County named Brad Shannon, who has an office in the jail, to try to get Hunter medical attention. Deputy Shannon informed me that Hunter could walk up to the medical cart and get medicine there. I relayed this to Hunter. But Hunter told me that when he tried to do that, the jail staff wouldn't give him medication.

4. I continued to call Deputy Shannon many times to try to get my son appropriate treatment. After I called several times, my son saw a nurse and learned that his oxygen saturation levels were very low. I know that low oxygen saturation levels are a sign that someone with COVID-19 needs immediate medical attention. I continued to call Deputy Shannon and ask if Hunter could see a doctor. He never saw a doctor.

5. On one of my calls with Deputy Shannon, I asked him about the precautions that the jail was taking to stop the spread of COVID-19 and monitor those who had COVID-19. Deputy Shannon told me that corrections officers were given full protective gear, inmates were being segregated based on whether they were positive and negative, and that the inmates' temperatures were being taken twice a day. Hunter told me over the phone that none of this was true. I called other inmates on Hunter's ward and they also told me none of this was true.

6. Eventually, Deputy Shannon stopped picking up the phone when I called. I called a different jail officer named Lieutenant Carnell on November 20, 2020, asking how I could help my son get medical treatment. Lt. Carnell told me that Hunter needed to submit a kite, but Hunter had told me that he already submitted a kite.

7. On November 21, I called a nurse in the El Paso County jail because Hunter told me he was having trouble breathing. Hunter tells me he is still having trouble breathing. He has still not seen a doctor.

8. I called various media outlets and reported on what I heard from the jail staff and the inmates.

9. I am appalled by the jail's failure to protect inmates and their treatment of this outbreak. I want an explanation.

10. I affirm under penalty of perjury that the foregoing is true to the best of my knowledge.

I, Arielle Herzberg, certify that I reviewed the information contained in this declaration with Jamie Fain over the phone on December 8, 2020 and that she certified that the information contained in this declaration was true and correct to the best of her knowledge. I am unable to meet in-person with Ms. Fain as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Arielle Herzberg
Arielle Herzberg, Esq.
ACLU of Colorado

DECLARATION OF BRYAN THOMAS

I, Bryan Thomas, declare the following based on my personal knowledge:

1. My name is Bryan Thomas, and I have been in the custody of the El Paso County jail since August 26, 2020. I am 41 years old. I came here from ComCor, a halfway house, and I'm supposed to have finished the custodial portion of my sentence. I'm just waiting for my parole hearing, which has been postponed since early November, when some of the parole board members got sick with COVID-19. Now I don't know when my hearing will be.

2. I am anxious to leave this place. The jail did nothing at all to protect me from getting COVID-19, and it gave me no defenses to protect myself. Now that I've had it, I'm scared of not getting the right treatment for my symptoms and of getting reinfected again.

3. COVID-19 has been a reality in the jail since March. I know because I was here then, from the end of January until May, before I went to ComCor. I was housed in "the towers" then, in ward G. In February, the deputies told us that they had quarantined the female unit in the towers, which was below us. They told us it was the flu. It hit us in March; our whole ward got sick. The deputies acknowledged that it was a COVID outbreak, but they didn't test any of us for it. If you tried to make yourself a mask, they'd write you up for it. If you wanted medicine, you could try to kite for it, or to get on the sick call, but it was so backed up because they had the whole female ward quarantined and it was impossible to get to the nurse. I was in court on the same day as another inmate who told me he had to be taken from the jail to be put on a ventilator to get oxygen. A deputy died from it a few weeks later. Looking back, it's clear it was COVID because when I was sick that time, I felt almost exactly the same as when I tested positive later: a migraine-like headache, fever, chills, sweating, and no appetite.

4. When I was booked here again, I was housed in the towers again before I was transferred to Delta 1, where I've been for a little over 90 days. Delta 1 has 48 cells, 24 on the top tier and 24 on the bottom, with two bed spots in each cell. We're locked down in our cells for 22 hours a day and let out in the common area for 2, in shifts of 8 cells at a time called "pools." Since I got to Delta, I've had about 8 different cellmates.

5. I was first tested for the coronavirus on October 25, 2020, by a staff nurse. They tested my "wing" of the ward: cells 1-8. They brought each of us out into the hallway in between wards D1 and D2 (what we call the "mod," short for "module"), where they sat us down in a chair to get tested. The nurse was wearing a full face shield, a raincoat, the works. They didn't even give us masks.

6. The next night, my symptoms started. They were familiar: a migraine-like headache, fever, chills, sweating, and no appetite. The only medicine I ever got for these symptoms was Tylenol and Motrin.

7. A few days later, I was tested by the National Guard, who said a lot of the tests the staff had run were "inconclusive." The National Guard didn't take us out of the ward to test us—they brought their own cart in. They also wore a lot of personal protective equipment, and they had some sort of spray that they used on themselves after each test. The first time they came, they tested everyone. But on subsequent visits, they had a system where they marked the doors of inmates who had not already tested positive, and then only tested those people, and so on. Often, one inmate in a cell would have his door marked, and the other wouldn't. But as more and more people tested positive, the pool of people they continued to test shrank.

8. I still have not received a result for either of my COVID tests. In response to a grievance I filed in late October, I was told I'd need to leave the jail before I could get my

results. But my door wasn't marked again. And some nurses told me, "if they aren't testing you, it's because you already tested positive."

9. After they tested us the first time, I was moved into a wing in the top tier of my ward with other sick inmates, some of whom had actually been told they were positive. We were in one of two "quarantine" pools—ours, the cells 25-32 pool, and another, the cells 17-24 pool. But we were in between 4 other pools of people who weren't positive. We were never meaningfully isolated from each other; we all shared the same common room, used the same phones and surfaces, breathed the same air. To make matters worse, the air was down throughout the ward for a whole month. I was constantly worried the lack of ventilation would make the ward a breeding ground for the virus. And as more and more people tested positive, the guards started moving everyone around. When two other major units—Bravo and Charlie—closed down, our ward got even more packed. People who were transferred from elsewhere in the jail and people who were just booked were put wherever there was an empty bed. They put positive people in the same cells as negative people. This is still going on: if there is an open cell, that's where you're going. Even if you get stuck in there with someone sick.

10. They finally issued us cloth masks after the National Guard came through. Before that, inmates were getting write-ups for trying to make their own masks out of tshirts or towels. They would give us surgical masks to wear to court, but we'd be forced to throw them out when we got back to our housing units.

11. Still, the guards aren't making sure that people wear their masks in the common areas. Some inmates don't have masks at all. The jail hasn't reissued masks since the first time, so anyone who got here after that walks around without a face covering. And even those of us who do have a mask only have one. The masks don't get cleaned unless we clean them in our

sinks, which I doubt is very effective. And we can't wear our masks while we're cleaning them or waiting for them to dry.

12. When we are let out of our cells, it's impossible to keep a safe distance from the other inmates. Since we have so little time out of our cells, everyone uses those two hours to access the same resources: if people use the phones, line up at the hot water sink (since so much of our commissary food relies on getting hot water), or even need to ask the deputies a question, they are necessarily in close distance to other inmates. No one is enforcing any space requirements, so the only way to avoid other people would be to stand in the middle of the common room and not move for two hours. I feel defenseless in here.

13. After I recovered from what I thought were the worst of my symptoms, I noticed for the first time that I couldn't smell or taste anything. I was really freaked out. I still haven't gotten back either sense. It's been more than a month. The only things I can smell or taste are things with strong citrus or pickled flavors. But everything else is lost. Peanut butter might as well be mayonnaise. Things like coffee—things I used to be able to pick up on a mile away—I can't smell or taste at all.

14. I'm still really nervous about it. I need to go to a doctor and figure out how to get my smell and taste back. And I'm always worried about getting sick again. No one in here is an expert in this disease. They haven't advised us about how to protect ourselves, how long it takes to develop antibodies, what it takes to be reinfected, or what will happen with our symptoms. I've never seen a doctor in the jail about my symptoms, and the only nurse I've seen was the one who tested me the first time. There used to be some basic health department signs up about COVID, but those have been taken down. On top of everything else, the total lack of information makes it really hard to be here. You never know if you can even relax.

15. I affirm under penalty of perjury that the foregoing is true, to the best of my knowledge.

I, Anna I. Kurtz, certify that I reviewed the information contained in this declaration with Bryan Thomas via a video visit on December 10, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Thomas because of the COVID-19 pandemic. *See Fenty v. Penzone,* No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton,* No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

Anna I. Kurtz
American Civil Liberties Union of Colorado

DECLARATION OF ALAN DOBBINS

I, Alan Dobbins, declare the following based on my personal knowledge:

1. My name is Alan Dobbins and I was detained at the El Paso County Jail from September 8, 2020, to December 9, 2020. I turned myself in, but I was unable to post bond until December.

2. I developed asthma after working in the concrete industry. In 2007, I was prescribed Albuterol and Advair inhalers for my asthma, and I used the Advair every day when it was available to me outside the jail. I used to smoke cigarettes. I had a heart attack in 2015, since which I have had an arrhythmic heartbeat. I have had epileptic seizures. I have also been diagnosed with Hepatitis C. I need continuing care for these conditions.

3. The jail did not protect me from the coronavirus. Up until November, we were only given masks to wear when we were walking in the halls or going to court. We had to give up the masks when we went back to our pods. We made masks out of underwear, but we were told we couldn't wear those masks because we weren't allowed to cover our faces. It wasn't until November, after a lot of us had tested positive, that the jail finally gave us cloth masks that we could wear in our pods.

4. I tested positive on November 1, 2020, but the jail did not tell me. I had to write a request to find out my results, and I didn't get an answer until a week and a half later. We have to rely on what we're told, but they don't usually tell us anything.

5. The jail did not give me proper treatment after I tested positive. No one came to monitor me or give me medication, even though I couldn't get out of bed for days. Other inmates here thought I had left the jail because they didn't see me for so long while I was bedridden. I did

not get any medication for COVID. The other inmates in my pod also didn't get any medication for COVID based on what I observed and was told.

6. About two weeks after getting my COVID-19 results, I sent a kite to medical asking them to see me and treat me for my symptoms. Instead of treating me, they told me that I would get COVID symptoms for up to twelve weeks, and it would eventually get better. I wrote again later, telling them that I wasn't feeling better, and I requested treatment. They still didn't see me for my COVID symptoms.

7. I feel like I was denied medical attention for anything COVID-related. I asked for help multiple times and did not get any. They wouldn't even give me an inhaler for my asthma. I felt like it was useless and I should give up.

8. It has been over a month since I tested positive for the coronavirus, and I am still experiencing symptoms. The top of my chest is tight. I feel short of breath. I have to clear my throat a lot, and sometimes spit up black phlegm. That never happened before I caught COVID. Every morning when I wake up, my sinuses are congested, and I have difficulty breathing. My nose bleeds in the morning, which also never happened before I caught COVID. I wake up sweating in the middle of the night and with pain in both the top of my chest and below, inside near my lower back. I finally saw a nurse just before I bonded out, and she told me that I was showing signs of bronchitis, and that the bronchitis was likely because of COVID-19. She said I need an x-ray, but that I might not get one for several weeks.

9. Conditions in the jail are still bad. The day I left, most of us had the same sheets in our beds that we had when we tested positive. There wasn't a working washing machine for us to use. Some inmates clean the jail in exchange for an extra food tray, but only the tables and floors get wiped down. The door handles and handrail do not get cleaned. The bathrooms smell

horrible and the sinks are often clogged. Before I left, we didn't have running water most nights because the pipes are busted in the showers and the jail turns the water off at night.

10. There were about 70 people in my pod, and I know many people in my pod have tested positive. The jail is still moving people between pods. The jail did nothing to protect us and continues to do nothing to help us. I worry that, since I did not get proper treatment, I will suffer long-term effects of this virus.

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

I, Rachel Z. Geiman, certify that I reviewed the information contained in this declaration with Alan Dobbins over the phone on December 11, 2020, that he reviewed an email copy of it on December 11, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Dobbins as a result of the COVID-19 pandemic. *See Fenty v. Penzone*, No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton*, No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Rachel Z. Geiman
Rachel Z. Geiman, Esq.
Maxted Law LLC

DECLARATION OF IYAN MURRAY

I, Iyan Murray, declare the following based on my personal knowledge. I am submitting this declaration in support of the class action suit on behalf of inmates in the El Paso County Jail.

1. My name is Iyan Murray and I am currently incarcerated in the El Paso County Jail. I am 42-years-old and I am borderline diabetic with high blood pressure. I take medication to manage my high blood pressure. I contracted COVID-19 while in the jail and am still suffering symptoms from the virus.

2. I have been in the jail since August 12, 2020 and despite being high risk for complications and even death from COVID-19, the jail took no steps to protect me from contracting the virus.

3. I have been housed in multiple wards since I arrived at the jail. I have been moved between units F1 and F2. I am currently in F1 with about 80 other people. I was never quarantined or separated from COVID-19 positive inmates despite frequently moving and being with new bunk mates.

4. In early October, a deputy in my unit was extremely sick. He was regularly coughing and sneezing and did not regularly wear a mask. This deputy informed us that he did not have COVID-19 and told us “not to worry.” I assumed the deputy had a cold and I was safe from the virus. I was wrong.

5. I began to feel strange symptoms in my body in October. I was experiencing severe headaches and had an extremely difficult time being around loud noises or any lights. I had cold sweats and always felt like there was something heavy sitting on my chest. In addition to chest pain, my body was aching all over. After a week or so of these symptoms, I lost the

ability to taste or smell anything. I assumed I had the same cold the deputy said he had. I then tested positive for COVID-19 the first week in November.

6. After the National Guard came to test the jail for COVID-19, I went to the nurse's cart to receive my blood pressure medication and asked her if anyone was monitoring the health or vitals of the individuals who tested positive for COVID-19. The nurse told me that "the jail is not doing vital checks for anyone anymore because the entire Jail has COVID-19." The same week, a Sargent in F2 informed our entire unit that "we're just going to let the virus run its course."

7. I made repeated requests for a face mask long before the National Guard testing that were denied. When I asked for a mask, jail staff threatened me and other inmates by saying if we wanted to be protected from the virus we could just go in the hole or stay in lockdown with only 1 hour of out time a day. I was afraid of retaliation for trying to protect my health and safety.

8. I only received a cloth face mask after the National Guard came to test everyone for COVID-19. Once I received my mask, I was told that deputies would come at the end of the night to clean our mask and replace it with a new one. I have not seen deputies cleaning our masks and do not believe cleaning is occurring. I wash my own mask with hand soap from the bathroom sink.

9. The hygiene conditions in our bays are dismal. In my unit, there are 80 inmates to two working toilets. Inmates are required to do all cleaning and we have limited access to cleaning supplies. We are also given limited opportunities to clean.

10. There are new admissions coming into my ward every day and there is no effort to separate people who are showing symptoms of COVID-19 from those who are not. In late

November, an individual came into F1 from the streets showing clear symptoms of COVID-19. He was so obviously sick that a deputy said: “it is not right to put someone in our bay who is sick with COVID-19. I had COVID-19 and I know what the symptoms look like. I am worried about you all.” That deputy took it upon herself to remove him from our bay. I am terrified of comingling with these new people coming in off the street every day.

11. I still have severe headaches and cannot taste or smell anything. I fear negative consequences of the effects of the virus on my weakened immune system. I am horrified that the jail has said multiple times they have no plan to keep us safe and just let the virus run its way through all of us leaving unpredictable damage behind.

12. I affirm under penalty of perjury that the foregoing is true to the best of my knowledge.

I, Asma Kadri Keeler, certify that I reviewed the information contained in this declaration with Iyan Murray via a video visit on December 10, 2020 and that he certified that the information contained in this declaration was true and correct to the best of his knowledge. I am unable to meet in-person with Mr. Murray as a result of the COVID-19 pandemic. *See Fenty v. Penzone,* No. CV-20-01192-PHX-SPL, Docket No. 67 (D. Ariz. Nov. 13, 2020) (approving declarations in similar circumstances); *Urdaneta v. Keeton,* No. CV-20-00654-PHX-SPL (JFM), 2020 WL 2319980, at *5 (D. Ariz. May 11, 2020) (same).

s/ Asma Kadri Keeler
Asma Kadri Keeler, Esq.
ACLU of Colorado

From: Joseph Roybal on behalf of Joseph Roybal <JosephRoybal@elpasoco.com>
To: Deanda, Kathy
Subject: RE: El Paso County Jail Triage Process
Date: Tuesday, October 27, 2020 10:48:11 AM
Attachments: image002.png

Ms. Kathy,

We have approximately 1,600 people we need tested and want to use UC Health. May I have a point of contact to help coordinate this effort and determine a cost?

Thank you,
Joe

From: Deanda, Kathy [redacted]
Sent: Tuesday, October 27, 2020 9:01 AM
To: Davis, Christopher [redacted]; Janet Huffor <JanetHuffor@elpasoco.com>; Joseph Roybal <JosephRoybal@elpasoco.com>; Domenick D'Amico <DomenickDAmico@elpasoco.com>; Nicole Blatnick [redacted]
Cc: EXTERNAL Nicole Blatnick [redacted]; Jane Fromme <JaneFromme@elpasoco.com>
Subject: RE: El Paso County Jail Triage Process

Good Morning,

Based on our conversation Monday, I have reached out to our lab director regarding the Abbott Alere ID. Our assessment and recommendations are as follows:

> "This and all rapid non-PCR tests have the same limitations on sensitivity. We estimated that they would miss about 40% of low grade infections. A positive is great, but it is recommended that they back up negative results with a PCR test. "

I also discussed the cost of your last COVID-19 event and it appears this was an on-site collection event and we may want to look at a solution where specimens are collected by the jail and sent to UCHealth for processing. This should be more cost effective for you and would reduce the need to repeat any negative tests as above. We could also institute this process for any negatives that result on the Alere once installed. Please let me know if you'd like to pursue this option.

Other Items:
Work on the POC testing equipment needs is in progress and I will update this team once I have more information.

Nicole,

Could you please provide me with:

1. The specifications on your EKG machine to include your vendor contact to determine upload or printing options
2. Contact for Mobile RX to determine ability to utilize Power Share for image uploads to UCHealth

Please let me know if there is anything I missed that you were expecting as a next step.

Thank you,
Kathy

Kathy Deanda, RN MSN

Sr. Director Virtual Health/NeuroDx

/Cancer Center (Interim)

UCHealth
12401 E. 17th Ave

Mail Stop F728
Aurora, CO 80045
[redacted]
uchealth.org

-----Original Appointment-----
From: Davis, Christopher <[redacted]>
Sent: Monday, October 19, 2020 8:49 AM
To: Davis, Christopher; Deanda, Kathy; JanetHuffor@elpasoco.com; Joseph Roybal; Domenick D'Amico; Nicole Blatnick
Cc: Nicole Blatnick; Jane Fromme
Subject: El Paso County Jail Triage Process
When: Monday, October 26, 2020 10:00 AM-10:30 AM (UTC-07:00) Mountain Time (US & Canada).
Where:

Join Zoom Meeting
[redacted]

Meeting ID: [redacted]

Dial by your location

Meeting ID:

Find your local number:

From: Bill Elder on behalf of Bill Elder <BillElder@elpasoco.com>
To: Pete Carey; Brad Shannon; Eric Carnell; Andrew Prehm; Lari Hanenberg; Elizabeth O"Neal; Raymond Bernier; Paul Wheeler; Nicole Blatnick
Bcc: [redacted]
Subject: RE: Marigny Conversation
Date: Tuesday, November 3, 2020 4:35:17 PM
Attachments: image002.png
image003.png

Thanks Brad, good information and glad we are moving to the end of it for some.

Sheriff Bill Elder
El Paso County Sheriff's Office
27 E. Vermijo Ave.
Colorado Springs, CO 80903
719 520-7202

From: Pete Carey <PeteCarey@elpasoco.com>
Sent: Tuesday, November 3, 2020 4:05 PM
To: Brad Shannon <BradShannon@elpasoco.com>; Eric Carnell <EricCarnell@elpasoco.com>; Andrew Prehm <andrewprehm@elpasoco.com>; Lari Hanenberg <LariHanenberg@elpasoco.com>; Elizabeth O'Neal <ElizabethONeal@elpasoco.com>; Raymond Bernier <RaymondBernier@elpasoco.com>; Paul Wheeler <PaulWheeler@elpasoco.com>; Nicole Blatnick <NicoleBlatnick.ven@elpasoco.com>
Cc: Bill Elder <BillElder@elpasoco.com>
Subject: RE: Marigny Conversation

Looks good. I'd highlight the Full PPE definition (first bullet, second sentence) in RED. Thanks, Pete

From: Brad Shannon <BradShannon@elpasoco.com>
Sent: Tuesday, November 3, 2020 3:32 PM
To: Eric Carnell <EricCarnell@elpasoco.com>; Andrew Prehm <andrewprehm@elpasoco.com>; Lari Hanenberg <LariHanenberg@elpasoco.com>; Elizabeth O'Neal <ElizabethONeal@elpasoco.com>; Raymond Bernier <RaymondBernier@elpasoco.com>; Paul Wheeler <PaulWheeler@elpasoco.com>; Nicole Blatnick <NicoleBlatnick.ven@elpasoco.com>
Cc: Bill Elder <BillElder@elpasoco.com>; Pete Carey <PeteCarey@elpasoco.com>
Subject: Marigny Conversation

Based on our conversation:

- With all of the new positives in the wards across the facility, all of our people should be in full PPE if they have positives in their wards. Full PPE is defined as eye covering, KN95 mask and rubber gloves. Full PPE will be placed in all of the MODS for use by our employees. Employees shall weigh the use of PPE and the public health crisis against the normal security issues that are presented in their daily assignments.
- Due to the spread of this virus and the number of positive inmates it is recommended that employee's wear a new uniform each day and handle the uniform with care when they take it home to avoid contamination of the home or family members. Additional suggestions regarding the washing and drying of uniforms will sent in a subsequent email.
- Deputies who have had the virus and have come back to duty should if possible be put into wards with the infected, they have

immunity for up to 90 days.

- Ray, our burn rates have just increased based on new guidance.
- With regard to the inmates, each person is evaluated based on the date of test. Meaning, the 8 we tested on the 24th have completed their 10 day quarantine and can move anywhere in the facility. Their 10th day was November 2nd. I think these were all asymptomatic.
- We need Adam P. to start with [redacted] and [redacted] and create ward rosters and attach the test dates so that we have a point of reference. On the 11th day these people can return to the inmate population. NO SYMPTOMS!!
- On our times out for inmates, with our current situation, I don't know if we can allow some time for the air in these wards to turn over, intervals of the hours out. Especially with the changes from positive inmates to negative inmates.
- Marigny will check again with CONG, we do not have a start time for them at this time.

Right now the State is proposing the 6th and the 10th for our testing. This will be any remaining inmates that have not tested positive. More to follow.

Brad Shannon
Detentions Bureau Chief
El Paso County Sheriff's Office
FBI-NA Session #233
Office: 719-390-2103
Cell: 719-439-0342

Lock Form

El Paso County Sheriff's Office

"Serving the community for over 150 years."

Bill Elder, Sheriff

El Paso County Sheriff's Office
27 East Vermijo Avenue, Colorado Springs, CO 80903-2280
Sergeant Deborah Mynatt, Public Information Officer
Office: (719) 520-7141, Email: deborahmynatt@elpasoco.com

MEDIA RELEASE

DATE: June 16, 2020 [9:05 AM]

Sheriff's Office Launches COVID-19 Projects After Receiving Cares Act Funding

The El Paso County Jail will be upgrading many areas and equipment to ensure the health and safety of staff and the incarcerated population. These upgrades are intended to reduce the risk of exposure and spread of COVID-19 and increase overall safety and security of the jail.

The following projects are in the planning phase and each are lead by a project coordinator:
1. Replace Property Conveyor in the El Paso County Jail =$600,000.00
2. Jail Security Cameras and Door Control =$4,686,440.00
3. Jail Facility Door Lock Replacement =$1,850,000.00
4. Jail Lobby / Lockers =$2,200,000.00
5. Sheriff's Training Facility / Remodel =$950,000.00
6. Upgrade Equipment for Sanitation / Hygiene =$300,000.00
7. Tele-Medicine Equipment =$250,000.00
8. Visitation Booth Remodel for Privacy and Security of Professional Visits =$250,000.00
9. Hazardous Duty Pay =$1,161,000.00
10. Office Cubicle Update & Safety Improvements =$500,000.00
11. Overtime to Establish Services Back to Expected Level =$200,000.00
12. Re-Deployment of School Resource Officers =$125,000.00
13. Re-Deployment of Work Release Deputies =$487,500.00
14. Video Court =$26,000.00

Total of = $13,585,940.00

We will communicate all potential impacts to daily operations involving the public through press release and/or through our social media channels.

Due to guidelines through the CARES Act we are required to complete all projects by the end of 2020.

These projects will assist with meeting recommendations regarding movement of inmates between facilities, physical distancing measures for staff, inmates and contractors, and overall improvements in allowing a more safe environment.

###
MR 20-102

Exhibit T

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

HANNAH WEIKERT
JENNIFER HERMANNS
TERRENCE LACEY
SEAN NELSON
JEAN-JOSEPH LE CHIFFRE
GILBERT TRUJILLO,

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

v.

BILL ELDER, Sheriff of El Paso County, Colorado, in his official capacity,

Defendant.

[PROPOSED] ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND EXPEDITED HEARING

Having considered the evidence and authority submitted by the parties in this matter, and in accordance with Federal Rule of Civil Procedure 65, the Court finds that entry of interim injunctive relief is appropriate in this case because: Plaintiffs are likely to succeed on the merits; there is a real threat of irreparable harm absent injunctive relief; the balance of harms favors entry of an injunction; and the issuance of injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs have demonstrated that they are being held under constitutional conditions of confinement at the El Paso County Criminal Justice Center in violation of their Eighth and Fourteenth Amendment rights. *See Helling v. McKinney*, 509 U.S. 25 (1993). The conditions of confinement Plaintiffs are currently being held under are likely to cause them irreparable harm absent interim injunctive relief. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001). The balance of harms

weighs in favor of granting interim injunctive relief because Plaintiffs' situation is life and death. *Edmisten v. Werholtz*, 287 F. App'x 728, 732-35 (10th Cir. 2008); *see also Thakker, et al. v. Doll, et al.*, No. 20 C0480, Dkt. 47, at 24 (M.D. Pa. Mar. 31, 2020). Finally, the public interest favors stopping the spread of COVID-19, *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 169 (2d Cir. 2005), and protecting Plaintiffs' constitutional rights. *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001).

Accordingly, this Court issues the following injunctive relief requiring Defendant to implement a system-wide process to rectify the violation of Plaintiffs' constitutional rights that includes the following:

a. Inmates and staff must be required to wear masks at all times. To allow inmates to wear masks at all times, each inmate must be issued at least two cloth masks, such that when one mask is being washed daily, another mask can be worn. Alternatively, inmates may be issued disposable masks which are replaced at the frequency recommended by the mask manufacturer.
b. COVID-19 positive and suspected COVID-19 positive inmates must be isolated from other inmates, with cohorting used sparingly for COVID-19 positive inmates, and no cohorting used for suspected COVID-19 positive inmates.
c. Newly admitted inmates must be screened to determine if they are medically vulnerable, and all inmates arriving at the jail should be tested for COVID-19 upon arrival if possible.
d. The jail should engage in regular prevalence testing to screen for COVID-19 outbreaks at the jail.
e. Newly admitted inmates who do not test negative for COVID-19 upon arrival at the jail must be quarantined in a transition unit for at least 14 days prior to being moved to a general population unit in the jail.
f. During the quarantine period for newly admitted inmates, the medically vulnerable newly admitted inmates must be placed in single cells to the maximum extent feasible to prevent exposure from other inmates of the transition unit.
g. After leaving the transitional unit, medically vulnerable inmates should be housed and kept separate from other inmates to the maximum extent feasible, so that they do not come into contact with COVID-19 positive inmates.

h. Routine cleaning practices for all hard-metal and other non-porous surfaces must be strictly followed, including for toilets, sinks, showers, tables, telephones, and other areas of the jail. Inmates must be afforded access to cleaning supplies to wipe the surfaces down with cleaners or disinfecting wipes sufficient to eliminate the virus.

i. Inmates must be afforded adequate supplies of soap for basic hygiene and hand-washing multiple times per day.

j. Each COVID-19 positive inmate must be evaluated by medical personnel. Symptomatic inmates must have individual treatment plans consistent with medical best practices. Each COVID-positive inmate must be examined daily, with vital signs taken, to determine if their condition is worsening, and if changes are required for the inmate's treatment plan.

k. Symptomatic inmates must be afforded treatment consistent with medical best practices, including access to pain relievers and other needed medication without undue delay.

l. All inmates must be afforded ongoing access to clean drinking water from a fountain or other water faucet that does not require the inmate to drink from sinks used for handwashing. Likewise, inmates require access to both hot and cold water so that they can have proper nutrition by using hot water for food preparation such as for soup packets.

m. All inmates must be provided accurate, up-to-date educational materials and information regarding controlling the spread of COVID-19.

Further, this Court hold that, in accordance with Federal Rule of Civil Procedure 65(c), bond is waived in this matter because the above-outlined interim relief is in the public interest. *See Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002).

SO ORDERED, this ____ day of _____ 2020.

_____

United States District Court Judge