

**In the Supreme Court of the United States**

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LADDY CURTIS VALENTINE AND RICHARD ELVIN KING,  
INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED,  
*Applicants,*

*v.*

BRYAN COLLIER, IN HIS OFFICIAL CAPACITY, ROBERT HERRERA, IN HIS OFFICIAL  
CAPACITY, AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
*Respondents.*

\_\_\_\_\_  
**SUPPLEMENTAL BRIEF REGARDING EMERGENCY APPLICATION TO  
JUSTICE ALITO TO VACATE STAY PENDING APPEAL OF  
PRELIMINARY INJUNCTION ENTERED BY THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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Plaintiffs-Applicants write to direct the Court to important supplemental information that Defendants-Respondents submitted to the Court of Appeals for the Fifth Circuit last night. *See* Defendants' Response to Court Directive filed in the Fifth Circuit, dated May 11, 2020 (filed under seal with the Fifth Circuit).

Defendants' submission contains critical facts not previously disclosed regarding the Wallace Pack Unit. On April 17, 2020, when moving to stay the preliminary injunction, Defendants primarily argued that the inmates had failed to exhaust their administrative remedies (a two-plus month long grievance process) and stated that "Plaintiffs have alleged only a speculative threat of harm from the absence of a preliminary injunction." Defendants' Motion for Stay Pending Appeal filed in the Fifth Circuit, dated April 17, 2020. On May 5, 2020, Defendants informed the district court judge they "did not know" how many inmates had tested positive. But yesterday, May 11, 2020, in response to an Order requiring disclosure, Defendants revealed that numerous inmates and staff members at the Wallace Pack Unit are now COVID-19 positive and the vast majority of those tested positive within the past two weeks. *See* Defendant's Response to Court Directive filed in the Fifth Circuit, dated May 11, 2020 (filed under seal with the Fifth Circuit). Included in this are inmates who died as a result of the virus. There are over a thousand inmates and hundreds of staff members who live and work at the Pack Unit; only a fraction have been tested to date. Many have likely been in contact with those that were infected and it appears that no contact tracing has been conducted related to any confirmed cases amongst staff and inmates.

The newly-disclosed information is pertinent to this Court's review of Applicants' Motion to Vacate. Defendants' refusal to put in place the preliminary injunction's easily implemented and common sense protections reveals a continuing and deliberate indifference to the health of the inmates, the staff, and the community. And the late-revealed information provides compelling evidence that in the time since the Fifth Circuit imposed a stay of that Order, the conditions at the Pack Unit with respect to COVID-19 have worsened significantly, causing irreparable harm to the inmates that will continue unless the injunction is reinstated.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Brandon W. Duke, a member of the bar of this Court, certify that on May 12, 2020, a copy of the foregoing was served on all parties by email and first class mail to the individuals listed below:

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