

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

JOSEPH LEWIS, JR., *et al.*, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

BURL CAIN, Warden of the Louisiana State  
Penitentiary, in his official capacity, *et al.*,

Defendants.

CIVIL ACTION NO. 3:15-cv-00318

JUDGE SDD

MAGISTRATE RLB

**PLAINTIFFS' EMERGENCY MOTION TO RESTRAIN DEFENDANTS FROM  
TRANSFERRING COVID-19 CARRIERS TO LOUISIANA STATE PENITENTIARY**

NOW INTO COURT COME Plaintiffs in the above-captioned matter, through undersigned counsel, who move this Honorable Court to issue a Temporary Restraining Order (TRO) in order to prevent Defendants from enacting a plan to transfer to LSP people who are COVID-19 carriers from state and local facilities across Louisiana.<sup>1</sup> As established throughout the course of this case, LSP houses a uniquely high number of inmates who are at particularly high risk for severe or even fatal consequences if they contract COVID-19 because they are elderly, immunocompromised, or disabled, or have cardiac, pulmonary, or cardiovascular conditions. Intentionally bringing COVID-19 carriers to LSP, particularly given this Court's notice of intent to find that the medical care provided at LSP is unconstitutional in at least some respects, will expose the most vulnerable people in the DOC system to an unconscionably high risk of death or serious harm.

Even if the COVID-19 transferees to LSP could successfully be placed in medical isolation and adequately cared for on-site, medical personnel and other correctional staff would be required to move between them and other areas at LSP, creating a high likelihood of transmission of the virus to the rest of the prison population and – through staff – to the community at large. The community

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<sup>1</sup> See, e.g., Emily Lane, *Louisiana plans to house local and state inmates with coronavirus at Angola and Allen Correctional*; WDSU NEWS (March 27, 2020), <https://www.wdsu.com/article/louisiana-plans-to-house-inmates-with-coronavirus-at-angola-and-another-prison/31960114>.

in the populated areas close to Angola have thus far been largely unaffected by the transmission of COVID-19. Additionally, intentionally introducing COVID-19 into LSP increases the risk of harm for Class members with on-going chronic medical issues by exacerbating medical understaffing issues and other inadequate procedures and practices that are already on the record.

Federal Rule of Civil Procedure 65(c) provides that the Court should levy “security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Given that there are no costs or damages associated with the relief Plaintiffs request (simply restraining Defendants from transferring people to LSP), the “proper” amount is zero dollars.

If the Court does determine that a different amount would be proper, Plaintiffs respectfully request that the Court waive the bond requirement, given the obviousness of the risk to Class members’ health, their indigence, and the strong public interest involved.<sup>2</sup> Furthermore, the requirement of a bond is contrary to the proposition that inadequate resources under no circumstances justify a prison’s deprivation of constitutional rights.<sup>3</sup> Consistent with this well-established principle, this Court should not require Plaintiffs, who are indigent, to post a bond in order to protect their constitutional rights.

For the reasons in the attached memorandum, the Court should immediately issue an order temporarily restraining Defendants from transferring inmates with COVID-19 to LSP; and, after a hearing, preliminarily enjoin Defendants from doing so. Counsel for the Plaintiffs, Mercedes Montagnes and Jeff Dubner, will both be available by phone at the pleasure of the Court. They have called chambers to provide their cell phone numbers.

Respectfully submitted this 31th day of March, 2020.

Respectfully submitted by:

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<sup>2</sup> See, e.g., *Molton Co v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and “the strong public interest” involved); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

<sup>3</sup> See, e.g., *Smith v. Sullivan*, 553 F.2d 373, 378 (5th Cir. 1977) (inadequate resources can never be a justification for depriving an inmate of his constitutional rights).

/s/ Mercedes Montagnes

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

I further certify that copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the Defendants' attorneys, who have already made an appearance in this matter.

/s/ Mercedes Montagnes

Mercedes Montagnes La. Bar No. 33287

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JUDGE SDD

MAGISTRATE RLB

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION TO  
RESTRAIN DEFENDANTS FROM TRANSFERRING COVID-19 CARRIERS TO  
LOUISIANA STATE PENITENTIARY**

Defendants are about to embark on a course of action that will likely result in the death of dozens if not hundreds of Class members. According to multiple press reports, Defendants intend to transfer persons with COVID-19 from prisons and jails throughout Louisiana to the Louisiana State Penitentiary at Angola ("LSP").<sup>1</sup> But LSP has "no place to treat an ill person with COVID-19 except in a general housing unit or on the infirmary, both of which would expose other patients to infection."<sup>2</sup> And even if Defendants could somehow isolate the transferred inmates while treating their condition, LSP's inappropriate policy on staff who may have contracted COVID-19 makes it likely that staff would transmit the virus to other staff and to the general population of LSP. In such settings, transmission to large numbers of Class members is inevitable.<sup>3</sup>

As established at the 2018 trial in this case, LSP has a uniquely high number of inmates who are elderly, immuno-compromised, or disabled, or have cardiac, pulmonary, or cardiovascular conditions—individuals who are at particularly high risk for severe or even fatal consequences if

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<sup>1</sup> See, e.g., Emily Lane, *Louisiana plans to house local and state inmates with coronavirus at Angola and Allen Correctional*; WDSU NEWS (March 27, 2020), <https://www.wdsu.com/article/louisiana-plans-to-house-inmates-with-coronavirus-at-angola-and-another-prison/31960114>.

<sup>2</sup> Supplemental Declaration of Dr. Michael Puisis ("Supp. Puisis Dec."), ¶ 13.

<sup>3</sup> *Id.* ¶¶ 7-10.

they contract COVID-19.<sup>4</sup> If Defendants intentionally bring carriers of COVID-19 to LSP and treat them in the infirmary—the only place at LSP where even moderate cases of COVID-19 could conceivably be treated—“the infection is likely to spread throughout this unit of compromised patients,” just like “nursing homes where COVID is known to have caused significant death.”<sup>5</sup> Defendants will be intentionally and willfully exposing the most vulnerable people in the entire DOC system to an unconscionably high risk of death or serious harm.

Moreover, as proven at the 2018 trial in this case, the medical system at LSP is unconstitutional at its worst and severely overtaxed at its best. The transfer of numerous patients requiring intensive medical care, and the increased risk of an outbreak sweeping through both the Class and the medical personnel who treat them, will devastate LSP’s capacity to provide care to even those inmates who do not contract COVID-19. This will exacerbate the already unconstitutional risk to which Defendants subject Class members, and result in avoidable suffering and death.

Plaintiffs have expressed this concern to Defendants, who have refused to confirm whether DOC intends to transfer patients with COVID-19 to LSP.<sup>6</sup> Indeed, they have refused even to get on the phone with Plaintiffs.<sup>7</sup> Instead, they have stated that they will respond only in their briefing on Plaintiffs’ Emergency Motion to Re-Open Discovery Regarding COVID-19. But if Defendants carry out their reported plan before the Court has the opportunity to rule on Plaintiffs’ motion, it will be too late to provide meaningful relief: Defendants will have already introduced COVID-19 to LSP and the risk of transmission will be impossible to undo.

The four-factor test for a preliminary injunction and temporary restraining order is therefore readily satisfied. Plaintiffs can likely show that the transfer plan will knowingly and unconstitutionally place Class members at a substantial risk of serious harm, and there can be no question that that harm would be irreparable. The public interest weighs heavily against a plan that would introduce

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<sup>4</sup> *Id.* ¶ 12.

<sup>5</sup> *Id.* ¶ 10.

<sup>6</sup> *See* Supplemental Declaration of Jeffrey Dubner (“Supp. Dubner Dec.”), Ex. A, ¶¶ 4-12.

<sup>7</sup> *See id.* ¶ 3; Declaration of Jeffrey Dubner (“First Dubner Dec.”), Rec. Doc. No. 580-3, ¶¶ 5-8.

COVID-19 to a population where it is not known to have spread, and from where it could easily spread to the broader community and devastate the region’s medical infrastructure. And Defendants would suffer no harm from an injunction. Accordingly, Plaintiffs respectfully request that the Court immediately restrain Defendants from knowingly transferring patients with COVID-19 to LSP, and then issue a preliminary injunction enjoining the transfer plan once the parties have fully briefed the issue.

## FACTUAL BACKGROUND

### I. COVID-19

COVID-19 “is a novel virus for which there is no established curative medical treatment and no vaccine.”<sup>8</sup> Compared with past outbreaks of communicable diseases, the COVID-19 pandemic is of “unprecedented magnitude” because of the “magnitude and speed of transmission of COVID-19.”<sup>9</sup> COVID-19 “is transmitted by droplets of infected aerosol when people with the infection cough,” which can survive in the air for up to three hours—and on surfaces such as plastic and stainless steel for up to 2-3 days.<sup>10</sup>

COVID-19 is an acute respiratory syndrome that can cause pneumonia, acute respiratory distress syndrome, respiratory failure, heart failure, sepsis, and other potentially fatal conditions.<sup>11</sup> Treatment for severe cases of COVID-19 include “respiratory isolation, oxygen, and mechanical ventilation.”<sup>12</sup> COVID-19 is particularly dangerous for elderly or immunocompromised individuals and those who have chronic lung disease, moderate to severe asthma, serious heart conditions, severe obesity, or other medical conditions such as diabetes, renal failure, or liver disease, particularly if not well controlled.<sup>13</sup> According to a study of nearly 1600 COVID-19 cases, “patients with at least

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<sup>8</sup> Supp. PUISIS Dec. ¶ 2.

<sup>9</sup> *United States v. Martin*, No. 19-cv-140-13, 2020 WL 1274857, at \*2 (D. Md. Mar. 17, 2020).

<sup>10</sup> Supp. PUISIS Dec. ¶ 6.

<sup>11</sup> Fei Zhou et al., *Clinical Course and Risk Factors for Mortality of Adult Inpatients with COVID-19 in Wuhan, China: A Retrospective Cohort Study*, 395 LANCET 1054 (Mar. 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext).

<sup>12</sup> Supp. PUISIS Dec. ¶ 13.

<sup>13</sup> Centers for Disease Control (“CDC”), “People Who Are at Higher Risk for Severe Illness” (Mar. 26, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

one co-morbidity—including cardiovascular disease, diabetes and chronic kidney diseases—‘had a 79% greater chance of requiring intensive care or a respirator or both, or of dying.’”<sup>14</sup> Nationwide, the mortality rate among persons aged 55-64 is 1-3%; among persons aged 65-84, 3-11%; and among persons 85 or older, 10-27%.<sup>15</sup>

To reduce the risk of contracting COVID-19, the Centers for Disease Control and Prevention (“CDC”) advises all people—and particularly those “at higher risk of severe illness”—to “[s]tay home,” “[w]ash your hands often,” “[a]void close contact (6 feet, which is about two arm lengths) with people who are sick,” and “[c]lean and disinfect frequently touched surfaces.”<sup>16</sup> The President’s Task Force on COVID-19 recommends avoiding gatherings of more than 10 people.<sup>17</sup>

Louisiana is experiencing some of the worst COVID-19 outbreaks in the world. As of March 29, 2020, Louisiana had 3540 confirmed cases of COVID-19, with at least 151 deaths.<sup>18</sup> A study from the University of Louisiana at Lafayette reported that COVID-19 cases grew at 67.8%, the highest rate in the United States.<sup>19</sup> New Orleans “is quickly becoming a coronavirus epicenter in

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<sup>14</sup> *Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274, at \*3 (S.D.N.Y. Mar. 27, 2020) (slip op.) (quoting Sharon Begley, *Who Is Getting Sick, and How Sick? A Breakdown of Coronavirus Risk by Demographic Factors*, STAT NEWS (Mar. 3, 2020), <https://www.statnews.com/2020/03/03/who-is-getting-sick-and-how-sick-a-breakdown-of-coronavirus-risk-by-demographic-factors/>; see also Jason Oke & Carl Heneghan, *Global Covid-19 Case Fatality Rates*, Oxford COVID-19 Evidence Service (Mar. 28, 2020), <https://www.cebm.net/covid-19/global-covid-19-case-fatality-rates/> (“Patients with comorbid conditions had much higher [fatality] rates.”).

<sup>15</sup> CDC COVID-19 Response Team, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)—United States, February 12–March 16, 2020*, 69 MORBIDITY AND MORTALITY WEEKLY REPORT 343 (Mar. 26, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>; see also Oke & Heneghan, *supra* n.14 (finding similar mortality rates globally).

<sup>16</sup> CDC, “What You Can Do” (Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>; see also Martin, 2020 WL 1274857, at \*2 (“With no known effective treatment, and vaccines months (or more) away, public health officials have been left to urge the public to practice ‘social distancing,’ frequent (and thorough) hand washing, and avoidance of close contact with others ... all of which are extremely difficult to implement in a detention facility.”).

<sup>17</sup> Supp. Puisse Dec. ¶ 10.

<sup>18</sup> *Coronavirus Updates in Louisiana: 3540 COVID-19 Cases in State; 151 Deaths Reported*, WDSU NEWS (Mar. 29, 2020), <https://www.wdsu.com/article/coronavirus-updates-in-louisiana-3540-covid-19-cases-in-state-151-deaths-reported/31969586#>.

<sup>19</sup> Adam Daigle, *Coronavirus Cases Grew Faster in Louisiana Than Anywhere Else in the World: UL Study*, THE ACADIANA ADVOCATE (Mar. 24, 2020), <https://www.wdsu.com/article/coronavirus-updates-in-louisiana-3540-covid-19-cases-in-state-151-deaths-reported/31969586#>.

the U.S.,”<sup>20</sup> while “an equally alarming outbreak” is occurring in Shreveport.<sup>21</sup> As of yet, however, West Feliciana Parish, where LSP is located, is only known to have one or two confirmed COVID-19 cases.<sup>22</sup>

## II. LSP Presents a Heightened Risk of Transmission of COVID-19

As a rule, “[i]ndividuals in carceral settings are at a significantly higher risk of spreading infectious diseases.”<sup>23</sup> This is because it is typically “not possible to isolate ... detainees from the outside world (including from staff and vendors who may have been exposed to COVID-19), nor is it possible to isolate them from one another.”<sup>24</sup> “Prevention of contact with an infected droplet is significantly more difficult in a prison than in the community.”<sup>25</sup> As a result, “[j]ails and prisons are long known to be a breeding ground for infectious respiratory illness.”<sup>26</sup> And as has long been understood, “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise.”<sup>27</sup>

LSP poses a particularly high risk of transmission. The CDC recommendations described above “are not possible in LSP.”<sup>28</sup> The majority of inmates live in dormitories of up to 86 people,

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<sup>20</sup> Erika Edwards, *Why New Orleans Is Quickly Becoming a Coronavirus Epicenter in the U.S.*, NBC NEWS (Mar. 26, 2020), <https://www.nbcnews.com/health/health-news/why-new-orleans-quickly-becoming-coronavirus-epicenter-u-s-n1169376>.

<sup>21</sup> Kent Sepkowitz, *The Alarming Message of Louisiana’s Sharp Rise in Covid-19 Cases*, CNN (Mar. 29, 2020) (<https://www.cnn.com/2020/03/29/opinions/shreveport-louisiana-new-orleans-coronavirus-kent-sepkowitz-opinion/index.html>).

<sup>22</sup> Charles Lussier, *School Leader in West Feliciana Parish in Hospital for “Presumed Coronavirus,”* THE ADVOCATE (Mar. 27, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_91166ce4-7037-11ea-b95d-3b57904f3ce6.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_91166ce4-7037-11ea-b95d-3b57904f3ce6.html); Matt Sledge, *Two Louisiana Prison Staffers, Including Angola Employee, Test Positive for Coronavirus*, NOLA.com (Mar. 26, 2020), [https://www.nola.com/news/coronavirus/article\\_e947332a-6f70-11ea-83bf-8fb78c8ff09c.html](https://www.nola.com/news/coronavirus/article_e947332a-6f70-11ea-83bf-8fb78c8ff09c.html).

<sup>23</sup> *Coronel*, 2020 WL 1487274 (internal quotation omitted).

<sup>24</sup> *Id.*

<sup>25</sup> Supp. PUISIS Dec. ¶ 7.

<sup>26</sup> *Id.* ¶ 8.

<sup>27</sup> *United States v. Stephens*, No. 15-cr-95, --- F. Supp. 3d ---, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020) (quoting Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 CLINICAL INFECTIOUS DISEASES 1047, 1047 (Oct. 2007), <https://doi.org/10.1086/521910>).

<sup>28</sup> Supp. PUISIS Dec. ¶ 7.

which “are not arranged to provide social distancing as the distance between beds is approximately 3 feet.”<sup>29</sup> “Large fans blow air through the units which is likely to spread contagious agents embedded in aerosol like COVID-19.”<sup>30</sup> As a result, “[o]ne couldn’t devise a system more contrary to current public health recommendations and the President’s Task Force recommendations than a prison like LSP.”<sup>31</sup> Indeed, “LSP has worse living conditions and higher commingling of people than cruise ships and nursing homes, where COVID-19 is known to have easily spread” and “caused significant death.”<sup>32</sup>

### **III. LSP Houses Thousands of Class Members Who Are at Particular Risk of Death If They Contract COVID-19**

As shown on the record throughout the course of this case, LSP houses thousands of people who are at high risk of suffering severe or even fatal effects if they contract COVID-19 due to the “aging and elderly” population,<sup>33</sup> as well as the extremely high numbers of people suffering from chronic diseases.<sup>34</sup>

The most vulnerable among the LSP population are the patients at the infirmaries in the Treatment Center. Most if not all of these patients have one or more conditions that put them at high risk. Their “beds are in dormitory style setting and are close together.”<sup>35</sup> “If inmates with COVID-19 are housed on the infirmary rather than outside hospitals, the infection is likely to spread throughout this unit of compromised patients.”<sup>36</sup> The approximately 240 residents of the so-called “medical dormitories” are nearly as vulnerable: virtually all have risk factors for severe consequences from COVID-19, yet they live in “dormitories [that] are incapable of allowing inmates to follow

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<sup>29</sup> *Id.* ¶ 10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶¶ 7, 10.

<sup>33</sup> *See* Oct. 24, 2018 Testimony of Tonia Faust at 104.

<sup>34</sup> *See* Nov. 2, 2017 Class Cert. Tr. at 23:12-24:16, 51:9-21; Rec. Doc. 377 at 4 (Dr. Lavespere testifying at the class certification hearing that approximately 2600 patients at Angola have hypertension, 800 have asthma or COPD, 800 have hepatitis C, 900 have hyperlipidemia, 600 have diabetes, 112 have cancer, 125 have hyperthyroidism, 110 have HIV, 50 have seizure disorder, and 75 are anticoagulated).

<sup>35</sup> Supp. PUISIS Dec. ¶ 10.

<sup>36</sup> *Id.*

current CDC recommendations regarding prevention against COVID-19.”<sup>37</sup> These “[d]ormitories with large numbers of persons with severe medical conditions are similar to nursing homes where COVID is known to have caused significant death.”<sup>38</sup>

#### **IV. Defendants Intend to Transfer Inmates with COVID-19 to LSP from Facilities in Other Parts of Louisiana**

To prevent spread of COVID-19, Defendants have suspended “[t]ransfers between DOC facilities and/or local facilities ... indefinitely absent extenuating circumstances.”<sup>39</sup> But they are not applying this protective policy to LSP, despite it having the largest concentration of high-risk inmates in the entire DOC system. Instead, Defendants plan to “house inmates who test positive for the coronavirus, including those from all over the state,” at LSP and the Allen Correctional Center.<sup>40</sup> According to a DOC spokesman, “[o]perators of local jails not equipped to treat coronavirus patients, as well as other state prisons, can transfer inmates with COVID-19 to [LSP].”<sup>41</sup>

According to news reports, Defendants plan to house the patients brought to Angola at “Camp J,” an outcamp that Defendants shut down in May 2018. But as discussed at trial, the outcamps have limited medical facilities.<sup>42</sup> “LSP is not set up to manage hospital level care including ventilation” even at the Treatment Center, much less the outcamps.<sup>43</sup> To the extent any of the transferred patients require intensive medical care, that would need to occur in the Treatment Center. LSP is 25 miles from the nearest hospital and even further from the nearest hospital of any meaningful size,<sup>44</sup> and Defendants “frequently decline to send patients to outside hospitals when indicated by urgent, life-threatening vital signs and symptoms,”<sup>45</sup> making it highly likely that they will

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Ex. A, First Dubner Dec., Rec. Doc. No. 580-4 at 2 (Mar. 25, 2020 email from Randy Robert to Jeffrey Dubner).

<sup>40</sup> Lane, *supra* n.1.

<sup>41</sup> *Id.*

<sup>42</sup> Oct. 9, 2018 Testimony of Dr. Mike Puisis at 117-120.

<sup>43</sup> Supp. Puisis Dec. ¶ 13.

<sup>44</sup> Rec. Doc. No. 573 ¶ 27.

<sup>45</sup> Rec. Doc. No. 573 ¶ 230.

attempt to treat serious cases of COVID-19 at the Treatment Center, with all the attendant risk of transmission throughout the facility.

Even if Defendants could find a way to provide all medical care for the COVID-19 transferees at Camp J, medical personnel and other correctional staff regularly move between Camp J and the Treatment Center, creating a high likelihood of transmission from Camp J to the rest of the prison. Equally concerning, Defendants' plan for preventing staff from transmitting the virus is directly contrary to CDC guidelines. Defendants have directed employees found to have a fever to be sent home, and then return to work as soon as 24 hours after they are fever-free without the use of fever medication.<sup>46</sup> But the CDC recommends returning to work no less than *three* days after resolution of the fever—and at least *seven* days after symptoms first appeared (or after receiving multiple negative COVID-19 tests).<sup>47</sup>

Medical personnel are at particular risk for contracting and spreading COVID-19.<sup>48</sup> In many medical systems, this has impaired the ability to provide care for serious non-COVID-19 conditions. As detailed at the trial, countless Class members require ongoing care for serious, chronic medical conditions, and Class members need emergency care for urgent medical needs every day even in normal times.<sup>49</sup>

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<sup>46</sup> Rec. Doc. No. 580-4 at 31.

<sup>47</sup> Supp. Puisse Dec. ¶ 22 n.17; *see* CDC, “What to Do If You Are Sick” (Mar. 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (under “How to discontinue home isolation”); *see also* CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (advising that symptomatic correctional staff should follow the guidance in “What to Do If You Are Sick”).

<sup>48</sup> CDC, “Interim Infection Prevention and Control Recommendations” (Mar. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html>

<sup>49</sup> *See, e.g.*, JX-rr, R. Lavespere Depo. at 44:4-7 (testifying that as many as 76 patients may be seen each day in the ATU).

## V. Defendants Have Refused to Meet and Confer with Plaintiffs About the Transfer Plan

News reports first disclosed Defendants' plan to transfer inmates with COVID-19 to LSP on Friday, March 27, 2020.<sup>50</sup> The following morning, Plaintiffs contacted Defendants' counsel to inquire whether the reports were accurate, explaining that the high proportion of high-risk individuals and distance from hospital care would make the plan "unconscionably risky to Class members."<sup>51</sup> Plaintiffs asked Defendants whether their understanding of DOC's plans was incorrect, and advised Defendants that they would move for emergency relief if they did not hear from Defendants on the subject by Monday, March 30, 2020.<sup>52</sup> Defendants informed Plaintiffs that they would not respond, due to Plaintiffs' filing of their motion to reopen discovery.<sup>53</sup> Plaintiffs twice more asked for Defendants to confirm whether DOC did in fact plan to transfer patients with COVID-19 and if Defendants would meet and confer about it, explaining that "given the urgency of the approaching tragedy we really have no choice but to go to the Court in an expedited fashion if you refuse even to meet and confer with us."<sup>54</sup>

Late Monday afternoon, Defendants' counsel stated that "DOC has not transferred anyone with Covid-19 to Angola and there are no imminent plans to make any such transfers at this time," but pointedly did not respond to Plaintiffs' request that they confirm whether Defendants planned to transfer inmates with COVID-19 to LSP at all.<sup>55</sup> Within an hour, Plaintiffs learned that Defendants had begun transferring inmates with COVID-19 to Allen.<sup>56</sup> Accordingly, Plaintiffs specifically asked "whether 1) DOC plans to transfer patients with COVID-19 from other jails and facilities to LSP (whether before or after Allen runs out of room for transfers) and 2) whether Defendants will provide us with 14 days' notice before making such transfers, allowing us time at

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<sup>50</sup> See Lane, *supra* n.1.

<sup>51</sup> Ex. A, Supp. Dubner Dec.; Supp. Dubner Dec. ¶¶ 3-4.

<sup>52</sup> Supp. Dubner Dec. ¶ 4

<sup>53</sup> *Id.* ¶ 6.

<sup>54</sup> *Id.* ¶¶ 7-9; Ex. A, Supp. Dubner Dec.

<sup>55</sup> Supp. Dubner Dec. ¶ 10; Ex. A, Supp. Dubner Dec.

<sup>56</sup> Supp. Dubner Dec. ¶ 11.

that point to bring the matter to the Court in a more orderly fashion,”<sup>57</sup> and requested a response by 10:30 a.m. Tuesday, March 31, 2020. Defendants responded immediately to ask who told Plaintiffs that transfers had begun, but declined to respond to Plaintiffs’ questions.<sup>58</sup>

### LEGAL STANDARD

In order to obtain a preliminary injunction or temporary restraining order, “Plaintiffs must demonstrate: (1) a substantial likelihood of success on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury outweighs the threatened harm to the defendant, and (4) that granting the preliminary injunction will not deserve the public interest.”<sup>59</sup> Plaintiffs must show each of these factors.<sup>60</sup> However, Plaintiffs are “not required to prove [their] entitlement to summary judgment”; rather, they “must present a prima facie case but need not show that [they are] certain to win.”<sup>61</sup>

The Court may issue a temporary restraining order without awaiting for the adverse party’s response if it finds that “immediate and irreparable injury ... will result to the movant before the adverse party can be heard in opposition.”<sup>62</sup>

### ARGUMENT

Plaintiffs are a certified Class of “all inmates who [are] now, or will be in the future, incarcerated at LSP.”<sup>63</sup> In a three-week trial in October 2018, they proved “that the medical care at [LSP] is unconstitutional in some respects.”<sup>64</sup> In other words, they have shown that Defendants have acted “with deliberate indifference to [their] serious medical needs”<sup>65</sup> and that they are

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<sup>57</sup> *Id.* ¶ 12; Ex. A, Supp. Dubner Dec.

<sup>58</sup> Supp. Dubner Dec. ¶ 13; Ex. A, Supp. Dubner Dec.

<sup>59</sup> *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng’rs*, No. 18-cv-23-SDD-EWD, 2018 WL 4701849, at \*2 (M.D. La. Jan. 30, 2018)

<sup>60</sup> *Id.*

<sup>61</sup> *New River Shopping Ctr., LLC v. Villenurve*, No. 17-cv-281-SDD-RLB, 2017 WL 1821108, at \*2 (M.D. La. May 5, 2017).

<sup>62</sup> Fed. R. Civ. P. 65(b)(1).

<sup>63</sup> Rec. Doc. 394 at 30.

<sup>64</sup> Rec. Doc. 578.

<sup>65</sup> *Domino v. Tex. Dep’t of Criminal Justice*, 239 F.3d 752, 754 (5th Cir. 2001).

“incarcerated under conditions posing a substantial risk of serious harm.”<sup>66</sup> As yet, the Court has not entered any remedy alleviating these unconstitutional conditions.

Now, Defendants are on the verge of taking a step that will exponentially exacerbate this constitutional violation. They are about to intentionally bring COVID-19, a deadly and contagious virus of “unprecedented magnitude,”<sup>67</sup> to LSP. Doing so is highly likely to lead to an outbreak of COVID-19 that could literally decimate the elderly and medically vulnerable population of LSP. Dozens if not hundreds of Class members may die. And even those who do not contract COVID-19 could face serious harm. COVID-19 outbreaks wreak devastating harm on even the most prepared medical systems, and they would cripple LSP’s already unconstitutional system—further limiting access to care for the most vulnerable Class members.

Plaintiffs more than meet the standard for a preliminary injunction. There is a substantial likelihood that they can show that the transfer plan is unconstitutional under the Eighth Amendment, and the substantial threat of irreparable harm is incontestable. There would be no harm to Defendants from enjoining this plan, and the public interest stands strongly against allowing Defendants to create a COVID-19 cluster where none currently exists, in an area that is unequipped to handle an outbreak.

Once Defendants introduce COVID-19 to LSP, there will be no unringing the bell. As soon as the transfers begin, transmission could immediately spread through LSP like wildfire and rapidly become uncontrollable even in the best of circumstances and with the best of intentions. Accordingly, the Court should immediately enter an order temporarily restraining Defendants from effectuating their plan while it considers the full motion for a preliminary injunction and while the parties confer to determine whether there is any way to obviate the need for such an injunction.

### **I. Plaintiffs Face a Substantial Threat of Irreparable Injury**

Thousands of Class members are elderly or have medical conditions that make it highly likely that they would experience severe consequences, and possibly death, if they contract COVID-19.<sup>68</sup>

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<sup>66</sup> *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

<sup>67</sup> *Martin*, 2020 WL 1274857, at \*2.

<sup>68</sup> See *supra* nn.33 & 34.

And because Class members are incarcerated in dormitories with little to no control over their contact with others and the hygiene of their confinement, they cannot practically take the preventative measures recommended by the CDC and the President’s Task Force on COVID-19.<sup>69</sup> They are entirely at the mercy of Defendants.

Defendants’ affirmative plan is to take individuals with COVID-19 from hotspots around the state and bring them to LSP. For all the reasons explained above, it would take a miracle for this plan not to result in a COVID-19 outbreak at LSP. And even if Defendants could somehow show that transmission was not a virtual certainty, “it is not necessary to demonstrate that harm is inevitable.”<sup>70</sup> Rather, all that is required is “a significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.”<sup>71</sup> At a minimum, there is no question that the likelihood of transmission of this virus of unprecedented “magnitude and speed of transmission”<sup>72</sup> through a facility that could hardly be “more contrary to current public health recommendations and the President’s Task Force recommendations”<sup>73</sup> is “significant” and “imminent.”

Nor can there be any question that the threatened harm is irreparable. Thousands of Class members have risk factors making death or severe illness likely if they contract COVID-19.<sup>74</sup> “It goes without saying that ... death is an irreparable injury.”<sup>75</sup> Even for those who recover, the extreme suffering that they may experience during their illness<sup>76</sup> and the possibility of long-term

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<sup>69</sup> See *supra* nn.16 & 17.

<sup>70</sup> *Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986).

<sup>71</sup> *Id.*

<sup>72</sup> *Martin*, 2020 WL 1274857, at \*2.

<sup>73</sup> Supp. PUISIS Dec. ¶ 10.

<sup>74</sup> See *supra* nn.33 & 34.

<sup>75</sup> *East v. Blue Cross & Blue Shield of La.*, No. 14-cv-115-BAJ-RLB, 2014 WL 8332136, at \*2 (M.D. La. Feb. 24, 2014); accord, e.g., *Turner v. Epps*, 842 F. Supp. 2d 1023, 1028 (S.D. Miss. 2012) (describing death as “the single most irreparable harm of all”).

<sup>76</sup> See, e.g., Graham Readfearn, *What Happens to People’s Lungs When They Get Coronavirus?*, THE GUARDIAN (Mar. 28, 2020, 2:56 AM), <https://www.theguardian.com/world/2020/mar/28/what-happens-to-peoples-lungs-when-they-get-coronavirus> (noting that “almost all serious consequences of Covid-19 feature pneumonia” and that “there is evidence that pneumonia caused by Covid-19 may be particularly severe.” The lungs “become filled with inflammatory material [and] are unable to

respiratory impairment<sup>77</sup> could not be erased. Such “bodily injury is not far behind” death as “an irreparable and unfathomable harm.”<sup>78</sup>

Moreover, COVID-19 outbreaks have brought some of the most well-equipped medical systems in the country to their knees.<sup>79</sup> In New York City, for example, many people with serious non-COVID-19 conditions are finding it difficult if not impossible to obtain needed medical care.<sup>80</sup> People have died while waiting in line for overburdened emergency rooms.<sup>81</sup> Medical personnel have been hit particularly hard, leading to numerous deaths and further depleting medical systems’

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get enough oxygen to the bloodstream, reducing the body’s ability to take on oxygen and get rid of carbon dioxide”).

<sup>77</sup> See, e.g., Peter Wark, *How Are the Most Serious COVID-19 Cases Treated, and Does the Coronavirus Cause Lasting Damage?*, THECONVERSATION.COM (Mar. 29, 2020, 9:29 PM), <http://theconversation.com/how-are-the-most-serious-covid-19-cases-treated-and-does-the-coronavirus-cause-lasting-damage-134398> (“At this stage there is no data on the long-term effects of COVID-19. But we can look at the after-effects of other acute viral respiratory diseases such as influenza, SARS and Middle East respiratory syndrome (MERS). In these diseases, collectively called acute respiratory distress syndromes (ARDS), the fragile small airways and air sacs become damaged by inflammation, can become blocked by fluid and blood, and are replaced by scar tissue as they heal. This can stiffen the lungs – at first from fluid and then from scar tissue – impairing their ability to transfer oxygen and making breathing more laboured.”).

<sup>78</sup> *Garcia v. Google, Inc.*, 743 F.3d 1258, 1268 (9th Cir. 2014); see also, e.g., *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (noting that the “suffer[ing] of physical effects” can “serve as an independent basis for [a] conclusion that the plaintiff would suffer irreparable harm in the absence of preliminary injunctive relief”).

<sup>79</sup> See, e.g., Michael Rothfeld, Somini Sengupta, Joseph Goldstein, and Brian M. Rosenthal, *13 Deaths in a Day: An “Apocalyptic” Coronavirus Surge at an N.Y.C. Hospital*, NEW YORK TIMES (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/nyregion/nyc-coronavirus-hospitals.html> (“[H]ospitals are under siege. New York City’s hospitals run the gamut from prestigious teaching institutions catering to the elite to public hospitals providing care for some of the poorest communities in the nation. Regardless of whom they serve, few have been spared the impact of the pandemic: A flood of sick and fearful New Yorkers has besieged emergency rooms across the city.”); see also Miguel Marquez and Sonia Moghe, *Inside a Brooklyn Hospital that Is Overwhelmed with COVID-19 Patients and Deaths*, CNN (Mar. 30, 2020, 12:25 PM), <https://www.cnn.com/2020/03/30/us/brooklyn-hospital-coronavirus-patients-deaths/index.html> (“‘A medical war zone,’ [Dr. Arabia] Mollette, an emergency room physician at Brookdale Hospital, told CNN. ‘Every day I come, what I see on a daily basis, is pain, despair, suffering and health care disparities.’”).

<sup>80</sup> *Id.*

<sup>81</sup> See, e.g., Jessica Glenza, Ankita Rao, and Alexandra Villarreal, *‘It’s What Was Happening in Italy’: the Hospital at the Center of New York’s COVID-19 Crisis*, THE GUARDIAN (Mar. 27, 2020, 1:59 PM), <https://www.theguardian.com/us-news/2020/mar/27/new-york-coronavirus-elmhurst-hospital>.

resources.<sup>82</sup> The strain on LSP's already overtaxed and insufficient system will almost certainly be catastrophic and could result in grievous harm to the many Class members with chronic conditions that require regular medical care, as well as Class members who experience emergency medical needs of all types. Class members' access to physicians, nurses, outside specialists, and hospital care is already unconstitutionally limited, as shown at trial; if Defendants introduce a novel virus of unprecedented magnitude to LSP, even the faint access to care that existed before the outbreak will be beyond reach.

## II. Plaintiffs Have a Substantial Likelihood of Success on the Merits

To show a substantial likelihood of success on the merits, Plaintiffs "must present a prima facie case but need not show that [they are] certain to win."<sup>83</sup> Plaintiffs are likely to be able to show that the transfer plan is unconstitutional for three reasons. First, for all the reasons explained above, it directly exposes Class members to a heightened risk of contracting COVID-19. "[C]orrectional officials have an affirmative obligation to protect inmates from infectious disease."<sup>84</sup> The Eighth Amendment "require[s] a remedy" where their jailors knowingly expose them to a risk of contracting serious infectious diseases, even if "it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed."<sup>85</sup>

Second, Plaintiffs have already shown that Defendants' inadequate medical system places them at a substantial risk of serious harm.<sup>86</sup> Defendants' new plan is to make that unconstitutional system even worse by introducing a virulent communicable disease into the system, exponentially increasing providers' caseloads and reducing access to care for all Class members. In effect, Defendants are intentionally taking capacity out of LSP's health care system, exacerbating all the

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<sup>82</sup> See, e.g., Dylan Scott, Umair Irfan, and Jen Kirby, *The Next Coronavirus Crisis Will Be a Shortage of Doctors and Nurses*, VOX (Mar. 26, 2020, 7:00 AM), <https://www.vox.com/2020/3/26/21192191/coronavirus-us-new-york-hospitals-doctors-nurses>.

<sup>83</sup> Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, 11A Federal Practice & Procedure § 2948.3 (2d ed. 1995); see also *Janvey v. Alguire*, 647 F.3d 585, 595-96 (5th Cir. 2011) (noting that plaintiffs are "not required to prove [their] entitlement to summary judgment" to show likelihood of success on the merits).

<sup>84</sup> *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996).

<sup>85</sup> *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

<sup>86</sup> See Rec. Doc. 578.

problems that Plaintiffs have already proven. Defendants are knowingly increasing the risk of harm to Class members from their understaffing and inadequate procedures, which likely constitutes deliberate indifference.<sup>87</sup>

Third, Plaintiffs have yet to receive any remedy for their successful claim that Defendants' medical care places them at a substantial risk of serious harm in violation of the Eighth Amendment. A preliminary injunction would be in aid of remediating this proven constitutional violation, as it is necessary to ensure that Plaintiffs' medical care does not get even worse before a remedy is instated. Indeed, the requested injunction will save an unknowable number of Class members from passing away before they can ever receive relief on their proven claim.

### **III. The Remaining Factors Weigh Heavily in Favor of a Temporary Restraining Order and Preliminary Injunction**

The third and fourth factors, "harm to the opposing party and weighing the public interest ...[,] merge when the Government is the opposing party."<sup>88</sup> Here, they weigh heavily in favor of granting relief.

As an initial matter, the requested injunction would protect Plaintiffs' constitutional rights under the Eighth Amendment, and "[i]t is always in the public interest to prevent the violation of a party's constitutional rights."<sup>89</sup> Because "confidence in the humane application of the governing laws of the State must be in the public's interest,"<sup>90</sup> there is a clear public interest in preventing Defendants from exposing Class members to cruel and unusual punishment in the form of willful exposure to a serious risk of severe harm.

And beyond the public interest in protecting the Class members themselves, minimizing risk of transmission of COVID-19 is inarguably in the public interest. As already explained, the transfer

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<sup>87</sup> See *Newman v. Alabama*, 503 F.2d 1320 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975) (finding that when systematic deficiencies in staffing, facilities or procedures make unnecessary suffering inevitable, a court will not hesitate to use its injunctive powers).

<sup>88</sup> *Nken v. Holder*, 556 U.S. 418, 435 (2009).

<sup>89</sup> *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (quoting *Awad v. Ziriakx*, 670 F.3d 1111, 1132 (10th Cir. 2012)); *accord, e.g., June Medical Servs., LLC v. Caldwell*, No. 14-cv-525-JWD-RLB, 2014 WL 4296679, at \*8 (M.D. La. Aug. 31, 2014).

<sup>90</sup> *Harris v. Johnson*, 323 F. Supp. 2d 797, 810 (S.D. Tex. 2004).

plan is likely to spread COVID-19 to the staff of LSP and then to the broader West Feliciana and central Louisiana community.<sup>91</sup> “[A] COVID-19 outbreak at a detention facility could quickly overwhelm” not only the facility’s medical system, but “surrounding community hospitals” as well.<sup>92</sup> The resulting effect on “public health and safety” would plainly harm the public interest.<sup>93</sup>

By contrast, there is no substantial harm to Defendants in enjoining the transfer plan. Defendants can have no interest in following through with a plan that will expose not only Class members but hundreds of their own staff to COVID-19. Moreover, Defendants have other, safer options than transferring persons with COVID-19 to a prison distinctly ill-suited to house and treat them, and to prevent transmission.<sup>94</sup> And even if there were some harm to Defendants, it would be greatly outweighed by the catastrophic risk to Class members.

#### **IV. The Court Should Immediately Enter a Temporary Restraining Order While It Adjudicates This Motion**

At any moment, Defendants could begin transferring inmates with COVID-19 to LSP. They have refused even to acknowledge their transfer plan to Plaintiffs, making it impossible to know when they will start introducing COVID-19 to LSP or how they expect to prevent its spread. Although they have said that transfers are not imminent “at this time,”<sup>95</sup> they have given no assurance that that will not change at any time without notice. Even on an expedited briefing schedule, by the time the Court can receive full briefing and hold a preliminary injunction hearing, the damage may already be done. Once COVID-19 begins to spread at LSP, it will likely be impossible to stop it. “A hearing *weeks* from now may be no relief at all, because Petitioners may contract COVID-19 in the interim and face serious health consequences—including death.”<sup>96</sup>

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<sup>91</sup> See, e.g., Supp PUISIS Dec. ¶¶ 14, 19

<sup>92</sup> *Coronel*, 2020 WL 1487274, at \*7.

<sup>93</sup> *Id.*

<sup>94</sup> See, e.g., Supp. PUISIS Dec. ¶¶ 15-16 (recommending, *inter alia*, release of low-risk prisoners to make room for proper isolation).

<sup>95</sup> Supp. Dubner Dec. ¶ 10; Ex. A, Supp. Dubner Dec.

<sup>96</sup> *Coronel*, 2020 WL 1487274, at \*7.

This is an archetypal situation for a temporary restraining order. Temporarily restraining the Defendants from transferring inmates with COVID-19 to LSP will allow the Court to “preserve the status quo and prevent irreparable harm just so long as is necessary to hold a hearing, and no longer.”<sup>97</sup> Plaintiffs are prepared to proceed to a preliminary injunction hearing as soon as Defendants and the Court are able. But in the interim, a temporary restraining order is the only way to ensure that Defendants’ plan to affirmatively introduce COVID-19 to LSP is not a *fait accompli* before this Court has the opportunity to pass judgment on it.

### CONCLUSION

For the foregoing reasons, the Court should immediately issue an order temporarily restraining Defendants from transferring inmates with COVID-19 to LSP; and, after a hearing, preliminarily enjoin Defendants from doing so.

Respectfully submitted this 31st day of March, 2020.

Respectfully submitted by:

/s/ Mercedes Montagnes

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<sup>97</sup> *Snow v. Lambert*, No. 15-cv-567-SDD-RLB, 2015 WL 5071981, at \*1 (M.D. La. Aug. 27, 2015) (quoting *RW Dev’t, LLC v. Cuninghame Grp. Architecture, Inc.*, No. 12-cv-224, 2012 WL 3258782, at \*2 (S.D. Miss. Aug. 8, 2012)).

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

I further certify that copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the Defendants' attorneys, who have already made an appearance in this matter.

/s/ Mercedes Montagnes  
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**SUPPLEMENTAL DECLARATION OF DR. MICHAEL PUISIS CONCERNING THE RISK OF THE SPREAD OF COVID-19 IN THE LOUISIANA STATE PRISON (LSP) AT ANGOLA**

1. Dr. Michael PUISIS is an internist who has worked in correctional medicine for 35 years. He began working at the Cook County Jail as a physician in 1985 and became the Medical Director of Cook County Jail from 1991 to 1996 and Chief Operating Officer for the medical program at the Cook County Jail from 2009 to 2012. He has worked in and managed correctional medical programs in multiple state prisons including in Illinois and New Mexico. He has worked as a Monitor or Expert for Federal Courts on multiple cases and has worked as a Correctional Medical Expert for the Department of Justice on multiple cases. He has also participated in revisions of national standards for medical care for the National Commission on Correctional Health Care and for the American Public Health Association. He also participated in revision of tuberculosis standards for the Center for Disease Control. Dr. PUISIS has edited the only textbook on correctional medicine, *Clinical Practice in Correctional Medicine*. Dr. PUISIS evaluated the Louisiana State Prison at Angola for The Promise of Justice Initiative in 2016 (and also conducted records review in 2018) and previously monitored Louisiana State Prison at Angola for the Department of Justice.
2. Coronavirus disease of 2019 (COVID-19) is a viral pandemic. This is a novel virus for which there is no established curative medical treatment and no vaccine.
3. The number of cases of COVID-19 in the United States are rising rapidly. On March 30, 2020, Johns Hopkins reported that there were 161,807 reported COVID-19 infections in the U.S. The number of deaths is over 3,000 but both cases and deaths are rising rapidly so by the time this declaration is read the numbers of both cases and deaths will be significantly larger. The number of cases of COVID-19 is the highest number of reported cases of any country in the world.
4. Louisiana has a rapidly accelerating rate of COVID-19 infections. A study from the University of Louisiana at Lafayette reported that COVID-19 cases grew at a 67.8% rate, the highest rate in the U.S.<sup>1</sup> The Louisiana Department of Health reported on March 30, 2020 that there were 3251 cases of COVID-19 with 185 deaths. Louisiana has the 5<sup>th</sup> most deaths of any state in the U.S.
5. UpToDate<sup>2</sup> reports an overall case mortality rate from the disease of 2.3. Louisiana has 185 deaths for 3251 cases; 5.7% of persons diagnosed with the infection in Louisiana die.

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<sup>1</sup> Coronavirus cases grew faster in Louisiana than anywhere else in the world: UL study, The Acadiana Advocate, Adam Daigle March 24, 2020, [https://www.theadvocate.com/acadiana/news/coronavirus/article\\_94494420-6d4b-11ea-ac42-ff7dd722c084.html](https://www.theadvocate.com/acadiana/news/coronavirus/article_94494420-6d4b-11ea-ac42-ff7dd722c084.html).

<sup>2</sup> UpToDate is an online medical reference widely used in hospitals, health organizations, and private physicians.

6. COVID-19 is transmitted by droplets of infected aerosol when people with the infection cough. Droplets of respiratory secretions infected with the virus can survive as an aerosol for up to three hours.<sup>3 4</sup> Droplets can be directly transmitted by inhalation to other individuals in close proximity. Droplets can land on surfaces and be picked up by the hands of another person who can then become infected by contacting a mucous membrane (eyes, mouth, or nose) with their hand. Infected droplets can remain viable on surfaces for variable lengths of time, ranging from up to 3 hours on copper, 24 hours on cardboard, and 2-3 days on plastic and stainless steel.<sup>5</sup>
7. Medical care for COVID-19 focuses on prevention, which emphasizes social distancing, handwashing, and respiratory hygiene. The current CDC recommendations for social distancing and frequent handwashing measures, which are the only measures available to protect against infection, are not possible in LSP. Furthermore, repeated sanitation of horizontal and touch surfaces in inmate living units and throughout LSP is not typically done based on our review and would be an overwhelming task. LSP has worse living conditions and higher comingling of people than cruise ships and nursing homes, where COVID-19 is known to have easily spread. Prevention of contact with an infected droplet is significantly more difficult in a prison than in the community.
8. With respect to transmission of disease by droplet inhalation, correctional environments, including LSP, actually promote spread of respiratory contagious disease. Jails and prisons are long known to be a breeding ground for infectious respiratory illness. Tuberculosis is a bacteria which is significantly less transmissible than COVID-19 yet has been responsible for numerous outbreaks of illness in prisons and jails over the years. Respiratory infectious disease like TB are thought to be made worse in prisons because of crowding and recirculated air. Because of transmissibility of TB in prisons the CDC still recommends screening for this condition in prisons. Proper screening for tuberculosis can control that disease in prison populations.
9. The COVID-19 virus is a different type of respiratory illness; its spread is rapid and it is more easily transmissible. Control through screening with a test as is done for TB in prisons would be optimal but current CDC guidance<sup>6</sup> does not recommend a test as a screening method. Likely, this is due to a critical shortage of testing material. The method of control in an intake of a correctional facility is quarantine for up to 14 days.<sup>7</sup> If testing material

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<sup>3</sup> National Institute of Health, available at <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

<sup>4</sup> Neeltje van Doremalen and Others, Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1, Correspondence in New England Journal of Medicine, March 17, 2020, <https://www.nejm.org/doi/full/10.1056/NEJMc2004973?cid=DM88773 &bid=171021451>

<sup>5</sup> *Id.*

<sup>6</sup> Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19) Centers for Disease Control as found at <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>

<sup>7</sup> In their Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities guidance the CDC recommends “If possible, consider quarantining all new intakes for 14 days before they enter the facility’s general population

becomes readily available, I would recommend testing and a quarantine until the test is complete.

10. Jails and prisons promote spread of respiratory illnesses because of crowded congregate housing arrangements. LSP is the largest maximum security prison in the U. S. and has a population of approximately 6000 individuals. The main unit of LSP contains 32 dormitories. The remote camps C and D have a combination of dormitories and cellblocks. Camp F is a minimum dormitory. I have visited multiple inmate dormitories. All dormitories I visited were filled to capacity and were crowded. The dormitories are not arranged to provide social distancing as the distance between beds is approximately 3 feet. Large fans blow air through the units which is likely to spread contagious agents embedded in aerosol like COVID-19. Washing areas are shared. There is no privacy and it is not possible to remain 6 feet apart as recommended. Infirmary beds are in dormitory style setting and are close together. If inmates with COVID-19 are housed on the infirmary rather than outside hospitals, the infection is likely to spread throughout this unit of compromised patients. Photos in our prior 2016 report<sup>8</sup> show what some of these dormitories and showers look like.<sup>9</sup> Notable in these pictures is that soap is not consistently present on sinks used by staff and in showers used by inmates. Currently the President's Task Force on COVID-19 recommends limiting gatherings to no more than 10 persons. Inmates at LSP live in large dormitories with over 80 persons per dormitory. These dormitories are incapable of allowing inmates to follow current CDC recommendations regarding prevention against COVID-19. Officers guarding the inmates can carry the infection into the prison. One couldn't devise a system more contrary to current public health recommendations and the President's Task Force recommendations than a prison like LSP. The elderly and those with significant medical conditions are housed together in some of these dormitories creating a nursing home like environment; environments where COVID-19 is known to have rapidly spread. Dormitories with large numbers of persons with severe medical conditions are similar to nursing homes where COVID is known to have caused significant death.
11. There is a lack of information about what is occurring within LSP and testing is not being widely performed. A bullet point summary of the LSP COVID-19 plan states that "any LSP offender presenting with symptoms is given both a flu test and COVID-19 test." A news report on March 26, 2020 stated that two employees at different state prisons tested positive for COVID-19 but that no inmates have tested positive. The newspaper reported that only 32 inmates in the entire Louisiana Department of Corrections have been tested and all have tested negative. Currently, transfers into LSP have been suspended absent extenuating

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(SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case). As found at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

<sup>8</sup> Louisiana State Penitentiary at Angola; Health Care Evaluation Submitted October 3, 2016; Lewis et al v. Cain et al Class Action Complaint. United States District Court, Middle District of Louisiana. Case No. 3:15-cv-00318-BAJ-RLB Document 133-1 10/14/16

<sup>9</sup> Photos PX006.0279, PX006.0280, PX006.0277

circumstances and if an inmate is transferred into LSP, they are supposed to be quarantined for a 14-day period. LSP screens visitors and new inmates with symptom screening and a temperature. These measures are consistent with recommendations of the Centers for Disease Control (CDC) correctional guidelines.<sup>10</sup> However, based on our review of this facility in 2018, we noted ineffective medical care with several unqualified physicians, insufficient nurse staff, no infection control nurse, and lack of supervision of front line medical staff. While CDC procedures are in place I question the ability to effectively carry out the procedures as stated.

12. An individual's immune system is the primary defense against this infection. As a result, people over age 65 years of age and persons with impaired immunity may have a higher probability of death if they are infected. Age related risk is a result of impaired immunity with aging. The older a person is the greater the apparent risk. In LSP 90% of inmates are incarcerated for life and approximately 50% of inmates are over age 50. People on immunosuppressive medication, with diseases causing impaired immunity, or with significant cardiac or pulmonary medical conditions also are at increased risk of death. It has recently been reported that younger patients with cardiovascular disease or hypertension may have unappreciated risk for severe disease.<sup>11</sup> This has significant implications for correctional facilities with high rates of hypertension. Persons with severe mental illness in prisons are also, in my opinion, at increased risk of acquiring and transmitting infection because they are unable to understand social distancing and hand hygiene and may be unable to communicate symptoms appropriately. Also, by classification, like other prison systems, LSP houses inmates who are elderly, have disabilities, are mentally ill or have severe chronic illness profiles in specific housing areas, making this population at great risk if one of them becomes infected. Because LSP has a very large elderly population with significant chronic illness spread of infection in LSP would result in high rates of death.
13. Based on our review of care at LSP through 2018, inmates lacked access to hospital care under ordinary circumstances; the COVID-19 pandemic will only make that worse. Currently, severe COVID-19 disease is treated only with supportive care including respiratory isolation, oxygen, and mechanical ventilation as a last resort. LSP is a remote prison which is also remote from hospitals. There are reports that Louisiana's hospitals could be overwhelmed by COVID-19 cases.<sup>12</sup> The reports of possible lack of hospital beds

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<sup>10</sup> Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention posted March 23, 2020 as found at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

<sup>11</sup> ACE2 is the SARS-CoV-2 Receptor Required for Cell Entry, Summary, New England Journal of Medicine, March 18, 2020 Review of article of Hoffman, M et al in Cell 2020 Mar 5

<sup>12</sup> Louisiana's hospitals could be overwhelmed by COVID-19 virus in all but best scenario; Daily Adviser March 26, 2020 as found at <https://www.theadvertiser.com/story/news/local/2020/03/26/coronavirus-louisiana-hospitals-overwhelmed-under-all-covid-19-scenarios/2884019001/>

would place LSP inmates in a dire predicament.<sup>13</sup> Also, LSP is not set up to manage hospital level care including ventilation. The infirmary is a dormitory and housing a COVID-19 patient on this unit would result in spread to other uninfected but medically compromised patients. There is therefore no place to treat an ill person with COVID-19 except in a general housing unit or on the infirmary, both of which would expose other patients to infection. The existing staff at LSP could not manage any hospital-level patient and getting a patient to a hospital from LSP will be challenging under current circumstances. This will invariably place inmates at risk of death.

14. The state is proposing transferring detained individuals with COVID-19 from the state's numerous jails to Angola. This would entail transportation of COVID-19 infected detainees to Angola for housing. It is my opinion that transferring detainees from jails to LSP for medical isolation and clinical management is not a good idea for multiple reasons. First, because the process for transporting COVID positive cases to a parish and a prison without cases—or with few cases—would increase the risk of transmission of positive cases to a location without cases or few cases, thereby increasing risk of spread including to West Feliciana Parish and the surrounding communities. Second, LSP has a particularly vulnerable population with over 50% of inmates over 50 years of age and many vulnerable persons with high risk medical conditions. Staffing deficiencies will likely result in medical and custody staff working with infected transferred detainees as well as LSP prisoners, which is likely to spread infection to the uninfected prisoners currently housed at LSP. This places them at significant risk. Third, medical care at LSP is not good and transferred inmates are unlikely to receive the medical attention needed to appropriately monitor their disease. LSP had insufficient staff in 2016 and was unable to adequately provide medical care such that officers and inmates were used to provide medical care.<sup>14</sup> Introduction of a COVID-19 infected population into a system without adequate medical staff can only result in less attention being paid to both the existing LSP patients who have substantial medical needs as well as the newly transferred inmates who should be monitored multiple times daily. Additionally, the quality of care at LSP was substandard in 2016 when we produced a report of our investigation and again in 2018 based on selected record reviews. Physicians were not credentialed appropriately and did not perform consistent with existing standards of care. On record reviews, we noted failure to recognize indications for hospitalization which is critical in the COVID-19 population. There was failure to recognize typical signs of respiratory decompensation which is also critical for COVID-19 patients. There were delays in transfer of patients to a hospital when indicated. Both physicians and other staff (nurses and emergency medical technicians) failed to recognize “red flag” signs resulting in adverse events. Also, LSP is not set up to manage acutely ill patients. Laboratory services are only available weekdays during working-day-hours and not at all on weekends. Blood gas assessments, critical for managing acute respiratory distress are not available at LSP.

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<sup>13</sup> Who gets a ventilator? Hospitals facing coronavirus surge are preparing for life-or-death decisions. NBC News as found at <https://www.nbcnews.com/health/health-care/who-gets-ventilator-hospitals-facing-coronavirus-surge-are-preparing-life-n1162721>

<sup>14</sup> Officers passed medications on most units, and inmates assisted in providing some services to inmates on the infirmary during our 2016

Physician evaluations during evening and nights were mostly telephonic and inadequate for patient needs. Also, the higher-level-of-care infirmary houses many long-term ill patients. These patients are at very high risk of death in the event of COVID-19 making the infirmary not useable for COVID-19 patients who deteriorate. Further, the local hospital is not a reference hospital and patients requiring intubation would need to be sent to Baton Rouge or New Orleans, an hour to three hour ride, respectively, a long ride with a potentially decompensating patient. For these reasons, detainees involved in these transfers would not be transferred into a situation that would include improved medical services. Services would likely be worse. Fourth and last, there is no evidence that the Louisiana Department of Health was involved in this decision. This appears to be a custody decision without consultation during a pandemic crisis with the Louisiana Department of Health. I have listed multiple reasons why this decision make little sense from a medical perspective. It also is not a good decision from a public health perspective. Custody leadership should not be making a decision that is likely to have great impact on a public health crisis, both with respect to introduction of active COVID-19 cases into a naïve and vulnerable population, and because the impact on local hospital resources could overwhelm the local community and reduce availability of ICU beds to community residents. For all of these reasons, it is my opinion that this transfer is not a good idea and will worsen the impact of this pandemic.

### **Recommendations**

15. Steps should be taken to release any inmate who is a low risk to the community. The additional risk to inmates by virtue of crowding in prisons and the risk of promoting spread of the infection to the inmate population, and thereby to the community, needs to be weighed against the reason for not releasing the inmate from incarceration. Release based on risk should prioritize inmates over 65 years of age, inmates with immune disorders, inmates with significant cardiac (including hypertension) or pulmonary conditions, or inmates with cognitive disorders. Keeping healthy individuals in prison for short sentences, or for parole violations or other marginal public safety reasons only promotes crowding. Crowding decreases the ability of maintaining distancing of prisoners which risks spread of the virus. Therefore, healthy prisoners with low risk sentences are best sent home as a preventive measure.
16. Because LSP is a maximum security prison with a 90% of inmates having a life sentence, depopulation of low risk inmates may not yield many inmates who can be released. Depopulating should be done at other Louisiana prisons to permit LSP to reassign inmates to other prisons that will permit appropriate distancing in dormitories. Such reassignment is permissible under CDC guideline on the basis of depopulation. Current dormitory arrangements are inconsistent with current public health and CDC recommendations regarding social distancing and if COVID-19 transmission penetrates the prison, the infection will spread widely.
17. If and when COVID-19 testing becomes readily available, expanded testing should be done.

18. All persons over 65, with severe mental illness, with immune disorders, with serious cardiac or pulmonary disease, or with any cognitive disorder should have daily symptom screening and temperature screening. Any positive symptom or temperature should require respiratory isolation and testing for COVID-19. Temperatures should be taken with infrared no-touch thermometers so that symptom screening and temperatures can be taken without touching the patient.
19. Persons suspicious for or known to be infected with COVID-19 should NOT be transferred to LSP unless specifically approved and recommended by the Louisiana Department of Health.<sup>15</sup> As far as news reports reveal, LSP and West Feliciana Parish have only had two confirmed cases of COVID-19 as of March 30, 2020.<sup>16</sup> To send patients infected with COVID-19 to a parish and correctional facility with few known cases risks spreading the disease further into Louisiana and has ramifications for the community at large. Furthermore, approximately 50% of the LSP population is over age 50 with many high risk medical conditions and a majority of inmates live in dormitories. This increases risk of transmission into an uninfected population and increases risk of death.
20. The CDC recommends suspending all transfers between facilities or jurisdictions.<sup>17</sup> LSP should enact this recommendation. However, if a transfer must be done, any person is transferred from one prison to another, they should have a negative COVID-19 test result or be quarantined for 14 days prior to transfer and known to not have COVID-19.
21. LSP needs to develop guidelines for when to send patients to a hospital. These should be developed with the reference hospital. Contact information with the reference hospital should be established as soon as possible. Criteria for hospital referral should be established

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<sup>15</sup> Louisiana plans to house local and state inmates with coronavirus at Angola and Allen Correctional; Emily Lane, WDSU News March 27, 2020; as found at <https://www.wdsu.com/article/louisiana-plans-to-house-inmates-with-coronavirus-at-angola-and-another-prison/31960114>

<sup>16</sup> Two Louisiana prison staffers, including Angola employee, test positive for coronavirus; Matt Sledge, NOLA.com March 26, 2020; as found at [https://www.nola.com/news/coronavirus/article\\_e947332a-6f70-11ea-83bf-8fb78c8ff09c.html](https://www.nola.com/news/coronavirus/article_e947332a-6f70-11ea-83bf-8fb78c8ff09c.html); School leader in West Feliciana Parish in hospital for “presumed” coronavirus; Charles Lussier, The Advocate March 27, 2020; as found at [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_91166ce4-7037-11ea-b95d-3b57904f3ce6.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_91166ce4-7037-11ea-b95d-3b57904f3ce6.html)

<sup>17</sup> In the Operations item of the Management section of the CDC correctional guidance, it states, “Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding”. LSP is not a location ideal for medical isolation or medical care due to poor service history, lack of nearby hospitals, and because the prison and surrounding area have no cases. Sending patients with COVID-19 to this facility risk spread and places them in a facility with less medical resources than a facility closer to a large city.

in advance and posted so that all physicians, physician assistants and nurse practitioners are aware.

22. The current Pandemic Flu Plan (PFP) of LSP is a generic influenza-like-illness plan which is not consistent with guidance regarding COVID-19<sup>18</sup> and should not be used. Instead, rather than re-writing a document at this late stage, I recommend the existing CDC guidelines should be used as a plan and appropriately adapted to LSP conditions. The adaptations and CDC guidelines should be widely distributed to health and custody staff.
23. A point of contact with the Louisiana Department of Health should be established and contact information shared with medical leadership. The Department of Health should have contact information of LSP medical leadership and an update conference call with the Department of Health should occur every few days or more frequently if needed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 31, 2020 in Chicago, Illinois.

/s/ Michael Puisis

Michael Puisis D.O.

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<sup>18</sup> I give only one example. Item 4.a, of the Yellow/Orange Phase of the LSP plan states that “employees will complete a self-screening at roll call. Employees who state they are sick shall be triaged by medical staff or health trained staff, and if found to have a fever shall be sent home. Staff with ILI shall remain at home at least 24 hours after they are free of fever (100F) or signs of fever, without the use of fever medication”. This is incorrect information with respect to COVID-19 and could result in increased transmission of infection. The CDC recommends not returning to work until there is resolution of fever without use of medication *and* improvement of symptoms *and* negative COVID-19 tests on at least two consecutive occasions 24 hours apart OR at least 3 days since resolution of fever without use of medication *and* improvement of respiratory symptoms *and* at least 7 days have passed since symptoms first appeared.

**SUPPLEMENTAL DECLARATION OF JEFFREY DUBNER**

I, Jeffrey Dubner, state and declare as follows:

1. My name is Jeffrey Dubner, and I am over 18 years of age.
2. I am an attorney of record in this case representing the Plaintiff Class.
3. On March 27, 2020, while Plaintiffs were awaiting a response to their request for a meet-and-confer with Defendants, a reporter from WDSU contacted my cocounsel Mercedes Montagnes about a news story it was preparing to publish that reported that Defendants intended to transfer local and state inmates with COVID-19 to LSP and the Allen Correctional Center, citing a DOC spokesman. WDSU published the story later that day.<sup>1</sup>
4. In light of Defendants' failure to respond to our March 26 request for a meet-and-confer (*see* Rec. Doc. 580-4), I emailed Defendants' counsel on March 28, 2020, to let them know that in light of their failure to respond we would be filing a motion to reopen discovery. *See* Ex. A. I also conveyed two concerns. First, I noted our concern with the LSP "plan" that Defendants provided via email on Wednesday March 25, 2020. *Id.* Second, I asked that Defendants' counsel confirm the news reports that the DOC intended to transport patients with confirmed or suspected cases of COVID-19 to LSP from other prisons. *Id.* I explained that this was "precisely the opposite of what should be occurring" due to LSP's high proportion of high-risk individuals and LSP's distance from the nearest hospital as compared to other correctional facilities. Specifically, I informed them that "[p]roactively bringing the virus to LSP, particularly with the current insufficient plan in place, would be unconscionably risky to Class members." *Id.* I asked that Defendants' counsel let us know if our understanding as to LSP intentions was incorrect by Monday March 30, 2020, and informed them that we would move for emergency relief if necessary. *Id.* I also reiterated that we were available to speak to Defendants' counsel or any representative at their convenience on any topic and asked that they contact us as soon as they could. *Id.*
5. Defendants' counsel responded approximately 15 minutes later, also on March 28, 2020, and said they would forward our concerns to DOC and let us know if they had any further response by Monday March 30, 2020 if possible. *See* Ex. A.
6. A few hours later, on March 28, 2020, Defendants' counsel emailed that they would not respond to Plaintiffs' question about the transfer plan because we had moved to reopen discovery, and that they would instead respond only in their briefing on the motion. *See* Ex. A.

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<sup>1</sup> *See* Emily Lane, *Louisiana Plans to House Local and State Inmates with Coronavirus at Angola and Allen Correctional*, WDSU.com, Mar. 27, 2020, <https://www.wdsu.com/article/louisiana-plans-to-house-inmates-with-coronavirus-at-angola-and-another-prison/31960114>.

7. Approximately an hour later, on March 28, 2020, I emailed to clarify that my request for a response by Monday dealt with the “news reports that DOC is actively transporting patients with COVID-19 to LSP, placing our most vulnerable clients at heightened risk,” not the broader motion to reopen discovery *See* Ex. A. I reiterated our previous request that Defendants’ counsel confirm by Monday March 30, 2020 whether in fact the DOC’s plan was to actively transport patients with COVID-19 to LSP. *Id.*
8. Approximately an hour later, on March 28, 2020, Defendants’ counsel responded in acknowledgement of our clarification but maintaining “[y]ou have clearly raised this issue in your filing and we plan to respond accordingly.” *See* Ex. A.
9. On March 29, 2020, in an attempt to avoid unnecessary motion practice, I emailed Defendants’ counsel to inquire yet again if they could confirm whether DOC intends to transfer patients with COVID-19 to LSP. *See* Ex. A. I explained that we would “file an emergency motion seeking to restrain DOC from engaging in such transfers until the Court has an opportunity to pass on their legality,” unless they could confirm “by close of business on Monday that DOC does not have this plan.” *Id.*
10. At 4:05 pm on March 30, 2020, Defendants’ counsel responded that he did not need to provide us with any information on “the purported movement of prisoners in the DOC system to Angola” before the Court ruled on the motion to reopen discovery, but provided a partial response that DOC had not yet transferred anyone with COVID-19 to Angola and that there were “no imminent plans to make any such transfers at this time.” *See* Ex. A. Defendants’ counsel did not respond to our request to confirm or deny whether DOC’s intention was to transport patients with COVID-19 to LSP from other facilities. *Id.*
11. Shortly after receiving Defendants’ counsel’s email, a member of the Louisiana advocacy community informed us that they had just been told by an employee of a local sheriff’s office that they had one confirmed COVID-19 case who was being transferred to Allen. We had previously been informed that DOC’s plan was to transfer patients to Allen until it was full, and then to LSP.
12. We responded to Defendants’ email shortly thereafter, pointing out that Defendants’ counsel had not answered our question of “whether DOC has a plan to transfer patients with COVID-19 to LSP.” *See* Ex. A. We explained the information that we had just received and noted that Defendants’ email left open the possibility that transfers to LSP would begin as soon as Allen is full. *Id.* In a final effort to avoid motion practice, we asked Defendants’ counsel to confirm by March 31, 2020 at 10:30 a.m. whether “(1) DOC plans to transfer patients with COVID-19 from other jails and facilities to LSP (before or after Allen runs out of room for transfers)” and “(2) whether Defendants will provide us with 14 days’ notice before making such transfers, allowing us time at that point to bring the matter to the Court in a more orderly fashion.” *See* Ex. A.

13. Although Defendants' counsel emailed me almost immediately to ask who had told us that transfers to Allen had already begun, *see* Ex. A., as of 11:00 a.m. on March 31, 2020, they have not responded to our request that they confirm whether they plan to transfer patients with COVID-19 to LSP and whether they will provide us with time before doing so to allow us to seek relief from the Court on a less expedited timetable.

I declare under penalty of perjury that the statements above are true and correct. Executed on this 31st day of March, 2020.

*/s/ Jeffrey Dubner*

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Jeffrey Dubner



Jeffrey Dubner &lt;jeffrey.dubner@gmail.com&gt;

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## Lewis v. Cain: Urgent Client Concerns in light of COVID-19 - Immediate Response Requested

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Jeffrey Dubner <jeffrey.dubner@gmail.com>  
To: Randy Robert <Randy.Robert@butlersnow.com>

Mon, Mar 30, 2020 at 8:12 PM

Randy,

No, the information did not come from your clients.

On Mon, Mar 30, 2020 at 7:39 PM Randy Robert <Randy.Robert@butlersnow.com> wrote:

Concerned staff at a local facility? That's not a response. Are you contacting employees of DOC or a facility associated with DOC? This is serious and I need an answer ASAP.

Sent from my iPhone

On Mar 30, 2020, at 6:35 PM, Jeffrey Dubner <jeffrey.dubner@gmail.com> wrote:

Randy,

Though we see no obligation to share our source, in the interest of courtesy, the information originated from a concerned staff member at a local facility.

Regards,

Jeff

On Mon, Mar 30, 2020 at 7:19 PM Randy Robert <Randy.Robert@butlersnow.com> wrote:

What is the source of your information?

Sent from my iPhone

On Mar 30, 2020, at 6:03 PM, Jeffrey Dubner <jeffrey.dubner@gmail.com> wrote:

Randy,

Thank you for responding and providing some information. But your email didn't fully answer our question. We asked whether DOC has a plan to transfer patients with COVID-19 to LSP. You said that it has not transferred any and does not imminently plan to make any such transfers at this time, but that doesn't answer whether it has the plan at all.

Our understanding is that DOC plans to transfer patients with COVID-19 to Allen, and then after Allen is full, to LSP. Almost immediately after you sent your email, we received

a report that transfers to Allen have begun. That makes it even more urgent that we learn whether DOC does in fact plan to transfer patients with COVID-19 to LSP -- something that you have still refused to confirm or deny. You say that "there are no imminent plans to make any such transfers at this time," but that obviously leaves open the possibility that transfers will begin as soon as Allen is full. Because we have no idea when that will occur and you have given us no assurance that transfers could not begin at any moment, we cannot wait to seek relief.

To avoid motion practice, please confirm by tomorrow at 10:30am whether 1) DOC plans to transfer patients with COVID-19 from other jails and facilities to LSP (whether before or after Allen runs out of room for transfers) and 2) whether Defendants will provide us with 14 days' notice before making such transfers, allowing us time at that point to bring the matter to the Court in a more orderly fashion.

As always, we would be happy to get on the phone with you and discuss this, but you have made it clear that that is even less agreeable to you than these emails.

Regards,  
Jeff

On Mon, Mar 30, 2020 at 5:05 PM Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)> wrote:

Jeff:

Thank you for yet another email on this issue. I understood your position in the first email that you sent yet you continue to pepper me with emails in order to help paper your inevitable motion with the court. You have now filed a motion for emergency relief seeking to undertaken discovery again in this matter. One of the grounds that you use to support the motion is the purported movement of prisoners in the DOC system to Angola. You ask the court to grant your motion so you can do discovery on this very issue. You are now demanding that we provide you with this discovery before the Court has even ruled on whether you are entitled to obtain it.

I assure you that any potential movement of prisoners within the DOC system is part of a well developed plan to protect the health and safety of all inmates within the DOC system. We intend to fully respond to your allegations and provide our plans and action in response to your motion. My personal opinions of your motives have nothing to do with DOC decisions or actions in this matter. They are working extremely hard to protect the inmates at Angola and other facilities throughout the state. I know that you always think that your group has a better plan for dealing with any situation, but the state officials charged with responding to this situation are very competent and are attempting to make decisions for all concerned. Your contention that the actions of DOC is putting lives at risk is groundless rhetoric.

Nevertheless, I have spoken with DOC further about the matter and have confirmed that DOC has not transferred anyone with Covid-19 to Angola and there are no imminent plans to make any such transfers at this time. Additionally, no inmate at Angola has tested positive for Covid-19 as of this submission.

No need to send me yet another email on this matter. I understand your position.

Randy

**Randal J. Robert**

**Butler Snow LLP**

D: (225) 325-8735 | F: (225) 325-8800

445 North Boulevard, Suite 300, Baton Rouge, LA 70802

[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com) | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

**From:** Jeffrey Dubner <[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)>

**Sent:** Sunday, March 29, 2020 10:48 PM

**To:** Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)>

**Cc:** Bruce Hamilton <[bhamilton@laaclu.org](mailto:bhamilton@laaclu.org)>; Caroline Tomeny <[caroline@scwllp.com](mailto:caroline@scwllp.com)>; Connell L. Archey <[CONNELL@kswb.com](mailto:CONNELL@kswb.com)>; Jamila Johnson <[JJJohnson@defendla.org](mailto:JJJohnson@defendla.org)>; Jared Davidson <[Jared.Davidson@splcenter.org](mailto:Jared.Davidson@splcenter.org)>; Jeffrey Cody <[jeffreyc@scwllp.com](mailto:jeffreyc@scwllp.com)>; John Conine <[coninej@scwllp.com](mailto:coninej@scwllp.com)>; Keith J. Fernandez <[Keith@kswb.com](mailto:Keith@kswb.com)>; Mercedes Montagnes <[MMontagnes@defendla.org](mailto:MMontagnes@defendla.org)>; Nishi Kumar <[NKumar@defendla.org](mailto:NKumar@defendla.org)>; Randal J. Robert <[randy@kswb.com](mailto:randy@kswb.com)>; Rebecca Ramaswamy <[RRamaswamy@defendla.org](mailto:RRamaswamy@defendla.org)>; [rlospennato@advocacyla.org](mailto:rlospennato@advocacyla.org)

**Subject:** Re: Lewis v. Cain: Urgent Client Concerns in light of COVID-19 - Immediate Response Requested

Randy,

In your most recent emails, you refused to confirm or deny whether DOC intends to transfer patients with COVID-19 to LSP, and indicated that you would not respond until Defendants file their response to our motion to reopen discovery. If that's the case, we will file an emergency motion seeking to restrain DOC from engaging in such transfers until the Court has an opportunity to pass on their legality.

If DOC does not in fact intend to transfer patients with COVID-19 to LSP, or does not plan to begin doing so imminently, then we would not need to file this motion. Accordingly, I wanted to ask one more time if there is any information you can provide on this subject. If we do not hear from you by close of business on Monday that DOC does not have this plan, then we will proceed with our motion as soon as possible.

I gather from the tone of your emails that you don't think much of our efforts to advocate for our clients in this matter. Please understand that we fear that DOC's actions will directly result in the deaths of dozens if not hundreds of our clients. We truly regret that this process has already become adversarial rather than cooperative, but given the urgency of the approaching tragedy we really have no choice but to go to the Court in an expedited fashion if you refuse even to meet and confer with us.

Regards,

Jeff

On Sat, Mar 28, 2020 at 2:57 PM Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)> wrote:

Thanks for your clarification. You have clearly raised this issue in your filing and we plan to respond accordingly.

Sent from my iPhone

On Mar 28, 2020, at 1:48 PM, Jeffrey Dubner <[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)> wrote:

Randy,

I believe our email and brief were clear, but to avoid any misunderstanding, we still require a response from you on a subject separate from the relief sought in our motion. The motion deals with your refusal to meet and confer and our request for information regarding our clients and LSP's actions regarding COVID-19. Our open request for a response by Monday deals with the news reports that DOC is actively transporting patients with COVID-19 to LSP, placing our most vulnerable clients at heightened risk. Please confirm by Monday whether that is in fact DOC's plan and whether you are willing to meet and confer about it; if not, we will promptly seek relief if we believe it is necessary.

Regards,

Jeff

On Sat, Mar 28, 2020 at 12:46 PM Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)> wrote:

Correction "now"

**Randal J. Robert**

**Butler Snow LLP**

D: (225) 325-8735 | F: (225) 325-8800

445 North Boulevard, Suite 300, Baton Rouge, LA 70802

[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com) | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

**From:** Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)>  
**Sent:** Saturday, March 28, 2020 11:46 AM  
**To:** 'Jeffrey Dubner' <[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)>  
**Cc:** 'Bruce Hamilton' <[bhamilton@laaclu.org](mailto:bhamilton@laaclu.org)>; 'Caroline Tomeny' <[caroline@scwllp.com](mailto:caroline@scwllp.com)>; 'Connell L. Archey' <[CONNELL@kswb.com](mailto:CONNELL@kswb.com)>; 'Jamila Johnson' <[JJJohnson@defendla.org](mailto:JJJohnson@defendla.org)>; 'Jared Davidson' <[Jared.Davidson@splcenter.org](mailto:Jared.Davidson@splcenter.org)>; 'Jeffrey Cody' <[jeffreyc@scwllp.com](mailto:jeffreyc@scwllp.com)>; 'John Conine' <[coninej@scwllp.com](mailto:coninej@scwllp.com)>; 'Keith J. Fernandez' <[Keith@kswb.com](mailto:Keith@kswb.com)>; 'Mercedes Montagnes' <[MMontagnes@defendla.org](mailto:MMontagnes@defendla.org)>; 'Nishi Kumar' <[NKumar@defendla.org](mailto:NKumar@defendla.org)>; 'Randal J. Robert' <[RANDY@kswb.com](mailto:RANDY@kswb.com)>; 'Rebecca Ramaswamy' <[RRamaswamy@defendla.org](mailto:RRamaswamy@defendla.org)>; 'rlospennato@advocacyla.org' <[rlospennato@advocacyla.org](mailto:rlospennato@advocacyla.org)>  
**Subject:** RE: Lewis v. Cain: Urgent Client Concerns in light of COVID-19 - Immediate Response Requested

Hi Jeff:

I see that you have not sought relief from the Court. We will respond to you with our response in our briefing.

Thanks and have a nice weekend.

I'm sure that the hard working state employees working round the clock to protect your clients won't be sitting at home enjoying the weekend.

## Randal J. Robert

### Butler Snow LLP

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[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com) | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

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**From:** Randy Robert  
**Sent:** Saturday, March 28, 2020 8:14 AM  
**To:** 'Jeffrey Dubner' <[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)>  
**Cc:** Bruce Hamilton <[bhamilton@laaclu.org](mailto:bhamilton@laaclu.org)>; Caroline Tomeny <[caroline@scwllp.com](mailto:caroline@scwllp.com)>; Connell L. Archey <[CONNELL@kswb.com](mailto:CONNELL@kswb.com)>; Jamila Johnson <[JJJohnson@defendla.org](mailto:JJJohnson@defendla.org)>; Jared Davidson <[Jared.Davidson@splcenter.org](mailto:Jared.Davidson@splcenter.org)>; Jeffrey Cody <[jeffreyc@scwllp.com](mailto:jeffreyc@scwllp.com)>; John Conine <[coninej@scwllp.com](mailto:coninej@scwllp.com)>; Keith J. Fernandez <[Keith@kswb.com](mailto:Keith@kswb.com)>; Mercedes Montagnes <[MMontagnes@defendla.org](mailto:MMontagnes@defendla.org)>; Nishi Kumar

<NKumar@defendla.org>; Randal J. Robert  
<RANDY@kswb.com>; Rebecca Ramaswamy  
<RRamaswamy@defendla.org>; rlospennato@advocacyla.org  
**Subject:** RE: Lewis v. Cain: Urgent Client Concerns in light of  
COVID-19 - Immediate Response Requested

Jeff,

Thank you for your email. I will forward your concerns to DOC and let you know if they have any further response for you by Monday if possible.

**Randal J. Robert**

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**From:** Jeffrey Dubner <jeffrey.dubner@gmail.com>  
**Sent:** Saturday, March 28, 2020 8:01 AM  
**To:** Randy Robert <Randy.Robert@butlersnow.com>  
**Cc:** Bruce Hamilton <bhamilton@laaclu.org>; Caroline Tomeny  
<caroline@scwllp.com>; Connell L. Archey  
<CONNELL@kswb.com>; Jamila Johnson  
<JJohnson@defendla.org>; Jared Davidson  
<Jared.Davidson@splcenter.org>; Jeffrey Cody  
<jeffreyc@scwllp.com>; John Conine <coninej@scwllp.com>; Keith  
J. Fernandez <Keith@kswb.com>; Mercedes Montagnes  
<MMontagnes@defendla.org>; Nishi Kumar  
<NKumar@defendla.org>; Randal J. Robert  
<RANDY@kswb.com>; Rebecca Ramaswamy  
<RRamaswamy@defendla.org>; rlospennato@advocacyla.org  
**Subject:** Re: Lewis v. Cain: Urgent Client Concerns in light of  
COVID-19 - Immediate Response Requested

Randy,

We were disappointed not to hear from you Friday, and will move for relief promptly from Judge Dick. In the meantime, we wanted to convey our urgent and extreme concern with the "plan" that you provided on Wednesday. This is not a COVID-19 plan, but rather a generic plan designed for a pandemic flu. It is directly contrary to CDC guidelines in multiple respects, such as its guidance on when staff with fever should return to work. This puts inmates at great risk of unnecessary infection, as well as LSP staff and the surrounding

community. Rather than using an inappropriate plan not designed for COVID-19, DOC should base its plan on the existing CDC guidelines and make such adaptations as are necessary for LSP in particular.

Additionally, news reports state that DOC intends to transport patients with confirmed or suspected cases of COVID-19 to LSP from other prisons. That is precisely the opposite of what should be occurring. LSP has an extraordinarily high proportion of high-risk individuals (e.g., elderly and immuno-compromised inmates). It is also furthest from the nearest hospital than most other correctional facilities in Louisiana. Proactively bringing the virus to LSP, particularly with the current insufficient plan in place, would be unconscionably risky to Class members.

Please let us know as soon as possible if our understanding that LSP intends to proactively bring confirmed or suspected cases of COVID-19 to LSP is incorrect. If we do not hear from you on that subject by Monday, we will assume that our understanding is correct and, if necessary, move for emergency relief.

As we have said, we are available to speak with you or any representative of Defendants at your convenience, whether about the information we are requesting, the transfer of COVID-19 patients to LSP, our concerns with the pandemic flu plan, or any other topic. Please contact us as soon as you can.

Regards,

Jeff

On Thu, Mar 26, 2020 at 5:49 PM Jeffrey Dubner  
<[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)> wrote:

Randy,

Thank you for your email. To be clear, we represent a certified class of all inmates at Angola who have alleged -- and proven -- that the DOC's medical system exposes them to an unconstitutional risk of serious harm. We have an ethical and fiduciary duty to determine whether emergency relief is required while we await the District Court's order remediating that risk. If Defendants are not willing to provide us with the information we need to determine whether action is necessary, we will have no choice but to request that the Court reopen limited discovery to determine if injunctive steps are needed. We requested a meet and confer in the hopes of avoiding that possibility and ensuring that our need to protect our clients poses the least burden possible on DOC. If we must seek relief from the Court, it will not be to "interfere" with DOC's operations but to ensure that our clients are safe despite your intransigence. Of course, we would prefer to work with Defendants to avoid the need of going to court, but that will require cooperation between the parties given the urgent circumstances.

Below are the types of information we will need to ensure that

emergency relief is not necessary at this time. Again, we are more than willing to discuss with you and/or DOC the least intrusive way to get this information.

- Weekly population numbers for people housed at Angola beginning January 1;
- Documentation of Angola's criteria for transport to an outside hospital for confirmed or suspected COVID-10 infection;
- Documentation of trips to outside hospitals, including but not limited to ambulance runs and requests to transport by both Angola and the outside hospitals;
- Any criteria for who is being given a COVID-19 test and information on who is administering that screening;
- How many ventilators are available at Angola and where those ventilators are located;
- Documentation of medical supply inventory currently available at Camp J and anywhere else staff or patients with confirmed or suspected COVID-19 are being held;
- Monthly medical staffing reports beginning January 1;
- Any written materials, handouts, or presentations being used to educate staff and patients on COVID-19 or preventive measures;
- Weekly reports of how many people have been tested for COVID-19 and the results of those tests;
- Plans for infection surge and corresponding impact on staffing and facilities and equipment;
- Identity of any working group/committee on COVID-19 response, including membership, and any documents generated;
- Clinical guidance provided to medical staff for screening and treatment;
- Plans for social distancing;
- Plans for screening of and precautions for medically vulnerable people.

Again, we would appreciate the opportunity to speak with you at your earliest convenience. If we do not hear from you by 5:00 p.m. tomorrow, Friday March 27, we will move for appropriate relief before the Court.

In the meantime, we are reviewing the plan you provided and will convey our concerns as soon as possible.

Regards,

Jeff

On Wed, Mar 25, 2020 at 4:04 PM Randy Robert  
<[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)> wrote:

Jeff:

Thank you for your concerns for the well-being of the offender population at Louisiana State Penitentiary. You may rest assured that the main priority of Secretary Le Blanc, DOC officials and LSP staff during the COVID-19

emergency declaration is the health and safety of our incarcerated population at LSP.

In order to limit offender exposure to COVID-19, Warden Darrel Vannoy ordered implementation of the attached LSP Continuity of Operations Plan (“COOP”) as updated in March 2020 to comply with applicable US Centers for Disease Control and Prevention (“CDC”) guidelines.

Below is a bullet point summary of some of the key issues that LSP is addressing with offenders to both avoid exposure to the virus and provide for increased family contact:

- Offender movement within the facility has been restricted, and reverse isolation is being practiced with our most vulnerable population to protect those prisoners from unnecessary exposure to staff. LSP staff in these areas are required to wear masks and only make contact when absolutely necessary.
- Lines for pill call are being alternated. Medicine is distributed unit by unit so that offenders from different units do not come into contact with one another.
- Meal times are also being alternated, and the dining facilities are being both cleaned and sanitized before and after each unit has meal time. Yard time is also being allocated on a unit by unit basis.
- Transfers between DOC facilities and/or local facilities have been suspended indefinitely absent extenuating circumstances, and any offender transferring into LSP is required to quarantine for a 14-day period. If the offender develops symptoms, he is placed into isolation.
- Any LSP offender presenting with symptoms is given both a flu test and COVID-19 test.

- All employees entering the facility are screened daily by means of a temperature check and a series of questions regarding COVID-19 symptoms and recent travel.
- Offenders are currently being provided two free telephone calls per week, and Warden Vannoy has chosen to allow any offender being moved into quarantine or isolation a free telephone call to update family or friends.
- Offenders are being provided with soap and sanitizer free of charge though out the duration of this event.

Our current procedures ensure that proper housing, housekeeping, nutrition, medical care, and sanitation requirements are met despite the additional challenges to staff and the offender population. As the situation continues to evolve, LSP staff is ready to adapt as necessary.

We hope that this response will help to alleviate your concerns. DOC and LSP officials are working round the clock to protect the inmate population from exposure to this virus. LSP has adequate supplies and tests to satisfy its current needs. **As of today, there have been no positive tests among the inmate population at Angola.** We are providing you with detailed information regarding the efforts being undertaken and we hope that you will allow DOC and LSP officials to do their jobs without interference. At this time DOC and LSP do not need your assistance in dealing with this event and we decline your invitation to meet and confer later this week.

Regards - Randy

**Randal J. Robert**

**Butler Snow LLP**

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Randy.Robert@butlersnow.com | vCard | Bio

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**From:** Jeffrey Dubner <jeffrey.dubner@gmail.com>

**Sent:** Monday, March 23, 2020 3:22 PM

**To:** Randy Robert <Randy.Robert@butlersnow.com>

**Cc:** John Conine <coninej@scwllp.com>; Jeffrey Cody

<jeffreyc@scwllp.com>; Caroline Tomeny

<caroline@scwllp.com>; Randal J. Robert

<RANDY@kswb.com>; Keith J. Fernandez

<Keith@kswb.com>; Connell L. Archey

<CONNELL@kswb.com>; Mercedes Montagnes

<MMontagnes@defendla.org>; Rebecca Ramaswamy

<RRamaswamy@defendla.org>; Jared Davidson

<Jared.Davidson@splcenter.org>; Jamila Johnson

<JJohnson@defendla.org>; Bruce Hamilton

<bhamilton@laaclu.org>; rlospennato@advocacyla.org; Nishi

Kumar <NKumar@defendla.org>

**Subject:** Re: Lewis v. Cain: Urgent Client Concerns in light of COVID-19 - Immediate Response Requested

Counsel,

In light of the evolving and urgent situation facing all of our clients at Angola due the mounting concerns of a COVID-19 outbreak in jails and prisons across the state, we think it makes sense to schedule a meet and confer to discuss the situation in addition to having your clients respond to our previous request. In order to protect our clients while we await the Court's ruling, we anticipate that there is additional, ongoing information we will require in addition to our request for the DOC and Angola plans. As we said in our previous email, we understand how complex the situation is for your clients and hope that we can aid the DOC in keeping Angola's inmates safe and informed. We are happy to discuss further any time this week that is convenient for you. We would also request that someone from the DOC be present at the meet and confer.

Best,

Jeff

On Fri, Mar 20, 2020 at 2:14 PM Jeffrey Dubner <jeffrey.dubner@gmail.com> wrote:

Randy,

Thank you for your email. Tuesday or Wednesday is fine with us. We'll look forward to your response.

Again, we wish you all the best in these difficult times.

Regards,

Jeff

On Fri, Mar 20, 2020 at 1:35 PM Randy Robert <[Randy.Robert@butlersnow.com](mailto:Randy.Robert@butlersnow.com)> wrote:

Jeff:

Thanks for you deep heartfelt concerns for us. We appreciate the lovely sentiments.

I have passed you concerns on to those on the frontline at DOC and they have agreed to provide you with a reasonable response to your inquiry. As you are well aware, DOC officials have pressing matters and cannot respond to you "immediately." However, I anticipate that we will be able to provide you with a response by Tuesday or Wednesday of next week.

Regards - Randy

**Randal J. Robert**

**Butler Snow LLP**

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445 North Boulevard, Suite 300, Baton Rouge, LA 70802

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**From:** Jeffrey Dubner <[jeffrey.dubner@gmail.com](mailto:jeffrey.dubner@gmail.com)>

**Sent:** Thursday, March 19, 2020 8:38 PM

**To:** John Conine <[coninej@scwllp.com](mailto:coninej@scwllp.com)>; Jeffrey Cody <[jeffreyc@scwllp.com](mailto:jeffreyc@scwllp.com)>; Caroline Tomeny <[caroline@scwllp.com](mailto:caroline@scwllp.com)>; Randal J. Robert <[RANDY@kswb.com](mailto:RANDY@kswb.com)>; Keith J. Fernandez <[Keith@kswb.com](mailto:Keith@kswb.com)>; Connell L. Archey <[CONNELL@kswb.com](mailto:CONNELL@kswb.com)>

**Cc:** Mercedes Montagnes  
<MMontagnes@defendla.org>; Rebecca Ramaswamy  
<RRamaswamy@defendla.org>; Jared Davidson  
<Jared.Davidson@spicenter.org>; Jamila Johnson  
<JJohnson@defendla.org>; Bruce Hamilton  
<bhamilton@laaclu.org>; rlospennato@advocacyla.org  
**Subject:** Lewis v. Cain: Urgent Client Concerns in light  
of COVID-19 - Immediate Response Requested

Counsel,

We hope this email finds you all safe and healthy. In light of the rapidly escalating numbers of confirmed cases of COVID-19 across the state, we are reaching out because we are concerned about the health and well-being of each of our 6000+ clients housed at Angola. As we are sure you have heard, the virus that causes COVID-19 is easily spread in institutional settings like Angola and typical prevention measures – such as avoiding close contact and frequent cleaning and disinfecting of surfaces – are not always possible in jails and prisons. With so many of our clients already at high risk of complications and death from COVID-19 due to advanced age, chronic medical conditions, or otherwise compromised immune systems, we think everyone would agree that measures must be put in place to prevent a widespread outbreak and provide medical care to anyone who may exhibit symptoms in the future.

We know the DOC and Angola staff are likely overburdened right now and we do not want to do anything to impede their efforts on behalf of our clients. We simply request that you share whatever plan the DOC has put in place in response to the COVID-19 pandemic and that we are timely provided with updated versions as that plan evolves. It is vital that we have access to this information as it impacts the immediate safety of our clients. We urge you to share those plans with us as soon as possible.

Thank you for your help. This is a concerning time for everyone and we hope you all are able to take the necessary precautions to keep yourselves and your loved ones safe.

Best,

Jeff

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

JOSEPH LEWIS, JR., *et al.*, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

BURL CAIN, Warden of the Louisiana State  
Penitentiary, in his official capacity, *et al.*,

Defendants.

CIVIL ACTION NO. 3:15-cv-00318

JUDGE SDD

MAGISTRATE RLB

**[PROPOSED] ORDER**

Considering the foregoing *Emergency Motion to Restrain Defendants From Transferring COVID-19 Carriers to Louisiana State Penitentiary (“LSP”)*, it is ordered that the motion is GRANTED IN PART and Defendants are temporarily restrained from transferring people with confirmed or suspected COVID-19 to LSP up until and including the time that this Court issues a decision on the preliminary injunction application, after a hearing.

The parties are directed to meet and confer within 24 hours of this order on the least burdensome means for the DOC to provide accurate and up-to-date information on any plans to transfer persons with COVID-19 in the DOC system or parish facilities to LSP, including when such transfers may begin and all measures intended to prevent spread to Class members.

A hearing in this matter will take place on \_\_\_\_\_.

Signed in Baton Rouge, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Chief Judge Shelly Dick