

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OSCAR SANCHEZ, MARCUS WHITE,
TESMOND McDONALD, MARCELO
PEREZ, ROGER MORRISON, KEITH
BAKER, PAUL WRIGHT, TERRY
McNICKELS, and JOSE MUNOZ, *on their
own and on behalf of a class of similarly
situated persons,*

Petitioners/Plaintiffs,

v.

DALLAS COUNTY SHERIFF MARIAN
BROWN, *in her official capacity;* and
DALLAS COUNTY, TEXAS,

Respondents/Defendants.

Civil Action No. 3:20-cv-00832

DETAINEE PLAINTIFFS' MOTION FOR LEAVE TO ALLOW EXPERT TESTIMONY

Detainee Plaintiffs¹ respectfully move for leave to designate Dora B. Schriro, Ed.D. J.D. (**Dr. Schriro**) as a corrections expert who may present opinion evidence regarding the Jail Defendants' failure to meet standards for protecting detainees in the Dallas County Jail from the ongoing substantial risk of harm posed by COVID-19.² Dr. Schriro—a career public servant with decades of experience running detention systems—will explain, among other things, that Jail Defendants' assertion that they can delegate their responsibility to provide Detainee Plaintiffs a safe environment to Jail Defendants' contracted medical provider without meaningful engagement or supervision is wrong.

¹ Oscar Sanchez, Marcus White, Tesmond McDonald, Marcelo Perez, Roger Morrison, Keith Baker, Paul Wright, Terry McNickels, and Jose Munoz. Kiara Yarbrough served as a Detainee Plaintiff until she passed away earlier this year. *See A Life of Boundless Empathy: Remembering Kiara Yarbrough* (<https://www.aclutx.org/en/news/life-boundless-empathy-remembering-kiara-yarbrough>).

² A true and correct copy of Dr. Schriro's expert report, dated June 2, 2021 (**Report**), is attached to this Motion as **Exhibit A**. Dr. Schriro's professional vita, including all publications in the last ten years, is attached to the Report as "Appendix A."

Detainee Plaintiffs seek injunctive relief based on evolving facts, related primarily to the novel COVID-19 virus and the Dallas County Jail’s management of the same.³ The original expedited scheduling order set an October 30, 2020 fact discovery deadline and required Detainee Plaintiffs to designate any potential experts by November 20, 2020. The pre-trial discovery schedule has been amended three times since, with fact and expert discovery recently concluding (with reservations) on May 28, 2021,⁴ but none of the modified scheduling orders expressly addressed the expert disclosure deadline. On May 17, 2021, Detainee Plaintiffs provided notice of Dr. Schriro and her anticipated testimony. Detainee Plaintiffs subsequently withdrew the designation in response to Jail Defendants’ untimeliness objections and notified Jail Defendants of their intention to seek the Court’s leave by way of this Motion.

Detainee Plaintiffs ask the Court to find the May 17 designation of Dr. Schriro timely under the current scheduling order, or if Detainee Plaintiffs’ notice of Dr. Schriro and her opinions is untimely under the existing order, to grant Detainee Plaintiffs leave to present Dr. Schriro at trial. Dr. Schriro’s opinions, described more fully in **Exhibit A**, directly address a defense that Jail Defendants only recently raised. This anticipated defense addresses a critical element of Detainee Plaintiffs’ case-in-chief—i.e., whether Jail Defendants’ management (or lack thereof) of COVID-19 in the jail by abdicating their responsibility to the contracted medical provider Parkland Health

³ In past filings with the Court, Jail Defendants have claimed COVID-19 poses less of a threat now than in the past by pointing to the results of testing of *new* detainees for COVID-19. Recent discovery has revealed, however, that the reported test results do not account for half or more of the new detainees and exclude the vast majority of detainees currently in the jail. The reported deaths are also grossly understated, with Jail Defendants pretending not to know when a detainee dies from COVID-19 hours after their “compassionate release” at the request of Parkland’s Medical Director in the jail infirmary.

⁴ Because Detainee Plaintiffs seek injunctive relief, they anticipate receiving additional, updated information from Jail Defendants in discovery between the May 28 deadline and trial. *See Valentine v. Collier*, 993 F.3d 270, 282 (5th Cir. 2021) (“When there is a possible constitutional violation that is likely to continue over time as in a prison injunction case, we consider the evidence from the time the suit is filed to the judgment. Deliberate indifference is determined based on prison officials’ current attitudes and conduct.”) (quoting *Farmer v. Brennan*, 511 U.S. 825, 845 (1994)). A motion to compel may become necessary, depending on whether Jail Defendants provide additional information and documents requested by Detainee Plaintiffs.

& Hospital System (**Parkland**), without meaningfully overseeing that provider, was “deliberately indifferent” to the substantial risk of harm posed to Detainee Plaintiffs. The anticipated defense was revealed for the first time in Defendant Sheriff Marian Brown’s (**Brown**) March 31, 2021 deposition.⁵ Specifically, Brown confirmed that she has fully abdicated her responsibility to manage COVID-19 in the jail to Parkland, the jail’s healthcare provider, and has failed to ensure a plan of action is in place in accordance with CDC guidelines. This defense, based in facts within Jail Defendants’ control revealed through ongoing discovery, was not (and could not have been) known by Detainee Plaintiffs four months prior when serving their initial expert disclosures and, as explained by Dr. Schriro, demonstrates that Jail Defendants have knowingly failed to mitigate the risk of harm from COVID-19 to Detainee Plaintiffs and other detainees at the jail. *See generally*, Ex. A.

Also significant, Jail Defendants will not be prejudiced by permitting Dr. Schriro’s proffered testimony. Expert depositions recently commenced on May 25, Jail Defendants have been on notice of the scope of Dr. Schriro’s opinions since May 17, and Detainee Plaintiffs recently offered to postpone the current trial date, pretrial deadlines, and other discovery (including expert discovery) in the event the parties successfully negotiated a vaccination and education plan. As explained below, late disclosure—even assuming the November 2020 deadline applies—is permitted under these circumstances pursuant to *Sierra Club* and its progeny.

⁵ True and correct excerpts of Dallas County Sheriff Marian Brown’s Deposition Transcript, dated Mar. 31, 2021 (**Brown Tr.**), are attached to this Motion as **Exhibit B**.

Background

A. Expert Disclosures and Related Deadlines

On August 20, 2020, the Court entered an initial scheduling order as negotiated by the parties that governed dates for pre-trial discovery and dispositive motions. The original order set the following, relevant deadlines:

Description	Deadline
Fact Discovery Deadline	October 30, 2020
Expert Disclosures and Expert Report Deadlines	November 20, 2020 – Plaintiffs to designate expert witnesses and provide expert reports December 11, 2020 – Defendants to designate expert witnesses and provide expert reports
Expert Discovery Deadline	January 29, 2021
Trial Setting	March 26, 2021

Dkt. No. 121. The initial order was subsequently amended three times (as amended, the “**Scheduling Order**”), twice by party agreement to accommodate additional discovery and mediation, and subsequently at Jail Defendants’ request. Specifically, the deadline to complete expert discovery was extended from November 20, 2020 to March 30, 2021 (Dkt. No. 199), to April 20, 2021 (Dkt. No. 202) and, most recently, to May 28, 2021 (Dkt. No. 238). May 28 was also the fact discovery deadline. Dkt. No. 238 at ¶ 1. No amendments to the Scheduling Order expressly addressed the expert disclosure deadline. *See* Dkt. Nos. 121, 199, 202, and 238.

On November 20, 2020, Detainee Plaintiffs disclosed three potential experts—Dr. Homer Venters, a medical expert specializing in epidemiology; Dr. Ank Nijhawan, an expert of infectious disease mitigation in detention and correctional facilities; and Dr. William Bahnfleth, a mechanical engineer specializing in indoor air quality. Detainee Plaintiffs also expressly noted that their expert

disclosures were “contingent on information that may be learned through ongoing discovery” and, for that reason, were “unable to make complete disclosures of information their proposed experts may opine on” and “anticipate[d] supplementing the information provided in [the] disclosure[s] at the conclusion of fact discovery.” In response, Jail Defendants disclosed two potential experts—Ms. Diane Skipworth, a registered and licensed dietitian, registered professional sanitarian, certified correctional health professional, and certified laundry and linen manager who has served with the Dallas County Sheriff’s Department since 1994; and Mr. Fredrick St. Amant, the Quality Assurance Manager for Dallas Counties Facility Management. Jail Defendants likewise reserved their rights to “designate additional rebuttal experts,” withdraw any of their disclosed experts, and “substitute other individuals for those designated.”

Detainee Plaintiffs timely served Dr. Venters’ Expert Report, which included a December 2020 inspection of the jail, on January 12, 2021, and produced a supplemental report dated May 18, 2021, per party agreement in advance of Dr. Venters’ deposition, which took place on May 25. On May 17, 2021, Detainee Plaintiffs withdrew the designation of their third expert, Dr. Bahnfleth, and notified Jail Defendants of their intent to produce an expert report from Dr. Schriro (providing a written description of the scope of her anticipated opinions and expert testimony) prior to the May 28 expert deadline and to call her as an expert witness at trial. *See* Plaintiffs’ Amended Disclosures, dated May 17, 2021 (**Amended Disclosures**).⁶ After Jail Defendants objected to the designation of Dr. Schriro as untimely, Detainee Plaintiffs withdrew the same without prejudice, offered to continue certain case deadlines, including discovery-related deadlines, and proceeded to file this Motion.

⁶ A true and correct copy of Plaintiffs’ Amended Disclosures are attached to this Motion as **Exhibit C**.

B. Testimony and Recent Discovery Necessitating Dr. Schriro's Testimony

On March 31, 2021, while recognizing the harm posed by COVID-19,⁷ Brown admitted under oath that she had not read the CDC's most current guidance for the management of COVID-19 in correctional settings and could not even identify the policies of the jail for the same.⁸ As Brown's testimony revealed, Jail Defendants have not implemented a COVID-19 management policy incorporating CDC guidance.⁹ When asked what policies Brown and her staff had implemented with respect to managing COVID-19 in the jail, she could not specifically identify any policy but referred to the File Folders supposedly existing on each floor of the jail. However, subsequent discovery—produced as recently as April 16, 2021—confirmed that other than a directive relating to concerns about COVID-19 in the jail, the File Folders simply included information packets dating back to August 2020, likely printed out from the Internet.¹⁰

Also demonstrated through her testimony, Brown is indifferent to the need for routine testing of asymptomatic individuals and has failed to implement a long-term testing plan.¹¹ It thus became clear through Brown's deposition that Jail Defendants do not have testing protocols in place to ensure that persons who have been exposed to other infected detainees, including those not officially counted as COVID-19 cases, are themselves tested.¹² Brown admitted that the jail does not include persons who are infected in the jail but are subsequently released from custody for further medical treatment or prior to death when reporting COVID-19 cases.¹³

⁷ Ex. B, Brown Tr. 9:4–7.

⁸ *Id.* 11:15–14:3, 136:2–9, 138:4–10.

⁹ *See id.* 162:7–163:10; *see also* DALLASCO_SANCHEZ_0012338–0012365, DALLASCO_SANCHEZ_0019045–0019093 (together, the “**File Folders**”), a true and correct copy of which is attached to this Motion as **Exhibit D**.

¹⁰ Ex. D.

¹¹ *See, e.g.*, Ex. B, Brown Tr. 34:22–35:8, 38:4–13, 40:20–41:16, 43:1–12, 100:2–102:2.

¹² *See id.*

¹³ *Id.* 111:8–112:7.

Further, Brown's testimony demonstrated her indifference to the slow pace of vaccinations in the jail (fewer than 500 detainees at the time of her deposition) and did not care to inquire of Parkland if the pace could be expedited.¹⁴ Nor has Brown coordinated with Dallas County health officials to try to secure more vaccinations for detainees.¹⁵

When asked why she was so indifferent to these issues, Brown set out (for the first time in this case) a new defense: she bears no responsibility to address them because she retained Parkland to handle COVID-19 mitigation in the jail.¹⁶ This abdication of her duties completely overlooks that Parkland cannot implement critical CDC guidance that falls under Defendant Brown's responsibility, including ensuring that correctional staff are educated about COVID-19 transmission, mitigation, and symptoms, as well as steps to address correctional staff safety and assignments in infected areas. *See* Ex. A. These are but a handful of examples of Jail Defendants' delegation to Parkland, as further highlighted in Dr. Schriro's expert report. *See id.*

C. Dr. Schriro's Anticipated Testimony

Following Brown's shocking deposition testimony, Detainee Plaintiffs retained Dr. Schriro to provide expert opinions regarding Jail Defendants' responsibilities with respect to the management of health conditions in a major correctional institution. Dr. Schriro is an expert with decades of direct experience running jails, prisons, and civil detention facilities, as well as state and local correctional systems and federal immigration detention facilities. *See* Ex. A. As described more fully in Exhibit A, Dr. Schriro has assessed the adequacy of COVID-19 responses in correctional and immigration detention facilities across the United States. Based on her

¹⁴ *Id.* 68:6–71:8.

¹⁵ *Id.* 70:19–22, 76:13–18.

¹⁶ *Id.* 70:23–71:8 (when asked whether she had any concerns regarding the slow pace of vaccinating detainees, Brown responded that she did not, stating: "I'm trusting that [Parkland] will do it"). The deposition testimony of Brown's Chief Deputy Fredrick Robinson confirmed that he shares his boss's unwillingness to take responsibility for addressing the issues posed by COVID-19 for detainees.

experience running correctional facilities, Dr. Schriro offers opinions regarding (a) Jail Defendants' response to COVID-19 and Jail Defendants' impact on facility operations and (b) the conditions of detention for detainees in the Dallas County Jail.

Dr. Schriro opines that Brown has a duty, as well as the authority, to execute a plan of action that detects, deters, and treats COVID-19 in the Dallas County Jail and that Brown, by virtue of her position, has the responsibility to ensure that any plan of action accords with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) (**CDC Guidance**). Dr. Schriro opines that Brown cannot abdicate this duty, that she has failed to execute any such action, and that the Dallas County Sheriff's Department remains unwilling or unable to afford detainees in its custody, as well as in its employ, the protection and care to which they are entitled. Dr. Schriro further opines that Defendant Dallas County, Texas, as it controls and operates the Dallas County Jail through Brown, is responsible for ensuring that Brown has a viable plan of action in place, including sufficient resources, to implement CDC guidance in the jail. Dr. Schriro opines that Dallas County has failed to do so and, consequently, the persons in its custody have not received the requisite standard of care and continue to be harmed.

Dr. Schriro also opines that detainees in the Dallas County Jail must be afforded healthcare that is equal to the community standard of care. Dr. Schriro further opines that the CDC Guidance is the community standard of care and that all correctional facilities, including the Dallas County Jail, must adhere to it.

Finally, Dr. Schriro opines that Jail Defendants' failures have not been occasional, temporary, or inadvertent. Rather, they have been chronic, continuous, knowing, and gross deviations from the standards of competence and care that have significantly increased the likelihood of serious harm and death to detainees from COVID-19.

Standard of Review

Even if the Court determines that Detainee Plaintiffs' designation of Dr. Schriro is untimely pursuant to the controlling Scheduling Order—which does not address the expert disclosure deadlines—Dr. Schriro is nonetheless permitted to provide her expert opinion at trial if the late disclosure “was substantially justified or is harmless.” *See* FED. R. CIV. P. 37(c).¹⁷ As explained by the Fifth Circuit, four factors guide this inquiry, including: “(1) the importance of the witness[’s] testimony; (2) the prejudice to the opposing party of allowing the witness to testify; (3) the possibility of curing such prejudice by granting a continuance; and (4) the explanation, if any, for the party’s failure to comply with the discovery order.” *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 572 (5th Cir. 1996) (citing *Bradley v. United States*, 866 F.2d 120, 125 (5th Cir. 1989)).

Courts in the Fifth Circuit have permitted late disclosures of expert witnesses where, on balance, the necessity of the testimony outweighs any potential prejudice to the opposing party. *See, e.g., In re Complaint of C.F. Bean, L.L.C.*, 841 F.3d 365, 374 (5th Cir. 2016) (reversing district court’s exclusion of expert report, notwithstanding its untimeliness, where there was no indication of bad faith on behalf of the disclosing party, the expert report and testimony were essential to the party’s case, and a continuance would cure much of the prejudice caused by the late disclosure); *Betzel v. State Farm Lloyds*, 480 F.3d 704, 708 (5th Cir. 2007) (finding the expert testimony was critical to the party’s case and noting that three of the four factors weighed in favor of permitting the late designation, the Court found that the district court abused its discretion in excluding late-

¹⁷ As explained below, the Fifth Circuit’s test in *Sierra Club* is directly relevant to Detainee Plaintiffs’ request. However, for the same reasons described herein, Detainee Plaintiffs meet the “good cause” standard articulated by Federal Rule 16(b)(4), which is required to modify a Court’s scheduling order. *See Squyres v. Heico Companies, L.L.C.*, 782 F.3d 224, 237 (5th Cir. 2015) (stating that there are “four relevant factors” including: (1) the explanation for the failure to comply; (2) the importance of the modification; (3) potential prejudice in allowing the modification; and (4) the availability of a continuance to cure such prejudice).

designated expert testimony despite the fact the late-disclosing party did not provide an adequate reason for delay); *Eagle Railcar Services-Roscoe, Inc. v. NGL Crude Logistics, LLC*, 2018 WL 2317696, at *11 (N.D. Tex. May 22, 2018) (denying motion to strike untimely designation where extension of discovery deadline would provide other party opportunity to depose late-designated expert and noting that the Fifth Circuit has “repeatedly emphasized that a continuance is the preferred means of dealing with a party’s attempt to designate a witness out of time”) (quoting *Betzel*, 480 F.3d at 708)); *see also Branch Banking & Tr. Co. v. Moody Nat’l HP Westchase S, LLC*, 3:12-CV-1057-L, at *9 (N.D. Tex. June 17, 2013) (citing *Betzel* and noting the Fifth Circuit has indicated that “district courts should think twice before striking an expert for failure to comply with a pretrial order”). That is the case here.

Argument

All four of the Fifth Circuit factors weigh in favor of allowing Dr. Schriro to testify. The proposed expert testimony is essential to establish an important part of Detainee Plaintiffs’ claims and rebut an anticipated defense regarding Jail Defendants’ constitutional duties. As explained herein, Detainee Plaintiffs only became aware of this defense recently, during the March 31, 2021 deposition of Defendant Brown, and could not have anticipated the need for Dr. Schriro’s opinions in November 2020 at the time of their initial expert disclosures. Moreover, any purported prejudice to Jail Defendants has been or can be ameliorated. Accordingly, Dr. Schriro’s proposed expert testimony should be permitted.

A. The Proposed Expert Testimony is Essential, and Detainee Plaintiffs’ May 2021 Designation is Substantially Justified

Dr. Schriro’s testimony is critical to understanding whether Jail Defendants can delegate their responsibility to manage COVID-19 in the jail to a third-party health care provider—an issue directly relevant to the central question of whether Jail Defendants have acted with deliberate indifference to the risk of harm to Detainee Plaintiffs from COVID-19. As the Fifth Circuit explained in *Valentine v. Collier*, an essential element of Detainee Plaintiffs’ case-in-chief requires a showing of “deliberate indifference” on behalf of Jail Defendants, i.e., that Detainee Plaintiffs “were exposed ‘to a substantial risk of serious harm’ and ‘that prison officials acted or failed to act with deliberate indifference to that risk.’” 978 F.3d 154, 162–63 (5th Cir. 2020) (quoting *Gobert v. Caldwell*, 463 F.3d 339, 345–46 (5th Cir. 2006)) (citations omitted). Dr. Schriro’s testimony is thus relevant to the subjective showing Detainee Plaintiffs must make—“that prison officials had actual knowledge of the risk and disregarded it.” *See id.* at 163.

At the time they served their original expert disclosures last year, Detainee Plaintiffs were unaware that Brown would abdicate COVID-19 management to Parkland and rely on this decision as a defense to her duty to care for detainees in the Sheriff’s custody. This only came to light on March 31, 2021, during Brown’s sworn deposition testimony. As Brown conceded, she has not even satisfied the minimal standard of care cited in *Valentine*. 978 F.3d at 163–64 (explaining that the Texas Department of Criminal Justice’s (TDCJ) policy incorporating CDC Guidance helped demonstrate the reasonableness of defendants’ response to the COVID-19 crisis); *cf. generally*, Ex. B and Ex. D (confirming, among other things, that Jail Defendants have not implemented a COVID-19 management policy incorporating CDC Guidance). Moreover, despite having requested that Jail Defendants produce COVID-19 policies in summer of 2020, Detainee Plaintiffs did not receive the entirety of the purported File Folders referenced by Brown until April 16, 2021.

Dr. Schriro is expected to explain the obligations of Brown to implement a plan to address COVID-19 in the jail and to address the need for resources—two key areas of responsibility that Brown now claims can be delegated to a third-party health care provider. Dr. Schriro will explain, specifically, why Jail Defendants cannot satisfy even the most basic constitutional obligation noted in *Valentine*, including the need to conduct appropriate testing of persons exposed to infection. *See* Ex. A. For example, unlike the TDCJ in *Valentine*, Brown has no testing protocol in place to ensure that persons who have been exposed to other infected detainees, including those not officially counted as COVID-19 cases, are themselves tested. *See* Ex. A; Ex. B, Brown Tr. 34:22–35:8, 37:16–38:13; *Wallace v. Dallas County, TX*, 51 F.3d 1045 (5th Cir. 1995) (noting that minimum standard of care established by testing persons known to be exposed to tuberculosis).

The opinions and testimony proffered by Dr. Schriro provide critical information beyond what Dr. Venters and Dr. Nijhawan (medical experts specializing in epidemiology) will provide. Thus, Dr. Schriro’s testimony is unique, directly relevant, and critical for Detainee Plaintiffs to establish Defendants’ deliberate indifference.

B. Jail Defendants will Suffer No Prejudice

This case is currently set on the three-week trial docket beginning July 27, 2021, and dispositive motions are due June 4, 2021. *See* Dkt. No. 238. Jail Defendants will not be harmed if the Court grants Detainee Plaintiffs leave to admit the report and proffered testimony of Dr. Schriro. Jail Defendants have been on notice of Dr. Schriro’s opinions and can factor (and have factored) this into their deposition strategy for any anticipated expert witnesses. Jail Defendants have not, to date, expended significant resources on rebuttal reports or depositions. Specifically, Jail Defendants have not proffered any expert reports or indicated that they will call any previously-disclosed expert at trial. Thus, Jail Defendants cannot claim to be disadvantaged by

having proffered an expert report prior to having the benefit of reviewing Dr. Schriro's anticipated testimony. Further, the deadline to file any motions has not expired, and Jail Defendants can have an opportunity to depose Dr. Schriro and move to exclude her testimony under *Daubert*.

Moreover, should Jail Defendants need additional time to depose Dr. Schriro or notice a rebuttal expert, Detainee Plaintiffs would not oppose such relief. Thus, given that both expert and fact discovery were still ongoing pursuant to the Scheduling Order at the time of disclosure, it is difficult to see how Jail Defendants can claim prejudice. On the other hand, the prejudice to Detainee Plaintiffs from excluding the testimony will be great, as it will preclude Detainee Plaintiffs from evidencing whether Jail Defendants are satisfying even their most basic constitutional obligations to Detainee Plaintiffs and to mitigate Detainee Plaintiffs' exposure to COVID-19.

Conclusion

For all of the foregoing reasons, Detainee Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Leave to admit the expert report of their corrections expert, Dora B. Schriro, Ed.D. J.D., and permit her testimony and opinions at trial.

Dated: June 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all counsel via the Court's CM/ECF system on June 2, 2021.

/s/ Barry Barnett
Barry Barnett

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that by telephone on May 18 and in person on May 20, 2021, I conferred with counsel for Jail Defendants about designation of Dora B. Schriro Ed.D. J.D. as a testifying expert. Counsel advised me that Jail Defendants oppose Detainee Plaintiffs' designation on May 17 of Dr. Schriro as an expert after the November 20, 2020 deadline in the Scheduling Order of August 20, 2020, Doc. 121. Counsel also informed me that Jail Defendants would move to strike the designation unless Detainee Plaintiffs withdrew it. Jail Defendants are therefore opposed to this Motion.

/s/ Barry Barnett
Barry Barnett

EXHIBIT A

IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF TEXAS DALLAS DIVISION

OSCAR SANCHEZ, MARCUS WHITE, TESMOND
McDONALD, MARCELO PEREZ, ROGER
MORRISON, KEITH BAKER, PAUL WRIGHT, TERRY
McNICKELS, JOSE MUNOZ, OLIVIA
WASHINGTON, and IDEARE BAILEY, *on their own
and on behalf of a class of similarly situated
persons,*

Petitioners/Plaintiffs,

v.

DALLAS COUNTY SHERIFF MARIAN
BROWN, *in her official capacity,* and
DALLAS COUNTY, TEXAS,

Respondents/Defendants.

Civil Action No. 20-cv-832-E

Expert Report of Dr. Dora Schriro, Ed.D., J.D.

I, Dora B. Schriro, hereby declare the following:

Qualifications

1. I am a career public servant who has served as an executive-level administrator and policy maker in corrections, public safety, and immigration enforcement, and as a homeland security advisor.
2. From 2014 through 2018, I served as Commissioner of the Connecticut Department of Emergency Services and Public Protection, which consists of six state agencies, including the Connecticut State Police, the Divisions of Homeland Security and Emergency Management and Scientific Services (the state's crime lab), and the Police Officer Standards and Training (POST) Council (the state's municipal police training academy and accrediting agency). I served concurrently as Connecticut's Homeland Security Advisor from 2016 through 2018. My security classification was Top Secret.
3. Prior to that time, I served as Director of two state correctional systems, the Missouri Department of Corrections from 1993 to 2001, and the Arizona Department of Corrections from 2003 to 2009. As Director, I served concurrently as Vice-Chair of Missouri's Sentencing Commission and as an advisory member of the Arizona as well as the Connecticut POST Councils.

4. I also served as Commissioner of two city jail systems, the St. Louis City Division of Corrections from 2001 to 2003, and the New York City Department of Correction from 2009 to 2014. I was also the Warden of the Medium Security Institution, a city jail in St. Louis City, Missouri, from 1989 to 1993.
5. In 2009, I was appointed Senior Advisor to U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano and, subsequently, Director of the U.S. Immigration and Customs Enforcement (ICE) Office of Detention Policy and Planning.
6. Throughout most my service in government, I was also a member of the adjunct faculties of the University of Missouri-St. Louis Department of Criminology from 1990 to 1998, St. Louis University School of Law from 2000 to 2002, and Arizona State University Sandra Day O'Connor School of Law from 2005 to 2008. I am published in the areas of corrections and immigration enforcement reform.
7. I am an expert in the operation of jails, prisons, and civil detention facilities, as well as state and local correctional systems and the federal immigration detention system. I participated in drafting the American Bar Association (ABA) standards for both correctional and immigration detention facilities. I have interacted at length with the staff and individuals in the custody of these systems in many states and most regions of the country.
8. Since 2013, I have consulted in the areas of corrections and immigration enforcement. I am the Corrections expert to the California Department of Justice, which, pursuant to Assembly Bill 103 enacted in June 2017, reports annually on the conditions of immigration detention in California. I am also currently engaged as a Corrections expert by the American Civil Liberties Union, Southern Poverty Law Center, and the St. Louis University School of Law Legal Clinic. Former clients include the Hampton County Massachusetts Sheriff's Department, Human Rights First, and Disabilities Rights California.
9. Since April 2020, I have assessed the adequacy of correctional and immigration detention facilities' responses to SARS-CoV-19 virus (COVID-19), including:
 - a. Eloy (ICE) Federal Contract Facility, AZ
 - b. Essex County Correctional Facility, NJ
 - c. Calhoun County Correctional Center, MI
 - d. Clinton County Correctional Facility, PA
 - e. La Palma Correctional Center, AZ
 - f. McHenry County Jail, IL
 - g. New Mexico Corrections Department, NM
 - h. Northwest Detention Center, WA
 - i. Pike County Correctional Facility, PA
 - j. Wyatt Detention Facility, RI
 - k. York County Prison, PA

10. Based on all the foregoing, I am familiar with and have specific knowledge regarding the professional standards and guidance that shape corrections and immigration detention. This includes, but is not limited to, the American Correction Association (ACA) Standards for Adult Local Detention Facilities (ALDF), Texas Commission on Jails Standards (TCJS), ICE Detention Standards, and Centers for Disease Control and Prevention (CDC) Interim Guidance on COVID-19 for Correctional and Detention facilities (CDC Guidance).
11. A complete and correct professional vita, including a list of all publications in the last ten years, is attached to this report as "Appendix A."

Expert Assignment

12. I have been engaged by Plaintiffs' counsel to assess Dallas Texas Sheriff Marian Brown's and Dallas County's, a municipal agency (collectively, Defendants), response to COVID-19 and Defendants' impact on facility operations and the conditions of detention for persons in the Sheriff's and/or Dallas County's custody at the Lew Sterrett Justice Center (Jail).

Materials Reviewed

13. To prepare this report, I considered the following documents:
 - a. CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, to date
 - b. Texas Commission on Jail Standards, COVID-19 memos, facility reports, Feb. 2021 inspection
 - c. The Dallas County Sheriff's Department General Orders and Code of Conduct, Jan. 13, 2021
 - d. Court filings in *Sanchez, et al. v. Dallas County Sheriff Marian Brown and Dallas County*, Case No. 3:20-CV-00832-E, pending in the Northern District of Texas (Lawsuit), including Plaintiffs' Original Petition and Application for Temporary and Permanent Injunctions, First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief, Immediate Relief Sought, dated Apr. 17, 2020, Plaintiffs' Motion for Temporary Restraining Order, dated Apr. 9, 2020, Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order, dated Apr. 9, 2020, and Transcript of Hearing on Motion for Temporary Restraining Order, dated Apr. 21, 2020
 - e. Defendants' Response to Plaintiffs' First Set of Interrogatories, Nov. 10, 2020
 - f. Plaintiffs' Responses to Defendants' First Interrogatories, Nov. 27, 2020
 - g. General information relating to COVID-19 represented by Defendants' to be included in floor file folders at control rooms through the Jail and available to detention staff (Folder Materials)
 - h. Detention Bureau, Standard Operating Procedure, Release Division, Chpt. 16, Post Orders, Classification Specialist
 - i. The sworn deposition testimony of Dallas County Sheriff Marian Brown, dated Mar. 31, 2021 (Brown Tr.)
 - j. The sworn deposition testimony of Deputy Chief Fredrick Robinson, dated Apr. 6, 2021 (Robinson Tr.)

- k. The rough deposition testimony of Deputy Chief Fredrick Robinson, in his capacity as 30(b)(6) representative, dated May 28, 2021 (Robinson Tr. Vol. II)
 - l. The sworn deposition testimony of Dallas County Texas Sheriff Jason Hartgraves, dated Apr. 7, 2021 (Hartgraves Tr.)
 - m. The sworn deposition testimony of Parkland's VP Operations for Correctional Health, Patrick Jones, dated Dec. 16, 2020 (Jones Tr.)
 - n. The rough deposition testimony of Parkland's VP Operations for Correctional Health, in his capacity as 30(b)(6) representative, Patrick Jones, dated May 27, 2021 (Jones Tr. Vol. II)
 - o. The sworn deposition testimony of Ank Nijhawan, M.D., UT Southwestern Medical Center/Parkland Correctional Health, dated Dec. 9 and Dec. 14, 2020 (Nijhawan Tr. Vol. I and Nijhawan Tr. Vol. II, respectively)
 - p. The sworn deposition testimony of Tesmond McDonald, a detainee at the Dallas County Jail, dated May 18, 2021 (McDonald Tr.)
 - q. The sworn deposition testimony of Dianne Urey, Parkland Correctional Health, dated Dec. 22, 2020 (Urey Tr.)
 - r. The sworn deposition testimony of Barry-Lewis Harris II, M.D., Parkland Health & Hospital System, dated Dec. 30, 2020 (Harris Tr.)
 - s. Expert Report, Facility Inspection, Homer Venters, M.D., Medical Expert, dated Jan. 12, 2021 (Venters Report)
 - t. Supplemental Expert Report, Homer Venters, M.D., Medical Expert, dated May 17, 2021 (Venters Supp. Report)
 - u. Court filings in *Emanuel Lewis et al. v. Dallas County Sheriff Marian Brown*, Case No. DC-20-11810 (Lewis Lawsuit), including Plaintiff's Original Petition and Application for Temporary and Permanent Injunctions, dated Aug. 24, 2020, and Plaintiff's Requests for Disclosures, First Requests for Admissions, First Set of Interrogatories, and First Requests for Production, dated Aug. 24, 2020
 - v. Court filings in *United States v. Dallas County Texas and Lupe Valdez*, Civil No. 307-cv-1559-N, including the Agreed Order, dated Nov. 6, 2007
 - w. Correctional Health Vaccination Summary, dated Apr. 13, 2021 [SANCHEZ_00000220]; Correctional Health Vaccination Summary, dated May 21, 2021 [produced as part of Patrick Jones's May 27, 2021 deposition]
 - x. Parkland COVID-19 Positive and Negative (Mar. 2020–Mar. 2021) [SANCHEZ_00000229]; Parkland COVID-19 Positive and Negative, dated May 21, 2021 [produced as part of Patrick Jones' May 27, 2021 deposition]
 - y. Jail Media [SANCHEZ_00000205–SANCHEZ_00000211]
14. I understand that discovery is ongoing, and that Plaintiffs' counsel expects to receive supplemental productions and to obtain further deposition testimony before and potentially during trial in the Lawsuit. I may review and rely on some of these additional materials after they become available and are provided to me and may amend or supplement my opinions as stated in this Report accordingly.

Summary of Expert Opinions

- I. Detainees in the custody of the Dallas County Sheriff's Department must be afforded healthcare commensurate with the community standard of care. Regarding COVID-19, the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities is the standard of professional competence and care to which all correctional facilities, including the Dallas County Jail, shall adhere.
- II. As the keeper of the Jail, Sheriff Marian Brown has a professional duty to execute a plan that detects, deters, and treats COVID-19 in the Jail, and imbued in her office is the authority to do so. While Parkland Health & Hospital System (Parkland) serves as the Jail's healthcare provider, that does not relieve Sheriff Brown of her professional responsibility to ensure that a plan of action in accord with CDC Guidance is in place and fully supported by the Sheriff's Department. The Sheriff has failed to meet that professional standard. Today, the Dallas County Sheriff's Department continues to be unwilling or unable to afford all those in its custody, as well as in its employ, the protection and care to which they are entitled.
- III. Dallas County, Texas, a municipal corporation organized under the laws of the State of Texas, controls and operates the Jail through Sheriff Brown. Dallas County must ensure Sheriff Brown has a viable plan in place, including sufficient resources, to implement CDC Guidance in the County's Jail. Dallas County has failed to ensure that the people in its custody receive that level of care. The Sheriff has been slow to act and still does not have a viable plan of action in place. The County's failure to oversee Sheriff Brown's management of COVID-19 in the Jail since its onset and to ensure a CDC-compliant plan is in place continues to harm detainees in the County's custody and must be resolved.
- IV. Sheriff Brown chronically, continuously, and knowingly failed to take meaningful and timely measures so that the Jail would comply with CDC Guidance. Her decision to delegate the Jail's management of COVID-19 to Deputy Chief Robinson, the Jail Administrator, and to disengage Parkland, are not only derelictions of her duty to govern but are deliberate and active choices not to meet her professional obligations. These failures and derelictions of duty are gross deviations from professional standards of care and competence that have resulted in at least several detainees contracting COVID-19 while in the Jail's custody and ultimately dying in the last year, medically vulnerable detainees' underlying conditions worsening, and the infection of an untold number of healthy detainees.

Overview: Dallas County Jail

15. The Dallas County Public Health Committee's current COVID-19 risk level for Dallas County, Texas, is Extreme Caution. To date, Dallas County has reported 260,581 confirmed and 42,699 additional, probable Dallas County resident cases of COVID-19, including 638 residents of congregate-living facilities in the county and 224 staff members, as well as 4,059 Dallas County deaths due to COVID-19 illness.¹ On May 31, 2021, the Dallas County Sheriff's Department reported there were five inmates with active coronavirus disease, an additional 86 inmates' test results were pending, and 134 quarantined, not active.² To date, the Sheriff's Department also reported one confirmed inmate death related to COVID-19.³ There are at least another three inmate deaths believed to be related to COVID-19, none of which the Sheriff's Department reported.⁴ Currently, there are two Detention Service Officers (DSO) who are actively infected.⁵ Zero jailers are quarantined.⁶ The Texas Commission on Jail Standards (TCJS) began collecting jails' COVID-19 data on August 24, 2020; however, TCJS does not maintain prior daily data online or publish a cumulative record report. According to an October 19, 2020, news article, more than 735 detainees and 34 employees in the Jail tested positive for COVID-19 between March and October 2020.⁷ Because the Jail stopped the routine testing of detainees in the general population for COVID-19 in May or June 2020, these reported numbers are likely to be materially understated.
16. The Dallas County Sheriff's Department operates the Jail. Dallas County Texas Commissioners fund the Jail's operating and capital construction and repairs budgets, approve staffing levels and new positions, and oversee its activities.
17. The Sheriff's Department is the County's third largest department and employs 2,100 people. The Jail consists of three towers and is staffed by 900 employees. It is also the second largest mental health facility in Texas.⁸ The Jail's operating capacity is 7,126 rated beds.⁹ The North Tower has

¹ Dallas County Department of Health and Human Services 2019 Novel Coronavirus (COVID-19) Updates and Information, as of June 1, 2021, <https://www.dallascounty.org/departments/dchhs/2019-novel-coronavirus/daily-updates.php> (last accessed June 1, 2021).

² TCJS COVID-19 Jail Report, dated May 31, 2021, https://www.tcjs.state.tx.us/wp-content/uploads/2021/05/TCJS_COVID_Report.pdf (last accessed June 1, 2021).

³ *Id.* (last accessed June 1, 2021).

⁴ In addition to Channel Lee Greer, it is believed that the deaths of Paul Aaron French, Robert Bryant, Jr., and Nathaniel Washington are also related to COVID-19. They were released from custody shortly before their deaths.

⁵ TCJS COVID-19 Jail Report, May 31, 2021, *supra* note 2 (last accessed June 1, 2021).

⁶ *Id.* (last accessed June 1, 2021).

⁷ Dallas Morning News, Coronavirus cases in jail, criminal justice reform key issues in Dallas County sheriff race, dated Oct. 19, 2020, <https://www.dallasnews.com/news/politics/2020/10/19/coronavirus-cases-in-jail-criminal-justice-reform-key-issues-in-dallas-county-sheriff-race/> (last accessed June 1, 2021).

⁸ Dallas County Sheriff's Department, Jail Facts, <https://www.dallascounty.org/departments/sheriff/jail-facts/> (last accessed June 1, 2021).

⁹ The rated capacity is the number of beds to which detainees are assigned on a continual basis. The remaining beds are non-rated and include those in the medical unit, punitive and administrative segregation, dry cells, and suicide watch, all of which are temporary assignments. The Jail's TCJS housing capacity including rated and non-rated beds is 7,408 beds.

3,292 beds, primarily 28-bed tanks and 188 single cells; the West Tower has 1,530 beds, primarily 8-bed tanks; and the South Tower has 2,304 beds, a total of 36 64-bed pods.¹⁰ All three towers are characterized as maximum custody facilities; however, low- and medium-custody male and female detainees are also housed in all three locations.¹¹ CDC Guidance has been in effect since March 2020, yet, many housing units in the three towers are filled to their rated capacities. With 5,610 prisoners in custody on March 31, 2021, about 80% of its operating capacity occupied, the remaining 20% of the beds is swing space that can be used to redistribute detainees to increase social distancing without compromising the custody classification system. The Jail can further improve its ability to socially distance detainees by (1) ensuring no beds are off-line for maintenance or repairs,¹² (2) reevaluating the suitability of collocating seriously mentally ill inmates in a county jail, (3) releasing otherwise eligible medically vulnerable detainees, and (4) by suspending cell leasing to the U.S. Marshal Service and housing ICE detainees. In February 2021, the TCJS reported the Jail housed 274 contract inmates.¹³

Opinion I

Detainees in the Jail must be afforded healthcare commensurate with the community standard. Regarding COVID-19, the CDC Guidance in Correctional and Detention Facilities is the standard of care to which all correctional facilities, including the Dallas County Jail, shall adhere.

18. The Dallas County Sheriff is the chief law enforcement officer in the County and the keeper of the Jail.¹⁴ The Sheriff is required to safely keep all prisoners committed to the Jail by a lawful authority, subject to an order of the proper court.¹⁵ While the Sheriff may appoint a jailer – in this case, Deputy Chief Fredrick Robinson – to operate the Jail and meet the needs of the prisoners, the Sheriff is required to continue to exercise supervision and control over the Jail.¹⁶
19. As she stated in her deposition, the Sheriff is also obligated to ensure that all those in the County's custody are afforded healthcare commensurate with the community level of care.¹⁷ The CDC, as part of the U.S. Public Health Service, is charged with protecting the public health of the nation by (1) providing leadership and direction in the prevention and control of diseases and other preventable

¹⁰ Dallas County Detention Centers, <https://www.dallascounty.org/departments/sheriff/detention-centers/> (last accessed June 1, 2021).

¹¹ See *id.*; Dallas County has two other jails: the "Old Jail," which is closed, and the George Allen Jail (capacity 800 beds), which is depopulated according to the Sheriff's Department website but was reopened recently for COVID-19 use.

¹² See Email Regarding George Allen, dated Nov. 16, 2020 [DALLASCO_SANCHEZ_0040294–0040295].

¹³ TCJS Annual Jail Report, dated Feb. 8–12, 2021 [DALLASCO_SANCHEZ_0019094–0019100].

¹⁴ Tex. Loc. Gov't Code § 351.041(a).

¹⁵ *Id.*

¹⁶ *Id.* at § 351.041(b).

¹⁷ Brown Tr., 177:7–22.

conditions and (2) responding to public health emergencies.¹⁸ With regard to the COVID-19 pandemic, the CDC Guidance issued on March 23, 2020, and updated periodically thereafter, is the standard of professional competence and care that correctional and detention facilities are expected to follow. Sheriff Brown has failed, and continues to fail, to comply with the CDC Guidance.

20. The Sheriff's Department General Orders materially deviate from these standards. The Orders create the Office of Detention Services, which encompass all aspects of detention operations – the care, custody, and control of detainees. The Office of Detention Services is led by a Deputy Chief who is appointed by the Sheriff but reports directly to the Department's Executive Chief Deputy, and not to the Sheriff.¹⁹
21. Within the Office of Detention Services is the Inmate Housing Bureau, which is led by an Assistant Chief Deputy appointed by the Sheriff. A Captain is assigned to each of the three towers and reports directly to the Assistant Chief Deputy. Captains are responsible first and foremost for:
 - a. Providing medical services to all inmates in that facility,
 - b. Supervising all the detainees by detention service officers, and
 - c. Maintaining an acceptable level of cleanliness and sanitation.²⁰
22. The General Order is an impediment to a unified system of command and control for several reasons, including:
 - a. The Sheriff is removed from the Jail's chain of command. Thus, the Department's Executive Chief Deputy serves as the Jail Administrator.
 - b. Detention Services continues to be headed by a Deputy Chief; however, an Assistant Chief Deputy oversees the Jail.
 - c. Three Captains operate as the equivalent of deputy wardens with one over each of the three towers. Each Captain is responsible for ensuring the delivery of healthcare to detainees in their respective tower, increasing the likelihood of tower-specific arrangements with Parkland.
 - d. No one person in any rank is expressly assigned in the General Orders to liaise with Parkland.

¹⁸ Federal Register, CDC, Centers for Disease Control and Prevention, <https://www.federalregister.gov/agencies/centers-for-disease-control-and-prevention#:~:text=The%20Centers%20for%20Disease%20Control%20and%20Prevention%20%28CDC%29%2C,preventable%20conditions%20and%20responding%20to%20public%20health%20emergencies> (last accessed June 1, 2021).

¹⁹ Dallas County Sheriff's Department, General Orders and Code of Conduct at 81–83 [DALLASCO_SANCHEZ_0024796- DALLASCO_SANCHEZ_0024798].

²⁰ *Id.*

23. Emergency planning and preparedness are key to public safety and among the Sheriff's primary responsibilities. Outbreaks of infectious and contagious diseases – notably, mumps, measles, chickenpox, and the flu – occur regularly in jail settings, and there was a recent pandemic in 2009, H1N1, as well as an outbreak of the Ebola virus in the United States in 2014. Nevertheless, when the World Health Organization (WHO) declared COVID-19 a global pandemic on March 11, 2020, many correctional facilities were ill-prepared. Within several weeks, however, the CDC issued the first iteration of its Guidance,²¹ affording all correctional systems a plan of action to protect their staff and confined population. The CDC has continued to update its Guidance for correctional and immigration detention facilities, and the TCJS has posted these updates on its website. The CDC's most recently updated Guidance was released on February 19, 2021, and subsequently refreshed on May 6, 2021.²² The CDC also released Recommendations for Quarantine Duration in correctional and immigration detention facilities on March 18, 2021.²³
24. Sheriff Brown and Deputy Chief Robinson have been unwilling to act on the most rudimentary of the CDC's milestones. For example, Deputy Chief Robinson only directed all detainees and DSO to wear a mask last summer after learning about the large number of asymptomatic inmates in the Jail.²⁴ He did not issue this order to finally comply with the CDC's mask mandate. Rather, it appears that he did so in lieu of adopting CDC's recommendation to test asymptomatic detainees. Despite all the scientific evidence to the contrary, he just did not believe it was necessary, "I just use common sense."²⁵
25. Sheriff Brown admitted making only a cursory review of the initial CDC Guidance and that she had not reviewed the updated CDC Guidance.²⁶ In fact, she did not know the CDC updated its Guidance periodically. It is her responsibility to know this information and to stay up to date. It is worrisome that the Sheriff believes she can lead without this foundational information. More than a year has passed since the CDC issued its first Guidance for correctional and detention facilities, and the Sheriff and Jail Administrator do not yet have a coherent or comprehensive plan of action that conforms with CDC Guidance. Both detainees and detention staff remain at high risk of infection.

²¹ CDC, Centers for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, updated May 6, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last accessed June 1, 2021).

²² CDC, Guidance for Correctional & Detention Facilities, updated May 6, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last accessed June 1, 2021).

²³ CDC, Quarantine Duration in Correctional Facilities, updated Mar. 18, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/community/quarantine-duration-correctional-facilities.html> (last accessed June 1, 2021).

²⁴ Robinson Tr., 38:1–2.

²⁵ *Id.* at 45:6–10, 14.

²⁶ Brown Tr. at 11:15–14:3, 136:2–9, 138:4–10.

26. In addition to the CDC, there are numerous professional law enforcement and correctional organizations with resources to assist state and local law enforcement and correctional systems, including jails, to address COVID-19. They include the National Association of Chiefs of Police, the National Sheriffs Association, the American Jail Association, and the American Correctional Association, all of which have compiled information about their systems' best practices and are available online. There are also government resources. Of note, the U.S. Department of Justice National Institute of Corrections offers training, technical assistance, and information services at no cost to federal, state, and local corrections facilities. Many Sheriffs, Corrections Commissioners, Jail Commanders, and Wardens avail themselves of these resources. Sheriff Brown has not.²⁷ I would encourage Sheriff Brown and Deputy Chief Robinson to do so, as well.
27. Due to the nature of the virus especially in densely populated settings like jails, addressing COVID-19 is difficult. But it cannot be avoided. From the onset of COVID-19 to date, the Jail has lacked the leadership necessary to identify and address the issues and obstacles that have impeded its compliance with CDC Guidance. The Sheriff is the keeper of the Jail. She picked Deputy Chief Robinson to be the Jail Administrator and contracts with Parkland to provide all the Jail's healthcare, but it is always Sheriff Brown's responsibility to ensure the Jail's compliance with the most current CDC Guidance. This requires the Sheriff to be fully conversant with the CDC Guidance and to continually engage with the Deputy Chief and Parkland to identify and address any obstacles that may impede the Jail's compliance. If, for any reason, the Sheriff cannot meet or maintain compliance with one or more CDC Guidance for any reason, she has a duty to inform the Dallas County Commission and request the assistance required. In turn, the Commission has the duty to respond affirmatively.

Opinion II

Sheriff Marian Brown has a duty to execute a plan that detects, deters, and treats COVID-19 in the Jail, and imbued in her office is the authority to do so. Parkland's role as the Jail's healthcare provider does not relieve Sheriff Brown of her responsibility to ensure that a plan of action in accord with CDC Guidance is in place and fully supported. The Sheriff has failed to meet her responsibilities. Today, the Dallas County Sheriff's Department continues to be unwilling or unable to afford all of those in its custody, as well as in its employ, the protection and care to which they are entitled.

A. Command and Control

28. Sheriff departments and county jails are paramilitary organizations, closed systems known for their unwillingness to take direction from others, including civilians in their own organizations. Command and Control is top-down, which is to say, these organizations are not disposed to discuss matters or to revisit and reverse decisions. In this environment, rank matters; academic achievement, terminal degrees, and civilian titles do not. Absent intervention by the sheriff or jail administrator, licensed medical personnel cannot be assured of their status or standing as medical authorities. Not surprisingly, detention officers and detainees are powerless. Metaphorically, the sheriff always has control of the keys.

²⁷ Brown Tr., 86:22–88:1.

29. Delegation is a means by which paramilitary agencies distance themselves from disagreeable tasks and duties that are viewed as secondary to safety and security, i.e., not “their job.” Implementing CDC Guidance is a case in point. Jails, prisons, and their respective healthcare providers embraced CDC Guidance to varying degrees. There are resource constraints to be sure – staff, space, supplies – but the commitment to follow the science is also a factor. Dallas County Jail is better positioned than are a number of other jails because its medical provider, Parkland, is a partner with considerable resources. Parkland is one of the main teaching hospitals at UT Southwestern Medical Center and, through this affiliation, secured the services of Dr. Ank Nijhawan, a specialist in infectious diseases. Not only has the Sheriff delegated all the decision-making concerning the delivery of healthcare to Parkland particularly in infectious diseases, but she is disengaged as to the outcomes. The Dallas County Sheriff’s Department would serve better, and be better served, if it actively engaged Parkland in its delivery of detainee healthcare. During her deposition, Sheriff Brown stated that she did not know what Parkland’s plan was to vaccinate detainees and that she did not believe that she needed to know, admitting “I’m trusting that [Parkland] will do it.”²⁸ Deputy Chief Robinson has expressed similar sentiments. When asked about his lack of familiarity with CDC Guidance he responded, “I depend on Parkland.”²⁹ And concerning Parkland’s protocols he replied, “No, I’m not curious.”³⁰
30. Actually, Parkland is having considerable difficulty vaccinating detainees, and that should matter to both the Sheriff and Deputy Chief. Parkland failed to anticipate or address many detainees’ belief that the Johnson & Johnson (J&J) vaccine is not safe to take, resulting in lower vaccination acceptances. Prior to the CDC’s pause on administering the J&J vaccine, 989 of 2,215 detainees agreed to be vaccinated (45%) but 1,226 (55%) did not. Parkland resumed vaccinations on April 25 following the CDC’s pause to reassess J&J’s safety. Participation decreased considerably. Of the 954 detainees approached, only 128 (13%) consented, the remaining 826 (87%) did not. Upon completing its sweep of the general population, Parkland began vaccinating consenting new admissions. Between May 2 and May 22, just 143 of 2,799 (5%) incoming detainees agreed to be vaccinated. The Jail will never achieve herd immunity at this rate, and the Sheriff cannot partner with Parkland if she does not participate.
31. The Dallas County Sheriff primarily oversees the daily Jail operations, warrant execution, and highway patrol. The Sheriff is also responsible for policing 14 unincorporated areas in the County. Sheriff Brown makes policy for the Jail, and any policy regarding COVID-19 is a policy for which she is responsible.³¹ The Sheriff said that she spends 51% or more of her time on the Jail,³² but little of

²⁸ Brown Tr., 70:23–71:8.

²⁹ Robinson Tr., 58:17.

³⁰ *Id.* at 121:1.

³¹ Brown Tr., 162:1–6.

³² *Id.* at 19:11–13.

it substantively on COVID-19 related matters.³³ Given the time and attention that managing the pandemic has required of all correctional systems, I was surprised to learn how limited the Sheriff's familiarity is with CDC Guidance, her lack of awareness of CDC Guidance periodic updates, and how little she knew about the Jail's COVID-19-specific issues.³⁴ Sheriff Brown relies primarily on Deputy Chief Robinson to oversee the Jail's response to COVID-19, but the Sheriff has not designated the Deputy Chief the Jail's liaison to Parkland – the Sheriff has not designated anyone for that role. Moreover, Deputy Chief Robinson is not a reliable reporter; it is his belief that the Jail surpasses CDC expectations and most likely that is what he conveys to the Sheriff.³⁵ The Deputy Chief is wrong. The Jail is deficient with respect to implementing every component of the CDC's Guidance.

32. There is no indication that Sheriff Brown ever instructed Deputy Chief Robinson either as the Jail Administrator or de facto liaison to Parkland that he should do whatever it takes to incorporate the CDC Guidance in the Jail's policy and practice as well as that of Parkland, or to report to her office immediately should he face an obstacle that he cannot not overcome. Instead, it appears that the Sheriff has allowed the Deputy Chief to exercise his judgment concerning Parkland's performance which has not been trouble-free in other ways. On occasion, nursing staff have refused to enter the cells of symptomatic detainees in medical distress, sometimes due to the lack of PPE,³⁶ or to administer medication as prescribed due to staffing problems.³⁷ Nursing staff also have failed to screen incoming detention staff, instead leaving it to untrained officers.³⁸ Nursing staff have also failed to consistently inform the Jail of detainees who tested positive.³⁹ Parkland also apparently discontinued "RAT" nurses, medical staff who respond to medical emergencies, without notice at a time when the need for this support is greatest.⁴⁰
33. Even more worrisome, are Deputy Chief Robinson's repeated refusals to consider recommendations that Dr. Nijhawan, Parkland's infectious disease specialist, offered to address COVID-19 consistent with CDC Guidance, and Sheriff Brown's unawareness that this was occurring. Of note are two practices that Dr. Nijhawan identified as problematic and to which the Jail still adheres contrary to CDC Guidance – (1) isolating detainees in cohorts or groups which increases the likelihood of infection and (2) returning detainees to the general population without first testing asymptomatic detainees to prevent infection in the general population, thereby exposing more detainees and detention staff to COVID-19.⁴¹

³³ Brown Tr., 19:22–20:21.

³⁴ See, e.g., *id.* at 12:8–14:3; 69:4–15; 100:2–101:9.

³⁵ Robinson Tr., 92:1–8.

³⁶ Email to Robinson Regarding PPE [DALLASCO_SANCHEZ_0045264–DALLASCO_SANCHEZ_0045266].

³⁷ T. McDonald Grievance, dated Apr. 17, 2020 [DALLASCO_SANCHEZ_0002985].

³⁸ DSO Memorandum dated Apr. 1, 2020 [DALLASCO_SANCHEZ_0045358–DALLASCO_SANCHEZ_0045359].

³⁹ Email to Robinson Regarding Exposure to COVID-19 [DALLASCO_SANCHEZ_0043152].

⁴⁰ Jail Media [SANCHEZ_00000205–SANCHEZ_00000211].

⁴¹ See, e.g., Nijhawan Tr. Vol I, 29:3–30:14, 37:12–38:14, 41:15–22, 42:2–16, 137:22–138:8, 139:12–18, 140:15–143:6, 144:22–145:12.

34. It is my opinion that Sheriff Brown never formed a clear or complete understanding of how COVID-19 could disrupt facility operations, and she has continued to resist adopting a plan, or agreeing to plans, to mitigate its impact on everyone in the Jail.⁴² Sheriff Brown appears to be unaware how deficient the Department's response has been, unaware of how much further behind other correctional facilities' COVID-19 management it is and is of the mindset that it does not matter.⁴³
35. COVID-19 is as great a threat to our individual and collective safety and wellbeing as any that law enforcement has encountered. Even as the community begins to lift COVID-19-related restrictions, jails and prisons will continue to be at risk of infection given the conditions under which they routinely operate. Sheriff Brown is not expected to execute CDC's Guidance without Parkland, but she is expected to work tirelessly with Parkland toward full compliance with CDC Guidance. On behalf of Dallas County, Deputy Chief Robinson testified, "We consider the CDC guidance as what it really says [it] is -- guidance."⁴⁴ He is wrong, and it is Sheriff Brown's responsibility to redirect or to replace him. Ultimately, the Sheriff is responsible for the detainees in the County's custody. She may not delegate this duty of care to others.⁴⁵ As the rollout of administering vaccinations demonstrated, this requires that she remain engaged, i.e., – informed, educated, and in constant communication with Mr. Jones, Parkland's Vice President of Operations for Correctional Health Services, the Jail's Medical Director currently, Dr. Barry-Lewis Harris, and Dr. Nijhawan, Parkland's infectious disease specialist.

B. Key Activities and Areas of Concern

36. The pandemic is dynamic – ever changing and evolving – and the Sheriff's Department must be, as well. With the introduction of testing in the summer of 2020 and vaccines early in 2021, and at least several formidable variants still spreading today in the United States, it is incumbent upon Sheriff Brown and Deputy Chief Robinson to lead by example -- to be nimble, and to focus and to press continuously on the containment of COVID-19 in the Jail. The safety and wellbeing of everyone in their custody, the Jail's staff, and the public at-large require that they do.
37. The CDC was purposeful in its choice of the word "interim," signaling guidance is evolving and subsequent updates are forthcoming. For similar reasons, the CDC selected "guidance," not requirements or standards, when it first issued *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* in March 2020. The CDC recognized jails, prisons, and immigration detention facilities vary appreciably place to place and, still, there are critical components in each of three phases – operational preparedness, prevention, and intervention – that every facility must address to protect the people in those places and the public at-large. These critical components include screening and testing, cohorting and quarantine,

⁴² Brown Tr. 37:16–38:18, 39:12–14, 40:20–41:21, 43:1–14, 47:16–48:2, 48:11–17, 68:6–71:8, 100:2–102:2; Robinson Tr. 41:25–42:6, 42:17–43:9, 57:11–20, 58:14–23, 86:14–25, 115:22–116:3, 117:22–118:5, 119:19–120:21, 123:7–15.

⁴³ See Brown Tr., 48:11–24.

⁴⁴ Robinson Tr. Vol. II, 55:20–21.

⁴⁵ Tex. Loc. Gov't Code § 351.041.

personal protective equipment and hand hygiene, social distancing and sanitation, and most recently, vaccination.⁴⁶ It is not a matter of choosing one or some of them, but adequately addressing them all.

38. The Dallas County Jail may be the seventh largest jail system in the country,⁴⁷ but it does not operate as well as many other county correctional systems with the same responsibilities. Based on my experience, smaller facilities with fewer resources have made more strides toward full compliance with the CDC's Guidance than have Defendants. For example, last June, the DHS Office of Inspector General surveyed facilities that ICE used to detain immigration detainees about their compliance with key components of the CDC Guidance and most reported success in every area but testing.⁴⁸ And it was not that those facilities were unwilling to test the population; they were unable to secure test kits or processing back in June of 2020. To follow are some of the infirmities which, in my opinion, impede the Jail's compliance with CDC Guidance. They also impact the Jail's ability to comply with TCJS standards.

- a. **Mission, Vision, Values.** The Sheriff's Department is first and foremost a law enforcement agency, and Sheriff Brown is the County's chief law enforcement officer. The Jail is the place where those who the Sheriff's deputies arrested are detained pending resolution of their criminal cases. The Sheriff's primary responsibility as the Jail's Chief Executive Officer is twofold: (1) provide the necessary custody and control to protect the public; and (2) ensure detainees are afforded the requisite level of care to meet or exceed community standards. This is not always easy to do. Most candidates for the Office of Sheriff run to serve as the county's Chief Law Enforcement Office and not as its Jailer, but once elected, the incumbent must serve faithfully in both capacities.

As the Jailer, Sheriff Brown appears more willing to implement certain CDC recommendations, notably, suspending most in-person visitation,⁴⁹ over others, such as increasing social distancing by releasing medically vulnerable offenders.⁵⁰ But both are

⁴⁶ See CDC Interim Guidance, *supra* note 21 (last accessed June 1, 2021).

⁴⁷ Dallas County Sheriff's Department Jail Facts, <https://www.dallascounty.org/departments/sheriff/jail-facts/> (last accessed June 1, 2021).

⁴⁸ DHS OIG, Early Experiences with COVID-19 at ICE Detention Facilities, OIG-20-42, dated June 18, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf> (last accessed June 1, 2021).

⁴⁹ Executive Order, Governor of the State of Texas, dated May 22, 2020, <https://gov.texas.gov/news/post/governor-abbott-issues-executive-order-suspending-in-person-visitations-in-county-and-municipal-jails> (last accessed June 1, 2021).

⁵⁰ Executive Order, Governor of the State of Texas, dated Mar. 29, 2020, <https://gov.texas.gov/news/post/governor-abbott-prohibits-release-of-individuals-in-custody-with-history-of-offenses-involving-physical-violence> ("Provided, however, that nothing herein shall prevent the lawful exercise of authority by a county criminal court judge, district judge, or appellate judge in considering release on an individualized basis for health or medical reasons, provided that proper notice is given to the district attorney and an opportunity for hearing is given.") (last accessed June 1, 2021).

subjects of Executive Orders.⁵¹ There are additional actions that are easier to implement and can have an immediate impact; for example, addressing the medication lines where the most vulnerable detainees queue to receive their daily medications.⁵²

Senior and Supervisory staff take their direction from the top, and a number of the Jail's staff have served as sheriff deputies as well as DSO over the course of their careers. Some of the Jail's uniformed managers are at the Jail today because that is where the promotional opportunities were.⁵³ This is not to suggest that Sheriff's Department staff should not work at the Jail or with detainees, only that their information is limited, and their orientation absent additional information is not necessarily to advocate on the detainees' behalf. An example of this inclination is the Jail's awareness of detainees with handicapping conditions – most often, those who are in need of a lower bunk or assignment to the lower tier in a housing unit – but not medically vulnerable detainees – people with chronic lung disease or moderate to severe asthma, serious heart conditions, people who are immunocompromised, including cancer treatment, and people over 55 years of age – all of whom are at heightened risk of contracting COVID-19, experiencing more severe symptoms, and are more likely to die from the virus.⁵⁴ Until custody staff can recognize people at risk, they cannot refer them to Parkland for assessment and care, including consideration for release. The recognition that certain people should not be detained consistent with CDC Guidance, or detained under appreciably different conditions, starts at the top.

- b. ***Roles and Responsibilities.*** The Sheriff described her job as the day-to-day manager of the Department and the Jail,⁵⁵ and the Deputy Chief, much the same.⁵⁶ Both are much more than that. The Sheriff is the keeper of the Jail, and the Deputy Chief is the Jail Administrator. Parkland is the Jail's healthcare provider. Parkland cannot provide healthcare -- and specific to COVID-19, in accord with CDC Guidance -- without the Sheriff's and Deputy Chief's ongoing engagement.

Decision-makers must be informed to make informed decisions. The Sheriff failed both to make a concerted effort to be knowledgeable about the CDC Guidance, and to direct the Deputy Chief to do so as well. Instead, the Sheriff's inaction and the Deputy Chief's refusal to adapt, if not adopt, Dr. Nijhawan's recommendations have exposed countless detainees to infection. In turn, it does not appear that Parkland's on-site administrators and section heads have always kept Mr. Jones fully informed. Apathy can be infectious. Parkland had formed a COVID-19 team in February 2020 that met daily until July when it was disbanded

⁵¹ See Executive Orders, *supra* notes 49–50.

⁵² Venters Supp. Report, p. 26.

⁵³ See Robinson Tr., 7:15–8:11.

⁵⁴ See Venters Supp. Report, pp. 6–7.

⁵⁵ See Brown Tr., 19:22–20:21.

⁵⁶ Robinson Tr., 7:17–22.

for other operational reasons. No one on the Sheriff's staff ever attended.⁵⁷ And no other group of Sheriff's and Parkland's staff has met in its place.⁵⁸

It is widely recognized that passing the TCJS' annual inspection matters. Sheriff Brown also has a responsibility to raise everyone's awareness that complying with CDC Guidance matters, too.

- c. **COVID-19 Policies and Procedures.** The Sheriff's Department has not issued any policies and procedures to implement CDC Guidance – including, but not limited to, policies regarding sufficient space for monitoring, medical isolation, cohorting and quarantine; meaningful social distancing measures; enhanced hygiene and sanitation; continuity of meal service, laundry, maintenance and repair when inmate workers and staff movement are restricted; PPE distribution and enforcement; and detainee and detention officer information and instruction.⁵⁹ Nor has the Jail actively participated in the development of Parkland's protocols, including, by way of example, protocols for intake screening, testing, and vaccination.⁶⁰ Lacking plans of their own, the Jail has also been quick nevertheless to reject Parkland's proposals. Among the Jail's refusals, Deputy Chief Robinson denied Parkland's request to institute a 14-day quarantine, a CDC guideline in carceral settings. Initially, the Deputy Chief agreed to a seven-day quarantine then later, to a nine-day quarantine.⁶¹ He did so without weighing the options to increase bedspace.

Most of the material that the Jail has issued to guide supervisors and staff are copies of largely repetitive general information produced primarily by the CDC more than a year ago.⁶² Far less has been posted in the housing units for detainees. These copies had been kept in a floor file folder at control centers in the Jail.⁶³ The most recent information in the folder is dated August 2020, which is to say, any developments since then – notably, vaccine and plans to vaccinate the detainee population – are not included.⁶⁴ Not only is this material not an acceptable substitute for agency-specific policy and procedure, but the method of delivery is also inadequate. There is no opportunity to review a file on post – while in the housing unit the DSO is expected to continually surveil the population – and their 30-minute meal break is supposed to be just that, a break, and some of that time is already used to secure replacement masks for detainees and themselves. There is no system of accountability to ensure any, much less all, staff has read and understands the material.

⁵⁷ Jones Tr., 20:3–5, 20:9–21.

⁵⁸ *Id.* at 20:22–25, 21:1.

⁵⁹ Robinson Tr., 47:16–48:2; 120:23–121:15; 162:7–164:7.

⁶⁰ *Id.* at 48:11–17; 90:5–92:13.

⁶¹ *See* Jones Tr., 150:20–25; Robinson Tr., 54:25–55:12.

⁶² *See* Folder Materials [DALLASCO_SANCHEZ_0019045–0019093; DALLASCO_SANCHEZ_0012338–0012365].

⁶³ Brown Tr., 162:7–17.

⁶⁴ *See* Folder Materials [DALLASCO_SANCHEZ_0019045–0019093; DALLASCO_SANCHEZ_0012338–0012365].

- d. ***Shift Briefings/Detailing/Special Training.*** The Sheriff Department's dissemination of information is also hierarchical. Under ordinary circumstances, it is customary to conduct a short shift briefing for the oncoming shift to advise the DSO about any incidents that occurred on the last shift and to pass on any other information of consequence before announcing (any changes to) that shift's post assignments. The Jail also uses its shift briefing for "detailing," a process by which instruction on a subject is passed verbally from one rank to another -- captain to lieutenant to sergeant -- to the oncoming shift.⁶⁵ The Jail suspended shift briefings to socially distance staff for some time at the height of the pandemic and along with that, discontinued detailing. In its place, Deputy Chief Robinson instituted the floor file folder referenced above.⁶⁶

The Deputy Chief announced in May 2020 that he planned to replace the floor file folder with an official training program on COVID-19 and prevention efforts in the Jail provided with the assistance of Parkland Jail Health Staff for all the DSO.⁶⁷ It never happened. Dr. Nijhawan offered to help and he declined. The Deputy Chief told her how the Sheriff's Department liked to "do the education" and that "he would tackle that."⁶⁸

- e. ***Healthcare/Other Systemic Indicators.*** A jail's medical contract is usually its largest and most complex purchase of service, and the failure to provide healthcare consistent with the community standards is among its most consequential. Indeed, in November 2007, the U.S. Department of Justice entered an Agreed Order with Dallas County and Sheriff Lupe Valdez concerning conditions of confinement at the Jail including detainee healthcare.⁶⁹ Chief among the substantive provisions of that Order were those concerning medical care, including treatment and management of communicable disease, specialty care, and quality assurance review. Specific deficiencies concerned problems with the intake process to include the lack of a 14-day health assessment process, screening for infectious disease, and adequate and timely acute care and follow-up; the need to establish effective infection control policies and procedures; adequate access to appropriate health care including follow-up care; medication administration; and healthcare staffing, training, and supervision.⁷⁰

⁶⁵ Nijhawan Tr. Vol I, 40:17–24; 113:18–21.

⁶⁶ DSO Memorandum, dated May 13, 2020 [DALLASCO_SANCHEZ_0012361–0012365].

⁶⁷ DSO Memorandum, dated May 6, 2020 [DALLASCO_SANCHEZ_0012356- DALLASCO_SANCHEZ_0012360]; DSO Memorandum, dated May 13, 2020 [DALLASCO_SANCHEZ_0012361-DALLASCO_SANCHEZ_0012365].

⁶⁸ DSO Memorandum, dated May 13, 2020 [DALLASCO_SANCHEZ_0001121–DALLASCO_SANCHEZ_0001130]; Robinson Tr., 113:18–21.

⁶⁹ Agreed Order, *United States v. Dallas Cnty, Tex., et al.*, Civil Action No. 307-cv 1559-N, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/dallas_county_order_11-06-07.pdf (last accessed June 1, 2021).

⁷⁰ *Id.* at 5–12.

The issues identified by the Justice Department in 2007 about the Jail's detainee healthcare continue to impede the Jail's response to COVID-19 as well as its compliance with the TCJS Standards today. They must be addressed. Other correctional systems employ a contract manager and/or in-house medical director who reports directly to the Chief Executive Officer – which, in this case, is the Sheriff – to liaise on a continual basis with the Jail's healthcare provider and advocate for the best healthcare outcomes. It is my opinion that the Sheriff's Department should consider this as well.

- f. **Activities and Outcomes/Focus and Press.** The Jail has a lot of moving parts. It also has quite a few loose ends. Sheriff Brown and Deputy Chief Robinson, the Jail's ultimate decision-makers, attend meetings, participate in conference calls, issue emails, and receive a variety of reports about a variety of issues and still, neither of them is particularly engaged or well-informed about how well the Jail is performing.

Recently, two issues, both attracting considerable attention, appeared to take the Sheriff and Deputy Chief by surprise: (1) the impact of COVID-19 on facility operations; and (2) TCJS' most recent annual inspection of the Dallas County Jail. The few remedial measures taken by Defendants occurred after, and not before, the lawsuit concerning COVID-19 conditions brought on behalf of Plaintiffs and another on behalf of detention staff were filed, and the notice of the 2021 failed TCJS inspection was issued.

COVID-19 was new to everyone and yet, the majority of correctional systems followed CDC Guidance and found their footing.⁷¹ Others still have not. The Dallas County Jail has not. During her deposition in March 2021, Sheriff Brown testified that she did not know (1) over one-half of all detainees who were tested a year ago were found to be positive for COVID-19,⁷² (2) about ten months when a sample of asymptomatic detainees was tested, more than three-quarters tested positive for COVID-19,⁷³ or (3) what was Parkland's plan to vaccinate detainees.⁷⁴ It is clear to me from the Sheriff's statements that she has made a deliberate choice to be hands-off regarding COVID-19 in the Jail. During Chief Robinson's deposition in April 2021, he testified that he did not know there was training available for the custody staff who were conducting COVID-19 contact tracing and he had not inquired. He figured contact tracing was common sense.⁷⁵ If he had, he may also have discovered how poorly detainees' contact tracing was being conducted.⁷⁶

⁷¹ See generally Prison Policy Initiative, the Most Significant Criminal Justice Policy Changes from the COVID-19 Pandemic, <https://www.prisonpolicy.org/virus/virusresponse.html> (last accessed June 1, 2021).

⁷² Brown Tr., 33:5–9.

⁷³ *Id.* at 31:18–23; 33:5–9.

⁷⁴ *Id.* at 49:2–12.

⁷⁵ Robinson Tr., 122:15–18, 25; 123:7–15.

⁷⁶ Jones Tr., 80:6–10, 80:17–20; Urey Tr., 66:19–20; Harris Tr., 71:5–12; Email to Brown Regarding Contact Tracing [DALLASCO_SANCHEZ_0051339–DALLASCO_SANCHEZ_0051340].

Unlike COVID-19, TCJS facility inspections are not new. They are conducted annually. The most recent inspection occurred early in February 2021. However, neither the Sheriff nor Deputy Chief was aware that the Jail was at risk of failing that inspection or so it appeared. The only measures reported by the Jail in response to the TCJS inspection were taken after the release of TCJS' report. TCJS' February 2021 letter to Clay Jenkins, Dallas County Judge, and Sheriff Brown notified them that the Jail had failed to comply with minimum standards and that appropriate corrective measures must be initiated to rectify deficiencies in four critical areas – custody reassessment/review, personal hygiene, correspondence, and grievances, an additional indicator of the Jail's non-compliance with CDC Guidance, and its overall inadequate management of COVID-19.⁷⁷

- i. Custody reassessment/review. Current risk assessments are essential to accurate custody classification. The TCJS cited the Jail for delays as great as 23 days in routine custody reclassification reviews and 83 days upon disciplinary action, impeding both informed housing assignments and the potential reallocation of housing units to accommodate the growing number of medically monitored detainees for COVID-19.
- ii. Personal hygiene. The TCJS determined indigent detainees were not provided personal care/hygiene items, and that detainees with funds to purchase these items were not receiving them timely. The Jail contracts with a vendor to operate its commissary and includes supplying indigent detainees with these items. Apparently, the vendor was delinquent in distributing products to all detainees due to staffing issues. CDC Guidance underscore the need for vigorous personal hygiene.
- iii. Correspondence. The TCJS also determined detainees were not furnished paper, pencils, envelopes, and stamps through the commissary. Apparently, the commissary vendor was having trouble furnishing paper due to a national shortage. The Jail did not explain the lack of the other items. The failure to provide these supplies impeded access to counsel for both indigent detainees and those with funds.
- iv. Grievances. The TCJS determined that multiple grievances submitted by detainees about these, and other issues did not receive the required 15-day interim response by the Jail's grievance board as required. Apparently, another of the Jail's vendors converted its inmate grievance submission process to an automated system, and the Jail had failed to monitor its implementation.

Both these recent events also underscore how pervasive is Sheriff Brown's and Deputy Chief Robinson's practice to delegate to other providers —not just detainees' healthcare, but also commissary and the inmate phone provider—all of which are fundamentally the Jail's responsibilities. This pattern and practice are another indicator of their egregious dereliction of duty.

⁷⁷ TCJS Letter to the Hon. Clay Jenkins and Sheriff Marian Brown, dated Feb. 23, 2021 [DALLASCO_SANCHEZ_0019094–DALLASCO_SANCHEZ_0019100].

- g. **Code of Conduct.** Ordinarily, the Department's code of conduct would be included in a discussion about its vision, mission, and values. Here, it is its own section because the Sheriff's Department does not have a code of conduct, not in the customary sense, i.e., a recitation of its employees' attributes upon which its stakeholders can rely. Instead, the Dallas County Sheriff's Department Code of Conduct is its discipline system, a primary means upon which it appears to rely to achieve staff compliance. The Code of Conduct Manual's policy statement provides, in part, that the discipline system "reflects the values of the Department ... and results in a culture of public accountability, individual responsibility, and maintenance of the highest standards of professionalism."⁷⁸ Demoting Assistant Chief Hartgraves to Captain upon notice that the Jail had failed the TCJS' annual inspection will not in and of itself achieve a better result. Better selection and promotion decisions by managers, timely training, clear direction, and adequate supervision and recognition when warranted, however, will.
- h. **Cultivating Scarce Resources.** Sheriff Brown has failed to conserve and to cultivate scarce resources -- time, personnel, talent, appropriated funds, and good will -- wisely.
- i. **Time.** Sheriff Brown lost a lot of time resisting the adoption of CDC Guidance. Prior to the release of CDC Guidance, it was widely recognized that PPE, cleaning and disinfecting supplies, dedicated space for people with symptoms and infected individuals, a backup plan to cover all the essential posts, and alternative accommodations to ensure access to counsel needed to be in place. Sheriff Brown failed to act. And, in at least one instance -- face masks -- it appears that she refused to. When detention staff began to bring and wear masks from home because the Jail had not issued them any, they were directed not to wear them because that would panic the detainees.⁷⁹
- ii. **Personnel.** The Jail had a number of vacancies and apparently, its vendors did as well. Custody staff's working conditions were made more difficult with the pandemic. The DSOs were routinely exposed to detainees with symptoms or diagnoses of COVID-19. They also received no assistance securing on-site testing and initially, only their union arranged on several occasions for them to be vaccinated off-site. The DSOs regularly entered housing units where one or more detainees with symptoms had not been moved. At least several DSOs refused to enter or remain in certain areas fearful they would contaminate their families. I cannot underscore how exceptional it is for officers to refuse any order especially, the order to assume one's post. In my experience, staff will only take a measure as extreme as this when they believe they have no other recourse.
- iii. **Talent.** Many of the email exchanges that I reviewed depicted line staff and supervisors' efforts to solve problems -- especially, to make space, opening and closing housing units and moving detainees around, to separate those with symptoms from those without,

⁷⁸ Dallas County Sheriff's Department, General Orders and Code of Conduct at 672 [DALLASCO_SANCHEZ_0025387].

⁷⁹ Hearing Tr. on Motion for Temporary Restraining Order, dated Apr. 21, 2020, at 159:15--22.

and to summon medical attention for detainees in distress – without the assistance or support of the Jail’s senior staff. All those who tried to make a difference should be commended and the leadership they demonstrated, cultivated.

- iv. Appropriated funds. The operating budget is usually based upon the prior year’s spending, documented new needs, and available revenue. The budget process also allows for emergency appropriations. New needs associated with COVID-19 arose over the past year; there is no indication that Deputy Chief Robinson requested Sheriff Brown’s assistance and that she asked or offered. Instead, they rejected several significant steps to address the spread of COVID-19 in the Jail – testing and vaccinating detainees and addressing social distancing due to the lack of staff –and discontinued a professional sanitation service at the height of the pandemic due to insufficient operating funds.⁸⁰
- v. Good will. Good will may be an agency’s most valuable, and its scarcest, asset. Repeated mistakes, bad calls, poor judgment, and the lack of transparency quickly erode good will. I am alarmed by the Jail’s continual state of crises, the failure to focus and press, and the lack of transparency that Sheriff Brown has demonstrated as evidenced for example, by the overall numbers of deaths in detention and positive cases of COVID-19 reported when testing is conducted. Sheriff Brown and Deputy Chief Robinson have not served well. They reacted not responded to COVID-19, the 2021 TCJS inspection, and recent lawsuits. Neither has led the Jail.

39. Sheriff Brown and Deputy Chief Robinson appear to be far more forgiving of their own deficiencies than they are of others. The Sheriff agreed with the Deputy Chief that Parkland’s request to test asymptomatic detainees for COVID-19 was resource-prohibitive, but she did not request additional officers or overtime to assist in this effort.⁸¹ This issue has resurfaced recently as additional DSO are also needed to facilitate detainees’ vaccinations. In comparison, staff that have tried to do better have not been supported. A number of DSO have longstanding requests for additional information and more instruction in the performance of their duties concerning COVID-19 and have received little to date.⁸² A lawsuit filed by some of these officers in August 2020 chronicles their efforts to be better informed to protect themselves and to inform the detainees so that they may take the same precautions.⁸³

40. Given all the difficulties that the Jail has encountered grappling with COVID-19 and the toll that it has taken on the workforce, I cannot imagine how anyone in a leadership position in the Sheriff’s Department and at the Jail, especially Sheriff Brown, could conclude that complying with CDC Guidance is not necessary. Sheriff Brown and Deputy Chief Robinson share, and have shirked, their responsibility to be fully informed; to use all the resources at their disposal, including the power of

⁸⁰ Email to Semie Hart Regarding Funding [DALLASCO_SANCHEZ_0040397–DALLASCO_SANCHEZ_0040398].

⁸¹ Email from Dr. Ank Nijhawan Regarding Testing [DALLASCO_SANCHEZ_0000726–DALLASCO_SANCHEZ_0000728]; *see also* Robinson Tr., 114:9–116:3.

⁸² *See, e.g.*, DSO Memorandum, dated May 6, 2020 [DALLASCO_SANCHEZ_0012356–DALLASCO_SANCHEZ_0012360].

⁸³ *See generally* Lewis Lawsuit.

their Offices to focus their efforts on that which is important – complying with CDC Guidance; to closely monitor and carefully measure its impact on facility operations; and to press forward without any further delay.

Opinion III

Dallas County, Texas, a municipal corporation organized under the laws of the State of Texas, controls and operates the Jail through Sheriff Brown. Dallas County must ensure Sheriff Brown has a viable plan, including sufficient resources, to implement CDC Guidance in the County’s Jail. Dallas County has failed to establish and enforce a level of care owed the people in its custody. The Sheriff has been slow to act and still does not have a comprehensive plan of action in place. The County’s failure to oversee Sheriff Brown’s management of COVID-19 in the Jail since its onset and to ensure a CDC-compliant plan is in place continues to harm detainees in the County’s custody and must be resolved.

41. Dallas County is also culpable. Only the County Commissioners can compel Sheriff Brown to use all the resources at her disposal, including the Jail’s 7,100 beds and 900 detention staff, the Department’s annual operating budget, and the County’s contract with Parkland, to fully comply with the CDC Guidance. This is accomplished in large part, by assisting and supporting Parkland’s efforts toward that end. And, if additional resources are required to accomplish this goal, the County Commissioners are obligated to ensure those needs are addressed.⁸⁴

42. When Plaintiffs first sought relief in spring 2020, known conditions in the Dallas County Jail included:⁸⁵

- a. COVID-19 testing had been delayed or denied, even to detainees with symptoms, at intake, during detention, and upon release.
- b. Detainees who tested positive remained in housing units with others who did not have symptoms and who had not been tested.
- c. There was a shortage of Jail employees to report for work and increasing reliance on overtime to backfill those posts.
- d. Defendants failed to provide staff and detainees with adequate PPE and to require the use and regular replacement of such equipment, as well as to inform and enforce its correct, consistent use.
- e. Defendants failed to educate detainees about the virus and prevention methods, including by way of example, the lack of signage and in languages other than English.
- f. Defendants failed to institute appropriate social distancing practices, including in-dorm bunk arrangements, waiting lines, and meals for detainees, and shift briefings for staff.

⁸⁴ See Functions of the County Administrator, <https://www.dallascounty.org/government/county-administrator/functions-administrator.php> (last accessed June 1, 2021).

⁸⁵ See generally Venters Report and Venters Supp. Report; TCJS Annual Jail Report, dated Feb. 8–12, 2021 [DALLASCO_SANCHEZ_0019094–DALLASCO_SANCHEZ_0019100]; DSO Memorandum, dated May 13, 2020 [DALLASCO_SANCHEZ_0001121–DALLASCO_SANCHEZ_0001130].

- g. Defendants failed to segregate detainees with symptoms and illness from other detainees and DSOs, and to institute a 14-day quarantine for all new admissions.
- h. Defendants failed to ensure sufficient stocks of hygiene and cleaning supplies and to provide detainees with no-cost access to these supplies.
- i. So many detainees developed symptoms so quickly, they were secured in place, placing everyone else in those housing units at risk.
- j. So many areas were quarantined that routine medical care, meal service, laundry, and commissary were interrupted, and maintenance, repairs and routine cleaning went unattended.

43. Few of these issues are fully resolved and others have arisen, including, by way of example:⁸⁶

- a. The facility delayed testing detainees at intake and now it is having difficulty encouraging more of them to consent.
- b. At the same time, the Jail rejected Parkland's proposal to offer routine testing to asymptomatic detainees, causing more asymptomatic detainees to infect others with whom they come in contact.
- c. Bed management is so poor, cohorted and quarantined patients, as well as lower and higher custody inmates, are comingled with greater frequency.
- d. Quarantine practices are so onerous that detainees are willing to risk their health to avoid housing conditions akin to punitive segregation.
- e. There is urgent need for an aggressive, achievable plan to educate and vaccinate as many detainees as quickly as possible.

44. Recently, the CDC has begun to lift mask and movement restrictions for people in the community who are fully vaccinated for COVID-19. The Jail is not ready to resume any semblance of normalcy. A minority of detainees in the Dallas County Jail, widely recognized to be a convector for contracting COVID-19, are vaccinated.⁸⁷ Basic sanitation and hygiene practices are not in place. Screening and assessments and referrals for testing are still happenstance. Medical monitoring, cohorting and quarantine are chaotic. The risk of exposure is still great. In my opinion, Defendants must be held accountable. Defendants must get this right. They must comply with the CDC Guidance. Only then does Dallas County and the Dallas County Sheriff's Department fulfill their shared responsibility to protect the public, their personnel, and the people in their custody from COVID-19, including any new variant or reoccurrence that may occur.

⁸⁶ DSO Memorandums, dated May 13, 2020 and May 6, 2020 [DALLASCO_SANCHEZ_0001121–DALLASCO_SANCHEZ_0001130; DALLASCO_SANCHEZ_0012361–0012365].

⁸⁷ See Correctional Health Vaccination Summary, dated Apr. 13, 2021 [SANCHEZ_00000220].

Opinion IV

Sheriff Brown chronically, continuously, and knowingly failed to take meaningful and timely measures so that the Jail would comply with CDC Guidance. Her decision to delegate the Jail's management of COVID-19 to Deputy Chief Robinson, the Jail Administrator, and to disengage Parkland, are not only derelictions of her duty to govern but are deliberate and active choices not to meet her professional obligations. These failures and derelictions of duty are gross deviations from professional standards of care and competence that have resulted in at least several detainees contracting COVID-19 while in the Jail's custody and ultimately dying in the last year, medically vulnerable detainees' underlying conditions worsening, and the infection of an untold number of healthy detainees.

45. Sheriff Brown has continually failed to adequately anticipate and address COVID-19 in the Dallas County Jail.
- a. Sheriff Brown acknowledges COVID-19 presents a substantial risk of harm to detainees in the Dallas County Jail.⁸⁸
 - b. Sheriff Brown further acknowledges that the Dallas County Jail is a medium of COVID-19 transmission to or between detainees.⁸⁹
 - c. Sheriff Brown agreed that she is the keeper of the Jail and as such, must always maintain supervision and control of the Dallas County Jail.⁹⁰
 - d. Sheriff Brown made only a cursory review of the initial CDC Guidance and no review of the CDC subsequent updates. Without this foundational information, the Sheriff can neither formulate a plan to comply with CDC Guidance without knowing what it entails nor evaluate the Jail's activities or assess Parkland's recommendations regarding the management of COVID-19.
 - e. Sheriff Brown delegated all the decision-making associated with managing COVID-19 including all decision-making impacting Parkland, to Deputy Chief Robinson, the Jail Administrator.
 - f. Sheriff Brown was—and continues to be—as ill-equipped to supervise Deputy Chief Robinson's execution of his duties as she was to execute them herself. The Sheriff is derelict in the performance of the duties of her Office. Moreover, her failure to perform her duties in accordance with professional standards was an active choice, which she continues to believe is justified.⁹¹
46. Dallas County has continually failed to ensure Sheriff Brown had a viable plan and was faithfully, effectively executing that plan to protect the people in the County's custody from serious harm and death from COVID-19. Independent of reporting and oversight measures that the County Commissioners should have in place, there have been numerous indicators readily available to the County of Sheriff Brown's failure to develop and implement a viable plan to detect, deter, and treat COVID-19 in the Jail.

⁸⁸ Brown Tr., 9:4–7.

⁸⁹ *Id.* at 11:9–13.

⁹⁰ *Id.* at 9:23–10:2.

⁹¹ See, e.g., *id.* at 21:20–24, 31:18–23, 33:5–9, 38:15–18, 48:11–17, 70:10–25, 71:1–72:15, 72:24–73:7, 75:19–22, 101:7–9, 105:16–20, 121:8–12, 131:7–24, 137:23–24, 138:16–22, 159:6–7, 160:1–6.

- a. News accounts documented detention staff's concerns about the Jail's continued mismanagement of COVID-19 including, staffing shortages, mandatory overtime, and the lack of PPE. Also covered by the press was a protest by detainees concerning disruptions in laundry service due to staffing shortages during the pandemic and resulting in the lack of clean clothes, towels, and bedding.⁹² Earlier this year, the media also covered the Jail's failure to pass its 2021 annual inspection by the TCJS.⁹³
- b. In February, TCJS notified Dallas County Judge Clay Jenkins and Sheriff Brown that the Jail had failed its 2021 annual TCJS inspection. The letter identified the four areas that the TCJS found to be deficient – significantly delinquent custody reclassifications, failure to provide detainees personal hygiene products, failure to provide paper, pencils and stamps impeding detainees' access to counsel and others, and hundreds of unanswered grievances, concerns that carried forward at the onset of COVID-19. These are all additional indicators of the Jail's overall inability to operate during the pandemic and further substantiated its non-compliance with CDC Guidance.
- c. Court filings in *Sanchez, et al. v. Dallas County Sheriff Marian Brown and Dallas County*, Case No. 3:20-CV-00832-E, began in April 2020. Court filings in *Emanuel Lewis et al. v. Dallas County Sheriff Marian Brown* began in August 2020. In both cases, detainees and detention staff have attested to similar conditions in the Jail.
- d. The Jail has reported key COVID-19 indicators daily to the TCJS since late August 2020, and the indicators are available on its website. Any day's data was occasion for County Commissioners to ask Sheriff Brown why detainee testing was so low, why the numbers of detainees quarantined was so high, and why the number of in-custody deaths fluctuated between none, one, and two.⁹⁴ Deputy Chief Robinson, testifying on behalf of Dallas County made clear the County's lack of credence in the science, "We consider the CDC guidance as what it really says [it] is - guidance."⁹⁵ Defendants simply do not care.
- e. The County also contributed to the Jail's difficulties. The Dallas County Human Resources/Civil Service Office receives and evaluates applications for Worker's Compensation; the Office requires detention staff to prove they contracted COVID-19 while at work at the Jail to receive Worker's Compensation. This is an unreasonably high bar few detention officers can meet. Further, some staff do not have the sick leave and cannot afford to stay home, uncertain whether their application will be approved.⁹⁶ Additionally, the County's Health Department has

⁹² Brown Tr., 20:22–24:2; *see also* Dallas Observer, Women in Dallas County Jail Say They Endured Nearly Two Weeks Without Clean Clothes, dated Jan. 4, 2021, <https://www.dallasobserver.com/news/female-inmates-in-dallas-county-jail-say-they-were-denied-clean-clothes-and-care-11974827> (last accessed June 1, 2021).

⁹³ Dallas County Jail Fails Annual Inspection for First Time in a Decade, dated Feb. 12, 2021, <https://www.dallasnews.com/news/crime/2021/02/12/dallas-county-jail-fails-annual-inspection-for-first-time-in-a-decade/> (last accessed June 1, 2021).

⁹⁴ Email to Robinson Regarding Reporting [DALLASCO_SANCHEZ_0046813–DALLASCO_SANCHEZ_0046816].

⁹⁵ Robinson Tr. Vol. II, 55:20–21.

⁹⁶ Email from Robinson Regarding Leave [DALLASCO_SANCHEZ_0046018–DALLASCO_SANCHEZ_0046020].

not tested or vaccinated staff on-site and the County has had no policy in place to assure staff shall be released from work with pay for these purposes.

47. The Dallas County Sheriff's Department is the third largest department in Dallas County, and Sheriff Brown is the keeper of the Jail, the seventh largest jail in the country. Sheriff Brown failed to direct the Jail's COVID-19 response and Dallas County has not held the Sheriff to account. The consequences have been considerable.

- a. Sheriff Brown agreed it is her responsibility to ensure detainees are vaccinated however, this did not occur. The Sheriff admits she chose not to exercise any oversight.⁹⁷ She did not know what Parkland's plan was to vaccinate detainees, and she did not believe that she needed to know. In fact, she does need to know. Parkland's efforts to vaccinate detainees are stalled. The first vaccinations were administered the week of February 28. Twelve weeks later at the end of the week of May 22, Parkland had only vaccinated 1,260 detainees,⁹⁸ many of whom are no longer detained. Unless and until Parkland addresses detainees' concerns about the efficacy of the J&J vaccine, this effort is unlikely to succeed.

Vaccinating the majority of the detained population is an urgent matter. The CDC Guidance underscores its importance, and it is the Sheriff's responsibility to ensure this is accomplished. She must engage. The County Commissioners oversee the Sheriff's Department. The Sheriff's failure to act is the County Commissioners failure as well.

- b. Sheriff Brown agreed that she must ensure that detainees are tested for COVID-19.⁹⁹ She said that she understood it is necessary to test enough detainees to ascertain the facility's true rate of infection, and to identify asymptomatic detainees to prevent its spread. This did not occur.

When Parkland offered to conduct additional testing of detainees consistent with CDC Guidance, the Deputy Chief declined their offer to assist due to "resources constraints" and when the Sheriff learned about their offer, she did not redirect the Deputy Chief to try.

Testing most of the workforce is equally important. Sheriff Brown could have elicited the support of the Dallas County Health Department to arrange on-site testing for detention staff, which also would have been an action to implement CDC guidance. Again, she failed to do so.

Further, there is no indication that the Dallas County Commissioners enlisted the Dallas County Health Department to assist other Departments, especially the Sheriff's Department, to test as many county residents as possible including detention staff and detainees or Sheriff Brown has failed to act on the offer.

- c. Sheriff Brown agreed it is her responsibility to adopt quarantine practices that will protect detainees from further exposure to infection.¹⁰⁰ This did not occur. The Jail's isolation practices

⁹⁷ Brown Tr., 71:7-8 ("I don't know what the pace should be, so, therefore, I'm trusting that they will do it.").

⁹⁸ Correctional Health Vaccination Summary, dated May 21, 2021.

⁹⁹ Brown Tr., 47:7-9.

¹⁰⁰ *Id.* at 47:11-15.

have not improved substantively over the course of the pandemic – the quarantine is too short to identify everyone who may be infected and the Jail’s refusal to test people who are released too soon continues to expose non-infected detainees and detention staff to COVID-19, contrary to CDC Guidance.

There are additional measures the Jail should consider. Parkland determined 14 64-bed housing units are needed to quarantine detainees for 14 days; it has access to nine units.¹⁰¹ The Sheriff’s Department has another Jail, the George Allen, with 800 beds, which it briefly reopened then closed last year, because of significant plumbing problems, to avoid a TCJS inspection that they knew it would fail.¹⁰² The Sheriff should secure the County Commissioner’s authorization for emergency capital repairs forthwith or decommission the facility. Also last year, with the approval of the Court, the Sheriff released about 1,000 detainees, including people whose fees had not been paid, to increase swing space.¹⁰³ There is no indication that the Sheriff has continued to cull the detained population for others who are suitable for release. She should continue to do so in conjunction with the Court.

Further, there is no indication that Dallas County Commissioners directed the Dallas County Health Department to assist the Departments which operate residential facilities, especially the Sheriff’s Department, by assessing their quarantine protocols or Sheriff Brown has failed to act on its offer.

- d. Sheriff Brown stated it is the Jail’s legal obligation to provide the same level of healthcare to inmates as is available in the community, and that she would insist upon and advocate for that.¹⁰⁴ Regarding COVID-19, the CDC’s Guidance is the community’s standard of care. To date, Sheriff Brown has not insisted upon and advocated for the Jail’s compliance with CDC Guidance.

The Board of the Hospital District develops Parkland’s annual budget, then it is approved by the County Commissioner’s Court.¹⁰⁵ Its FY2021 budget is “a little over 35 million [dollars].”¹⁰⁶ If Parkland exceeds its budget, Parkland is responsible for correctional health spending,¹⁰⁷ that is, Parkland draws down on the Hospital District’s tax base of Dallas County.¹⁰⁸

¹⁰¹ Jones Tr. Vol. II, 39:4–6.

¹⁰² Email to Brown Regarding George Allen [DALLASCO_SANCHEZ_0040294–DALLASCO_SANCHEZ_0040295].

¹⁰³ Ashley Paredez, FOX 4, Officials release 1,000 inmates to ease crowding, slow spread of COVID-19 at Dallas County jail, dated Apr. 15, 2020, <https://www.fox4news.com/news/officials-release-1000-inmates-to-ease-crowding-slow-spread-of-covid-19-at-dallas-county-jail> (last accessed June 1, 2021).

¹⁰⁴ Brown Tr., 177:17–25, 178:1–2.

¹⁰⁵ Jones Tr. Vol. II, 54:2–4.

¹⁰⁶ *Id.* at 58:15–16.

¹⁰⁷ *Id.* at 54:16–17.

¹⁰⁸ *Id.* at 54:20–24.

Prior to the pandemic, Parkland anticipated its FY2022 costs would increase. The number of detainees in need of mental health services is increasing,¹⁰⁹ and more medications are prescribed.¹¹⁰ There is also a need for more positions and labor costs are up.¹¹¹

Sheriff Brown knew or should have known the Jail did not have sufficient resources to conduct testing, administer vaccines, medically monitor, and address social distancing.¹¹² The Jail is chronically short on space and staff and other essential services and supplies, and if the Sheriff had engaged with Parkland as is her duty, she also would have known that Parkland was as well. It is always her professional responsibility to determine whether additional resources are required, then take the necessary steps to secure those positions and/or funds.

Dallas County Commissioners are responsible for providing the funds to meet this standard of care. It appears the Dallas County Commissioners expect the Departments to operate within existing funds even during a pandemic. Nonetheless, Sheriff Brown has the professional responsibility to inform the County Commissioners of new needs and emergency requisitions to operate the Jail through the duration of the pandemic and to advocate for their allocation. The County Commissioners have the professional responsibility to find the operating and capital funds to operate the Jail in conformance with CDC Guidance. There is no other option when a catastrophic occurrence lasting more than a year as has COVID-19 occurs. The County Commission and Sheriff Brown have failed to do so.

- e. The Jail has missed most milestones required by the CDC Guidance, and to date, does not comply with the CDC Guidance for correctional facilities and detention centers.
- f. Both Sheriff Brown and Dallas County Commissioners knew or should have known and continually failed to intervene at every decision point. They all have professional responsibilities to be aware of these crucial requirements and take steps to ensure that they are met, including becoming aware of obstacles and taking action to remove those obstacles.

48. Healthy detainees continue to be infected at an alarming rate. Sample testing of asymptomatic detainees in the Dallas County Jail for COVID-19 in June 2020, found 76% were positive.¹¹³ More recent data is not available however, Deputy Chief Robinson declined Parkland's offer to continue testing asymptomatic detainees; he did not see any value in doing so.¹¹⁴ In March 2021, when Sheriff Brown learned about the sample and Deputy Chief's decision, she never contacted Parkland to act on its offer.¹¹⁵ Statistically, as many Plaintiffs are asymptomatic as were in the sample.

¹⁰⁹ Jones Tr., 60:9–13.

¹¹⁰ *Id.* at 59:18

¹¹¹ *Id.*

¹¹² *Id.* at 10:25–11:8, 43:7–14.

¹¹³ Brown Tr., 31:7–24.

¹¹⁴ Robinson Tr., 61:5–9.

¹¹⁵ Brown Tr., 102:13–22.

49. Medically vulnerable detainees are especially at risk of infection are more likely to become severely ill from COVID-19 and require hospitalization, intensive care, and/or a ventilator, and are more likely to die.¹¹⁶ A number of Plaintiffs are medically vulnerable, and their health suffered during their detention. For example, Oscar Sanchez has a history of severe, chronic asthma that has required hospitalization in the past.¹¹⁷ When he reported he had chest pains and difficulty breathing to the medical staff at the Dallas County Jail, he was told there was nothing to be done.¹¹⁸ Terry McNickles is a 58-year-old man recovering from an operation for kidney cancer. After his kidney removal surgery, his doctor told him he would have to take extra precautions to fight off infections because his immune system had been compromised.¹¹⁹ Tesmond McDonald's oxygen levels reached a dangerously low point, and he has had such difficulty breathing that on at least one occasion last year "he thought he was going to die."¹²⁰ As long as such medically vulnerable detainees remain detained, their risk of infection is still great.

50. At least several detainees who contracted COVID-19 in the Jail have died in the last year.

- a. The Dallas County Jail reported 16 custodial deaths to the TCJS since January 1, 2018.¹²¹ In my experience, this is too many deaths for a jail of any size.
- b. The Jail reported the County Coroner determined one custodial death was the result of COVID-19.¹²² Channel Lee Greer died in the custody of the Jail on June 21, 2020.¹²³
- c. Paul Aaron French was a Dallas County detainee who contracted COVID-19 in the Jail and died December 2020.¹²⁴
- d. Robert Bryant, Jr. was a Dallas County detainee who contracted COVID-19 in the Jail. He was found unresponsive in his cell and died in January 2021.¹²⁵
- e. Nathaniel Washington was a Dallas County detainee who experienced low oxygen levels and pneumonia in the Jail. The record does not indicate whether he was tested but is believed to have contracted COVID-19 while in the Jail. He died in February 2021.¹²⁶

¹¹⁶ CDC, People with Certain Medical Conditions, dated May 13, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#MedicalConditionsAdults> (last accessed June 1, 2021).

¹¹⁷ See Memorandum in Support of Motion for Temporary Restraining Order, dated Apr. 9, 2020.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ TCJS Annual Jail Report, dated Feb. 8–12, 2021 [DALLASCO_SANCHEZ_0019094–DALLASCO_SANCHEZ_0019100].

¹²² Defendants' Resp. to Plaintiffs' First Set of Interrogatories, dated Nov. 10, 2020.

¹²³ Brown Tr. 93:4–13; see also How a 63-year-old Inmate Was the First to Die from COVID-19 in the Dallas County Jail, dated Oct. 16, 2020, <https://www.dallasnews.com/news/public-health/2020/10/16/how-a-63-year-old-inmate-was-the-first-to-die-from-covid-19-in-the-dallas-county-jail/> (last accessed June 1, 2020).

¹²⁴ Brown Tr., 93:9–13, 93:20–23.

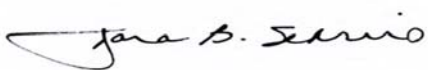
¹²⁵ *Id.* at 94:24–95:5.

¹²⁶ *Id.* at 95:10–97:19.

51. It is likely that more of the 16 deaths of detainees reported are COVID-19 related. Most residential facilities are averse to reporting deaths. Correctional facilities are especially concerned about their rates of mortality and morbidity as relatively few inmates who die are elderly or at eminent risk of death. COVID-19 is different in that a host of medically vulnerable people of different ages may die, if infected.
52. It is also more likely additional detainees died during this reporting period immediately after transfer or release. It is not uncommon for correctional facilities to grant an especially ill or infirm inmate a compassionate release at which point, the prisoner/patient is no longer in custody. Other prisoner/patients are transferred to a medical facility, rehabilitation center, or hospice, still in custody but not in the jail or prison. The TCJS tracks only in-custody deaths. To ascertain the full impact of COVID-19, it would be better to report (1) how many detainees contracted COVID-19 in custody, (2) how many detainees died in custody or after release, and (3) whether COVID-19 (a) caused or (b) contributed to their death. The Dallas County Commissioners should prepare such a report. The County should also conduct a mortality and morbidity study of the Jail's population. It is also my opinion; both reports, the detainees' identities redacted, should be released to the public.
53. **Quis custodiet ipsos custodes? Who Will Guard the Guards?**¹²⁷ Defendants have failed the people in the County's custody. They have done so for more than a year with little evidence of interest or ability to improve. Neither negative press, a failed jail inspection, nor several lawsuits have persuaded Defendants to do better, to be better stewards of the public's trust. Unlike conditions in the community which are increasingly normal because of testing, social distancing and other safety precautions, and the widespread availability of vaccinations, detainees assigned to the Dallas County Jail continue to be exposed to COVID-19. They are at risk and do not have the means to remedy this situation on their own.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day in June 2021, in Bronx, New York.



Dora B. Schriro, Ed.D., J.D.

¹²⁷ "Quis custodiet ipsos custodes?" is a Latin phrase found in the work of the Roman poet Juvenal from his Satires (Satire VI, lines 347–348). It is literally translated as "Who will guard the guards themselves?"