

DAVID DANIELS, JODIE CAMPBELL, and	§	IN THE DISTRICT COURT OF
KEILIE McCULLAR, on behalf of themselves	§	
and a class of medically-vulnerable persons,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	DALLAS COUNTY, T E X A S
	§	
DALLAS COUNTY SHERIFF MARIAN	§	
BROWN, in her official capacity,	§	
	§	
Defendant.	§	298TH JUDICIAL DISTRICT

**PLAINTIFFS’ FIRST AMENDED VERIFIED PETITION
FOR EMERGENCY RELIEF AGAINST UNLAWFUL ENDANGERMENT OF
MEDICALLY-VULNERABLE PERSONS DETAINED IN DALLAS COUNTY JAIL**

Plaintiffs bring this action for themselves and on behalf of a class of medically-vulnerable persons under the Texas Constitution’s Bill of Rights and under Texas statutory and common law for emergency injunctive relief against Defendant Dallas County Sheriff Marian Brown (the “Sheriff”) for detaining approximately 1,800 medically-vulnerable persons at the Dallas County Jail (the “Jail”) in unsafe and unconstitutional conditions that make the ongoing and rapid spread of novel coronavirus disease 2019 (“COVID-19”) in the Jail inevitable and thus endanger the lives and health of the medically-vulnerable persons and of the larger Dallas community.¹

Necessity of Action

The reasons that make this action necessary are simple and obvious:

- COVID-19 poses a serious threat to health and life;
- The threat is especially elevated for people who are medically vulnerable;

¹ For avoidance of doubt, Plaintiffs are not asking the Court to order the release of any person from the Jail. The purpose of this suit is to compel the Sheriff to perform her mandatory, ministerial duty to keep people in her custody safe from a deadly, highly communicable disease by taking steps necessary to allow everyone detained in the Jail to practice effective social distancing.

- The medical consensus is that 6 feet of social distancing is required to prevent the spread of COVID-19; and
- Social distancing is not possible at the Dallas County Jail complex under current conditions.

This pre-pandemic photograph—showing one of the dozens of 64-person “pods” in the Jail at *well below full capacity*—highlights the impossibility of social distancing:

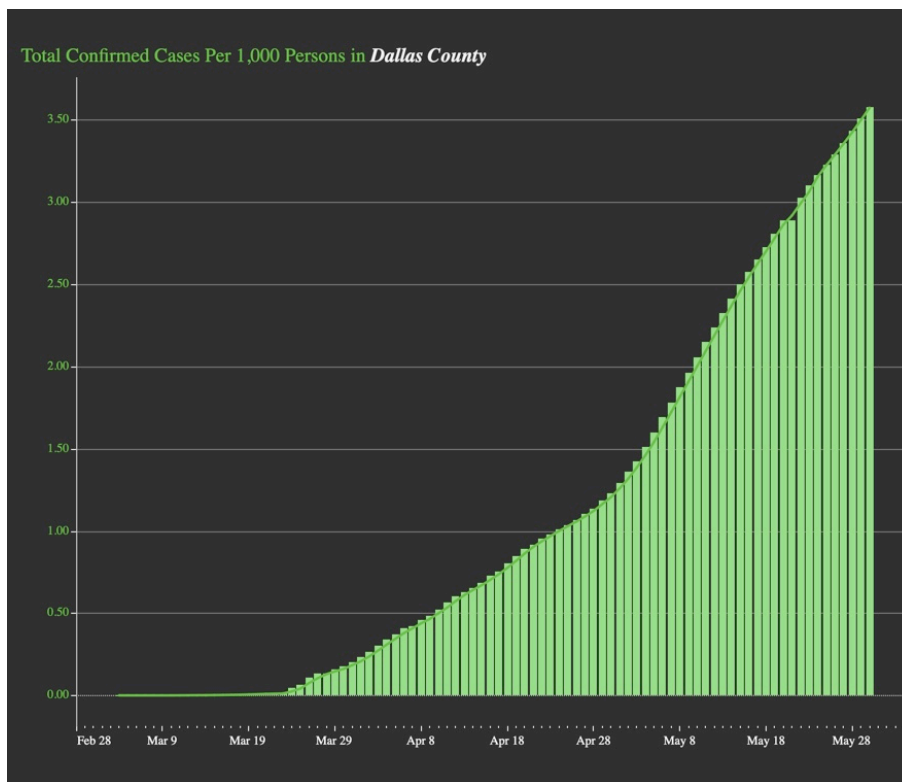


How did conditions at the Jail get so bad? The Sheriff learned on March 25, 2020 that one of the approximately 5,600 men and women then in her custody at the Jail had contracted COVID-19, the most dangerous and infectious disease to appear in more than a century. Since then, the Sheriff’s refusal to enforce social distancing has allowed the Jail to become what the Texas Health and Safety Code declares a “public health nuisance”—a “place . . . that is a possible and probable medium of disease transmission to or between humans.”² Indeed, by May 28, 2020, the number of *confirmed* sick detainees had soared to 383³—a number that plainly understates the *actual* extent

² Tex. Health & Safety Code § 341.011(12).

³ *Dallas County Health and Human Services 2019 Novel Coronavirus (COVID-19) Summary* (“*Dallas County Summary*”), May 29, 2020, Table 6 (access on May 31, 2020) (available at

of COVID-19 cases due to the Sheriff’s failure to conduct anything close to adequate testing in the Jail.⁴ Even with significant under-testing, the Dallas County Jail is the third-highest source of COVID-19 cases in all of Dallas County, behind general community spread and long-term care facilities.⁵ And the *rate* of COVID-19 infection in Dallas County is the highest of all large Texas counties and rising rapidly, as this chart by Texas Department of State Health Services shows:⁶



https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_052920.pdf.

⁴ The Jail averages only 11 COVID-19 tests per day, has capacity for only an average of 25 tests per day, and does not test members of the Jail’s guards and other staff at all. *See* Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

⁵ *Dallas County Summary*, May 29, 2020, Table 6 (access on May 31, 2020) (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_052920.pdf),

⁶ Texas Department of State Health Services, *Texas COVID-19* (access on May 20, 2020) (available at <https://tabexternal.dshs.texas.gov/t/THD/views/COVIDExternalQC/COVIDTrends?%3AisGuestRedirectFromVizportal=y&%3Aembed=y>). The rate of COVID-19 infection as of May 19, 2020 per 1,000 persons is approximately 1.25 in Bexar County, 2.40 in Harris County, 2.45 in Travis County, 2.50 in Tarrant County, 3.10 in El Paso County, and 3.60 (up from 2.85 on May 19, 2020) in Dallas County. *Id.*

Texas law requires that Plaintiffs and the class members be granted emergency relief. That is because the Sheriff’s exposure of thousands of medically-vulnerable detainees (and 1,300 staff) to the threat of severe illness and death violates their right to “due course of the law,”⁷ inflicts on them “cruel or unusual punishment,”⁸ and ignores the Sheriff’s mandatory duties that she “*shall abate* a public health nuisance in or on a place [she] possesses as soon as [she] knows that the nuisance exists”, that the “county jail *must be . . . maintained* in a clean and sanitary condition”, that medical instructions of designated physicians *shall be followed*”, and that “[p]reventive maintenance, to include necessary repairs, *shall be conducted* to ensure a safe, secure, and *sanitary* facility”.⁹ Nor does sovereign immunity shield the Sheriff’s conduct, since Plaintiffs are entitled to “injunctive relief under the Texas Constitution”¹⁰ and the Texas Tort Claims Act waives immunity for threats of “personal injury and death so caused by a condition or use of tangible personal or real property.”¹¹

Emergency relief is necessary to prevent imminent irreparable injury to Plaintiffs—not to mention the Jail’s detention services officers (“DSOs”), their family members, and larger community outside the Jail’s walls. As a new study by experts at the University of Texas Southwestern Medical Center demonstrates, moreover, enforcing social distancing in the Jail will prevent serious viral infection of the Plaintiffs, the members of the class, and many others in Dallas County. *See* pages 26-28 below. The abundant evidence presented by and incorporated into this First Amended Verified Petition amply supports emergency relief, which will compel the Sheriff

⁷ TEX. CONST. ART. I, § 19.

⁸*Id.* § 13. The guarantee of “due course of the law” and prohibition against “cruel or unusual punishments” have been fundamental Texas law since its founding as an independent republic and appear, respectively, in articles 6 and 11 of the Declaration of Rights in the Constitution of the Republic of Texas (1836).

⁹ Tex. Health & Safety Code § 341.012(a) (emphasis added); Tex. Local Gov. Code § 351.010(4) (emphasis added); Tex. Admin. Code § 273.3 (emphasis added); *id.* § 279.3 (emphasis added).

¹⁰ *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 391 (Tex. 2007) (per curiam) (affirming refusal to dismiss “claims for injunctive relief based on alleged constitutional violations”).

¹¹ Tex. Civ. Prac. & Rem. Code § 101.021(2).

to do her constitutional and statutory duty but will do so in a way that does not mandate particular methods.¹² Accordingly, the Court should conditionally certify this case as a class action under Rule 42 of the Texas Rules of Civil Procedure and grant the class a temporary restraining order and temporary and permanent injunctions to remedy the unconstitutional and unlawful conditions at the Jail.

Discovery Level

1. Plaintiffs intend to conduct discovery under Level 3.

Parties

2. Plaintiff David Daniels is a Texas citizen and a resident of Dallas County. Daniels is currently detained in the Jail, has a history of asthma, and is medically vulnerable to COVID-19.

3. Plaintiff Jodie Campbell is a Texas citizen and a resident of Dallas County. Campbell is currently detained in the Jail, has a history of emphysema and asthma, and is medically vulnerable to COVID-19.

4. Plaintiff Keilie McCullar is a Texas citizen and a resident of Dallas County. McCullar is currently detained in the Jail, has a history of high blood pressure, lung problems, and asthma, and is medically vulnerable to COVID-19.

¹² The evidence supporting this First Amended Verified Petition includes four days of testimony in a pending federal lawsuit against the Sheriff and Dallas County, *Sanchez v. Dallas County Sheriff Marian Brown*, No. 20-cv-832-E (N.D. Tex.); government statistics and statements published on official websites and cited in footnotes; the Declaration of Eric T. Lofgren, MSPH Ph.D.; the Declaration of Ank Nijhawan, M.D., M.P.H., M.S.C., M.S.C.S.; the Declaration of Robert L. Cohen, M.D., Regarding the Spread of COVID-19 in and from the Dallas County Jail; and the Affidavit of Thomas William Boston. The federal lawsuit alleges claims exclusively under federal law. The *Sanchez* defendants asserted multiple defenses, including that the plaintiffs should or must seek recourse under Texas law, in Texas state court. The federal court denied immediate relief by of April 27, 2020. On May 21, 2020, the day Plaintiffs brought this action, they gave the federal court notice of it along with a copy of Plaintiffs' Verified Petition for Emergency Relief Against Unlawful Endangerment of Medically-Vulnerable Persons Detained in Dallas County Jail ("Verified Petition"). On the following evening, the federal court issued a Memorandum Opinion and Order ("Memorandum Opinion"), explaining its April 27 ruling in terms of "**Federalism Concerns**" that the court believed called for its own "**abstention**" in favor of what the federal court earlier described as "trial on the merits in the state court" and pursuit of "available state remedies". Memorandum Opinion at 35, 38 & 26 (emphasis added).

5. Defendant Dallas County Sheriff Marian Brown is a Dallas County official, the head of the Dallas County Sheriff's Department, and the keeper and possessor of the Jail. Although the Sheriff is the final policymaker for running and administering the Jail, she has mandatory, non-discretionary obligations under the Texas Constitution and statutory law. She has immediate custody over Plaintiffs and all other members of the class of detainees. Plaintiffs bring this action against the Sheriff solely in her official capacity.

Jurisdiction and Venue

6. The Court has jurisdiction over the subject matter under the Texas Constitution, Texas common law, and section 65.021(a) of the Texas Civil Practice and Remedies Code. The case falls within the Court's jurisdictional limits.

7. Venue for the case properly lies in Dallas County under section 15.015 of the Texas Civil Practice and Remedies Code because it is effectively (although not actually) an action against Dallas County.

Class Action

8. Plaintiffs seek to represent a class ("Class") of all medically-vulnerable person who currently are or who come to be detained in the Jail.

9. "Medically-vulnerable person" means the person in custody is over the age of 50 or experiences (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g., bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) hypertension; (f) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other

autoimmune disease); (g) blood disorders (including sickle cell disease); (h) inherited metabolic disorders; (i) history of stroke; and/or (j) a current or recent (within the last two weeks) pregnancy.

10. This action has been brought and may properly be maintained as a class action under Texas law. It satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 42(a) of the Texas Rules of Civil Procedure.

11. Joinder is impracticable because (1) the Class is numerous; (2) the Class includes future members, and (3) the Class members are or will be incarcerated, rendering their ability to institute individual lawsuits limited.

12. The Jail currently houses approximately 1,800 Class members.

13. Common questions of law and fact exist as to all members of the Class: all are at unreasonable risk of serious harm from contracting COVID-19 due to the conditions in the Jail and the Sheriff's failure to take reasonable measures to assure their safety from the disease, and all have a right to receive adequate COVID-19 prevention, testing, and treatment. Questions of fact common to all proposed Class members include whether COVID-19 is a serious disease that poses an intolerable risk to health and safety and whether the conditions in the Jail expose Class members to a heightened risk of contracting COVID-19 and heightened risk of serious illness, injury, or death. Questions of law common to all Class members include whether Plaintiffs' rights are being violated and what relief is available to mitigate the risks posed by their confinement in the Jail.

14. Plaintiffs are medically-vulnerable persons detained in the Jail, and their claims are typical of the Class members' claims. The Sheriff has placed them at significant risk of harm by failing to take appropriate steps to address the risk of contracting, and being rendered seriously ill

or injured by, COVID-19 in the Jail. Plaintiffs face heightened risk of contracting COVID-19 if they are not adequately protected by the Sheriff.

15. Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests adverse to the interests of the proposed Class. Plaintiffs retained counsel with experience and success in the prosecution of civil rights litigation. Counsel for Plaintiffs know of no conflicts among proposed Class members or between counsel and proposed Class members.

16. The Sheriff has acted on grounds generally applicable to all proposed Class members, and this action seeks injunctive relief. Plaintiffs therefore seek class certification under Rule 42(b)(2).

FACTS

Overview

17. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the United States declared the COVID-19 pandemic a national emergency.

18. On March 23, 2020, the Centers for Disease Control and Prevention (CDC) issued its Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (“CDC Interim Guidance”). The CDC Interim Guidance recommended “social distancing” as a “cornerstone” of any strategy to prevent the spread of COVID-19 in a jail setting.

19. Ank Nijhawan, M.D. MPH, MSCS, is an infectious diseases expert who works in the Dallas County Jail and has been managing the Jail’s response to the pandemic. She works with

the medical care providers who work at the Jail for Dallas County’s Parkland Health and Hospital System (“Parkland”).

20. The serious threat that COVID-19 poses to people detained in the Jail so concerned Dr. Nijhawan that on March 23, 2020, she prepared a list of approximately 2,200 people whose age or poor health makes them especially vulnerable to severe illness and death if they contract COVID-19.

21. Dr. Nijhawan’s concern was prophetic. Two days after she prepared the list, the Jail for the first time discovered that a person detained in the Jail was positive for COVID-19. That person had entered the Jail in December 2019, meaning that he had been living in the general population, potentially spreading the virus to others for weeks if not months, and that he had contracted COVID-19 from someone else who had been in the Jail, but the Jail never determined who. Perhaps coincidentally, on the same day, the Jail received an autopsy report—for a detained person who had passed away in custody in February 2020—that identified the cause of death as “Bronchopneumonia”,¹³ “a common and potentially deadly complication of infection with the novel coronavirus that leads to COVID-19.”¹⁴

22. Before March 25, 2020, the individual who was the first to test positive had lived and slept in two different “pods” in the South Tower of the Jail. Pods in the Jail house up to 64 detainees at a time. Detainees assigned to pods sleep in bunk beds within a few feet of each other and share a day room, toilets, showers, tables, pay phones, an electronic kiosk for (among other things) video conferences and sending and receiving messages, and other common facilities. This

¹³ Office of the Attorney General of Texas, *Custodial Death Report*, Mar. 25, 2020 (“The report depicts that the Decedent [Nathaniel Washington] died as a result of Bronchopneumonia. Congestive Heart Failure and Chronic Kidney Disease due to Hypertensive Cardiovascular Disease and Diabetes Mellitus also contributed to the Decedent’s death.”) (available at <https://oagtx.force.com/cdr/cdrreportdeaths>).

¹⁴ Elain K. Howley, *What Is Coronavirus Pneumonia?*, May 1, 2020 (access one May 19, 2020) (available at <https://health.usnews.com/conditions/articles/what-is-coronavirus-pneumonia>).

person may have exposed a large number of people to the disease, including other people detained in the Jail, along with guards, nurses, food servers, and visiting lawyers and family members. Many of the people the person exposed were subsequently moved elsewhere within the Jail, and some of them were released into the community outside the Jail.

23. Despite the discovery of an active COVID-19 case in the Jail and the high probability that the individual had exposed others in the Jail, including detained persons and staff alike, the Sheriff did not promptly adopt or implement the CDC Interim Guidance. Nor did she provide the CDC Interim Guidance to DSOs or other Jail staff or provide them with training about COVID-19. She has even failed to update the Jail’s policy—already a decade old—for handling infectious diseases within the Jail.

24. Indeed, Sheriff Brown did not create or distribute *any* overall policy for dealing with COVID-19.

25. On the same day the first COVID-19 case in the Jail was confirmed, Dr. Nijhawan sent an extraordinary letter to Sheriff Brown and other Dallas County officials. Her letter provided dire warnings of “real and immediate danger to the health of the community.” She wrote (with emphasis added) as follows:

As an infectious diseases doctor, I strongly urge you to consider *releasing defendants* in the Dallas County Jail who are charged with non-violent offenses. For the reasons below, it is important to prioritize inmates who are older (over 50 years of age) or have pre-existing conditions such as cancer, diabetes, lung disease (such as asthma or chronic obstructive pulmonary disease), heart disease, or HIV.

The Dallas County Jail and other large correctional facilities *pose a real and immediate danger to the health of the community*. An even limited outbreak of COVID-19 in the Dallas County Jail has *the potential to overwhelm our already overburdened hospital system and will directly impact security staff and healthcare staff at the jail*. As we have already had *one incarcerated individual test positive for COVID-19*, and *this epidemic can spread quickly* both within the jail and to vulnerable people in our community.

According to the Centers for Disease Control and Prevention, older adults and people with serious chronic medical conditions like heart disease, diabetes, and lung disease are at higher risk of becoming ill from COVID-19. On average, the people housed in our correctional facilities are older and more likely to suffer from poor physical health and illness as compared with the general public, which means they are exactly the type of high-risk group that will fall very sick if they come into contact with COVID-19. Of the 5000+ persons incarcerated at the Dallas County Jail, over half have chronic medical conditions.

To make matters worse, *social distancing is nearly impossible in a jail setting*, where people are housed in a relatively small spaces with up to 60 people at a time. In addition *200-300 inmates enter and leave the Dallas County Jail on a daily basis*, severely limiting the ability to meaningfully quarantine individuals who have been exposed or who are at high risk for developing the disease.

If we do not reduce the population in the Dallas County Jail substantially, and in very short order, we risk *contributing to an already expanding outbreak, compromising the health of vulnerable incarcerated individuals, jail healthcare providers and security staff as well as jeopardizing the health of the Dallas community at large*.

Sincerely,

/s/

Ank Nijhawan, M.D., MPH, MSCS

26. Since Dr. Nijhawan sent this letter to Sheriff Brown on March 25, 2020, the pace of infection in the Jail has skyrocketed. By April 21, 2020, the number of confirmed positives among people detained in the jail stood at 81. Two weeks later, the number had more than tripled, to 248. As of May 19, 2020, it had risen further to 333.

27. These alarming numbers are almost certainly dramatic undercounts. Astonishingly, although the administrator of medical services at the Jail believes that testing should be expanded, a daily average of only 11 COVID-19 tests *are* being administered at the Jail—and a daily average of only 25 tests *can be* administered at the Jail due to a shortage in available capacity.¹⁵ There are

¹⁵ Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as

thus very probably far more detained persons (and detention service officers, or DSOs) who are sick with COVID-19 at the Jail than we currently know.¹⁶

28. On May 22, 2020, the Governor of Texas officially recognized that “the jail population in Texas presents unique challenges in mitigating against and responding to the spread of COVID-19”.¹⁷ The Governor declared that exposing persons detained in a jail to persons who might have COVID-19 would create “an unacceptable risk of importing COVID-19” into the jail.¹⁸ Yet the Sheriff has persisted in failing to take effective measures to address the “unacceptable risk” posed by the “unique challenges in mitigating against and responding to the spread of COVID-19” at the Dallas County Jail.

The Jail Complex

29. These tragic circumstances are unfolding in a massive complex that consists of three connected buildings called the Lew Sterrett Justice Center near downtown Dallas. The complex comprises the North Tower, West Tower, and South Tower and can hold up to a total of 7,100 detained persons.¹⁹ As of May 1, 2020, 4,805 people were detained in the Jail,²⁰ up slightly from the average of 4,714 during May 2019.

30. The North Tower is a maximum-security facility that houses up to 3,292 detained persons but has only 188 single cells. The West Tower has capacity for up to 1,530 detained

of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

¹⁶ *As Many as 50 Percent of People with COVID-19 Aren't Aware They Have the Virus*, Apr. 24, 2020 (available at <https://www.healthline.com/health-news/50-percent-of-people-with-covid19-not-aware-have-virus#How-transmission-works>).

¹⁷ Governor of the State of Texas, *Executive Order GA 26* at 1, May 22, 2020 (available at https://gov.texas.gov/uploads/files/press/EO-GA-25_in-person_visitation_for_jails_COVID-19.pdf).

¹⁸ *Id.*

¹⁹ *Dallas County Sheriff Detention Centers* (available at <https://www.dallascounty.org/department/sheriff/detention.php>).

²⁰ *Texas Commission on Jail Standards—Abbreviated Population Report for 5/01/2020* at 2 (available at <https://www.tcjs.state.tx.gov/wp-content/uploads/2020/05/AbbreRptCurrent.pdf>).

persons but only 25 single cells. The South Tower has a capacity of 2,304 and 0 single cells and is a “direct supervision facility” in which DSOs “work inside the actual housing unit with the inmates”.²¹

31. The vast majority of detained persons in the Jail occupy bunk beds in tanks and pods capable of holding 8, 28, and 64 individuals, respectively. The West Tower alone has 132 8-person tanks.²² The tanks in the North Tower hold up to 24 detained persons. Each floor of the South Tower has 9 pods holding as many as 64 detained persons.

32. The pre-pandemic photograph on page 2 above depicts a typical pod in the South Tower. The following image shows part of a typical 24-person tank, including the common area in the foreground and multiple-person cells on the far side, in the North Tower.²³



²¹ *Id.*

²² *Dallas County Detention Centers* (available at <https://www.dallascounty.org/departments/sheriff/detention.php>).

²³ The image was excerpted from a video, “Behind Bars: The World’s Toughest Prisons”, that is available online at <https://www.youtube.com/watch?v=fkX2hanoYyM>. The page on which the video appears provides a date of November 5, 2018. Testimony in the *Sanchez* case established that the image is a fair and accurate depiction of a pod in the South Tower as of April 2020.

The Critical Lack of Social Distancing in the Jail

33. Jails must maintain or create environments that allow social distancing because it is the only way to prevent people from contracting COVID-19.

34. The CDC Interim Guidance says both good hygiene practices and social distancing are indispensable in preventing further transmission of the virus. It is necessary to practice social distancing, meaning people must keep at least 6 feet apart, to reduce the likelihood the virus will spread. The closer people are to each other, the more rapidly the virus spreads.

35. According to the CDC Interim Guidance, social distancing is a “cornerstone” of any strategy to control the spread of COVID-19 in a detention facility like the Jail.

36. Everyone is at risk of catching COVID-19. Congregate settings—like jails, nursing homes, and meatpacking plants—are the most fertile ground for rapid spread because social distancing is impossible in those environments; they are currently the sites of the largest outbreaks in the United States.²⁴ The same is true in Dallas County, where congregate settings account for at least 12 percent of known COVID-19 cases.²⁵ In a statement on May 16, 2020, Texas Governor

²⁴ See Dylan Matthews, *America’s Covid-19 hot spots shed a light on our moral failures*, May 1, 2020 (available at <https://www.vox.com/future-perfect/2020/5/1/21239396/covid-19-meatpacking-prison-jail-moral>); *Texas prisons see more than 38,000% spike in coronavirus cases*, May 1, 2020 (available at <https://www.kvue.com/article/news/investigations/defenders/texas-prisons-see-spike-in-coronavirus-cases/269-4ecec259-0c97-4436-884a-66b95a3dd7c7>); Avery Travis, *In under two weeks, Texas jails see 340% increase in inmates testing positive for COVID-19*, Apr. 30, 2020 (available at <https://www.kxan.com/investigations/in-under-two-weeks-texas-jails-see-340-increase-in-inmates-testing-positive-for-covid-19/>); Tyler Hicks, *As COVID-19 Hits Jails and Prisons, Texas Inmates Call for Action*, Apr. 28, 2020 (available at <https://www.dallasobserver.com/news/coronavirus-texas-jails-prisons-11904509>); Lomi Kriel, et al., *Texas Still Won’t Say Which Nursing Homes Have COVID-19 Cases. Families Are Demanding Answers*, Apr. 30, 2020 (available at <https://www.propublica.org/article/texas-still-wont-say-which-nursing-homes-have-covid-19-cases-families-are-demanding-answers>); Coltrain, Gruber-Miller & Eller, *Iowa prisons, jails, meatpacking plants and long-term care facilities face growing COVID-19 challenges*, Apr. 20, 2020 (available at <https://www.desmoinesregister.com/story/news/health/2020/04/20/iowa-gov-kim-reynolds-coronavirus-covid-19-news-conference-maps-data-matrix-stay-at-home/5163891002/>).

²⁵ See Dallas County Summary, May 15, 2020, Table 6 (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_051520.pdf).

Abbott referred to nursing homes, meat packing plants, and jails as the “most high-risk areas” in the state in terms of COVID-19 infection.²⁶

37. Research shows that COVID-19 has a lengthy incubation period and that many people are asymptomatic carriers, meaning that a person can spread the disease to others without ever knowing that the individual is sick. This reality makes social distancing even more important as a precaution to prevent the spread of COVID-19 by undetected carriers of the novel coronavirus.

38. Indeed, without universal testing, treatment, or a cure, the only way to effectively stop the spread is to separate people and minimize the opportunities for COVID-19-positive people to infect others.

39. Jail populations have experienced a rapid spread in COVID-19, because people are forced to live, 24 hours a day, in cramped, unsanitary quarters, without access to sufficient space to social distance and without the ability to take basic health and sanitation precautions, including washing their hands, cleaning communal surfaces, obtaining clean laundry, and avoiding infected or potentially infected people—like the DSOs who might touch them or the kitchen workers who provide them food. Indeed, the Jail’s kitchen has been an especially prolific source of COVID-19 infections.

40. DSOs and other Jail staff are equally vulnerable, and because they leave the Jail every night, they in turn may expose their families and communities to COVID-19.

41. Personal Protective Equipment (“PPE”) is not an effective substitute for social distancing. Effective PPE—such as an N95 mask—is not available for detained persons or for the vast majority of staff in the Jail. Nor has Sheriff Brown provided training for people detained in

²⁶ Office of Tex. Gov., Press Release: *Governor Abbott Releases Statement, Provides Details on Increased Cases in Amarillo*, May 16, 2020 (available at <https://gov.texas.gov/news/post/governor-abbott-releases-statement-provides-details-on-increased-cases-in-amarillo>).

the Jail on the proper use of the PPE that is available. The limited number of paper masks that have been provided generally do not prevent the wearers from inhaling droplets carrying the novel coronavirus that causes COVID-19 and at best reduce the spread of droplets when the wearers exhale, cough, or sneeze. They do not even do that when they are broken, which is common, or are not worn, which happens often, whether during meals, sleep, showers, or other times.

42. There have been many recent instances of poor and non-existent social distancing practices in the Jail.

43. In each of the Towers, the Sheriff requires DSOs in the Jail to conduct a “round” at least every 44 minutes during their 8-hour shifts. A round involves walking through the pod or tank in close proximity to everyone detained in the pod or tank at least 10 times each shift.

44. Protective measures are so haphazard at the Jail that a DSO working in the South Tower, Emmanuel Lewis, was never told that the pod he was assigned to was on quarantine until he arrived at work, walked into the pod, and saw a sign saying it was locked down.

45. Even when they are under quarantine, pods in the South Tower are still routinely visited by DSOs, nurses, people who deliver meals, people who deliver the mail, and others who cycle throughout the Jail.

46. Detainees in the South Tower still line up for meals in pods without social distancing. The line goes through the restroom area and to the showers, and with limited space to line up, all persons in the pod are in close contact while in line. During meals, which last about 30 minutes, people detained in the Jail sit within 6 feet from each other and do not wear masks.

47. It is not possible to adequately socially distance under these current and ongoing living conditions and density of population at the Jail. Following social distancing guidelines in the Jail would require either reducing density inside the Jail by using currently unoccupied pods

and tanks or by releasing some detained persons from the Jail, thus allowing for enough space in the Jail for detained persons, DSOs, and other staff and visitors to keep at least 6 feet apart.

48. The number of people that the population needs to be reduced by is dictated by the number of people that can be in the Jail and allow for eating, living, and sleeping at least 6 feet apart in the pods and tanks that can be staffed with DSOs.

49. The Jail is not making sufficient efforts to protect medically-vulnerable persons from infection because the Jail is not practicing social distancing for those detainees and as a practical matter cannot do so given its ability to staff and use pods, tanks, and other crowded spaces.

50. The Jail has no contingency plan for separating COVID-19-positive patients in light of the availability of only 213 single-person cells in the Jail and is simply crowding detained persons into the pods and tanks it is able to staff with DSOs.

51. There are too many people in the Jail for social distancing to be effective in pods and tanks, and the Jail has refused to release sufficient numbers of medically-vulnerable people, who are highly likely to develop complications and overwhelm the medical staff.

Lack of Cleaning Shared Areas and Common Surfaces in the Jail

52. The lack of effective cleaning and poor hygienic practices in the Jail make the lack of social distancing an even greater threat to the health and lives of Plaintiffs and the Class members.

53. The CDC Interim Guidance recommends intensifying cleaning and disinfecting procedures, including wiping down commonly touched surfaces several times per day, as a means of preventing and containing a COVID-19 outbreak.

54. Yet all routine cleaning inside the Jail is done by the people who are detained there—who are not professional cleaners and are not trained on proper cleaning techniques. Further, the Jail does not provide the CDC-recommended bleach-based cleaner.

55. Detainees in the Jail are responsible for cleaning common areas within pods and tanks. No alcohol wipes or other disinfectant wipes are provided.

56. Common surfaces where droplets of the coronavirus may accumulate are not cleaned. When detainees are using the dayrooms in South Tower pods, for example, they take the plastic chairs stacked underneath the staircase and set them up at the tables. In a typical shift, the chairs are not cleaned, wiped down, or sprayed with disinfectant.

57. Nor are the electronic kiosks and pay phones for people detained in the Jail to use for communications cleaned or disinfected. Despite being in almost constant use, the kiosks and pay phones are not cleaned, wiped down, or sprayed with disinfectant. The video kiosks in South Tower pods are used by up to 64 people and have been used a lot more frequently since the Jail stopped in-person visits as a result of the pandemic.

58. Cleaning of areas that have been occupied by people showing COVID-19 symptoms is also haphazard. Pods where such detainees had been held are not cleaned by professional cleaners.

59. Examples of deplorable hygiene at the Jail are common. In one incident, a detainee in the E pod of South Tower started vomiting in the night, and no one cleaned it up. In the morning, a DSO tried to get the detainee to clean up after himself, but he was unresponsive, and he continued to lay in his bunk, coughing, sneezing, and vomiting. Jail staff simply moved him to a bottom bunk across from the urinal so that he would not have to walk very far in order to throw up.

60. When Jail staff came with gloves and masks to remove the ill person, they did not give the other detainees in pod E any instructions about how to protect their health. Nor did they provide any of the inmates in pod E with any cleaning supplies or PPE.

61. There is one sink in each of the South Tower pods. The sink and the bar of soap at the sink are used by up to 64 people in the pod. People detained in the jail have access only to bars of soap and cannot obtain liquid soap.

Lack of Training for DSOs and Detainees in the Jail

62. Poor or non-existent training further heightens the danger of coronavirus infection to detained persons in the Jail.

63. The CDC Interim Guidance calls for providing up to date information about COVID-19 to DSOs and detainees on a regular basis. It also recommends updating DSOs about facility policies regarding COVID-19 on a regular basis. It further specifies that training should be given by medical personnel.

64. The Parkland administrator for medical care at the Jail agrees that it is important for DSOs to have training specific for social distancing in the age of COVID-19 in order to effectively implement social distancing. Yet Parkland has never provided training for social distancing or other matters addressed by the CDC Interim Guidance to DSOs or detained persons in the Jail—other than making a videotape available for DSOs to view regarding putting on PPE and taking it off.

65. As of May 19, 2020, the only training that any of the DSOs have received relating to COVID-19 also concerned PPE. And even that training was not about preventing the spread of COVID-19 among detained persons or adhering to CDC guidelines but aimed instead at compliance with Occupational Safety and Health Administration requirements.

66. Nor has the Sheriff provided DSOs with any written instruction about social distancing, about guidance for COVID-19 by the CDC, or even about how to identify COVID-19. DSOs were forced to rely on their own common sense and whatever they were able to research on their own about COVID-19 because they were not given any training, either orally or in writing, from the Sheriff about what to do during this pandemic.

67. The reality of life for detained persons in the Jail is illustrated by this recent photograph, which shows several detainees in an image communicated through an electronic kiosk on April 22, 2020:



The detainees' inability to practice social distancing, the absence of training to impress on the detainees the importance of social distancing to their lives and health, and the absence of clean and effective PPE are not the exception in the Jail. They are the ever-present rule.

Lack of Testing in the Jail

68. Testing for COVID-19 is essential to determining how far it has spread. It is therefore important to expand testing in Jail populations in order to be able to understand how many persons may be asymptomatic and to identify people who have COVID-19 in order to remove them from the general population.

69. In testimony he gave on April 24, 2020, the Parkland administrator responsible for medical care in the Jail, Patrick Jones, said he believed that more testing should be done in the Jail.

70. But testing is rare and haphazard. DSOs are completely excluded from testing for COVID-19 at the Jail because Parkland provides healthcare exclusively for detained persons, not staff.

71. Detained persons who have COVID-19 and are shedding the coronavirus but are asymptomatic are very unlikely to be tested in the Jail. Even if they have symptoms like fatigue, sore throat, or congestion, they would not come to the attention of the floor nurse or anyone affiliated with Parkland if they did not report their symptoms. Many people infected with COVID-19 are very likely undetected in the Jail.

72. Nor in any event are there enough COVID-19 tests to test more than a small number of people at the Jail on any given day. The Dallas County health department processes the COVID-19 testing for the Jail but does not have the capacity to provide any more than a daily average of 25 test results for the Jail. Although Parkland is not satisfied with the level of testing that is being done at the Jail and wants to expand it, as of May 15, 2020, Parkland was administering an average of only 11 COVID-19 tests at the Jail each day.²⁷

²⁷ Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (“April Foran, a spokeswoman for Parkland Memorial Hospital, said the jail was averaging 11 tests per day as of May 1.”) (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>).

73. Nor are people entering and leaving the Jail—lawyers, loved ones, staff who work at the Jail, or medical staff from Parkland—tested for COVID-19 by the Jail. The only people who get tested are people who are symptomatic detainees and for some reason or another come to the attention of Parkland and who Parkland chooses to test.

Heightened Danger to Medically Vulnerable Persons in the Jail

74. The CDC Interim Guidance states that some groups are especially at risk of developing complications and dying from COVID-19. These include persons who have cardiac disease, chronic liver or kidney disease, or diabetes as well as obese persons and immune compromised persons who have had cancer.

75. Dr. Nijhawan believes it is important to prioritize releasing people who are older (over the age of 50) or have preexisting conditions such as cancer, diabetes, lung disease, such as asthma, or chronic obstructive pulmonary disease (heart disease or HIV).

76. The age of 50 is the right threshold because detained people tend to have a biological age about 10 to 15 years older than their chronological age given that people with poverty, mental and physical health problems, and substance use issues are overrepresented in the jail, and those issues age people significantly. This is the same for convicted persons and pretrial jail detainees because people turn through the systems one day after the next. The population is largely the same.

77. Patrick Jones, the Parkland administrator at the Jail, agrees that if a medically-vulnerable person contracts the COVID-19 disease, the odds that it will cause serious harm to that person are greatly increased because the risk factors are higher. He also agrees that in April 2020 there were more than 2,000 people in the Jail who were at a higher risk of serious harm—enough to require hospitalization or cause death—if they were to become infected by COVID-19. He

further agrees that COVID-19 is a disease that is many times more likely to be fatal than a flu disease or a flu.

Conditions at the Jail Are Worsening

78. The rapid increase in detected COVID-19 cases at the Jail reflects worsening conditions and portend graver circumstances in the near future. Even the Parkland administrator testified that as of April 24, 2020, he expected more people detained in the Jail to contract COVID-19 every day. He noted that the rate of infection of detainees with COVID-19 in the Jail was still increasing as of April 24, 2020. And he said the Jail had not yet hit the peak of the outbreak.

79. Dr. Nijhawan agrees that the effects of the pandemic in the Jail have yet to peak and are growing worse daily.

80. The circumstances are worse than we know, given that the deplorable lack of testing at the Jail obscures the true severity of the COVID-19 outbreak in the Jail. Because the Jail tests only those detained persons who exhibit obvious symptoms of COVID-19 and come to the attention of a Parkland nurse, detained persons and DSOs who have COVID-19 but are asymptomatic do not receive tests for the disease and continue to expose others. The number of people who have COVID-19—and who are quietly spreading it in the Jail—is thus likely far higher than the 383 confirmed cases among detained persons (not to mention the 48 confirmed *active* cases among DSOs as of May 30, 2020).²⁸

81. Nor is that all. When a 64-person pod has been suspected of being exposed to COVID-19, all 64 of the men are quarantined together where they commingle with one another as they had done before one of them came under suspicion. If someone else in the pod did not have

²⁸ Texas Commission on Jail Standards, *TCJS COVID-19 Form A*, May 30, 2020 (access on May 31, 2020) (available at https://www.tcjs.state.tx.us/wp-content/uploads/2020/05/TCJS_COVID_Report.pdf).

COVID-19 at the time the quarantine started, they now face very likely exposure to the virus with little hope for relief or safe social distancing.

82. The reason people who may not have COVID-19 have to wait with and potentially be exposed to somebody who does have the virus is because the Jail keeps people detained in 64-person pods rather than in smaller groups. If the Jail had enough single cells or used smaller cells to house just one person or even a few, the Jail would not have to house potentially exposed people with so many others who have not yet been exposed.

The Jail Poses a Growing Danger to the Larger Community

83. As the Sheriff has conceded through the testimony of her representative, Chief Deputy Fredrick Robinson, there is no assurance that the Jail has not spread already COVID-19 beyond the Jail's walls or that it will not do so in the future.

84. That is an unsurprising concession. Hundreds of people who come into contact with DSOs enter and leave the Jail every day.

85. The constant movement of people into and out of the Jail is also problematic because it makes effective identification of exposed persons and their placement into cohorts for observation in the Jail virtually impossible.²⁹ It also increases the likelihood that people with the virus will interact with those who do not yet have it and that COVID-19 will be spread into the community outside the Jail.

86. In Dr. Nijhawan's medical opinion, if we do not reduce the Jail population substantially and in very short order, you risk contributing to an already expanding outbreak and compromising the health of incarcerated individuals, Jail healthcare providers, DSOs, and the

²⁹ The CDC Interim Guidance defines "cohorting" as "the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group."

Dallas community at large. This is consistent with the opinions of other public health officials, doctors, and epidemiologists.

87. Dr. Nijhawan believes that reducing the correctional population is a crucial public health step. She would encourage the Jail to decrease its population by a substantial number so that those who remain can practice social distancing.

88. The Parkland Vice President of Correctional Health Services at the Jail, Patrick Jones, agrees that reducing density in the Jail is a “feasible” response to the danger of COVID-19 infection in the Jail.

89. Reducing density in the Jail would also help alleviate the pressure on the Jail’s and County’s health system and resources to handle the pandemic and would allow DSOs to oversee smaller groups of detained persons in pods, tanks, and other shared spaces.

Necessity for Emergency Injunctive Relief

90. As discussed in the CLAIMS section below, the Sheriff’s conduct violates the rights of Plaintiffs and the members of the Class under the Bill of Rights in the Texas Constitution as well as under Texas statutory and common law. Plaintiffs seek emergency injunctive relief to stop the unsafe and unconstitutional conditions causing immediate and irreparable harm and the imminent loss of human life and serious damage to human health.

91. Plaintiffs and the members of the Class meet all of the elements necessary for immediate injunctive relief. Plaintiffs state valid causes of action and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Sheriff’s actions and inactions violate Article I, Sections 13 and 19, of the Texas Constitution, violate the Sheriff’s mandatory obligations under Texas statutory law, and would, unless restrained, cause personal injury and death in contravention

of Texas tort law. Plaintiffs have already been injured by the Sheriff's conduct and will continue to experience imminent and irreparable harm absent injunctive relief.

92. Emergency injunctive relief's purpose is to maintain the status quo pending trial. "The status quo is the last actual, peaceable, non-contested status that preceded the controversy" and "the continuation of illegal conduct cannot be justified as preservation of the status quo."³⁰ Here, Sheriff Brown's actions and inactions in her official capacity have caused Plaintiffs to be subject to imminent and irreparable harm that upended the status quo. The last peaceable, non-contested state existed before Plaintiffs were harmed by the Sheriff's actions and inactions, and injunctive relief is warranted to preserve human life and health and maintain the status quo.

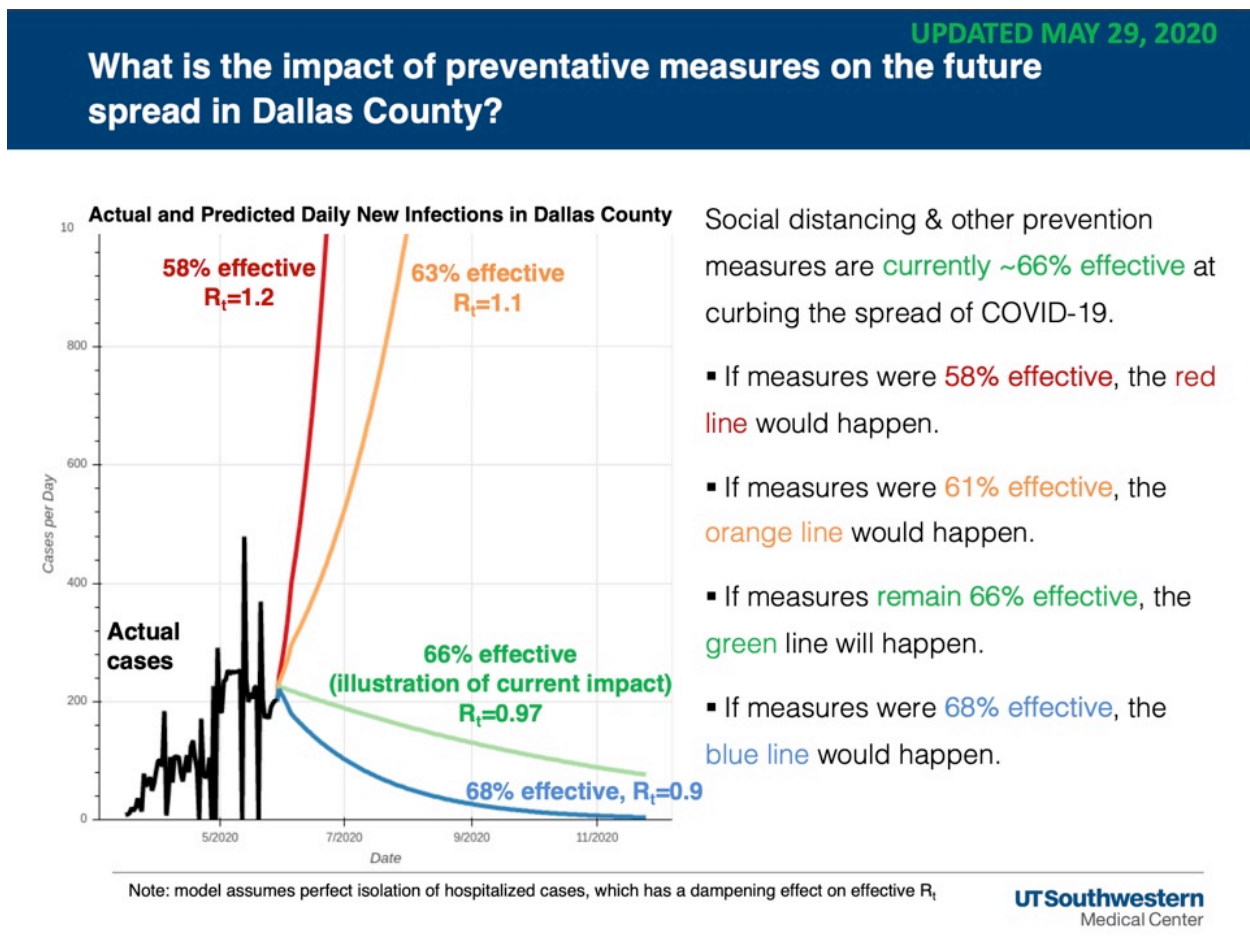
93. Plaintiffs in this suit are three individuals who are currently detained in the Dallas County Jail have already suffered substantial harm. Absent injunctive relief by this Court, Plaintiffs and members of the Class will continue to be imminently and irreparably injured by the Sheriff's unconstitutional and unlawful actions and inactions as COVID-19 rapidly spreads through the Jail.

94. Class members face the same imminent and irreparable injuries as named Plaintiffs. Contrary to guidance from public health experts, the Sheriff has chosen to house people close together in the Jail, putting together as many as 64 individuals per pod in closely confined quarters. Unlike members of the general public, Class members are unable to socially distance and avoid close contact with detained individuals and DSOs who are spreading COVID-19 within the Jail, and Class members are also unable to take other steps to protect themselves from injury and death and are utterly dependent on the Sheriff for protection of their health and lives. The Sheriff's failure to provide adequate PPE, cleaning, training, and other measures to prevent unnecessary spread of

³⁰ *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

COVID-19 makes the lack of social distancing even more dangerous to Plaintiffs and the members of the Class.

95. A study by infectious disease specialists at the University of Texas Southwestern Medical School (“UTSW”) found in May 2020 that an increase in the effectiveness of precautions will reduce the spread of COVID-19 in Dallas County.³¹ As the following UTSW slide illustrates, the effectiveness rate of preventative measures is crucial in avoiding explosively rapid growth in the spread of COVID-19 in Dallas County:



Social distancing & other prevention measures are currently ~66% effective at curbing the spread of COVID-19.

- If measures were 58% effective, the red line would happen.
- If measures were 61% effective, the orange line would happen.
- If measures remain 66% effective, the green line will happen.
- If measures were 68% effective, the blue line would happen.

³¹ UT Southwestern Medical Center, *COVID-19 Current State Analysis and Forecasting for the DFW Region* (access on May 18, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

96. The UTSW study indicates that a 3-percentage-point gain in the effectiveness of social distancing from 63 percent to 66 percent would prevent approximately 850 new COVID-19 cases a day by the first of August 2020 and an exponentially larger number of new cases after early August 2020.³²

97. The UT Southwestern study makes abundantly clear that establishing social distancing in the Jail will confer significant benefits on Plaintiffs and the members of the Class. Reinforced by the Governor's May 22, 2020 declaration regarding the "unacceptable risk" to detained persons from exposure to COVID-19, the study also suggests that those benefits will inure to the entire community given the thousands of people who will cycle in and out of the Jail in the coming months. Enabling distancing to prevent infection at the Jail is necessary to control the spread of the infection around the community, and thus critical to avoiding the need for future disruptions and shutdowns.

98. Urgent action from this Court is needed. The novel coronavirus spreads rapidly, and every day matters. Given the exigency of this crisis, Plaintiffs request that the Court issue an order restraining Sheriff Brown from continuing to subject Plaintiffs and the Class members to imminent and irreparable harm.

99. For the same reasons above, Plaintiffs request the Court issue a temporary restraining order, a temporary injunction following a hearing within 14 days, and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is

³² *Id.* An update of the UTSW study as of May 15, 2020 showed that even a 3-percentage-point increase in the effectiveness of preventative measures would reduce the number of COVID-19 cases in Dallas County by 600 a day as of August 20, 2020. *Id.*

necessary to enjoin the Sheriff’s unconstitutional and illegal conduct, preserve the status quo, and ensure justice.

100. Plaintiffs stand ready to post a bond for the temporary restraining order and request that the Court set a nominal bond because the Sheriff is acting in a governmental capacity, has no pecuniary interest in the suit, and no monetary damages are available. Tex. R. Civ. P. 684.

Sovereign Immunity Does Not Apply

101. Under Texas law, an action to protect a private party’s rights against a county official who has acted without legal or statutory authority is not a suit that sovereign immunity bars.³³ Suits to require a county official to comply with statutory or constitutional provisions are not prohibited by sovereign immunity.³⁴ Such a case does not seek to alter government policy but rather to enforce existing policy.³⁵

102. The State of Texas has no power to commit acts contrary to the guarantees in the Texas Bill of Rights.³⁶ Sovereign immunity thus does not prohibit a suit—like this one—for equitable relief under the Texas Constitution.³⁷

103. Nor does sovereign immunity protect a county official’s failure to perform a ministerial act that Texas statutory law mandates.³⁸ In this case, the Sheriff has failed to perform multiple ministerial acts under the Texas Local Government Code, the Texas Health and Safety Code, and the Texas Administrative Code. The first Code provides in relevant part that a “county jail *must be . . . maintained* in a clean and sanitary condition *in accordance with standards of sanitation and health.*”³⁹ The second mandates that “a person *shall abate* a public health nuisance

³³ *Federal Sign v. Texas State Univ.* 951 S.W.2d 401, 405 (Tex. 1997).

³⁴ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

³⁵ *Id.*

³⁶ *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148 (Tex. 1997).

³⁷ *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 391 (Tex. 2007) (per curiam).

³⁸ *City of Houston v. Houston Municipal Employees Pension System*, 549 S.W.3d 566, 576 (Tex. 2018).

³⁹ Tex. Local Gov. Code § 351.010(4).

existing in or on a place the person possesses as soon as the person knows that the nuisance exists.”⁴⁰ A “public health nuisance” includes “an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.”⁴¹ The third demands that the “medical instructions of designated physicians *shall be followed*” and that “[p]reventive maintenance, to include necessary repairs, *shall be conducted* to ensure a safe, secure, and *sanitary* facility”.⁴² Because Plaintiffs seek to enjoin the Sheriff to perform her mandatory statutory duties under these statutory provisions, sovereign immunity does not apply to Plaintiffs’ claims.

104. The Texas Tort Claims Act provides a further basis for waiver of sovereign immunity in this case. Plaintiffs seek injunctive relief because “a condition or use of tangible personal or real property” by the Sheriff threatens to cause them personal injury and death.⁴³ The “condition or use” may include the presence of disease-causing elements of the novel coronavirus and COVID-19 in or on tangible personal or real property and the employment of tangible personal or real property in ways that expose detainees to such disease-causing elements.

CLAIMS

Count I: Violation of Article I, Sections 13 and 19, of the Texas Constitution **(Injunction)**

1. Plaintiffs reallege each of the preceding allegations.
2. The Sheriff’s actions and inactions regarding the confinement of Class members in the Jail violates the prohibitions in Article I, Sections 13 and 19, of the Bill of Rights in the Texas

⁴⁰ Tex. Health & Safety Code § 341.012(a) (emphasis added). The Code defines “person” as “an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.” *Id.* § 341.011(5).

⁴¹ *Id.* § 341.011(12).

⁴² Tex. Admin. Code § 273.3 (emphasis added); *id.* § 279.3 (emphasis added).

⁴³ Tex. Civ. Prac. & Rem. Code § 101.021(2).

Constitution, respectively, against cruel or unusual punishment and against deprivation of life or liberty except by the due course of the law of the land.

3. Unless the Court immediately restrains the Sheriff from continuing to violate the Class members' rights to be free of cruel or unusual punishment and not to be deprived of life or liberty except by the due course of law, the Class members will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

4. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must immediately begin and continue to enforce effective social distancing for all Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

Count II: Public Health Nuisance
(Injunction)

5. Plaintiffs reallege each of the preceding allegations.

6. The Sheriff's actions and inactions regarding the confinement of Class members in the Jail have created an ongoing "public health nuisance" under section 341.011(12) of the Texas Health and Safety Code, have failed to maintain the Jail "in a clean and sanitary condition in accordance with standards of sanitation and health" under section 351.010(4) of the Texas Local Government Code, and have ignored the requirements that "medical instructions of designated physicians shall be followed" and that "[p]reventive maintenance, to include necessary repairs, shall be conducted to ensure a safe, secure, and sanitary facility" under sections 273.3 and 279.3 of the Texas Administrative Code.

7. Unless the Court immediately restrains the Sheriff from continuing to operate the Jail such that it constitutes a statutory public health nuisance, violates standard of sanitation and

health, and disregards medical instructions, the Class members will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

8. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must immediately begin and continue to enforce effective social distancing for Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

Count III: Negligence and Gross Negligence
(Injunction)

9. Plaintiffs reallege each of the preceding allegations.

10. The Sheriff's actions and inactions regarding the confinement of Class members in the Jail are negligent and grossly negligent in that they create an unreasonable danger to medically-vulnerable persons, violate CDC health and safety rules and guidance that the Sheriff claims to adhere to as a matter of policy, and exhibit an entire want of care and a high degree of recklessness towards the medically-vulnerable persons, whose health, safety, and lives are entrusted to the Sheriff.

11. Unless the Court immediately restrains the Sheriff from continuing to operate the Jail such that it constitutes a public health nuisance under section 341.011(12) of the Texas Health and Safety Code and a public nuisance under the common law of Texas and violates section 351.010(4) of the Texas Local Government Code and sections 273.3 and 279.3 of the Texas Administrative Code, the medically-vulnerable persons will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

12. The Court should accordingly enter a temporary restraining order awarding Plaintiffs and the Class all appropriate injunctive relief, including that the Sheriff must

immediately begin and continue to enforce effective social distancing for medically-vulnerable Class members by reducing crowding in pods, tanks, and other shared spaces such that it is practicable for Class members to remain at least 6 feet away from other persons at all times.

CONCLUSION AND PRAYER

The Sheriff's failure to take basic steps including enforcement of social distancing to mitigate the extreme danger that the COVID-19 pandemic poses to medically-vulnerable people currently detained in the Dallas County Jail, or who will be detained there in the future, violates fundamental principles that underlie the Bill of Rights in the Texas Constitution and Texas statutory and common law. Those principles forbid the Sheriff to continue to detain Plaintiffs and the members of the Class under conditions that gravely endanger their safety, their health, and their very lives. Because the Sheriff has refused to remedy those conditions by, among other things, taking steps necessary to make social distancing practicable, the Court should grant Plaintiffs and the Class all appropriate relief, including certification of this case as a class action, issuance of a temporary restraining order and temporary and permanent injunctions, and costs of court.

DATE: June 1, 2020

Respectfully submitted,

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ATTORNEYS FOR
PLAINTIFFS

**pro hac vice pending or
forthcoming*

VERIFICATION

1. My name is Barry Barnett, my date of birth is January 19, 1959, and my address is 8115 Preston Road, Suite 575, Dallas, Texas 75225. I verify under penalty of perjury that the statements in this Verification are true and correct.

2. Attached to this Plaintiffs' First Amended Verified Petition for Emergency Relief Against Unlawful Endangerment of Medically-Vulnerable Persons Detained in Dallas County Jail ("First Amended Verified Petition") as Exhibits A, B, C, and D are true and correct copies of the official transcript of proceedings in *Sanchez v. Dallas County Sheriff Marian Brown*, No. 20-cv-832-E (N.D. Tex.) on April 21, 22, 23, and 24, 2020.

3. Attached to this First Amended Verified Petition as Exhibits E, F, G, and H are true and correct copies of, respectively, the Declaration of Eric T. Lofgren, MSPH Ph.D.; the Declaration of Ank Nijhawan, M.D., M.P.H., M.S.C., M.S.C.S.; the Declaration of Robert L. Cohen, M.D., Regarding the Spread of COVID-19 in and from the Dallas County Jail; and the Affidavit of Thomas William Boston.

4. The images of scenes inside the Dallas County Jail on pages 2 and 13 of this First Amended Verified Petition were excerpted from a video, "Behind Bars: The World's Toughest Prisons", that is available online at <https://www.youtube.com/watch?v=fkX2hanoYyM>. The page on which the video appears provides a date of November 5, 2018. I believe, based on testimony referred to in paragraph 2 of this Verification, that the images are true and correct depictions of what they appear to show.

5. I understand that the image on page 20 of this First Amended Verified Petition was communicated on April 22, 2020 through an electronic kiosk inside a common area within the

Dallas County Jail and that it fairly and accurately depicts detained persons in the Dallas County Jail as they appeared on that date.

6. The image on page 27 of this First Amended Verified Petition is a true and correct copy of a slide that is part of a presentation on the official website of the University of Texas Southwestern Medical Center as it appeared on May 31, 2020. *See* UT Southwestern Medical Center, *COVID-19 Current State Analysis and Forecasting for the DFW Region* (access on May 31, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

Executed in Dallas County, State of Texas, on June 1, 2020.

/s/ Barry Barnett

Barry Barnett

CERTIFICATE OF SERVICE

I certify that on June 1, 2020 my office served a copy of Plaintiffs' First Amended Verified Petition for Emergency Relief Against Unlawful Endangerment of Medically-Vulnerable Persons Detained in Dallas County Jail on the following counsel of record for Defendant Dallas County Sheriff Marian Brown by email and through the e-filing service of the Dallas County District Courts:

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/s/ Barry Barnett _____