

TABLE OF CONTENTS

Table of Authorities	ii
Introduction	1
Procedural Background	3
Argument	4
I. Plaintiffs § 1983 Claims Should be Dismissed as they are Subject to the PLRA’s Restrictions and as Plaintiffs did Not Follow the PLRA’s Required Procedure for Obtaining a Prisoner Release Order.....	4
II. Plaintiffs Failed to Exhaust Their Available Remedies As Required By the PLRA and 28 U.S.C. § 2241.....	6
A. Plaintiffs were Required to Exhaust Available Remedies Before Filing Their § 1983 Claims.	6
B. Plaintiffs were Required to Exhaust Available Remedies Before Filing Their Habeas Petition.	8
III. Plaintiffs Cannot Challenge the Conditions of Their Confinement Through a Habeas Petition.	11
IV. Plaintiffs’ Motion for Class Certification Should be Denied Because a Mass Prisoner Release Order Inherently Hinges on Individualized Determinations About Which Prisoners Should be Released and on what Conditions Release is Appropriate.....	15
V. Three Recent COVID-19-Related Prisoner Cases Highlight the Fatal Flaws in Plaintiffs’ Action.	21
VI. Releasing Felons During a Time of Crisis Endangers Public Safety and is Not in the Public Interest.	28
Conclusion	30
Certificate of Service.....	33

TABLE OF AUTHORITIES

Cases

<i>Adderly v. Wainwright</i> , 272 F. Supp. 530 (M.D. Fla. 1967)	18
<i>Barrientos v. Dallas Cty. Dist. Attorney's Office</i> , No. 3:12-CV-4753-O-BN, 2013 WL 1499382 (N.D. Tex. Jan. 18, 2013), <i>report and recommendation adopted</i> , No. 3:12-CV-4753-O-BN, 2013 WL 1501623 (N.D. Tex. Apr. 12, 2013)	10
<i>Booth v. Churner</i> , 532 U.S. 731 (2001)	6
<i>Braden v. 30th Judicial Circuit Court of Ky.</i> , 410 U.S. 484 (1973)	21
<i>Brown v. Plata</i> , 563 U.S. 493 (2011)	5
<i>Calderon v. Ashmus</i> , 523 U.S. 740 (1998)	19
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979)	15
<i>Carafas v. LaVallee</i> , 391 U.S. 234 (1968)	21
<i>Coleman v. Newsom</i> , No. 01-CV-01351-JST, 2020 WL 1675775, (E.D. Cal. Apr. 4, 2020)	26, 27
<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991)	passim
<i>Comcast Corp. v. Behrend</i> , 5 69 U.S. 27 (2013)	18
<i>Cook v. Hanberry</i> , 596 F.2d 658 (5th Cir. 1979)	11
<i>Cruson v. Jackson Nat'l Life Ins. Co.</i> , 954 F.3d 240, 2020 WL 1443531 (5th Cir. Mar. 25, 2020)	15
<i>Day v. McDonough</i> , 547 U.S. 198 (2006)	13
<i>Dickerson v. State of La.</i> , 816 F.2d 220 (5th Cir. 1987)	9, 21
<i>Dillon v. Rogers</i> , 596 F.3d 260 (5th Cir. 2010)	6, 8

<i>Ex parte Royall</i> , 117 U.S. 241 (1886)	21
<i>Ex parte Tom Tong</i> , 108 U.S. 556 (1883)	11
<i>Fuller v. Rich</i> , 11 F.3d 61 (5th Cir. 1994)	9
<i>Gallegos-Hernandez v. United States</i> , 688 F.3d 190 (5th Cir. 2012)	9
<i>Gardner v. Sch. Bd. Caddo Par.</i> , 958 F.2d 108 (5th Cir. 1992)	9
<i>Gibbs v. Grimmette</i> , 254 F.3d 545 (5th Cir. 2001)	16
<i>Glaus v. Anderson</i> , 408 F.3d 382 (7th Cir. 2005)	11
<i>Gomez v. United States</i> , 899 F.2d 1124 (11th Cir. 1990)	11
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005)	13
<i>Gonzalez v. Seal</i> , 702 F.3d 785 (5th Cir. 2012)	6, 8
<i>Harris v. Nelson</i> , 394 U.S. 286 (1969)	11, 13
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994)	13, 14
<i>Hill v. McDonough</i> , 547 U.S. 573 (2006)	14
<i>Hilton v. Braunskill</i> , 481 U.S. 770 (1987)	11
<i>Hinojosa v. Horn</i> , 896 F.3d 305 (5th Cir. 2018)	9
<i>Holiday v. Johnson</i> , 313 U.S. 342 (1941)	13
<i>Holland v. Fla.</i> , 560 U.S. 631 (2010)	21
<i>Jennings v. Rodriguez</i> , 138 S. Ct. 830 (2018)	20
<i>Johnson v. Johnson</i> , 385 F.3d 503 (5th Cir. 2004)	6

<i>Jones v. Bock</i> , 549 U.S. 199 (2007)	6
<i>Mayle v. Felix</i> , 545 U.S. 644 (2005)	13
<i>McQuiggin v. Perkins</i> , 569 U.S. 383 (2013)	21
<i>Money v. J.B. Pritzker</i> , No. 20-CV-2093, 2020 WL 1820660 (N.D. Ill. Apr. 10, 2020)	22
<i>Montano v. Tex.</i> , 867 F.3d 540 (5th Cir. 2017)	8, 9
<i>Murray v. Carrier</i> , 477 U.S. 478 (1986)	21
<i>Nelson v. Campbell</i> , 541 U.S. 637 (2004)	4, 14
<i>Nettles v. Grounds</i> , 830 F.3d 922 (9th Cir. 2016)	11, 14
<i>Norton v. Parke</i> , 892 F.2d 476 (6th Cir. 1989)	20
<i>Palma-Salazar v. Davis</i> , 677 F.3d 1031 (10th Cir. 2012)	11
<i>Phillips v. Sheriff of Cook Cty.</i> , 828 F.3d 541 (7th Cir. 2016)	17
<i>Picard v. Connor</i> , 404 U.S. 270 (1971)	9
<i>Pierre v. United States</i> , 525 F.2d 933 (5th Cir. 1976)	26
<i>Porter v. Nussle</i> , 534 U.S. 516 (2002)	6
<i>R.R. Comm’n of Tex. v. Pullman Co.</i> , 312 U.S. 496 (1941)	28
<i>Rose v. Lundy</i> , 455 U.S. 509 (1982)	21
<i>Ross v. Blake</i> , 136 S. Ct. 1850 (2016)	6
<i>Rouse v. Michigan</i> , No. 2:17-CV-12276, 2017 WL 3394753 (E.D. Mich. Aug. 8, 2017)	20

<i>Russell v. Harris Cty.</i> , No. H-19-226, 2020 WL 1866835 (S.D. Tex. Apr. 14, 2020)	29
<i>Sacal-Micha v. Longoria</i> , No. 1:20-CV-37, 2020 WL 1815691 (S.D. Tex. Apr. 9, 2020)	25, 26
<i>Schall v. Martin</i> , 467 U.S. 253, 281 (1984)	19
<i>Skinner v. Switzer</i> , 562 U.S. 521 (2011)	14
<i>Spina v. Aaron</i> , 821 F.2d 1126 (5th Cir. 1987)	14
<i>Thomas v. Collins</i> , 919 F.2d 333 (5th Cir. 1990)	10
<i>United States ex rel. Bowe v. Skeen</i> , 107 F. Supp. 879 (N.D. W.Va. 1952).....	20
<i>United States v. Frady</i> , 456 U.S. 152 (1982)	13
<i>United States v. Sanchez-Gomez</i> , 138 S. Ct. 1532 (2018)	19
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011)	15, 16, 18
<i>Whitmore v. Arkansas</i> , 495 U.S. 149, 161-66 (1990)	19
<i>Wilkinson v. Dotson</i> , 544 U.S. 74 (2005)	14
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	28, 30
<i>Wright v. Hollingsworth</i> , 260 F.3d 357-59 (5th Cir 2001).....	6, 8
<i>Yates v. Collier</i> , 868 F.3d 354 (5th Cir. 2017)	17
Statutes	
18 U.S.C. § 3626.....	4, 5
18 U.S.C. § 3626(a)(3)(A)	5
18 U.S.C. § 3626(a)(3)(B)	5
18 U.S.C. § 3626(a)(3)(C)-(D).....	5
18 U.S.C. § 3626(a)(3)(E)	5

18 U.S.C. § 3626(g)(2)	4
18 U.S.C. § 3626(g)(4)	4, 5
28 U.S.C. § 1331	14, 15
28 U.S.C. § 2241	1, 7, 10, 14
28 U.S.C. § 2242	14
28 U.S.C. § 2244	22, 24
28 U.S.C. § 2244(d)(2)	24
28 U.S.C. § 2254	15, 23, 25
28 U.S.C. § 2254(b)(1)(A)	24
28 U.S.C. § 2254(b)(1)(B)	24
28 U.S.C. § 2254(c)	24
28 U.S.C. §§ 2261-66	21
42 U.S.C. § 1983	1
42 U.S.C. § 1997e(a)	7

Other Authorities

Brandon L. Garrett, <i>Aggregation in Criminal Law</i> , 95 CAL. L. REV. 383 (2007)	21, 22
--	--------

Rules

Fed. R. Civ. P. 3	14
Fed. R. Civ. P. 7(a)	14
Fed. R. Civ. P. 8	14
Fed. R. Civ. P. 10(a)	14
Fed. R. Civ. P. 12(b)(6)	1
Fed. R. Civ. P. 14	14
Fed. R. Civ. P. 23(a)	18, 27
Fed. R. Civ. P. 81(a)(4)	15
Fed. R. Civ. P. 81(a)(4)(B)	23

The State of Texas, Governor of Texas, and Attorney General of Texas (“State Intervenors”) move to dismiss Plaintiffs’/Petitioners’ (“Plaintiffs”) Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief (“Complaint”) (ECF 1) under Fed. R. Civ. P. 12(b)(6) due to Plaintiffs’ failure to exhaust their available remedies.

In the alternative, the State Intervenors oppose (1) Plaintiffs’ Motion for a Temporary Restraining Order, Preliminary Injunction, and Writ of Habeas Corpus (ECF 2-4), and (2) Plaintiffs’ Motion for Class Certification (ECF 17-18). Specifically, State Intervenors oppose all portions of these motions pertaining to the mass release of prisoners from Dallas County Jail.

INTRODUCTION

Plaintiffs’ three claims—all brought under 42 U.S.C. § 1983 and 28 U.S.C. § 2241 (the writ of habeas corpus portion of their claims)—revolve around their argument that the conditions in Dallas County Jail violate the U.S. Constitution. The State Intervenors’ combined motion to dismiss and oppositions to Plaintiffs’ requests for emergency injunctive relief and class certification is limited to Plaintiffs’ attempt to depopulate Dallas County Jail via a mass release of prisoners. It is hoped that the Defendants, who are presumptively more knowledgeable about the innerworkings of their facilities, will write separately to respond to the merits of Plaintiffs’ action. But, as shown below, the Court need not reach the merits as Plaintiffs’ suit is rife with errors and other insurmountable procedural problems.

First, Plaintiffs’ § 1983-based request for a prisoner release order is subject to the Prison Litigation Reform Act (“PLRA”)’s restrictions. But Plaintiffs did not follow

the PLRA's mandatory procedure for obtaining such relief. Nor has a three-judge court been convened to hear this issue, which is the only court with authority to enter such a prisoner release order under the PLRA.

Second, Plaintiffs must exhaust their available remedies before filing their § 1983 and habeas claims in federal court. Yet Plaintiffs made no meaningful attempt to bring their claims through the Dallas County Jail's grievance procedures. Nor have Plaintiffs attempted to file their claims in Texas state court. Plaintiffs' claims should be dismissed as they failed to exhaust their available remedies, which is a mandatory prerequisite to this suit.

Third, the sole function of a habeas petition is to grant release from imprisonment or custody. Yet Plaintiffs' action, at its core, challenges the allegedly unlawful conditions at Dallas County Jail due to COVID-19. Binding precedent holds that an inmate cannot challenge his or her conditions of confinement via a habeas petition.

Fourth, Plaintiffs' request for class relief in the form of a mass prisoner release inherently hinges on individualized determinations about which prisoners should be released and on what conditions release is appropriate. A person-by-person assessment would be necessary to avoid unleashing thousands of dangerous prisoners—many of whom, according to Plaintiffs, were likely recently exposed to COVID-19—upon Texas' law-abiding citizens. These individualized issues overwhelm any common questions of law or fact and make this action particularly ill-suited to class-wide resolution.

Fifth, three recent federal COVID-19 prisoner cases, *Money v. J.B. Pritzker*, *Socal-Micha v. Longoria*, and *Coleman v. Newsom*, confirm the State Intervenor's position and highlight the fatal flaws in Plaintiffs' action. The Illinois district court's decision in *Money v. J.B. Pritzker* is particularly apt as the court analyzed effectively the exact same action presented here—a joint § 1983 civil complaint and a habeas petition seeking class certification and a mass prisoner release due to allegedly unconstitutional conditions in Illinois prisons brought upon by COVID-19. The Illinois court thoroughly rejected the lawsuit as both procedurally and substantively improper. The same conclusion is warranted here.

Finally, Plaintiffs' request that the Court release all criminals from the jail—including murders, rapists, and gang members—during a time of public crisis endangers public safety. Thus, this request is not in the public interest.

PROCEDURAL BACKGROUND

On April 13, 2020, the State Intervenor's filed a motion to intervene in this action on the grounds that this suit impacts the State's interests in, among other things, protecting its citizens from a largescale release of prisoners and protecting the public from the spread of COVID-19.¹ During the next day's telephone conference, the Court authorized the State Intervenor's to file response papers by the April 15th deadline previously set for the Defendants,² despite the fact that the State Intervenor's motion to intervene would likely still be pending at that time.

¹ See ECF 26–27.

² ECF 14.

ARGUMENT

I. Plaintiffs § 1983 Claims Should be Dismissed as they are Subject to the PLRA's Restrictions and as Plaintiffs did Not Follow the PLRA's Required Procedure for Obtaining a Prisoner Release Order.

The PLRA significantly limits the issuance of preliminary and permanent injunctive relief for “civil action[s] with respect to prison conditions” like this one.³ The PLRA states that any award of preliminary or prospective relief must: (1) be narrowly drawn; (2) extend no further than necessary to correct the violation of the Federal right; and (3) be the least intrusive means necessary to correct the violation of the Federal right.⁴ Further, before awarding such relief, the court must “give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.”⁵

The PLRA also restricts a court's ability to issue a prisoner release order⁶ and specifies that the following procedure must be met before such an order is entered:

- *Step #1:* The presiding federal judge must: (1) issue an order for “less intrusive relief”; (2) give the defendant a “reasonable amount of time to comply with the . . . order[]”; and (3) find that this order “failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order.”⁷

³ See 18 U.S.C. § 3626; *id.* at § 3626(g)(2) (defining “civil action with respect to prison conditions” to mean “any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison”); *see also Nelson v. Campbell*, 541 U.S. 637, 650 (2004).

⁴ 18 U.S.C. § 3626(a)(1)–(a)(2).

⁵ *Id.*

⁶ The PLRA broadly defines a “prisoner release order” to cover “any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison.” *Id.* at § 3626(g)(4).

⁷ *Id.* at § 3626(a)(3)(A).

- *Step #2:* Once step #1 is met, either the party requesting relief or the presiding judge can request the convening of a three-judge court to determine whether a prisoner release order should be entered.⁸
- *Step #3:* The three-judge court then determines whether a prisoner release order should be entered, based on clear and convincing evidence that “(1) crowding is the primary cause of the violation of a Federal right[,] and (2) no other relief will remedy the violation of the Federal right.”⁹

In a federal civil action with respect to prison conditions, only a three-judge court can issue a prisoner release order.¹⁰ As the Supreme Court explained in *Brown v. Plata*, “[t]he authority to order release of prisoners . . . is a power reserved to a three-judge district court, not a single-judge district court.”¹¹

Plaintiffs’ motion for injunctive relief seeks the “release [of] all members of a subclass of medically vulnerable individuals” and the “release [of] additional Class Members . . . as needed to ensure that remaining persons incarcerated in the Dallas County Jail are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19.”¹² But, only a three-judge court can award such relief under the PLRA’s clear language and binding Supreme Court precedent. Thus, Plaintiffs’ request for a mass prisoner release should be denied.

⁸ *Id.* at § 3626(a)(3)(C)–(D).

⁹ *Id.* at § 3626(a)(3)(E).

¹⁰ *Id.* at § 3626(a)(3)(B).

¹¹ 563 U.S. 493, 500 (2011) (citing 18 U.S.C. § 3626(a)); *see also id.* at 511 (“By its terms, the PLRA restricts the circumstances in which a court may enter an order ‘that has the purpose or effect of reducing or limiting the prison population.’”) (quoting 18 U.S.C. § 3626(g)(4)).

¹² ECF 2, 1–2.

II. Plaintiffs Failed to Exhaust Their Available Remedies As Required By the PLRA and 28 U.S.C. § 2241.

A. Plaintiffs were Required to Exhaust Available Remedies Before Filing Their § 1983 Claims.

Under the PLRA, “no action shall be brought with respect to prison conditions under section 1983 . . . by a prisoner confined in any jail . . . until such administrative remedies as are available are exhausted.”¹³ “[T]he PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.”¹⁴ Exhaustion is a mandatory prerequisite to filing suit.¹⁵

The Fifth Circuit requires inmates to fully exhaust the applicable prison grievance procedures before filing a suit in federal court.¹⁶ Courts have no discretion to excuse an inmate’s failure to properly exhaust the prison grievance process, even to take “special circumstances” into account.¹⁷

The Dallas County Jail’s Inmate Handbook sets out the grievance procedure applicable to Plaintiffs’ claims.¹⁸ Per the Handbook, Inmates have various methods

¹³ 42 U.S.C. § 1997e(a); *Jones v. Bock*, 549 U.S. 199, 202 (2007); *Johnson v. Johnson*, 385 F.3d 503, 515 (5th Cir. 2004).

¹⁴ *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

¹⁵ *Booth v. Churner*, 532 U.S. 731, 739 (2001).

¹⁶ *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) (“It is irrelevant whether exhaustion is achieved during the federal proceeding. Pre-filing exhaustion is mandatory, and the case must be dismissed if available administrative remedies were not exhausted.”); *Dillon v. Rogers*, 596 F.3d 260, 268 (5th Cir. 2010) (finding that mere “substantial compliance” with administrative procedures is insufficient exhaustion); *see also Johnson*, 385 F.3d at 515; *Wright v. Hollingsworth*, 260 F.3d 357, 358–59 (5th Cir 2001).

¹⁷ *Ross v. Blake*, 136 S. Ct. 1850, 1856–57 (2016); *Gonzalez*, 702 F.3d at 788.

¹⁸ Ex. 1 at 12-14. Information about how to submit a grievance can also be found at multiple electronic kiosks located throughout the prison and on channel 3 of Inmate TV. *Id.* at 12.

of submitting a grievance.¹⁹ Once submitted, the Inmate Grievance Board reviews the grievance and provides a status response to the inmate.²⁰ The Board has 15 days to submit its initial status response and 60 days to submit a final response.²¹ An inmate who has not received a timely response from the Board can submit a written request for the response.²² The Handbook specifies that all emergency grievances “will be handled immediately.”²³

An inmate who disagrees with the Board’s response may appeal.²⁴ The first level of appeal is to the Quality Assurance Commander.²⁵ The Commander has 15 days to respond.²⁶ If this does not occur, the inmate can request a response.²⁷

If the inmate disagrees with the Commander’s response, the inmate can file a second appeal, this time to the Assistant Chief Deputy for the Special Services Bureau.²⁸ The Assistant Chief Deputy has 30 days to render a decision, which is final.²⁹ It is only at this point that the grievance process has been fully exhausted.³⁰ As the Handbook explicitly states:

IF YOU DO NOT RECEIVE A RESPONSE TO YOUR GRIEVANCE, FIRST LEVEL APPEAL, AND/OR SECOND LEVEL APPEAL WITHIN THE TIME LIMITS SET FORTH ABOVE, YOU MUST PROCEED TO THE NEXT STEP OF THE GRIEVANCE

¹⁹ *Id.* at 12 (noting that a prisoner can submit a grievance: (1) via the jail visitation kiosks located throughout every facility; (2) through a written grievance form provided by jail staff; or (3) by any other written means).

²⁰ *Id.* at 13.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 13–14.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 14.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See id.* at 12–14.

PROCESS IN ORDER TO FULLY EXHAUST YOUR ADMINISTRATIVE REMEDIES.³¹

Here, Plaintiffs' declarations confirm that they failed to fully exhaust administrative remedies prior to filing this suit.³² Plaintiffs Morrison, Baker, Wright, Munoz, and McNickles made no attempt to go through the Dallas County Jail's grievance procedures.³³ And while Plaintiffs Sanchez, White, MacDonald, and Perez possibly began the grievance process, they filed suit before the process concluded and present no evidence suggesting otherwise.³⁴ Thus, none of the Plaintiffs have shown that they exhausted their administrative remedies as the PLRA requires.³⁵ This is fatal to their § 1983 claims.³⁶ And this result should not shock Plaintiffs' counsel from the ACLU whose own PLRA practice guide warns "[i]f you file a lawsuit in federal court before taking your complaints through every step of your prison's grievance procedure, it will almost certainly be dismissed."³⁷

B. Plaintiffs were Required to Exhaust Available Remedies Before Filing Their Habeas Petition.

Plaintiffs bring their habeas petition under 28 U.S.C. § 2241.³⁸ It is well settled that petitioners must exhaust their administrative and state court remedies before filing a federal habeas petition based upon this provision.³⁹ The exhaustion

³¹ *Id.* at 14.

³² *See* ECF 1.2–1.11.

³³ *See* ECF 1.6–1.10.

³⁴ *See* ECF 1.1–1.5.

³⁵ *See Gonzalez*, 702 F.3d at 788; *Dillon*, 596 F.3d at 268; *Wright*, 260 F.3d at 358–59.

³⁶ *See id.*

³⁷ American Civil Liberties Union, *Know Your Rights: The Prison Litigation Reform Act (PLRA)*, available at https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf (last visited Apr. 14, 2020).

³⁸ ECF 1, ¶ 10.

³⁹ *Montano v. Tex.*, 867 F.3d 540, 542 (5th Cir. 2017) (“[I]t has long been settled that a section 2241 petitioner must exhaust available state court remedies before a federal court will entertain a

requirement is vital to “preserv[ing] the respective roles of state and federal governments and avoid[ing] unnecessary collisions between sovereign powers.”⁴⁰

Exceptions to the exhaustion rule apply where (1) “the available administrative remedies either are unavailable or wholly inappropriate to the relief sought” or (2) “the attempt to exhaust such remedies would itself be a patently futile course of action.”⁴¹ A petitioner bears the burden of demonstrating that an exception to the exhaustion rule is warranted.⁴²

As explained above, Plaintiffs failed to exhaust their administrative remedies.⁴³ Nor have they attempted to argue that an exception to the exhaustion rule for administrative remedies applies. This is fatal to their habeas petition.⁴⁴

Further, Plaintiffs made no discernable effort to bring their claims in state court.⁴⁵ Plaintiffs’ sole argument for an exception is that, in their minds, state courts are just too slow to afford a “sufficiently swift resolution of their constitutional

challenge to state detention.”); *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (“We have held that a federal prisoner filing a § 2241 petition must first pursue all available administrative remedies.”); *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (“A prisoner. . . is required to exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241.”); *Dickerson v. State of La.*, 816 F.2d 220, 225 (5th Cir. 1987) (“[A]lthough section 2241 establishes jurisdiction in the federal courts to consider pre-trial habeas corpus petitions, federal courts should abstain from the exercise of that jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state court or by other state procedures available to the petitioner.”).

⁴⁰ *Montano*, 867 F.3d at 546; cf. *Picard v. Connor*, 404 U.S. 270, 275-76 (1971).

⁴¹ *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (per curiam) (quoting *Fuller*, 11 F.3d at 62).

⁴² *Fuller*, 11 F.3d at 62 (citing *Gardner v. Sch. Bd. Caddo Par.*, 958 F.2d 108, 112 (5th Cir. 1992)).

⁴³ *Supra*, Part II.A.

⁴⁴ See *Gallegos-Hernandez*, 688 F.3d at 194; *Fuller*, 11 F.3d at 62.

⁴⁵ For just one example, Art. 11.25 of the Texas Code of Criminal Procedure provides that when a judge, upon investigation, is satisfied “that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life.” Plaintiffs have not availed themselves of this, or the many other, state court remedies or procedures at their disposal.

claims.”⁴⁶ Plaintiffs’ sole “evidence” on this point is a declaration from one of Plaintiffs’ attorneys in which she states that, prior to COVID-19, a habeas petition may take months to run through the Texas state courts and that some Texas courts are “slowing their operations in response to the COVID-19 pandemic.”⁴⁷ Yet a state court’s adjudication of habeas petition *pre-COVID-19* is not comparable to their adjudication of habeas petitions *post-COVID-19*. The State Intervenor’s counsels’ experience has been that both federal and state courts have been willing to move heaven and earth to quickly resolve COVID-19 cases such as this one (often at the expense of counsels’ sleep schedules).⁴⁸

Plaintiffs were required to exhaust all available remedies before filing a habeas petition in federal court. They failed to do so, and they present no meaningful evidence that an exception to the exhaustion requirement applies. This failure warrants the dismissal of Plaintiffs’ § 2241 claims.⁴⁹

⁴⁶ ECF 1, ¶ 86.

⁴⁷ ECF 1.11, ¶¶ 3–4.

⁴⁸ For example, the rapid pace of *Texas Criminal Defense Lawyers Assoc., et al. v. Greg Abbott, et al.*—a Texas state court case in which both the undersigned and Mr. Segura of the ACLU are counsel—clearly displays that state judges are hearing COVID-19 related issues quickly. On April 8, 2020, the plaintiffs filed a petition and motion for restraining order challenging Governor’s Abbott’s Executive Order GA 13 limiting the release of violent felons during the pandemic. On April 10, 2020, the trial court held an emergency hearing on the motion. Several hours later, the trial court enjoined GA 13. *The very next day*, after an application from the State defendants, the Texas Supreme Court stayed the trial court’s restraining order. Another example is *Ex part Luis Arroyo* which was filed on April 14, 2020. In that case, a pre-trial inmate filed a writ of habeas corpus directly before the Court of Criminal Appeals challenging his pretrial release as it related to GA 13 and COVID-19. The Court of Criminal Appeals accepted the application that same day. These examples just highlight that Texas courts are open for business and moving quickly to resolve all claims, especially those related to COVID-19. The State Intervenor can provide exhibits to support this point upon request.

⁴⁹ See, e.g., *Barrientos v. Dallas Cty. Dist. Attorney's Office*, No. 3:12-CV-4753-O-BN, 2013 WL 1499382, at *1 (N.D. Tex. Jan. 18, 2013) (“A federal habeas petition that contains unexhausted claims must be dismissed in its entirety”), *report and recommendation adopted*, No. 3:12-CV-4753-O-BN, 2013 WL 1501623 (N.D. Tex. Apr. 12, 2013) (citing *Thomas v. Collins*, 919 F.2d 333, 334 (5th Cir. 1990)).

III. Plaintiffs Cannot Challenge the Conditions of Their Confinement Through a Habeas Petition.

In their Petition, Plaintiffs argue that current conditions in the Harris County Jail violate the Eighth and Fourteenth Amendments.⁵⁰ But that kind of claim is not cognizable in habeas.⁵¹ The Fifth Circuit held long ago that the appropriate remedy for a condition-of-confinement violation “would be to enjoin continuance of any practices or require correction of any conditions.”⁵² It “would not . . . entitle[] [a prisoner] to release from prison.”⁵³ Plaintiffs therefore may not work around the PLRA defects described above by dressing up their civil claims (under 42 U.S.C. § 1983) in the garb of habeas corpus relief (under 28 U.S.C. § 2241).⁵⁴

Civil actions and habeas corpus review are two entirely distinct proceedings.⁵⁵ A habeas corpus proceeding is neither civil⁵⁶ nor criminal.⁵⁷ “Essentially, the [habeas] proceeding is unique.”⁵⁸ A habeas petitioner may not file a habeas petition in a criminal case; he likewise may not file a habeas application in a civil action. Plaintiffs therefore may not circumvent the PLRA’s limits on civil actions by manufacturing this “hybrid” action that purports to seek habeas relief.

⁵⁰ See ECF 1, ¶¶ 77, 79–80, 82–83, 85, 88–92, 97–101.

⁵¹ See, e.g., *Nettles v. Grounds*, 830 F.3d 922, 927–34 (9th Cir. 2016) (en banc); *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012); *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990); *Glaus v. Anderson*, 408 F.3d 382, 387 (7th Cir. 2005).

⁵² *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979) (per curiam)

⁵³ *Id.*

⁵⁴ ECF 1, ¶¶ 10, 84–87.

⁵⁵ *Hilton v. Braunskill*, 481 U.S. 770, 776 n.5 (1987) (noting “the differences between general civil litigation and habeas corpus proceedings”).

⁵⁶ *Harris v. Nelson*, 394 U.S. 286, 293–94 (1969).

⁵⁷ *Ex parte Tom Tong*, 108 U.S. 556, 559 (1883).

⁵⁸ *Harris*, 394 U.S. at 293–94.

Federal law makes clear that civil actions and habeas review, despite their similarities, remain different proceedings. Consider, for example, the initial filing that sets a proceeding in motion. Habeas review commences with the filing of an “application.”⁵⁹ And the federal habeas statute provides specific rules that prescribe what a habeas corpus application must contain.⁶⁰ “A civil action,” by contrast, “is commenced by filing a complaint.”⁶¹ Elsewhere, the federal rules likewise provide specific rules that govern the filing of complaints.⁶²

Civil Rule 7, which provides an exhaustive list of authorized pleadings, hammers the point home. “*Only these pleadings* are allowed” in a civil action:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.⁶³

Conspicuously absent from this list is a habeas corpus application. In this case, Plaintiffs filed a “Class Action Complaint” under 28 U.S.C. § 1331. Section 1331, in turn, provides district courts with “original jurisdiction of all *civil actions*.”⁶⁴ Because this is a civil action, a habeas corpus application is not “allowed.”

Other provisions confirm what the plain text of Rule 7 suggests. Civil Rule 81 provides that the Federal Rules of Civil Procedure “apply to *proceedings for habeas*

⁵⁹ 28 U.S.C. § 2241(b), (d).

⁶⁰ 28 U.S.C. § 2242.

⁶¹ Fed. R. Civ. P. 3.

⁶² See, e.g., Fed. R. Civ. P. 8, 10(a), 14.

⁶³ Fed. R. Civ. P. 7(a) (emphasis added).

⁶⁴ ECF 1, ¶ 11 (citing 28 U.S.C. § 1331).

corpus . . . to the extent that the practice in *those proceedings*: (A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and (B) has previously conformed to the practice in civil actions.”⁶⁵ And Habeas Rule 12 provides that “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to *a proceeding under these rules*.”⁶⁶ The only reason a habeas proceeding needs to borrow rules from a civil action is because it is an entirely distinct proceeding. And even then, habeas procedure often diverges from civil procedure.⁶⁷

Supreme Court precedent confirms this view. In *Heck v. Humphrey*⁶⁸ the Supreme Court established that a proceeding is either a civil action (under § 1983) *or* a habeas proceeding (under § 2241)—not both. The Court recognized that § 1983 and § 2241 are both capacious enough to cover “claims of unconstitutional treatment at the hands of state officials.”⁶⁹ That meant a creative prisoner who opted to sue under § 1983 could effectively evade requirements unique to habeas corpus review, like the exhaustion rule.⁷⁰ To prevent that workaround, the Court held a prisoner who necessarily “call[s] into question the lawfulness of conviction *or confinement*” must

⁶⁵ Fed. R. Civ. P. 81(a)(4) (emphases added).

⁶⁶ 28 U.S.C. § 2254, Habeas Rule 12 (emphasis added).

⁶⁷ See, e.g., *Gonzalez v. Crosby*, 545 U.S. 524, 529–31 (2005) (motion for relief from judgment under FRCP 60(b)); *Day v. McDonough*, 547 U.S. 198, 207–09 (2006) (forfeiture of limitations defense under FRCP 8(c), 12(b), 15(a)); *Mayle v. Felix*, 545 U.S. 644, 654–56 (2005) (notice pleading under FRCP 8(a)); *United States v. Frady*, 456 U.S. 152, 164–66 & n.15 (1982) (plain error review under FRCP 52); *Harris*, 394 U.S. at 294–98 (discovery and interrogatories under FRCP 26(b), 33); *Holiday v. Johnson*, 313 U.S. 342, 353 (1941) (reference to a master under FRCP 53).

⁶⁸ 512 U.S. 477 (1994).

⁶⁹ *Id.* at 480.

⁷⁰ *Id.* at 480–81.

proceed in habeas, not in a civil action.⁷¹ Because the prisoner in *Heck* challenged his confinement, the Court held he should have sought relief in habeas.

If Plaintiffs were correct that a civil action like this one could be combined with a habeas proceeding, then the prisoner in *Heck* should have been permitted to amend his pleadings. But that is not what the Supreme Court said. It held that “*dismissal of the action* was correct.”⁷² Heck could pursue only one route in a given case—either a civil action or a habeas proceeding—and he chose the wrong one.

The Supreme Court has reaffirmed the *Heck* rule countless times.⁷³ And its principle dividing the world between challenges to custody and challenges to conditions of confinement applies here too. A prisoner cannot use § 1983 to avoid the strictures of the federal habeas statute. A prisoner likewise cannot use the habeas statute to avoid the strictures of the PLRA.⁷⁴ Plaintiffs’ complaint about “conditions of confinement” in Dallas County Jail is simply not cognizable in habeas corpus. And their § 1983 claims likewise fail. This should be the end of this case.

⁷¹ *Id.* at 483; *see id.* at 481 (“challenges [to] the fact or duration of his *confinement* and seek[ing] immediate or speedier *release*” (emphases added)), 483 (challenges “call[ing] into question the lawfulness of the plaintiff’s *continuing confinement*” (emphasis added)), 486 (challenges that “require the plaintiff to prove the unlawfulness of his conviction *or confinement*” (emphasis added)); *see also Spina v. Aaron*, 821 F.2d 1126, 1128 (5th Cir. 1987) (“Congress has chosen habeas corpus as the appropriate avenue to challenge the fact or duration of a prisoner’s confinement.”).

⁷² *Heck*, 512 U.S. at 490.

⁷³ *See, e.g., Skinner v. Switzer*, 562 U.S. 521 (2011); *Hill v. McDonough*, 547 U.S. 573 (2006); *Wilkinson v. Dotson*, 544 U.S. 74 (2005); *Nelson*, 541 U.S. 637, 637.

⁷⁴ *Skinner*, 562 U.S. at 535 (noting that a prisoner whose claim that falls outside of the habeas bucket and into the civil action bucket is subject to the “series of controls on prisoner suits” Congress established in the PLRA); *Nettles*, 830 F.3d at 927–34 (same).

IV. Plaintiffs’ Motion for Class Certification Should be Denied Because a Mass Prisoner Release Order Inherently Hinges on Individualized Determinations About Which Prisoners Should be Released and on what Conditions Release is Appropriate.

Even setting aside the various procedural defects described above, this Court cannot grant class certification or class-wide relief. No matter how the Court characterizes this Janus-faced suit, class action treatment remains inappropriate.

If the Court treats Plaintiffs’ pleadings as a § 1983 action challenging conditions of confinement, Plaintiffs have not satisfied Rule 23’s prerequisites. A plaintiff must “affirmatively demonstrate his compliance with” Rule 23,⁷⁵ in order to justify a departure from “the usual rule that litigation is conducted by and on behalf of the individual named parties only.”⁷⁶ Just three weeks ago, the Fifth Circuit “cautioned that a district court must conduct a rigorous analysis of the rule 23 prerequisites before certifying a class.”⁷⁷

Under Rule 23(a), Plaintiffs must show:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.⁷⁸

Two of those requirements are pertinent here—namely, commonality and typicality.

Plaintiffs boast that they have raised common questions, like “[W]hat measures [have] Defendants implemented in the Dallas County Jail in response to

⁷⁵ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–50 (2011).

⁷⁶ *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979).

⁷⁷ *Cruson v. Jackson Nat’l Life Ins. Co.*, 954 F.3d 240, 2020 WL 1443531, at *7 (5th Cir. Mar. 25, 2020).

⁷⁸ Fed. R. Civ. P. 23(a).

the COVID-19 crisis?”⁷⁹ They add that the “the most important common question” is “whether Defendants are liable under the Eighth and Fourteenth Amendments for their deliberate indifference to conditions of confinement.”⁸⁰ In other words, Plaintiffs say they have identified the common question of whether Dallas County has been deliberately indifferent across the board.

The Supreme Court rejected this theory of commonality in *Wal-Mart*, in part based on the recognition that different actors may perpetrate the same violation of law *in different ways*.⁸¹ Considering the underlying “merits contention,” Plaintiffs are “unable to show that all [prisoners’ deliberate indifference] claims will in fact depend on the answers to common questions.”⁸² To establish a violation, Plaintiffs must show that “state official[s] knew of and disregarded an excessive risk to the inmate’s health or safety.”⁸³ But that kind of violation may befall prisoners in different ways. Some officers are allegedly reusing masks.⁸⁴ Some dorm rooms are allegedly unsanitary.⁸⁵ Some prisoners have allegedly been kept in shared spaces with prisoners exhibiting symptoms.⁸⁶ Some prisoners have been denied testing, while others have had testing delayed.⁸⁷ Some prisoners are healthy, while others are not.⁸⁸

⁷⁹ ECF 18, 17.

⁸⁰ *Id.* at 18.

⁸¹ *Wal-Mart*, 564 U.S. at 350 (commonality “does not mean merely that they have all suffered a violation of the same provision of law”).

⁸² *Id.* at 356.

⁸³ *Gibbs v. Grimmette*, 254 F.3d 545, 549 (5th Cir. 2001).

⁸⁴ ECF 1, ¶ 54.

⁸⁵ *Id.* at ¶ 56.

⁸⁶ *Id.* at ¶ 52.

⁸⁷ *Id.* at ¶ 51.

⁸⁸ Compare *id.* at ¶¶ 17, 19, with *id.* at ¶¶ 13, 16.

These are just a few easy examples. Subjective indifference to the healthy inmate may look different from indifference to an inmate with a respiratory issue. Other circuits have repeatedly rejected putative class-actions pressing deliberate indifference claims for just this reason.⁸⁹ To be sure, some courts have found commonality for “systemic indifference.” But plaintiffs have not actually presented evidence of “a gross and systemic deficiency that applies to the entire class. Instead, the[y] bring a series of individual claims of deliberate indifference.”⁹⁰ They cannot point to a set temperature for the entire jail⁹¹ or a memo from Dallas County officials formally setting a policy of making every effort not to provide care for inmates during an unprecedented public health challenge.

There are more than mere “factual variations in some details of” the putative class members’ custodial status.⁹² The face of Plaintiffs’ pleadings shows factual variations in *the way* that prison officials have allegedly been indifferent to the Plaintiffs’ health needs.

Separately, the Plaintiffs must also satisfy one of the requirements listed in Rule 23(b). Plaintiffs purport to cram their certification motion into Rule 23(b)(2). But as Plaintiffs themselves admit, “the key to the (b)(2) class is the *indivisible nature* of the injunctive or declaratory remedy warranted—the notion that the conduct is such

⁸⁹ See, e.g., *Phillips v. Sheriff of Cook Cty.*, 828 F.3d 541 (7th Cir. 2016).

⁹⁰ *Phillips*, 828 F.3d at 558.

⁹¹ *Yates v. Collier*, 868 F.3d 354 (5th Cir. 2017).

⁹² ECF 18, 18.

that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.”⁹³ The relief Plaintiffs seek here is obviously not of that character.

Cases enjoining prison officials to protect prisoners from excessive heat provides a helpful comparator. An injunction ordering prison officials to set prison temperatures at 88° is “indivisible.” It automatically benefits every member. But it should be obvious that release is different. A court may choose to release some, but not others. (Indeed, that is why habeas proceedings seeking relief proceed on an individual basis.) Moreover, Plaintiffs seem to recognize that release of some may *obviate* the need to release others. Some of their pleadings note that County officials could possibly address the problem by reducing the jail population and then using newly vacated facilities to space out remaining prisoners.⁹⁴

Accordingly, Plaintiffs must proceed under Rule 23(b)(3), which is “even more demanding.”⁹⁵ And because they have not identified a common question, they certainly cannot show a non-existent question “predominates” over all others.⁹⁶

If the Court treats Plaintiffs’ pleading as a § 2241 application seeking release from custody, class-wide relief ordering release is still inappropriate. For starters, class action relief is simply unavailable in habeas corpus proceedings. No court ever purported to entertain that departure from the historic office of the Great Writ until “the late 1960s.”⁹⁷ Then, after having its day in the sun, habeas class actions

⁹³ *Id.* at 23 (quoting *Wal-Mart*, 564 U.S. at 360) (emphasis added).

⁹⁴ ECF 1, ¶ 103(4)-(5).

⁹⁵ *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013).

⁹⁶ *Wal-Mart*, 564 U.S. at 359.

⁹⁷ Brandon L. Garrett, *Aggregation in Criminal Law*, 95 CAL. L. REV. 383, 404 (2007) (collecting cases); *Adderly v. Wainwright*, 272 F. Supp. 530, 532 (M.D. Fla. 1967).

“vanished.”⁹⁸ That is due in large part to the Supreme Court’s decision in *Calderon v. Ashmus*.⁹⁹ There a putative class of death-row inmates brought suit seeking a declaration that California did not qualify for expedited capital habeas review under AEDPA’s opt-in provisions.¹⁰⁰ The Supreme Court held the prisoners’ challenge to the fact of their confinement “must be brought under the habeas sections of Title 28.”¹⁰¹ And it recognized that each putative class member must first “exhaust state remedies before bringing his claim to a federal court.”¹⁰² Naturally, that decision “made habeas corpus class actions impossible.”¹⁰³

That jives with what the Supreme Court has said elsewhere. For instance, in *Schall v. Martin*, the Court pointed to state habeas procedures “on a case-by-case basis” as the appropriate avenue for challenging pre-trial detention.¹⁰⁴ In *Whitmore v. Arkansas*, the Supreme Court rejected one prisoner’s attempt to utilize the carefully-circumscribed “next friend” application on behalf of another prisoner.¹⁰⁵ And just last year in *United States v. Sanchez-Gomez*, the Supreme Court cautioned that lower courts “may not recognize a common-law kind of class action or create de facto class actions at will” on behalf of pre-trial detainees.¹⁰⁶

⁹⁸ *Id.* at 408.

⁹⁹ 523 U.S. 740 (1998).

¹⁰⁰ 28 U.S.C. §§ 2261–66.

¹⁰¹ *Ashmus*, 523 U.S. at 747.

¹⁰² *Id.* at 748.

¹⁰³ Garrett, 95 CAL. L. REV. at 410. There were also good policy reasons for scrapping the class-action habeas application: A class application, combined with AEDPA’s limits on second or successive habeas applications, could have the effect of precluding a prisoner from later seeking habeas relief in an individual application. See 28 U.S.C. § 2244.

¹⁰⁴ 467 U.S. 253, 281 (1984).

¹⁰⁵ 495 U.S. 149, 161–66 (1990).

¹⁰⁶ 138 S. Ct. 1532, 1540 (2018).

The class action has no place in habeas corpus proceedings. Accordingly, importing Rule 23 to the habeas context would violate Civil Rule 81. The “practice in [habeas] proceedings” has not “previously conformed to the practice in civil actions” with respect to class action.¹⁰⁷ Habeas Rule 2(e), for example, provides that “[a] petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.”¹⁰⁸ In other words, the same petitioner is obligated to file a separate action to challenge a different judgment. There is no way *different petitioners* can challenge different judgments in a single case. Unsurprisingly, the handful of federal courts that have explicitly addressed this question agree that habeas petitioners may not seek class-wide habeas relief.¹⁰⁹

But even if that is wrong, and something like a class action *is* available in habeas proceedings, all of the same problems above would plague the request for class-wide relief. And surely any habeas class action is not *less* demanding than Rule 23. The nature of habeas review, moreover, highlights a plethora of typicality problems: Was this member of the putative class in custody at the time the

¹⁰⁷ Fed. R. Civ. P. 81(a)(4)(B).

¹⁰⁸ 28 U.S.C. § 2254 Rule 2(e).

¹⁰⁹ See *Norton v. Parke*, 892 F.2d 476, 478 (6th Cir. 1989); *Rouse v. Michigan*, No. 2:17-CV-12276, 2017 WL 3394753, at *1 (E.D. Mich. Aug. 8, 2017) (“It is improper for different petitioners to file a joint habeas petition.”); *United States ex rel. Bowe v. Skeen*, 107 F. Supp. 879, 881 (N.D. W.Va. 1952) (“Several applicants can not join in a single petition for a writ of habeas corpus.”). Perhaps that is why Justice Thomas and Justice Gorsuch took for granted that a class of plaintiffs that (like this one) “seeks a declaration and an injunction that would provide relief for both present and future class members, including future class members not yet detained” “do not seek habeas relief, as understood by our precedents.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 858 (2018) (concurring in part and concurring in the judgment).

application was filed?¹¹⁰ What kind of custody is he in?¹¹¹ Is he being held pre-trial? Or on a life sentence for murder? Is he subject to a detainer request from another sovereign government? If he's subject to multiple forms of custody, which one is he challenging?¹¹² Would his habeas application be timely under AEDPA's statute of limitations?¹¹³ Is he entitled to statutory tolling?¹¹⁴ What about equitable tolling?¹¹⁵ Perhaps a miscarriage-of-justice exception?¹¹⁶ Has he exhausted his state-court remedies?¹¹⁷ Before trial?¹¹⁸ After conviction?¹¹⁹ If not, is there some reason why his failure to exhaust does not matter?¹²⁰ Even if he exhausted, is his claim procedurally defaulted?¹²¹ Can he supply cause and prejudice to excuse any default?¹²²

Frankly, it's hard to imagine a more dissimilarly situated group of individuals than Plaintiffs' putative class.

V. Three Recent COVID-19-Related Prisoner Cases Highlight the Fatal Flaws in Plaintiffs' Action.

Three recent cases confirm the State Intervenors' position and highlight the fatal flaws in Plaintiffs' action.

¹¹⁰ *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968); 28 U.S.C. §§ 2241(c)(3), 2254(a).

¹¹¹ *Dickerson*, 816 F.2d at 224.

¹¹² *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484 (1973).

¹¹³ 28 U.S.C. § 2244(d)(1).

¹¹⁴ *Id.* at § 2244(d)(2).

¹¹⁵ *Holland v. Fla.*, 560 U.S. 631 (2010).

¹¹⁶ *McQuiggin v. Perkins*, 569 U.S. 383 (2013).

¹¹⁷ 28 U.S.C. § 2254(b)(1)(A), (c).

¹¹⁸ *Ex parte Royall*, 117 U.S. 241, 245 (1886).

¹¹⁹ *Rose v. Lundy*, 455 U.S. 509 (1982).

¹²⁰ 28 U.S.C. § 2254(b)(1)(B).

¹²¹ *Murray v. Carrier*, 477 U.S. 478, 489–90 (1986).

¹²² *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

The Illinois district court's decision in *Money v. J.B. Pritzker*,¹²³ is the most significant of the three cases as it analyzed an action practically identical to this one. In *Money*, ten individuals convicted of a range of felonies and serving sentence in various Illinois Department of Corrections ("IDOC") facilities brought two class action lawsuits "seeking release of prisoners from IDOC facilities in light of the COVID-19 pandemic."¹²⁴ One suit was brought under § 1983; the other was a petition for writs of habeas corpus under 28 U.S.C. § 2254.¹²⁵ As the court summarized:

The foundation of each suit is essentially the same: Plaintiffs argue that the prison setting makes them (and other purported class members) especially vulnerable to COVID-19, that the state government's responses to the danger are insufficient or not fast enough or both, and that the only way to solve the problem is moving prisoners out of prisons.¹²⁶

Plaintiffs claimed that "reducing the prison population is the only meaningful way to prevent the harms posed by COVID-19 in the prison setting."¹²⁷ Plaintiffs sought to release at least 12,000 Illinois-based inmates due to COVID-19.¹²⁸

Plaintiffs filed motions for class certification and emergency injunctive relief in both actions.¹²⁹ Plaintiffs sought to certify classes consisting of subsets of inmates who were medically vulnerable, convicted of lower-level offenses, or near the end of their prison sentence.¹³⁰

¹²³ No. 20-CV-2093, 2020 WL 1820660 (N.D. Ill. Apr. 10, 2020).

¹²⁴ *Id.* at *2.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at *5.

¹²⁸ *Id.* at *1.

¹²⁹ *Id.* at *6.

¹³⁰ *Id.*

At the outset, the court questioned whether it was “even proper to bring a Section 1983 action and a petition for writ of habeas corpus at the same time on the same facts seeking the same remedy[.]”¹³¹ The court, expressing significant doubt on the issue, assumed the answer was yes and continued its analysis.¹³²

The court found that the plaintiffs’ § 1983 claims were subject to the PLRA’s limitations.¹³³ The court analyzed whether the plaintiffs were seeking a “prisoner release order” that would need to be decided by a three-judge panel under the PLRA.¹³⁴ During the lawsuit, the plaintiffs walked-back their original request for release and claimed they were now only seeking “a process through which subclass members eligible for medical furlough will be identified and evaluated based on a balancing of public safety and public health needs, and transferred accordingly.”¹³⁵ The court found that even this watered-down request was effectively a request for a prisoner release order as it was intended to further the lawsuits’ main purpose—which was to reduce or limit the IDOC’s prison population.¹³⁶ The court held that, under the PLRA’s specific procedures regarding prisoner release orders and due to

¹³¹ *Id.* at *8.

¹³² *Id.* (“As explained below, the answer (though not without doubt) seems to be yes.”); *id.* at *9 (“[I]t is abundantly clear that Plaintiffs may proceed on their claims under Section 1983 and at least plausible—though far less certain—that they also have a right to seek habeas relief as well.”).

¹³³ *Id.* at *10-14.

¹³⁴ *Id.*

¹³⁵ *Id.* at *12 (quotations omitted).

¹³⁶ *See, e.g., id.* at *12 (“There is no doubt that Plaintiffs’ request—even if couched in terms of a process—would have the purpose and the effect of reducing the population in Illinois prisons.”); *id.* at 13 (“Reducing the prison population is not just a die effect of the case—it is the whole point.”); *id.* (“[I]n asking that inmates be physically transferred from inside the prison to outside of it on the basis of [living conditions in the prisons,] Plaintiffs plainly are implicating ‘crowding’ as the primary cause of their concern. If prisons could be reconfigured to permit social distancing and observance of the CDC’s hygiene recommendations, Plaintiffs would have no claim.”).

the sweeping relief being requested, it could not grant the plaintiffs' § 1983-based request for prisoner release.¹³⁷

The court noted additional problems with the plaintiffs' § 1983 claims. The court found that the plaintiffs could not satisfy Fed. R. Civ. P. 23(a)(2)'s "commonality" requirement due to the individualized determinations inherent in a request for a mass prisoner release order.¹³⁸ The court found that, "for the safety of the inmate, the inmate's family, and the public at large," any release order would need to consider the "inmate's suitability for release" and on what conditions the inmate should be released.¹³⁹ For instance, "any inmate who is exhibiting symptoms of infection, may be more suitable for quarantine or even transfer to a hospital."¹⁴⁰ For the inmate's family, an inmate may be ill-suited for release if he or she had been recently exposed to someone with COVID-19, "particularly if the inmate's proposed destination is a residence already occupied by someone equally or more vulnerable."¹⁴¹ And the public has an interest in being protected from the release of inmates convicted of serious crimes and in the significant resources their government would need to expend to safely monitor the released prisoners.¹⁴²

The court aptly summarized the problems with plaintiffs' motion for class certification as follows:

Each putative class member comes with a unique situation—different crimes, sentences, outdates, disciplinary histories, age, medical history,

¹³⁷ *Id.* at *14.

¹³⁸ *Id.* at *14–17.

¹³⁹ *Id.* at *14.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

places of incarceration, proximity to infected inmates, availability of a home landing spot, likelihood of transmitting the virus to someone at home detention, likelihood of violation or recidivism, and danger to the community. As Plaintiffs point out, commonality “does not require perfect uniformity.” But it does require more uniformity that these Plaintiffs would have on the only matter “apt to drive the resolution of the litigation”—namely, which class members should actually be given a furlough? . . . Simply put, there is no way to decide which inmates should stay, and which inmates should go, without diving into an inmate-specific inquiry.¹⁴³

Further, the court found that there were “serious separation of powers concerns” inherent in plaintiffs’ actions “because running and overseeing prisons is traditionally the province of the executive and legislative branches.”¹⁴⁴ The court explained that the judiciary is “ill-equipped” to manage tens of thousands of inmates, particularly in the context of “an ongoing, fast moving public health emergency.”¹⁴⁵

Finally, turning to the merits of the habeas petition, the court found that the plaintiffs failed to exhaust their remedies as they did not give Illinois state courts a meaningful opportunity to consider their claims before turning to the federal courts for relief.¹⁴⁶ Ultimately, the court denied their habeas petition because “Plaintiffs have not made a satisfactory showing that the state court system was not every bit as available as the federal courts, if not more so.”¹⁴⁷

In *Sacal-Micha v. Longoria*, the District Court for the Southern District of Texas found that a writ of habeas corpus was not a proper vehicle for challenging an

¹⁴³ *Id.* at *15 (citations omitted).

¹⁴⁴ *Id.* at *16.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at *20–22.

¹⁴⁷ *Id.* at *21.

inmate's conditions of confinement due to COVID-19.¹⁴⁸ In *Sacal-Micha*, the petitioner was an “elderly man with serious underlying medical conditions” who filed a habeas petition seeking immediate release from the immigration detention center in which he was being held.¹⁴⁹ The petitioner sought release due to the “possibility of a COVID-19 outbreak within the detention center . . . and the Respondents’ alleged inability to protect him from contracting the virus or providing him with adequate medical attention.”¹⁵⁰ Specifically, the petitioner claimed that the respondents had not implemented sufficient social distancing measures, the universal use of mask and gloves, and various other measures to protect against the spread of COVID-19.¹⁵¹

The court noted that the “‘sole function’ of a habeas petition is to ‘grant relief from unlawful imprisonment or custody’”¹⁵² and that “[d]istrict courts have . . . den[ied] habeas relief based solely on alleged inadequate conditions of detention.”¹⁵³ The court found that the petitioner’s lawsuit was “[a]t its core” challenging his conditions of confinement and that habeas relief is unavailable in such a suit.¹⁵⁴ Thus, the court held that the petition should be dismissed under Fed. R. Civ. P. 12(b)(6).¹⁵⁵

In *Coleman v. Newsom*, a three-judge federal court based in California clarified how the PLRA’s limits applied to COVID-19-based claims for a prisoner release

¹⁴⁸ No. 1:20-CV-37, 2020 WL 1815691 (S.D. Tex. Apr. 9, 2020).

¹⁴⁹ *Id.* at *1.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at *2.

¹⁵² *Id.* at *3 (quoting *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976)).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at *4 (“Given that Sacal challenges the conditions of his confinement at PIDC, he cannot rely on a petition for writ of habeas corpus to obtain the relief he requests.”).

¹⁵⁵ *Id.* at *6.

order.¹⁵⁶ The presiding three-judge court was established in 2007 under the PLRA to consider whether a prisoner release was warranted due to structural failures in California's prison system.¹⁵⁷ Recently, two classes of inmates incarcerated in California state prisons filed a motion asking the court to order the release of a significant number of prisoners "so that the prison population can be reduced to a level sufficient to allow physical distancing to prevent the spread of COVID-19."¹⁵⁸

The three-judge court rejected the new plaintiffs' motion.¹⁵⁹ The court noted that the "PLRA places significant restrictions on a federal court's authority to order the release of prisoners as a remedy for a constitutional violation."¹⁶⁰ The court found that the plaintiffs likely could not satisfy the PLRA's requirements "at this point because there have not yet been any orders requiring Defendants to take measures short of release to address the threat of the virus; nor have Defendants had a reasonable time in which to comply."¹⁶¹

These three cases, *Money v. J.B. Pritzker*, *Sacal-Micha v. Longoria*, and *Coleman v. Newsom*, confirm the State-Intervenors' position and highlight the reasons why Plaintiffs' request for a prisoner release should be denied.

¹⁵⁶ No. 01-CV-01351-JST, 2020 WL 1675775, (E.D. Cal. Apr. 4, 2020).

¹⁵⁷ *Id.* at *1.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at *4.

¹⁶¹ *Id.*

VI. Releasing Felons During a Time of Crisis Endangers Public Safety and is Not in the Public Interest.

“The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction.”¹⁶² Accordingly, federal courts often consider two factors—the balance of the equities and the public interest—together.¹⁶³ Public safety is a paramount public interest. And Plaintiffs’ requested injunctive relief here—releasing a class of individuals defined as “[e]veryone in the Dallas County Jail”—will imperil public safety.¹⁶⁴

As explained in detail in the Motion to Intervene, Plaintiffs’ attempt to free inmates is not limited to non-violent offenders, but also includes murderers, rapists, and violent gang members.¹⁶⁵ And it even includes Billy Chemirmir, possibly “one of the state’s most prolific serial killers.”¹⁶⁶

But the risks posed to the public is not limited to those arrestees with a history for violence. And communities are “being repeatedly victimized by the same offenders who were often released before the paperwork was even filed.”¹⁶⁷ Under Plaintiffs’ requested relief, burglars and other felons would be free to roam the streets

¹⁶² *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941).

¹⁶³ *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26–31 (2008).

¹⁶⁴ To avoid duplicative briefing, State Intervenors hereby incorporate the arguments included in the Motion to Intervene and accompanying exhibits. *See* [Dkt. 27](#), [Exs. 1-15](#).

¹⁶⁵ *See* ECF No. 27, at 1-2; 7–8.

¹⁶⁶ Antonia Noori Farzan, *A Jewelry Box Led Police to Revisit Hundreds of Deaths. They May Have Found a Serial Killer*, WASH. POST (May 20, 2019), <https://wapo.st/2wxTJpJ>; Chemirmir’s booking information is available at https://www.dallascounty.org/jaillookup/defendant_detail?recno=8701479E-2A8F-4A79-8F26-00343043A503&bookinNumber=18013860&bookinDate=1521653460000&dob=1972-12-08&lastName=CHEMIRMIR&firstName=BILLY&sex=Male&race=Black ; Charles Scudder, *Dallas DA Seeks Death Penalty Against Serial Killer Suspect Billy Chemirmir*, DALLAS MORNING NEWS (July 24, 2019), <https://bit.ly/3cbtjey>.

¹⁶⁷ [Ex. 15](#), *Kahan Dec.* ¶ 9; [Ex. 14](#), *Rushin Dec.* ¶ 7.

committing numerous offenses. Releasing such individuals during the coronavirus pandemic presents a “target rich environment” for criminals to exploit as businesses are closed pursuant to governmental mandates and proprietors are encouraged to stay home with a diminished ability to monitor their closed storefronts.¹⁶⁸

Likewise, released fraudsters will be presented with new opportunities to prey on Texans, especially the elderly, during this pandemic.¹⁶⁹ And habitual DWI offenders certainly endanger the public through intoxicated driving.¹⁷⁰

Plaintiffs’ requested relief would further threaten public safety by placing additional strain on already limited law enforcement resources and divert them from aiding pandemic control efforts.¹⁷¹ The risk of this harm is compounded by the likelihood that law enforcement officers will contract COVID-19 by having to apprehend recidivists released from a jail population who are alleged to have been likely exposed to the virus. The general population would likewise face a heightened risk of infection by the hasty mass release requested by Plaintiffs. The requested injunction will also disserve the public interest by releasing arrestees without proper consideration of the safety, wellbeing, and legal rights of victims.¹⁷² Just recently, the danger a largescale prisoner release poses to society was a significant factor in a federal court’s decision to deny a set of plaintiffs’ request for injunctive relief in the form of a mass release of Harris County felony arrestees due to COVID-19 issues.¹⁷³

¹⁶⁸ See [Ex. 1](#), *Acevedo Dec.* ¶ 8.

¹⁶⁹ Zack Friedman, *Beware These Coronavirus Scams*, FORBES (Mar. 20, 2020), <https://bit.ly/2xzJT6B>.

¹⁷⁰ [Ex. 1](#), *Acevedo Dec.* ¶ 12.

¹⁷¹ See *id.* at ¶ 5; [Ex. 3](#), *Johnson Dec.* ¶ 3; [Ex. 4](#), *Miller Dec.* ¶ 3.

¹⁷² [Ex. 11](#), *Deaver Dec.* ¶ 9.

¹⁷³ *Russell v. Harris Cty.*, No. H-19-226, 2020 WL 1866835 (S.D. Tex. Apr. 14, 2020) (finding that the public interest and balance of equities weighed in favor of denying plaintiffs’ request to release many

In sum, the State Intervenors have grave concerns about the increased risk of harm to the public and the additional burden on already-strained law enforcement resources. This is especially concerning since Dallas saw a dramatic increase in both murder and other violent crime during the past year.¹⁷⁴

It is no response to say that these “concerns about the preliminary injunction [are] ‘speculative.’”¹⁷⁵ As the Supreme Court has noted, this kind of uncertainty in uncharted waters “is almost always the case when a plaintiff seeks injunctive relief to alter a defendant’s conduct.”¹⁷⁶ Instead, this Court should “defer to [the state] officers’ specific, predictive judgments about how the preliminary injunction” would impact public health, public safety, law enforcement, and State’s criminal justice system.¹⁷⁷ As a result, the Court should deny the requested injunctive relief.

CONCLUSION

For the reasons discussed above, the State Intervenors respectfully request that the Court dismiss this action under Fed. R. Civ. P. 12(b)(6). In the alternative,

felony arrestees partly because “[t]here is the threat of releasing on a personal bond those who should not be released because of risks such as not only failure to appear, but also of new offenses”).

¹⁷⁴ See Troy Closson, *Dallas' sudden spike in homicides has officials perplexed. And not everyone agrees that state troopers are helping*, TEXAS TRIBUNE (Aug. 15, 2019), available at <https://www.texastribune.org/2019/08/15/Dallas-crime-murder-rate-rises-state-troopers-resident-complaints/> (last visited Apr. 14, 2020); Editorial Board, *What's causing Dallas crime to spike?*, DALLAS MORNING NEWS (Feb. 13, 2020), available at <https://www.dallasnews.com/opinion/editorials/2020/02/13/is-bail-reform-the-cause-of-dallas-climbing-crime/> (last visited Apr. 14, 2020); *Numbers Show Spike in Dallas Crime in Past Year, DPD Says There's More to the Data*, NBCDFW.COM, available at <https://www.nbcdfw.com/news/local/numbers-show-spike-in-dallas-crime-in-past-year-dpd-says-theres-more-to-the-data/2239161/> (last visited Apr. 14, 2020).

¹⁷⁵ *Winter*, **Error! Bookmark not defined.**, 555 U.S. at 27.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

with respect to Plaintiffs' requests for emergency injunctive relief and class certification, the State Intervenor respectfully request an order ruling as follows:

1. Denying Plaintiffs' request for an emergency temporary restraining order and writ of habeas corpus requiring Defendants to "identify and release all members of a subclass of medically vulnerable individuals";¹⁷⁸
2. Denying Plaintiffs' requests for a preliminary/permanent injunction and writ of habeas corpus requiring Defendants to (A) "continue to release all current and future Medically-Vulnerable subclass members," and (B) "release additional Class Members, including those not considered 'Medically-Vulnerable,' as needed to ensure that all remaining persons incarcerated in the Dallas County Jail are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them";¹⁷⁹
3. Denying Plaintiffs' request to certify a "Pre-Adjudication Class" and a "Post-Adjudication Class";¹⁸⁰ and
4. Granting State Intervenor such other relief as the Court deems just and proper.

¹⁷⁸ ECF 2, 1.

¹⁷⁹ *Id.* at 1–2.

¹⁸⁰ ECF 17, 1–3.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief for General Litigation Division

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS
Special Litigation Counsel
Texas Bar No. 24077727
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 | FAX: (512) 320-0667
adam.biggs@oag.texas.gov

COUNSEL FOR STATE INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by electronic notification through ECF by the United States District Court, Northern District of Texas, Dallas Division, on April 15, 2020 to all counsel of record.

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS
Special Litigation Counsel

INMATE HANDBOOK

DALLAS SHERIFF'S DEPARTMENT

DALLAS COUNTY JAIL SYSTEM

133 N. RIVERFRONT BOULEVARD

DALLAS, TEXAS 75207-4313

Revised September 1, 2018

Approved by TCJS September 28, 2018

INMATE HANDBOOK

DALLAS SHERIFF'S DEPARTMENT

133 N. RIVERFRONT BLVD, DALLAS, TEXAS 75207

INTRODUCTION

The Dallas County Jail System of the Dallas County Sheriff's Department consists of four separate operating jail facilities:

George Allen Jail (De-Populated)
Sterrett West Tower
Sterrett North Tower
Suzanne Kays Facility
Decker Detention Center (Closed)

All persons placed into this system are processed at Low Sterrett Intake/Release Center. You may then be transferred to one of the other facilities for housing. Your housing assignment will depend upon your past criminal record, the type of charge against you, your age, medical condition, and your behavior while you are in this system. On the following pages you will find a great deal of information which will be of help to you during your stay. We recognize that people do not want to be in jail; however, with your cooperation and respect for the rights of others, you can make your time here less uncomfortable for yourself and others.

NOTARY SERVICE

If you need notary service, watch Channel 3 and follow instructions. Jail personnel do not notarize personal papers.

AVOID JAIL SOLICITORS

Department policy prohibits lawyers and others from soliciting legal business. If you do not have an attorney, the Dallas County Bar Association will recommend one for you. The telephone number for the Dallas Bar Association is (214) 220-7400.

INTAKE

Property and/or money taken by the Search-In officer will be safely and carefully stored and the prisoner will be given a receipt for all property and/or money taken by the Search-In officer. Your friends or relatives may call Jail Information at (214) 761-9025 if they wish additional information regarding the posting of bonds. No member of the Sheriff's Department is permitted to recommend a bonding agency.

PRE-TRIAL RELEASE

Each person booked into the Dallas County Jail System is screened by the Pre-Trial Release personnel for possible release on a Personal Bond.

SANCTIONS

The Board or Officer may impose the following penalties for violation of jail rules:

Minor Infractions:

1. Loss of commissary, telephone, non-legal mail (if non-legal was a factor in the violation or the non-legal mail violated correspondence regulations), and/or visiting privileges for up to fifteen (15) days.
2. Assigned to a disciplinary housing unit for up to fifteen (15) days.

Major Infraction:

1. Loss of commissary, telephone, non-legal mail (if non-legal was a factor in the violation or the non-legal mail violated correspondence regulations), and/or visiting privileges for up to thirty (30) days
2. Assigned to a disciplinary housing unit for up to thirty (30) days
3. Removal from work assignment or program participation
4. Loss of County good time credit and/or recommendation sent to the Prison for loss of good time credit at that institution

Any or all sanctions specified for each type of infraction listed above may be imposed. Your penalty may be suspended subject to acceptable conduct for the duration of confinement. As a result of a conviction, your custody level will be reassessed, and may be increased. Rule violations will become part of your permanent record, and will have a direct bearing on your classification during this stay and all subsequent stays in this jail. If you are transferred to another agency, your conduct will be reported to that agency.

In a Major Board Hearing you have the right to appeal, in writing, the decision of the Disciplinary Board within seventy-two (72) hours, to the Chief Deputy, Office of Inmate Housing. In a Minor Board Hearing you have the right to appeal, in writing, the decision of the Disciplinary Board within twenty-four (24) hours, to the Jail Commander.

ALL INMATES WILL SIGN FOR RECEIPT OF INSTRUCTIONS ON HOW TO ACCESS THE DALLAS COUNTY JAIL RULES, INMATE HANDBOOK, AND AIDS BROCHURE, ON THE BACK OF THEIR BUFF CARD.

Board or Officer will result in the revoking of that probation status. That probationed penalty may be imposed consecutively with the penalty for the new violation, upon completion of the appeal process .

DISCIPLINARY PROCEEDINGS

If you violate any of the jail rules, it will result in disciplinary action. Disciplinary action for infractions classified as **MINOR** may include any of the following: Counseling, verbal warning, written warning, and/or a hearing before a Minor Disciplinary Board or Officer. **MAJOR** infractions will be referred to the Major Disciplinary Board.

The alleged violator will receive a written notice which specifies the violation at least twenty-four (24) hours prior to any hearing. The alleged violator may designate up to two (2) witnesses to testify in their behalf, at the time of service of the written notice of violation. The violator may be moved to Administrative Custody until the hearing.

Disciplinary hearings will be held by a neutral and impartial board or officer that does not include anyone involved in the claimed violation, and will normally be held within ten (10) working days of the alleged violation.

WAIVER

An accused inmate may waive any Board Hearing with proper notification before signing the waiver:

1. The waiver must include the appropriate identification of any Jail Rule Infraction, the allowable sanctions, and the sanctions offered by the waiver.
2. A waiver cannot include the loss of good time as a sanction.
3. The waiver may be offered by the Board Chairman or by the Officer serving the Board Hearing Notification before the start of any hearing. Once the hearing starts, the waiver offer is withdrawn.

You will be given the opportunity to be heard in person, present evidence, and call only those witnesses designated at the service of the notice of violation, in your behalf at the hearing, as long as doing so does not present any undue hazard to the safety of the institution and correctional goals. The evidence against you will be disclosed at the hearing, although confidential informants may be protected. You may seek the aid of another inmate or staff member if you are illiterate or do not comprehend your case enough to collect and present the necessary evidence for your defense. The hearing Board or Officer will decide your guilt or innocence. The Board or Officer will provide you with written notification of their findings and the evidence relied upon. The notice will outline the appeal process.

CLASSIFICATION

The Classification Unit is responsible for assigning locations of all inmates in the Dallas County Jail System. Housing assignments are based on a variety of factors. You may appeal your housing assignment, classification assessment and re-assessments, work or trusty assignments by sending a kite or a grievance to the Classification Unit. You may also appeal an Inmate Program assignment by sending a kite or grievance addressed to Inmate Programs.

VAULT

Your valuable property items that cannot be taken to the cell with you will be kept in secured storage. Large bulky items will be returned to the arresting Agency and subject to that Agency's Policy concerning property storage. Any money that you have will be deposited to an Inmate Trust Fund Account set up under your name and book-in number. This account will allow you to receive deposits from your family and friends and allow you to purchase items from the commissary vendor.

An armband will be placed on your wrist and must remain on your wrist for the duration of your stay in the Dallas County Jail. On the armband is a bar code. This bar code acts as a "debit" card to your Inmate Trust Fund Account. Do not lose or damage this bar code. This bar code works like your ATM card. If someone else gets your bar code, they will have access to your account.

You must have this bar code on your wrist at the time of your release. If you do not have your bar code at the book out window, your account will be placed into reserve for 24 hours. This means that you will have to come to the Lobby Information Window in the Lew Sterrett Building after 24 hours and pick up the balance of your Inmate Trust Fund Account.

If your armband is lost or stolen, contact a Detention Service Officer immediately so he can have your account frozen. If your bar code is damaged or stops working, contact a Detention Service Officer. He can arrange a time for you to get a new bar code. Any questions that you have concerning your account should be addressed to the Vault Supervisor.

Any questions concerning the purchases you make from the commissary vendor must be brought to the attention of the vendor at the time of the sale.

CHANGE TO JAIL CLOTHING

You will be taken to the shakedown room after you have been assigned a jail facility and cell location. All of your personal clothing will be taken from you.

COUNTY ISSUE CLOTHING & PROPERTY

When you are to be housed in one of the units of the Dallas County Jail System, you receive:

Male Inmate:

shirt/pant	towel	shoes	socks
sheets	mattress	washcloth	underwear
blanket	spoon	cup	

Female Inmate:

shirt/pant	towel	shoes	socks
sheets	mattress	spoon	cup
washcloth	blanket	underwear	bra

It is your responsibility to make certain that you retain the property issued to you.

PERSONAL CLOTHING & PROPERTY

You are allowed to store only one set of personal clothing in the jail property room. (Exceptions are made for inmates on Work Release.) If someone brings clothing for you to wear to court, those items will be accepted only in exchange for clothing in the property room. Clothing and tennis shoes cannot be mailed to the inmate. These items will be returned. The only items, other than court clothes, which will be accepted, are as follows:

- Prescription eye glasses or contact lenses
- Prescription medications (subject to approval & distribution by the medical staff)
- Dentures

VISITING

Visiting hours at all jail facilities are as follows:

- Mon. and Thurs. (Last name starting with A-L) 7:00 PM – 9:00 PM
- Tues. and Fri. (Last name starting with M-Z) 7:00 PM—9:00 PM

- aging any lighting device
- 9. Falsely reporting any emergency
- 10. Tattooing or possession of tattooing paraphernalia
- 11. Reckless conduct which places self or another in danger of injury
- 12. Faking an illness or injury
- 13. Disruption of ANY institutional activity
- 14. Wearing a mask or disguise

SECTION E—RULE VIOLATIONS

Violation of any of the following rules is considered a **MAJOR** infraction and the violator may receive from fifteen (15) to thirty (30) days of restriction

Classified as **HIGHEST**:

1. Any act classified as an offense under Local, State, or Federal Law, whether or not a criminal case is filed. (Including, but not limited to: Murder, Sexual Assaults, Theft, Arson, Escape, Criminal Mischief, Any Attempted Offense, etc.)
2. Riotous behavior
3. Fighting
4. Assaulting another person
5. Altering, defacing, damaging, or removing of an inmate arm band
6. Possession of stolen property
7. Trafficking
8. Giving or offering any official, deputy, or staff member a bribe or anything of value
9. Tampering with or blocking any locking device or door system
10. Self mutilation
11. Possession or manufacture of a weapon
12. Possession or manufacture of an escape device
13. Possession or manufacture of chemical agents
14. Possession or manufacture of unauthorized drugs or medication
15. Possession or manufacture of narcotics or narcotic paraphernalia
16. Throwing or propelling objects or substances
17. Interference with Court related proceedings
18. Interference with official communications or communications devices
19. Interference with security operations
20. Encouraging or engaging in a group demonstration
21. Counterfeiting, forging, or unauthorized reproduction of any document, article of identification, money, negotiable item, security, or official paper

REVOCATION FOR PROBATED DISCIPLINARY SANCTIONS

An inmate who has been found guilty of violating a jail rule by a Disciplinary Board or Officer may have any penalty imposed probated for their length of stay in the Dallas County Jail. Once having been given a probated penalty for any rule violation, any subsequent finding of another rule violation by a Disciplinary

violation may receive from five (5) to fifteen (15) days of restriction:

1. Gambling, or preparing or conducting a gambling pool
2. Encouraging others to refuse to keep their individual cells and/or day room clean
3. Lying or providing a false statement to a deputy or a staff member
4. Unauthorized contact with the public
5. Refusing to obey an order of any deputy or staff member
6. Abuse of intercom system
7. Present in an unauthorized area
8. Unauthorized taking of items into or out of a housing unit
9. Unauthorized absence from work or activity.
10. Failure to identify self or giving a false identity.

SECTION C—RULE VIOLATIONS

Violation of the following rules is considered a **MAJOR** infraction and the violator may receive from five (5) to twenty (20) days of restriction.

Classified as **MODERATE**:

1. Disrespect to staff
2. Possession of an altered item
3. Excessive noise
4. Violation of feeding procedures
5. Violation of visitation procedures
6. Violation of program procedures
7. Violation of recreation procedures
8. Violation of treatment program procedures
9. Giving money or anything of value to or accepting money or anything of value from another inmate, a member of another inmates family or friends, unless specifically authorized by the Watch Supervisor on duty

SECTION D—RULE VIOLATIONS

Violation of any of the following rules is considered a **MAJOR** infraction and the violator may receive from ten (10) to twenty-five (25) days of restriction.

Classified as **HIGH**:

1. Adulteration of any food or drink
2. Threatening another
3. Extortion, blackmail, protection, demanding money or anything of value in return for protection of one inmate from another, to avoid bodily harm, or under threat of informing, or the selling of beds, bedding, clothing, linen, regular meals, telephone usage, or any other privilege or right given to inmates
4. Engaging in sexual acts with another, or making a sexual proposal or a threat to another
5. Indecent exposure
6. Impeding an inmate head count
7. Impeding the security of a housing unit
8. Obstructing the view into any area, or covering, tampering with or dam-

Saturday and Sunday (All Inmates) 8:00 AM -2:00 PM

Children under the age of 17 may only visit on Sat. and Sun.

No visitation on Wednesdays.

Visitation hours are subject to change. Please check Channel 3 for up-to-date information regarding visitation hours and procedures.

JAIL VISITATION RULES

1. All inmates will be required to fill out an inmate visitor authorization card. The card must be filled out completely and limited to five (5) adults. The card will require full name, race, sex, date of birth (or approximate age) and address. Children under the age of 17 do not count as one of the approved visitors. Persons under seventeen (17) years of age will not be allowed to visit unless accompanied by a parent or legal guardian. **Only 2 children per adult.** If you are the legal guardian documentation showing proof will be required. All children shall visit the same inmate being visited by the accompanying parent or guardian and shall be kept under the supervision of the accompanying adult. Visitors under the age of 17 who are married to an inmate shall show proof of marriage before visits shall be allowed.
2. Persons not listed on the card will not be allowed to visit. **Inmates will be allowed to make revisions on their visitors card once every 90 days.**
3. **Inmates will be allowed two visitors per calendar week.** The week begins on Sunday and ends on Saturday. **If you have only one person listed on the visitor card that person may visit two (2) times per week.**
4. Visitors must present a Valid Picture State Drivers License or Identification Card. Paper license or identification card renewal (must be accompanied by other picture identification) or one of the following:
 Jail Identification Card
 Official Government Issued Passport
 Military Identification Card
 Alien Registration Card or other valid picture identification card from the United States Government
5. Purses, baby carriages, baby blankets and bottles, packages, umbrellas, handbags, paper sacks or other items which may be used as containers, cell phones, pagers, any sharp instrument, mace, cigarettes, cigarette lighters, and matches are not allowed within the Jail Facility.

No items of any kind may be left unattended in the lobby area.

6. Physical searches of visitors may be conducted with probable cause.
7. Visitors shall not give any items directly to inmates.
8. Visitors are required to successfully clear the metal detector before being allowed to enter the secure area of the jail.

Any visitor who becomes disruptive, allows their children to be disruptive, or does not follow visiting guidelines, shall be asked to leave and the visit shall be terminated. The Commander of the Facility shall review the situation and shall determine the length of time for restricting the visitor. Children are not allowed to disrupt visitation. Any child running or playing anywhere on the premises will have to leave.

VIDEO VISITATION

Participation in video visitation is a privilege, not a right. Both visitor and inmate are expected to conduct themselves in an appropriate fashion at all times during a visit.

Dallas County Sheriff's Department reserves the right to deny, cancel, or terminate a video visit prior to or during a session based upon visitor or resident inmate misconduct. Dallas County Sheriff's Department also reserves the right to restrict visitor from participating in all future video visits.

All video visits are recorded and subject to electronic monitoring by DALLAS COUNTY personnel. Your participation in video visitation constitutes consent to this recording and monitoring.

No NUDITY, provocative clothing, or tight fitting clothing will be allowed during the video visit. First violation of this rule will result in being barred from off-site and on-site video visitations for 30 days, second violation- 60 days, third violation- barred permanently.

Visitors appearing to be under the influence of alcohol or drugs; displaying items that may be considered contraband such as drugs, drug paraphernalia, weapons; or displaying gang signs, symbols, colors, etc., are subject to having the visit cancelled and barred from future visits.

Any type of provocative or disruptive behavior will not be permitted. No pictures of any type will be allowed during the video visit session.

TELEPHONE

Your use of the telephone is a privilege which should be used wisely as well as courteously. Collect call phones are available in each housing unit.

Dallas County Jail contracts the Inmate Phones through Securus. To set up a Phone account, your family needs to call 1-800-844-6591, or go online to <http://>

Jail System, as well as any other orders given to you by jail personnel. Violations of these rules will subject you to the disciplinary proceedings of the Jail System or to prosecution as provided by law.

Violation of any jail rule can be enhanced by the circumstances. This will be decided by the Watch Supervisor on duty and forwarded to the Jail Commander for his decision on disciplinary action.

The inmate rules are divided into five (5) categories, with possible sanctions outlined for each category, depending on the severity of the infraction. Each inmate will be provided with a copy of the Jail Inmate Rules which you are expected to read. You will be asked to sign, acknowledging that you received a copy of the Inmate Handbook which contains the rules and grievance procedure.

INMATE RULES

SECTION A—RULE VIOLATIONS

Violation of any of the following rules is considered a **MINOR** infraction and the violator may receive from two (2) to ten (10) days of restriction:

1. Smoking
2. Misuse or saving of authorized medication
3. Possession of unauthorized money or currency
4. Possession of property belonging to another
5. Loaning of property or anything of value for profit or increased return
6. Possession of anything not authorized for retention, or receipt, or not issued to him/her by the jail
7. Possession of clothing, bedding, and/or linen in excess of the number authorized
8. Un-excused absence from any assigned area
9. Participating in an unauthorized meeting or gathering
10. Failure to follow sanitation or safety standards
11. Using any equipment contrary to instructions or jail safety standards
12. Possessing an intoxicant, making intoxicants, being intoxicated, or reporting to jail intoxicated
13. Being unsanitary or untidy; failing to keep ones person, cell, and/or day room area clean and tidy in accordance with jail sanitation rules
14. Unauthorized or fraudulent use of the mail or the telephone
15. Inadequate, partial, or improperly worn uniform
16. Unauthorized contact with another inmate, or unauthorized passing of any item to another inmate
17. Violation of a written or posted rule

SECTION B—RULE VIOLATIONS

Violation of any of the following rules is considered a **MINOR** infraction and the

er has 15 days to respond to your first level appeal, either in an electronic format or in written document. If you do not receive a status response concerning your first level appeal from the Grievance Board at the end of the 15 day time period, you may request a copy of the first level appeal status response. Your request, either electronically or in writing, must be submitted within 5 days of the 15 day time period.

NOTE: ALL FIRST LEVEL APPEALS (ELECTRONICALLY AND WRITTEN) MUST BE SUBMITTED WITHIN 10 DAYS OF THE BOARD'S DECISION. YOUR FAILURE TO TIMELY SUBMIT A FIRST LEVEL APPEAL IS DEEMED ACCEPTANCE OF THE BOARD'S DECISION.

SECOND LEVEL APPEAL

If you disagree with the decision of the Quality Assurance Commander, you may appeal the decision to the Assistant Chief Deputy, Special Services Bureau of the Sheriff's Department. You may file your second level appeal electronically through the Jail Visitation Kiosks located in every Jail Facility and/or submit a second level appeal in writing to the Quality Assurance Commander of the Quality Assurance Unit. The Assistant Chief Deputy, Special Services Bureau has 30 days to submit in writing a decision concerning your second level appeal. All decisions of the Assistant Chief Deputy, Special Services Bureau shall be final. If you do not receive a copy of the final response concerning your second level appeal from the Grievance Board/Assistant Chief Deputy, Special Services Bureau at the end of the 30 day time period, you may request a copy of the final response. Your request for a copy of the final response, either electronically or in writing, must be submitted within 5 days after the 30 day time period.

IF YOU DO NOT RECEIVE A FINAL RESPONSE TO YOUR INITIAL GRIEVANCE AT THE END OF THE 60 DAY PERIOD, YOU MUST SUBMIT, WITHIN 30 DAYS, AN ELECTRONIC OR WRITTEN REQUEST FOR A COPY OF THE FINAL RESPONSE.

IF YOU DO NOT RECEIVE A RESPONSE TO YOUR GRIEVANCE, FIRST LEVEL APPEAL, AND/OR SECOND LEVEL APPEAL, WITHIN THE TIME LIMITS SET FORTH ABOVE, YOU MUST PROCEED TO THE NEXT STEP OF THE GRIEVANCE PROCESS IN ORDER TO FULLY EXHAUST YOUR ADMINISTRATIVE REMEDIES.

INMATE DISCIPLINE

You have been provided with this Inmate Handbook which contains the inmate rules. You are required to obey all rules and regulations of the Dallas County

www.securustech.net.

Misuse can result in the loss of telephone privileges and even additional criminal charges being filed against you.

ASSIGNMENT TO TRUSTY STATUS

The Classification Unit is responsible for approving and assigning trustees. If you are interested in being considered for trusty, you should fill out an application.

If you receive penitentiary time, a letter shall be sent to the Texas Department of Corrections verifying your trusty status and conduct while you were incarcerated in the Dallas County Jail.

CHECKS / MONEY ORDERS / CASH

We only accept money orders for inmates through the regular mail, but they must be made payable to "Inmate Trust Fund". We also accept Social Security and Attorney General checks that may be payable to the inmate.

Deposits to inmate accounts can be made 24 hours a day, 7 days a week, at the Lobby Kiosks at each Jail Facility, by Internet at www.accesscorrections.com, or by phone at 1-866-345-1884. After the deposit is made, you may draw off of your account by purchasing items from the commissary. Account funds are accessed by commissary via the computer chip attached to your arm band. The arm band and chip must remain intact and on your arm at all times.

Save all of your money deposit receipts. These receipts are the only way your account can be checked for error. If you feel that an error has been made on your account, you must give the following information:

Money receipt number

Date of receipt

Amount of receipt

Name and Book-in number

Tank location

State your problem.

Money WILL NOT be accepted for the following inmates:

Incoming inmates who have not been processed through the Vault

Inmates who are Class "C" City Prisoners

Inmates who are on Work Release and Weekenders

Inmates who are releasing and have been through the Vault

INDIGENT INMATES

An indigent inmate is one who has less than \$5.00 in their inmate account for a period of 72 hours or longer. You may request paper, pencil, and stamped envelopes for non-legal correspondence by sending a written request (kite) to the Law Library in your facility. You are limited to one issue per week. Indigent in-

mates may mail legal material requiring a large envelope at any time by taking it to the Law Library. Material for legal correspondence is also provided at the Law Library. Send a written request to the Law Library. Indigent inmates will be issued a hygiene package (razor, comb, toothpaste, toothbrush, shampoo, and deodorant). You will receive these items automatically after the first 72 hours. If you remain on the indigent list, you will receive another package every two weeks.

VETERAN SERVICES

VA may pay certain benefits to justice-involved Veterans who are incarcerated and have a verifiable Social Security Number. By providing your social security number, you are authorizing Dallas County Veteran Services to access your Department of Veterans Affairs file. Please contact Dallas County Veteran Services at 972-692-4939, or forward a "KITE" to Central Intake Veterans Program. (Effective 09/01/15)

COMMISSARY

Inmates who are not on restriction are permitted to purchase food, stationery, stamps and personal comfort items from the jail commissary. Items may be purchased as needed when you have sufficient money in your inmate account. Prices for commissary items are comparable to prices for similar items on the outside. Any questions concerning purchases from the Commissary must be brought to the attention of the vendor at the time of sale.

MAIL

Mail should be addressed as such:

Your Name
Your Book-in Number
Your Location
P. O. Box 660334
Dallas, Texas 75266-0334

The sender should also print their full name and return address in case the inmate has been released. Mail is not forwarded to the inmate once he has been released. Mail for released inmates is returned to sender or sent to the dead letter department at the U.S. Post Office. Legal mail will be opened in your presence. Stamps and writing material may be purchased from the Commissary. We also take mail from Inmate Service that need postage to George Allen for indigent inmates.

Inmates are **not allowed** to receive the following items through the mail:

1. Any non-legal material inside legal mail correspondence.
2. Books, magazines, or newspapers (or full pages from same) sent from a private individual. No hard back books are allowed. These items are allowed (limit of 5 books maximum), only if sent from the publishers or

INCIDENT.

It should be noted that submitting multiple grievances for the same complaint/issue will not expedite the process and could potentially delay the response from the Inmate Grievance Board.

INITIAL GRIEVANCE

You may submit an electronic grievance directly to the Inmate Grievance Board through the Jail Visitation Kiosks, which are located in every jail facility. A written grievance form can be requested and will be provided to you by the Detention Staff. It is not mandatory that you use the supplied grievance form; however, the grievance must be received in a written format.

In the grievance, you must list pertinent and relevant facts such as dates, times, location, witnesses, names, etc. If submitted in written format, you are required to provide the grievance to the Detention Staff in a sealed envelope marked "Grievance".

Once the electronic and/or written grievance is submitted, the Inmate Grievance Board will review your electronic and/or written grievance to determine if it meets grievance standards and an status response will be generated and provided to you. The Grievance Board has 15 days to submit the initial status response and 60 days to submit a final response.

If you do not receive a status response from your initial grievance from the Grievance Board at the end of the 15 day time period, you must submit, within 5 days, a written request for a copy of the initial status response. If you do not receive a final response at the end of the 60 day period, you must submit, within 30 days, a written request for a copy of the final response.

All emergency grievances (electronic and/or written) will be handled immediately.

NOTE: ALL INITIAL GRIEVANCE APPEALS (ELECTRONICALLY AND WRITTEN) MUST BE SUBMITTED WITHIN 10 DAYS OF THE BOARD'S DECISION OR THE GRIEVANCE. YOUR FAILURE TO TIMELY SUBMIT AN INITIAL APPEAL IS DEEMED ACCEPTANCE OF THE BOARD'S DECISION.

FIRST LEVEL APPEAL

If you disagree with the initial Grievance Board's findings, you may submit your first level appeal electronically through the Jail Visitation Kiosks located in every Jail Facility and/or submit a grievance appeal in writing to the Quality Assurance Commander of the Quality Assurance Unit. The Quality Assurance Command-

py groups.

- f. Patients will not be charged fees for follow-up appointments made by health services.
- g. Patients will not be charged fees for prescription medications.
- h. Patients will not be charged fees for tuberculosis testing.
- i. Patients will not be charged fees for testing for sexually transmitted diseases.
- j. Patients will not be charged fees for an injury as a direct result of working in an assigned trusty position.

3. Appeals

- a. Patients may appeal charges by submitting a written request to the Parkland Site Administrator's office stating the date, the fee and the reason for the appeal.
- b. The Patient's commissary funds will be refunded by Dallas County personnel if it is determined that the charge is in error.

Medications are announced at all tanks when the nurse arrives on the jail floor. If you want to receive medication, you must be dressed, have your cup of water ready, and be waiting at the security door of your tank. Do not ask another inmate to pick up your medication. You are prohibited from giving your medications to another inmate. You must swallow the medication while standing in front of the nurse.

PROCEEDURES FOR SUBMITTING GRIEVANCES AND THE APPEAL PROCESS

INMATE GRIEVANCE PROCEDURES

A grievance is an electronic and/or written complaint to protect you from the following:

- Violation of Civil Rights
- Criminal Act
- Unjust denial or restriction of inmate privileges
- Prohibited acts by Detention Staff

The process for filing an electronic and/or written grievance is explained on Channel 3 of the Inmate TV and/or noted in the Dallas County Inmate Handbook. Information and guidelines for submitting an electronic or written grievance also may be found on the Securus Jail Visitation Kiosk. The Dallas County Inmate Handbook may also be accessed through the Securus Jail Visitation Kiosk.

NOTE: ALL GRIEVANCES MUST BE SUBMITTED WITHIN 7 DAYS OF THE

an authorized bookstore such as Barnes and Noble, Mardels, Lifeway, Better World Books, or Amazon Books.com. Coloring books or pages from coloring books are not allowed.

3. Writing materials, including pens, pencils, envelopes, and stamps. These items are made available to the inmates from a contract commissary vendor. Indigent inmates are provided these items without cost from Inmate Services.
4. Greeting cards must be signed by the sender in ink and cannot be padded, musical, laminated, plastic, or larger than 8x10. Cards and other correspondence may not have clasps, strings, ribbons, or confetti.
5. Books, magazines or photos which are: obscene, violent, pornographic, sexually enticing, or depict nudity, exposed buttocks, female breasts, firearms or drugs (legal or illegal). Photos cannot be larger than 8x10.
6. Polaroid photos are only acceptable if the sender removes the chemical backing. The mail room personnel will not remove the backing.
7. Items of clothing or footwear. These items will be returned to sender.
8. Any unknown substance on paper, card, envelope, or photo. Profanity on the outside of the envelope.
9. Other items, including but not limited to: glue, metal, magnets, stickers, tape, plastic, wood, cloth, glass, ribbon, liquid, cardboard, electronic devices, bus passes, bookmarks, phone cards, nonreligious catalogs, advertisements, brochures, promotional materials, sweepstakes, pamphlets, ID cards, driver's licenses, birth certificates, marriage licenses, rosaries, jewelry, eyeglasses, tobacco products, or food.

FOOD SERVICE

Each inmate will receive three (3) meals a day. Meals will be served at:

Breakfast 5:00 am
Lunch 11:00 am
Dinner 4:30pm

Eating utensils are issued when you are placed in jail. These utensils will be retained by the inmate until his release from jail. All trays (hot and cold) will be returned at the completion of the meal. No one is allowed to retain a tray.

PERSONAL HYGIENE

It will be your responsibility to keep yourself clean and presentable at all times. Inmates must be completely dressed while in the dayroom. Alteration of jail issued clothing is not allowed. Personal body, clothing, and living areas are to be kept clean. Bedding and county issued clothing will be laundered on a regular schedule by the jail laundry. Female inmates are responsible for laundering personal clothing. Inspections by staff members will take place at regular intervals to insure that the living areas are kept clean. All tank areas shall be kept neat and orderly at all times.

All property will be kept in property bags.

HOUSING

No posters, photographs or papers may be hung, pasted or otherwise attached in any manner on cell walls, bars, ceilings, doors, windows, furniture or storage bins. No writing or drawing is permitted on cell walls, bars, ceilings, doors, windows, furniture or storage bins. Beating on glass or cell doors or walls is not permitted. Cell bars, doors, light fixtures and air vents must be kept free of clutter (paper) at all times.

CLEAN UP DAYS - Every day, all tanks and cells will be completely cleaned by the inmates assigned to each tank and cell. The Jail Officer will inspect each floor to determine if each tank and cell has been cleaned. Inspections by staff members will be taken at regular intervals to insure that living areas are kept clean.

INMATE SERVICES - PROGRAMS

Education - A variety of vocational and educational programs are available to qualified inmates. Course work is offered at several levels from literacy and adult basic education to high school (GED). College level and vocational education programs are also offered. Inmate Services should be contacted by kite if you are interested in being considered for enrollment in these programs.

Alcohol and Chemical Dependency - Qualifying inmates with a drug or alcohol problem may be chosen to participate in counseling. Send a kite to Inmate Services to be considered for this program.

Recreation - Inmates who are not restricted for medical reasons are eligible to use the recreation areas. Use of the recreation areas are rotated from tank to tank.

Work Release - Work release allows an inmate sentenced to the jail to leave each day for work. The Judge presiding over your case is the only person who can grant you work release status.

Library - A law library and general circulation library is provided in each jail. General library books are brought to the tanks in carts and checked out to the units, not to the individuals. Law library books must be used in the Law Library. Requests to visit the Law Library should be made by writing an inmate request (kite) to the Library Coordinator in your jail facility.

Voter Registration - Inmates who would like to obtain a voter registration card can do so by sending a kite to the law library.

Television - The Dallas County Jail television is on Channel 3. The programs which include education, religion, and recreation features are provided from 7:45 a.m. until 8:00 p.m. daily. Other channels providing usual television shows and music are also available. Music is provided on Channel 3. Radio stations are rotated daily. The hours you may view the television are 7:00 a.m. to 12:00 a.m., Sunday through Thursday, and 7:00 a.m. to 1:00 a.m. on Friday and Saturday.

Religion - The Religious Services Office (Chaplain) offers a wide variety of ser-

vices. Inmates may request visits from a chaplain or request religious reading materials by sending an inmate request (kite) to the Chaplain's Office. Various religious services are held in each jail facility. Religious services are also broadcast daily on Channel 3. Bibles are available for inmates in all facilities and can be taken from the general circulation book cart.

HEALTH CARE

Medical care is provided by an outside agency Medical Staff. Licensed nurses are on duty 24 hours a day. In an emergency, notify the detention officer on your floor. When non-emergency medical services are needed, you should write an inmate request (kite) to the nurse stating the date, your name, book-in number, tank number and nature of your problem.

You will be called to the medical section and checked by a nurse at the earliest convenience. If the nurse feels that you should be checked by the jail doctor, this will be arranged.

INMATE HEALTH SERVICES FEE

Patients requesting and/or receiving health services within the Dallas County Jail will be assessed appropriate medical fees for services. Health services will be rendered regardless of the patient's ability to pay for the service.

The fee(s) may be deducted from an inmate's trust fund (commissary) account so long the deduction does not cause the balance in the account to fall below \$6.00.

1. Schedule of Fees

- a. Patients will be charged a \$10.00 medical care fee for each request for care (kite) that they submit, verbal request for medical care, or incident that requires an assessment by a licensed health care staff member.
- b. Patients will be charged a \$10.00 medical care fee for each inquiry received by the Dallas Sheriff's Office, which results in an assessment by a licensed health care staff member. (For example: verbal or written correspondence from family members, friends, attorneys, or public figures).

2. Exceptions

- a. Patients will not be charged fees for nursing assessments performed upon intake.
- b. Patients will not be charged fees for medical and mental health assessments within the Medical Assessment Program (MAP) and the Psychiatric Assessment Program (PAP).
- c. Patients will not be charged fees for Closed Behavioral Observation provider visits.
- d. Patients will not be charged fees for Crisis Stabilization services.
- e. Patients will not be charged fees for participation in mental health thera-

‘Medically-Vulnerable,’ as needed to ensure that all remaining persons incarcerated in the Dallas County Jail are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them” (ECF 2, 1–2); and

3. Plaintiffs’ request to certify a “Pre-Adjudication Class” and a “Post-Adjudication Class” (ECF 17, 1–3).

SIGNED on this the _____ day of _____, 2020.

ADA BROWN
UNITED STATES DISTRICT JUDGE

SIGNED on this the _____ day of _____, 2020.

ADA BROWN
UNITED STATES DISTRICT JUDGE