Exhibit 2

Declaration of Dr. Robert L. Cohen, M.D.
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Regarding the Spread of COVID-19 in and from the Dallas County Jail

Professional Background

1. I am an internist. I received my M.D. degree from Rush Medical College at Rush University. I have worked as a physician, administrator, and expert in the care of prisoners and persons with HIV infection for more than thirty years. I was Director of the Montefiore Rikers Island Health Services from 1981 to 1986. In 1986, I was Vice President for Medical Operations of the New York City Health and Hospitals Corporation. In 1989, I was appointed Director of the AIDS Center of St. Vincent’s Hospital. I represented the American Public Health Association (APHA) on the Board of the National Commission for Correctional Health Care for 17 years. I have served as a federal court monitor overseeing efforts to improve medical care for prisoners in Florida, Ohio, New York State, and Michigan. I have been appointed to oversee the care of all prisoners living with AIDS in Connecticut, and I also serve on the nine-member New York City Board of Corrections.

Coronavirus of 2019 Poses a Significant Threat in the Dallas County Jail

2. Coronavirus disease of 2019 (COVID-19) is a pandemic. COVID-19 is caused by a novel coronavirus (SARS-CoV-2) for which there is no established curative medical treatment and no vaccine. UpToDate\(^1\) reports an overall case mortality rate from the disease of 2.3 percent, though the rate ranges in different geographies, from 0.9 percent in South Korea to 7.2 percent in Italy.

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\(^1\) See “Coronavirus disease 2019 (COVID-19)”, UpToDate, https://cutt.ly/GtJYSkj. UpToDate is an online medical reference resource widely used in hospitals and health organizations and by private physicians. The 2.3 percent figure is from an update on April 4, 2020.
3. The numbers of COVID-19 cases in Dallas County and Texas are rising rapidly, resulting in a public health crisis. Texas was declared a disaster area due to COVID-19 by Governor Greg Abbott on March 13, 2020. Cases in Dallas County increased from one as of March 10, 2020 to 921 as of April 2, 2020. Cases in Texas rose from five on March 6, 2020 to 6,110 on April 3, 2020. As of the date I am executing this declaration, there are 8,264 confirmed COVID-19 cases in Texas, and 1,155 in Dallas County.

4. The current conditions in the Dallas County Jail create a high risk of contributing to an outbreak of COVID-19. Jails and prisons are long known to rapidly spread air-borne respiratory infection like COVID-19 because they house large number of persons held in cramped conditions with inadequate air flow. Tuberculosis, for example, is a bacterium that is significantly less transmissible than COVID-19 yet has been responsible for numerous outbreaks of illness in prisons and jails over the years. For this reason, the Centers for Disease Control and Prevention (CDC) recommend universal screening for tuberculosis in all jails and prisons. The intensity of tuberculosis screening in prisons and jails depends on the inmate population, their length of stay, and the prevalence of tuberculosis in the population that live in and work in the jail.

5. Everyone is at risk for COVID-19 infection, and the danger of transmission presented by COVID-19 in jails and prisons thus requires more intense screening and testing than tuberculosis. Everyone who lives and works in a jail is at the highest risk.

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3 See Texas Department of State Health Services, “Texas Case Counts COVID-19” (accessed April 7, 2020), https://cutt.ly/YtJUaXJ.
4 Id.
6. Jails promote the spread of respiratory illnesses because large groups of strangers are forced suddenly into crowded congregate housing arrangements. Normal civilian recommendations that are made with the expectation that individuals can safely shelter in place are not relevant to a jail where congregate living is forced on all who enter. This situation is complicated by the fact that custody and other personnel who care for detainees live in the community and can carry the virus into a jail with them and, just as concerning, out into the community at large.

7. At a time when (a) the President’s task force on COVID-19 recommends limiting gatherings to no more than 10 persons, (b) the President has declared a national emergency, (c) the Centers for Disease Control and Prevention (CDC) recommend wearing a face mask in public settings where social distancing is difficult to maintain, and (d) there is a stay-at-home order in Texas through at least April 30, 2020, Dallas County is forcing over 5,000 people to live in congregate living conditions at the Dallas County Jail with a continuing influx of new bookings every day. Because of the structure of the jail and manner in which daily activities occur in a jail, incarcerated persons intermingle, and it is not possible to limit gatherings to less than 10 individuals or engage in social distancing required by public health guidance. The conditions in the Dallas County Jail are contrary to the President’s recommendation, to the Texas Governor’s order requiring people to “minimize in-person contact with people who are not in the same household”, to the stay at home order by Dallas County,7 to City of Dallas regulations implementing the Texas and Dallas County orders,8 and to current public health recommendations.

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These circumstances will result in the spread of disease both within the Dallas County Jail and to the broader community.

8. Indeed, there are already confirmed cases of COVID-19 in the Dallas County Jail: On March 25, 2020, Dallas County Sheriff Marian Brown announced during a news conference at the Frank Crowley Courthouse that a Dallas County Jail inmate, a man in his 40s, who tested positive for the novel coronavirus had been in custody for at least three months, since December 2019.9 Sheriff Brown said on April 1, 2020 that it was unclear how he contracted the virus while in custody.10

9. Medical care for COVID-19 focuses on prevention, which emphasizes physical distancing, handwashing, respiratory hygiene, and the wearing of masks. Currently, severe cases of the disease can be treated only with supportive care including respiratory isolation, oxygen, and mechanical ventilation.

10. COVID-19 is transmitted by infected people when they sneeze or cough. Droplets of respiratory secretions infected with the virus can survive as an aerosol for up to three hours.11 Droplets can be directly transmitted by inhalation to other individuals in close proximity. Droplets can land on surfaces and be picked up by the hands of another person who can then become infected by contacting a mucous membrane (eyes, mouth, or nose) with their hand. Infected droplets can remain viable on surfaces for variable lengths of time, ranging from up to three hours on copper, 24 hours on cardboard, and two to three days on plastic and stainless steel.12

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10 Id.
12 Id.
11. There is now evidence that COVID-19 can be transmitted by asymptomatic individuals, and it is estimated that approximately six percent of infections are transmitted by asymptomatic persons.\textsuperscript{13} This is critical in a jail because persons coming into the jail or already in jail and newly infected may be asymptomatic, are confined in close quarters, and are passing the infection without being aware.

12. Infected individuals become symptomatic with COVID-19 in a range of 2.5 to 11.5 days with 97.5 percent of infected individuals becoming symptomatic within 11.5 days. Typically, an infected individual becomes symptomatic around day five of their infection. The total incubation period for COVID-19 is thought to extend up to 14 days. Thus, persons coming into jails can be asymptomatic at intake only to become symptomatic later during incarceration. For that reason, a comprehensive correctional intake screening test for COVID-19, including COVID-19 testing is essential.

\textbf{Despite Positive Steps Taken to Address COVID-19 in the Dallas County Jail, Considerably More Must be Done to Protect Incarcerated Persons and the Community}

13. At the Dallas County Jail, an incoming detainee receives a screening test for COVID-19 only if intake personnel refer the detainee to health care professionals at the jail and they determine the detainee meets “Dallas County Health and Human Services criteria.”\textsuperscript{14} Others are not routinely tested.

14. There are three types of groups cohorted in the Dallas County Jail with respect to the COVID-19 pandemic under CDC guidelines.\textsuperscript{15}

\textsuperscript{14} Dallas County Sheriff’s Office, “COVID-19 Initiatives,” (March 27, 2020), https://cutt.ly/NtJO7zY.
15. The first group are “persons quarantined” and includes those who may have been exposed or those who have unknown status, such as new inmates coming into the jail. Persons newly booked into the Dallas County Jail should be housed separately from any other group for a sufficient period of time after booking to reduce further transmission. Further, to reduce transmission, Dallas County officials should take every measure to admit and book as few new people into the jail as possible, as other cities have done in response to the COVID-19 crisis.

16. The second group are persons suspicious for COVID-19, which includes those who are symptomatic but whose tests have not been done or are pending, or who are otherwise highly likely to have the virus; this group is called “persons-under-investigation” (PUI).

17. The third group are persons known to be COVID-19 positive. These groups should be screened daily or multiple times daily for symptoms and fever. The known COVID-19 positive cases need to also be regularly checked for their oxygen levels to ensure they are not deteriorating. Persons known to be positive for COVID-19 should be housed separately from the rest of the jail. While testing positive for COVID-19 is not an independent reason to release someone from custody as a matter of public health, if someone positive for COVID-19 is medically vulnerable, sick, or incarcerated on a technical probation violation, a pretrial bond, or on a sentence with less than one year remaining, their positive status should not be a bar to releasing them so long as an adequate self-quarantine option for them exists.

18. As of April 4, 2020, according to The Dallas Morning News, 5,300 inmates remained in the Dallas County jail, down from 5,900. At least 20 of them had tested positive for the novel coronavirus, as had at least six detention officers and one or two deputies, up from five

16 Id. That number compares with 4,661 detainees at the Cook County jail in Chicago as of April 3. See Sheriff’s Daily Report, https://cutt.ly/4tJAv9r.
the week before.\textsuperscript{17} These numbers represent a more than 5x increase from the week before.\textsuperscript{18} The number has almost certainly grown over the intervening days.

19. Detainees are still being admitted into Dallas County Jail. According to its website, the Dallas Sheriff’s Office did not begin “checking the temperatures of employees assigned to the jail” or asking detainees during the intake process “a set of preliminary questions recommended by Dallas County’s healthcare partners” until March 27, 2020.\textsuperscript{19} Known or suspected cases of COVID-19 require isolation from others, but the housing units at the Dallas County Jail are not set up for mass quarantine or isolation. The Dallas County Sheriff’s Office reports that “[i]nmates that need quarantining are being housed in separate cells.”\textsuperscript{20} According to the Dallas County website, there are fewer than 220 single cells in the North and West Towers of the principal Dallas County Jail facilities (at the Lew Sterrett Justice Center, a few blocks west of downtown Dallas) and an unknown number in the South Tower.\textsuperscript{21}

20. Because inmates continue to be incarcerated in the Dallas County Jail, invariably, this will result in a significant portion of the Dallas County Jail dedicated to quarantine. Because the recommended number of days for quarantine is 14 days,\textsuperscript{22} if any individual in a cohort becomes COVID-19 positive, the entire group should be quarantined for another 14 days. As the number of persons in quarantine grows, managing them clinically becomes unsustainable. As of April 6,

\textsuperscript{17} Editorial, \textit{supra} note 9 (“At the time of this writing, 20 inmates had tested positive for the virus, along with six detention officers and one deputy.”); Ashley Paredez, \textit{Confirmed COVID-19 cases at Dallas County Jail now up to 28}, Fox 4 (April 4, 2020), https://cutt.ly/0tJSenr (“The number of coronavirus cases at the Dallas County jail has increased from five cases last week, to now a total of 28,” and “six [of those testing positive] are detention officers and two are clerks”); \textit{COVID-19 Live Updates}, KERA News (quoting Director of Dallas County Health and Human Services on April 5, 2020 as saying “the jail has 24 cases, which includes 22 inmates and two detention officers,” presenting approximately 25% of all new cases in Dallas County that day), https://cutt.ly/itJSsiy.

\textsuperscript{18} Paredez, \textit{supra} note 17.

\textsuperscript{19} Sheriff’s office COVID-19 Initiatives, \textit{supra} note 14.

\textsuperscript{20} \textit{Id.}

\textsuperscript{21} Dallas County Sheriff, Detention Centers, https://cutt.ly/AtJSO2A.

\textsuperscript{22} \textit{See Interim Guidance, supra} note 15.
2020, more than half of the incarcerated persons in New York City’s jails, over 2500, are in asymptomatic “quarantine status.” 23

21. Keeping people with confirmed COVID-19 cases in the same, quarantined cohort is a correct intervention. However, this can only be done as staff and physical capacity limits allow. For persons who are sick, vulnerable to serious illness, or whose reason for incarceration is less serious—for instance, a technical probation violation, a pretrial bond, or a criminal sentence with less than one year left—release should remain the default public health intervention, notwithstanding an individual’s positive COVID-19 status. In cases where a person positive with COVID-19 should be released, jail and other officials should confirm that the individual can be released to self-quarantine at home or in a temporary socially distant housing option such as a vacant hotel room.24

22. Negative room pressure is an isolation technique used to prevent cross-contamination from room to room of airborne contagious diseases, such as COVID-19. While, if operating properly, they can be effective, there are only a limited number of negative pressure isolation rooms at the Jail, and the known numbers of COVID-19 patients and persons suspicious for infection likely already exceeds the number of isolation beds. Based on available information regarding the characteristics of the Dallas County Jail’s three towers, there are an inadequate number of negative pressure rooms, and thus the conditions there create a high risk of transmission to both staff and other inmates. Increasingly it is difficult to separate suspected and infected persons from the uninfected, and therefore infections will rise. The continuing rise in positive COVID-19 cases at the Dallas County Jail demonstrate that this is already occurring.

23 These persons are not being tested for COVID-19 in New York, though it is my opinion that they should be.
24 See, e.g., Updates: COVID-19 in Washington State, KUOW (Apr. 3, 2020) https://cutt.ly/ftJdzd (discussing, inter alia, the use of vacant hotels to provide temporary housing for those who need to practice social distancing but do not have a stable option on their own).
23. Incarcerated persons in quarantine or in isolation for suspicion or known infection must be monitored. Persons in quarantine should be monitored daily for symptoms and temperature. Individuals in isolation require multiple daily temperatures and monitoring of blood oxygen levels to ensure stability. The required monitoring has had an effect – severely stressing or overwhelming-- on staffing in facilities with significant infections. The COVID-19 pandemic has had a similar effect on staffing in most hospital settings.

24. Newer tests with a turn-around time of one day (“rapid COVID-19 test”) are still being rationed. These tests need to be made available to screen inmates quarantined in order to reduce transmission to newly incarcerated inmates in their arrest quarantine cohort. All incoming inmates into the jail should be screened for COVID-19.

25. Most persons being discharged from the jail have uncertain COVID-19 status. If a person of unknown COVID-19 status is discharged from quarantine or from PUI isolation they can infect persons they come into contact with in the community. For this reason, persons being discharged from the jail who have uncertain status need to be tested with a rapid COVID-19 test prior to discharge and given appropriate instructions on protecting themselves and others. However, testing should not be used to delay release.

26. An individual’s immune system is the primary defense against this infection. As a result, people over 50 years of age and persons with impaired immunity, including chronic diseases, have a higher probability of death if they are infected. It is important to note that the older a person is, the higher likelihood of death; this is thought to be due to impaired immunity with aging. Persons of any age with a number of health conditions including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease),
blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, severe obesity, and asthma, also have an elevated risk.\textsuperscript{25} Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2\%, 9.2\% for diabetes, 8.4\% for hypertension, 8.0\% for chronic respiratory disease, and 7.6\% for cancer.\textsuperscript{26} Persons with severe mental illness in jails and prisons are also, in my opinion, at increased risk of acquiring and transmitting infection because of likely inability or impaired ability to communicate.

27. The current CDC recommendations for social distancing and frequent handwashing measures, which are the only measures available to protect against infection, are extremely unlikely to be adequately enforced in the current correctional environment at the Dallas County Jail. The mandatory cleaning and sanitizing of all surfaces multiple times each day, in bathrooms, toilets, showers, tables, and all surfaces will be extremely difficult to assure. Adequate cleaning supplies and necessary personal protective equipment for all persons must be provided.

28. A large number of employees work in jails and prisons. These individuals have frequent contact with incarcerated persons, which often requires them to break the recommended CDC guidelines for social distancing. Frequent handwashing is not easily available for inmates or staff. Their risk is considerable. At least seven employees at the Dallas County Jail tested positive for COVID-19 as of April 3, 2020, and the number of infected employees will undoubtedly be larger when this Declaration is filed. These employees return to the community and can and will transmit the infection to others in their family and community. In this sense, jails act as incubators.

\textsuperscript{25} World Health Organization, \textit{Coronavirus disease (COVID-19) advice for the public: Myth busters}, https://cutt.ly/dtEiCyc (“Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”); see Centers for Disease Control, \textit{Groups at Higher Risk of Severe Illness}, https://cutt.ly/AtJDxSz.

of respiratory infectious disease. COVID-19 is experiencing a rapid and dramatic spread within the Dallas County Jail and this ongoing outbreak is inevitably resulting in spread to the community. All staff entering the jail should be screened daily for temperature and symptoms, and should be sent home if they cannot pass the screen.

29. Currently, there is limited screening and very little protective housing for all inmates in the Dallas County Jail.

Opinions and Recommendations

30. Given current conditions in the jail, it is my opinion that steps should immediately be taken to release any inmate who is over the age of 50 or otherwise medically vulnerable as described in Paragraph 23 above to protect them from a serious risk of death. No less intrusive intervention will adequately address the public health risk posed by COVID-19 in the Dallas County Jail environment.

31. I also believe anyone in jail for a technical parole violation or less than one year left on a sentence should be removed from the Dallas County Jail. Considerable downsizing is needed—less urgent action will not be sufficient.

32. In addition to release, it is my opinion that the following steps must be taken to protect those in the Dallas County Jail, and that they too are necessary in order to address the threat posed by COVID-19. These additional necessary measures cannot replace the release required as described in Paragraphs 30 and 31.

33. It is my opinion that at this time, testing for COVID-19 must be expanded to all incoming inmates and all inmates about to be discharged. These tests need to be done as rapidly as possible due to problems with potential for transmission in the quarantined population and the need to discharge people quickly. Rapid COVID-19 testing also needs to be expanded for as many
people as possible because of the ongoing continuing rise in cases and continuing transmission within the jail. This recommendation is made to protect both the inmate population and the civilian population who will be exposed to employees who work within the jail.

34. It is my opinion that persons under investigation (PUI) for COVID-19 need to be housed in separate housing and not in cells on tiers with other inmates.

35. It is my opinion that—to the extent, for any reason, they are not immediately released—any incarcerated person over 50, or with severe mental illness, or a medical vulnerability as set forth in paragraph 23, along with all persons in quarantine or who have potentially been exposed to the virus should, immediately, have a daily symptom and temperature screening. Any positive symptom or temperature should require respiratory isolation and testing for COVID-19. All PUI and known COVID-19 positive detainees need to have monitoring every shift with at least vital signs including temperature and pulse oximeter testing.

36. It is my opinion that all persons anticipated being discharged who have uncertain status need to be tested with a rapid COVID-19 test prior to discharge.

37. All symptomatic persons requiring discharge planning services to assure safe transition back to their community must have access to these services, including temporary housing. The need for such services should not be treated as a bar to release.

38. It is my opinion, and the CDC recommendation, that all inmates and staff should wear a face mask. Employees interacting with potentially positive inmates (most inmates at this time) must wear CDC recommended personal protective equipment.

39. It is my opinion that all inmates in the Jail should receive full and free access to sanitation supplies (including soap, cleaning supplies, paper supplies and sanitizer with at least 60 percent alcohol) and adequate advice, orally and in writing, by appropriately trained personnel,
regarding the relevant symptoms to look for, the urgency of the social distancing, and appropriate use of PPE.

40. Jail administration should document that cleaning supplies are available to persons working and living in the jail, that all surfaces in all housing and living areas are cleaned. This information should be published.

41. It is my opinion that all persons housed in the Jail should receive information, both verbally and in writing, about the latest CDC and public health guidance about the COVID-19 disease, including best practices and updated protocols as they emerge.

42. It is my opinion that statistics reflecting the state of the pandemic in Dallas County Jail be published daily and provided to the community, including those who live and work in the jail. This data is essential to assure that current pandemic management plans are working, and to provide timely evidence if they are not, so that plans can be changed.

43. Elements of this daily published report must include:

   a. Number of patients with confirmed COVID-19
   b. Number of patients tested each day
   c. Number of positive and number of negative results received each day
   d. Number of Correction Staff with Confirmed COVID-19 positive (cumulative)
   e. Number of Jail Health Staff with Confirmed COVID-19 (cumulative)
   f. Total Population in Custody
   g. Total New Admissions
   h. Total Pretrial
   i. Total Sentenced
   j. Total held on Technical Parole Violation
k. Total 50+

l. Total in Infirmary Status (Mens and Womens infirmary)

m. Total Pregnant Women in Custody

n. Number in Quarantine Status

  i. Admission

  ii. Exposed, not tested

o. Number of Persons Under Investigation (PUI)

p. Number COVID-19 in cohorted housing

q. Total Hospitalized

  i. Daily Hospital Admissions

  ii. Daily Hospital Discharges

  iii. Daily Number of Patients on Ventilators

  iv. Deaths (daily and cumulative)

44. It is my opinion that all persons hosed in the Jail should receive clean, laundered sheets and clothing at least twice a week, and showers with soap once per day, and at least one hour of large muscle recreation.

45. It is my opinion that sufficient physical distancing must be implemented throughout the Jail, including allowing for six feet of distance between inmates, in addition to the measures outlined above for those who are positive or PUI. People should be released from the jail until it can be run in a manner that ensures sufficient social distancing at all times, beginning with persons over 50 and the medically vulnerable, as I set forth above.

46. It is my opinion that inmates must continue to have access to timely and emergency medical and mental health care as this virus continues to spread.
47. It is my opinion that the Sheriff must be in close communication with the health staff and the Dallas County Department of Health and Human Services.

48. In reaching my opinion in this matter, I relied on my personal expertise, professional experience in correctional medicine, as well as the statements referenced above regarding operations at the Dallas County Jail.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7\textsuperscript{th} day of April, 2020 in \textit{New York}.

\begin{center}
\textbf{Robert L. Cohen, M.D.}
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