

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

Favian Busby and Michael Edgington, *on  
their own behalf and on behalf of those  
similarly situated*;

Petitioners-Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,  
Shelby County Sheriff, and the Shelby  
County Sheriff's Office,

Respondents-Defendants.

Case No. \_\_\_\_\_

**DECLARATION OF BILL POWELL  
IN SUPPORT OF PETITIONERS-PLAINTIFFS' MOTION  
FOR A TEMPORARY RESTRAINING ORDER**

I, Bill Powell, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746:

1. My name is Bill Powell. I am over the age of 18 and I am competent to make this declaration.

2. I have lived in Shelby County for 57 years. Prior to my retirement, I worked in the criminal justice system in Shelby County for 39 years.

3. I am the former director of Shelby County's Pretrial Services Department. I also served as the criminal justice coordinator for the Shelby County Government and previously served as a coordinator for a settlement agreement between the Shelby County Government and the U.S. Department of Justice.

4. Through each of my capacities described above, I became familiar with the Shelby County Jail, its design, structure, and administration.

5. I make this declaration of my personal knowledge.

**I. Concerns Around Shelby County Jail's Response to COVID-19**

6. On March 19, 2020, I sent an email to Mark Billingsley, Chair of the Shelby County Board of Commissioners; Lee Harris, Shelby County Mayor; Karen Bartlett, Executive Assistant to Sheriff Bonner, and Shelby County Sheriff Floyd Bonner, Jr. A true and correct copy of that email is attached as **Exhibit A**.

7. The email expressed my concerns that the severity of the health issue presented by COVID-19 in the Shelby County Jail was not being adequately addressed, even in light of positive steps taken by local officials including the Sheriff.

8. I recommended that the Sheriff's Office devise a plan to release people incarcerated in the jail, starting with those only incarcerated for their inability to pay a secured bail requirement of \$10,000 or less.

9. I wrote this email because I was concerned about the significant risk posed to the health of vulnerable people in the Shelby County Jail, where individuals spend their time in close proximity to each other. Many people in the jail have risk factors that render them particularly vulnerable to serious illness or death if they contract COVID-19.

**II. Scope of Sheriff's Authority to Release Medically-Vulnerable People**

10. The Sheriff is vested with legal authority to release persons accused of misdemeanors without a judicial order and that this has been the case for 30 years. *See* Tenn. Code Ann. § 40-7-120.

11. A Pretrial Services department already exists in Shelby County that could supervise persons in the community while they are awaiting future court dates. I noted in my March 19, 2020 email that the Pretrial Services could easily undertake a review of an individual's case file prior to a person's release, for instance to determine if they have other holds.

12. I do not believe the Shelby County Sheriff's Office has done all that it can to address the COVID-19 outbreak or to release vulnerable people from the Jail.

13. As just one example, the Sheriff's Office continues to accept intake via misdemeanor arrests rather than issuing citations and diverting people accused of misdemeanors as authorized by statute.

**III. Opinion as a Criminal Justice Stakeholder**

14. I continue to hold the same concerns stated in my March 19, 2020 email today.

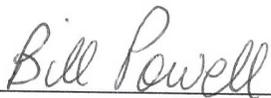
15. I believe the Shelby County Sheriff's office should take all steps to release medically-vulnerable persons from the Shelby County Jail and ensure that any necessary supervision of such persons occurs in the community or, if necessary, in a facility (i.e. a community treatment program or hospital) where they are housed in a manner that ensures their ability to follow public health protocols regarding social distancing and hygiene.

16. I believe the release of medically-vulnerable people can be undertaken in a way that ensures public safety for the Shelby County community.

17. Further, because nearly all of the individuals detained in the Shelby County Jail eventually return to their families and communities, preventing contraction of COVID-19 of the most vulnerable will promote the broader public health.

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

Executed this 19<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_

Bill Powell

# Exhibit A

**From:** [Bill Powell](#)

**Sent:** Thursday, March 19, 2020 9:36 AM

**To:** [mark.billingsley@shelbycountyttn.gov](mailto:mark.billingsley@shelbycountyttn.gov); [lee.harris@shelbycountyttn.gov](mailto:lee.harris@shelbycountyttn.gov); [karen.bartlett@shelby-sheriff.org](mailto:karen.bartlett@shelby-sheriff.org); [floyd.bonner@shelby-sheriff.org](mailto:floyd.bonner@shelby-sheriff.org)

**Subject:** Coronavirus and the Jail

Good morning,

I read the article in the Daily Memphian this morning about concerns about coronavirus threat to those in custody at the County Jail. The extreme measures being taken by government, business and the population at large are indicative of the public health threat we all face.

Sheriff Bonner is correct that in most cases, he cannot simply release individuals from custody without judicial approval. Having the jail expeditor review cases is a good move but I would suggest it is not enough given the level of crisis we face. I would like to make the following suggestion for your consideration:

1. Prepare a planned response and take to the General Sessions and Criminal Court judges and base the plan on the following factors.
2. The plan would include releasing inmates in custody with bonds of \$10,000 or less. These individuals would be released under the supervision of Shelby County Pretrial Services during the pendency of their case. The Bond amount is some measure of the risk posed according to the magistrate who set the bond and releasing by bond amount saves a considerable amount of time screening and reviewing cases. Pretrial could do some type of quick review to insure there are no other holds in the case. If there is concern about releasing these individuals it should be noted they could obtain their own release if they had \$1,000 so, in essence, they are detained for a lack of money not because of the level of threat.
3. Encourage law enforcement to issue summons whenever possible in all misdemeanor cases. This would slow down the numbers entering the jail facility.
4. The Sheriff actually does have the authority to release misdemeanor offenders without judicial authority. This has been the case for 30 years and that authority has historically been granted to Pretrial Services. There are some exceptions to this such as if a bond has already been set on a warrant.

I would strongly encourage a dramatic response to this serious health issue. The folks in the jail are at great risk because of the close proximity to each other while detained and because many of them have other risk factors. Nearly all of these individuals will return to their family and community and their time in 201 Poplar should be limited.

Our jail suffered a crisis in 1991 when there was a riot in which use of the 4<sup>th</sup> floor was lost for some time. The judges were very helpful in revising current practices to meet that crisis. I have no doubt they will be eager to work with you on this crisis as well.

Thank you for your consideration and for the work you are doing to protect our community.

Sincerely,  
Bill Powell  
[Billpowell55@gmail.com](mailto:Billpowell55@gmail.com)

Sent from [Mail](#) for Windows 10