

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

CLIFTON BELTON, JR., JERRY  
BRADLEY, CEDRIC FRANKLIN,  
CHRISTOPHER ROGERS, JOSEPH  
WILLIAMS, WILLIE SHEPHERD,  
DEVONTE STEWART, CEDRIC SPEARS,  
DEMOND HARRIS, and FORREST  
HARDY, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

SHERIFF SID GAUTREAUX, in his official  
capacity as Sheriff of East Baton Rouge; LT.  
COL. DENNIS GRIMES, in his official  
capacity as Warden of the East Baton Rouge  
Parish Prison; CITY OF BATON  
ROUGE/PARISH OF EAST BATON  
ROUGE,

Defendants.

Case No. 3:20-cv-000278-BAJ-SDJ

**PLAINTIFFS' MEMORANDUM IN SUPPORT  
OF THEIR MOTION FOR EXPEDITED DISCOVERY**

Pursuant to Fed. R. Civ. P. 26(d), Plaintiffs hereby move for an Order directing discovery including an expert's inspection of the East Baton Rouge Parish Prison ("Jail") on an expedited basis in anticipation of a hearing on Plaintiffs' request for preliminary injunctive relief on their non-habeas claims in this matter.<sup>1</sup>

---

<sup>1</sup> Plaintiffs have filed a complaint seeking habeas corpus relief pursuant to 28 U.S.C. § 2241 in the form of release from custody, on behalf of a Plaintiff subclass comprised of medically vulnerable individuals. They have also filed claims, pursuant to 42 U.S.C. § 1983, on behalf of all class members (and different subclass members) seeking an order requiring Defendants to undertake a range of remedial measures to bring the prison in compliance with Center for Disease Control guidance regarding COVID-19, and otherwise take steps to protect all class members from risk of COVID-19 infection. Plaintiffs are seeking emergency relief via a temporary restraining order on the former claim as release is imperative for medically vulnerable class members. For the latter set of claims, Plaintiffs intend to move for a preliminary injunction to ensure safer conditions in the Jail. The present motion for expedited discovery relates to the injunctive relief requested in the later set of claims.

Specifically, Plaintiffs seek targeted written discovery and limited deposition testimony to ascertain the adequacy of steps Defendants are taking – and failing to take – to protect Plaintiffs from infection and serious illness or death from the present COVID-19 outbreak in the facility, as well as an inspection from a highly credentialed and experienced correctional health expert, Dr. Fred Rottnek, retained by Plaintiffs in order to evaluate the measures the Defendants will need to undertake to ensure their compliance with constitutional baselines and protect the health and safety of Plaintiffs. This discovery – and especially the expert inspection – will aid this Court in understanding the conditions in the Jail and fashioning appropriate preliminary injunctive relief on Plaintiffs’ Section 1983 claims.

This Court has broad discretion to manage the timing of discovery and issue orders for expedited discovery. *See AVO Multi-Amp Services Corp. v. Technical Diagnostics Services, Inc.*, No. 3:97-CV-3168-P, 1998 WL 25568, at \*1 (S.D. Tex. Jan. 14, 1998); *accord* Fed. R. Civ. P. 26(d)(1) (permitting deviation from normal rule when “authorized . . . by court order”). In determining whether to grant a motion for discovery prior to a Rule 26(f) conference, several district courts in the Fifth Circuit, including this court, use the “good cause” standard. *See ELargo Holdings, LLC v. Doe*–68.105.146.38, 318 F.R.D. 58, 61 (M.D. La. 2016); *St. Louis Group, Inc. v. Metals and Additives Corp., Inc.*, 275 F.R.D. 236, 240 (S.D. Tex. 2011) (noting that although the Fifth Circuit has not decided the issue, “[s]everal district courts within the Fifth Circuit have expressly utilized the ‘good cause’ standard”).

In a good cause analysis, a court “examine[s] the discovery request on the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances.” *Id.* at 239 (internal quotation marks omitted). Good cause typically exists “where the need for expedited discovery outweighs the prejudice to the responding party.” *Id.* at 240, quoting *BKGTH*

*Productions, Inc. v. Does 1–20*, No. 13–5310, 2013 WL 5507297, at \*5 (M.D. La. 2013). Given the possibility of suffering irreparable harm, good cause makes particular sense in cases seeking injunctive relief, as here. See *N. Am. Deer Registry, Inc. v. DNA Solutions, Inc.*, No. 4:17-cv-62, 2017 WL 1426753, at \*2 (E.D. Tex. Apr. 21, 2017) (noting that “expedited discovery is appropriate in cases involving preliminary injunctions”). Moreover, “[t]he purpose of expedited discovery in the context of a temporary restraining order or preliminary injunction is for further development of the record before the preliminary injunction hearing, which better enables the court to judge the parties’ interests and respective chances for success on the merits.” *Amos v. Taylor*, No. 4:20-CV-7-DMB-JMV, 2020 WL 618824, at \*2 (N.D. Miss. Feb. 10, 2020). Finally, courts in this circuit have found good cause where the scope of the discovery sought is narrow and would substantially contribute to moving the case forward. *St. Louis Group, Inc.*, 275 F.R.D. at 240-241.

Good cause exists in this case to order expedited discovery based on the presence of a highly contagious and potentially lethal virus that has swept the globe with ruthless speed. Plaintiffs’ pleadings emphasize the severe and urgent risk of harm imposed by the growing COVID-19 pandemic for those incarcerated at the Jail. Those pleadings are based on Plaintiffs’ own affidavit testimony, investigative media, and public health and epidemiological expert opinions regarding the acute risk of COVID-19 contagion and spread in prisons and jails.

Expedited discovery from Defendants will permit the Court and Plaintiffs to access information necessary to assess the adequacy of Defendants’ response to the COVID-19 pandemic. The denial or delay of this discovery would irreparably harm Plaintiffs and the putative class members they represent by prolonging their time in unconstitutional conditions that risk their health and lives. See *id.* at 240. (expedited discovery is appropriate “when there is some showing of *irreparable harm* that can be addressed by limited, expedited discovery”) (emphasis added).

Plaintiffs' expert, Dr. Fred Rottnek, a highly credentialed and experienced physician, Professor and correctional health specialist who among other things, was lead physician and medical director of the Saint Louis County (Missouri) Jail for over fifteen years, reviewed all Plaintiffs' declarations, as well as the considerable literature regarding the transmissibility and lethality of COVID-19 in jails and prisons. In addition to making detailed, specific findings about the peculiar and heightened risks associated with COVID-19, he concludes that the Jail is facing a crisis:

[I]t is my professional judgment that individuals placed in the East Baton Rouge Parish Prison are at a significantly higher risk of infection with COVID-19 as compared to the population in the community, given the procedural and housing conditions in the facilities, and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis), permanent lung damage, and even death.

*See* Declaration of Dr. Fred Rottnek at ¶61, attached as Exhibit A. *See also* Rottnek Decl. ¶30 (“It is my professional judgment, based on the materials and experience identified above . . . that the Parish Prison is under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which has already resulted in harm to detained individuals, correctional staff, and potentially the broader community.”).

In support of these conclusions and based on his review of the present record, Dr. Rottnek details numerous deficiencies in Jail protocols as measured around applicable CDC Guidance, including: inadequate testing and screening, Rottnek Decl. ¶¶35-40; critically inadequate social distancing, Rottnek Decl. ¶¶46-47; critically insufficient cleaning of common and high-touch areas, Rottnek Decl. ¶41; insufficient cleaning of cells and personal hygiene, Rottnek Decl. ¶42; inadequate provision and use of protective gear by inmates and staff, Rottnek Decl. ¶43; nonexistent to insufficient communication and education of inmates on risks of infection and necessary preventative measures, Rottnek Decl. ¶48; failure to identify, prioritize and protect high-

risk individuals, Rottnek Decl. ¶54-55; and, sorely inadequate provision of medical care, Rottneck Decl. ¶49-53.

For medically vulnerable individuals, Dr. Rottnek recommends the only relief that will protect them from risk of serious illness or death is release from custody. Dr. Rottnek further explains that, given the severe departures from CDC Guidance at the Jail and other *de facto* health care policies and decrepit conditions of confinement, some other immediate changes will need to be implemented. Specifically, he explains what would be necessary to inspect in order to provide the court with guidance on existing deficiencies and necessary, curative measures: physical spaces, including lobbies, hosing pods, infirmary, common and dining spaces; availability and usage of personal protective equipment (“PPE”), cleaning materials and supply; HVAC system; behavioral observation including social distancing practices, cleaning, use of PPE, visitation. Rottnek Decl. ¶59. He also identifies a set of documents he would want to review and digest in aid of the court’s understanding of the conditions at the facility. Rottnek Decl. ¶60

Conscious of the need for expedited action, Plaintiffs have carefully tailored their discovery requests to minimize the burden on Defendants’ time and resources. *See ELargo Holdings, LLC*, 318 F.R.D. at 61 (“the scope of the requests must be narrowly tailored to the necessary information they seek”).

To illustrate the targeted scope of the discovery, Plaintiffs propose a 30(b)(6) Deposition (taken by video conference) of the person with the most knowledge of the day to day operations of the Jail and a deposition of Sheriff Sid Gautreaux, to last no more than 4 hours per deposition. These depositions will be set after conference with defense counsel in order to find dates and times most convenient to them and their clients. In addition, Plaintiffs seek a certain limited number of Interrogatories, Requests for Production, and Requests for Admission.

Lastly, pursuant to Fed. R. Civ. P. 34(a)(2), Plaintiffs also request that Dr. Rottnek be granted access to the Jail along with one of the undersigned counsel, where they shall be permitted to inspect areas of the facilities without limitation as set forth in the Rottnek Declaration, ¶59; Dr. Rottnek should be permitted to bring cameras, cell phones, writing instruments, recording devices, and any other equipment required to conduct the site visit; shall be permitted to speak with Jail staff and residents in confidence and outside the presence of Prison supervisors and staff; and shall be provided by Defendants with a sufficient supply of full personal protective equipment to safely enable the visit. *See Amos*, 2020 WL 618824, at \*3–5 (permitting prison inspection and finding good cause for expedited discovery). Subject to scheduling constraints of both parties, Plaintiffs would propose the inspection occur within 7 days of an entry of an order on this motion.

In light of the urgency imposed by this COVID-19 pandemic, other district courts have ordered an expedited inspection of the jail or prison with the same or similar conditions requested by Plaintiffs in this case. *See, e.g.*, Consent Order Appointing Amicus, *Banks, et al v. Quincy Booth, et al.*, No. 1:20-cv-849 (CKK), ECF No. 34 (D.D.C. filed Apr. 9, 2020); Order (ECF No. 45, filed Apr. 15, 2020) and Order (ECF No. 53, filed Apr. 17, 2020), *Chunn et al. v. Warden Derek Edge*, No. 1:20-cv-01590-RPK (E.D.N.Y.).

The burden of this limited and tailored discovery on Defendants is minimal at most. The requested inspection will last no more than a day with minimal intrusion into the operation of the Jail, and many of the other discovery requests reference information uniquely in Defendants' possession that is already being collected (such as the numbers of people detained in the Jail who have been tested for the virus, and have tested positive). In addition, some of the information can be disclosed, through a meet and confer process, in stages. Compliance with the expedited

discovery requested by Plaintiffs impose no prejudice on Defendants, and any potential burdens on Defendants is greatly outweighed by Plaintiffs' urgent need for this discovery.

Ultimately, this discovery will aid the Court in fashioning appropriate relief on Plaintiffs' anticipated request for a preliminary injunction ordering Defendants to improve conditions of confinement to promote the long-term health and safety of individuals currently facing serious harms associated with the likely spread of COVID-19 in EBRPP.

Upon entry of an Order permitting expedited discovery, Plaintiffs will seek to work with Defendants to agree on a proposed discovery schedule that permits sufficient time for Defendants' response as well as Plaintiffs' review of the discovery before a preliminary injunction application and hearing.

Respectfully submitted, this 27<sup>th</sup> day of May, 2020.

/s/ David J. Utter

David J. Utter (LA Bar No. 23236)  
William R. Claiborne (GA Bar No. 126363)\*  
FAIR FIGHT INITIATIVE  
410 East Bay Street  
Savannah, Georgia 31401  
(912) 236-9559 Telephone  
(912) 236-1884 Facsimile  
[david@fairfightinitiative.org](mailto:david@fairfightinitiative.org)  
[will@fairfightinitiative.org](mailto:will@fairfightinitiative.org)  
*Attorneys for Plaintiffs*

*\*Pro Hac Vice motion pending*

/s/ Lillian S. Hardy

Lillian S. Hardy (DC Bar No. 991282)\*  
Hogan Lovells US LLP  
555 Thirteenth Street NW  
Washington, DC 20004  
(202) 637-5884 Telephone  
[lillian.hardy@hoganlovells.com](mailto:lillian.hardy@hoganlovells.com)

/s/Miriam R. Nemeth

Thomas B. Harvey (MBE #61734MO)\*  
Miriam R. Nemeth (DC Bar No. 1028529)\*\*  
Tiffany Yang (DC Bar No. 230836)\*  
ADVANCEMENT PROJECT NATIONAL  
OFFICE  
1220 L Street NW, Suite 850  
Washington, DC 20005  
(202) 728-9557 Telephone  
[tharvey@advancementproject.org](mailto:tharvey@advancementproject.org)  
[mnemeth@advancementproject.org](mailto:mnemeth@advancementproject.org)  
[tyang@advancementproject.org](mailto:tyang@advancementproject.org)  
*Attorneys for Plaintiffs*

*\*Pro Hac Vice motions pending*

*\*\* Lead Attorney for Plaintiffs*

/s/ William P. Quigley

William P. Quigley (LA Bar No. 00769)  
Loyola University New Orleans  
7214 St. Charles Avenue  
Campus Box 902  
New Orleans, LA 70117  
*Attorney for Plaintiffs*

*Attorneys for Plaintiffs*

*\*Pro Hac Vice motion pending*

/s/ Baher Azmy

Baher Azmy (NY Bar No. 2860740)\*  
Omar Farah (NY Bar No. 4641247)\*  
Brittany Thomas (NY Bar No. 5683834)\*

CENTER FOR CONSTITUTIONAL  
RIGHTS

666 Broadway, 7th Floor  
New York, NY 11201  
(212) 614-6427 Telephone

[bazmy@ccrjustice.org](mailto:bazmy@ccrjustice.org)

[ofarah@ccrjustice.org](mailto:ofarah@ccrjustice.org)

[bthomas@ccrjustice.org](mailto:bthomas@ccrjustice.org)

*Attorneys for Plaintiffs*

*\*Pro Hac Vice motions forthcoming*

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2020 a copy of the foregoing was sent to all parties via electronic mail upon the following:

Michael P. Schillage  
Assistant Parish Attorney  
Office of the East Baton Rouge Parish Attorney  
222 St. Louis Street, Suite 902  
Baton Rouge, LA 70803  
[MSchillage@brla.gov](mailto:MSchillage@brla.gov)

Catherine St. Pierre  
Erlingson Banks, PLLC  
One American Place  
301 Main Street Suite 2110  
Baton Rouge, LA 70801  
[cstpierre@erlingsonbanks.com](mailto:cstpierre@erlingsonbanks.com)

/s/ David J. Utter

David J. Utter