

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,)	
)	
Plaintiff,)	
)	
vs.)	No.: 2:20-CV-02359-SHL
)	
FLOYD BONNER, JR., ET AL.,)	
)	
Defendants.)	

**RESPONDENTS-DEFENDANTS' RESPONSE IN OPPOSITION TO PETITIONERS-
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

Respondents-Defendants, Floyd Bonner, Jr., Shelby County Sheriff and the Shelby County Sheriff's Office ("Respondents"), by and through their undersigned counsel, respond in opposition to Petitioners-Plaintiffs' ("Petitioners") Motion for Temporary Restraining Order (ECF No. 2).¹

BACKGROUND

Petitioners are Tennessee state pretrial detainees being held by the Shelby County Sheriff's Office ("SCSO") in the Shelby County Jail ("Jail"). (ECF No. 1, ¶¶ 7-8). Petitioners filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, asking this Court to order them and a class/subclass of other detainees to be released from the Jail because of fear that they may contact COVID-19. (ECF No. 1). Petitioners have also filed a motion for temporary restraining order seeking, among other things, "immediate release from incarceration," and for Respondents to produce within twelve (12) hours of the entry of the Court's order a list of all Class and Subclass

¹ In doing, Respondents rely upon all filings by Respondents, the "Declaration of Kirk Fields," the "Declaration of the Honorable Amy P. Weirich," the "Declaration of the Honorable John W. Campbell," the "Declaration of the Honorable Christopher Craft," the "Declaration of Bruce Randolph, M.D., M.P.H.," the "Declaration of Dr. Donna Randolph," and the entire record of this cause.

members as proposed by Petitioners. (ECF No. 2, ¶ 2). Petitioners further propose that within twenty-four (24) hours, Respondents release all detainees “who are incarcerated solely due to their inability to afford a financial condition of release, or solely due to an alleged technical violation of probation or parole,” and to “provide a list...noting the basis for any objections to the release of the remaining Class and Subclass members.” (ECF No. 2, ¶¶ 3-4). They recommend that Respondents be allowed the opportunity to object to the release of specific detainees based solely upon “evidence of a credible risk of pretrial flight or danger to others.” (ECF No. 2, ¶ 4).

A. APPLICABLE POLICIES AND STANDARD OPERATING PROCEDURES

At all times relevant, the Jail has maintained certification by the Tennessee Corrections Institute, as well as accreditation by the American Correctional Association and the National Commission on Correctional Health Care. At all relevant times, Respondent adhered to and trained its personnel on SCSO’s policies and standard operating procedures concerning “Inmate Medical and Mental Healthcare,” “Inmate/Detainee Sick Call,” “Inmate/Detainee Grievance Process,” “Inmates Medical Rights,” “Inmates/Detainees Rights,” “Exposure Control Plan Communicable Disease,” “Communicable Disease Response,” “Infection Control Program,” “Inmate Medical Screening,” and “Inmate Clothing, Bedding, Linen Supplies and Hair Care.”

B. RESPONSIBILITY OF MEDICAL TREATMENT

Shelby County contracts with WellPath to provide inmate medical care at its corrections facilities, including the Shelby County Jail. WellPath personnel are not employees of the SCSO. The contract with WellPath is administered by the Shelby County Health Department. The Shelby County Health Department assigns full-time on-site contract monitors at the Shelby County Jail to ensure WellPath meets its contractual obligations and provides appropriate inmate medical care. Per the contract, the Director of Nursing for WellPath oversees all medical care for SCSO facilities

and reports directly to the Shelby County Health Department.

C. SCSO'S RESPONSE TO COVID-19

In February of 2020, the SCSO began planning and in March of 2020, the SCSO began implementing procedures in addition to its standard operating procedures and policies to combat and prevent the spread of COVID-19 in the Jail, which have evolved on an ongoing basis. In undertaking such efforts, the SCSO has enhanced its pre-booking screening process for all of its facilities, including the Jail. As such, no detainee is allowed inside a SCSO facility without first being questioned and screened by a nurse. As part of the enhanced process, the nurse evaluates the detainee, and the detainee's body temperature is taken. If the individual exhibits COVID-19 symptoms, he must undergo further testing before being admitted into the facility.

Upon entrance of a positive/possible positive COVID-19 detainee, all movement in the intake area ceases. If it is determined that the detainee is COVID-19 positive, he must proceed to a separate tent in the sally-port for isolation. All Jail staff in the tent must wear a hazmat suits, gloves, and masks before entering the tent. Officers in the tent then undertake initial intake/processing of the COVID-19 positive individual, ensuring that the inmate remains isolated from all other staff and detainees. Medical staff must also make a determination as to whether the inmate should be hospitalized. If hospitalization is unnecessary, the inmate is escorted to an isolation cell away from other inmates or staff. Contact between any known COVID-19 positive detainee and other inmates is strictly prohibited. When leaving the processing area, staff must remove the hazmat suit, gloves, and mask for proper disposal.

Additionally, upon intake, all inmates are immediately provided a facial mask free of charge and are instructed to wear the mask while in the facility. Inmates are also instructed on general CDC guidelines concerning social distancing and other best practices to prevent the spread

of COVID-19. Any inmates who test positive for COVID-19 are immediately isolated from all other detainees and housed in a medical cell. Other inmates exposed to an inmate who tests positive are also immediately quarantined. Inmates remain in isolation for at least 21-days, if not longer, depending upon their symptoms and whether they continue to test positive for COVID-19.

To reinforce the exercise of best practices to prevent and/or mitigate the spread, CDC guidance posters are displayed throughout the Jail. These posters provide inmates guidance on best practices to mitigate the spread of COVID-19. Additionally, the SCSO televises an informative video on all televisions throughout the Jail which similarly provides inmates information on preventing and mitigating the spread of COVID-19.

To that extent, SCSO has also limited movement throughout the Jail and has prohibited group gatherings. For example, inmates must generally remain in their own housing unit at all times and cannot generally traverse to and from different areas of the Jail.

The SCSO has also taken steps to prevent the spread by or through its staff. The SCSO has directed its employees to comply with all CDC guidelines concerning combating and preventing COVID-19, including directing staff to practice social distancing by remaining six (6) feet apart at all possible times and to wash and sanitize their hands regularly. The SCSO strictly prohibits any staff members exhibiting symptoms of COVID-19 from coming to work or entering the facility. The SCSO has also strongly discouraged employees from nonessential and personal travel and has set a moratorium on all vacation requests and approvals for out-of-town travel purposes until at least May 31, 2020. Additionally, since March 16, 2020, SCSO employees have been allowed to access the facility only through the main entrance of the jail and are no longer allowed to enter the facility through the annex door. All employees must undergo a medical screening every day prior to entering the facility. If an employee exhibits any COVID-19 symptoms, the

employee is prohibited from entering the facility. SCSO has also restricted access in and out of the facility by all employees except for members of management with the Jail Division.

The SCSO has taken further steps to prohibit non-SCSO employees from entering the Jail. Since March 27, 2020, the SCSO has suspended all in-person visitations. Likewise, Jail volunteers are no longer allowed access, and attorneys who wish to visit with their clients in the Jail must do so via phone, teleconference, or video conference. The SCSO has also suspended all non-essential vendors from coming into the Jail except in emergency situations and has limited commissary deliveries to only one day per week.

To further combat and prevent the spread, the SCSO requires all individuals in the Jail to wear a facial mask at all times. Any staff who fail to follow said directive are subject to disciplinary action, and anyone who is not an employee who refuses to wear a facial mask is denied entry into the facility. Staff who observe an inmate not properly wearing a mask immediately instruct the inmate to put his facial mask on.

Per the general operating policies and procedures, all inmates have access to medical care and can request medical care at any time. In light of COVID-19, inmates are not charged for medical examination if they raise concerns that they are suffering from COVID-related symptoms.

The SCSO has also implemented more aggressive cleaning methods within the Jail. Officers disinfect every surface throughout the Jail with BioVex daily. The walking tunnel from the Jail to the courtrooms is also thoroughly cleaned and disinfected daily. Additionally, cleaning supplies are provided for inmates to utilize prior to the use of phones, kiosks, and showers. All inmate facial masks are disinfected with BioVex every day immediately after lockdown, and at least once a week, the masks are thoroughly washed by laundry staff.

The SCSO provides all inmates access to hand soap and other hygiene products free of

charge. Any inmate may ask any officer for more soap or hygiene products at any time, and it is immediately provided to the inmate. The Jail also provides inmates access to disposable gloves in further effort to prevent the spread of COVID-19.

If there is reason to believe a group of detainees in a pod might have been exposed to COVID-19, the Jail will place the entire pod on quarantine. Inmates in a quarantined pod cannot leave the pod or traverse through other areas of the facility. Medical staff at the Jail regularly monitor and take the bodily temperatures of all such quarantined detainees multiple times a day. Quarantined pods remain on quarantine for a minimum of fourteen (14) days and until medical staff determine that is reasonably safe to take the pod off of quarantine.

Importantly, in implementing procedures to combat and prevent the spread of COVID-19, the SCSO has worked closely with its medical contract partner, WellPath, as well as the Shelby County Health Department. The senior leadership in the SCSO, Shelby County Health Department, and WellPath meet two times per week to obtain updates concerning the COVID-19 pandemic as it relates specifically to the SCSO's correctional facilities and to discuss what further steps, if any, the SCSO can take to prevent the spread of COVID-19. The SCSO has also implemented and follows specific guidelines and procedures recommended by WellPath.

The maximum capacity of the Shelby County Jail is 2,800. The SCSO detains criminal defendants as ordered by Tennessee Criminal and General Sessions Judges. Thus, the SCSO has control whatsoever over the total number of detainees who are housed in the Jail. Notwithstanding, the SCSO has worked with the District Attorney's Office and the Public Defender's Office to lower the Jail population. Even before the pandemic, Sheriff Bonner hired Mischelle Best to serve as the SCSO's Expeditor. In her position as Expeditor, Best works with inmates, prosecutors, public defenders, and other outside services to identify detainees with minor charges and/or

medical conditions to expedite their cases and possible releases.

Since the COVID-19 pandemic began, the SCSO has increased its efforts to reduce the Jail population. During the pandemic, the SCSO has coordinated with law enforcement agencies and requested that, in light of COVID-19, they issue misdemeanor summonses instead of making physical arrests, when possible. The SCSO has received tremendous cooperation from those agencies. Additionally, the SCSO, the District Attorney's Office, the Public Defender's Office, and other agencies have worked together in accelerating the cases for detainees with serious medical issues that are sixty (60) years and older, and those with misdemeanor or Level D & E felonies, in an effort to get those detainees out of Jail quickly. Further, the District Attorney General has aggressively worked towards bringing those criminal cases to a resolution to obtain the release of even more detainees.

Notably, the population in the Jail has significantly declined since the initial COVID-19 outbreak. On January 1, 2020, the population at the Shelby County Jail was over 2,500. On April 1, 2020, the population of the Shelby County Jail was 2,095. As of today, the population at the Shelby County Jail has decreased to 1,877.

Since March, 160 inmates at the Shelby County Jail have tested positive for COVID-19, and 154 of those inmates have fully recovered. The Jail currently has only four (4) detainees who are medically isolated from all other detainees while they recover from the virus. None of those individuals require hospitalization.

D. PLAINTIFFS-PETITIONERS

i. Michael Edgington ("Edgington")

Petitioner Edgington is being detained on two (2) Class A felony charges involving conspiracy to manufacture/deliver/sell controlled substance (cocaine) and trafficking high

amounts of cocaine. Edgington is one (1) of thirty-eight (38) individuals indicted in a trafficking case and is accused of distributing a controlled substance within a school zone. Edgington's bond was set at \$500,000.00. Edgington has not requested a bond reduction.

Edgington is currently housed on the third floor of the Jail. His assigned pod has the capacity to house forty-three (43) individuals. Thirty-eight (38) individuals are currently housed in said pod. No individual housed within Edgington's assigned pod has tested positive for COVID-19. Edgington does not have an assigned cell mate currently. Laundry services are available to the individuals assigned within Edgington's assigned pod at least two (2) times per week.

ii. Favian Busby ("Busby")

Petitioner Busby is being detained on numerous criminal charges including involving manufacture/delivery/sale of cocaine, ecstasy, methamphetamine, oxycodone, alprazolam, marijuana, and other controlled substances and being a felon in possession of a firearm. Busby's bond was set at \$239,000.00 in relation to the drug charges and \$25,000.00 in relation to the felon in possession charge. Busby has not requested a bond reduction.

Busby is currently assigned to a pod in the Jail Annex that has the capacity to house sixty-two (62) individuals. Forty-one (41) individuals are currently housed in said pod. Busby does not have an assigned cell mate and has access to a washer, dryer, and gym within his pod, whereby he maintains the ability to launder his personal items at his discretion.

STANDARD

A temporary restraining order "is an extraordinary remedy designed for the limited purpose of preserving the status quo pending further proceedings on the merits...." *Cross v. Mnuchin*, 2019 U.S. Dist. LEXIS 171703, *1 (W.D. Tenn. Oct. 3, 2019). "The standard for determining whether to grant a temporary restraining order is the same as the standard for determining whether to grant

a preliminary injunction.” *Am. Home Shield Corp. v. Specter*, 2019 U.S. Dist. LEXIS 178465, *2 (W.D. Tenn. April 3, 2019). “Generally, the plaintiff bears the burden of establishing his entitlement to a preliminary injunction.” *Id.* (citing *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). Accordingly, when evaluating the merits of a motion for preliminary injunction, the Court must balance: “(1) whether the movant is likely to succeed on the merits; (2) whether the movant will suffer irreparable injury in the absence of an injunction; (3) whether the injunction will cause substantial harm to others; and (4) whether the injunction will serve the public interest.” *Id.* (citing *Bradfield v. Perry*, 2017 U.S. App. LEXIS 24358, at *2-3 (6th Cir. Nov. 30, 2017)).

LAW & ARGUMENT

A. PETITIONERS ARE NOT LIKELY TO SUCCEED ON THE MERITS.

The availability of a TRO or preliminary injunction is inextricably intertwined with the merits of the underlying claim. For this reason, one of the principal factors in determining a plaintiff’s entitlement to relief is the likelihood that the plaintiff will succeed on the merits of his underlying claims. *See United States v. Contents of Accounts*, 629 F.3d 601, 606 (6th Cir. 2011). Accordingly, a basic showing necessary for obtaining a temporary restraining order is that there must be some relationship between the conduct giving rise to the claims in the complaint and the injury sought to be prevented. *See Colvin v. Caruso*, 605 F.3d 282, 299-300 (6th Cir. 2010); *Beasley v. Westbrook*, 2017 U.S. Dist. LEXIS 152103, *5 (M.D. Tenn. Sept. 9, 2017).

- i. Petitioners are not likely to succeed on the merits because their habeas petition is improper.*

The Sixth Circuit has held that when the proponent of the injunctive relief has no chance of success on the merits of the claim, the Court may dismiss the motion without considering the other three factors. *See Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1249 (6th Cir. 1997). Failure to do so is reversible error. *See id.*; *Sandison v. Michigan High School Athletic Association*,

64 F.3d 1026, 1037 (6th Cir. 1995). Here, as set forth in Respondents-Defendants’ motion to dismiss, the petition is improper because (1) Petitioners failed to exhaust their state law remedies prior to bringing suit, and (2) a habeas corpus petition under 28 U.S.C. § 2241 is not the proper vehicle for a prisoner to challenge his conditions of confinement.

Moreover, any attempt by Petitioners to claim state law remedies are unavailable would be without merit. In-person court proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated individuals have not been suspended in Tennessee. Indeed, Criminal Courts in Shelby County have remained open and have regularly heard motions, petitions, and requests from pre-trial detainees to be released from incarceration and/or to modify their bond amounts due to the COVID-19 pandemic. Further, pursuant to Tennessee law, criminal judges possess the authority and discretion to release a pre-trial detainee under certain conditions, including an inmate’s medical condition and/or vulnerability to contracting a serious medical condition while in Jail, if they believe in light of the circumstances such release is appropriate.

Because Petitioners’ petition is improper, Petitioners *cannot* succeed on the merits, and as a result, this Court should deny Petitioners’ Motion for a temporary restraining order.

ii. *Petitioners are not likely to succeed on the merits because the Shelby County Sheriff’s Office has not acted with deliberate indifference.*

“To show a likelihood of prevailing on the merits, the [party seeking the injunction] must show the likely existence of a constitutional violation causally related to the result sought to be enjoined.” *L.P. Acquisition Co. v. Tyson*, 772 F.2d 201, 205 (6th Cir. 1985) (quoting *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 565 (6th Cir. 1982)). Here, Petitioners bring their claims against the Shelby County Sheriff’s Office and Sheriff Floyd Bonner, Jr., in his official capacity. “Official capacity suits...‘generally represent only another way of pleading an action

against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165-68 (1985). To show a constitutional violation against a governmental entity, a plaintiff must prove that some “policy or custom” caused the alleged constitutional deprivation. *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 690 (1978).

Petitioners allege that their Fourteenth Amendment rights are being violated due to the conditions of their confinement. (ECF No. 1, ¶¶ 52-61). The Fourteenth Amendment’s due process clause protects pretrial detainees from cruel and unusual punishments. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). Fourteenth Amendment due process claims “are analyzed under the same rubric as Eighth Amendment claims brought by prisoners.” *Richmond v. Huq*, 885 F.3d 928, 938 (6th Cir. 2018); *Villegas v. Metro. Gov’t of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013); *Cooper v. Montgomery Cty.*, 768 F. App’x. 385, 392 (6th Cir. 2019). In order to state a claim that prison conditions violate the Constitution, a pretrial detainee-plaintiff must allege that he has been subjected to deprivations so serious that he was deprived of the “minimal civilized measure of life’s necessities” and that jail officials acted wantonly, with deliberate indifference to his serious needs. *Richmond v. Settles*, 450 F. App’x 448, 454-55 (6th Cir. 2011). Allegations of temporary inconveniences are insufficient to state a claim. *Dellis v. Corr. Corp. of Am.*, 257 F.3d 508, 511 (6th Cir. 2001). The Supreme Court has noted that jail conditions may be “restrictive and even harsh,” and the “Constitution does not mandate comfortable prisons.” *Rhodes v. Chapman*, 452 US 337, 349 (1981).

To raise a cognizable constitutional claim for deliberate indifference to an inmate’s safety, an inmate must make a two-part showing: (1) the alleged mistreatment was objectively serious; and (2) the defendant subjectively ignored the risk to the inmate’s safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). In the context of conditions of confinement claims, only “extreme

deprivations” can be characterized as punishment prohibited by the Eighth Amendment. *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992).

In regard to the second element discussed above, the United States Supreme Court has held that in order for a plaintiff to be successful in his deliberate indifference claim, he must show the prison official possessed a state of mind “more blameworthy than negligence.” *Id.* The *Farmer* Court also noted that “acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding the risk.” *Id.* Importantly, the reckless standard is not one of objectivity. *Id.* at 837-38. Instead, a plaintiff must show the prison officer “consciously disregarded” a substantial risk of harm. *Id.* at 839. The Sixth Circuit has likewise acknowledged that a plaintiff must show defendant subjectively ignored a risk that was objectively serious. *Leary v Livingston County*, 528 F.3d 438, 442 (6th Cir. 2008). The prison official’s state of mind must evince “deliberateness tantamount to intent to punish.” *Miller v. Calhoun Cty.*, 408 F.3d 803, 812-13 (6th Cir. 2005) (citing *Horn v. Madison County Fiscal Court*, 22 F.3d 653, 660 (6th Cir. 1994)). “[A]n official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.” *Farmer*, 511 U.S. at 838. Deliberate indifference is more than “mere negligence.” *Bowman v Corrections Corp of Am*, 350 F.3d 537, 544 (6th Cir. 2003). It is tantamount to a finding of criminal recklessness. *Farmer*, 511 U.S. at 837. In the prison setting, it requires a showing “approaching total unconcern for the prisoner’s welfare.” *Rosario v Brown*, 670 F.3d 816, 821 (7th Cir. 2012).

In *Money v. Pritzker*, the Northern District of Illinois recently considered similar allegations when it determined that the petitioners had no chance of success:

Clearly Defendants are trying, very hard, to protect inmates against the virus and to treat those who have contracted it. The record simply does not support any

suggestion that Defendants have turned the kind of blind eye and deaf ear to a known problem that would indicate “total unconcern” for the inmates’ welfare. *Rosario*, 670 F3d at 821. Nor would the record support any claim that Defendants lack a plan for implementing exactly what Plaintiffs have requested – individualized decisions on release through a panoply of vehicles guided by administrative discretion. It may not be the plan that the Court would choose, if it were sufficiently informed to offer an opinion on the subject. But the Eighth Amendment does not afford litigants and courts an avenue for de novo review of the decisions of prison officials, and the actions of Defendants here in the face of the COVID-19 easily pass constitutional muster.

Money v. Pritzker, 2020 U.S. Dist. LEXIS 63599 at *18 (N.D. Ill. Apr. 10, 2020).

As outlined above, Respondents have adhered to and trained SCSO personnel on numerous policies and operating procedures including, but not limited to, “Inmate Medical and Mental Healthcare,” “Inmate/Detainee Sick Call,” “Inmate/Detainee Grievance Process,” “Inmates Medical Rights,” “Inmates/Detainees Rights,” “Exposure Control Plan Communicable Disease,” “Communicable Disease Response,” “Infection Control Program,” “Inmate Medical Screening,” and “Inmate Clothing, Bedding, Linen Supplies and Hair Care.” Additionally, Respondents have undertaken numerous measures to combat and prevent the spread of COVID-19 in the Jail including, but not limited to, enhancing detainee intake screenings, encouraging social distancing, minimizing movement in and around the jail, requiring all employees and inmates to wear masks, providing disinfectants through the facility for use by employees and inmates alike, enhancing cleaning procedures throughout the jail, suspending in-person visitations, informing inmates on best practices to prevent the spread of COVID-19, quarantining inmates who have come in contact with COVID-19 positively tested inmates, isolating inmates who have tested positive for COVID-19, and implementing and following ever changing CDC guidelines concerning the prevention and mitigation of the spread of COVID-19. Said policies, protocols, and measures meet the community standard of medical care in a correctional setting, have successfully mitigated its spread, and have created a safe environment for detainees/inmates to reside in while incarcerated in the Jail in light

of the current COVID-19 pandemic. Accordingly, Petitioners are not likely to succeed on the merits because they have not and cannot establish that the Shelby County Sheriff's Office has acted with deliberate indifference.

iii. Petitioners are not likely to succeed on the merits because the Shelby County Sheriff's Office has not discriminated against Plaintiffs-Petitioners and/or any proposed Class/Subclass members.

Under the Americans with Disabilities Act ("ADA"), a disabled individual who otherwise is qualified may not be excluded from participating in, denied the benefits of, or subjected to discrimination under, a public program, because of the individual's disability. 42 U.S.C. § 12132. Under the Rehabilitation Act ("RA"), an individual may not be denied access to or discriminated against with respect to a federally-funded program or activity "solely by reason of" the individual's disability. 29 U.S.C. § 794(a). "Inmates alleging claims under the ADA and the RA must show prison officials took the challenged actions *because of the inmate's alleged disability.*" *Finfrock v. Mohr*, 2019 U.S. Dist. LEXIS 192024 (N.D. Ohio Nov. 5, 2019) (emphasis added)).

Within their Petition, Petitioners have outlined the dangers of COVID-19 and have asserted that Respondents have failed to take appropriate measures to mitigate its spread and to protect all detainees/inmates incarcerated within the Jail. (*See* ECF No. 1). However, Petitioners have failed to allege sufficient facts, much less offered substantive evidence, to establish that any of Respondents' officials took any specific actions against Petitioners *because of* their proposed disabilities. Accordingly, Petitioners are not likely to succeed on the merits because they have not and cannot establish that Respondents discriminated against them in violation of the ADA or RA.

B. PETITIONERS CANNOT ESTABLISH IRREPARABLE HARM.

In order to obtain an injunction, a "plaintiff must demonstrate, by clear and convincing evidence, actual irreparable harm or the existence of an actual threat of injury." *Patio Enclosures*,

Inc. v. Herbst, 39 Fed. App'x 964, 969 (6th Cir. 2002) (internal punctuation omitted). The harm must be actual and imminent, not speculative or unsubstantiated. *See Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006). Here, neither Petitioner claims to have COVID-19. Further, neither Petitioner claims that they even have contact with anyone who is positive for COVID-19. They simply *assume* that they *could be* in contact with other detainees with COVID-19. Mere assumptions do not meet the clear and convincing standard.

Furthermore, every detainee in the Shelby County Jail is confined pursuant to a court order or judicial findings justifying detention. Pursuant to Tennessee law, the Sheriff may not and cannot release them. Only a judge can do that. Since the outbreak of COVID-19, the Judges in Shelby County, with the assistance of the SCSO, the Shelby County District Attorney's Office, the Public Defender's Office, and other agencies, have worked together to expedite the release of detainees, including medically vulnerable detainees. Neither the SCSO, nor the local judiciary is ignoring the risks posed by COVID-19. Petitioners have simply elected to forego their state court remedies entirely in order to seek an emergency injunction from federal court. Because Petitioners have available remedies and because the SCSO, along with numerous other local agencies, are actively engaged in the preventing the spread of COVID-19, Petitioners have not and will not suffer irreparable harm in the absence of an injunction.

C. PETITIONERS' REQUESTED RELIEF COULD CAUSE SUBSTANTIAL HARM TO OTHERS AND WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST.

i. Ordering the categorical release of the proposed detainees is detrimental to the public interest.

Ordering categorical release of the proposed detainees, with no regard for their risk to society upon release, would be detrimental to the public interest. The named Petitioners in this case are both being held on serious felony charges. Edgington is being detained on two (2) Class

A felony charges involving conspiracy to manufacture/deliver/sell controlled substance (cocaine) and trafficking high amounts of cocaine. Similarly, Busby is being detained on multiple criminal charges, including Class B felonies, involving manufacture/delivery/sale of cocaine, ecstasy, methamphetamine, oxycodone, alprazolam, marijuana, and other controlled substances, and being a felon in possession of a firearm. The proposed class likewise is in no way limited by the seriousness of the proposed class members' pending criminal charges.

Tennessee law provides that Tennessee courts must consider numerous factors in determining whether a pretrial detainee should be released and whether and for what amount bond should be set:

(1) The defendant's length of residence in the community; (2) The defendant's employment status and history, and financial condition; (3) The defendant's family ties and relationships; (4) The defendant's reputation, character and mental condition; (5) The defendant's prior criminal record, including prior releases on recognizance or bail; (6) The identity of responsible members of the community who will vouch for defendant's reliability; (7) The nature of the offense and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and (8) Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

Tenn. Code Ann. § 40-11-115(b). A court must carefully consider these factors when deciding whether "a release will reasonably assure the appearance of the person as required." *Id.* Absent a showing that conditions on a release on recognizance will reasonably assure the appearance of the defendant as required, the magistrate should require bail. Tenn. Code Ann. § 40-11-117. Thus, Tennessee law provides that judges must make a specific, individualized assessment of a detainee's flight risk and danger to society in setting their conditions of confinement or conditions of release. This Court should presume that Petitioners, as well as any other potential petitioners-plaintiffs, are being detained for a good reason, as state judicial officers have conducted individual assessments of them and applied statutory factors in order to set their respective bonds accordingly.

A federal court usurping the state courts' thorough assessment in determining conditions of release certainly goes against the public interest.

- ii. *Ordering the categorical release of the proposed detainees violates the rights of victims of violent crimes as secured by the Tennessee Constitution.*

Over the past few decades, many states have amended their constitutions and passed laws affording victims various rights during criminal proceedings, including the right to fair and compassionate treatment, the right to be kept informed of the proceeding, and many others. *See Payton v. State*, 266 So. 3d 630, 640-641 (Miss. 2019) (collecting cases). Tennessee is no exception. In fact, the Tennessee Constitution provides to the victims of crimes certain basic constitutional rights. Tenn. Const. art. I § 35. The applicable constitutional provision sets out eight specific rights for victims, including the right to “[t]he right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly,” “the right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person,” and “[t]he right to be present at all proceedings where the defendant has the right to be present.” *Id.*; *see also* Tenn. Code Ann. §§ 40-38-101 to 40-38-117; *State v. Mutory*, 581 S.W.3d 741, 749 (Tenn. 2019).

By seeking the release of unknown detainees via a temporary restraining order in federal court, Petitioners attempt to avoid the rights of victims as protected by the Tennessee Constitution. No victims of the potential class members have been informed of this proceeding and have not had the opportunity to appear. Indeed, pursuant to the rights afforded victims under the Tennessee Constitution, failure to allow victims of the proposed class a voice prior to releasing the proposed class members potentially violates Rule 19 of the Federal Rules of Civil Procedure (requiring the joinder of parties who claim an interest relating the subject of the action when disposing of the action in the person's absence would impair or impede the person's ability to protect the interest).

Moreover, releasing said class members without any heed to the rights of victims as protected under the Tennessee Constitution certainly goes against the public interest in protecting the rights of victims.

- iii. *Ordering the categorical release of the proposed detainees violates federalism and the separation of powers.*

Given the extraordinary nature of the injunctive relief that Petitioners seek, the Court should abstain pursuant to *Rizzo v. Goode*, 423 U.S. 362 (1976), where the Supreme Court instructed that to obtain injunctive relief on a matter traditionally reserved to the discretion of a state or local government agency, a plaintiff must overcome the steep hurdle set by “the well-established rule that the Government has traditionally been granted the widest latitude in the ‘dispatch of its own internal affairs.’” *Id.* at 378-79. In such cases, federal courts are to issue injunctions “sparingly, and only in a clear and plain case.” *Id.* at 378.

The considerations of federalism and comity underlying *Rizzo* weigh especially heavily when considering the administration of a corrections facilities. Federal courts should be hesitant to direct states how to operate their state facilities because doing so goes against the public interest in allowing the state legislative and executive branches to control their operation. *Bell v. Wolfish*, 441 U.S. 520, 548 (1979). Indeed, “the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial.” *Id.* Courts must accord prison administrators “wide-ranging deference in the adoption and execution of policies and practices.” *Ward v. Dyke*, 58 F.3d 271, 273 (6th Cir. 1995). Thus, where a prison inmate seeks an order enjoining state prison official, the court should proceed with the utmost care and must recognize the unique nature of the prison setting. *See Kendrick v. Bland*, 740 F.2d 432, 438, n. 3 (6th Cir. 1984). As recognized by the Supreme Court, “[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state

laws, regulations, and procedures, than the administration of its prisons...Since these internal problems of state prisons involve issues so peculiarly within state authority and expertise, the States have an important interest in not being bypassed in the correction of those problems.”

Preiser v. Rodriguez, 411 U.S. 475, 491–92 (1973).

In *Money*, the Court also discussed its concerns over request from petitioners to be released from incarceration due to the COVID-19 outbreak:

Plaintiffs’ motion also raises serious concerns under core principles of federalism and the separation of powers, especially given their request for sweeping relief in the form of a mandatory injunction. *See Missouri v. Jenkins*, 495 U.S. 33, 51 (1990) (“[O]ne of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions.”). The Supreme Court repeatedly has cautioned that federal courts must tread lightly when it comes to questions of managing prisons, particularly state prisons. The Court has gone so far as to opine that “[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of prisons.” *Preiser*, 411 U.S. at 492–92; *see also Turner v. Safley*, 482 U.S. 78, 85, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987) (“[W]here a state penal system is involved, federal courts have * * * additional reason to accord deference to the appropriate prison authorities.”); *Meachum v. Fano*, 427 U.S. 215, 229, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976) (“Federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States.”).

There are serious separation of powers concerns, too, because running and overseeing prisons is traditionally the province of the executive and legislative branches. *See Turner*, 482 U.S. at 84–85 (“Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.”). The judiciary is ill-equipped to manage decisions about how best to manage any inmate population—let alone a statewide population of tens of thousands of people scattered across more than a dozen facilities. And the concern about institutional competence is especially great where, as here, there is an ongoing, fast-moving public health emergency.

Money, 2020 U.S. Dist. LEXIS 63599 at *53–55.

The SCSO, along with other law enforcement agencies in Shelby County, have taken

considerable steps to reduce the jail population at the Jail. They have *already* focused on accelerating the criminal cases of detainees with less serious charges and detainees 60 years old and older as ordered by the Tennessee Supreme Court. As a result, the population at the Jail has decreased by nearly 700 inmates since the beginning of this year. As in *Money*, this Court's intervention would violate core principles of federalism and the separation of powers especially in light of the SCSO and other agencies already proactively taking steps to reduce the jail population. Such an action is unnecessary and would be detrimental to the public's interest in allowing the State of Tennessee and local County officials to administer their own corrections facilities.

CONCLUSION

Respondents respectfully request that the Court enter an order denying Petitioners' Motion for Temporary Restraining Order.

Respectfully submitted,

PENTECOST, GLENN & MAULDIN, PLLC

By: s/Nathan D. Tilly
James I. Pentecost (#11640)
Nathan D. Tilly (#031318)
J. Austin Stokes (#031308)
162 Murray Guard Drive, Suite B
Jackson, Tennessee 38305
(731) 668-5995

AND

Marlinee C. Iverson (#18591)
Bridgett L. Stigger (#29415)
Shelby County Attorney's Office
160 North Main Street, Suite 950
Memphis, TN 38103
(901) 222-2100

Attorneys for Respondents-Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via ECF filing system, upon the following:

Amreeta Mathai
Andrea Woods
ACLU
125 Broad Street
New York, NY 10004

Jonathan Silberstein-Loeb
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019

Brice Moffatt Timmons
Black, McLaren, Jones, Ryland & Griffee, P.C.
530 Oak Court Drive, Ste. 360
Memphis, TN 38117

on or before the filing date thereof.

DATE: This the 26th day of May, 2020.

By: s/Nathan D. Tilly
James I. Pentecost
Nathan D. Tilly
J. Austin Stokes

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

FLOYD BONNER, JR., ET AL.,

Defendants.

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No.: 2:20-CV-02359-SHL

DECLARATION OF HONORABLE AMY P. WEIRICH

In accordance with the provisions of Title 28, United States Code, Section 1746, I the undersigned, Amy P. Weirich, hereby make the following declaration pertinent to above styled cause of action:

1. I am over eighteen (18) years of age and have personal knowledge of the facts contained herein.
2. I currently serve as the District Attorney General for Shelby County, Tennessee. As District Attorney General, I prosecute and supervise the prosecution of state law crimes in Shelby County, Tennessee, on behalf of the State of Tennessee.
3. At no time since the Tennessee Supreme Court declared a state of emergency for the Judicial Branch of Tennessee has the criminal court system in Shelby County, Tennessee totally ceased operations. Daily, criminal courts within Shelby County, Tennessee, have heard motions, petitions, and requests from pre-trial detainees to be released from incarceration and/or to modify their bond amounts due to the COVID-19 pandemic.
4. Since the outbreak of COVID-19, I have personally worked with the Shelby County Sheriff's Office, the Shelby County Public Defender's Office, and the judicial system to expedite

criminal proceedings in an effort to safely and reasonably reduce the population of individuals incarcerated within Shelby County Jails while balancing our responsibilities to the victims.

END OF STATEMENT.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

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

Executed this the 26th day of May, 2020.

A handwritten signature in cursive script, appearing to read "A. Weirich", written in dark ink.

AMY P. WEIRICH, *District Attorney General*
Shelby County, Tennessee

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

FLOYD BONNER, JR., ET AL.,

Defendants.

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No.: 2:20-CV-02359-SHL

DECLARATION OF HONORABLE JOHN W. CAMPBELL

In accordance with the provisions of Title 28, United States Code, Section 1746, I the undersigned, John W. Campbell, hereby make the following declaration pertinent to above styled cause of action:

1. I am over eighteen (18) years of age and have personal knowledge of the facts contained herein.
2. I currently serve as the Criminal Court Division VI Judge for Shelby County, Tennessee and I am the Administrative Judge for the Criminal Court for the 30th Judicial District.
3. At no time since the Tennessee Supreme Court declared a state of emergency on March 13, 2020, for the Judicial Branch of Tennessee has the criminal court system in Shelby County totally ceased operations. The Tennessee Supreme Court did not suspend in-person "proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated

individuals.” See *In re: Covid-19 Pandemic*, No. ADM2020-00428 (Tenn. March 13, 2020).

4. Pursuant to the Tennessee Supreme Court’s orders, at no time has the Shelby County Criminal Courts ceased hearing in-person proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated individuals. Since that time, I and to the best of my knowledge other Criminal Divisions have regularly heard motions, petitions, and requests from pre-trial detainees to be released from incarceration and/or to modify their bond amounts due to the COVID-19 pandemic. In fact, I hear several motions to release and/or modify bond amounts routinely every week. The premise that Shelby County criminal pre-trial detainees cannot obtain or are being delayed on obtaining hearings on motions to be released and/or modify their bonds is simply not true. To the contrary, in light of nearly all other in-person hearings being suspended by the Tennessee Supreme Court, a hearing to be released from incarceration and/or to modify bond amounts can in some cases be obtained more quickly than prior to the Tennessee Supreme Court’s March 13, 2020, order. Typically, a hearing to hear such motions can be obtained within five days of the motion being filed.
5. In order to obtain a hearing a pretrial detainee, by himself or through his attorney, must file his motion and complete a “Pre-Trial Services report” form. Shelby County Pre-Trial Services then makes contact with the detainee’s family to determine, among other things, whether someone will vouch that the pretrial detainee will appear at trial, whether the pretrial detainee’s living condition upon release would be safe and suitable, the pre-trial detainee’s criminal history as well as history of bond forfeitures

and bench warrants, and whether the pretrial detainee would be employed upon release. Based upon its finding, Pre-Trial Services issues a report specific to said detainee.

6. Pursuant to Tennessee law, as the presiding judge over an accused criminal's case, I have the authority and discretion to release a pre-trial detainee under certain conditions, including an inmate's medical condition and/or vulnerability to contracting a serious medical condition while in jail, if I believe in light of the circumstances such release is appropriate. In light of this authority and discretion, I have and will continue to consider an inmate's vulnerability to contracting COVID-19 in making determinations on whether to reduce bond and/or to release a pre-trial detainee on his own recognizance. Of course, in making said decisions, I must also consider numerous other factors to make a specific, individualized assessment of a detainee's flight risk and danger to society in setting their conditions of confinement or conditions of release pursuant to T.C.A §40-11-118.
7. After I or any Tennessee Criminal Court Judge issues an order on a pretrial detainee's motion to be released from incarceration and/or to modify his or her bond amount, the pretrial detainee has the right to appeal said decision to the Tennessee Court of Appeals pursuant to Rule 8 of the Tennessee Rules of Appellate Procedure.
8. To obtain first-hand, personal knowledge of the conditions of the Shelby County Jail, I visited the Shelby County Jail approximately 2-3 weeks ago. I was highly impressed by the efforts I observed the jail has undertaken to combat and prevent the spread of COVID-19. All the staff and inmates I observed were wearing facial masks. I also observed a room set up with video phones to allow criminal defense

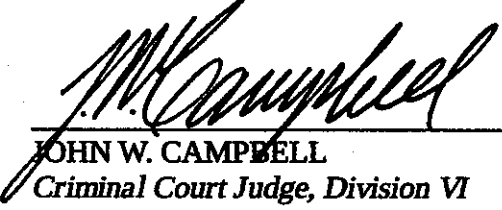
lawyers the ability to speak with their clients. During my visit, staff explained the cleaning protocol in the jail and video rooms. I also observed jail staff exercising social distancing.

END OF STATEMENT.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

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

Executed this the 25th day of May, 2020.



JOHN W. CAMPBELL
Criminal Court Judge, Division VI
Shelby County, Tennessee

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

FLOYD BONNER, JR., ET AL.,

Defendants.

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No.: 2:20-CV-02359-SHL

DECLARATION OF HONORABLE CHRISTOPHER CRAFT

In accordance with the provisions of Title 28, United States Code, Section 1746, I the undersigned, Christopher Craft, hereby make the following declaration pertinent to above styled cause of action:

1. I am over eighteen (18) years of age and have personal knowledge of the facts contained herein.
2. I currently serve as the Criminal Court Division VIII Judge for Shelby County, Tennessee. Division VIII is known as the Special Prosecution Division.
3. At no time since the Tennessee Supreme Court declared a state of emergency on March 13, 2020, for the Judicial Branch of Tennessee has the criminal court system in Shelby County totally ceased operations. The Tennessee Supreme Court did not suspend in-person “proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated individuals.” *See In re: Covid-19 Pandemic*, No. ADM2020-00428 (Tenn. March 13, 2020).

4. Pursuant to the Tennessee Supreme Court's orders, at no time has the Shelby County Criminal Courts ceased hearing in-person proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated individuals. Since that time, I and to the best of my knowledge other Criminal Divisions have regularly heard motions, petitions, and requests from pre-trial detainees to be released from incarceration and/or to modify their bond amounts due to the COVID-19 pandemic. In fact, I hear several motions to release and/or modify bond amounts routinely every week. The premise that Shelby County criminal pre-trial detainees cannot obtain or are being delayed on obtaining hearings on motions to be released and/or modify their bonds is simply not true. To the contrary, in light of nearly all other in-person hearings being suspended by the Tennessee Supreme Court, a hearing to be released from incarceration and/or to modify bond amounts can in some cases be obtained more quickly than prior to the Tennessee Supreme Court's March 13, 2020, order. Typically, an oral request by an attorney is all that is necessary to set such a hearing, which can be set within the five days it takes Pretrial Services to provide a bond report on the detainee to the parties. An unrepresented detainee can obtain a hearing by filing a motion with the court clerk or writing a letter to the judge.
5. The bond report lists the detainee's prior record, prior failures to appear in court, other pending cases, family connections, employment and other information pertinent to the bond considerations listed in Tenn. Code Ann. 40-11-118, Tennessee's bail bond consideration statute. Pursuant to Tennessee law, as the presiding judge over an accused criminal's case, I have the authority and discretion to release a pretrial

detainee or lower the bond based upon numerous factors, including an inmate's medical condition and/or vulnerability to contracting a serious medical condition while in jail, if I believe in light of the circumstances such release is appropriate. In light of this authority and discretion, I have and will continue to consider an inmate's vulnerability to contracting COVID-19 in making determinations on whether to reduce bond and/or to release a pre-trial detainee on his own recognizance. Of course, in making said decisions, I must also consider numerous other factors listed in Tenn. Code Ann. 40-11-118 to make a specific, individualized assessment of each detainee's flight risk and danger to society in setting conditions of confinement or conditions of release

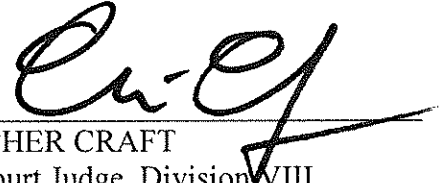
6. After I or any Tennessee Criminal Court Judge issues an order on a pretrial detainee's motion to be released from incarceration and/or to modify his or her bond amount, the pretrial detainee has the right to request an expedited appeal of said decision to the Tennessee Court of Criminal Appeals pursuant to Rule 8 of the Tennessee Rules of Appellate Procedure.

END OF STATEMENT.

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

Executed this the 26th day of May, 2020.

A handwritten signature in black ink, appearing to read 'C. Craft', written over a horizontal line.

CHRISTOPHER CRAFT
Criminal Court Judge, Division VIII
Memphis, Shelby County, Tennessee

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

FLOYD BONNER, JR., ET AL.,

Defendants.

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No.: 2:20-CV-02359-SHL

DECLARATION OF BRUCE RANDOLPH, M.D., M.P.H.

In accordance with the provisions of Title 28, United States Code, Section 1746, I the undersigned, Bruce Randolph, hereby make the following declaration pertinent to above styled cause of action:

1. I am over eighteen (18) years of age and have personal knowledge of the facts contained herein.
2. I am a physician licensed to practice medicine in the State of Tennessee. A true and accurate copy of my curriculum vitae (CV) is attached to this declaration.
3. I am currently employed as the County Health Officer with the Shelby County Health Department. As the County Health Officer, I currently oversee Shelby County's official response to the current COVID-19 pandemic.
4. I am personally knowledgeable and familiar with the efforts taken at the Shelby County Jail (the "Jail") to combat and prevent the spread of COVID-19. The Shelby County Sheriff's Officer ("SCSO") has undertaken numerous measures to combat and prevent the spread of COVID-19 in its facilities. These efforts include, but are not limited to, enhancing detainee

intake screenings, encouraging social distancing, minimizing movement in and around the jail, requiring all employees and inmates to wear masks, providing disinfectants through the facility for use by employees and inmates alike, enhancing cleaning procedures throughout the jail, suspending in-person visitations, informing inmates on best practices to prevent the spread of COVID-19, quarantining inmates who have come in contact with COVID-19 positively tested inmates, isolating inmates who have tested positive for COVID-19, and implementing and following ever changing CDC guidelines concerning the prevention and mitigation of the spread of COVID-19.

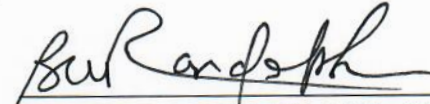
5. Based upon my experience, training, knowledge, and practice, I believe that the Jail has reasonably and appropriately adhered to and implemented policies, protocols, and practices medically necessary to combat and prevent the spread of COVID-19 within the Jail. Said policies, protocols, and practices meet the community standard of medical care in a correctional setting, have successfully mitigated its spread, and have created a safe environment for detainees/inmates to reside in while incarcerated in the Jail in light of the current COVID-19 pandemic.
6. All of my above-referenced opinions, statements, and beliefs are based upon a reasonable degree of medical certainty.

END OF STATEMENT.

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

Executed this the 26 day of May, 2020.



BRUCE RANDOLPH, M.D., M.P.H.
Health Officer, Shelby County, Tennessee

CURRICULUM VITAE

Bruce W. Randolph, MD, MPH
Shelby County Health Department
814 Jefferson Avenue, Room 124
Memphis, Tennessee 38105
bruce.randolph@shelbycountyttn.gov
901-483-3116 (cell)

EDUCATIONAL BACKGROUND

University of Oklahoma - Health Sciences Center
Oklahoma City, Oklahoma
Occupational Health (1994-1995)

Johns Hopkins University - School of Hygiene and Public Health
Baltimore, Maryland
Master of Public Health Degree, Health Policy and Management (1989)

University of Florida - College of Medicine
Gainesville, Florida
Doctor of Medicine Degree (1984)

Tuskegee University (previously Tuskegee Institute) - Tuskegee, Alabama
Bachelor of Science Degree in Biology (1980)
Graduated Summa Cum Laude

POSTGRADUATE TRAINING

University of Oklahoma - Health Science Center
Oklahoma City, Oklahoma
Department of Family and Preventive Medicine
Residency in Occupational and Environmental Medicine (1994-1995)

Johns Hopkins University - School of Hygiene and Public Health
Baltimore, Maryland
Department of Preventive Medicine
Residency in General Preventive Medicine and Public Health (1988-1989)

University of Arkansas Area Health Education Center
Fort Smith, Arkansas
Department of Family Medicine
Residency in Family Medicine (1984-1985)

PROFESSIONAL EXPERIENCE

Shelby County Health Department (2019 – Present)

Health Officer/ Administrator of Clinical Health Bureau
Memphis, Tennessee

Providing the following services, duties, and responsibilities:

- Fulfills the role and statutory requirements of local Public Health Officer
- Works in close collaboration with the medical community to enhance the health status of the general population
- Enforces appropriate rules, regulations and ordinances essential to the control preventable and infectious diseases.
- Oversees investigation and control of potential disease outbreak
- Provides medical consultation, leadership, direction and oversight of all programs and services of the Shelby County Health Department
- Provides public health guidance and medical input into the delivery of public health services that are provided by the health department
- Informs public citizens of potential health problems and assures dissemination of appropriate information
- Communicates on issues of public health concern to citizens, providers, and other agencies through presentations, media, and publication of written reports
- Administrates the following programs: TB Elimination, STI/HIV/Hep C, Ryan White, Occupational Health, and Forensic Medical.

Randolph Occupational Medicine Services, Inc. - ROMS (2002-2019)

Founder and President
Memphis, Tennessee
www.roms-memphis.com

Provided the following services:

- Disability Evaluations
- Impairment Ratings
- Independent Medical Evaluations
- Fitness For Duty Medical Evaluations
- Pre-Placement and Post-Offer Medical Exams
- Return to Work Medical Exams
- Occupational Medicine Consulting Services
- Health & Wellness Evaluations
- Total Wellness Care

Occupational Medicine Physician (2014 – 2017)

Assistant Professor

University of Arkansas for Medical Sciences (UAMS)

Department of Family & Preventive Medicine

Little Rock, Arkansas 72205

Provided the following services:

- Disability Evaluations
- Impairment Ratings
- Independent Medical Evaluations
- Evaluation and Management of Work Related Injuries and Illnesses
- Driving Assessment Medical Evaluations
- Health & Wellness Evaluations
- Evaluation and Management of Work Related Injuries and Illnesses
- Workers' Compensation Medical Care

Occupational Medicine Physician (1997-2002)

Primary Care Physicians, PC (Baptist Minor Medical Centers)

Memphis, Tennessee

Provided the following services:

- Evaluation and Management of Work Related Injuries and Illnesses
- Workers' Compensation Medical Care
- Occupational Medicine services for companies in the Memphis Metro area
- Occupational Medicine consultation services in areas such as workplace hazards, occupational safety and health, workers compensation, OSHA regulations, ADA, and FMLA.

Occupational Medicine Physician (1996-1997)

Occupational Medicine Consultants, Inc.

Memphis, Tennessee

Provided the following services:

- Evaluation and Management of Work Related Injuries and Illnesses
- Workers' Compensation Medical Care
- Occupational Medicine services for companies in the Memphis Metro area
- Occupational Medicine consultation services in areas such as workplace hazards, occupational safety and health, workers compensation, OSHA regulations, ADA, and FMLA.
- Management of an outpatient Occupational Medicine Clinic

Family Medicine Physician (1991-1996)

Private Practice

Randolph Health Services

Oklahoma City, Oklahoma

Provided the following services:

- Family medical care
- Preventive health care
- Disability evaluations
- Served as the Center Physician for Guthrie Job Corps Center
- Served as the Campus Physician for Langston University
- Served as a consultant for a community health center and community based organizations
- Established and operated a school based clinic for adolescent males

Preventive Medical Consultant (1989-1991)

Oklahoma State Department of Health
Oklahoma City, Oklahoma

- Special Assistant to the Deputy Commissioner for Personal Health Service.
- Consultant in the areas of chronic diseases, communicable diseases, health promotion, disease prevention, and minority health issues.

Family Medicine Physician (1989-1989)

Indian Health Services - Cheyenne River Sioux Indian Hospital
Eagle Butte, South Dakota

- Provided primary health care services to adult and pediatric patients on the Cheyenne River Sioux Indian Reservation.
- Fulfillment of National Health Service Corp obligation

Family Medicine Physician (1988-1989)

Private Practice (part-time)
Francine Higgs-Shipman, M.D.
Baltimore, Maryland

- Provided ambulatory primary care services to adult and pediatric patients on a part-time basis while attending Johns Hopkins University School of Hygiene and Public Health.

Family Medicine Physician (1986-1988)

Benton Medical Clinic
Ashland, Mississippi

- Provided primary health care services to adult and pediatric patients in rural Northern Mississippi. Services provided include hospital visits, home visits, and clinic visits.
- Provided health care services for Rust College, participated in health fairs, and gave presentations on various health topics.
- National Health Service Corps obligation

Family Medicine Physician (1985-1986)

Private Practice

Clay County Health & Medical Clinic

West Point, Mississippi

- Provided the following services:
 - Family medical care
 - Preventive health care
 - Disability evaluations
 - Health & Wellness Counseling
- Performed many administrative duties related to managing a private physician's office.
- National Health Service Corps obligation
- Provided health care services for Mary Holmes College, participated in health fairs, and gave presentations on various health topics.

CERTIFICATION

Maintenance of Board Certification - Occupational Medicine (2009), American Board of Preventive Medicine

Board Certified - Occupational Medicine (1999), American Board of Preventive Medicine

LICENSURE

State of Arkansas (Active)

State of Mississippi (Active)

State of Oklahoma (Active)

State of Tennessee (Active)

PUBLICATIONS

Atin R. Datta, Bruce Randolph and Judah L. Rosner (1983): "Detection of Chemical Stimulate Tn9 Transportation in Escherichia Coli," *Mol Gen Genet* 189:243-50.

Paul C. Lampley and Bruce Randolph (1989): "Patients' and Physicians' Assessments of the Patient's Health in Rural Mississippi," *Academic Medicine* 64, 669-672.

Bruce W. Randolph (1991): "Closing the Gap: The Role of the African American Community", *Journal of the National Medical Association*, Vol. 83, No.2, 123-124

Bruce W. Randolph (1991): "Parity in Health: A challenge for the 1990's," *State of Black Oklahoma*, Urban League of Greater Oklahoma City.

M.M. Randolph, B.W. Randolph, M. Perry, "Animal Rights Issues and African American Health Care Providers," *Journal of the National Medical Association*, Vol. 84, No. 8:649, August 1992.

Bruce W. Randolph and Mildred M. Randolph, "Who Needs an "Occ Doc"? The Role of an Occupational Medicine Physician in an Animal Research Facility", *Contemporary Topics in Laboratory Animal Science*, Vol. 44, No. 2, 68-70, March 2005)

PRESENTATIONS

"OCCUPATIONAL INJURIES FROM THE 'OCC DOC' PERSPECTIVE", presented to Physical Medicine & Rehabilitation Residents, College of Medicine, University of Arkansas for Medicine Sciences, April 2018

"INTRODUCTION TO OCCUPATIONAL MEDICINE", presented to Physical Medicine & Rehabilitation Residents, College of Medicine, University of Arkansas for Medicine Sciences, April 2016

"ESTABLISHING AN OCCUPATIONAL HEALTH & SAFETY PROGRAM", presented to Students, Faculty, and Staff, College of Agriculture, Environmental & Nutrition Sciences, and College of Veterinary Medicine, Tuskegee University, April 2016

"OCCUPATIONAL MEDICINE – IMPAIRMENT RATINGS", presented at the 2016 Health & Safety Seminar, Arkansas Environmental Federation

"OCCUPATIONAL MEDICINE", presented to OSHA Compliance Officers and State OSHA Consultants at the OSHA Consultation/Enforcement SHMS Training, April 2016

"THE WORKPLACE TOUR: THE 'OCC DOC' PERSPECTIVE", presented at the Arkansas Self Insurers Association General Membership Meeting, August 2015

"DOT PHYSICALS & WORKPLACE TOURS", presented at the Arkansas Trucking Association Self-Insurers Fund Loss Prevention Seminar, November 2015

"IMPAIRMENT RATINGS – WHY DO THEY DIFFER?" presented to the Association of Arkansas Counties, Arkansas Self Insurers Association General Membership Meeting, December 2015

"OCCUPATIONAL HEALTH ISSUES IN PRIMARY CARE" presented at the AMDPA 123rd Scientific Session, Arkansas Medical, Dental & Pharmaceutical Association, June 2016

AWARDS

Tuskegee Athletic Hall of Fame Inductee, Class of 2017, Tuskegee University

COMMUNITY SERVICE ACTIVITIES

Founder and President, Issa Ministries, Inc., Memphis, TN (2007 – Present)

- Established Issa Ministries, Inc., a "not for profit" 501(c) (3) tax-exempt religious corporation, for the purpose of promoting holistic health and wellness through education, counseling, mentoring, and evangelism.
- Produced and distributed pamphlets pertaining to Stress Management, Physical Activity/Exercise, Healthy Eating/Weight Management, and Spirituality/Faith.

- Conducted Wellness Classes on at Rufus K. Young Christian Church in Little Rock, AR. Topics included Weight Management, Stress Management, Engaging in Physical Activity, and Life Style Practices/Behavior Practices.
- Conducts Wellness Lectures and Workshops for churches and community organizations.
- Collaborates with other organizations to promote health and wellness activities such as 1) "*Easy Exercises For Everyone*", a program for seniors in which they were taught how to safely exercise and become more active, 2) *Back 2 School Celebration*, a program in which we provided school supplies, physical exams, and dental screening for kids., 3) "*Issa Nation*", a mentoring program for males ages 12-17 in which wellness, character development and productive living are emphasized.

Associate Pastor, Rufus K. Young Christian Church, Little Rock, AR (2010 – Present)

Areas of responsibility:

- Health & Wellness Ministry
- Male Mentoring Program
- Finance and Administration

Associate Minister, North Star Community Church, Memphis, TN (2007-2010)

Areas of responsibility:

- Bible Study
- Sunday School Class
- Health & Wellness Ministry

Associate Minister, St. Andrew AME Church, Memphis, TN (2003- 2007)

Areas of responsibility:

- Health Ministry
- Sunday School Class
- Bible Study

Associate Minister, Oak Grove Baptist Church, Memphis, TN (2001 - 2003)

Areas of responsibility:

- Men's Ministry

- Men's Sunday School Class
- Heath Ministry

Associate Minister, North Star Community Church, Memphis, TN (1999-2001)

Areas of responsibility:

- Men's Ministry
- Sunday School Class
- Bible Study

Associate Minister, St. Andrew AME Church, Memphis, TN (1996-1999)

Areas of responsibility:

- Health Ministry
- Young Men's Ministry

Youth Minister/Youth Mentor, Avery Chapel AME Church, Oklahoma City, OK (1991-1996)

Areas of responsibility:

- Established and Directed Youth Ministry/ Youth Church
- Established a "Rites of Passage" program for young men

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

No.: 2:20-CV-02359-SHL

FLOYD BONNER, JR., ET AL.,

Defendants.

DECLARATION OF DR. DONNA RANDOLPH

In accordance with the provisions of Title 28, United States Code, Section 1746, I the undersigned, Dr. Donna Randolph, hereby make the following declaration pertinent to above styled cause of action:

1. I am over eighteen (18) years of age and have personal knowledge of the facts contained herein.
2. I am a physician licensed to practice medicine in the State of Tennessee. I have provided health care for incarcerated individuals for approximately ten (10) years. A true and correct copy of my curriculum vitae (CV) is attached to this declaration.
3. I am currently employed with WellPath, and I currently serve as the Medical Director for the Shelby County Jail ("Jail"). As the Medical Director, I, along with Shelby County Health Department, Shelby County Sheriff's Office, and the WellPath Healthcare team are responsible for overseeing operations of the medical department at the Jail, and I also provide medical care to detainees/inmates incarcerated within the Jail.
4. I am familiar with the efforts taken at the Shelby County Jail to combat and prevent the spread of COVID-19. The Shelby County Sheriff's Officer ("SCSO") has undertaken numerous

measures to combat and prevent the spread of COVID-19 in its facilities. These efforts include, but are not limited to, enhancing detainee intake screenings, encouraging social distancing, minimizing movement in and around the jail, requiring all employees and inmates to wear masks, providing disinfectants through the facility for use by employees and inmates alike, enhancing cleaning procedures throughout the jail, suspending in-person visitations, informing inmates on best practices to prevent the spread of COVID-19, quarantining inmates who have come in contact with COVID-19 positively tested inmates, isolating inmates who have tested positive for COVID-19, and implementing and following ever changing CDC guidelines concerning the prevention and mitigation of the spread of COVID-19.

5. I personally participate in nationwide and local meetings involving medical providers, administrators, security personnel, and other health officials on a weekly basis concerning the status of COVID-19 and effective measures to prevent and combat its spread within the correctional setting.
6. Based upon my experience, training, knowledge, and practice, as well as upon my personal evaluations of and presence within the facility and treatment of detainees/inmates incarcerated therein, I believe that the Jail has reasonably and appropriately adhered to and implemented policies, protocols, and practices medically necessary to combat and prevent the spread of COVID-19 within the Jail. Said policies, protocols, and practices meet the community standard of medical care in a correctional setting, have successfully mitigated its spread, and have created a safe environment for detainees/inmates to reside in while incarcerated in the Jail in light of the current COVID-19 pandemic.
7. I am familiar with the medical care and treatment provided to Michael Edgington (#11539) and Favian Busby (#350913) during their incarceration at the Jail. Based upon my experience,

training, knowledge, and practice, it is my opinion that the care and treatment that Michael Edgington (#11539) and Favian Busby (#350913) have received during their incarceration within the Jail has met or exceeded the applicable standard of medical care in a correctional setting.

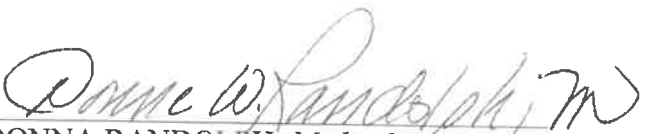
8. At all relevant times during my treatment of detainees/inmates within the Jail, as well as during my supervision of the policies, protocols, and practices implemented to combat and prevent the spread of COVID-19 within the Jail, I relied upon my training and experience as a medical doctor to provide the best treatment and to implement the best preventive measures available within a correctional setting.
9. At no time did I ignore, disregard, or act with deliberate indifference towards any of the detainees/inmates' medical needs. At no time did I deny appropriate medical care to any detainee/inmate or knowingly fail to implement reasonable and appropriate preventive measures to combat and prevent the spread of COVID-19 within the Jail.
10. At all times relevant, I acted in good faith, and I did not and have not acted with deliberate indifference towards the well-being of any detainee/inmate housed within the Jail.
11. All of my above-referenced opinions, statements, and beliefs are based upon a reasonable degree of medical certainty.

END OF STATEMENT.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

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

Executed this the 25 day of May, 2020.


DONNA RANDOLPH, Medical Director

CURRICULUM VITAE

DONNA WITHERS RANDOLPH, M.D.
1618 Vinton Ave., Memphis, Tennessee 38104
901.569.8886 themothertork@msn.com

Professional Profile

High -performing physician with over 20 years of Healthcare experience. In -depth knowledge of healthcare operations at all levels. Demonstrated proficiency in patient care and all Gynecological surgeries, staffing, training, development, budgeting, program management, creating, revising, and implementing policies.

- ✓ Excellent Clinical Skills and Judgment
- ✓ Team Player
- ✓ Managed Private Practice for Sixteen Years ✓ Dependable
- ✓ Excellent Interpersonal Skills
- ✓ Organized and Thorough

Professional Experience

Medical Director (Wellpath) Shelby County Criminal Justice Center: Feb 4, 2020 – Present

Responsibilities:

- ➤ Supervised Advanced Registered Nurse Practitioners and approximately 90 Registered Nurses and LPNs
- ➤ Manage 2 clinics and 2 sites, care for approximately 2900 inmates (men, women, and juveniles)
- ➤ Support standards of correctional medical care through adherence to existing policies and procedures.
- ➤ Assist the HAS to monitor pharmacy services including formulary compliance, prescribing patterns and dispensing of medication
- ➤ Insured that inmates are referred to the appropriate outside clinics, follow ups are made, and medications or surgeries are scheduled as needed

Gilead Speaker: Truvada for PrEP January 1, 2018 - Present

Medical Director and Laboratory Director ▪ June 2009 – December 2018

CHOICES Memphis Center for Reproductive Health ▪ Achievements:

- ➤ CHOICES PrEP Provider in Memphis, Tn
- ➤ Grant Recipient for 2016-2017 Shelby County PrEP Initiation

- ➤ Reviewer – Are you PrEPared? Evidence-based prevention of HIV infection in at risk individuals. Alosa Health
- ➤ Creating new policies and procedures with leadership team
- ➤ Participating in grant studies for long acting birth control

Responsibilities:

- PrEP/PEP Care and Monitoring of Patients
- Abortion Provider: Medical Abortion and Surgical Abortion up to 15 weeks
- Gyn Surgeries in Local Hospital
- Transgender Care and HRT Implementation
- Perform minor gynecological surgeries in office
- Placement of IUDs and Nexplanon
- Supervision of Nurse Practitioner
- Training of New Medical Doctors and ancillary staff
- Chart Review

Physician: Obstetrics/Gynecology, Co-Owner of Practice • October 1995 – September 2016 Randolph Women's Center, P.C. •

Responsibilities:

- Managed two separate locations of the practice
- Provide medical care for women of all ages: prenatal and gynecological
- Perform both minor and major Gynecological surgeries
- Perform both vaginal and caesarian section deliveries
- Directed and managed the hiring and staffing at both locations

Medical Director of Shelby County Division of Corrections • December 2008 – May 2015
Correct Care Solutions •

Achievements:

- Chronic Care Clinics up and running
- Intake and Health Assessments performed in a timely manner and better organized
- Revised existing policies and procedures in conjunction with CQI Nurse

Responsibilities:

- ➤ Supervised Advanced Registered Nurse Practitioners and approximately 45 Registered Nurses and LPNs
- ➤ Manage 3 major clinics and 2 sub clinics throughout the compound that care for approximately 2500 inmates (men, women, and juveniles)
- ➤ Support standards of correctional medical care through adherence to existing policies and procedures.

- ➤ Assist the HAS to monitor pharmacy services including formulary compliance, prescribing patterns and dispensing of medication
- ➤ Insured that inmates are referred to the appropriate outside clinics, follow ups are made, and medications or surgeries are scheduled as needed

Physician in OB/GYN ▪ March 1996 – October 1998

Memphis Health Center ▪

Responsibilities:

- Provide both Gynecological and Obstetrical care for women of all ages
- Perform minor and major surgeries

Embryologist/Research Technician (In Vitro Fertilization) ▪ September 1986 – August 1987

Cleveland Clinic Foundation ▪

Achievements:

- Publication: Quigley, M.N., Sololoski, J.E., Withers, DM., Richards, S.I., Reis, J.M., Simultaneous in Vitro Fertilization and Gamete Intrafallopian Transfer (GIFT), Fertility and Sterility. 47(5) 797- 801, May 1987

Responsibilities:

- Fertilization of human oocytes, culture of embryo and transfer to the prospective mother
- Assist in ongoing research

Albert Einstein College of Medicine, Bronx, New York ▪ August 1983 – July 1985

Research Assistant:

Achievements: Abstracts

- ➤ Samuelson, A.C., Withers, D.M., Stockert, R.J., Wolkoff, A.W., Role on Monovalent Cations in Receptor-Mediated Endocytosis, Hepatology. 4:1075, 1984
- ➤ Wolkoff, A.W., Samuelson, A.C., Withers, D.M., Sosiak, A., Transport of BSP by Short-Term Cultured Hepatocytes: Energy and Anion Requirements, Hepatology, 4:1075, 1984
- ➤ Wolkoff, A.W., Samuelson, A.C., Johnsen, K.L., Nakata, R., Withers, D.M., Sosiak, A., Influence of C- on Organic Anion Transport in Short-Term Cultured Rat Hepatocyte and Isolated Perfused Rat Liver, Journal of Clinical Investigation. 79(4) 1259-68, April 1987

Responsibilities:

- Performing research with liver perfusion, tissue cultures and uptake studies

Medical Training

Jamaica Hospital, Department of Obstetrics/Gynecology, Jamaica, New York
PGY 2 – PGY 4
June 1995

Interfaith Medical Center, Department of Obstetrics/Gynecology, Brooklyn, New York
PGY 1
July 1992

Education

Medical College of Ohio, Toledo, Ohio Medical Doctor June 1991

Vassar College, Poughkeepsie, New York Bachelor of Arts
June 1983

***References available on request**